

ORDERED.

Dated: April 29, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re: Chapter 11
LUMASTREAM, INC., Case No. 8:20-bk-00999-CPM
Debtor.

**ORDER ON EXPEDITED MOTION FOR ENTRY OF AN ORDER
(I) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE
OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS, (II) ESTABLISHING
PROCEDURES FOR THE ASSUMPTION AND/OR ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) APPROVING
PROCEDURES FOR SELECTION OF STALKING HORSE BIDDER AND
ESTABLISHING BREAK UP FEE, (IV) APPROVING FORM AND MANNER OF
NOTICE OF BIDDING PROCEDURES, AND (V) SETTING OBJECTION DEADLINES**

THIS CASE came on for hearing before the Court on April 27, 2020 at 9:30 a.m. (the “Hearing”), upon the Expedited Motion for Entry of an Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (II) Establishing Procedures for the Assumption and/or Assignment of Certain Executory Contracts and Unexpired Leases, (III) Approving Procedures For Selection of Stalking Horse Bidder and Establishing Break Up Fee,

(IV) Approving Form and Manner of Notice of Bidding Procedures, and (V) Setting Objection Deadlines [Doc. No. 93] (the “**Motion**”).¹

The Debtor, Lumastream, Inc. (“**Lumastream**” or the “**Debtor**”) has also filed the Motion for Order Authorizing (I) the Sale of Substantially All of the Debtor’s Assets Pursuant to 11 U.S.C. § 363, Free and Clear of All Liens, Claims and Encumbrances, and (II) Authorizing the Assumption and Assignment of Contracts [Doc. No. 95] (the “**Sale Motion**”).

In the Motion, the Debtor requested that the Court consider the entry of an order (a) approving procedures for the submission of Bids (defined below); (b) approving the form and notice of Bid Procedures (as defined below); (c) approving an Auction (as defined below) procedures; (d) approving procedures to select and approve a stalking horse bidder and approval of any break-up fee agreed to with such stalking horse bidder; and (e) establishing procedures related to the assumption and assignment by the Debtor of certain executory contracts and unexpired leases to which the Debtor is a party.

At the Hearing, counsel for the Debtor set forth the bid procedures requested by the Debtor in connection with the proposed sale of the Offered Assets and outlined the deadlines set forth in the bidding procedures.

By its Motion, the Debtor requests the Court establish the following deadlines and dates with respect to the relief requested by the Motion:

Bid Deadline	May 22, 2020 at 5:00 p.m. (Eastern Standard Time)
Sale Objection Deadline	May 22, 2020 at 5:00 p.m. (Eastern Standard Time)
Cure Amount Objection Deadline	May 25, 2020 at 5:00 p.m. (Eastern Standard Time)

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to such terms in the Motion.

Assumption Objection Deadline	May 22, 2020 at 5:00 p.m. (Eastern Standard Time)
Auction	May 27, 2020 at 10:00 a.m.
Sale Hearing	May 29, 2020 at 2:00 p.m.

The Court finds that notice of the Motion and the Hearing to creditors and other parties in interest was sufficient, and that it complied with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court.

The Court considered the Motion, together with the record and the arguments of counsel at the Hearing, and being otherwise duly advised in the premises, and for the reasons announced on the record at the Hearing, which shall constitute the order of the Court as if specifically provided herein, finds that the relief requested in the Motion is necessary and appropriate, and that the Motion is well taken and shall be granted in accordance with the terms and conditions set forth herein. Specifically, the Court finds that it would be in the best interests of the Debtor, its creditors and its estate that an orderly procedure be established for the selection of the highest and best offer for the sale of substantially all of the assets owned by the Debtor (collectively, the “**Offered Assets**”). The Court thus finds that it is appropriate to provide prospective purchasers with the opportunity to submit bids for the Offered Assets, and that notice of the proposed sale of the Offered Assets shall be sent to all parties that expressed an interest in acquiring the Offered Assets. The Court also finds that it is appropriate to require any such prospective purchasers to comply with certain requirements in connection with the submission of bids, and that the bidding procedures proposed by the Debtor, as set forth in the Motion and as modified herein, are reasonable. The Court has scheduled a hearing to approve the sale to the successful bidder (the “**Sale Hearing**”) for May 29, 2020 at 2:00 p.m. Accordingly, it is

ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The Court approves the following procedures (the “**Bid Procedures**”) for the submission and consideration of any written competing bid (“**Bid**”) by any competing bidder (“**Bidder**”) for the Offered Assets:

(a) By no later than five (5) days after the entry of the Bid Procedures Order, the Debtor will serve on interested parties as required by the Bid Procedures Order, a motion to approve the sale of the Offered Assets (the “**Sale Motion**”), which will seek entry of an order approving the sale of the Offered Assets to the bidder(s) with the highest and best offer for the Offered Assets, or any combination of bids for certain portions of the Offered Assets, which results in the highest and best total offer for the Offered Assets consistent with the terms, conditions and dates set forth in the Bid Procedures Order.

(b) By no later than May 29, 2020, the Court will conduct a hearing (the “**Sale Hearing**”) to consider approval of the Sale Motion and highest and best offer(s) submitted for the Offered Assets in accordance with the procedures set forth in the Bid Procedures Order.

(c) Any Bidder must deliver to the parties listed below a Bid for the Offered Assets by no later than 5:00 p.m. (Eastern Daylight Time) on May 22, 2020 (the “**Bid Deadline**”) which is five (5) business days prior to the date of the Sale Hearing or such later date agreed to by the Debtor. The parties to be served by the Bid Deadline with all Bids are: (i) counsel to the Debtor, Scott A. Stichter, Esq. and Susan Heath Sharp, Esq., Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, Email: [sstichter@srbp.com](mailto:ssstichter@srbp.com) and [ssharp@srbp.com](mailto:sssharp@srbp.com); and (ii) the Debtor’s investment banker, James S. Cassel and Philip Cassel, Cassel Salpeter & Co., LLC, 801 Brickell Ave., Suite 1900, Miami, Florida 33131, Email: jcassel@cs-ib.com; pcassel@cs-ib.com; (the parties identified in subparagraph (i) and (ii) above being hereafter referred to as the “**Notice Parties**”).

(d) Prior to receipt by a prospective Bidder of any information (including business and financial information and access to the Debtor) from the Debtor, each such Bidder will be required to execute a confidentiality agreement in form and content acceptable to the Debtor.

(e) Each Bid shall include the following:

- i) The Bidder’s purchase agreement must be an asset purchase agreement (the “**Bidder’s APA**”) in substantially the same form as the asset purchase agreement to be filed with the Court on or before May 4, 2020 (the “**Form APA**”),

accompanied by a black-line to show all changes made by such Bidder to the Form APA. The Bidder's APA must be signed by such Bidder and be subject to acceptance by the Debtor.

- ii) The Debtor may accept modifications to a Bidder's APA if the Debtor determines, in the exercise of its business judgment, that the proposed modifications result in a higher and better offer for the Offered Assets. A copy of the Form APA shall be furnished in Microsoft Word format to any Bidder requesting a copy.
- iii) A designation of any executory contracts or unexpired leases such Bidder desires the Debtor to assume and assign to the Bidder (the "**Designated Contracts**").
- iv) A purchase price which is at least Six Million Dollars (\$6,000,000.00), payable in cash only, and not subject to a financing contingency (unless otherwise agreed by the Debtor).
- v) A designation of those liabilities of the Debtor that such Bidder intends to assume.
- vi) Relevant background and financial information reasonably satisfactory to the Debtor (including without limitation the latest available audited and unaudited financial statements) demonstrating the Bidder's financial ability to close and to consummate an acquisition of the Offered Assets, as set forth in the Bidder's APA, such as (1) evidence of the Bidder's ability to assume or satisfy the terms and obligations of the Bidder's APA, pay the purchase price provided for therein and provide adequate assurance of future performance as to any Designated Contracts pursuant to § 365 of the Bankruptcy Code, and (2) a lending commitment from a recognized financial institution or cash sources in the amount of the Bid subject to only those conditions that are acceptable to the Debtor.
- vii) A good faith deposit in immediately available funds in an amount equal to ten percent (10%) of the Bid (the "**Bid Deposit**"), which shall be made payable to and delivered to Stichter, Riedel, Blain & Postler, P.A. ("**Stichter Riedel**"), counsel to the Debtor, by no later than the Bid Deadline (or such later date agreed to by the Debtor). The Bid Deposit shall be deposited into a non-IOTA, non-interest-bearing

