

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	<b>Procedures Objection Deadline: March 15, 2017 at 4:00 p.m. (Proposed)</b>
	:	<b>Procedures Hearing Date: March 20, 2017 at 1:00 p.m.</b>

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**MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTOR TO SELL  
CERTAIN WIRELESS LICENSES FREE AND CLEAR OF LIENS AND  
ENCUMBRANCES AND (II) APPROVING SALE AND AUCTION PROCEDURES  
IN CONNECTION THEREWITH**

Limitless Mobile, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), by its undersigned counsel, hereby moves this Court (the “Motion”) for entry of Orders, substantially in the form attached hereto, (a) authorizing the Debtor to solicit bids for the sale of certain wireless licenses (collectively, the “Spectrum Assets”); (b) approving competitive bidding procedures related thereto; (c) scheduling (i) an auction (the “Auction”) with respect to the sale of the Spectrum Assets and (ii) a hearing date to approve the sale (the “Sale Hearing”); (d) approving the form, manner, and sufficiency of notice of the Auction and the Sale Hearing; and (e) approving the sale of the assets to a qualified bidder at the Auction determined by the Debtor to be the highest and best offer pursuant to 11 U.S.C. § 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure. In support of the Motion, the Debtor avers as follows:

**Jurisdiction and Venue**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtor consents to the entry of final orders or judgments of the Court pertaining to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

**Background**

3. On December 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. On December 16, 2016, an Official Committee of Unsecured Creditors (the “Committee”) was appointed.

5. The Debtor, successor to Keystone Wireless, LLC, was formed in 2013 with a mission to construct a broadband network and provide wireless telecommunications services to nine rural and underserved counties of Central Pennsylvania. To that end, the Debtor has built a \$40 million state of the art 3G/4G LTE network that has increased access to reliable, high quality mobile phone and home internet services in rural areas. This network and infrastructure makes it an attractive partner for providing wholesale services to national carriers.

6. As part of the build out of its network and infrastructure, the Debtor obtained certain PCS licenses issued by the Federal Communications Commission (collectively, the “FCC Licenses”) for rural areas of Pennsylvania.

7. Due to increased costs and delays in the build out of its network, which repeatedly extended the required runway to profitability, the Debtor determined prior to the Petition Date that it could not sustain its current business model without significant infusions of additional capital, which it could not attract due to its excessive debt structure.

8. Thus, the Debtor determined that its needed to reorganize by reducing and restructuring its debt, scaling back its retail efforts, and focusing its attention on the wholesale opportunities that its infrastructure also enables. As part of these efforts, the Debtor has identified those FCC Licenses that are necessary for its more limited retail services and its growing wholesale business.

9. The remainder of the FCC Licenses, the Spectrum Assets, are no longer necessary for the Debtor's operations. Nevertheless, as the number of PCS licenses issued by the FCC are limited for any given region, the Spectrum Assets have considerable value to third parties who are looking for capacity in the regions they cover.

10. To maximize the value of the Spectrum Assets to its bankruptcy estate, the Debtor seeks authority to sell, assign, transfer, convey and deliver to the Successful Bidder (as defined below) all of its right, title, and interest in the Spectrum Assets, subject to any necessary approvals required by the FCC.

11. To facilitate the marketing of the Spectrum Assets for sale, the Debtor has sought approval from the Court to retain MVP Capital, LLC ("MVP") as its investment banker. D.I. 175.

**Highlighted Provisions Pursuant to Local Rule 6004-1**

<b><u>Provision</u></b>	<b><u>Description</u></b>	<b><u>Location in Order</u></b>
<u>Closing and Other Deadlines</u> (L.R. 6004-1(iv)(E))	Although there is currently no deadline to close, the sale of the Spectrum Assets is subject to approval by the Federal Communications Commission as required by law.	Sale Order ¶¶ B., 2, 5
<u>Good Faith Deposit</u> (L.R. 6004-1(iv)(F))	Qualified Bids must be accompanied by a deposit equal to 5% of the total proposed purchase price (a “ Good Faith Deposit”) and a Successful Bidder must provide an additional Good Faith Deposit equal to 5% of the Successful Bid amount upon approval of the Proposed Agreement by the Court . If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposits deposited by such Successful Bidder, which shall be retained by the Debtor as liquidated damages.	Procedures Order ¶¶ 1 c. ii., iii. & 1 l.
<u>Relief from Rule 6004(h)</u> (L.R. 6004-1(iv)(O))	The 14 day stay of 6004(h) is waived to permit the sale to close promptly	Sale Order ¶ 15
<u>Qualification of Bidders</u> (6004-1(c)(i)(A))	<p>All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtor and its advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.</p> <p>Each Potential Bidder must execute a confidentiality agreement in form and substance satisfactory to the Debtor, and documentation satisfactory to the Debtor and its advisors demonstrating the Potential Bidder’s ability to close.</p>	Procedures Order ¶ 1 c. iv. & 1 e. i., ii.

<b><u>Provision</u></b>	<b><u>Description</u></b>	<b><u>Location in Order</u></b>
<u>Qualified Bids</u> (6004-1(c)(i)(B))	<p>The Bid Deadline is March 31, 2017 at 5:00 p.m. (prevailing Eastern Time).</p> <p>All Qualified Bids shall be accompanied by a deposit of an amount equal to 5% of the total proposed purchase price (the “Good Faith Deposit”), and shall be in the form of the License Purchase Agreement (“LPA”), together with a comparison showing all changes from the LPA. Qualified Bids must also be accompanied by a cover letter from a person or persons that the Debtor deems financially able to consummate the purchase of the Spectrum Assets, which letter states:</p> <p>(1) that such Qualified Bidder offers to purchase some or all of the Spectrum Assets upon the terms and conditions set forth in an asset purchase agreement, together with its exhibits and schedules, including terms relating to price and the time of closing (the “Proposed Agreement”).</p> <p>(2) The Proposed Agreement must provide that if the Qualified Bidder becomes the Successful Bidder (as defined below), then upon approval of the Proposed Agreement by the Court at the Sale Hearing (as defined below), the Successful Bidder will deposit with the Debtor an additional Good Faith Deposit equal to 5% of the Successful Bid amount.</p> <p>(3) that such Qualified Bidder is fully qualified under the Communications Act of 1934, as amended, to hold FCC licenses;</p> <p>(4) that such Qualified Bidder is prepared to consummate the transaction immediately upon the FCC’s approval of the assignment of the Spectrum Assets to the Qualified Bidder; and</p> <p>(5) that such Qualified Bidder’s offer is irrevocable until two (2) business days after the closing of the sale of the Spectrum Assets.</p>	<p>Procedures Order ¶ 1 c. i. – iii.</p>

