

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
PSA, Inc. a Delaware corporation, and affiliates,
Debtors

Chapter 11
Case No 00-3570
(Jointly Administered Case Nos 00-3570(PJW) through 00-3572(PJW) and 00-3718(PJW) through 00-3725(PJW))
Hearing Date: March 15, 2001 11:00 p.m.
Objection Deadline: March 12, 2001 4:00 p.m.

0003570 40119 0 J4916A03 S#0017542
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD.
TALLAHASSEE FL 32399

NOTICE OF MOTION

TO Counsel to Committee of Unsecured Creditors, United States Trustee, all interested parties and creditors in the above-captioned bankruptcy cases

The above-captioned debtors and debtors in possession (the "Debtors") have filed the Debtors' Motion for Order (I) Authorizing Scheduling of Auctions of Debtors' Business Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving the Terms and Conditions of Such Auctions, (III) Fixing the Manner and Extent of Marketing Relating to Such Auctions, (IV) Scheduling Hearings to Approve the Sale and the Assumption and Assignment or Rejection of Certain Executory Contracts and Unexpired Leases by Debtors, and (V) Approving Procedures for Miscellaneous Sales of Nominal Assets Pursuant to Sections 363(b), 363(f), 365(a), and 365(f) of the Bankruptcy Code (the "Motion") In the Motion, Debtors request that the Court approve certain sale, auction and bidding procedures, establish dates on which auctions may be conducted and establish dates on which hearings will be held to approve the results of such auctions Debtors do not request approval of the sale of specific assets in the Motion Debtors propose to serve additional notice of any auctions and sales to all parties in interest and creditors in these bankruptcy cases at least two weeks prior to holding any such auction

Responses to the Motion, if any, must be filed on or before March 12, 2001 at 4:00 p.m. (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 5th Floor, 824 Market Street, Wilmington, Delaware 19801

At the same time, you must also serve a copy of the response upon the undersigned counsel to the Debtors so that the response is received on or before the Objection Deadline

A HEARING ON THE MOTION IS SCHEDULED TO OCCUR ON MARCH 15, 2001 AT 11:00 A.M. At that time, the Court will consider the sale, auction and bidding procedures requested by Debtors The Court will not consider the sale of any specific Business Assets of Debtors at the March 15 hearing You will receive additional notice, as described above and in the Motion, prior to the sale of any specific Business Assets of the Debtors, and, at that time, you may object to that proposed sale

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING

Dated Wilmington, Delaware
February 28, 2001

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-and-

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Atlanta, Georgia 30303
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DOCUMENT NUMBER-DATE

02920 MAR-6 01

Co-Counsel for the Debtors and Debtors in Possession

FPSC-RECORDS/REPORTING
Form F0751

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
PSA, Inc., a Delaware corporation, and affiliates,
Debtors.

Chapter 11

Case No. 00-3570
(Jointly Administered Case Nos. 00-3570(PJW) through 00-3572(PJW) and 00-3718(PJW) through 00-3725(PJW))

Hearing Date: March 15, 2001 11:00 a.m.
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DEBTORS' MOTION FOR ORDER (I) AUTHORIZING SCHEDULING OF AUCTIONS OF DEBTORS' BUSINESS ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE TERMS AND CONDITIONS OF SUCH AUCTIONS, (III) FIXING THE MANNER AND EXTENT OF MARKETING RELATING TO SUCH AUCTIONS, (IV) SCHEDULING HEARINGS TO APPROVE THE SALE AND THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES BY DEBTORS, AND (V) APPROVING PROCEDURES FOR MISCELLANEOUS SALES OF NOMINAL ASSETS PURSUANT TO SECTIONS 363(b), 363(f), 365(a), AND 365(f) OF THE BANKRUPTCY CODE

PSA, Inc., ETS Payphones, Inc., Americom, Inc., City Public Phones, Inc., ETS Payphones of California, Inc., ETS Management Services, LLC, MSC National, Inc., S&R Telecommunications, TSC Payphone Corp., ETS Vending, Inc. and Phoenix Telecom of Puerto Rico, the above-captioned chapter 11 debtors and debtors in possession (collectively, "Debtors"), move the Court for an order (a) authorizing the Debtors to sell their assets or certain business units in discrete parcels (the "Business Assets") free and clear of all liens, claims, interests, and encumbrances pursuant to sections 363(b) and 363(f), of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended and supplemented, the "Bankruptcy Code") to the persons or entities presenting the highest and best offer, (b) scheduling an auction(s) ("the Auction(s)") to receive bids on the Business Assets to take place at such date and time as the Court may set upon approval of this motion; (c) approving the terms and conditions of the Auction(s); (d) approving the manner and extent of marketing for the Auction(s); (e) scheduling post-auction hearing(s) as soon after the Auction(s) as the Court's schedule permits (the "Post-Auction Hearing"); (f) approving procedures for miscellaneous sales of Business Assets of nominal value; and (g) granting such other and further relief as is just and proper (the "Motion"). In support of this Motion, Debtors respectfully represent as follows:

I. INTRODUCTION

1. On September 11, 2000 and September 21, 2000 (collectively, the "Petition Date"), Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors are now operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "Committee") has been established in these cases and has retained counsel to represent its interests.

2. The Court has jurisdiction over this matter 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 Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is sections 105, 363, 365 and 1146 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules").

3. Debtors' cases are being jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules for procedural purposes only.

4. On December 11, 2000, the U.S. Trustee and Debtors consented to the appointment of an examiner. On December 22, 2000, the Court entered an order appointing David Neier as the examiner in these jointly administered cases.

II. GENERAL BACKGROUND

5. ETS Payphones, Inc. is a closely held corporation, headquartered in Lithia Springs, a suburb of Atlanta, Georgia. Ten of its wholly-owned subsidiaries are also debtors in these cases. Debtors are in the business of operating and managing coin operated telephones, private automated teller machines, and air and vacuum machines at various locations throughout the United States, Puerto Rico, Mexico and the United States Virgin Islands.

6. Based on the number of phones installed, Debtors are collectively the second largest independent payphone operators in the United States. Debtors presently own or manage over 40,000 public payphones in the United States, Mexico, Puerto Rico, and the United States Virgin Islands. Debtors currently have more than 375 employees.

7. Recently, the coin operated telephone industry has been in a significant decline. This has been primarily brought about by the increased use of cellular phones and other personal communication devices. At the same time, revenues have been adversely impacted by an increased use of "dial around" services such as calling cards, 1-800-Collect, and 1-800-CALLATT. The proliferation in dial around services is reflected in the fact that entirely new "toll-free" prefixes (888 and 877) were needed along with the 950 and 1010XXX access numbers which are used by the interexchange carriers. The loss of revenue from dial around services is a product of administrative regulations which set low rates and impose procedures which impair or effectively prevent collection of dial around compensation owed.

8. Deregulation has also opened up the telecommunications industry to alternate providers of dial-tone service. Debtors' efforts to negotiate reduced rates with its dial-tone providers or enter into contracts with new competitive local exchange carriers ("CLECs") in the face of increased competition and decreasing revenue are on-going, but sufficient savings have not been achievable in the near term to allow continuation of normal operations in the face of cash flow problems.

