

SRF 67235

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

)	
In re:)	Chapter 11
GigaMonster Networks, LLC, <i>et al.</i> , ¹)	Case No. 23-10051 (JKS)
)	(Jointly Administered)
Debtors.)	Re: Docket Nos. 12, 113

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NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

On January 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion of the Debtors for Entry of Orders: (I)(A) Approving Bidding Procedures of the Sale of the Stalking Horse Assets and Other Assets, (B) Authorizing the Debtors to Enter Into the Stalking Horse Agreement for Stalking Horse Assets and to Provide Bid Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving the Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 12] (the “Combined Sale/Bidding Procedures Motion”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

The Combined Sale/Bidding Procedures Motion seeks entry of an order (a) approving Bidding Procedures² to be used in connection with the sale (the “Sale”) of certain of the Debtors’ operating assets (collectively, the “Stalking Horse Assets”) to Bel Air Internet LLC and Everywhere Wireless, LLC (the “Stalking Horse Bidder”), or alternatively, to such other bidder that submits the highest and best bid for the Stalking Horse Assets at auction, and approving the bidding procedures to be used in connection with the Sale of the Debtors’ other assets not included in the category of Stalking Horse Assets (the “Other Assets”), (b) authorizing the Debtors to provide a break-up fee and expense reimbursement, as provided in the Stalking Horse Agreement (defined below) and potential break-up fee and expense reimbursement for the Other Assets, (c) scheduling an auction of the Stalking Horse Assets and scheduling the hearing to approve the Sale, (d) approving the form and manner of notices of the proposed sale hearing, (e) authorizing procedures governing the potential assumption and assignment of the Debtors’ certain executory

¹ The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number, are: GigaMonster Networks, LLC (2854); Gigasphere Holdings, LLC (0250); GigaMonster, LLC (3014); Fibersphere Communications, LLC (0163); and Fibersphere Communications of CA, LLC (5088). The Debtors’ business address is 350 Franklin Gateway, Suite 300, Marietta, GA 30067.

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the Bidding Procedures and Bidding Procedures Order, as applicable.

contracts and unexpired leases in connection with the Sale(s), (each a “Potential Assumed Contract” and together, the “Potential Assumed Contracts”), (f) approving the form and manner of notice to each relevant non-debtor counterparty to a Potential Assumed Contract of (A) the Debtors’ calculation of the amount necessary to cure any defaults required to be cured under section 365 of the Bankruptcy Code under an applicable Potential Assumed Contract and (B) certain other information regarding the potential assumption and assignment of Potential Assumed Contracts in connection with the Sale(s), and (g) granting related relief

The Debtors and the Stalking Horse Bidder have entered into that certain *Asset Purchase Agreement* dated January 16, 2023 (the “Stalking Horse Agreement”), pursuant to which the Debtors agreed to sell substantially all of the Stalking Horse Assets to the Stalking Horse Bidder free and clear of all liens, claims, encumbrances, and interests, subject to higher or better bids for the Stalking Horse Assets to be determined at the Auction.

I. Parties Interested in Submitting a Bid

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase all or certain of the Stalking Horse Assets must comply with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any party interested in bidding on the Stalking Horse Assets or Other Assets should contact, as soon as possible:

(1) Novo Advisors, 401 N. Franklin, Suite 4 East, Chicago Illinois 60654, Attn: Rian Branning (rbranning@novo-advisors.com); and

(2) Bank Street Group LLC, 333 Ludlow Street, South Tower - Third Floor, Stamford, CT 06902, Attn: Timothy J. Murphy (tmurphy@bankstreet.com); and

(3) proposed counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones, (ljones@pszjlaw.com).

To receive copies of the (i) Combined Sale/Bidding Procedures Motion, including any exhibits thereto, and/or a confidentiality agreement to become a Potential Bidder (as defined below), or (ii) a copy of the form asset purchase agreement or the Stalking Horse Agreement, as applicable, kindly submit a request by email to: proposed counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, Attention: Laura Davis Jones (ljones@pszjlaw.com) or, alternatively, you may download such documents at <https://cases.ra.kroll.com/GigaMonster> or you may email the Debtors’ claims agent at GigaMonsterInfo@ra.kroll.com or call the claims agent toll free at: (833) 238-7838 or at +1 (646) 440-4753 for non-US calls.

II. Bidding Procedures and Auction

On February 8, 2023, the Court entered the *Order (I) Approving Bidding Procedures and Bid Protections in Connection with the Sale of the Stalking Horse Assets and Other Assets, (II)*

Scheduling Bid Deadlines and the Auction, (III) Approving Form and Manner of Notice Thereof, and (IV) Granted Related Relief [Docket No. 113] (the “Bidding Procedures Order”), approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale(s) and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

The Bidding Procedures Order also approved payment of the Break-Up Fee and Expense Reimbursement potentially payable to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse Agreement and the Bidding Procedures Order.

The Bidding Procedures Order also establishes the following deadlines for the Stalking Horse Assets:

1. **Bid Deadline**. The deadline to submit a Qualified Bid for the Stalking Horse Assets is **February 24, 2023 at 4:00 p.m. (prevailing Eastern Time)**.
2. **Auction**. In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Stalking Horse Assets. The Auction, if one is held, will commence on **February 28, 2023 at 10:00 a.m. (prevailing Eastern Time)** the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (or by videoconference to the live proceedings at this location). The Debtors shall provide notice of the date, time, and place of the Auction to the Qualified Bidders no later than one (1) day before such Auction, and will post notice of the date, time, and place of the Auction no later than one business day before such Auction on the website of the Debtors’ notice and claims agent at <https://cases.ra.kroll.com/GigaMonster>. The Auction shall be only open to (i) Qualified Bidders, (ii) the Consultation Parties, and (iii) the members of the Committee, and each of their respective legal and financial advisors.
3. **Auction Objection and Sale Objection Deadlines**. The deadline to file an objection with the Court to the Sale Order, the Stalking Horse Bidder, or the Sale with the Stalking Horse Bidder (collectively, the “Sale Objections”) is **February 23, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”). If the Auction is held, the deadline to file an objection with the Court to the conduct of the Auction, the Successful Bidder, or the Sale to the Successful Bidder (collectively, the “Auction Objections”) at the Sale Hearing (the “Auction Objection Deadline”).

The Bidding Procedures Order also establishes the following deadlines for the Other Assets:

1. **Bid Deadline**. The deadline to submit a Qualified Bid for the Other Assets is **February 22, 2023 at 4:00 p.m. (prevailing Eastern Time)**.

2. **Auction.** In the event that the Debtors timely receive a Qualified Bid for the Other Assets and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Other Assets. The Auction, if one is held, will commence on **February 28, 2023 at 4:00 p.m. (prevailing Eastern Time)** the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (or by videoconference to the live proceedings at this location). The Debtors shall provide notice of the date, time, and place of the Auction to the Qualified Bidders no later than one (1) day before such Auction, and will post notice of the date, time, and place of the Auction no later than one business day before such Auction on the website of the Debtors' notice and claims agent, <https://cases.ra.kroll.com/GigaMonster>. The Auction shall be only open to (i) Qualified Bidders, (ii) the Consultation Parties, and (iii) the members of the Committee, and each of their respective legal and financial advisors.
3. **Auction Objection and Sale Objection Deadlines.** The deadline to file an objection with the Court to the Sale Order, any selected Other Assets Stalking Horse Bidder for the Other Assets, or the Sale with any Other Assets Stalking Horse Bidder (collectively, the "Sale Objections") is **February 23, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). If the Auction is held, the deadline to file an objection with the Court to the conduct of the Auction, the Successful Bidder, or the Sale to the Successful Bidder with respect to the Other Assets (collectively, the "Auction Objections") is at the Sale Hearing (the "Auction Objection Deadline").

III. Sale Hearing and Closing

A hearing (the "Sale Hearing") to approve and authorize the Sale to the Successful Bidder will be held before the Court on **March 2, 2023 at 1:00 p.m. (prevailing Eastern Time)** or such other date as determined by the Court. The Sale Hearing is being held to approve the highest or otherwise best offer received for the Stalking Horse Assets or the Other Assets, as applicable. The Sale Hearing may be adjourned or rescheduled with prior notice filed on the docket of the Chapter 11 Cases or without prior notice by an announcement of the adjourned date at the Sale Hearing or on the Court's docket.

IV. Filing Objections

Sale Objections and Auction Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale Objection Deadline or Auction Objection Deadline**, as applicable, and (d) be served on (i) proposed counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com); (ii) proposed counsel to the Committee, (a) Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas New York, New York 10036, Attn: Richard J. Bernard (richard.bernard@faegredrinker.com), and (b) Faegre Drinker Biddle & Reath LLP, 222 Delaware Avenue, Suite 1410 Wilmington, Delaware 19801, Attn: Patrick A. Jackson (patrick.jackson@faegredrinker.com); (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr.

(timothy.fox@usdoj.gov); (iv) counsel to DIP Lenders and Stalking Horse Bidder: (i)(a) Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114, Attn: Thomas M. Wearsch (twearsch@jonesday.com), (b) Jones Day, 100 High Street, Boston, MA 02110, Attn: John D. Casais (jcasais@jonesday.com), and (c) Jones Day, 250 Vesey Street, New York, NY 10281, Attn: Nicholas J. Morin (nmorin@jonesday.com), (ii) Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: Brian P. Lenihan (blenihan@choate.com), and (iii) Delaware counsel to the DIP Lenders, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Zachary Shapiro (shapiro@rlf.com); (v) counsel to the Prepetition Lenders: counsel to Prepetition Lenders: Hogan Lovells US LLP, 390 Madison Avenue, New York, NY 10017, Attn: Erin N. Brady (erin.brady@hoganlovells.com) and Chris Bryant (chris.bryant@hoganlovells.com); and (vi) any other party that has requested notice pursuant to Bankruptcy Rule 2002. Auction Objections must also be served on counsel for the Successful Bidder.

V. Consequences of Failing to Timely Assert an Objection

Any party who fails to make a timely Sale Objection on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice (i) shall be forever barred from asserting any Sale Objection, including, without limitation, with respect to the transfer of the Stalking Horse Assets or the Other Assets free and clear of all liens, claims, encumbrances and interests; and (ii) shall be deemed a consent to the Sale to the Stalking Horse Bidder or Successful Bidder, as applicable, and the other relief requested in the Sale Motion.

Any party who fails to make a timely Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction Objection, including, without limitation with respect to the transfer of the Stalking Horse Assets or Other Assets free and clear of all liens, claims, encumbrances and interests.

VI. No Successor Liability

The Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. Accordingly, as a result of the Sale, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in the Successful Bidder's asset purchase agreement, for any liens, claims, encumbrances and interests against or in any of the Debtors under any theory of law, including, without limitation, successor liability theories.

Dated: February 8, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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