

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
FORT WAYNE TELSAT, INC. ) CASE NO. 05-12177  
 )  
 )  
Debtor )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on September 25, 2007.

On September 20, 2007, the court overruled JAS Partners' and James Simon's objection to the trustee's application to sell property at auction. In particular, the trustee sought to sell FCC licenses in which the estate claims some kind of interest, free and clear. The objection was not so much to a sale of the licenses in question, (indeed, both Simon and JAS had previously consented to their sale through the bankruptcy proceeding) rather it went to the question of who would hold the sale proceeds pending the court's determination as to their appropriate distribution. The court felt the trustee was the most appropriate party to hold those proceeds and so overruled the objection. Before the court could then act upon the trustee's underlying motion to sell, Simon and JAS filed a motion to alter or amend the court's order. It is that motion which is presently before the court.

Once again the central issue presented by the motion is not the sale of the licenses through the bankruptcy proceeding, because both Simon and JAS have already consented to such a sale, as well as acknowledging the bankruptcy court's authority to determine the parties' various claims to the licenses and their proceeds, all of which have been preserved. Instead, the motion focuses upon who will hold the sale proceeds pending the court's determination of those claims. Simon and JAS believe that they should do so, whereas the trustee's motion contemplates that the trustee will be the

stakeholder. So the question before the court is, as between the trustee and the objectors, which of them is the most appropriate party to take custody of the disputed funds pending the court's resolution of the controversy?

In the court's opinion, as between the trustee and Simon/JAS, the trustee is clearly the more appropriate custodian. The bankruptcy estate claims some type of interest in the licenses in question. Although the nature and the existence of that interest is disputed – and could ultimately be determined adversely to the estate – it is, nonetheless, enough to permit a sale through the bankruptcy proceeding, especially in view of Simon's and JAS' consent. See, 11 U.S.C. § 363(f)(2), (4). It is also the trustee upon whom the Bankruptcy Code places the duty to collect and reduce to money property of the estate. See, 11 U.S.C. § 704. Finally, the trustee is bonded, Simon and JAS are not. Their motion to alter or amend is therefore DENIED.<sup>1</sup>

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court

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<sup>1</sup>If, in order to maximize the sale price, Simon and JAS believe that it is important for them to sign or otherwise join in any documents concerning the trustee's sale, the court has no doubt that the trustee would welcome their doing so. Nonetheless, following the sale, the trustee should hold the proceeds.