9. A further complication of Debtors' efforts to adjust to changes in the telecommunications industry has been a review by the Securities and Exchange Commission ("SEC") of Debtors' prepetition business practices. Prior to the filing of these chapter 11 cases, a significant source of Debtors' revenue was the "sale/lease-back" agreements with investors. The SEC began analyzing the "sale/lease-back" transactions to determine if the agreements were securities subject to registration and other requirements. Debtors were negotiating in good faith with the SEC, but were unable to reach a comprehensive accord by the Petition Date. To address and allay SEC concerns, Debtors ceased the "sale/lease-back" transactions as of the Petition Date and have not recommenced these transactions.

10. During the administration of these cases, as part of analyzing their business and developing business plans for reorganization, Debtors have been evaluating the profitability of certain divisions of their business and of operations in certain geographic regions. As per-payphone profits are analyzed and payphones are determined to be unprofitable, Debtors have been disconnecting unprofitable phones and, if necessary, ceasing operations in the subject area. Debtors have solicited inquiries for the sale of certain Business Assets in the affected areas and have received unsolicited inquiries regarding a potential sale of certain Business Assets.

11. In light of interest received by Debtors in the Business Assets and need to sell excess inventory and equipment, Debtors have determined that it is in the best interest of the creditors to establish a court-approved mechanism by which Debtors can sell the Business Assets rather than pursuing

numerous individual private sales of Business Assets. Debtors believe the Business Assets have substantial market value that can be realized for the benefit of their estates, if sold promptly and in an organized manner. Based on inquiries from several sources, Debtors believe third parties will be interested in acquiring the Debtors' Business Assets.

12. Debtors have filed this Motion to request the Court's approval of certain bidding, auction, and sale procedures. Debtors believe that establishing these procedures in advance of advertising the sales will enable them to streamline and focus the inquiries from potential purchasers and allow the process to proceed in the most efficient fashion. This will also allow Debtors to best analyze the offers received to determine the highest and best return.

13. As part of analyzing and reorganizing their business operations, Debtors have a wide range of assets they may desire to sell, including installed payphones¹, uninstalled payphones, various phone-related equipment, phone maintenance equipment, office leases, office furniture and equipment, vehicles, licenses and rights to operate payphones in certain restricted regions and exclusive phone location agreements and site leases. As Debtors determine which Business Assets should be sold or receive interest or offers on Business Assets, Debtors propose to sell the Business Assets to the highest or best bidder at the Auction. The specific Business Assets to be sold at the Auction will be listed on the Notice and Solicitation for bids (a proposed form which is attached hereto as Exhibit "A") (the "Solicitation") and served on all parties in interest within two weeks of the Auction.

14. In connection with the bidding procedures and Auction(s), Debtors intend to establish a "due diligence room" at Debtors' home office in Lithia Springs, Georgia or such other location as Debtors may designate. A more detailed list of assets will be available along with certain financial information in the due diligence room. Debtors will maintain copies of all documents and other information relevant to inquiries regarding the sale of the Business Assets in the due diligence room and will allow potential bidders to review them subject to execution of a confidentiality agreement to be provided by Debtors.

III. RELIEF REQUESTED

15. By this Motion, Debtors seek entry of an order pursuant to sections 105, 363, 365, and 1146(c) of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (i) authorizing the sale of the Debtors' Business Assets free and clear of all liens, claims, interests and encumbrances; (ii) approving the procedures by which the Debtors propose to market for sale and auction the Debtors' Business Assets as they make determinations regarding which Business Assets should be sold; (iii) authorizing the assumption and assignment of executory contracts and unexpired leases in conjunction with any sale or rejection thereof; and (iv) approving procedures for the sale of miscellaneous assets of the Debtors of nominal value.

Authority to Sell the Debtors' Interests in the Business Assets

16. To maximize the value of their Business Assets, Debtors may desire to market and sell the Business Assets in discrete parcels.

17. Debtors request authority, pursuant to sections 363(b) and 363(f) of the Bankruptcy Code to sell Debtors' interests in the Business Assets free and clear of all liens, claims, interests, and encumbrances (the "Encumbrances") to persons identified at the Auction(s), with such Encumbrances to attach to the proceeds of sale. The specific Business Assets to be sold will be identified by Debtors and listed on the Solicitation served prior to the Auction(s).

Sale of Debtors' Interests in the Business Assets Pursuant to Auction

18. Under Rule 6004(f)(1) of the Bankruptcy Rules, debtors in possession may sell property outside the ordinary course of business by private sale or public auction. Debtors have determined that the sale of their interests in the Business Assets by a series of scheduled auctions will enable Debtors to obtain the best offers for the Business Assets and, in the event of such sale, maximize the value of their estates. Accordingly, the Auction approach is in the best interest of Debtors' estates and their creditors.

19. Debtors propose to conduct the Auction(s) at the offices of Young Conaway Stargatt & Taylor LLP at dates to be set by the Court upon approval of the Motion pursuant to the terms and conditions set out below.

20. Debtors propose the following terms and conditions.

- (a) Bids for the Business Assets may be received by private written bid prior to or at the Auction(s).
- (b) The Business Assets will be offered to the bidder(s) making the offer(s) that the Debtors deem to be, in their discretion, the highest or best offer.
- (c) To become a qualified bidder, potential bidders must provide Debtors at or before the Auction(s) with either certified financial statements or evidence of financial wherewithal, experience and other relevant considerations, and any other information Debtors may, in their discretion, require to determine the bidder is able to consummate a transaction as contemplated herein.
- (d) In addition, at or before the Auction(s), to be qualified to bid upon assets exceeding \$500,000.00 in aggregate value, potential bidders must deliver to Debtors' counsel \$50,000.00 in good funds which amount shall be applied to a successful bid or returned upon written request to Debtors' counsel within two business days. At the option of an unsuccessful bidder, the funds may be left on deposit with Debtors' counsel to keep a bid in place as a backup. If a successful bidder on a sale approved by the Court shall fail to close by the "Closing Date," as defined below, the \$50,000 or the ten percent (10%) general deposit required (whichever is larger) shall be retained by Debtors as liquidated damages, and not a penalty, it being agreed by the parties participating in the Auction in advance that actual damages are impossible of precise determination.
- (e) All offers accepted by Debtors, whether at Auction(s) or private sale, shall be subject to the approval of the Court.
- (f) To the extent a bid involves any contingency, delayed payment, or non-cash component, Debtors may, at their option, value such components at any amount, including zero, and the bidder shall have no rights of appeal whatsoever from such valuation.
- (g) Successful bidders must, at the conclusion of the Auction or within such extended period as Debtors may permit, deliver to Debtors good funds in an amount equal to ten percent (10%) of their bid, which will not be refunded, but will be retained as liquidated damages if the bidder fails to consummate the sale of the Business Assets within the time period required herein or as extended by agreement of Debtors. (A deposit to obtain qualified-bidder status shall be a credit toward the ten percent.)
- (h) At the close of the Auction, with consultation from the Committee, Debtors shall consider Auction results for the Business Assets. Debtors shall seek approval from the Court at the Post-Auction Hearing for the qualified bid or bids which they believe represent the highest or best offer or offers received for the Business Assets.
- (i) After consultation with the Committee, Debtors reserve the right (a) to determine in their discretion which competing qualified bids, if any, for the Business Assets is the highest or otherwise best qualified bid and (b) to reject any bid which Debtors after consultation with the Committee believe to be (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the terms of the sale order, or (iii) contrary to the best interests of Debtors and their estates.

¹ Simultaneously upon filing this Motion, Debtors filed or will be filing a petition in this Court for a declaratory judgment seeking a determination that the "sale/lease-back" agreements are not true leases and that the payphones are owned by Debtors.