### **Terms of Sale**

12. Subject to the terms of a negotiated license purchase agreement, the Spectrum Assets will be sold and transferred (subject to approval by the FCC) to the Successful Bidder free and clear of all existing liens, claims, and encumbrances pursuant to 11 U.S.C. § 363 for a sum that is determined to be the highest or otherwise best bid.

13. The Spectrum Assets are being sold “AS IS, WHERE IS” with no representations of any kind. The Spectrum Assets (consisting of eight FCC Licenses) may be sold in their entirety, in lots or separately in the discretion of the Debtor in conjunction with its advisors.

14. After the approval of the sale of the Spectrum Assets to the Successful Bidder or Bidders, each Successful bidder will need to submit an appropriate application with the FCC requesting its consent to the assignment of the Spectrum Assets by the Debtor to the Successful Bidder. Any sale of the Spectrum Assets is subject to such approval by the FCC.

### **Relief Requested and Bidding Procedures**

15. The Debtor, in the exercise of its sound business judgment, has determined to sell the Spectrum Assets and believes that an open sale process will achieve a fair market price and maximize value to its various creditor constituencies. In furtherance of this objective, the Spectrum Assets will be subject to a marketing effort and only the highest or otherwise best qualified offer submitted by a bidder will be successful (the “Successful Bidder”). Accordingly, the Debtor seeks the Court’s approval of the following Bid Procedures (the “Bid Procedures”).

- a. **Assets to Be Sold.** The Debtor is offering the Spectrum Assets, consisting of eight FCC licenses for certain regions in central Pennsylvania, for sale. The Spectrum Assets may be offered for sale at the Auction (as defined below) in their entirety, in lots or separately in the discretion of the Debtor in conjunction with its advisors.
- b. **The Bidding Process.** The Debtor, through and in conjunction with MVP shall: (i) determine whether any person is a Potential Bidder (“Potential Bidder”); (ii) coordinate the efforts of Potential Bidders in conducting

their respective due diligence investigations regarding the Spectrum Assets; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to purchase the Spectrum Assets, together or separately (collectively, the “Bidding Process”). Neither the Debtor nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Spectrum Assets to any person who is not a Potential Bidder.

- c. **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtor, in order to participate in the Bidding Process each person (a “Qualified Bidder”) must submit a bid that adheres to the following requirements (a “Qualified Bid”):

- i. All Qualified Bids must be submitted in the form of the LPA which will subsequently be filed with the Court<sup>1</sup> to the Debtor’s investment bankers, MVP Capital, LLC via e-mail directed to Jason Nicolay at jnicolay@mvpcapital.com, not later than 5:00 p.m. (prevailing Eastern Time) on Friday, **March 31, 2017** (the “Bid Deadline”), with a copy to (A) counsel for the Debtor, Jennifer L. Maleski at jmaleski@dilworthlaw.com; (B) counsel to Tower Bridge LLM Partners (“Tower Bridge”), Ronald S. Gellert at rgellert@gsbblaw.com; (C) counsel for the United States Department of Agriculture, Rural Utilities Service (the “USDA”, and collectively with Tower Bridge, the “Lenders”), Mitchell Zeff at Mitchell.Zeff2@usdoj.gov; and (D) counsel for the Committee, Lucien B. Murley at LMurley@saul.com.
- ii. All Qualified Bids shall be accompanied by a deposit into escrow with the Debtor of an amount equal to 5% of the total proposed purchase price (the “Good Faith Deposit”).
- iii. All Qualified Bids shall be in the form of the LPA, together with a comparison showing all changes from the LPA, and a cover letter from a person or persons that the Debtor deems financially able to consummate the purchase of the Spectrum Assets, which letter states:
  - (1) that such Qualified Bidder offers to purchase some or all of the Spectrum Assets upon the terms and

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<sup>1</sup> As of the date of filing this Motion, the LPA has not been finalized. The Debtor intends to file it in advance of the proposed March 20 hearing.

conditions set forth in an asset purchase agreement, together with its exhibits and schedules, including terms relating to price and the time of closing (the “Proposed Agreement”).

- (2) The Proposed Agreement must provide that if the Qualified Bidder becomes the Successful Bidder (as defined below), then upon approval of the Proposed Agreement by the Court at the Sale Hearing (as defined below), the Successful Bidder will deposit with the Debtor an additional Good Faith Deposit equal to 5% of the Successful Bid amount.
  - (3) that such Qualified Bidder is fully qualified under the Communications Act of 1934, as amended, to hold FCC licenses;
  - (4) that such Qualified Bidder is prepared to consummate the transaction immediately upon the FCC’s approval of the assignment of the Spectrum Assets to the Qualified Bidder; and
  - (5) that such Qualified Bidder’s offer is irrevocable until two (2) business days after the closing of the sale of the Spectrum Assets.
- iv. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtor and its advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
  - v. Qualified Bids cannot contain any contingencies, including without limitation financing conditions or contingencies, other than FCC approval of the assignment of the Spectrum Assets and those conditions or contingencies agreed to by the Debtor, after consultation with the Lenders, the Committee, and/or any other affected creditors.
  - vi. All Qualified Bidders shall submit to the jurisdiction of the Court.
  - vii. Each Qualified Bidder shall acknowledge that their Qualified Bid is a good faith offer.
- d. **Stalking Horse Bid.** The Debtor reserves the right to designate a Qualified Bidder as a stalking horse (the “Stalking Horse Bidder”) with certain bidding protections to the Stalking Horse Bidder, including



breakup fees and expense reimbursements, subject to higher or otherwise better offers, as approved by an order of the Court after notice and a hearing. Should the Debtor designate a Stalking Horse Bidder, it will provide separate notice of the scheduled hearing and related objection deadlines as formally scheduled by the Court.

- e. **Due Diligence.** The Debtor (through MVP) shall afford each Potential Bidder (hereinafter defined) due diligence access to information regarding the Spectrum Assets. Due diligence access may include management presentations as may be scheduled by the Debtor or MVP, access to data rooms, and such other matters which a Potential Bidder may request and as to which the Debtor, in its sole discretion, may agree. Neither the Debtor nor any of its affiliates (nor any of their respective representatives) are obligated to furnish any information relating to the Spectrum Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Spectrum Assets provided by anyone other than the Debtor or its representatives. To be a “Potential Bidder,” each bidder must have delivered the following:
  - i. an executed confidentiality agreement in form and substance satisfactory to the Debtor; and
  - ii. documentation (financial statements, commitment letter, bank statements, etc.) in a format acceptable to the Debtor and its advisors in their sole discretion, demonstrating such Potential Bidder’s ability to close the proposed transaction.
  
- f. **“As Is, Where Is.”** The sale of the Spectrum Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or estate, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of the Debtor’s right, title and interest in and to the Spectrum Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents relating to the Spectrum Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Spectrum Assets, or the completeness of any information provided in connection with the Spectrum Assets, the Bidding Process or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.

- g. **Auction.** If the Debtor receives more than one Qualified Bid prior to the Bid Deadline, the Debtor shall conduct an auction (the “Auction”) at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102 on Tuesday, **April 11, 2017**, beginning at 11:00 a.m. (prevailing Eastern Time) or such later time or other place as the Debtor, after consultation with the Lenders and the Committee, shall notify all Qualified Bidders who have submitted Qualified Bids. The Auction shall be conducted openly and all creditors and any Qualified Bidders who have timely submitted Qualified Bids will be permitted to attend. The Debtor may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bidding Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor determines is relevant, the Debtor, in its sole discretion, after consultation with the Lenders and the Committee, may conduct the Auction in the manner they determine will achieve the maximum value for the Spectrum Assets.
  
- h. **Review of Bids.** As soon as practicable after the conclusion of the Auction, the Debtor shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale; (ii) consult with the Lenders and the Committee regarding its analysis; and (iii) identify the highest or otherwise best offer or combination of offers for the Spectrum Assets (the “Successful Bid”) and any second-highest or best offer. The Debtor will present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing (as defined below). The Debtor reserves all rights to not submit any bid which is not acceptable to the Debtor, after consultation with the Lenders and the Committee.
  
- i. **Acceptance of Qualified Bids.** Subject to approval by the FCC, the Debtor shall sell the Spectrum Assets to the Successful Bidder submitting the Successful Bid, after approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. The Debtor’s presentation to the Bankruptcy Court for approval of the Successful Bid does not constitute the Debtor’s acceptance of such Successful Bid. The Debtor shall have accepted a Successful Bid only when that Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.
  
- j. **The Sale Hearing.** A hearing to confirm the results of the Auction and to approve the sale of the Spectrum Assets (the “Sale Hearing”) will be held before The Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 5th

Floor, Courtroom #5, 824 Market Street N., Wilmington, Delaware, 19801, on Tuesday **April 25, 2017 at 2:00 p.m.** The Sale Hearing may be adjourned or rescheduled after consultation with the Lenders and the Committee.

- k. **Back up Bid.** Following the entry of the Sale Order approving the Sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), shall be deemed to be the Successful Bid(s) and the Debtor shall be authorized to effectuate such sale without further order of the Bankruptcy Court.
- l. **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtor and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until two (2) business days after the closing of the Sale of the Spectrum Assets. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposits deposited by such Successful Bidder, which shall be retained by the Debtor as liquidated damages.
- m. **Modifications.** The Debtor may: (i) determine, in its business judgment, after consultation with the Lenders and the Committee, which Qualified Bid, if any, is the highest or otherwise best offer; (ii) consult with the Lenders, the Committee or other significant constituent in connection with the bidding process and Bid Procedures; and (iii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtor's sole discretion, after consultation with the Lenders and the Committee, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bid Procedures, the Bankruptcy Code, or the terms and conditions of sale; or (z) contrary to the best interests of the Debtor or its estate. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bid Procedures to obtain the highest or otherwise best offer(s) for the Spectrum Assets, the Debtor, after consultation with the Lenders and the Committee, may impose such other terms and conditions as it or they may determine to be in the best interests of the Debtor's estate, its creditors and other parties in interest.
- n. **Reservation of Rights:** In addition to the rights set forth in sections (i.) and (m.) above, the Debtor, after consultation with the Lenders and the Committee, may modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Spectrum Assets if, in its reasonable judgment, such modifications would

be in the best interests of the Debtor's estate and promote an open and fair sale process.

16. The Debtor believes that establishing the procedures described above for bidding on the Spectrum Assets will allow it to promptly review, analyze and compare all bids received and determine if a bid or bids are in the best interests of its bankruptcy estate.

17. The Debtor proposes that within two (2) business days after the conclusion of the Auction, it will file with Court a supplement outlining the identity of the Successful Bidder or Successful Bidders of the Spectrum Assets and the purchase price therefore.

### **Legal Argument**

#### **A. This Court Has the Authority to Approve the Bid Procedures.**

18. Courts have indicated that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

19. Here, the proposed Bid Procedures are reasonable, appropriate, and within the Debtor's sound business judgment under the circumstances, because they will serve to maximize the value that the Debtor will recover and serve the best interests of the estate and all parties in interest.

**B. The Bid Procedures Are Appropriate.**

20. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Res.*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) *quoting Cello Bay Co. v. Champion Int’l Corn. (In re Atlanta Packaging Products, Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

21. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., Integrated Res.*, 147 B.R. at 659 (such procedures “encourage bidding and maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate”).

22. The Debtor believes that the Bid Procedures establish the parameters under which the value of the Spectrum Assets may be established and maximized at the Auction and the ensuing Sale Hearing. The proposed Bid Procedures will foster and enhance competitive bidding; therefore, such procedures will increase the likelihood that the Debtor will receive the greatest possible consideration for the Spectrum Assets by ensuring a competitive and fair bidding process.

**C. The Court Should Authorize the Debtor to Sell the Purchased Assets Pursuant to the Bid Procedures Set Forth Herein.**

23. The Bankruptcy Code permits the sale of a debtor's assets outside the ordinary course of business pursuant to Section 363. Courts in the Third Circuit and others have required that a decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. *See In re Martin*, 91 F.3d 389, 396 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry, Co.*, 124 B.R. 169, 176 (Bankr. D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reasons exists for completing the sale, and the transaction be made in good faith); *see also Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); and Fed. R. Bankr. P. 6004(0)(1) (authorizing sales outside of the ordinary course of business to be conducted privately or by public auction).

**(1) The Debtor Is Selling its Assets for a Sound Business Purpose.**

24. The "sound business purpose" test requires a debtor to establish four elements to sell property outside the ordinary course of business, namely that (a) a "sound business purpose" justifies the sale of assets outside the ordinary course of business, (b) adequate and reasonable notice has been provided to interested persons; (c) the debtor has obtained a fair and reasonable price, and (d) good faith is present. *See Abbotts Dairies, supra*; *In re Sovereign Estates, Ltd.*, 104 BR. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel*, 82 B.R. at 335-36; *In re Indus. Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987). Courts have made it clear that a debtor's showing of a sound business justification need not be unduly exhaustive but, rather, a debtor is "simply required to justify the proposed disposition

with sound business reason.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

25. In this case, the Debtor submits that the decision to sell the Spectrum Assets is based upon its sound business judgment and should be approved. The Spectrum Assets are no longer necessary for the Debtor’s operations, due to its decision to reduce its retail operations. The only value the Spectrum Assets have to the Debtor or its bankruptcy estate is through a sale.

**(2) Adequate and Reasonable Notice Will be Provided.**

26. The form and manner of the notice of this Motion and the Bid Procedures used for soliciting higher and better offers for the Spectrum Assets have been submitted for approval by the Court and will ensure that any and all interested parties will receive adequate notice of the Auction.

**(3) The Purchased Assets Will Be Sold for Fair Value.**

27. Courts should only approve section 363(b) sales if the debtor has obtained a fair and reasonable price for the assets. *In re Delaware & Hudson Ry. Co.*, 124 B.R. at 176; *Industry Valley*, 77 B.R. at 20.

28. At the Sale Hearing, the Debtor will demonstrate that the Successful Bidder(s) will purchase the Spectrum Assets for “value.” At a minimum, because the sale of the Spectrum Assets will be the result of intensive marketing efforts and all bids will be subject to higher and better offers at the Auction, the Debtor is confident that the value of the Spectrum Assets will be maximized and reflect fair market value.

**(4) Any Successful Bid Will be the Product of Arms’ Length Negotiations of a Kind that Satisfies the Good Faith Buyer Requirement.**

29. As set forth above, the Third Circuit has interpreted Section 363(b) to require a finding by the Bankruptcy Court that the purchaser of a debtor’s assets is a good faith buyer. *In*

*re Abbotts Dairies*, 788 F.2d at 149-50. The Third Circuit construed the “good faith buyer” standard to mean one who purchases “in good faith” and for “value.” *Id.* At 147.

30. In this case, the Auction pursuant to the Bid Procedures will ensure that any Successful Bidder is a good faith buyer. Generally, “the misconduct that would destroy a purchaser’s good faith status at a judicial [or section 363] sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *Abbotts Dairies*, 788 F.2d at 147 (*quoting In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). The Bid Procedures and this Court’s oversight will safeguard this sale process from any such misconduct.

31. Section 363(m) of the Bankruptcy Code provides that a reversal or modification on appeal of an authorized sale of property under section 363(b) will not affect the validity of such sale to a good faith purchaser. *See* 11 U.S.C. § 363(m). The sale process and Bid Procedures proposed are intended to ensure that any Successful Bid and sale consummated will be the product of arms’ length, good faith negotiations, and the result of a fair auction process conducted under the supervision of this Court pursuant to the Bid Procedures Order.

32. Thus, the Debtor submits that the protections of section 363(m) should apply to the Successful Bidder(s) presented at the Sale Hearing, and that sound business purpose exists for the Debtor’s determination to pursue the sale of the Spectrum Assets.

**D. The Debtor Should be Authorized to Sell the Spectrum Assets Free and Clear of Liens, Claims, and Encumbrances Pursuant to Section 363(f) of the Bankruptcy Code.**

33. In accordance with section 363(f) of the Bankruptcy Code, a debtor may sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” only if one of the following conditions is satisfied:



- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

*See* 11 U.S.C. § 363(f); *In re Elliot*, 94 B.R. 343, 354 (Bankr. E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met). The Debtor expects that it can satisfy at least three of these requirements, and will overcome any objections to a free and clear sale of the Spectrum Assets at the hearing on this Motion. While the Debtor believes that the Spectrum Assets are currently unencumbered, any valid interests, liens, claims and encumbrances asserted against the Spectrum Assets will attach to any cash consideration received by the Debtor from the sale.

34. Any entities asserting interests in the Spectrum Assets have consented, or the Debtor anticipates will consent, to the sale of the Spectrum Assets in accordance with this Motion. Any liens on the Spectrum Assets will attach to the cash consideration received for the Spectrum Assets with the same force, effect and priority as such liens, if any, may have on the Assets, subject to the rights and defenses, if any, of the Debtor and any party in interest with respect thereto. Moreover, the parties asserting a claim against the Spectrum Assets can be compelled to accept a money satisfaction of such claim. Accordingly, the Debtor submits that the Sale of the Assets free and clear of interests, liens, claims and encumbrances satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

35. To the extent that entities asserting interests in the Spectrum Assets do not consent to the sale, the Debtor, in the exercise of its business judgment, will proceed pursuant

section 363(f)(4) of the Bankruptcy Code. “The purpose of 11 U.S.C. § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate’s assets need not be delayed while such disputes are being litigated.” *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171 (Bankr. App. 9th Cir. 2001). “This standard does not require the court to resolve the underlying dispute, just to determine its existence.” *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain LLC)*, 306 B.R. 624, 627 (8th Cir. B.A.P. 2004). Further, the alleged lien need not be the subject of an immediate or concurrent adversary proceeding. *Id.*

36. For all of the foregoing reasons, the Debtor submits that the proposed Sale and Bid Procedures should be approved.

#### **Request for Waiver of Stay**

37. Bankruptcy Rule 6004(h) provides that all orders authorizing the sale of property pursuant to Bankruptcy Code Section 363 are automatically stayed for fourteen (14) days after entry of such order “unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h).

38. Courts have approved requests to waive the stay so long as there is a “business need” for same. *See, e.g., In re Grand Prix Associates, Inc.*, No. 09-16545 (DHS), 2009 WL 1850966 at \*8 (Bankr. D.N.J. Jun. 26, 2009).

39. In the instant case, waiving the fourteen (14) day stay under Bankruptcy Rule 6004(h) will serve a business need by enabling the Debtor and the Successful Bidder to move forward immediately with the process for approval of the assignment of the Spectrum Assets by the FCC. Absent waiver of the stay, the Successful Bidder may elect to wait until the Sale Order is a final order before incurring the expense of seeking FCC approval. Starting this process as

soon as possible after the Sale Hearing will help expedite the closing process. Waiver of the stay will also ensure the smooth facilitation of the Auction and Sale.

40. Accordingly, the Debtor requests that the Court waive the fourteen (14) day stay set forth in Bankruptcy Rule 6004(h).

**Notice**

41. The Debtor has provided notice of this Motion via first-class mail, postage prepaid to: (a) the Office of the United States Trustee for the District of Delaware; (b) respective counsel for the Lenders; (c) counsel to the Committee; (d) all parties requesting notice pursuant to Bankruptcy Rule 2002, and (e) all known creditors.

42. The Debtor respectfully submit that no further notice is necessary.

**No Prior Request**

43. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion by entering the Bid Procedures Order substantially in the form attached hereto as **Exhibit A** and, upon completion of the Auction process, enter the Sale Order, substantially in the form attached hereto as **Exhibit B**, as such form of Sale Order may be amended or modified based on the results of the Auction sale, and grant such other and further relief as is just and proper.

Dated: March 3, 2017

/s/ Jesse N. Silverman

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*Counsel for the Debtor and Debtor in  
Possession*

**EXHIBIT A**

[Proposed Bid Procedures Order]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
Debtor.	:	
	:	

**ORDER APPROVING BIDDING PROCEDURES IN CONNECTION  
WITH SALE OF CERTAIN WIRELESS LICENSES**

Upon the Debtor’s Motion (the “Motion”) for an Order, pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1), authorizing the Debtor to (a) solicit bids for the sale of the Spectrum Assets<sup>1</sup>; (b) approving competitive bidding procedures related thereto; (c) scheduling an auction (the “Auction”) with respect to the sale of the Spectrum Assets; and (d) granting such other relief that this Court deems just and equitable; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein,

**IT IS HEREBY ORDERED** that:

1. The following bidding procedures are approved:
  - a. **Assets to Be Sold.** The Debtor is offering the Spectrum Assets, consisting of eight FCC licenses for certain regions in central Pennsylvania, for sale. The Spectrum Assets may be offered for sale at the Auction (as defined

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning provided in the Motion.

below) in their entirety, in lots or separately in the discretion of the Debtor in conjunction with its advisors.

- b. **The Bidding Process.** The Debtor, through and in conjunction with MVP shall: (i) determine whether any person is a Potential Bidder (“Potential Bidder”); (ii) coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding the Spectrum Assets; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to purchase the Spectrum Assets, together or separately (collectively, the “Bidding Process”). Neither the Debtor nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Spectrum Assets to any person who is not a Potential Bidder.
- c. **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtor, in order to participate in the Bidding Process each person (a “Qualified Bidder”) must submit a bid that adheres to the following requirements (a “Qualified Bid”):
  - i. All Qualified Bids must be submitted in the form of the License Purchase Agreement which will subsequently be filed with the Court (the “LPA”) to the Debtor’s investment bankers, MVP Capital, LLC via e-mail directed to Jason Nicolay at jnicolay@mvpcapital.com, not later than 5:00 p.m. (prevailing Eastern Time) on Friday, **March 31, 2017** (the “Bid Deadline”), with a copy to (A) counsel for the Debtor, Jennifer L. Maleski at jmaleski@dilworthlaw.com; (B) counsel to Tower Bridge LLM Partners (“Tower Bridge”), Ronald S. Gellert at rgellert@gsbblaw.com; (C) counsel for the United States Department of Agriculture, Rural Utilities Service (the “USDA”, and collectively with Tower Bridge, the “Lenders”), Mitchell Zeff at Mitchell.Zeff2@usdoj.gov; and (D) counsel for the Committee, Lucien B. Murley at LMurley@saul.com.
  - ii. All Qualified Bids shall be accompanied by a deposit into escrow with the Debtor of an amount equal to 5% of the total proposed purchase price (the “Good Faith Deposit”).
  - iii. All Qualified Bids shall be in the form of the LPA, together with a comparison showing all changes from the LPA, and a cover letter from a person or persons that the Debtor deems financially able to consummate the purchase of the Spectrum Assets, which letter states:

- (1) that such Qualified Bidder offers to purchase some or all of the Spectrum Assets upon the terms and conditions set forth in an asset purchase agreement, together with its exhibits and schedules, including terms relating to price and the time of closing (the “Proposed Agreement”).
  - (2) The Proposed Agreement must provide that if the Qualified Bidder becomes the Successful Bidder (as defined below), then upon approval of the Proposed Agreement by the Court at the Sale Hearing (as defined below), the Successful Bidder will deposit with the Debtor an additional Good Faith Deposit equal to 5% of the Successful Bid amount.
  - (3) that such Qualified Bidder is fully qualified under the Communications Act of 1934, as amended, to hold FCC licenses;
  - (4) that such Qualified Bidder is prepared to consummate the transaction immediately upon the FCC’s approval of the assignment of the Spectrum Assets to the Qualified Bidder; and
  - (5) that such Qualified Bidder’s offer is irrevocable until two (2) business days after the closing of the sale of the Spectrum Assets.
- iv. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtor and its advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
  - v. Qualified Bids cannot contain any contingencies, including without limitation financing conditions or contingencies, other than FCC approval of the assignment of the Spectrum Assets and those conditions or contingencies agreed to by the Debtor, after consultation with the Lenders, the Committee, and/or any other affected creditors.
  - vi. All Qualified Bidders shall submit to the jurisdiction of the Court.
  - vii. Each Qualified Bidder shall acknowledge that their Qualified Bid is a good faith offer.



- d. **Stalking Horse Bid.** The Debtor reserves the right to designate a Qualified Bidder as a stalking horse (the “Stalking Horse Bidder”) with certain bidding protections to the Stalking Horse Bidder, including breakup fees and expense reimbursements, subject to higher or otherwise better offers, as approved by an order of the Court after notice and a hearing. Should the Debtor designate a Stalking Horse Bidder, it will provide separate notice of the scheduled hearing and related objection deadlines as formally scheduled by the Court.
- e. **Due Diligence.** The Debtor (through MVP) shall afford each Potential Bidder (hereinafter defined) due diligence access to information regarding the Spectrum Assets. Due diligence access may include management presentations as may be scheduled by the Debtor or MVP, access to data rooms, and such other matters which a Potential Bidder may request and as to which the Debtor, in its sole discretion, may agree. Neither the Debtor nor any of its affiliates (nor any of their respective representatives) are obligated to furnish any information relating to the Spectrum Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Spectrum Assets provided by anyone other than the Debtor or its representatives. To be a “Potential Bidder,” each bidder must have delivered the following:
  - i. an executed confidentiality agreement in form and substance satisfactory to the Debtor; and
  - ii. documentation (financial statements, commitment letter, bank statements, etc.) in a format acceptable to the Debtor and its advisors in their sole discretion, demonstrating such Potential Bidder’s ability to close the proposed transaction.
- f. **“As Is, Where Is.”** The sale of the Spectrum Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or estate, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of the Debtor’s right, title and interest in and to the Spectrum Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents relating to the Spectrum Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Spectrum Assets, or the completeness of any information

provided in connection with the Spectrum Assets, the Bidding Process or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.

- g. **Auction.** If the Debtor receives more than one Qualified Bid prior to the Bid Deadline, the Debtor shall conduct an auction (the “Auction”) at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102 on Tuesday, **April 11, 2017**, beginning at 11:00 a.m. (prevailing Eastern Time) or such later time or other place as the Debtor, after consultation with the Lenders and the Committee, shall notify all Qualified Bidders who have submitted Qualified Bids. The Auction shall be conducted openly and all creditors and any Qualified Bidders who have timely submitted Qualified Bids will be permitted to attend. Bidding at the auction shall be transcribed or videotaped. Each Qualified Bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale. The Debtor may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bidding Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor determines is relevant, the Debtor, in its sole discretion, after consultation with the Lenders and the Committee, may conduct the Auction in the manner they determine will achieve the maximum value for the Spectrum Assets.
  
- h. **Review of Bids.** As soon as practicable after the conclusion of the Auction, the Debtor shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale; (ii) consult with the Lenders and the Committee regarding its analysis; and (iii) identify the highest or otherwise best offer or combination of offers for the Spectrum Assets (the “Successful Bid”) and any second-highest or best offer. The Debtor will present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing (as defined below). The Debtor reserves all rights to not submit any bid which is not acceptable to the Debtor, after consultation with the Lenders and the Committee.
  
- i. **Acceptance of Qualified Bids.** Subject to approval by the FCC, the Debtor shall sell the Spectrum Assets to the Successful Bidder submitting the Successful Bid, after approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing. The Debtor’s presentation to the Bankruptcy Court for approval of the Successful Bid does not constitute the Debtor’s acceptance of such Successful Bid. The Debtor shall have

accepted a Successful Bid only when that Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

- j. **The Sale Hearing.** A hearing to confirm the results of the Auction and to approve the sale of the Spectrum Assets (the “Sale Hearing”) will be held before The Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 5th Floor, Courtroom #5, 824 Market Street N., Wilmington, Delaware, 19801, on Tuesday **April 25, 2017 at 2:00 p.m.** The Sale Hearing may be adjourned or rescheduled after consultation with the Lenders and the Committee.
- k. **Back up Bid.** Following the entry of the Sale Order approving the Sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), shall be deemed to be the Successful Bid(s) and the Debtor shall be authorized to effectuate such sale without further order of the Bankruptcy Court.
- l. **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtor and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until two (2) business days after the closing of the Sale of the Spectrum Assets. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposits deposited by such Successful Bidder, which shall be retained by the Debtor as liquidated damages.
- m. **Modifications.** The Debtor may: (i) determine, in its business judgment, after consultation with the Lenders and the Committee, which Qualified Bid, if any, is the highest or otherwise best offer; (ii) consult with the Lenders, the Committee or other significant constituent in connection with the bidding process and Bid Procedures; and (iii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtor’s sole discretion, after consultation with the Lenders and the Committee, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bid Procedures, the Bankruptcy Code, or the terms and conditions of sale; or (z) contrary to the best interests of the Debtor or its estate. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bid Procedures to obtain the highest or otherwise best offer(s) for the Spectrum Assets, the Debtor, after consultation with the Lenders and the Committee, may impose such other terms and conditions as it or they may determine to be in the best interests of the Debtor’s estate, its creditors and other parties in interest.

- n. **Reservation of Rights:** In addition to the rights set forth in sections (i.) and (m.) above, the Debtor, after consultation with the Lenders and the Committee, may modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Spectrum Assets if, in its reasonable judgment, such modifications would be in the best interests of the Debtor's estate and promote an open and fair sale process.

2. As provided in the Bid Procedures, the Debtor shall conduct the Auction on **April 11, 2017** at 11:00 a.m. prevailing Eastern Time at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102. Notification of any change in the date, time or place of Auction will be provided by e-mail or any other reasonable means to: the United States Trustee, Tower Bridge LLM Partners LLC ("Tower Bridge"), the United States Department of Justice/United States Department of Agriculture (the "USDA", and collectively with Tower Bridge, the "Lenders"), the counsel to the Committee, all parties requesting notice pursuant to Bankruptcy Rule 2002, and any Qualified Bidders.

3. The form of Sale Notice attached to this Order as Addendum 1 is hereby approved as sufficient.

4. Within three (3) business days after entry of this Order, the Debtor: (a) shall provide a copy of the Sale Notice and this Order to (i) counsel to the Committee; (ii) the Office of the United States Trustee; (iii) respective counsel to the Lenders; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002; and (b) serve the Sale Notice by first class mail on all known creditors of the Debtor.

5. Within two (2) business days after the conclusion of the Auction, the Debtor shall file with the Court a supplement outlining the identity of the Successful Bidder(s) of the Spectrum Assets and the purchase price therefor.

6. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

8. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures and this Order. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control.

Dated: \_\_\_\_\_2017

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Honorable Kevin J. Carey  
United States Bankruptcy Judge

**ADDENDUM 1 TO BID PROCEDURES ORDER**

**[SALE NOTICE]**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	
	:	

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**NOTICE OF BID DEADLINE AND AUCTION IN CONNECTION  
WITH THE SALE OF CERTAIN OF THE DEBTOR'S ASSETS**

**PLEASE TAKE NOTICE** that, on March \_\_, 2017 the above-captioned debtor and debtor in possession (the “Debtor”) filed a motion (the “Motion”) seeking approval of, among other things (A) auction and bidding procedures (the “Bid Procedures”) in connection with the sale (the “Sale”) of certain wireless licenses (the “Spectrum Assets”) and (B) related relief with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). By order dated March \_\_, 2017, the Bankruptcy Court approved the Bid Procedures set forth in the Bid Procedures Order [*Docket No.* \_\_] (the “Bid Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that, all interested parties are invited to submit a Qualified Bid and to make offers to purchase the Spectrum Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. The deadline to submit bids (the “Bid Deadline”) is **March 31, 2017 at 5:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bid Procedures Order, the Debtor intends to conduct an auction (the “Auction”) for the sale of the Assets at the offices of Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19107 on **April 11, 2017 beginning at 11:00 a.m. (prevailing Eastern Time)**, or at such other place and time as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids.

**PLEASE TAKE FURTHER NOTICE** that, the Debtor intends to seek the Bankruptcy Court’s approval of the Sale of the Spectrum Assets at a hearing (the “Sale Hearing”) which will held before The Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 5th Floor, Courtroom #5, 824 Market Street N., Wilmington, Delaware, 19801, at **2:00 p.m. (prevailing Eastern Time) on April 25, 2017**. The Debtor will provide separate notice of the Sale Hearing and related objection deadlines.

**PLEASE TAKE FURTHER NOTICE** that, this Notice is subject to the complete terms and conditions of the Motion, the Bid Procedures and the Bid Procedures Order, which shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Copies of these pleadings may be obtained by written request to counsel to the Debtor, c/o Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19107, Attn: Jennifer L. Maleski. In addition, copies of the aforementioned pleadings may be found on the case website maintained by the Debtor’s claims agent Rust Consulting/Omni Bankruptcy at [www.omnimgt.com/limitlessmobile](http://www.omnimgt.com/limitlessmobile), and are on file with the Bankruptcy Court

and available for inspection during regular business hours at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street N., Wilmington, Delaware, 19801.

Dated: March \_\_, 2017

/s/ Jesse N. Silverman

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*Counsel for the Debtor and Debtor in Possession*



**EXHIBIT B**

[Proposed Sale Order]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	
	:	<b>Re: Docket No. _____</b>

**ORDER AUTHORIZING AND APPROVING  
SALE OF CERTAIN WIRELESS LICENSES FREE AND CLEAR OF LIENS, CLAIMS,  
AND ENCUMBRANCES AND GRANTING RELATED RELIEF**

Upon the Debtor’s Motion (the “Sale Motion”) for entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1) and Rule 6004 of the Federal Rules of Bankruptcy Procedure, (a) authorizing the Debtor to sell the Spectrum Assets<sup>1</sup> to the Successful Bidder (as used herein, the “Buyer”), free and clear of liens, claims, interests, and encumbrances; and (b) granting such other relief that this Court deems just and equitable; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein,

**IT IS HEREBY FOUND AND DETERMINED** that:

A. The Debtor and the Buyer have at all times acted in good faith and in accordance with applicable law. The Buyer has acted and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code. The sale of the Spectrum Assets to the Buyer pursuant

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning provided in the Motion.

to the License Purchase Agreement attached hereto as **Addendum 1** and as set forth in this Order is a sale in good faith within the meaning of Section 363(m) of the Bankruptcy Code, and the Buyer is entitled to the protections of Section 363(m). None of the actions of the Buyer has chilled or adversely impacted a fair, competitive, and open sale process. The Buyer has not violated Section 363(n) of the Bankruptcy Code by any action or inaction, and there has been no evidence presented to this Court that the sale price was controlled by any agreement among potential bidders or that any activity prohibited by Section 363(n) of the Bankruptcy Code has occurred.

B. Subject to any required approvals by the Federal Communications Commission for the assignment of the Spectrum Assets to the Buyer, the Debtor may sell the Spectrum Assets free and clear of all liens, claims, encumbrances and interests, including but not limited to any lien, claim, encumbrance or interest for taxes in respect of the Spectrum Assets for any years prior to the closing date (whether or not assessed) because one or more of the standards set forth in Sections 363(f) of the Bankruptcy Code has or have been satisfied. Any holders of liens, claims, encumbrances, and/or interests against the Debtor, its estate or any of the Spectrum Assets who did not object, or who withdrew their objections, to the sale or the Sale Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Any holders of liens, claims, encumbrances, and interests who did object, who did not object, or who withdrew their objections fall within one or more of the other subsections of Section 363(f) and are adequately protected by having their liens, claims, encumbrances, and interests, if any, in each instance against the Debtor, its estates, or any of the Spectrum Assets, attach to the cash proceeds of the sale as set forth herein.

