

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

In re:

Pegasus Rural Broadband, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 11-11772 (PJW)

(Jointly Administered)

**RE: Docket Nos. 564, 566, 625, 647, 674, 675,
678, 694, 699 and 702**

**ORDER AUTHORIZING AND APPROVING
(A) THE SALE OF (I) SUBSTANTIALLY ALL OF THE ASSETS
OF PEGASUS RURAL BROADBAND, LLC AND (II) CERTAIN OF THE
ASSETS OF XANADOO, LLC, FREE AND CLEAR OF ALL LIENS, INTERESTS,
AND CLAIMS AND (B) THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND FIXING OF CURE AMOUNTS**

Upon the motion dated April 12, 2012 (the "Sale Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking, inter alia, entry of an order or orders authorizing and approving: (a) the sale of the Purchased Assets² of Pegasus Rural Broadband, LLC and Xanadoo, LLC (collectively, the "Sellers") free and clear of all Encumbrances (as defined herein) to Rhino Communications, Inc. ("Rhino" or the "Purchaser") pursuant to the terms of the Asset Purchase Agreement dated April 11, 2012 (the "APA"), and (b) the assumption and assignment of the executory contracts and unexpired leases to be assumed by the applicable Debtor and assigned to Rhino in connection with the sale; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28

¹ The Debtors are Xanadoo Spectrum, LLC, a Delaware limited liability company; Xanadoo Holdings, Inc., a Delaware corporation; Xanadoo, LLC, a Delaware limited liability company; Pegasus Guard Band, LLC, a Delaware limited liability company; and Pegasus Rural Broadband, LLC, a Delaware limited liability company. Xanadoo Holdings, Inc. is the sole member of Xanadoo, LLC, Pegasus Guard Band, LLC, and Pegasus Rural Broadband, LLC. Xanadoo Holdings, Inc. is a wholly owned subsidiary of Xanadoo Spectrum, LLC.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement or the Sale Motion, as the case may be.

U.S.C. §§ 157(b)(2) and 1334; and after consideration of the Sale Motion, the relief requested therein, and the responses thereto, if any; and this being a core proceeding in accordance with 28 U.S.C. § 157(b); and adequate and sufficient notice of the Sale Motion having been given to all parties in interest in these cases and all interested parties having been afforded an adequate opportunity to be heard with respect to the Sale Motion; and all responses and objections, if any, to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings in these cases; and it appearing that there is good cause for the relief requested in the Sale Motion, and such relief is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and, after due deliberation, sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:³

Jurisdiction, Final Order, and Statutory Predicates

A. On June 10, 2011 (the “Petition Date”), the Debtors filed voluntary petitions for relief under the Bankruptcy Code. The Debtors have continued in the management of their businesses and property as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No committee or trustee has been appointed in these cases.

B. The Court has jurisdiction over this matter and over the property of the Debtors and their estates, including the property to be sold, transferred or conveyed pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Sale Motion is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

C. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) sections 105, 363, and 365 of the Bankruptcy Code and (ii) Rules 2002, 6004, 6006, 7004(c), and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

E. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the parties may consummate the transactions provided for under the terms and conditions of the APA immediately upon entry of this Order.

F. Time is of the essence in consummating the sale. In order to maximize the value of the Purchased Assets to the Debtors' estates, it is essential that the sale of the Purchased Assets occur within the time constraints set forth in the APA. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

G. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the APA, and to adjudicate, if necessary, any and all disputes relating in any way to the transactions provided for under APA.

Adequate Notice

H. As evidenced by the affidavits of service filed with the Court and based upon representations of counsel made at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sale Motion and the Sale Hearing (including due and proper notice to each non-debtor party to a contract or lease of the assumption, assignment and sale of such contract or lease to Purchaser (the "Assigned Contracts")) has been provided in accordance with Sections

102, 105, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 7004(c), 9006, 9007, 9008 and 9014, the local rules of this Court, the procedural due process requirements of the United States Constitution; (ii) such notice was good and sufficient and appropriate under the particular circumstances; and (iii) no other or further notice of the Sale Motion, the Sale Hearing, the assumption, assignment, and or transfer of the Assigned Contracts, or of the entry of this Order is necessary or shall be required.