- (j) Any bid that requires submission to the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "HSR Act") shall, upon Debtors' request, be accompanied by the bidder's HSR Act application. Upon the request of a party submitting an HSR Act application, Debtors shall take reasonable steps to ensure the confidentiality of the information, subject to dissemination on a confidential basis to counsel for the Committee.
- (k) If a closing with a successful qualified bidder is not concluded by the Closing Date or within such other time as is further agreed by Debtor, after consultation with the Committee, Debtors may, without further Court approval or order, conclude the contemplated transactions with the next highest or best qualified bidder in accordance with the terms of the next highest or best qualified bidder's bid, providing such bid has been approved by the Court as a back-up bid.
- (l) The Business Assets shall be transferred on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. **DEBTORS EXPRESSLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE BUSINESS ASSETS, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- (m) All of Debtors' interests in the Business Assets sold shall be sold free and clear of any encumbrances, with all encumbrances, if any, attaching to the net proceeds of the sale with the same force and in the same priority as currently exists, subject to the order of the Court approving the sale.
- (n) After Debtors announce the first acceptable bid on a Business Asset at the Auction for the specific Business Assets, each subsequent bid must exceed the previous bid by not less than \$200,000 for Business Assets where the bid price exceeds \$2,000,000; by \$100,000 for Business Assets where the bid price is between \$1,000,000 and \$2,000,000; by \$50,000 for Business Assets where the bid price is between \$500,000 and \$1,000,000; and by \$10,000 for Business Assets where the bid price is between \$50,000 and \$500,000. When the bid price is less than \$50,000, Debtors will set minimum bids at the Auction(s). Debtors retain the right to lower any minimum incremental bids at the Auction(s) in Debtors' discretion.
- (o) By participating in the Auction(s), each qualified bidder shall be deemed to have reviewed the Business Assets and all pertinent documents before bidding and to rely solely on its review in making any offer.
- (p) If deemed to be the successful bidder for a Business Asset, immediately upon the conclusion of the Auction scheduled for that particular Business Asset (or by such time as Debtors may agree), such qualified bidder shall deliver good funds by certified, bank check, wire or other acceptable means ("Good Funds") to Debtors, in an amount equal to ten percent (10%) of the purchase price of such Business Asset (the "Purchase Price Deposit"). The amount deposited to become a qualified bidder shall be a credit against the ten percent (10%) deposit.
- (q) Debtors shall have no duties or obligations except those expressly set forth herein and shall not be required to invest the deposits in an interest earning account or to segregate each deposit, but may, in their sole discretion, do so. If there is a dispute between a qualified bidder and Debtors, Debtors shall have the right to retain the Purchase Price Deposit, and either party may apply to the Court for a determination of the rights and obligations of the parties. The Court shall retain jurisdiction to resolve all disputes with respect to the Purchase Price Deposit.
- (r) The closing of the sale of Debtors' interests in the Business Asset (the "Closing") shall take place (i) within ten business days following approval by the Court of the sale and the entry of the order approving the assumption, assignment and sale of the leases to the successful bidder, or (ii) at such later time as may be agreed to by Debtors in their sole discretion, not to exceed an additional twenty days unless otherwise provided by the Court (the "Closing Date"). With respect to the Closing, time is of the essence against the bidder and to the benefit of the Debtors.
- (s) At closing, the successful bidder shall pay the balance of the purchase price in Good Funds.
- (t) All adjustments to be made in connection with the Closing shall be made as of midnight of the date preceding the Closing (the "Adjustment Date"). Any adjustments attributable to escalation or pass-through charges that would be billed after the Adjustment Date shall be made based upon the most recent billing received by Debtors for such charges. The bidder shall be liable for all obligations from the Adjustment Date forward and shall indemnify Debtors with respect thereto.

21 Debtors request that the Court authorize them to conduct the Auction(s) at dates and times to be set by the Court upon approval of the Motion. Upon entry of the order and approval of the attached Solicitation, Debtors will serve interested parties within two weeks of the date set for each Auction with notice of each Auction and the Solicitation with a list of the Business Assets to be offered for sale at the Auction. Debtors believe that this will provide interested parties with adequate notice of the Auction(s) and will allow Debtors sufficient opportunity to advertise the Auction(s).

Hearing to Consider the Sale of Assets and the Assumption and Assignment or the Rejection of Executory Contracts and Unexpired Leases

22 As soon as feasible after the Auction(s), at a date and time to be set by the Court upon approval of the Motion, Debtors will request that the Court hold the Post-Auction Hearing(s) to consider approval of (a) the sale of the Business Assets to the prospective purchaser(s) or by private bid for Business Assets of nominal value accepted by the Debtor after consultation with the Committee (as set forth below), (b) the assumption and assignment of such contracts and leases as are requested in conjunction with a successful bid, and (c) the rejection of those contracts and leases Debtors do not have prospects to sell and assign. Any lessor or other party to a contract specifically requesting further notice of a proposed assignment will receive notice of the proposed assumption and assignment or rejection of their lease or contract if, upon receipt of the order approving the Motion, they send a written request to counsel for Debtors. Counsel for Debtors propose to fax notice of proposed assumption and assignments or rejections to those parties requesting notice in advance of the Post-Auction Hearing(s).

23 At the Post-Auction Hearing(s), Debtors and the proposed assignees will present evidence to satisfy the assumption and assignment requirements of section 365 of the Bankruptcy Code. If Debtors cannot identify an assignee, Debtors will seek to reject those contracts and leases that they deem appropriate in the exercise of their sound business judgment.

The Terms of the Auction and the Solicitation Should be Approved

24 Good cause exists to approve the proposed terms and conditions of the Auction(s). Debtors believe that the terms and conditions of the Auction(s) will enable Debtors to realize the maximum value from the Business Assets and, thus, it is in the best interest of their estates. Based on their experience, Debtors believe that the Auction(s) and bidding process as set forth in the Solicitation with the suggested incremental overbids will yield the best bids for the Business Assets Debtors determine should be sold.

25 Debtors seek authority to publicize the Auction(s) by sending the Solicitation and any other materials by direct mail, fax, e-mail, and by other appropriate means.

26 To the extent possible under the circumstances Debtors anticipate that the notices will be distributed to a substantial number of entities Debtors believe will be interested in attending the Auction(s). This procedure will ensure that all parties who may have an interest in bidding on the Business Assets receive notice of the Auction(s) and are aware of the sale procedures and Business Assets to be sold at each Auction.

Approval of Alternative Compliance with WARN and PSC Regulations

27. Debtors do not know at this time whether Business Assets will be sold sufficient to trigger the notice requirements under WARN (as defined herein). Therefore, Debtors request entry of an order pursuant to section 105 of the Bankruptcy Code reducing the time periods pursuant to section 2102 of title 29 of the United States Code, 29 U.S.C. §§ 2101-2109 (as amended and supplemented, "WARN") and authorizing Debtors to send any notices required by WARN within five days of the entry of any orders approving sales of Business Assets sufficient to trigger WARN notice.

28. The operation of payphones is regulated by the states' public service commissions and similar regulatory bodies at the municipal level ("Regulatory Agencies"). The Regulatory Agencies issue certificates and licenses for the operation of payphones. In many states or municipalities, the Regulatory Agencies promulgate various regulations pertaining to the operation of payphones. Further, the Regulatory Agencies have the authority to assess and levy fines for violations of these regulations. For example, the Regulatory Agencies may issue a fine if a phone line is disconnected for a certain period of time without authorization.

