

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:

(Chapter 11)

OPEN RANGE COMMUNICATIONS INC.,

Case No. 11-13188 (KJC)

Debtor.

Hearing Date: November 2, 2011 at 3:00 p.m. (ET)¹
Objection Deadline for Bidding Procedures:
November 1, 2011 at 4:00 p.m. (ET)

DEBTOR'S MOTION FOR ORDERS: (I)(A) APPROVING BIDDING AND AUCTION PROCEDURES IN CONNECTION WITH SALE OF ANY AND ALL OF THE DEBTOR'S ASSETS; (B) APPROVING PURCHASER PROTECTIONS, (C) SCHEDULING AN AUCTION AND EXPEDITED HEARING TO CONSIDER SALE OF ANY AND ALL DEBTOR'S ASSETS; AND (D) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (II)(A) AUTHORIZING AND APPROVING SALE OF ANY AND ALL DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (B) GRANTING RELATED RELIEF

The above-captioned debtor and debtor-in-possession (the "Debtor"), by and through its undersigned counsel, hereby moves (the "Motion"), pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of order, attached hereto as Exhibit A (the "Bidding Procedures Order"): (I) (A) approving bidding and auction procedures (the "Bidding Procedures") in connection with the proposed sale of any and all of the Debtor's assets (the "Assets") free and clear of liens, claims, and interests; (B) approving purchaser protections, (C)

COM _____ scheduling an auction (the "Auction") and an expedited hearing (the "Sale Hearing") to consider
APA _____
ECR _____ the sale of the Assets (the "Sale"), and (D) approving the form and manner of notice thereof.
GCL _____
RAD _____

SRC _____¹ This Hearing Date and Objection Deadline are subject to approval of the Court. By separate motion to
ADM _____ shorten filed contemporaneously herewith, the Debtor has requested the Court to consider this Motion at the
OPC _____ requested Hearing Date and approve the requested Objection Deadline.
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The Debtor further requests that at the Sale Hearing, subject to the results of the Auction and Bidding Procedures set forth herein, this Court enter an order (the "Sale Order")² approving and authorizing and approving the Sale, free and clear of liens, claims, and interests. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. This 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 this case and this Sale Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code. Such relief is also warranted under Bankruptcy Rules 2002, 6004 and 9014.

BACKGROUND

3. On October 6, 2011 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declaration of Chris Edwards, Chief Financial Officer of Open Range Communications, Inc., In Support of Debtor's Chapter 11 Petition and First Day Motions (the "Edwards Declaration") [Docket No. 2].

4. The Edwards Declaration states that the primary purpose of this chapter 11 case is to effectuate a section 363 sale of substantially all of the Debtor's assets as a going concern or sales for select assets. See Edwards Declaration ¶28. If a sale process is not successful within

² The Debtor will file a copy of the form of Sale Order prior to Sale Hearing. The form of Sale Order will be available at no cost on the website maintained by the Debtor's noticing and claims agent at www.loganandco.com.

thirty (30) days of the Petition Date, the Debtor will immediately shut down its network and begin a wind-down of operations. Id.

5. On October 19, 2011, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee").

6. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. No request for, or appointment of, a trustee or examiner has been made in this chapter 11 case.

A. The Debtor's Current Business Operations

8. Founded in 2004 and headquartered in Greenwood Village, Colorado, the Debtor is a broadband wireless internet provider whose primary focus is delivering high speed wireless internet and digital phone services to un-served and underserved communities across the United States.

9. The Debtor has primarily deployed WiMAX technology on over 400 towers across its 4G network. The Company's equipment (base stations and customer devices) are tuned to operate across any owned BRS spectrum and leased EBS spectrum. As of the date herein, the Debtor provides wireless in-home data and VoIP (telephone) service to approximately 25,000 customers in approximately 159 markets across thirteen (13) states in the United States. These markets are primarily connected via microwave but a number of markets are connected by leased circuit backhaul.

10. After recent reductions in force, the Debtor currently employs forty-seven (47) employees (the "Employees"), of whom thirty-three (33) are full time salaried Employees and fourteen (14) are hourly Employees. All of the Debtor's full time salaried Employees are located

in Colorado, and the hourly Employees are field technicians located in Alabama, Arizona, California, Colorado, Georgia, Illinois, Indiana, New Jersey, Ohio, Pennsylvania and Wisconsin.

B. The Marketing and Sale Process

11. Since the Petition Date, the Debtor has been extremely focused under considerable time constraints on pursuing a sale, pursuant to section 363 of the Bankruptcy Code, of all its assets as a going concern or sales for select assets. To that end, the Debtor retained FTI Consulting, Inc. (“FTI”) to provide a Chief Restructuring Officer, Michael E. Katzenstein (the “CRO”), an Associate Chief Restructuring Officer, Chris LeWand (the “Associate CRO”) and certain hourly temporary staff (as defined below) for post-petition crisis, turnaround, and related management services, including assisting the Debtor in marketing the Debtor’s business.³

12. FTI managed the sales due diligence process which was conducted on the business, operations, underlying assets and obligations of the Debtor. FTI met with and conducted numerous teleconferences with management and other representatives of the Debtor. Furthermore, FTI also worked with the Debtor’s management to build a comprehensive electronic data room containing detailed information regarding the Debtor’s business. In addition, FTI worked with the Debtor’s management to prepare materials related to the sale process, including a teaser (the “Teaser”) designed to create demand for the Sale, and a Confidential Sale Process Letter (the “Letter”) which outlined the opportunity and requested prospective purchasers to submit their proposals by October 21, 2011 at 12 p.m. (MT).

13. On or about October 10, 2011, FTI began sending the Teasers and Letters to fifty-eight (58) potential buyers, including strategic buyers as well as financial buyers with interest

³ The Debtor filed a motion to retain FTI (the “FTI Motion”) [Docket No. 74], which is scheduled to be heard by the Court on November 2, 2011. The exact scope of services to be performed by FTI are set forth in the FTI Motion, and the engagement letter annexed thereto as Exhibit B.

and/or experience in the telecommunications industry or general interest in acquiring distressed assets. Of the fifty-eight (58) potential buyers contacted, twenty-two (22) negotiated and signed confidentiality agreements with the Debtor and were granted access to the online data room established by FTI. The data room included information concerning the Debtor's operations, assets, finances and obligations, and contained a "FAQ" section so potential purchasers could navigate the data room based on frequently asked questions. Potential purchasers who received access to the data room were encouraged to conduct extensive initial due diligence, and FTI and the Debtor's management held several conference calls and were accessible via e-mail to address specific questions and concerns. Furthermore, two potential purchasers, including the Proposed Purchaser (defined below), attended on-site management presentations to discuss the Debtor's business.

14. These efforts ultimately led to proposals from four (4) different potential purchasers proposing various terms and conditions for the purchase of the Debtor's assets, including two (2) proposals for substantially all of the Debtor's assets, and two (2) proposals for select assets or markets of the Debtor. After an extensive review of all the proposals, and in consultation with FTI, the Debtor, with the approval of the Debtor's Board of Directors, selected totheHome.com, LLC (the "Proposed Purchaser" or "Stalking Horse") to be the stalking horse for the Sale of the Assets as a going concern. The Debtor and its advisors actively negotiated with the Proposed Purchaser regarding the terms and conditions of a term sheet and facilitated various additional diligence requests made by the Proposed Purchaser. On October 27, 2011, the Debtor and the Purchaser executed a Proposed Stalking Horse Term Sheet (the "Term Sheet"). A copy of the Term Sheet is attached hereto as Exhibit B.