C. The Buyer would not have entered into the License Purchase Agreement and would not consummate the sale of the Spectrum Assets, thus materially, adversely affecting the Debtor, its estate, and its creditors, if the sale of the Spectrum Assets to the Buyer were not free and clear of all liens, claims and encumbrances.

**IT IS HEREBY ORDERED** that:

1. The Motion is granted.
2. Subject to any required approvals by the Federal Communications Commission for the assignment of the Spectrum Assets to the Buyer, the sale of the Spectrum Assets to the Buyer, pursuant to the terms and conditions contained in the License Purchase Agreement executed by the Debtor and the Buyer, is hereby approved and such Buyer shall be deemed a purchaser in good faith and entitled to the protections provided in section 363(m) of the Bankruptcy Code.
3. The Debtor is selling the Spectrum Assets “AS IS” and “WHERE IS” without any representation of any kind as to the condition or title, except as set forth in the License Purchase Agreement.
4. The License Purchase Agreement was negotiated, proposed, and entered into by the parties without collusion, in good faith and arms’ length bargaining position.
5. Subject to any required approvals by the Federal Communications Commission for the assignment of the Spectrum Assets to the Buyer, the Spectrum Assets will be sold, transferred, conveyed and assigned to the Buyer upon the closing, free and clear of all liens, claims and encumbrances of any type or description—subject to the terms of the License Purchase Agreement—with all such liens, claims and encumbrances, to the extent valid,

perfected and enforceable, to transfer, affix and attach to the proceeds of the sale of the encumbered asset in the same order of priority as they existed with respect to the asset.

6. The foregoing provision of this Order shall be self-executing, and notwithstanding the failure of any other party to execute, file or obtain releases, termination statements, consents or other instruments to consummate or implement the provisions hereof or of the Auction, all liens, claims and encumbrances of any kind and nature in or against the Spectrum Assets transferred, sold and assigned, if any, shall be deemed released, except as provided in the License Purchase Agreement executed between the Debtor and the Buyer.

7. All persons or entities holding liens, claims or encumbrances of any kind and nature with respect to the Spectrum Assets transferred, sold and assigned are barred from asserting such liens, claims or encumbrances against the Spectrum Assets transferred, sold and assigned.

8. The Debtor and all persons affected by this Order are authorized and directed to execute and deliver such documents and instruments and to take such other action as may be reasonably necessary to carry out the transactions authorized by this Order and contemplated by the Auction, including execution of the License Purchase Agreement.

9. The Sale of the Spectrum Assets is in the best interests of the Debtor, its creditors and its estate.

10. Closing of the Sale shall occur as soon as practicable after final approval by the Federal Communications Commission of the assignment of the Spectrum Licenses to the Buyer.

11. This Order shall be binding upon the Debtor, its successors and assigns, and any trustee that may be appointed in this case or any case under chapter 7 of the Bankruptcy Code to which such case may be converted, and any affected third parties, including without limitation all

persons and entities asserting any encumbrances against or interest in the Debtor's estate or any of its assets, and all other persons and entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons or entities who may be required by operation of law or by the duties of their offices to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report to or insure title or state of title in or to any of the Debtor's assets.

12. Nothing contained in any plan of liquidation confirmed in the Debtor's case or the order confirming any plan of reorganization, or any order dismissing the Debtor's case or converting the Debtor's case to a chapter 7 liquidation shall conflict with or derogate from the terms of this Order. Further, the terms of this Order and any actions taken pursuant hereto shall survive the entry of any Order which may be entered confirming any plan of reorganization for the Debtor or converting the Debtor's case from a chapter 11 to a case under chapter 7 of the Bankruptcy Code. The provisions of this Order shall not be modified, impaired, or superseded by any subsequent Order.

13. If any person or entity that has filed financing statements or other documents or agreements evidencing interests, claims, liens or encumbrances, in the Spectrum Assets shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction and releases of such interests, the Debtor or the Buyer are authorized to execute and file such statements, instruments, releases and other documents with respect to the Spectrum Assets.

14. The Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of the auction and this Order.

15. The fourteen (14) day stay provided in Federal Rule of Bankruptcy Procedure 6004(h) is hereby waived.

Dated: \_\_\_\_\_ 2017

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Honorable Kevin J. Carey  
United States Bankruptcy Judge

**EXHIBIT C**

[Form License Purchase Agreement]

[To be provided]



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	<b>Procedures Objection Deadline: March 15, 2017 at 4:00 p.m.</b>
	:	<b>(Proposed)</b>
	:	<b>Procedures Hearing Date: March 20, 2017 at 1:00 p.m.</b>

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that Limitless Mobile, LLC (the “Debtor”) has filed its Motion for Order (I) Authorizing the Debtor to Sell Certain Wireless Licenses Free and Clear of Liens and Encumbrances and (II) Approving the Sale and Auction Procedures in Connection Therewith (the “**Motion**”) and related papers with the Court seeking an entry of Order granting Debtor’s Motion.

**PLEASE TAKE FURTHER NOTICE** that the Court will hold a hearing on the Motion with Respect to Bid Procedures at **1:00 p.m. on March 20, 2017 in Courtroom 5**, United States Bankruptcy Court for the District of Delaware, Fifth Floor, 824 N. Market Street, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected by the Court’s ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one. If you do not have an attorney, you may wish to consult one. Although individuals may appear before the Court and be heard without the assistance of counsel, all other entities may only appear and be heard through counsel admitted to practice in the Court. If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views in the matter, then you or your attorney must (a) attend the hearing, (b) file a

written response to the Motion with the Clerk on or before **March 15, 2017** (the “Response Deadline”) **at 4:00 p.m.**, and (c) ensure delivery of the response to the undersigned on or before the Response Deadline. The address of the Clerk’s Office is: Clerk of the United States Bankruptcy Court, Third Floor, 824 N. Market Street, Wilmington, Delaware 19801.

Dated: March 3, 2017

/s/ Jesse N. Silverman  
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-and-

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