trust account maintained by Stichter Riedel. Such Bid Deposit will be non-refundable to the Bidder and forfeited to the Debtor in the event such Bidder's Bid is approved by the Court at the Sale Hearing as the highest and best offer and such Bidder fails to close for any reason other than the failure of a condition to the Bidder's obligation to close provided that such failure was not caused or preceded by a default by such Bidder under any Bidder's APA. The Bid Deposit will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, Stichter Riedel will return the Bid Deposit of all Bidders except the Bidder whose Bid is approved by the Sale Order (the "**Successful Bidder**") and the Backup Bidder (defined below). The Backup Bidder's Bid Deposit will be returned within five (5) days following the closing with the Successful Bidder.

(f) If the Debtor receives a qualified Bid, acceptable to the Debtor, on or before 5:00 p.m. Eastern Standard Time (including actual receipt of the Bid Deposit by Stichter Riedel) on or before May 15, 2020 (or such extended date and time as the Debtor, may establish in its sole discretion) (a "**Stalking Horse Bid**"), the Debtor may file a motion with the Court seeking approval to designate such bidder as a "**Stalking Horse Bidder**" with any breakup fee or expense reimbursement as may be approved by the Court. Any Breakup Fee shall be payable from the proceeds of any sale of the same portion of the Offered Assets to a higher bidder as approved by the Court. Aside from any designated Stalking Horse Bidder approved by this Court, no other Bidder submitting any Bid shall be entitled to any expense reimbursement or any break-up, termination, or similar fee or payment.

(g) An auction ("**Auction**") to consider any Bids in respect of the Offered Assets will be held at the office of Stichter Riedel on May 27, 2020 at 10:00 a.m. (Eastern Standard Time), provided that Stichter Riedel shall make arrangements to allow Bidders to participate via video conference. All potential Bidders with full authority to participate in the Auction must be present in person or by video conference at the Auction. At the Auction, the Debtor may request a Bidder to provide additional information demonstrating the Bidder's financial ability to close and to consummate an acquisition of the Offered Assets. The Debtor shall commence the Auction with the highest Bid. Subsequent Bids shall be in the increased amount as set forth in paragraph (h) below. At the Auction, the Debtor shall consider Bids for all of the Offered Assets. At the conclusion of the Auction, the Debtor will announce the Bid or Bids it considers to be the highest and best offer(s) for the Offered Assets (the "**High Auction Bid(s)**"), after taking into account all aspects of the Bids and the Bidders' APA (including, without limitation, the amount of the purchase price, the method and timing of the payment of the purchase price, conditions to closing, the time for closing, the likelihood of regulatory approval, the representations, warranties and covenants to be provided by the Debtor and, if applicable, the Break-up Fee). At the Sale Hearing, the Debtor will seek approval of the High Winning Bid(s). The Bidder(s)

who submitted the High Auction Bid and any Backup Bids or their authorized representatives must be present at the Sale Hearing, subject to any Court order governing appearance of parties at hearings.

(h) All Bids for the purchase of substantially all of the Offered Assets above the prior high Bid must be in an amount which nets increased consideration in the amount of \$250,000.00 to the Debtor or in an amount determined by the Debtor at the Auction (the “**Overbid Amount**”). For purposes of calculating such net increased consideration, the Break-Up Fee, if applicable, shall be taken into account.

(i) The Debtor may make such modifications to the Overbid Amount and other Auction procedures as the Debtor believes are advisable, in the exercise of its discretion, to effect the Auction.

(j) No Bid shall be contingent upon receipt of financing or due diligence.

(k) Any Bidder shall provide satisfactory evidence (as determined by the Debtor) that it is (i) financially able to consummate the transaction contemplated by such Bid and (ii) able to consummate the transaction on the date and on the terms contemplated by the Bidder’s APA, including obtaining any necessary regulatory approvals.

(l) Any Bid shall not contain any conditions precedent to such Bidder’s obligation to purchase the Offered Assets and assume and perform any liabilities to be assumed, other than as may be included in the Bidder’s APA.

(m) Any Bid shall set forth (1) any applicable governmental, regulatory, or other approvals and any applicable consents that would be required to be obtained, (2) all actions taken to obtain such approvals or consents, (3) any approvals or consents obtained, and (4) the Bidder’s best estimates as to the likelihood and timing of any such approvals or consents.

(n) If any Bid does not conform to all of the requirements set forth above, such Bid will not be considered by the Court or be admissible at the Sale Hearing, unless otherwise agreed to by the Debtor.

(o) At the Sale Hearing, the Debtor shall recommend the Bids or combination of Bids that provide the highest and best offers for the Offered Assets.

(p) At the Sale Hearing, the Debtor will request that the Court approve the second highest Bid and Bidder (the “**Backup Bidder**”), whose Bidder’s APA shall be binding contracts with the Debtor and shall close in the event the Successful Bidder fails to consummate the acquisition of the Purchased Assets in accordance with the provisions described above and in the Sale Order. Any closing with the Backup Bidder shall occur within two (2) days of notification that the Successful Bidder failed to close.

(q) All objections to sale of the Offered Assets pursuant to the Bid Procedures shall be filed with the Court and served on the Notice Parties on or before the Bid Deadline.

(r) The Debtor is authorized to amend and modify the Bidding Procedures to impose additional terms and conditions on the proposed Auction and sale of the Offered Assets and assumption and assignment of the Contracts (as defined below), to account for any designation of a Stalking Horse Bidder, or to modify or eliminate any of the terms and conditions contained herein if, (i) in the Debtor's reasonable business judgment, such modifications would be in the best interest of the Debtor's estate and promote an open and fair Auction and sale process and (ii) such modifications and/or additional terms and conditions are not materially inconsistent with the provisions of the Bid Procedures Order. Notwithstanding anything herein to the contrary, the Debtor may consider and accept bids from a single qualified Bidder or from multiple qualified Bidders for less than all or substantially all of the Offered Assets.

3. As soon as practicable, but in any event no later than five (5) business days following entry of this Order, the Debtor shall serve a notice (the "**Assumption and Assignment Notice**") by first class mail upon each counterparty to an executory contract or unexpired lease with the Debtor (a "**Contract**"). The Assumption and Assignment Notice will (i) inform each recipient that the Debtor is seeking to sell substantially all of its assets, (ii) identify the Contract, (iii) advise that, in connection with the sale process, such Contract may be assumed and assigned to a Bidder, (iv) state the amounts (the "**Cure Amounts**") that the Debtor asserts are due to cure any monetary and non-monetary defaults in the event that the applicable Contract is assumed and assigned, (v) advise that any objections to the Cure Amounts (the "**Cure Amount Objection**") must be in writing, include the detail described in paragraph 6 below and be filed with the Court no later than May 25, 2020 (the "**Cure Amount Objection Deadline**"), (vi) advise that any objections to the assumption and assignment to the Successful Bidder of any Contracts identified in an Assumption and Assignment Notice, including based upon the ability of the Successful Bidder to provide adequate assurance of future performance, (the "**Assumption Objection**") must be in writing, include the detail described in paragraph 6 below and be filed with the Court by May 25, 2020 (the "**Assumption Objection Deadline**"), and (vii) advise that any timely asserted Cure

Amount Objection and Assumption Objection, will be decided by the Court at the Sale Hearing.

4. The Cure Amount Objection shall set forth: (a) the specific grounds for such objection; and (b) in the case of any Cure Amount Objection, any and all defaults of the Debtor (whether monetary or non-monetary) that the objector alleges are in existence under such Contract and if such alleged defaults are non-monetary, the nature of such non-monetary defaults and the amount of money or the type of action required to cure such non-monetary defaults.

5. Any lessors or other parties to Contracts who fail to assert timely on Assumption Objections by the Assumption Objection Deadline and/or to the Cure Amount, by the Cure Amount Objection Deadline shall be conclusively deemed to have waived any such objections and to have consented thereto.

6. Any lessors or other parties to Contracts filing a Cure Amount Objection or an Assumption Objection must serve the objection so as to be received by the relevant deadline by the Notice Parties.

7. The granting of the Motion as set forth herein shall not constitute the approval of any sale of the Offered Assets.

8. Following the entry of this Order, the Debtor shall serve a copy of this Order to (a) parties listed on the Local Rule 1007-2 Parties in Interest List; (b) all parties which, to the knowledge of the Debtor, have or have asserted liens on the Offered Assets; (c) all counterparties to the Contracts; and (d) any party that has expressed an interest to the Debtor in acquiring any of the Offered Assets. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Attorney Scott A. Stichter is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.