RELIEF REQUESTED

15. The Debtor seeks entry of two separate orders as follows:

- (i) **The Bidding Procedures Order:** The Bidding Procedures Order, in substantially the form attached hereto as Exhibit A, approving: (a) the Bidding Procedures; (b) the notice (the “Notice of Auction and Expedited Sale Hearing”) setting forth the dates, times, and location of the deadline to bid on the Assets, the auction of the Assets (the “Auction”) and the expedited hearing to consider the Sale of the Assets (the “Sale Hearing”), pursuant to the schedule proposed in the Bidding Procedures Order, subject to the Court’s availability; and (c) the Purchaser Protections (as defined below).
- (ii) **The Sale Order:** Following the Auction (if any), an order (the “Sale Order”), approving the Sale of the Assets free and clear of Liens. The Debtor will file a form of the Sale Order prior to the Sale Hearing.

A. The Term Sheet

16. Given the Debtor’s liquidity situation and imminent prospect of a shutdown of its network, the Debtor believes that an expedited Sale process will maximize value for all stakeholders. Accordingly, the Term Sheet proposes the following timeline for the Sale of the Assets:⁴

Event	Date
Execution of Asset Purchase Agreement	November 1, 2011
Bid Procedures Hearing	November 2, 2011
Submission Deadline for Qualified Bids (as defined below)	November 11, 2011
Auction	November 14, 2011
Sale Hearing	November 15, 2011
Entry of Sale Order	November 17, 2011

⁴ The Debtor, in the exercise of its business judgment, reserves the right to change these sale-related dates in order to achieve the maximum value for the Assets.

17. Furthermore, in addition to Sale approval milestone, the significant terms of the Term Sheet are as follows:⁵

- (a) Purchase Price: \$2,000,000 in cash.
- (b) Acquired Permanent Assets: All or substantially all of the assets of Seller now owned or hereafter acquired used in or necessary for the conduct of Seller's business including, without limitation, (a) all equipment listed in the data room established by the Seller, including all computer hardware, software and networking equipment, all service vehicles, field tools and RF testing tools, and cabling, (b) the Seller's entire customer base, (c) the Seller's name (Open Range Communication Inc.) and branding assets and (d) all intellectual property, including patents, trademarks, and trade secrets (collectively, the "Acquired Permanent Assets"). These assets do not include assets set-out under Transition Period Assets or Excluded Surplus Assets.
- (c) Excluded Surplus Assets: All assets of Seller other than the Acquired Assets and Transition Period Assets ("Excluded Surplus Assets"). These assets will be retained by the Seller. This includes all warehoused WiMAX transmission and CPE equipment, radio equipment spares not currently deployed, excess personal computer equipment, and other surplus assets not required by the Buyer to continue operations. Excluded surplus assets includes any and all avoidance actions of the debtor, and any and all claims against third parties, including without limitation, Alvarion.
- (d) Transition Period Assets: All assets identified as being required for a transition period of up to nine months post Transaction Close. These assets will be retrieved and returned by the Purchaser to a location of the Seller's choice within nine months of Transaction Close if the Purchaser does not choose to purchase the assets under the First Right of Refusal. This will specifically include all WiMAX equipment that is currently deployed on over 400 towers around the network, current customer premise equipment and any other equipment specifically identified as required for only the transition period. Best attempts will be made to return this equipment in a timely fashion which preserves asset value.
- (e) First Right of Refusal: The Buyer will have the First Right of Refusal to purchase Transition Period Assets in the nine months subsequent to Transaction Close at a price of 10% of the historical undepreciated cost basis for these assets.
- (f) Operations Funding: From November 8, 2011 until execution of the Agreements contemplated in this term sheet, Buyer will pay to Seller \$350,000 maximum per week (pro rated daily for partial weeks) for the continued operation of the Buyer's

⁵ The foregoing is only a brief summary. Capitalized terms not defined in this section shall have the meanings ascribed to them in the Term Sheet. In the event of any inconsistency between the above summary and the Term Sheet, the terms of the Term Sheet shall control.

customer serving operations. This charge will not exceed \$350,000 per week (averaged over the weeks between November 8, 2011 and closing, prorated for days elapsed) and amounts will be trued up to actual incremental charges incurred by the Seller for continued customer serving operations ("Operations Funding"). A \$350,000 deposit is to be paid by the Buyer to the Seller within one day of Bankruptcy Court approval of the Bidding Procedures and Expense Reimbursement (the "Bidding Procedures Order"). This deposit will offset actual amounts incurred by the Buyer for Operations Funding. Amounts in excess of the \$350,000 deposit will be due upon execution of the Asset Purchase Agreement (estimated as of that date and trued up within 14 days thereafter). In the event that Seller accepts a bid, other than that of Buyer, as the highest and best offer for the acquired permanent assets and consummates such transaction (an "Alternative Transaction"), all Operations Funding will be refunded to the Buyer.

- (g) Seller Assistance with Transition Planning: From the date of the Bidding Procedures Order, the Seller will assist the Buyer with planning for the transition upon the closing of a sale to the Buyer (the "Closing"). This will include reasonable efforts (without requiring out of pocket expenditures by the Seller) to provide acceptable notifications (to the Buyer) to customers of the intent to continue services and thereby aid in preserving the customer base. This will also include assistance planning for the assignment, rejection or renegotiation of commercial agreements between the Seller and vendors, to enable the Buyer to address vendor contracts as soon as practical upon the Closing, and other reasonable business planning and continuation efforts to assist with a efficient transition of the assets and operations.
- (h) Break-Up Fee and Expense Reimbursement: In consideration of Buyer's entering into the Agreement and in recognition of Buyer's work in (i) establishing a bid standard or minimum for other bidders and (ii) for serving, by its name and expressed interest, as a catalyst for other bidders, as an reimbursement for Buyer's expenses incurred in connection with the Transaction, Seller shall pay to Buyer (A) a break-up fee in the amount of 4% of the Purchase Price (the "Break-Up Fee") and (B) an amount (in no event to exceed \$170,000) equal to Buyer's actual reasonable and documented expenses incurred in connection with the Agreement and the transactions contemplated thereby (the "Expense Reimbursement"), if: (x) Seller accepts a bid, for the Acquired Permanent Assets, other than that of Buyer, as the highest and best offer and consummates such transaction (an "Alternative Transaction"), or (y) Buyer terminates the Agreement in the event of Seller's failure to perform in any material respect any obligation required to be performed by it under the Agreement.

The Break-Up Fee and Expense Reimbursement shall be paid as an administrative priority of Seller under section 503(b)(1) of the Bankruptcy Code upon the earlier to occur of the consummation of any Alternative Transaction, or the conversion of the Bankruptcy Case to a case under chapter 7 of the U.S. Bankruptcy Code or within two business days of Buyer's termination of the Agreement as described in clause (y) of the immediately preceding sentence.

18. **Provisions That May Implicate Local Rule 6004-1.** Local Rule 6004-1

requires, among other things, that certain provisions contained in sale motions and sale orders be highlighted. The Debtor believes that certain provisions of this Motion and/or Term Sheet may implicate Local Rule 6004-1 as follows:

- a. **Copy of Proposed Purchase Agreement:** A copy of the Term Sheet is attached hereto as Exhibit B. The Term Sheet contemplates that an asset purchase agreement (the "Agreement") will be executed within five days of the date of the filing of this Motion.
- b. **Proposed Sale Order:** A form of the proposed Sale Order will be filed prior to the Sale Hearing.
- c. **Other Relevant Provisions:**
 - i. **Private Sale/No Competitive Bidding:** As discussed herein, the Debtor seeks to expose the Assets to competitive bidding through an Auction pursuant to the Bidding Procedures. If there is no higher and better offer at the Auction, the Debtor will support a sale to the Stalking Horse.
 - ii. **Closing and Other Deadlines:** The Sale must close within several days after entry of the Sale Order.
 - iii. **Good Faith Deposit:** None, but the Proposed Purchaser will pay to the Debtor a deposit of \$350,000 for Operations Funding (as defined and described above).
 - iv. **Sale Free and Clear of Unexpired Leases:** The Debtor is seeking to sell the Assets free and clear of any possessory leasehold interest, license, or other right.
 - v. **Relief From Bankruptcy Rule 6004(h):** The Debtor anticipates the Sale Order will request relief from the fourteen day stay imposed by Rule 6004(h).

B. Proposed Bidding Procedures

19. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by public auction. The Debtor believes the proposed Bidding Procedures, which are annexed as Exhibit 1 to the Bidding Procedures Order, will maximize the realizable value of the Assets. The Debtor seeks to implement a competitive

bidding process, and believes the Bidding Procedures contemplate an auction process pursuant to which bids for the Assets will be subject to higher or otherwise better offers. Consistent with the bankruptcy auction procedures approved routinely in this District, the Debtor believes that the proposed Bidding Procedures are most likely to maximize the realizable value of the Assets.

20. Accordingly, the Debtor believes the Court should approve the Bidding Procedures. Similar procedures have been previously approved by this Court. See, e.g., In re BNA Subsidiaries, LLC, Case No. 10-13087 (BLS) (Bankr. D. Del. February 1, 2011); In re Barzel Industries Inc., et al., Case No. 09-13204 (CSS) (Bankr. D. Del. October 6, 2009); In re Ritz Camera Centers, Inc., Case No. 09-10617 (MFW) (Bankr. D. Del. July 10, 2009); In re Fedders North America, Inc. et al., Case No. 07-11176 (BLS) (Bankr. D. Del. January 9, 2008).

C. Notice of Auction and Expedited Sale Hearing

21. On or before one (1) business day after entry of the Bidding Procedures Order, the Debtor will cause the notice attached as Exhibit 2 to the Bidding Procedures Order (the “Notice of Auction and Expedited Sale Hearing”) and the Bidding Procedures Order to be sent by fax, overnight mail, and/or e-mail, to the following parties: (i) the Office of the United States Trustee; (ii) counsel to the RUS (defined below); (iii) counsel to the Federal Communications Commission; (iv) counsel to OEP (defined below); (v) counsel for the Committee; (v) all taxing authorities having jurisdiction over any of the Assets or a reasonably known interest in the relief requested by the Motion, (vi) all persons known to be interested in purchasing the Assets; (vii) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Assets and (viii) all parties that have requested to receive notice pursuant to Bankruptcy Rule 2002.

22. The Debtor submits that the foregoing notice is reasonably calculated to provide timely and adequate notice to the Debtor’s creditors and other parties in interest, and also to all

those that have expressed an interest in bidding on the Assets. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). Accordingly, the Debtors submit that such notice constitutes good and sufficient notice under the circumstances.

23. In addition, the Debtor further requests that the Court schedule the Sale Hearing on expedited basis for November 15, 2011 at 2:00 p.m. (ET). Pursuant to Bankruptcy Rule 2002(a)(2), the required twenty-one (21) day notice of the proposed sale of property other than in the ordinary course of business may be shortened for cause shown. See Fed. R. Bankr. P. 2002(a)(2). Here, given the imminent prospect of a shut down of the Debtor's business, the Debtor believes an expedited Sale Hearing on less than twenty-one (21) days notice is warranted. The Debtor further requests that the objection deadline with respect to the Sale of the Assets be at least one (1) day prior to the Sale Hearing.

BASIS FOR RELIEF REQUESTED

A. The Sale of the Assets is Within the Sound Business Judgment of the Debtor and Should be Approved

24. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a Debtor's assets prior to confirmation of a plan. However, courts in this Circuit and others have held that a debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code section 363 and prior to obtaining a confirmed plan if it demonstrates a sound business purpose for doing so. See In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (sale of substantially all of debtor's assets outside of reorganization plan is appropriate when a sound business reason justifies such a sale); see also

Committee of Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991) (stating that the “sound business purpose test” is appropriate); In re United Healthcare System, Inc., Civil Action No. 97-1159, 1997 WL 176574, at *7 (D.N.J. Mar. 26, 1997); In re Mid-American Waste System, Case No. 97-104 (PJW) (Bankr. D. Del. Mar. 7, 1997).

25. Courts have applied four factors in determining whether a sound business justification 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. See In re Delaware & Hudson Ry. Co., 124 B.R. at 175 (adopting Lionel factors to consider in determining whether sound business purpose exists for sale outside ordinary course of business in this District); see also In re Lionel Corp., 722 F.2d at 1071 (setting forth the “sound business” purpose test); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 147-49 (3d Cir. 1986) (implicitly adopting the articulated business justification test of Lionel standard and adding the “good faith” requirement).

26. In this case, the Debtor’s decision to sell the Assets is indeed based on a several compelling business reasons. First and foremost, the proposed Sale will allow the Debtor to survive as a going concern and avoid an imminent shut down of its network, which would then result in leaving thousands of the Debtor’s customers without service. Second, the sale of the Debtor’s business as a going concern will allow for the Debtor’s remaining Employees to be employed by the Purchaser and thus will benefit many of the Debtor’s Employees.

27. The Bidding Procedures are also designed to maximize the value received for the Assets. The Term Sheet establishes a floor for the purchase price and the Bidding Procedures

are designed to ensure that the Assets will be sold for the highest or otherwise best possible purchase price through the auction and bidding process.

28. Furthermore, by separate motion (the “Non-Core Asset Sale Motion”) [Docket No. 77], the Debtor is seeking to establish procedures for the sale of certain miscellaneous Debtor’s assets (the “Non-Core Assets) that are not a part of its core business operations.⁶ In order to eliminate any risk that any sale of the Non-Core Assets will impact the value of the Sale of the Assets that is the subject of this Motion, the Debtor has agreed to not sell any Non-Core Asset prior to the Auction. This step will also ensure that the Assets will be sold for the highest or otherwise best possible purchase price through the auction and bidding process.

29. Last, the notice described herein and in the Bidding Procedures Order is designed to provide adequate notice to all interested parties, including those who have previously expressed an interest in purchasing the Assets. Accordingly, the Debtor and all parties in interest can be assured that the consideration received for the Assets will be fair and reasonable.

B. The Proposed Sale Satisfies Section 363(f) of the Bankruptcy Code

30. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity [holding an interest] consents; (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; (iv) such interest is in bona fide dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f) (emphasis added).

⁶ The Non-Core Asset Sale Motion is set to be heard by the Court on November 2, 2011.

31. Since section 363(f) is written in the disjunctive, any of the five conditions, including the “consent” of the lienholders, provides authority to sell free and clear of liens. See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988); In re Pacific Energy Resources Ltd., et al., Case No. 09-10785 (KJC) (Bankr. D. Del. Aug. 18, 2009); In re Flying J Inc., et al., Case No. 08-1334 (MFW) (Bankr. D. Del. July 27, 2009); In re Eddie Bauer Holdings, Case No. 09-12099 (MFW) (Bankr. D. Del. July 23, 2009); In re Hancock Fabrics, Inc., Case No. 07-10353 (BLS) (Bankr. D. Del. April 30, 2007); In re Copelands’ Enters, Inc., Case No. 06-10853 (MFW) (Bankr. D. Del. Nov. 29, 2006); In re Three A’s Holdings, LLC, Case No. 06-10886 (BLS) (Bankr. D. Del. Nov. 17, 2006).

32. Here, the Debtor believes there are only two parties with secured liens on the Assets: (a) the Debtor’s prepetition lender, the United States Department of Agriculture, Rural Utilities Service (“RUS”), and (b) the Debtor’s postpetition lender, One Equity Partners, III, L.P. (“OEP”). The Debtor believes that both RUS and OEP are supportive of, and will thus consent to, the Sale of the Assets. Furthermore, the Debtor will send to any other or purported lienholders both the Auction and Expedited Sale Hearing Notice and notice of this Motion (with the Motion and exhibits attached). Accordingly, the Debtor requests that unless any party (other than the RUS) asserting a lien in any of the Assets timely objects to this Motion, all such parties shall be deemed to have consented to the Sale approved at the Sale Hearing.

33. The Debtor submits that the requirements of Section 363(f) will be satisfied, and the Court should approve the sale of the Assets free and clear of all lien claims, encumbrances and other interests, and any liens shall attach only to the proceeds of the Sale in the order of their priorities, subject to the rights and defenses, if any, of the Debtor and other parties in interest with respect thereto.

C. The Approval of the Purchaser Protections is Appropriate and in the Best Interest of the Estate.

34. While the Debtor has determined in its reasonable business judgment that an Auction of the Assets at this time will result in the highest and best price for the Assets, such an Auction would be of little value absent the Stalking Horse setting the minimum Purchase Price for the Assets under the Term Sheet.

35. Accordingly, the Debtor hereby requests that the Court approve certain bid protections to the Stalking Horse consisting of (A) a break-up fee in the amount of 4% of the Purchase Price (the "Break-Up Fee") and (B) an amount (in no event to exceed \$170,000) equal to the Stalking Horse's actual reasonable and documented expenses incurred in connection with the Agreement and the transactions contemplated thereby (the "Expense Reimbursement," and collectively with the Break-Up Fee, the "Purchaser Protections").

36. The approval of the Purchaser Protections is required to provide the Stalking Horse with the incentive to be bound by the terms of the Term Sheet prior to the Auction. This will establish a floor for the bidding on the Assets, while providing the opportunity for other bidders to increase the proposed purchase price, and will ensure that the Auction will generate the highest and best price for the Assets.

37. In the event that the Purchaser is not the Successful Bidder and the Purchaser Protections, including the break-up fee, must be paid to the Purchaser, the Debtor and its estate will have benefited significantly from the higher floor established by the Purchase Price under the Term Sheet.

38. In the Third Circuit, an application for a break-up fee is not be treated any differently from other applications for administrative expenses under section 503(b)(1)(A). The determination of whether a break-up fee or expense reimbursement is allowable under section

503(b)(1)(A) is made in reference to general administrative expense jurisprudence, and “depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” Calpine Corporation v. O’Brien Environmental Energy, Inc. (In re O’Brien Environmental Energy, Inc.), 181 F.3d 527, 532 (3d Cir. 1999).

39. This analysis is perfectly appropriate for application to a sale situation between the debtor and a third-party purchaser. As stated in O’Brien, “[w]e assume that bidding at the sale of O’Brien’s assets constituted a transaction with the debtor-in possession for purposes of § 503(b)(1)(A).” Id. at 533. Similarly, bidding at a sale of the debtor’s assets, where the seller is the debtor-in-possession, constitutes a transaction that may entitle a party to an administrative expense.

40. In examining the break-up fee at issue in O’Brien, the bankruptcy court identified nine factors that it viewed as relevant in making its break-up fee determination. While not expressly adopting the factors considered by the bankruptcy court as a “test” for all break-up fee determinations, the Third Circuit nevertheless considered those same factors. O’Brien, 181 F.3d at 536. The bankruptcy court’s nine O’Brien factors are as follows:

- a. the relationship of the parties who negotiated the break-up fee;
- b. effect of break-up fee on bidding;
- c. reasonableness of amount of the break-up fee;
- d. importance of fee to competitive bidding;
- e. will the fee serve to attract other bidders;
- f. maximization of value to debtors’ estates;
- g. creditor support for the break-up fee;
- h. availability of safeguards; and
- i. impact on unsecured creditors.

41. In the present case, the Purchaser has devoted substantial resources in negotiating the Term Sheet and performing its due diligence on an expedited basis, and without the incentive of the Purchaser Protections, there would be no incentive whatsoever for the Purchaser to enter into a binding purchase agreement prior to the Auction. Approval of

purchaser protections in connection with the sale of significant assets in a situation such as the Debtor faces here is an established practice that will facilitate the Debtor's efforts to assure a sale to a contractually-committed bidder at a price the Debtor believes is fair, while at the same time providing the Debtor with the potential for even greater benefit to the estate from a higher offer.

42. The proposed Purchaser Protections will not chill bidding and are reasonable and therefore meet the requirements of the business judgment rule, as well as the standard for approval set out in O'Brien. Thus, the Purchaser Protections should be approved.

D. Relief from the Fourteen-Day Waiting Period Under Bankruptcy Rule 6004(h)

43. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the ten-day stay period (now the fourteen-day stay period), Collier on Bankruptcy suggests that the [fourteen (14)] day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 COLLIER ON BANKRUPTCY ¶6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier's provides that if an objection is filed and overruled, and the objecting party informs the Court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

44. As described above, and in the Edwards Declaration, time is clearly of the essence in this case. If the Debtor is unable to promptly find a purchaser of its Assets, it will be forced

to shut down its business and begin a wind-down of its operations. The Debtor needs to close on the Sale within a few days after the Court approves the Sale so that the Debtor reduces the administrative costs of operating its network as a going concern. Furthermore, the Debtor must have the ability to promptly act under the Term Sheet to commence any required or appropriate actions in connection with the Sale. The Debtor therefore requests that the Court waive the fourteen (14) day stay period under Bankruptcy Rules 6004(h).

NOTICE

45. Notice of this Motion will be given to: (i) the Office of the United States Trustee; (ii) counsel to the RUS; (iii) counsel to the Federal Communications Commission; (iv) counsel to OEP; (v) counsel for the Committee; (vi) all taxing authorities having jurisdiction over any of the Assets or a reasonably known interest in the relief requested by the Motion, (vii) all persons known to be interested in purchasing the Assets; (viii) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Assets and (ix) all parties that have requested to receive notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, under the circumstances, no other or further notice is required.

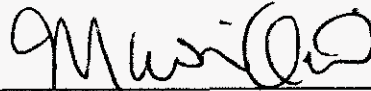
CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the proposed Bidding Procedures Order, substantially in the form attached hereto as Exhibit A, and such other further relief as the Court deems just and proper.

Dated: October 27, 2011
Wilmington, Delaware

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

By:



Norman L. Pernick (No. 2290)
Marion M. Quirk (No. 4136)
Sanjay Bhatnagar (No. 4829)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

Proposed Counsel for the Debtor and
Debtor in Possession

EXHIBIT A

Bidding Procedures Order

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

In re:	:	Chapter 11
	:	
OPEN RANGE COMMUNICATIONS INC.,	:	Case No. 11-13188 (KJC)
	:	
Debtor. ¹	:	Related to Docket No. _____
	:	

ORDER: (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH SALE OF ANY AND ALL OF THE DEBTOR'S ASSETS; (II) APPROVING PURCHASER PROTECTIONS; (III) SCHEDULING AUCTION AND EXPEDITED HEARING TO CONSIDER SALE OF ANY AND ALL OF THE DEBTOR'S ASSETS; (IV) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (V) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")² of the above-captioned debtor and debtor in possession (the "Debtor"), pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of orders approving, among other things, the sale of any and all of the Debtor's assets and related bidding and auction procedures; and the Court having determined that the relief provided herein is in the best interest of the Debtor, its estate, its creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the record of this case; and good and sufficient cause appearing therefore; it is hereby:

¹ The last four digits of the Debtor's federal tax identification number are 0894.

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including without limitation, (i) approval of the Bidding Procedures, (ii) approval of the Purchaser Protections and; (iii) approval and authorization to serve the Notice of Auction and Expedited Sale Hearing.

C. The Break-Up Fee and Expense Reimbursement described herein as well as in the Term Sheet are (i) an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtor's estate by the Purchaser, (iii) reasonable and appropriate, in light of the size and nature of the proposed sale transaction and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Purchaser, and (iv) necessary to induce the Purchaser to continue to pursue the sale transaction and to continue to be bound by the Term Sheet.

D. The Purchaser has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible price given the circumstances for the Assets will be received. Accordingly, the Bidding Procedures are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

E. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets.

F. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the Asset Sale, the Auction and the Sale Hearing.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is approved, subject to the Court's final approval of the Sale finally proposed as the highest or best offer.
2. All Objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Break-Up Fee and Expense Reimbursement, as set forth in the Term Sheet and this Order, is hereby approved. If the Purchaser becomes entitled to receive the Break-Up Fee and Expense Reimbursement in accordance with the Term Sheet and this Order, then the Purchaser shall be, and hereby is, granted an allowed administrative claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code in the Debtor's chapter 11 case in an amount equal to the Break-Up Fee and Expense Reimbursement.
4. The Debtor is authorized and directed to pay such Break-Up Fee and Expense Reimbursement in accordance with the terms and conditions of the Term Sheet and this Order.
5. No person or entity, other than the Stalking Horse, shall be entitled to any expense reimbursement, break-up fees or other similar fee or payment.
6. The Bidding Procedures, in substantially the form attached hereto as Exhibit 1, are incorporated herein and approved, and shall apply with respect to the Sale of the Assets. The Debtor is authorized to take all actions necessary or appropriate to implement the Bidding Procedures.
7. As further described in the Bidding Procedures, the deadline for submitting bids for the Assets (the "Bid Deadline") is **November 11, 2011 at 12:00 p.m.**

(prevailing Eastern Time). No bid shall be deemed to be a Qualified Bid (as defined in the Bidding Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures.

8. The Debtor may sell the Assets by conducting an Auction in accordance with the Bidding Procedures. If one or more Qualified Bids are timely received by the Debtor in accordance with the Bidding Procedures, the Auction shall take place on **November 14, 2011 at 9:00 a.m. (prevailing Eastern Time)** at the office of Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, DE 1901. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held and the Debtor may promptly seek Bankruptcy Court approval of the Asset Purchase Agreement.

9. The Sale Hearing shall be held before this Court on **November 15, 2011 at 2:00 p.m. (prevailing Eastern Time)**.

10. Within one (1) business day of the entry of this Order, the Debtor will cause the notice, substantially in the form attached hereto as Exhibit 2 (the "Notice of Auction and Sale Hearing") to be sent by e-mail, overnight mail, or facsimile, to the following parties: (i) the Office of the United States Trustee; (ii) counsel to the RUS; (iii) counsel to the Federal Communications Commission; (iv) counsel to OEP; (iv) counsel for the Committee; (v) all taxing authorities having jurisdiction over any of the Assets or a reasonably known interest in the relief requested by the Motion, (vi) all persons known to be interested in purchasing the Assets; (vii) all entities known to have asserted any lien, claim, interest or encumbrance in or upon any of the Assets; and (viii) all parties that have requested to receive notice pursuant to Bankruptcy Rule 2002.

11. Objections, if any, to the Sale of the Assets must be filed on or before **November ____, 2011 at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon: (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: David Buchbinder; (ii) counsel to the Debtor, Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Marion M. Quirk; (iii) counsel to the DIP Lender, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: D.J. Baker; and (iv) counsel to the Official Committee of Unsecured Creditors, Polsinelli Shughart, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801; Attn: Christopher A. Ward. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

12. The Notice of Auction and Expedited Sale Hearing to be issued in connection with the proposed sale of the Assets, substantially in the forms annexed hereto as Exhibit 2 is approved.

13. Subject to the provisions of the Term Sheet, the Bidding Procedures and this Bidding Procedures Order, the Debtor shall have the right as it may reasonably determine to be in the best interests of its estate to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) remove some of the Assets from the Auction; (f) waive terms and conditions

set forth herein with respect to all potential bidders; (g) impose additional terms and conditions with respect to all potential bidders and the Purchaser; (h) extend the deadlines set forth herein; (i) adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; and (j) modify the Bidding Procedures as the Debtor may determine to be in the best interest of its estate or to withdraw the Sale Motion at any time with or without prejudice.

14. The stay provided for in Bankruptcy Rules 6004(h) is waived and this Order shall be effective immediately upon its entry.

15. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: November ____, 2011
Wilmington, Delaware

The Honorable Kevin J. Carey
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

OPEN RANGE COMMUNICATIONS INC.

Bid Procedures

Set forth below are the bid procedures (the "Bid Procedures") to be employed with respect to the proposed sale (the "Proposed Sale") of substantially all of the assets of Open Range Communications Inc. (the "Debtor") to totheHome.com, LLC (the "Proposed Purchaser") pursuant to a certain asset purchase agreement (the "Agreement") or to one or more alternative bidders at the auction contemplated hereby. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

Assets For Sale

The Debtor is offering for sale any and all of their assets other than the Excluded Surplus Assets (the "Assets").

The Bidding Process

The Debtor and its advisors shall (i) determine whether any person is a Qualified Bidder (defined below), (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase all or any part of the Assets (collectively, the "Bidding Process"). Any person that wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Qualified Bidder. The Debtor shall have the right, with the prior written consent of the Proposed Purchaser, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process and that are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order.

Participation Requirements

Any person that wishes to participate in the Bidding Process (a "Potential Bidder") must become a "Qualified Bidder." As a prerequisite to becoming a Qualified Bidder (and thus, among other things, prior to being able to conduct comprehensive due diligence), a Potential Bidder must deliver (unless previously delivered) to the Debtor:

- (i) An executed confidentiality agreement in form and substance acceptable to the Debtor;
- (ii) Current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtor) of the Potential Bidder or of those entities that will guarantee the obligations of the Potential Bidder; and
- (iii) A preliminary (non-binding) proposal regarding the acquisition of all or any part of the Assets and the consideration to be paid (a "Preliminary Proposal").

Potential Bidders can receive initial access to diligence information without submission of a Preliminary Proposal.

A Qualified Bidder is a Potential Bidder that delivers the documents described in subparagraphs (i)-(iii), and that the Debtor determines is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing, experience and other considerations deemed relevant by the Debtor), to submit a bona fide offer and to be able to consummate a sale if selected as a Successful Bidder (defined below). No later than two business days after a Potential Bidder delivers all of the materials required by subparagraphs (i)-(iii) above, the Debtor shall determine, and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Debtor is not obligated to furnish to all Qualified Bidders any information that may be given to any one or more Qualified Bidders.

Due Diligence

The Debtor may afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). Neither the Debtor nor any of its respective representatives are obligated to furnish any information to any person other than a Qualified Bidder. The Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with the sale of the Assets.

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid to (i) Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Norman L. Pernick or Marion M. Quirk, counsel to the Debtor; (ii) Latham & Watkins, 885 Third Avenue, New York, NY 10022-4834, Attn: D.J. Baker, counsel to the DIP Lender; (iii) U.S. Department of Justice, Civil Division, 1100 L Street, NW, Room 10032, Washington, DC 20005, Attn: Lloyd H. Randolph, counsel to RUS; and (iv) Polsinelli Shughart, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801, Attn: Christopher A. Ward, counsel to the Committee, on November 11, 2011 at Noon (the "Bid Deadline").

Bid Requirements

All bids must include (unless such requirement is waived by the Debtor) the following documents (the "Required Bid Documents")

- A letter stating that the bidder's offer is irrevocable until the earlier of (i) 2 business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court, and (ii) 30 days after entry of an order approving the sale.
- An executed agreement to purchase any of the Assets or an asset purchase agreement to acquire substantially all of the Assets (marked to reflect the changes

to the Agreement with the Proposed Purchaser) which agreement shall include a commitment to close no later than 3 days after entry of a sale order.

- A good faith deposit (the “Good Faith Deposit”) in the form of a certified check or cash payable to the order of the Debtor in an amount that is either (a) \$350,000 to cover funding for the Debtor’s continued customer serving operations if the bid is for substantially all of the Assets or (b) such lesser amount as is agreed by the Debtor to cover the cost of maintaining the particular Assets covering the bid.
- Written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor with appropriate contact information for such financing sources.

A bid received from a Qualified Bidder that includes all of the Required Bid Documents, meets all of the above requirements and with respect to asset purchase agreement for substantially all of the Assets, offers consideration of a value that is \$250,000 in excess of the consideration proposed by the Proposed Purchaser, is a “Qualified Bid.”

Evaluation of Qualified Bids

The Debtor reserves the right to determine the value of any Qualified Bid (including the Agreement with the Proposed Purchaser) and which Qualified Bid constitutes the highest or otherwise best offer.

The Debtor will provide copies of all Qualified Bids to counsel for the DIP Lender, the RUS and the Committee.

Proposed Purchaser Qualified Bidder/ Commitment Qualified Bid

The Proposed Purchaser is a Qualified Bidder, and the Agreement with the Proposed Purchaser is a Qualified Bid. The Proposed Purchaser’s offer to purchase the Assets is irrevocable until the earliest of (i) 2 business days after the Assets have been sold pursuant to the closing of a sale approved by the Bankruptcy Court and (ii) 30 days after entry of a sale order.

Credit Bidding

The Debtor will accept credit bids consistent with Section 363(k) of the Bankruptcy Code.

“As Is, Where Is”

The sale of the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate except to the extent set forth in the Agreement with the Proposed Purchaser or the purchase agreement of another Successful Bidder. The Proposed Purchaser and each Qualified Bidder shall be deemed

to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, (i) as to the Proposed Purchaser, the terms of the sale of the Assets shall be set forth in the Agreement with the Proposed Purchaser, or (ii) as to another Successful Bidder, the terms of the sale of the Assets shall be set forth in the applicable agreement.

Free Of Any And All Interests

Except as otherwise provided in the Agreement with the Proposed Purchaser or another Successful Bidder's purchase agreement, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "Interests") in accordance with section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets.

Auction

If the Debtor receives at least one Qualified Bid (in addition to the Agreement with the Proposed Purchaser), it shall conduct an auction (the "Auction") with respect to the Assets. The Auction shall commence at 9:00 a.m. (Eastern) on November 14, 2011 at the offices of Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Ave., Suite 1410, Wilmington, Delaware 19801. The Debtor will file a notice with the Court setting forth any material changes to the date or location of the Auction.

Only the Proposed Purchaser and a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the highest Qualified Bid and subsequently continue in minimum increments of at least \$200,000. Other than as otherwise set forth herein, the Debtor, may conduct the Auction in the manner they determine will result in the highest or otherwise best offer(s) for the Assets.

Upon conclusion of the Auction, the Debtor, in consultation with (a) its advisors and (b) representatives of the DIP Lender, the Committee and the RUS shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Proposed Sale; and (ii) identify the highest or otherwise best offer(s) for the Assets (the "Successful Bid(s)" and the entity or entities submitting such Successful Bid, the "Successful Bidder(s)"), which highest or otherwise best offer(s) will provide the greatest amount of net value to the Debtor. If the Proposed Purchaser's final bid is deemed to be the highest or otherwise best, the Proposed Purchaser will be the "Successful Bidder," and such bid, the "Successful Bid".

Acceptance of Qualified Bids

The Debtor shall sell the Assets to the Successful Bidder(s) upon the approval of the Successful Bid(s) by the Bankruptcy Court after a sale hearing. The Debtor's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the bid. The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at a sale hearing. All interested parties reserve their right to object to the Debtor's selection of the Successful Bidder(s) (including the assignment of any of such objector's Assumed Executory Contract thereto).

Return of Good Faith Deposit

Good Faith Deposits of the Successful Bidder(s) shall be applied to the purchase price of such transaction(s) at closing. Good Faith Deposits of all other Qualified Bidders shall be held in an interest-bearing escrow account until 5 days after closing of the transactions contemplated by the Successful Bid(s), and thereafter returned to the respective bidders. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder.

Modifications

The Debtor, may (a) determine, which Qualified Bid, if any, is the highest or otherwise best; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtor, its estate and creditors. At or before any sale hearing, the Debtor may impose such other terms and conditions as the Debtor may determine to be in the best interests of the Debtor's estate, its creditors and other parties in interest.

EXHIBIT 2

Notice of Auction and Expedited Sale Hearing

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

In re:	Chapter 11
OPEN RANGE COMMUNICATIONS INC.,	Case No. 11-13188 (KJC)
Debtor. ¹	

NOTICE OF AUCTION AND EXPEDITED SALE HEARING

PLEASE TAKE NOTICE that on October 6, 2011, Open Range Communications Inc. (the “Debtor”) filed a Motion for Orders: (I)(A) Approving Bidding and Auction Procedures in Connection with Sale of Any and All of the Debtor’s Assets; (B) Approving Purchaser Protections, (C) Scheduling an Auction and Expedited Hearing to Consider Sale of Any and All Debtor’s Assets; and (D) Approving Form and Manner of Notice Thereof; and (II)(A) Authorizing and Approving Sale of Any and All Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; and (B) Granting Related Relief [Docket No. ____] (the “Sale Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). Pursuant to the Sale Motion, the Debtor seeks to sell the Assets free and clear of all liens, claims, encumbrances and other interests pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”).

PLEASE TAKE FURTHER NOTICE that on November ____, 2011, the Bankruptcy Court entered an order [Docket No. _] (the “Bidding Procedures Order”) approving, among other things, bidding procedures, in the form annexed hereto as Exhibit A (the “Bidding Procedures”), in connection with the sale of any and all of the Debtor’s assets.

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Bidding Procedures Order, an auction (the “Auction”) with respect to the sale of any and all of the Debtor’s Assets is scheduled to occur on **November 14, 2011 at 9:00 a.m. (prevailing Eastern Time)** at the office of counsel to the Debtor, Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that only those parties that have submitted Qualified Bids (as defined in the Bidding Procedures) by no later than **November 11, 2011 at 12:00 noon (prevailing Eastern Time)** (the “Bid Deadline”) may participate in the Auction. Any party that wishes to take part in this process and submit a bid for the Assets must submit their competing bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

¹ The last four digits of the Debtor’s federal tax identification number are 0894.

² Unless otherwise noted herein, all capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court also scheduled a hearing to consider approval of the Sale of the Assets to the Successful Bidder or, alternatively, to the Back-up Bidder (as such terms are defined in the Bidding Procedures), or to approve the Asset Purchase Agreement if no Auction is held, before the Honorable Kevin J. Carey in the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801 on **November 15, 2011, at 2:00 p.m. (prevailing Eastern Time)** (the "Sale Hearing"). The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any objections, if any, to the Sale of the Assets must be filed on or before **November __, 2011 at 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon: (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: David Buchbinder; (ii) counsel to the Debtor, Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Marion M. Quirk; (iii) counsel to the DIP Lender, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: D.J. Baker, and (iv) counsel to the Official Committee of Unsecured Creditors, Polsinelli Shughart, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801; Attn: Christopher A. Ward. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that this Notice of Auction and Expedited Sale Hearing is subject to the terms and conditions of the Bidding Procedures Order which shall control in the event of any conflict. Additionally, copies of the Sale Motion, the Bidding Procedures and/or the Bidding Procedures Order may be obtained free of charge (i) by request to the Debtor's counsel (a) via e-mail at pratkowiak@coleschotz.com; (b) via mail at 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; (c) via telephone at (302) 652-3131; and (d) via facsimile at (302) 652-3117 or (ii) by request to the Debtor's claims and noticing agent (a) via e-mail at logan@openrange.us; (b) via telephone at (973) 509-3190; and (c) via facsimile at (973) 509-3191. In addition, copies of the Motion, Bidding Procedures, and/or the Bidding Procedures Order may be viewed and downloaded, free of charge, at the following website: www.loganandco.com.

Dated: November ____, 2011
Wilmington, Delaware

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**

By: _____

Norman L. Pernick (No. 2290)
Marion M. Quirk (No. 4136)
Sanjay Bhatnagar (No. 4829)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

Counsel for the Debtor and
Debtor in Possession

EXHIBIT B

Term Sheet

“STALKING HORSE” TERM SHEET

Buyer:	totheHome.com, LLC (“Buyer”).
Seller:	Open Range Communications Inc. (“Seller”)
Transaction:	Subject to the terms set forth herein, Buyer and Seller propose to enter into an asset purchase agreement (the “Agreement”) containing substantially the terms set forth herein and otherwise containing terms as shall be mutually agreed by the parties. The Agreement and the transactions contemplated thereby (the “Transaction”) shall serve as the “Stalking Horse Bid” in the bankruptcy case of the Seller, Case No. 11-13188 (KJC) (the “Bankruptcy Case”) pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).
Acquired Permanent Assets:	All or substantially all of the assets of Seller now owned or hereafter acquired used in or necessary for the conduct of Seller’s business of providing high speed wireless internet and digital phone services to hundreds of un-served and underserved communities across the United States (the “Business”), including, without limitation, (a) all equipment listed in the data room established by the Seller, including all computer hardware, software and networking equipment, all service vehicles, field tools and RF testing tools, and cabling, (b) the Seller’s entire customer base, (c) the Seller’s name (Open Range Communication Inc.) and branding assets and (d) all intellectual property, including patents, trademarks, and trade secrets (collectively, the “Acquired Permanent Assets”). These assets do not include assets set-out under Transition Period Assets or Excluded Surplus Assets.
Transition Period Assets:	All assets identified as being required for a transition period of up to nine months post Transaction Close. These assets will be retrieved and returned by the Buyer to a location of the Seller’s choice within nine months of Transaction Close if the Buyer does not chose to purchase the assets under the First Right of Refusal. This will specifically include all WiMAX equipment that is currently deployed on over 400 towers around the network, current customer premise equipment and any other equipment specifically identified as required for only the transition period. Best attempts will be made to return this equipment in a timely fashion which preserves asset value.
Excluded Surplus Assets:	All assets of Seller other than the Acquired Assets and Transition Period Assets (“Excluded Surplus Assets”). These assets will be retained by the Seller. This includes all warehoused WiMax


	transmission and CPE equipment, radio equipment spares not currently deployed, excess personal computer equipment, and other surplus assets not required by the Buyer to continue operations. Excluded surplus assets includes any and all avoidance actions of the debtor, and any and all claims against third parties, including without limitation, Alvarion.
First Right of Refusal:	The Buyer will have the First Right of Refusal to purchase Transition Period Assets in the nine months subsequent to Transaction Close at a price of 10% of the historical undepreciated cost basis for these assets.
Assumed Liabilities:	Certain specified liabilities of Seller as may be specifically designated by Buyer ("Assumed Liabilities"). Buyer shall assume no liabilities or obligations of Seller, whether known or unknown, fixed or contingent, other than the specified Assumed Liabilities.
Purchase Price:	\$2,000,000 in cash (the "Purchase Price")
Operations Funding:	From November 8, 2011 until execution of the Agreements contemplated in this term sheet, Buyer will pay to Seller \$350,000 maximum per week (pro rated daily for partial weeks) for the continued operation of the Buyer's customer serving operations. This charge will not exceed \$350,000 per week (averaged over the weeks between November 8, 2011 and closing, prorated for days elapsed) and amounts will be trued up to actual incremental charges incurred by the Seller for continued customer serving operations ("Operations Funding"). A \$350,000 deposit is to be paid by the Buyer to the Seller within one day of Bankruptcy Court approval of the Bidding Procedures and Expense Reimbursement (the "Bidding Procedures Order"). This deposit will offset actual amounts incurred by the Buyer for Operations Funding. Amounts in excess of the \$350,000 deposit will be due upon execution of the Asset Purchase Agreement (estimated as of that date and trued up within 14 days thereafter). In the event that Seller accepts a bid, other than that of Buyer, as the highest and best offer for the acquired permanent assets and consummates such transaction (an "Alternative Transaction"), all Operations Funding will be refunded to the Buyer.

<p>Seller Assistance with Transition Planning:</p>	<p>From the date of the Bidding Procedures Order, the Seller will assist the Buyer with planning for the transition upon the closing of a sale to the Buyer (the "Closing"). This will include reasonable efforts (without requiring out of pocket expenditures by the Seller) to provide acceptable notifications (to the Buyer) to customers of the intent to continue services and thereby aid in preserving the customer base. This will also include assistance planning for the assignment, rejection or renegotiation of commercial agreements between the Seller and vendors, to enable the Buyer to address vendor contracts as soon as practical upon the Closing, and other reasonable business planning and continuation efforts to assist with a efficient transition of the assets and operations.</p>
<p>Sale Approval Timing and Related Conditions:</p>	<p>(i) Within two (2) days following the execution of this Term Sheet, Seller shall file in the Bankruptcy Case a motion (the "Sale Motion") seeking approval of the Transaction, in form and substance reasonably satisfactory to Buyer, for approval by the Bankruptcy Court. The Sale Motion shall include a request for entry of the Bidding Procedures Order;</p> <p>(ii) The parties shall execute the Agreement and all related agreements and documents (collectively, the "Transaction Documents") within five (5) days of the date of the filing of the Sale Motion;</p> <p>(iii) the Bidding Procedures Order shall be entered by the Bankruptcy Court in form and substance reasonably satisfactory to Buyer, within eight (8) days following the execution of this Term Sheet;</p> <p>(iv) Consummation of the Transaction is subject to the determination by Seller that is the highest or otherwise best offer for the Acquired Assets and Assumed Liabilities. In connection with this determination, Seller will conduct an auction (the "Auction") of its assets in accordance with section 363 of the Bankruptcy Code and the Bidding Procedures by no later than November 14, 2011; and</p> <p>(v) By no later than November 17, 2011, Seller shall have obtained an entry of an order of the Bankruptcy Court (the "Sale Order") (x) approving the Transaction including the sale of the Acquired Permanent Assets to Buyer free and clear of all liens, claims and interests pursuant to section 363(b) and 363(f) of the Bankruptcy Code and (y) containing, among other things, findings of fact and rulings that Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy</p>

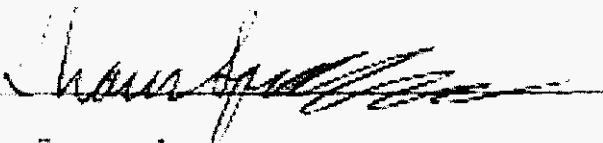
	Code.
Bidding Procedures:	Seller shall obtain an order (the "Bidding Procedures Order") from the Bankruptcy Court in the form and substance reasonably satisfactory to Buyer approving the Expense Reimbursement provision set forth below, as well as the bidding procedures to be mutually agreed by the parties (the "Bidding Procedures").
Break-Up Fee and Expense Reimbursement:	<p>In consideration of Buyer's entering into the Agreement and in recognition of Buyer's work in (i) establishing a bid standard or minimum for other bidders and (ii) for serving, by its name and expressed interest, as a catalyst for other bidders, as an reimbursement for Buyer's expenses incurred in connection with the Transaction, Seller shall pay to Buyer (A) a break-up fee in the amount of 4% of the Purchase Price (the "Break-Up Fee") and (B) an amount (in no event to exceed \$170,000) equal to Buyer's actual reasonable and documented expenses incurred in connection with the Agreement and the transactions contemplated thereby (the "Expense Reimbursement"), if: (x) Seller accepts a bid, for the Acquired Permanent Assets, other than that of Buyer, as the highest and best offer and consummates such transaction (an "Alternative Transaction"), or (y) Buyer terminates the Agreement in the event of Seller's failure to perform in any material respect any obligation required to be performed by it under the Agreement.</p> <p>The Break-Up Fee and Expense Reimbursement shall be paid as an administrative priority of Seller under section 503(b)(1) of the Bankruptcy Code upon the earlier to occur of the consummation of any Alternative Transaction, or the conversion of the Bankruptcy Case to a case under chapter 7 of the U.S. Bankruptcy Code or within two business days of Buyer's termination of the Agreement as described in clause (y) of the immediately preceding sentence.</p>
Due Diligence:	Buyer shall be permitted to conduct a due diligence investigation of the prospects, business, assets, contracts, rights, liabilities and obligations of Seller, including, without limitation, financial, marketing, employee, legal, regulatory and environmental matters through the date Qualified Bids are due to be submitted to Seller. To that end, Seller shall provide to Buyer and its representatives complete access to Seller's facilities, books and records and shall cause its representatives to cooperate fully with Buyer and Buyer's representatives in connection with Buyer's due diligence.
Transfer Taxes:	All transfer taxes payable as a result of the Transaction shall be

	paid by Buyer.
Employees:	Buyer may offer employment to any employee of Seller who is specifically identified by Buyer pursuant to the terms of the Agreement. Seller shall give Buyer reasonable access to all employees and, subject to applicable law, employment records for purposes of enabling Buyer to determine its staffing needs following the closing. In the event that the Buyer elects to hire an employee, Buyer shall assume employee liabilities for severance at Seller's current policy level (two weeks) and shall assume any liability for unused vacation.
Expenses:	Except as provided above, each party will bear its own expenses in connection with the Transaction.
Definitive Agreement:	Consummation of the Transaction shall be subject to the negotiation, execution and delivery of the definitive Transaction Documents in form and substance mutually satisfactory to the parties and which reflect the provisions set forth on this term sheet. The parties agree to negotiate in good faith the terms of the Transaction Documents and use commercially reasonable efforts to enter into such Transaction Documents as promptly as practicable.
Termination:	The Agreement may be terminated and the Transaction abandoned by: <ul style="list-style-type: none"> (i) mutual consent of the parties; (ii) Seller, if Seller accepts an Alternative Transaction (as defined above) in accordance with the terms of the Agreement; (iii) either party, if a governmental authority issues a final ruling or order prohibiting the Transaction; (iv) Seller, if there is an Event of Default under the DIP Financing; and (v) such other conditions as may be agreed by the parties.
Governing Law:	This Term Sheet shall be governed and construed under the laws of the State of Delaware, and each of the parties submits to the exclusive jurisdiction of the Bankruptcy Court for purposes of all legal proceedings arising out of or relating to this Term Sheet.

OPEN RANGE COMMUNICATIONS, INC.

By: 
CHRIS LEWAND
Title: ASSISTANT CEO

TO THE HOME.COM, LLC

By: 
Shawn Sprengeler
Title: President/CEO

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