I. Actual written notice of the Sale Motion and the Sale Hearing (including due and proper notice of the assumption, assignment and sale of each Assigned Contract) and a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, (i) all entities that assert any Encumbrances (as defined herein) on the Purchased Assets; (ii) all non-debtor parties to the Assigned Contracts; (iii) all governmental taxing authorities that have, or as a result of the sale may have, claims, contingent or otherwise, against the Debtors; (iv) all parties that filed requests for notices under the Bankruptcy Rules; (vi) all interested governmental entities; and (vii) the Office of the United States Trustee.

Debtors' Business Judgment and Justification for Sale

J. At the Sale Hearing and in the Sale Motion, the Debtors advanced sound business reasons for seeking to enter into the APA and to sell the Purchased Assets and to assume, assign, and/or transfer the Assigned Contracts. It is a reasonable exercise of the Debtors' business judgment to sell the Purchased Assets and assume, assign, and/or transfer the Assigned Contracts and to consummate the transactions contemplated by the APA.

K. The terms and conditions of the APA, including the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable, and the transactions contemplated

by the APA are in the best interests of the Debtors, the Debtors' estates, their creditors and other parties in interest in that, without exclusion:

- (i) The APA was negotiated, proposed and entered into in good faith, from arm's length bargaining positions between the Sellers and Purchaser;
- (ii) The Sellers were free to deal with any other party interested in acquiring the Purchased Assets to be sold pursuant to the APA; and
- (iii) The Sellers have provided for adequate notice and an opportunity to be heard in connection with the Proposed Sale.

L. The Debtors have demonstrated a sufficient basis and the existence of exigent circumstances requiring them to enter into the APA, sell the Purchased Assets, and assume, assign, and/or transfer the Assigned Contracts outside of a plan of reorganization under Sections 105, 363, and 365 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their creditors.

Highest and Best Offer

M. Prior to entering into the APA, the Debtors engaged in marketing efforts and a competitive sales process (the "Sale Process") in accordance with prior orders entered by the Court, each of which has become final and not subject to review or appeal, including: (i) the order approving Cantor Fitzgerald & Company ("Cantor Fitzgerald") as the Debtors' investment advisor (Docket No. 208) and (ii) the *Order (I) Establishing Bidding Procedures in Connection with the Sale of Substantially All of the Assets of Pegasus Rural Broadband, LLC and Certain Assets of Xanadoo, LLC; (II) Authorizing and Scheduling an Auction in Connection with the Sale; (III) Approving the Procedures Pursuant to which Debtors May Seek Approval of a Break-Up Fee and Expense Reimbursement to Stalking Horse Bidders; (IV) Approving Cure Cost Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and*

Unexpired Leases in Connection with the Sale; (V) Approving Form and Manner of Notices; and (VI) Scheduling a Hearing for Final Approval of the Sale (Docket No. 647). Through the Sale Process and in accordance with the Sale Process Orders, the Debtors (i) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all or certain of the Purchased Assets, (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets, and (iii) considered any bids submitted on or before the deadline established by the court for the submission of bids.

N. As a result of the Sale Process, the Sellers and Rhino entered into the APA.

O. The sale of the Purchased Assets to Purchaser pursuant to the APA represents the highest and best transaction for the Purchased Assets.

P. The purchase price for the Purchased Assets is \$3,000,000 in immediately available cash (the “Purchase Price”), inclusive of the Good Faith Deposit of the Purchaser.

Q. The offer of the Purchaser, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA: (i) is the highest and best offer for the Purchased Assets; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets; and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practical and available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

R. The total consideration provided by the Purchaser for the Purchased Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.