29. Debtors will attempt to insure continuous compliance with the various Regulatory Agencies' regulations during the course of the sales process discussed herein. However, Debtors anticipate that there may be brief periods during the sale process and related transfer of phones when certain phones may be without service or otherwise in noncompliance. Debtors request that the Court order that the Regulatory Agencies provide at least thirty (30) days' notice, or such longer period as is allowed by state statute or administrative regulation, to Debtors of any alleged noncompliance with such Regulatory Agencies' regulations and also provide Debtors with a reasonable opportunity to comply with the applicable regulations prior to the Regulatory Agencies assessing and/or levying any fine or penalty against Debtors.

Miscellaneous Sales of Debtors' Business Assets of Nominal Value

30. In addition to conducting scheduled Auction(s), Debtors request authority to consummate, without further Court approval, sales of their Business Assets where the aggregate purchase price is \$50,000 or less for each item of property (the "Miscellaneous Assets"), free and clear of all liens, claims, interests, and encumbrances, with any such lien, claim, interest, or encumbrance attaching to the sale proceeds, outside of the Auction procedures but subject to the notice procedures set forth below.

31. Debtors propose to serve each of the following parties with a notice of each proposed sale of Miscellaneous Assets (the "Miscellaneous Assets Sale Notice"): (a) the United States Trustee, (b) counsel for the Committee; (c) the Examiner; and (d) any known holder of a lien, claim, interest, or encumbrance against the specific property to be sold (the "Noticed Parties"). Debtors propose to serve the Miscellaneous Assets Sale Notice by facsimile or overnight delivery service so as to be received at least ten (10) business days prior to the proposed sale. The Miscellaneous Assets Sale Notice will specify: (a) the specific assets to be sold; (b) the identity of the proposed purchaser (including a statement of any connection between the proposed purchaser and the Debtors); and (c) the proposed sale price.

32. Debtors propose that if Debtors' counsel does not receive a written objection to the proposed sale within five (5) business days after the date Debtors served the Miscellaneous Assets Sale Notice (the "Notice Period"), Debtors may consummate the proposed sale transaction and take such actions as are necessary and appropriate to close the sale and obtain the sale proceeds. If no written objection is made to the proposed sale and the buyer requests receipt of an order authorizing the sale, Debtors will file a certificate of no objection with the Court with an order authorizing the sale attached thereto.

33. If Debtors receive a written objection during the Notice Period and are unable to resolve such objection, Debtors will take no further steps to consummate that specific sale without first obtaining the Court's approval.

34. The aggregate amount of Miscellaneous Assets that Debtors seek authority to sell pursuant to these procedures is \$3 million of sale proceeds, without prejudice to Debtors' right to request authority for an increase of such limit should circumstances later warrant.

35. The proceeds of the sales of the Miscellaneous Assets will not be distributed except pursuant to further order of the Court.

IV. BASIS FOR RELIEF REQUESTED

A. A Sound Business Justification Exists for Authorizing Debtors to Sell Property Pursuant to Sections 363(b) and 365 of the Bankruptcy Code.

36. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession "after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." See 11 U.S.C. §363(b)(1). The standard for approval of the sale of property of the estate is whether the debtor can demonstrate a "sound business purpose" for the proposed transaction. See Dai-ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.") (citing Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (the "sound business purpose" test applies to the sale of assets under 363(b)); In re Stroud Food, 163 B.R. 730, 732 (Bankr. M.D. Pa. 1993), In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (adopting Lionel in this district in the context of a sale of assets).

37. The business judgment standard requires that courts approve a debtor's business decision unless it is the product of bad faith, whim, or caprice. See Lubrizol Enter. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986). Courts consider four factors in determining whether a "sound business purpose" exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (setting forth the "sound business purpose" test); Abbotts Dairies, 788 F.2d at 145-47 (implicitly adopting the articulated business justification test of Lionel and adding the "good faith" requirement); In re Delaware & Hudson Ry. Co., 124 B.R. at 176 (adopting Lionel in this district). Sales of Business Assets pursuant to the Auction(s) and nominal sales pursuant to the procedures outlined herein meet each of these requirements, as demonstrated below. First, a sound business reason exists for the sale. Debtors are attempting to preserve the going concern value of their businesses by selling excess inventory, equipment and other Business Assets not necessary in their reorganization. Second, Debtors have proposed sales procedures which they believe will enhance the sale process and insure that fair and reasonable consideration is obtained. Third, competitive bidding will help ensure that all sale prices are market-tested and are arrived at in good faith. Fourth, under the proposed terms of the sale of the Business Assets, Debtors will give adequate and reasonable notice and provide appropriate information to all interested parties to make an informed decision.

B. The Sale of the Personal Property Satisfies the Requirements of Code Section 363(f) for a Sale Free and Clear of Liens, Claims, Encumbrances, and Interests.

38. The Court should approve the sale of the Business Assets free and clear of encumbrances because the requirements of section 363(f) of the Bankruptcy Code have been satisfied.

39. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any encumbrance in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest,
- (2) such entity consents.

- (3) such interest is a lien and the price at which such property is sold is greater than the value of the lien;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest

11 U.S.C. § 363(f)

40. Section 363(f) is drafted in the disjunctive. See *id.* (the word "or" connects the requirements.) Thus, satisfaction of any one of the requirements enumerated permits a debtor to sell property free and clear of liens, claims, encumbrances, and other interests. See 11 U.S.C. § 363(f); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale "free and clear," provided at least one of the subsections is met).

41. The payphones may be subject to liens or interests of the lessors/investors. However, the holder of any such liens or interests could be compelled to accept a money judgment in satisfaction of their respective liens.

42. Further, as a result of the nature and existence of the issues raised in the petition for declaratory judgment as discussed in note 1, *supra*, these potential liens or interests are the subject of a bona fide dispute.

C. Request for Relief from Transfer Taxes under Section 1146(c).

43. Section 1146(c) of the Bankruptcy Code provides that the making or delivery of an instrument of transfer under a confirmed chapter 11 plan of reorganization may not be taxed under any law imposing a stamp or similar tax. See 11 U.S.C. § 1146(c). The Third Circuit has construed this provision to include transfers under a sale outside of, but in furtherance of effectuating, a plan of reorganization. See Director of Revenue, State of Delaware v. CCA Partnership (In re CCA Partnership), 70 B.R. 696 (Bankr. D. Del. 1987), *aff'd* 72 B.R. 765 (D. Del. 1987), *aff'd* 833 F.2d 304 (3d Cir. 1987). This view is shared by the Second Circuit. See In re Jacoby-Bender, Inc., 40 B.R. 10 (Bankr. E.D.N.Y. 1984), *aff'd* 758 F.2d 840 (2d Cir. 1985), In re 995 Fifth Ave. Assocs., L.L.P., 116 B.R. 384 (Bankr. S.D.N.Y. 1990), *aff'd* 127 B.R. 533 (S.D.N.Y. 1991). See also In re Smoss Enter. Corp., 54 B.R. 950 (E.D.N.Y. 1985).

44. The sale of the Business Assets will enhance Debtors' liquidity which will increase their ability to reorganize. This is precisely the circumstance contemplated by the Third Circuit in its prior rulings. Accordingly, Debtors respectfully request a ruling of this Court that section 1146(c) of the Bankruptcy Code applies to the proposed sale of the Business Assets pursuant to the Solicitation and Auction(s) and any purchase and sale agreements entered into to consummate such sales.

D. Authorization for Assumption and Assignment or Rejection of All Executory Contracts and Unexpired Leases

45. Debtors also request authority to assume and assign or reject executory contracts and leases in connection with the sale of the Business Assets. Section 365(a) of the Bankruptcy Code provides in pertinent part that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard applied to determine whether the assumption or rejection of an executory contract or unexpired lease should be authorized is the "business judgment" standard. See Sharon Steel Corp. v. National Fuel Gas Distribution Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984). This standard is satisfied if the debtor determines in its business judgment that a benefit will be realized by the rejection of the contract or lease. Sharon Steel Corp., 872 F.2d at 39-40 (citing In re Wheeling-Pittsburgh Steel Corp., 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the debtor's business decision unless that judgment is the product of bad faith, whim or caprice. See Lubrizol Enterprises v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

46. Based on the foregoing, in the exercise of sound business judgment, Debtors request authority to assume and assign or all reject all executory contracts and unexpired leases in connection with the sale of the Business Assets.

V. NOTICE

47. Debtors propose to provide notice of the Motion to parties in interest in this chapter 11 case by serving this Motion on (i) counsel for the Committee, (ii) all parties Debtors believe may have an encumbrance upon the Business Assets, (iii) all parties on the General Service List established in this case, (iv) the relevant taxing authorities, (v) the U.S. Trustee, (vi) the Examiner, (vii) all parties to Debtors' contracts and leases, and such other parties as required under this Court's Order establishing Notice Procedures in this case. If the Court grants the relief requested, Debtors propose to send the Solicitation to such parties as they deem appropriate and any potential purchasers who so request with a copy of the Business Assets to be offered for sale within two weeks prior to the scheduled Auction(s).

WHEREFORE, Debtors request that the Court enter an order (i) scheduling the Auctions, (ii) scheduling the Post-Auction Hearing(s) to approve the sale of the Business Assets, assumption and assignment of certain executory contracts and unexpired leases and the rejection of any unsold leases and contracts, (iii) approving the terms and conditions of the Auction(s), (iv) authorizing Debtors to advertise the Auction(s) as described herein, (v) authorizing Debtors to sell, assume, and assign their interests in the Business Assets pursuant to sections 363(b), 363(f), 365(a), and 365(f) of the Bankruptcy Code, (vi) authorizing Debtors to reject those leases at the Post-Auction Hearing(s) as determined in the Debtors' business judgment, (vii) approving the notice procedures set forth herein, (viii) approving the procedures set forth herein for miscellaneous sales of assets of nominal value, and (ix) granting Debtors such other and further relief as is just and proper.

This 28th day of February 2001

E. Penn Nicholson
Shannon Lowry Nagle
POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
Sixteenth Floor
191 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone: (404) 572-6600
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-AND-

/s/
Brendan Linehan Shannon (No. 3136)
YOUNG CONAWAY STARGATT & TAYLOR LLP
1100 N. Market Street, 11th Floor
P.O. Box 391
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Counsel for Debtors and Debtors in Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re.

PSA, Inc., a Delaware corporation, and affiliates,
Debtors.

Chapter 11

Case No. 00-3570

(Jointly Administered Case Nos. 00-3570(PJW) through 00-3572(PJW) and 00-3718(PJW) through 00-3725(PJW))

Hearing Date: March 15, 2001 11:00 a.m.

Objection Deadline: March 12, 2001 4:00 p.m.

NOTICE OF HEARING, NOTICE OF AUCTION AND SOLICITATION FOR BIDS ON CERTAIN OF DEBTORS' BUSINESS ASSETS, AND TERMS AND CONDITIONS OF THE AUCTION

TO: ALL INTERESTED PARTIES

NOTICE IS HEREBY GIVEN that pursuant to an order of the Court dated March ____, 2001, PSA, Inc., ETS Payphones, Inc., and related entities, the above-captioned chapter 11 debtors and debtors in possession, (collectively, "Debtors") shall hold a public auction (the "Auction") on _____, 2001 __:___ .m. at the offices of Young Conaway Stargatt & Taylor LLP, 1100 N. Market Street, 11th Floor Wilmington, Delaware.

NOTICE IS FURTHER GIVEN that the Auction will be held with respect to certain of Debtors' business assets as set forth on the exhibit attached hereto (the "Business Assets"). All inquiries should be made in writing directly to Guy Longobardo, CEO, ETS Payphones, Inc., Suite G, 1490 Westfork Drive, Lithia Springs, Georgia 30122; email: glongobardo@etspayphones.com; facsimile: (770) 819-1682.

NOTICE IS FURTHER GIVEN that the Auction will be subject to the Terms and Conditions set forth below.

NOTICE IS FURTHER GIVEN that a hearing will be held before Peter J. Walsh, United States Bankruptcy Judge, on _____, 2001, at _____.m., or as soon thereafter as counsel may be heard (the "Hearing"), in the United States Bankruptcy Court, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, at which time Debtors will seek the entry of an order or orders approving the sale(s) of the Business Assets to the successful bidder(s) and the assumption and assignment or rejection of any executory contracts or unexpired leases associated therewith.

TERMS AND CONDITIONS OF AUCTION

1. Debtors hereby solicit bids for the sale of their interests in the Business Assets attached hereto as Exhibit "A." Bids for the Business Assets may be received by private written bid prior to or at the Auction(s).
2. The Business Assets will be offered to the bidder(s) making the offer(s) that the Debtors deem to be, in their discretion, the highest or best offer. All sales are subject to approval of the Bankruptcy Court.
3. Interested persons may obtain financial and other information about the Business Assets by contacting Guy Longobardo in writing at the address listed above.
4. To become a qualified bidder, potential bidders must provide Debtors at or before the Auction(s) with either certified financial statements or evidence of financial wherewithal, experience and other relevant considerations, and any other information Debtors may, in their discretion, require to determine the bidder is able to consummate a transaction as contemplated herein.
5. In addition, at or before the Auction(s), to be qualified to bid upon assets exceeding \$500,000.00 in aggregate value, potential bidders must deliver to Debtors' counsel \$50,000.00 in good funds which amount shall be applied to a successful bid or returned upon written request to Debtors' counsel within two business days. At the option of an unsuccessful bidder, the funds may be left on deposit with Debtors' counsel to keep a bid in place as a backup. If a successful bidder on a sale approved by the Court shall fail to close by the "Closing Date," as defined below, the \$50,000 or the ten percent (10%) general deposit required (whichever is larger) shall be retained by Debtors as liquidated damages, and not a penalty, it being agreed by the parties participating in the Auction in advance that actual damages are impossible of precise determination.
6. All offers accepted by Debtors and, at the election of the bidder any offers which are not deemed at the Auction to be the highest or best offer, shall remain open and irrevocable until the Closing (as such term is defined herein).
7. To the extent a bid involves any contingency, delayed payment, or non-cash component, Debtors may, at their option, value such components at any amount, including zero, and the bidder shall have no rights of appeal whatsoever from such valuation.
8. Successful bidders must, at the conclusion of the Auction or within such extended period as Debtors may permit, deliver to Debtors good funds in an amount equal to ten percent (10%) of their bid, which will not be refunded, but will be retained as liquidated damages if the bidder fails to consummate the sale of the Business Assets within the time period required herein or as extended by agreement of Debtors. (A deposit to obtain qualified-bidder status shall be a credit toward the ten percent.)
9. At the close of the Auction, with consultation from the Committee, Debtors shall consider Auction results for the Business Assets. Debtors shall seek approval from the Court at the Post-Auction Hearing for the qualified bid or bids which they believe represent the highest or best offer or offers received for the Business Assets.
10. After consultation with the Committee, Debtors reserve the right (a) to determine in their discretion which competing qualified bids, if any, for the Business Assets is the highest or otherwise best qualified bid and (b) to reject any bid which Debtors after consultation with the Committee believe to be (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the terms of the sale order, or (iii) contrary to the best interests of Debtors and their estates.
11. Any bid that requires submission to the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "HSR Act") shall, upon Debtors' request, be accompanied by the bidder's HSR Act application. Upon the request of a party submitting an HSR Act application, Debtors shall take reasonable steps to ensure the confidentiality of the information, subject to dissemination on a confidential basis to counsel for the Committee.
12. If a closing with a successful qualified bidder is not concluded by the Closing Date or within such other time as is further agreed by Debtor, after consultation with the Committee, Debtors may, without further Court approval or order, conclude the contemplated transactions with the next highest or best qualified bidder in accordance with the terms of the next highest or best qualified bidder's bid, providing such bid has been approved by the Court as a back-up bid.

13. The Business Assets shall be transferred on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis. **DEBTORS EXPRESSLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE BUSINESS ASSETS, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

14. All of Debtors' interests in the Business Assets sold shall be sold free and clear of any encumbrances with all encumbrances, if any, attaching to the net proceeds of the sale with the same force and in the same priority as currently exists, subject to the order of the Court approving the sale.

15. After Debtors announce the first acceptable bid on a Business Asset at the Auction for the specific Business Assets, each subsequent bid must exceed the previous bid by not less than \$200,000 for Business Assets where the bid price exceeds \$2,000,000; by \$100,000 for Business Assets where the bid price is between \$1,000,000 and \$2,000,000; by \$50,000 for Business Assets where the bid price is between \$500,000 and \$1,000,000; and by \$10,000 for Business Assets where the bid price is between \$50,000 and \$500,000. When the bid price is less than \$50,000, Debtors will set minimum bids at the Auction(s). Debtors retain the right to lower any minimum incremental bids at the Auction(s) in Debtors' discretion.

16. By participating in the Auction(s), each qualified bidder shall be deemed to have reviewed the Business Assets and all pertinent documents before bidding and to rely solely on its review in making any offer.

17. If deemed to be the successful bidder for a Business Asset, immediately upon the conclusion of the Auction scheduled for that particular Business Asset (or by such time as Debtors may agree), such qualified bidder shall deliver good funds by certified, bank check, wire or other acceptable means ("Good Funds") to Debtors, in an amount equal to ten percent (10%) of the purchase price of such Business Asset (the "Purchase Price Deposit"). The amount deposited to become a qualified bidder shall be a credit against the ten percent (10%) deposit.

18. Debtors shall have no duties or obligations except those expressly set forth herein and shall not be required to invest the deposits in an interest earning account or to segregate each deposit, but may, in their sole discretion, do so. If there is a dispute between a qualified bidder and Debtors, Debtors shall have the right to retain the Purchase Price Deposit, and either party may apply to the Court for a determination of the rights and obligations of the parties. The Court shall retain jurisdiction to resolve all disputes with respect to the Purchase Price Deposit.

19. The closing of the sale of Debtors' interests in the Business Asset (the "Closing") shall take place (1) within ten business days following approval by the Court of the sale and the entry of the order approving the assumption, assignment and sale of the leases to the successful bidder, or (11) at such later time as may be agreed to by Debtors in their sole discretion, not to exceed an additional twenty days unless otherwise provided by the Court (the "Closing Date"). With respect to the Closing, time is of the essence against the bidder and to the benefit of the Debtors. In the event Debtors do not consummate the sale Business Assets for any reason (other than the successful bidder's failure to consummate a sale of the Business Assets), Debtors' sole obligation shall be to refund the Purchase Price Deposit to the Offeror.

20. At closing, the successful bidder shall pay the balance of the purchase price in Good Funds.

21. All adjustments to be made in connection with the Closing shall be made as of midnight of the date preceding the Closing (the "Adjustment Date"). Any adjustments attributable to escalation or pass-through charges that would be billed after the Adjustment Date shall be made based upon the most recent billing received by Debtors for such charges. The bidder shall be liable for all obligations from the Adjustment Date forward and shall indemnify Debtors with respect thereto.

22. All bidders with respect to the Business Assets shall provide the following information to Debtors (unless Debtors shall waive any aspect hereof) either (a) at the time of the bidder's written offer if made prior to the Auction, or (b) prior to the commencement of the Auction:

- a. the full name and identity of the proposed purchaser and the proposed operator of the Business Assets,
- b. a current financial statement and such other proof of financial condition of the proposed purchaser and operator or guarantor, if any, as Debtors may reasonably request,
- c. the names and addresses of the CEO, president and CFO;
- d. a written statement of the bidder's and/or purchaser's proposed use of the premises, if acquired,
- e. proof acceptable to Debtors of the ability of the proposed assignee to perform under the terms of any of the leases to be assumed for which the proposed purchaser has submitted a bid, and
- f. such other information relating to the financial ability of the proposed purchaser as Debtors may reasonably request.

23. Debtors, after consultation with the Committee, at or before the Auction may impose such other and additional terms and conditions or modify the terms and conditions hereof as Debtors determine to be in the best interest of the estates.

This ___ day of _____ 2001.

Guy Longobardo, CEO
ETS Payphones, Inc.
Suite G, 1490 Westfork Drive
Lithia Springs, Georgia 30122
Email: glongobardo@etspayphones.com
Facsimile (770) 819-1682

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Shannon Lowry Nagle
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Sixteenth Floor
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Atlanta, GA 30303
Facsimile (404) 572-6999

**ETS PAYPHONES, INC. AND SUBSIDIARIES INSTALLED EQUIPMENT,
INVENTORY, LEASES, SUPPLIES AND OTHER ASSETS**

Business Assets to be described with particularity for each separate Solicitation distributed pursuant the bidding and auction procedures approved by the Court.

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

PSA, Inc., a Delaware corporation, and affiliates,

Debtors

Chapter 11

Case No 00-3570

(Jointly Administered Case Nos. 00-3570(PJW) through 00-3572(PJW) and 00-3718(PJW) through 00-3725(PJW))

ORDER (I) AUTHORIZING SCHEDULING OF AUCTIONS OF CERTAIN OF DEBTORS' BUSINESS ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE TERMS AND CONDITIONS OF SUCH AUCTIONS, (III) FIXING THE MANNER AND EXTENT OF MARKETING RELATING TO SUCH AUCTIONS, (IV) SCHEDULING HEARINGS TO APPROVE THE SALES AND THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES BY DEBTORS, AND (V) APPROVING PROCEDURES FOR MISCELLANEOUS SALES OF NOMINAL ASSETS PURSUANT TO SECTIONS 363(b), 363(f), 365(a), AND 365(f) OF THE BANKRUPTCY CODE

This matter having come before the Court on the motion of PSA, Inc., ETS Payphones, Inc., Americom, Inc., City Public Phones, Inc., ETS Payphones of California, Inc., ETS Management Services, LLC, MSC National, Inc., S&R Telecommunications, TSC Payphone Corp., ETS Vending, Inc. and Phoenix Telecom of Puerto Rico, the above-captioned chapter 11 debtors and debtors in possession (collectively, "Debtors"), for an order pursuant to sections 105, 363, 365 and 1146(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended and supplemented, the "Bankruptcy Code") and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") (a) authorizing the Debtors to sell their business assets (the "Business Assets") free and clear of all liens, claims, interests, and encumbrances pursuant to sections 363(b) and 363(f) of the Bankruptcy Code to the persons or entities presenting the highest and best offer, (b) scheduling auction(s) (the "Auction(s)") to receive bids on the Business Assets, (c) approving the terms and conditions of the Auction(s), (d) approving the manner and extent of marketing for the Auction(s), (e) scheduling post-auction hearing(s) (the "Post-Auction Hearing(s)"), and (f) approving procedures for miscellaneous sales of Business Assets of nominal value (the "Motion"); and the Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having considered the Motion, argument of counsel, and all matters of record; and Debtors having demonstrated a sound business reason for the sale(s); and it appearing that sufficient cause exists to grant the relief requested in the Motion,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED.
2. The "Notice of Hearing, Notice of Auction, and Solicitation for Bids on Certain of Debtors' Business Assets, and Terms and Conditions of Auction," in form and substance substantially similar to Exhibit A to the Motion (the "Solicitation") and the terms and conditions of the Auction(s) as set forth therein are hereby approved.
3. The following terms and conditions shall govern the Auction(s) and bidding procedures:
 - (a) Bids for the Business Assets may be received by private written bid prior to or at the Auction(s).
 - (b) The Business Assets will be offered to the bidder(s) making the offer(s) that the Debtors deem to be, in their discretion, the highest or best offer
 - (c) To become a qualified bidder, potential bidders must provide Debtors at or before the Auction(s) with either certified financial statements or evidence of financial wherewithal, experience and other relevant considerations, and any other information Debtors may, in their discretion, require to determine the bidder is able to consummate a transaction as contemplated herein
 - (d) In addition, at or before the Auction(s), to be qualified to bid upon assets exceeding \$500,000.00 in aggregate value, potential bidders must deliver to Debtors' counsel \$50,000.00 in good funds which amount shall be applied to a successful bid or returned upon written request to Debtors' counsel within two business days. At the option of an unsuccessful bidder, the funds may be left on deposit with Debtors' counsel to keep a bid in place as a backup. If a successful bidder on a sale approved by the Court shall fail to close by the "Closing Date," as defined below, the \$50,000 or the ten percent (10%) general deposit required (whichever is larger) shall be retained by Debtors as liquidated damages, and not a penalty, it being agreed by the parties participating in the Auction in advance that actual damages are impossible of precise determination.
 - (e) All offers accepted by Debtors, whether at Auction(s) or private sale, shall be subject to the approval of the Court
 - (f) To the extent a bid involves any contingency, delayed payment, or non-cash component, Debtors may, at their option, value such components at any amount, including zero, and the bidder shall have no rights of appeal whatsoever from such valuation.
 - (g) Successful bidders must, at the conclusion of the Auction or within such extended period as Debtors may permit, deliver to Debtors good funds in an amount equal to ten percent (10%) of their bid, which will not be refunded, but will be retained as liquidated damages if the bidder fails to consummate the sale of the Business Assets within the time period required herein or as extended by agreement of Debtors. (A deposit to obtain qualified-bidder status shall be a credit toward the ten percent)
 - (h) At the close of the Auction, with consultation from the Committee, Debtors shall consider Auction results for the Business Assets. Debtors shall seek approval from the Court at the Post-Auction Hearing for the qualified bid or bids which they believe represent the highest or best offer or offers received for the Business Assets
 - (i) After consultation with the Committee, Debtors reserve the right (a) to determine in their discretion which competing qualified bids, if any, for the Business Assets is the highest or otherwise best qualified bid and (b) to reject any bid which Debtors after consultation with

the Committee believe to be (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the terms of the sale order, or (iii) contrary to the best interests of Debtors and their estates.

- (j) Any bid that requires submission to the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "HSR Act") shall, upon Debtors' request, be accompanied by the bidder's HSR Act application. Upon the request of a party submitting an HSR Act application, Debtors shall take reasonable steps to ensure the confidentiality of the information, subject to dissemination on a confidential basis to counsel for the Committee.
- (k) If a closing with a successful qualified bidder is not concluded by the Closing Date or within such other time as is further agreed by Debtors, after consultation with the Committee, Debtors may, without further Court approval or order, conclude the contemplated transactions with the next highest or best qualified bidder in accordance with the terms of the next highest or best qualified bidder's bid, providing such bid has been approved by the Court as a back-up bid.
- (l) The Business Assets shall be transferred on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis **DEBTORS EXPRESSLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE BUSINESS ASSETS, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- (m) All of Debtors' interests in the Business Assets sold shall be sold free and clear of any encumbrances with all encumbrances, if any, attaching to the net proceeds of the sale with the same force and in the same priority as currently exists, subject to the order of the Court approving the sale
- (n) After Debtors announce the first acceptable bid on a Business Asset at the Auction for the specific Business Assets, each subsequent bid must exceed the previous bid by not less than \$200,000 for Business Assets where the bid price exceeds \$2,000,000; by \$100,000 for Business Assets where the bid price is between \$1,000,000 and \$2,000,000; by \$50,000 for Business Assets where the bid price is between \$500,000 and \$1,000,000; and by \$10,000 for Business Assets where the bid price is between \$50,000 and \$500,000. When the bid price is less than \$50,000, Debtors will set minimum bids at the Auction(s). Debtors retain the right to lower any minimum incremental bids at the Auction(s) in Debtors' discretion.
- (o) By participating in the Auction(s), each qualified bidder shall be deemed to have reviewed the Business Assets and all pertinent documents before bidding and to rely solely on its review in making any offer.
- (p) If deemed to be the successful bidder for a Business Asset, immediately upon the conclusion of the Auction scheduled for that particular Business Asset (or by such time as Debtors may agree), such qualified bidder shall deliver good funds by certified, bank check, wire or other acceptable means ("Good Funds") to Debtors, in an amount equal to ten percent (10%) of the purchase price of such Business Asset (the "Purchase Price Deposit"). The amount deposited to become a qualified bidder shall be a credit against the ten percent (10%) deposit
- (q) Debtors shall have no duties or obligations except those expressly set forth herein and shall not be required to invest the deposits in an interest earning account or to segregate each deposit, but may, in their sole discretion, do so. If there is a dispute between a qualified bidder and Debtors, Debtors shall have the right to retain the Purchase Price Deposit, and either party may apply to the Court for a determination of the rights and obligations of the parties. The Court shall retain jurisdiction to resolve all disputes with respect to the Purchase Price Deposit.
- (r) The closing of the sale of Debtors' interests in the Business Asset (the "Closing") shall take place (i) within ten business days following approval by the Court of the sale and the entry of the order approving the assumption, assignment and sale of the leases to the successful bidder, or (ii) at such later time as may be agreed to by Debtors in their sole discretion, not to exceed an additional twenty days unless otherwise provided by the Court (the "Closing Date"). With respect to the Closing, time is of the essence against the bidder and to the benefit of the Debtors
- (s) At closing, the successful bidder shall pay the balance of the purchase price in Good Funds.
- (t) All adjustments to be made in connection with the Closing shall be made as of midnight of the date preceding the Closing (the "Adjustment Date"). Any adjustments attributable to escalation or pass-through charges that would be billed after the Adjustment Date shall be made based upon the most recent billing received by Debtors for such charges. The bidder shall be liable for all obligations from the Adjustment Date forward and shall indemnify Debtors with respect thereto

4. The Auction(s) of the Business Assets shall be conducted on April __, 2001 at __: __ m and May __, 2001 at __: __ m., at the offices of Young Conaway Stargatt & Taylor LLP, 1100 N Market Street, 11th Floor, P O. Box 391, Wilmington, Delaware 19801 pursuant to the terms and conditions of the Solicitation. Debtors shall notify interested parties of the Business Assets offered for sale at each Auction by serving copies of the Solicitation with a list of specific Business Assets within two weeks of the Auction.

5. The sale of the Business Assets shall be free and clear of all liens, claims, interests and encumbrances established by Debtors in the Business Assets and the sales proceeds shall be paid to the lien and claimholders in the order of priority.

6. Any affected holders of liens, claims, interests and encumbrances could be compelled to accept a money judgment in satisfaction of their respective liens, claims, interests and encumbrances, or have otherwise consented to the sale

7. The sale of the Business Assets is an essential element of Debtors' plan of reorganization to be filed in this case and, pursuant to section 1146(c) of the Bankruptcy Code, the making or delivery of an instrument of transfer related to the sale of the Business Assets by Debtors to the purchaser, including without limitation the filing of a document evidencing this transfer with the register of deeds, contemplated to be necessary to effectuate the transfer of the Business Assets pursuant to this Motion, shall not be taxed under any law imposing a stamp tax or similar tax.

8. A hearing shall be conducted before the Court on April __, 2001 at __: __ m and May __, 2001 at __: __ m (the "Post-Auction Hearing(s)"), or as soon thereafter as counsel may be heard, in the United State Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, to consider the approval of the assumption, assignment and sale of the Business Assets offered for sale at the respective Auctions, pursuant to sections 363(b) and (f), and section 365 of the Bankruptcy Code, to the bidder with the highest or best bid accepted in Debtors' sole discretion and to consider the approval of the rejection of any executory contracts or unexpired leases, pursuant to section 365(a) of the Bankruptcy Code, not sold by Debtors at the Auction(s)

9. Any lessor or party to an executory contract with Debtors desiring to receive further notice of any proposed assumption and assignment or rejection of its executory contract or unexpired lease shall make a written request to Debtors' counsel as follows: David A. Geiger, Esq.; Powell, Goldstein, Frazer & Murphy LLP, 16th Floor, 191 Peachtree Street, Atlanta, Georgia 30303, 404-572-6999 (facsimile), dgeiger@pgfm.com (email) with a copy to Brendan Linehan Shannon, Esq., Young Conaway Stargatt & Taylor LLP, 11th Floor 110 N. Market Street, Wilmington, Delaware 19801, 302-571-1253 (facsimile), bshannon@ycst.com (email). Each request shall include the party's mailing address, facsimile number (if applicable) and email address (if applicable). Debtors' counsel shall serve notice at the conclusion of the Auction(s) and prior to any Post-Auction Hearing of any proposed assumption and assignment or rejection of any executory contract or unexpired lease on any lessor or other party to an executory contract with the Debtor who requests such notice in compliance with this paragraph.

10. All offers to purchase the Business Assets shall conform with the procedures and conditions set forth in the Solicitation.

11. Subject to the notice procedures set forth below (the "Miscellaneous Sales Procedures"), Debtors are hereby authorized to consummate without further Court approval sales of their assets where the aggregate purchase price is \$50,000 or less for each item of property (the "Miscellaneous Assets"), free and clear of all liens, claims, interests, and encumbrances, with any such lien, claim, interest, or encumbrance attaching to the sale proceeds.

12. Debtors shall serve each of the following parties with a notice of each proposed sale of miscellaneous assets (the "Miscellaneous Assets Sale Notice"): (a) the United States Trustee; (b) counsel for the Committee; (c) the Examiner; and (d) any known holder of a lien, claim, interest, or encumbrance against the specific property to be sold (the "Noticed Parties"). Debtors shall serve the Miscellaneous Assets Sale Notice by facsimile or overnight delivery service so as to be received at least ten (10) business days prior to the date of the proposed sale. The Miscellaneous Assets Sale Notice will specify the following: (a) the assets to be sold; (b) the identity of the proposed purchaser (including a statement of any connection between the proposed purchaser and the Debtors); and (c) the proposed sale price.

13. If none of the Noticed Parties serves Debtors' counsel with a written objection to the proposed sale in a manner so that it is actually received by the Debtors within five business days after the date Debtors served the Miscellaneous Assets Sale Notice (the "Notice Period"), Debtors may consummate the proposed sale transaction and take such actions as are necessary and appropriate to close the sale and obtain the sale proceeds. If there is no objection to the proposed sale and the buyer requests receipt of an order authorizing the sale, Debtors may file a certificate of no objection with the Court with an order attached thereto authorizing the sale.

14. If Debtors receive a written objection during the Notice Period and are unable to resolve such objection, Debtors will take no further steps to consummate the proposed sale without first obtaining the Court's approval.

15. The aggregate amount of Miscellaneous Assets that Debtors may sell pursuant to this Order shall be limited to \$3 million of sales proceeds, without prejudice to Debtors' right to request authority for an increase of such limit should circumstances later warrant.

16. The proceeds of the sales of the Miscellaneous Assets shall not be distributed except pursuant to further order of the Court.

17. Debtors may withdraw any of the Business Assets prior to or during the Auction(s), for any reason including but not limited to selling their interest in such Business Assets pursuant to the Miscellaneous Sales Procedures.

18. The Auction(s) or the Post-Auction Hearing(s) may be adjourned without further notice, other than announcement of such adjournment at the Auction(s) or in open Court on the date of the Post-Auction Hearing.

19. Debtors are authorized to advertise the Auction(s) by distributing the Solicitation, direct mail flyers, publishing advertisements in newspapers, and such other methods as Debtors deem appropriate, and such marketing shall constitute adequate marketing of the Auction(s).

20. In the event the closing of a sale of any one or more of the Business Assets would be sufficient to trigger a WARN notice, the time periods pursuant to section 2102 of title 29 of the United States Code, 29 U.S.C. §§ 2101-2109 (as amended and supplemented, "WARN") are hereby reduced and Debtors are authorized to send any notices required by WARN within five days of the entry of orders approving sales of Business Assets sufficient to trigger WARN notice.

21. The Regulatory Agencies (as defined in the Motion) shall provide at least thirty (30) days' notice, or such longer period as is allowed by state statute or administrative regulation, to Debtors of any alleged noncompliance with such Regulatory Agency's regulations and also provide Debtors or successful purchasers with a reasonable opportunity to comply with the applicable regulations prior to the Regulatory Agency assessing and/or levying any fine or penalty against Debtors.

22. Service of the Motion as described in the Motion constitutes good and sufficient notice of the Auction(s), Post-Auction Hearing(s) and Miscellaneous Sales Procedures.

23. Debtors are authorized and directed to take such actions as are necessary and appropriate to effectuate the terms of this Order, the conduct of the Auction(s) and any proposed transactions contemplated by the Motion.

24. This Court retains jurisdiction over all disputes which may arise from the terms of this Order, the conduct of the Auction(s) and any proposed transaction contemplated by the Motion.

Dated March __, 2001
Wilmington, Delaware

HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE