

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

In re:

THE NEWS-GAZETTE, INC., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

**Related Docket Nos. 15, 18, 66, 69, 70, and 118**

**DECLARATION OF TRACI NALLY IN SUPPORT OF MOTION FOR AN  
ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND  
CLEAR OF CLAIMS, LIENS AND ENCUMBRANCES; AND (B) APPROVING  
THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES; AND (III) CERTAIN RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, Traci E. Nally declares as follows:

1. I am at least 21 years of age and am competent to give this declaration. I have knowledge of the matters to which I hereinafter attest, except where otherwise stated. I also have spoken with certain directors, officers and/or employees of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) and certain professionals employed by the Debtors, as necessary, and where I have relied upon such information do believe such information to be true.

2. I am the Executive Vice President of the Debtors. I am authorized to submit this declaration (the “**Declaration**”) on behalf of the Debtors.

**I. INTRODUCTION**

3. On August 30, 2019 (the “**Petition Date**”), the Debtors filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). The Debtors have continued to operate their businesses and manage their properties as debtors-in-possession.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: The News-Gazette, Inc. (0894) and D.W.S., Inc. (7985). The Debtors’ headquarters are located at 15 East Main Street, Champaign, Illinois 61820.

4. I submit this Declaration on behalf of the Debtors in support of their *Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors' Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* [Docket No. 15] (the "**Sale Motion**").<sup>2</sup> I believe that the relief sought therein is essential to maximize the value of the Debtors' estates and the success of these Chapter 11 Cases.

5. I previously filed a declaration in support of the Debtors' first day motions [Docket No. 3] (the "**First Day Declaration**"), which declaration is incorporated herein by reference.

6. Debtor The News-Gazette, Inc is the leading local news source in Champaign County, Illinois. It publishes The News-Gazette daily newspaper, plus a number of surrounding weekly newspapers, companion websites and ancillary publications.

7. Debtor DWS, Inc. is a wholly-owned subsidiary of Debtor The News-Gazette, Inc. DWS, Inc operates three radio stations and companion websites.

8. To preserve going-concern value and enable the Debtors to continue to serve the East Central Illinois community, for about the last year, the Debtors have been exploring their strategic alternatives including a possible outside management arrangement and/or the sale of some or all of the business assets. Ultimately, the Debtors determined that a sale of the business as a going concern to a buyer with the financial resources and media footprint to further economize

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Sale Motion.

operations represented the best opportunity to maximize value for the benefit of the community and all stakeholders.

9. On December 20, 2018, the Debtors engaged Dirks, Van Essen, Murray and April (“Dirks”) to solicit interest from third parties with respect to a possible acquisition of either the newspaper or radio businesses individually, or the combined businesses.

10. Dirks conducted a comprehensive sale process (the “**Marketing Process**”), which is described in more detail in (i) the First Day Declaration and (ii) the Declaration of Philip Murray in support of the bidding procedures component of the Sale Motion [Docket No. 65].

11. Ultimately, after exposing the assets to the open market for more than five months, the Debtors concluded that selling the business to Champaign Multimedia Group LLC (“**CMG**”) represented the highest and best offer for the assets. Thus, on July 1, 2019, the Debtors and CMG executed a revised letter of intent, and on August 27, 2019, the parties executed an Asset Purchase Agreement (the “**Stalking Horse Agreement**”) providing for the sale of substantially all of the Debtors’ assets to CMG through these chapter 11 cases.

12. On the Petition Date, the Debtors filed the Sale Motion and the Stalking Horse Agreement [Docket No. 18].

13. On September 4, 2019, at the Debtors’ direction, the Debtors’ claims and noticing agent served notice of the proposed sale, including the requested bidding procedures and related objection deadlines, on the entire creditor matrix and other parties in interest. *See* Docket Nos. 42 and 50.

14. On September 4, 2019, at the Debtors’ direction, the Debtors’ claims and noticing agent served notice of the potential assumption and assignment of certain executory contracts and

unexpired leases, plus certain related objection deadlines, on all known contract counterparties and other parties in interest. *See* Docket No. 47.

15. On September 18, 2019, the Court entered an order approving the bidding procedures component of the Sale Order [Docket No. 66] (the “**Bidding Procedures Order**”).

16. On September 18, 2019, at the Debtors’ direction, the Debtors’ claims and noticing agent served an amended notice of the proposed sale, including the now-approved bidding procedures and related objection deadlines, on the entire creditor matrix and other parties in interest. *See* Docket Nos. 69 and 71.

17. On September 19, 2019, at the Debtors’ direction, the Debtors’ claims and noticing agent served an amended notice of the potential assumption and assignment of certain executory contracts and unexpired leases, plus certain now-approved related objection deadlines, on all known contract counterparties and other parties in interest. *See* Docket Nos. 70 and 71.

18. Pursuant to the Bidding Procedures Order and the related notices served by the Debtors, September 27, 2019 was the deadline for parties to (a) object to the Sale Motion, (b) object to the Debtors’ proposed cure amounts, and (c) submit a Qualified Bid for some or all of the Debtors’ assets.

19. On or before September 27, 2019, the Debtors received no formal objections to the Sale Motion and received only informal comments regarding the Sale Motion from (a) the Federal Communications Commission (the “**FCC**”), and (b) the Consumer Privacy Ombudsman (the “**CPO**”), who had been appointed by the United States Trustee [Docket No. 108]. After September 27, the Debtors received an informal comment from Sound Exchange, a contract counterparty, regarding language for the Sale Order that would require CMG to pay Sound Exchange certain cure amounts within a specified time after the closing of the sale to CMG.

20. On or before September 27, 2019, the Debtors received (a) only one formal objection to a proposed cure amount, filed by Sound Exchange, Inc. (“**Sound Exchange**”) [Docket No. 91] and (b) only one informal response from a contract counterparty, Christal Radio Sales, Inc. (“**Christal**”).

21. On or before September 27, 2019, the Debtors received no bids (qualified or otherwise) for the potential purchase of the Debtors’ assets, other than the stalking horse bid submitted by CMG.

22. On September 27, 2019, the Debtors filed (a) a notice of cancellation of the auction scheduled for September 30, 2019 [Docket No. 114]), and (b) a notice that CMG had been identified as the successful bidder [Docket No. 115], pursuant to the terms of the Bidding Procedures.

23. On September 27, 2019, the Debtors filed a notice of amended cure schedule to reflect the correct cure amounts as asserted by Sound Exchange and Christal [Docket No. 116].

24. On September 30, 2019, the Debtors filed a proposed Sale Order with the Court [Docket No.118] (the “**Proposed Sale Order**”).

25. The Proposed Sale Order (a) incorporates language requested by the FCC, to ensure that the purchaser complies with FCC regulations in connection with the transfer of radio licenses associated with the sale, (b) incorporates language requested by the CPO, to ensure that the purchaser protects customers’ personally identifiable information to the same degree as the Debtors’ protected such information prior to the sale, and (c) eliminates any reference to any expense reimbursement owed to CMG, in light of CMG being identified as the successful bidder [Docket No. 115]. The Proposed Sale Order does not incorporate certain language requested by

Sound Exchange because CMG has not yet determined whether it will designate the Sound Exchange contract for assumption and assignment at closing.

## **II. SUPPORT FOR FACTUAL FINDINGS IN PROPOSED SALE ORDER**

26. The Proposed Sale Order contains certain factual findings requested by the Debtors and CMG. The remainder of this Declaration supports those factual findings.

27. Purchaser Purchased Assets Property of the Estates. The Purchaser Purchased Assets sought to be transferred and/or assigned by Debtors to Purchaser pursuant to the Purchaser APA are property of Debtors' estate and title thereto is vested in Debtors' estate.

28. Sufficiency of Marketing. Based upon the record of the Debtors' chapter 11 cases, all creditors and other parties in interest and all prospective buyers have been afforded a reasonable and fair opportunity to bid for the Purchaser Purchased Assets. Under the circumstances, Debtors and its professionals have adequately and appropriately marketed the Purchaser Purchased Assets.

29. Corporate Authority. Subject to the entry of the Sale Order, Debtors: (i) have full power and authority to execute the Purchaser APA and all other documents contemplated thereby; (ii) have all of the power and authority necessary to consummate the transactions contemplated by the Purchaser APA (collectively, the "**Transactions**"), and (iii) have taken all company action necessary to authorize and approve the Purchaser APA and the sale of the Purchaser Purchased Assets, and any actions required to be performed by Debtors in order to consummate the Transactions contemplated in the Purchaser APA. No consents or approvals, other than those expressly provided for in the Purchaser APA or the Sale Order, are required for Debtors to consummate the Sale.

30. Arm's-Length Sale and Purchaser's Good Faith. The Purchaser APA was negotiated and is undertaken by Debtors and Purchaser at arm's-length without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. Neither Purchaser

nor any of its affiliates, members, officers, directors, or shareholders is an “insider” of either of the Debtors as that term is defined by section 101(31) of the Bankruptcy Code. Purchaser (i) recognized that Debtors were free to deal with any other party interested in acquiring the Purchaser Purchased Assets and (ii) willingly subjected the Purchaser Purchased Assets to a competitive bidding process in accordance with the Bid Procedures Order. All payments to be made by Purchaser and other agreements or arrangements entered into by Purchaser in connection with the Sale have been disclosed. The Debtors are unaware of any violations by the Purchaser of section 363(n) of the Bankruptcy Code by any action or inaction, and no common identity of directors or controlling stockholders exists between Purchaser and the Debtors. As a result of the foregoing, the Debtors believe Purchaser is a “good faith buyer” within the meaning of section 363(m) of the Bankruptcy Code, and as such, is entitled to all of the protections afforded thereby, including in the event the Sale Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the Sale specifically and these Chapter 11 Cases generally.

31. Sale Highest or Best Offer. The offer submitted by Purchaser for the Purchaser Purchased Assets as reflected in the Purchaser APA, including the form and total consideration to be realized thereunder, is the highest and best offer for the Purchaser Purchased Assets. No other person or entity or group of persons or entities has offered to purchase the Purchaser Purchased Assets for an amount that would provide greater value to Debtors than Purchaser, including through the reduction of claims against Debtors’ estate. The Court’s approval of the Sale Motion with respect to the Purchaser Purchased Assets, the Purchaser APA, and the Transactions, would maximize the Debtors’ recovery for the Purchaser Purchased Assets, and, thus, is in the best interests of Debtors and their estates, creditors and all other parties in interest.

32. No Fraudulent Transfer. The Debtors believe that the purchase price set forth in the Purchaser APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable law, and may not be avoided under section 363(n) or any other section of the Bankruptcy Code. The Purchaser APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither Debtors nor (to the Debtors' knowledge) Purchaser has entered into the Purchaser APA or is consummating the Sale with any fraudulent or otherwise improper purpose.

33. No Liability under Section 363(n). Neither Debtors nor (to the Debtors' knowledge) Purchaser engaged in any conduct that would cause or permit the Purchaser APA or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

34. Free and Clear Findings Required by Purchaser. Based on the Debtors' negotiations with the Purchaser, the Debtors believe that the Purchaser would not have entered into the Purchaser APA and would not consummate the transactions contemplated thereby if the Sale was not free and clear of any and all Interests (other than Assumed Liabilities) pursuant to section 363(f) of the Bankruptcy Code, or if Purchaser would, or in the future could, be liable for any of such Interests. Effective upon the Closing, Purchaser has required as part of the Purchaser APA that it shall not be responsible for any Interests (other than Assumed Liabilities), including in respect of the following: (i) labor or employment agreements; (ii) all mortgages, deeds of trust, and security interests; (iii) any intercompany loans and receivables between the Debtors and any



non-Debtor affiliate; (iv) any welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of Debtors, any affiliate of Debtors, or any member of Debtors' "control group;" (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 *et. seq.*, or (l) any other state or federal benefits or claims relating to any employment with Debtors or any of its predecessors; (vi) Interests arising under any environmental, health and safety laws with respect to any assets owned or operated by Debtors or any corporate predecessor at any time prior to the Closing and any liabilities of Debtors other than the Assumed Liabilities; (vii) any bulk sales Tax, bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) any and all Interests arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration; and (x) any theories of successor liability or causes of action related thereto. The Debtors believe that a sale of the Purchaser Purchased Assets other than one free and clear of all Interests would yield substantially less value for Debtors' estate, with less

certainty, than the Sale as contemplated. Therefore, the Sale contemplated by the Purchaser APA maximizes Debtors' recovery on the Purchaser Purchased Assets, and, thus, is in the best interests of Debtors and its estate, creditors and all other parties in interest.

35. Satisfaction of Section 363(f) Standards. I believe that the Debtors may sell the Purchaser Purchased Assets free and clear of all Interests because, with respect to each creditor or other person or entity asserting an Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Sale Motion with respect to the Purchaser Purchased Assets should be deemed to have consented to the Sale Motion with respect to the Purchaser Purchased Assets and to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code.

36. No Successor Liability. Purchaser is not holding itself out to the public as a continuation of Debtors and is not an "insider" or "affiliate" of Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders exists now or has ever existed between Purchaser and Debtors. I believe that the conveyance of the Purchaser Purchased Assets does not amount to a consolidation, merger or *de facto* merger of Purchaser and Debtors and/or Debtors' estates, there is no substantial continuity between Purchaser and Debtors, there is no continuity of enterprise between Debtors and Purchaser, Purchaser is not a joint employer or co-employer with Debtors or a mere continuation of Debtors or their estates, and Purchaser does not constitute a successor to Debtors or their estates. The Debtors believe that the Purchaser's acquisition of the Purchaser Purchased Assets should be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing. The Debtors believe that Purchaser's

operations should not be deemed a continuation of Debtors' business as a result of the acquisition of the Purchaser Purchased Assets. Based on the negotiations leading to the Purchaser APA, the Debtors believe that Purchaser would not have acquired the Purchaser Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

37. Assignment Objection Procedures. Prior to the filing of the Sale Motion, Purchaser had not indicated to Debtors which Assigned Contracts, if any, Purchaser would request to be assumed and assigned as part of the Purchaser APA. Therefore, to conserve the parties' and the Court's resources, as well as to avoid unnecessary cost and potential confusion to counterparties to the Assigned Contracts (each a "**Counterparty**" and collectively, the "**Counterparties**"), Debtors have requested that the Court approve the Assignment Objection Procedures (as defined in the Proposed Sale Order). The Debtors believe that such Assignment Objection Procedures are fair, reasonable, and protect the interests of all Counterparties to Assigned Contracts.

38. Assigned Contracts. Debtors believe that it is an exercise of their sound business judgment to assume and assign the Assigned Contracts to Purchaser in connection with the consummation of the Sale, and the assumption and assignment of the Assigned Contracts is in the best interests of Debtors, their estates and creditors, and other parties in interest. The Assigned Contracts being assigned to Purchaser are an integral part of the Sale and, accordingly, their assumption and assignment are reasonable and an enhancement to the value of Debtors' estate.

39. Cure/Adequate Assurance. Purchaser is in the media business and is a party to many of the same types of contracts as the Assigned Contracts. The Debtors believe Purchaser is capable of performing under the contracts to be designated as Assigned Contracts for periods on and after the Closing.

40. Sale as Exercise of Business Judgment. The Debtors believe that entry into and consummation of the Purchaser APA constitute the exercise by Debtors of sound business judgment, and such acts are in the best interests of Debtors, their estates and creditors, and all parties in interest. As set forth above and in the First Day Declaration, good and sufficient business reasons justify the Sale. Additionally: (i) the Purchaser APA constitutes the highest and best offer for the Purchaser Purchased Assets; (ii) the Purchaser APA and the closing thereon presents the best opportunity to realize the maximum value of the Purchaser Purchased Assets and avoid a decline and devaluation of the Purchaser Purchased Assets; (iii) there is risk of deterioration of the value of the Purchaser Purchased Assets if the Sale is not consummated promptly; and (iv) the Purchaser APA and the closing thereon will provide a greater recovery for Debtors' creditors than would be provided by any other presently available alternative.

41. Compelling Reasons for an Immediate Sale. As set forth above and in the First Day Declaration, the Debtors believe that good and sufficient reasons exist for approval of the Purchaser APA outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale is necessary and appropriate to preserve and to maximize the value of Debtors' estates. To maximize the value of the Purchaser Purchased Assets and to preserve the viability of the business to which the Purchaser Purchased Assets relate, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale.

I declare under penalty of perjury that the foregoing is true and correct to my knowledge, information and belief.

Date: October 1, 2019

By: /s/ Traci E. Nally  
Traci E Nally