Good Faith of Purchaser

S. Purchaser is not an "insider" or "affiliate" of the Debtors (as such terms are defined in the Bankruptcy Code). Purchaser is a purchaser in good faith, as that term is used in the Bankruptcy Code and court decisions thereunder, and is entitled to all of the protections, benefits, and immunities of Section 363(m) of the Bankruptcy Code. The APA was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor Rhino have engaged in any conduct that would prevent the application of Section 363(m) of the Bankruptcy Code to the APA or to the consummation of the sale transaction and transfer of the Purchased Assets to Rhino, including the Assigned Contracts. The Court finds that Rhino has acted in good faith in all respects in connection with these Chapter 11 cases and the transactions under the APA in that, among other things, all consideration to be paid by Purchaser and other agreements or arrangements entered into by Purchaser with the Debtors in connection with the APA have been disclosed, and the negotiation and execution of the APA and all other aspects of the transactions contemplated thereby were conducted in good faith and at arm's length.

T. In the absence of a stay pending appeal, the Purchaser will be acting in good faith, pursuant to Section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the APA at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

U. The Purchaser has not violated Section 363(n) of the Bankruptcy Code by any action or inaction. The consideration to be paid by Rhino was not limited by an agreement

among potential bidders. The transactions under the APA may not be avoided and no damages may be assessed against Rhino or any other party under Section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

Validity of Transfer

V. As set forth in the APA, prior to the transactions contemplated under the APA, the Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

W. As set forth in the APA, Debtors have full corporate power and authority to execute the APA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate authority by the Debtors to consummate the transactions contemplated by the APA. No consents or approvals, other than as may be expressly provided for in the APA or this Order, are required by the Debtors to consummate such transactions.

X. Pursuant to Section 365 of the Bankruptcy Code, the transfer of the Purchased Assets to the Purchaser, and the assumption, assignment and sale of the Assigned Contracts and leases to the Purchaser is a legal, valid and effective transfer of the Purchased Assets and the Assigned Contracts, notwithstanding any requirement for approval or consent by any person. Upon such transfer, Purchaser shall have good and indefeasible title to all the Purchased Assets.

Section 363(f) Free and Clear Sale

Y. As used in this Order, the term "Encumbrance" means and includes any lien (including as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), rights (including rights arising pursuant to a gift), demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants,

encroachments, rights of first refusal, preemptive rights, judgments, conditional sale or other title retention agreements and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever, interest (as that term is used in section 363(f) of the Bankruptcy Code), credits, allowances, rebates, causes of action (known or unknown, pending or threatened, including all causes of action arising under Chapter 5 of the Bankruptcy Code or under similar non-bankruptcy laws including fraudulent transfer or conveyance claims, and all other causes of action of a trustee and debtor in possession under the Bankruptcy Code), rights of setoff and recoupment, and successor liability claims; provided, however, that Encumbrances do not include any Permitted Liens or interests (the “FCC Interests”) in any of the Purchased Assets held by the Federal Communications Commission (“FCC”).

Z. The Purchased Assets shall be sold free and clear of Encumbrances, except as described below in Section 6.

AA. Purchaser would not enter into the APA to purchase the Purchased Assets and to assume the Assigned Contracts if the sale were not free and clear of all Encumbrances, except as described below in Section 6. Not selling the Purchased Assets free and clear of all Encumbrances (except as described below in Section 6) would adversely impact the Debtors' estates, and the sale of Purchased Assets other than free and clear of all Encumbrances would be of substantially less value to the Debtors' estates.

BB. Except as described below in Section 6, all persons having Encumbrances of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Encumbrances against the Purchaser or the Purchased Assets.

CC. The Debtors may sell the Purchased Assets free and clear of all Encumbrances (except as described below in Section 6) because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been or will be satisfied. Subject to the foregoing and the other terms and conditions of this Order, those holders of Encumbrances, in each case, against the Debtors or their estates who did not object, or who withdrew their objections to the Sale Motion, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who asserted their objections at the Sale Hearing, if any, fall within one or more of the other subsections of section 363(f).

DD. The Purchaser shall not have any obligations with respect to any Liabilities of the Debtors other than the Permitted Liens, FCC Interests, Assumed Liabilities, and its obligations under the APA.

Assumption, Assignment, and/or Transfer of Assigned Contracts

EE. The Debtors and the Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code. Pursuant to the terms and subject to the conditions of this Order and the APA, the Seller shall, within the time period and pursuant to the terms set forth in the APA, cure or provide adequate assurance of cure of any undisputed existing default prior to the Closing under any of the Assigned Contracts, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code. Rhino has demonstrated adequate assurance of future performance with respect to the Assigned Contracts, within the meaning of Section 365(b)(1)(C) of the Bankruptcy Code. The Assigned Contracts may be assigned to the Purchaser notwithstanding any provisions contained therein to the contrary pursuant to Section 365(f) of the Bankruptcy Code, and, to the extent a non-debtor party to any Assigned Contract has failed timely to object to the assumption and assignment of its respective contract or lease, any such

party shall be deemed to consent to the assumption and assignment thereof to the Purchaser pursuant to Section 365(c)(1)(B).

FF. The assumption and assignment of the Assigned Contracts is integral to the APA and is in the best interests of the Debtors, their estates, their creditors and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

No Successor Liability

GG. The transactions contemplated under the APA do not amount to a consolidation, merger or de facto merger of the Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchaser and any of the Debtors, there is no continuity of enterprise between the Debtors and the Purchaser, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates.

HH. Except as otherwise expressly set forth in the APA, the transfer of the Purchased Assets to Purchaser does not expose Purchaser or any of its respective affiliates, successors, predecessors, shareholders, members, partners, directors, officers, managers, employees, insiders, agents, representatives and advisors, to any liability, claim, cause of action or remedy by reason of such transfer under (i) the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, or (ii) any employment contract, understanding or agreement, including, without limitation collective bargaining agreements, employee pension plans, employee welfare or benefit plans.

Miscellaneous

II. The sale of the Purchased Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a plan of liquidation or reorganization for the Debtors. The sale does not constitute a sub rosa Chapter 11 plan.

JJ. For purposes of Section 363(b)(1) of the Bankruptcy Code, the Debtors have not, in connection with offering a product or service, disclosed to any individual a policy prohibiting the transfer of "personally identifiable information" (as defined in Section 101(41A) of the Bankruptcy Code) about individuals to persons that are not affiliated with the Debtors.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

General Provisions

1. The Sale Motion is granted in its entirety, and the Proposed Sale and all other transactions contemplated under the APA are hereby approved.

2. Any objections to the entry of this Order or the relief granted herein that have not been withdrawn, waived, resolved or settled, and all reservations of rights included therein, are hereby overruled.

Approval of the Asset Purchase Agreement

3. The terms and conditions of the APA, including, without limitation, (i) the sale of the Purchased Assets to Purchaser, (ii) the assumption and sale and assignment of the Assigned Contracts, and (iii) the assumption by Purchaser of the Assumed Liabilities, hereby are authorized and approved in all respects, pursuant to Sections 363(b), 363(f), 363(k), 365(a), 365(b), 365(f), 365(k) and 105(a) of the Bankruptcy Code.

4. Pursuant to section 363(b) of the Bankruptcy Code, and subject to the terms and conditions of the APA, the Sellers hereby are authorized, directed and empowered to assume fully, perform under, consummate and implement the APA, together with any and all additional instruments and documents, including without limitation any related agreements, that reasonably may be necessary or desirable to implement the APA and consummate the Proposed Sale, and to take all further actions as may reasonably be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to Purchaser or reducing to Purchaser's possession the Purchased Assets, including assuming and assigning the Assumed Liabilities, or as may be necessary or appropriate to the performance of the Sellers' obligations as contemplated by the APA.

Transfer of the Purchased Assets Free and Clear

5. The transfer of the Purchased Assets to Purchaser pursuant to the APA shall constitute a legal, valid and effective transfer of the Purchased Assets and shall vest Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets.

6. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred and assigned to Purchaser effective on the Closing Date free and clear of all Encumbrances, provided, that notwithstanding anything to the contrary herein, the tax liens for the 2012 taxes are specifically retained by Wichita County, Burkburnett Independent School District, and Lubbock Central Appraisal District (collectively, the “Texas Tax Authorities”) and the entities for which they collect with the same priority, validity, force and effect which they now have against the assets; and the Purchaser and any successors-in-interest assume both the lien and the personal liability for such 2012 taxes until the 2012 taxes are paid in full; provided, however, that between the Sellers and the Purchaser, the Sellers have agreed to assume responsibility for all Pre-Closing Lien Taxes (as that term is defined in the APA) which will be

paid by Sellers, and which payment obligation shall survive Closing. At Closing or as soon as practicable thereafter, the Debtors shall pay their pro rata portion of the 2012 taxes to the Texas Taxing Authorities or credit the purchase price, on and after the Closing Date, except as otherwise set forth herein or in the APA, the Sellers shall have no liability or responsibility for the Purchased Assets (subject to the Texas Taxing Authorities' jurisdiction), including, without limitation, ad valorem taxes relating to calendar year 2012 (including any penalties and interest that may have accrued thereon).

7. The Purchaser and Sellers shall have no obligation to proceed with the Closing of the APA until all conditions precedent under the APA or this Order to their obligations to do so have been satisfied or waived. The Purchaser and Sellers may consummate the transactions under the APA at any time after the entry of this Order (including immediately thereafter) by waiving any or all closing conditions set forth in the APA that have not been satisfied and by proceeding to close such transactions, without any notice to the Court, any pre-petition or post-petition creditor of the Debtors or any other party in interest.

8. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Encumbrances shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, the Debtors shall execute all documents necessary, and seek (or assist with) all applications required, to transfer all applicable FCC licenses to the Purchaser. Further, the Debtors and each other person or entity having duties or responsibilities under the APA, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the

terms and conditions contained in the APA, to carry out all of the provisions of the APA and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the APA, and any related agreements; to take any and all actions contemplated by the APA, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the APA, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The Executive Vice President of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the APA, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate; provided that

a failure of any such governmental unit to accept any such filing shall not be a violation of this Order by the Debtor. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporation laws of the State of Delaware and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the APA, any related agreements and this Order, and the transactions contemplated thereby and hereby.

9. On or before the Closing Date, all parties holding Encumbrances of any kind are authorized and directed to execute such documents and take all other actions as may be necessary to release any Encumbrances of any kind against the Purchased Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances in or against the Purchased Assets shall not have delivered to the Debtors prior to the Closing after Purchaser's or any Debtor's request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Encumbrances that the person or entity has with respect to the Purchased Assets, the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets prior to the Closing, and the Purchaser or its respective successors and assigns are authorized to file such documents after Closing.

10. A certified copy of this Order may be filed with appropriate clerks, recorders, and/or filing agents to cancel any of the Encumbrances.

11. Effective as of the Closing, (a) the sale of the Purchased Assets by the Debtors to the Purchaser shall constitute a legal, valid and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person and shall vest Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Encumbrances, pursuant to Section 363(f) of the Bankruptcy Code, and (b) the assumption of any Assumed Liabilities by the Purchaser shall constitute a legal, valid and effective delegation of any Assumed Liabilities to the Purchaser and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

Assigned Contracts

12. Upon the Closing Date, the assumption by the Debtors of the Assigned Contracts and the sale and assignment of the Assigned Contracts to the Purchaser, free and clear of all Encumbrances, is authorized and approved pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, and the Purchaser shall be fully and irrevocably vested in all right, title and interest of each Assigned Contract. The Debtors shall cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

13. The Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchaser, subject only to: (a) the payment of all required Cure Costs as provided in this Order and the APA; and (b) the right of the Purchaser to exclude any contract or lease in accordance with the terms of the APA. To the extent the Purchaser excludes any such contract or lease, the Debtors shall file a revised schedule to the APA with the Court and provide notice by first class mail or electronic mail to the Office of the United States Trustee, and to the applicable contract counterparty (or its counsel, if known).

14. Pursuant to Sections 365(b)(1)(A) and (B), pursuant to the terms and subject to the conditions of this Order and the APA, Debtors shall pay to the non-debtor parties to any Assigned Contract the requisite cure costs, if any, set forth in the notice served by the Debtors on each of the parties to the Assigned Contracts, except to the extent that a cure amount was set forth on the record at the Sale Hearing (the "Cure Costs"). Such Cure Costs are to be paid out of the Carve-Out, defined and more fully described below.

15. The Cure Costs are hereby fixed at the amounts set forth in the notice served by the Debtors, or the amounts set forth on the record of the Sale Hearing, as the case may be, and the non-debtor parties to the Assigned Contracts are forever bound by such Cure Costs, provided however, that the Texas State Technical College ("TSTC") has preserved its right to object to the payment of its stated Cure Cost if the Debtors fail to make any payment required under Xanadoo, LLC's leases with TSTC from June 8, 2012 to the Closing Date.

16. All defaults or other obligations under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in Section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by payment of the Cure Costs.

17. Pursuant to Section 365 of the Bankruptcy Code, any provision in any Assigned Contract that purports to declare a breach, default or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable with respect to the sale pursuant to the APA, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Cost, if any. No provision of any Assigned Contract that purports to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor third party shall have any force and effect with

respect to the transactions authorized by this Order. No assignment of any Assigned Contract pursuant to the terms of the APA and this Order shall constitute a default under any such Assigned Contract.

18. Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, the non-debtor parties to the Assigned Contracts are forever barred and permanently enjoined from asserting against the Purchaser or Debtors any assignment fee, default, breach, claim, or damage under the Assigned Contracts existing as of the Closing Date or arising by reason of the assumption, assignment, and or transfer of the Assigned Contracts.

19. To the extent a non-debtor party to any Assigned Contract has failed to timely object to the assumption and assignment of its respective contract or lease, any such party shall be deemed to consent to the assumption and assignment thereof to the Purchaser pursuant to Section 365(c)(1)(B) of the Bankruptcy Code.

20. The Purchaser has satisfied all requirements under Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Assigned Contracts.

21. All of the Debtors' security deposits, or other security held by landlords, lessors and other counterparties to the Assigned Contracts, if any, shall be transferred to the Purchaser, and shall be the property of, the Purchaser, from and after the Closing, which transfer and assignment of security deposits, other deposits, or security shall satisfy in full the requirements of Section 365(l) of the Bankruptcy Code for all contracts, leases, and licenses assumed and assigned pursuant to this Order or the APA.

22. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assigned Contracts occurring from and after Closing, pursuant to Section 365(k) of the Bankruptcy Code.

Good Faith of Purchaser

23. The Purchaser is a good faith Purchaser under section 363(m) of the Bankruptcy Code and is granted all of the benefits and protections provided to a good faith Purchaser by Section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assigned Contracts as part of the sale of the Purchased Assets. Accordingly, the reversal or modification on appeal of the authorizations provided in this Order shall not affect the validity of the Sale, including the assumption, assignment, and or transfer of the Assigned Contracts, unless such authorizations and consummation of such Sale are stayed pending appeal.

24. The sale of the Purchased Assets is not subject to avoidance, and no damages may be assessed against the Purchaser or any other party, pursuant to section 363(n) of the Bankruptcy Code or otherwise. All parties in interest are forever barred and permanently enjoined from commencing an action under Section 363(n) of the Bankruptcy Code.

Allocation of Proceeds of Sale

25. Subject to paragraph 26 and the terms thereof, and provided the Settlement Agreement (defined below) is approved by the Bankruptcy Court, and with the consent of BPC AS LLC, collateral agent for the Pre-Petition Secured Parties, the Debtors are authorized, consistent with and subject in all respects to the terms of the Settlement Agreement, to allocate from the Purchase Price nine hundred thousand U.S. dollars (\$900,000), to be first used to pay necessary costs and expenses associated with the disposal of the Purchased Assets, only as set forth below:

- a. all Cure Amounts;

- b. all severance, unpaid wage or benefit claims;
- c. all ad valorem property taxes;
- d. all expenses (but not fees) incurred by Cantor;
- e. all governmental fees;
- f. all fees incurred by ordinary course professionals of the Debtors related to the transfer of governmental licenses;
- g. all fees related to a transition services agreement between the Sellers and Rhino;
- h. all unpaid administrative expenses payments for the use of non-residential real property (collectively, the “Carve-Out”).

and second, for any other purpose in the discretion of the Debtors’ management, subject to the Bankruptcy Code.

26. Immediately following the Closing Date, the Debtors shall transfer the first one million five hundred thousand U.S. dollars (\$1,500,000) from the proceeds from the Rhino Transaction to BPC AS LLC, in its capacity as collateral agent for the Pre-Petition Secured Parties. The Debtors, Xanadoo Company (as DIP lender), BPC and the other Pre-Petition Secured Parties (collectively, the “Settlement Parties”) further agree that, with balance left following any adjustment of the Purchase Price, BPC, on behalf of itself and the other Pre-Petition Secured Parties, shall receive 75% of any such distribution (to the extent the proofs of claim filed by BPC have not otherwise been satisfied) and the Debtors shall receive 25% of any such distribution to be allocated for any purpose elected in the Debtors’ management’s discretion and in accordance with the Bankruptcy Code. Notwithstanding anything to the contrary herein (including paragraph 25 hereof), no payments from the proceeds of the Purchase Price may be

paid to insiders, whether a consulting fee, fees related to transition services or otherwise (from the 900k or the 25%) until the occurrence of the Completion Date (as that term is defined in the settlement agreement by and between the Settlement Parties dated June 22, 2012) (the “Settlement Agreement”), provided, however, that nothing herein shall limit the ability of the Debtors to pay compensation to insiders in the ordinary course of business pending the closing of the sales provided such insiders remain employees of the Debtors.

Additional Provisions

27. Each and every federal, state, and local governmental agency, unit or department is hereby directed to accept this Order as sole and sufficient evidence of the transfer of title of the Purchased Assets and such agency or department may rely upon this Order in consummating the transactions contemplated by the APA. Further, each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order.

28. Notwithstanding any other provision in the Sale Motion or this Order, no assignment of any rights and interests of the Debtors in any FCC license shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, as amended and the rules and regulations promulgated there under. The FCC’s rights and powers to take any action pursuant to its regulatory authority, including imposing any regulatory conditions and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC’s exercise of such power or authority to the extent provided by law.

29. The sale of the Purchased Assets and the consideration provided by the Purchaser is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

30. No holder of any Encumbrance in the Purchased Assets shall interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Encumbrance. No person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the APA or this Order.

31. To the greatest extent available under applicable law, the Purchaser or its respective successors and assigns shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser or its respective successors and assigns as of the Closing Date.

32. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets.

33. Except as expressly provided in the APA, the Purchaser is not assuming nor shall it or any affiliate, subsidiary, successor or assignee of Purchaser be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the APA, or any liabilities calculable by reference to the Debtors or their operations, or relating to continuing or other

conditions existing on or prior to consummation of the transactions contemplated by the APA, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Purchaser or any affiliate, subsidiary, successor, or assignee of the Purchaser.

34. Except as otherwise expressly provided in the APA, all persons or entities in possession of any of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

35. Except for the FCC Interests and Assumed Liabilities, the Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Purchased Assets and/or Assigned Contracts. Without limiting the generality of the preceding sentence, the Purchaser is not a "successor" to the Debtors or their estates under any theory of law or equity. Except for the Assumed Liabilities, the Purchaser shall not assume, nor be deemed to assume, or be in any way be responsible for any liability or obligation of any of the Debtors and/or their estates under any theory or law, including but not limited to, any bulk sales law, successor liability doctrine or law, vicarious liability of any kind or character, antitrust, environmental, tax liability, transferee liability, labor law, de facto merger or substantial continuity theory, whether known or unknown, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated.

36. The Purchaser has given substantial consideration under the APA for the benefit of the holders of Encumbrances. The consideration given by the Purchaser constitutes valid and valuable consideration for the release of any potential Successor Liability Claim, which releases

shall be deemed to have been given in favor of the Purchaser by all holders of Encumbrances against the Debtors or any of the Purchased Assets.

37. Purchaser, its affiliates, its subsidiaries, its successors and its assigns shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Purchaser's purchase of the Purchased Assets or assumption of the Assumed Liabilities.

38. Except to the extent expressly included in the Assumed Liabilities, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, all persons and entities, including, but not limited to, the Debtors, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, any claimant asserting a products liability claim, trade and other creditors asserting or holding an Encumbrance of any kind or nature whatsoever against, in or with respect to any of the Debtors or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the Purchased Assets to the Purchaser, are and shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Encumbrance or other liability against the Purchased Assets, the Purchaser or any affiliate, subsidiary, predecessor, successor or assign of each of them and each of their respective current and former members, managers, officers, directors, owners, attorneys, employees, partners, agents, advisors, and professionals, or the Purchased Assets.

39. Subject to the terms of the APA, the terms of the APA and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the APA and any related agreements.

40. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the APA.

41. The failure specifically to include any particular provisions of the APA or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Purchaser that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

42. To the extent any provisions of this Order conflict with the terms and conditions of the APA, the terms and conditions of this Order shall control.

43. This Order and the APA shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtors, the Debtor's bankruptcy estates, any liquidating agent or similar person appointed pursuant to any plan of reorganization or liquidation, any examiner, Chapter 7, or Chapter 11 trustee appointed or elected for the Debtors' estates, the Purchaser, all creditors and parties in interest of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, the Debtors' prior DIP Lenders and counsel and collateral agent for such DIP Lenders, and all other persons and entities who may be required by operation of law, the duties of their office or

contract to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets.

44. Any amounts that become payable by the Debtors to the Purchaser pursuant to the APA shall (a) constitute administrative expenses of the Debtors' estate under Sections 503(b) and 507(a)(1) of the Bankruptcy Code, and (b) be paid by the Debtors in the time and manner provided by the APA, all without further Court order and notwithstanding any Encumbrances against the Debtors' estates.

45. The provisions of this Order are non-severable and mutually dependent.

46. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Cases, or in any subsequent or converted cases of the Debtors under Chapter 7 or Chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

47. Notwithstanding Bankruptcy Rules 6004, 6006, 7062, and 9014, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the APA immediately upon entry of this Order.

48. This Court shall retain jurisdiction even after the closing of these Chapter 11 cases to:

- a. interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers or consents thereunder and each of the agreements executed in connection therewith in all respects;
- b. decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and Assigned Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive

of those concerning the transfer of the assets free and clear of all Encumbrances;

- c. protect the Purchaser, any contract or lease assumed and assigned and sold to the Purchaser, or the Purchased Assets, against any of the Encumbrances as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability;
- d. enter orders in aid or furtherance of the transactions contemplated by the APA or to ensure the peaceful use and enjoyment of the Purchased Assets and the contracts and leases by the Purchaser and its successors and assigns;
- e. compel delivery of all Purchased Assets to the Purchaser;
- f. adjudicate any and all remaining issues concerning the Debtors' right and authority to assume and assign and sell the Assigned Contracts to the Purchaser and the existence of any default under any such contract or lease;
- g. adjudicate any and all disputes concerning alleged Encumbrances in and to the Purchased Assets including without limitation the extent, validity, enforceability, priority, and nature of any and all such alleged Encumbrances;
- h. adjudicate any and all disputes relating to the Debtors' right, title, or interest in the Purchased Assets and the proceeds thereof; and
- i. re-open the Debtors' Chapter 11 cases to determine any of the foregoing.

Dated: Wilmington, Delaware

_____, 2012

HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE