

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re:)	
)	
KCST USA, INC., ¹)	Chapter 11
)	
Debtor.)	Case No. 17-40501 (EDK)

ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF BANKRUPTCY CODE AND GRANTING ADEQUATE PROTECTION TO SECURED PARTY, (B) AUTHORIZING EXTENSION OF POSTPETITION FINANCING ON PRIORITY SECURED BASIS, AND (C) GRANTING RELATED RELIEF

Upon the *Motion by Debtor for Entry of an Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection; (B) Authorizing Extension of Postpetition Financing on Priority Secured Basis; and (C) Granting Related Relief* (the "Motion"), filed on June 14, 2017 by KCST USA, Inc. ("KCST" or "Debtor"), as debtor and debtor-in-possession, seeking entry of an Order (the "Order") (a) authorizing the Debtor to use Cash Collateral (as hereinafter defined) pursuant to § 363 of Title 11 of the United States Code (the "Code") substantially in accordance with the budget and granting adequate protection to Axia Net Media Corp. (the "Lender" or "ANMC"), (b) to the extent Cash Collateral is insufficient to pay the Debtor's operating expenses in the budget, authorizing an extension of the Debtor's existing post-petition lending facility with ANMC (the "DIP Loan" or "DIP Loan Facility") secured by a lien on the Debtor's assets (the "Collateral"); and (c) granting related relief; and the Court having considered the Motion, including, without limitation, the budget; and an interim hearing to consider approval of the Motion having been held on June 16, 2017 (the "Hearing"); and an interim order having

¹ f/k/a AXIA NG NETWORKS USA, INC. The last four digits of the Debtor's federal tax identification number are 4617.

entered approving the Motion on June 16, 2017; and a continued hearing having been held on July 13, 2017; and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. On March 22, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Code (the "Chapter 11 Case").

B. Jurisdiction. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157(b)(2)(D), (M). This Court has jurisdiction over the Chapter 11 Case and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the relief sought by the Motion and the hearing with respect thereto was delivered on or about June 14, 2017 to: (a) the United States Trustee for the District of Massachusetts (the "U.S. Trustee"); (b) those parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims Against the Debtor, as identified in the Debtor's Chapter 11 petition; (c) counsel to the Lender; and (d) any party asserting a Lien (as hereafter defined) against any of the Debtor's assets. Given the nature of the relief sought in the Motion, such notice constitutes sufficient and adequate notice of the Motion, the relief requested therein and this Order pursuant to Rules 2002, 4001(b), (c), and (d), and 9014, and MLBR 4001, and no further notice of the Motion or this Order is necessary or required.

D. Debtor's Acknowledgement of Postpetition Indebtedness. The Debtor acknowledges that it is indebted to the Lender pursuant to the DIP Loan Facility approved pursuant to the Interim Order dated March 24, 2017 granting the *Motion by Debtor and Debtor-*

in-Possession for Entry of an Order (A) Authorizing Postpetition Financing on a Priority Secured Basis; (B) Scheduling Interim and Final Hearing on Financing; and (C) Granting Related Relief (the "DIP Financing Motion"), the Final Order dated April 13, 2017 approving the DIP Financing Motion, and the interim order dated June 16, 2017 approving the Motion (collectively, the "DIP Financing Orders") and that the Lender was granted Liens on certain assets pursuant to the DIP Financing Orders.

E. Cash Collateral. For purposes of this Order, "Cash Collateral" of the Lender has the meaning set forth in § 363(a) of the Code and includes (a) all funds of the Debtor (including any funds on deposit or maintained in any account, and any proceeds of the Collateral.

F. Good Faith. Based on the record before the Court, the terms of the use of the Cash Collateral as provided in this Order have been negotiated at arms' length and in "good faith," as that term is used in § 363(m) of the Code, and are in the best interests of the Debtor, its estate and creditors. The Lender is permitting the use of its Cash Collateral in good faith and the Lender is entitled to the benefits of the provisions of § 363(m) of the Code.

G. Findings Regarding the Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Order.
(b) Entry of this Order is in the best interests of the Debtor's estate and all parties in interest in this Chapter 11 Case.

H. The Debtor is in need of continued financing to preserve its assets and operations.

I. Based on the record before this Court: (i) it appears that the DIP Loan Facility extension has been negotiated in good faith between the Debtor and ANMC, and (ii) it appears that the terms of the DIP Loan Facility extension are fair and reasonable and reflect the exercise of the Debtor's prudent business judgment.

J. Based on the record before this Court, this Court finds that, under the circumstances of the Hearings and the relief requested in the Motion, sufficient notice has been given pursuant Bankruptcy Rules 2002, 4001, and 6004(a), and MLBR 4001.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is approved.
2. The Debtor is authorized to use Cash Collateral substantially in accordance with the Budget, as amended by the Debtor and filed with the Court on July 12, 2017 (the "Budget").
3. The Lender is entitled, under § 363(e) of the Code, to adequate protection of its interest in the Collateral, and all Cash Collateral. The Lender has consented to Debtor's use of Cash Collateral subject to and conditioned upon the granting of the following protections (the "Adequate Protection Obligations") for which the Debtor shall be obligated:

- (a) Adequate Protection Liens. The Lender shall continue to have, pursuant to the DIP Financing Orders, and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid and perfected security interest in, and lien on the Collateral, including the Cash Collateral and the proceeds thereof, as approved and provided for in the DIP Financing Orders (the "Adequate Protection Liens"). The Lender shall expressly have no lien on causes of action brought pursuant to §§ 506(c), 544, 547, 548 and 549 of the Code (the "Avoidance Actions") and recoveries upon such causes of action.
- (b) The failure or delay by the Lender to exercise its rights and remedies under this Order shall not constitute a waiver of any of the rights of the Lender hereunder or otherwise, and any single or partial exercise of such rights and remedies against

the Debtor or the Collateral shall not be construed to limit any further exercise of such rights and remedies against the Debtor and/or the Collateral.

- (c) The provisions of this Order shall be binding upon and inure to the benefit of each of the Lender and the Debtor and their respective successors and assigns (including any estate representative, Chapter 7 trustee, or other trustee or fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the property of the Debtor's estate).

4. Pursuant to this Order, the Adequate Protection Liens are, and are deemed to be, valid, enforceable and perfected liens, effective as of the date hereof, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code or any other relevant law or regulation of any jurisdiction) no further notice, filing, possession, control or other act shall be required to effect such perfection.

5. The DIP Loan Facility is hereby extended on the same terms and conditions as presently in effect, except that: (i) the maturity date is extended to the earlier of September 30, 2017 or confirmation of a plan of reorganization; and (ii) the maximum borrowing under the DIP Loan Facility shall be \$800,000. Advances may be made substantially in accordance with the Budget and to the extent that Cash Collateral is insufficient to pay Budgeted Expenses.

6. ANMC shall continue to have a senior security interest in and lien upon the Debtor's assets, provided that, such liens shall not attach to nor be satisfied from the proceeds of the Debtor's claims and causes of action arising under Chapter 5 of the Bankruptcy Code.

7. Each of the security interests and other liens granted to ANMC pursuant to this order shall be deemed to be valid, perfected and enforceable (except as otherwise set forth

herein), without any necessity of ANMC complying with any perfection or other requirements under any otherwise applicable state, federal or other non-bankruptcy law.

8. Nothing in this order or the DIP Financing Orders (the “Orders”) shall in any way prime or affect the rights, if any, of Westchester Fire Insurance Company (the “Surety”) as to: (a) any funds it is holding and/or being held for it presently or in the future whether in trust, as security, or otherwise, (b) any substitutions or replacements of said funds including accretions to and interest earned on said funds, and (c) any letter of credit related to any indemnity, collateral trust, or related agreements between Surety and the Debtor (collectively (a) to (c), the “Surety Assets”). Nothing in the Orders shall affect the rights of the Surety under any indemnity, collateral trust, or related agreements between the Surety and the Debtor, and/or ANMC, as to the Surety Assets. In addition, nothing in the Orders shall prime the setoff and/or recoupment rights, if any, or the lien rights of the Surety, if any, or of any party to whose rights the Surety, has or may become subrogated therein, if any, and/or any subrogation or other common law rights of the Surety, if any. To the extent that any Surety Assets are being held by the Debtor and are used by the Debtor as part of cash collateral, a concomitant replacement trust claim or replacement lien shall be granted to the Surety equal to the amount of the use of those funds with any replacement trust fund claim to be equal to the amount of trust funds used, and any replacement lien to have the same priority, amount, extent and validity as existed as of the Petition Date. In addition, notwithstanding anything in the Orders to the contrary, the rights, claims and defenses of the Debtor and of the Surety, including, but not limited to, the Surety’s rights under any properly perfected liens and claims and/or claim for equitable rights of subrogation, and rights of the Debtor and of any successors

in interest to the Debtor, and any creditors, to object to any such liens, claims and/or equitable subordination and other rights, are fully preserved. Nothing herein is an admission by the Surety or the Debtor, or a determination by the Bankruptcy Court, regarding any claims under the bonds, and the Surety and the Debtor reserve any and all rights and defenses in connection therewith.

9. The provisions of this order shall be binding upon and inure to the benefit of ANMC, the Debtor, and their respective successors and assigns.

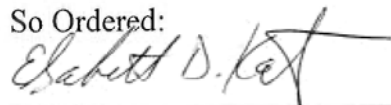
10. The Court shall retain jurisdiction to enforce this order and to determine any disputes arising from or related to this order.

11. In the event of an alleged default, ANMC shall be required to obtain an order of the Court granting relief from the automatic stay provisions of 11 U.S.C. §362 prior to taking any actions to exercise its remedies.

12. The provisions of this Order, including the grant of claims and Liens to or for the benefit of the Lender, and any actions taken pursuant hereto shall survive the entry of any order converting the Chapter 11 Case to a case under Chapter 7 of the Code.

13. The provisions of this Order, the Adequate Protection Obligations and any and all rights, remedies, privileges and benefits in favor of the Lender provided or acknowledged in this Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Order, and the stay provided for in Rule 6004(h) is hereby waived.

So Ordered:



07/13/2017

Elizabeth D. Katz, United States Bankruptcy Judge

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