

Dish Network Wins Blockbuster With \$320M Bid

By **Eric Hornbeck**

Law360, New York (April 5, 2011) -- Dish Network Corp. beat out five competitors with a \$320 million offer to buy bankrupt Blockbuster Inc. in a New York auction for the movie rental chain that lasted into early Wednesday morning.

The field of bidders in the hotly contested auction was narrowed from five to three — a group of Blockbuster Inc. lenders that submitted the initial stalking horse bid, Dish, and a group led by investor Carl Icahn — as the bidding dragged on, moving from a public courtroom in the U.S. Bankruptcy Court for the Southern District of New York to behind closed doors in the nearby law offices of Icahn's attorneys at Cadwalader Wickersham & Taft LLP in downtown Manhattan.

The bidders adjusted their bids throughout the day not just by increasing the total so-called headline number offer, but also by making adjustments to movie studio payments and payment of unsecured Blockbuster lenders that hold so-called roll-up notes, among other changes.

Before the formal auction was scheduled to open Monday morning, five groups submitted initial bids, including Dish; the group led by Icahn Video Acquisition LLC and including Great American Group Inc., Tiger Capital Group LLC, Hudson Capital Partners LLC and SB Capital Group LLC; South Korea's SK Telecom Co. Ltd.; liquidators Gordon Brothers Group and Hilco Merchant Resources; and the stalking horse bidders, a group of lenders called Cobalt Video Holdco LLC, which includes Monarch Alternative Capital LP, Owl Creek Asset Management LP, Stonehill Capital Management LLC and Varde Partners Inc.

But the complicated bidding process grew occasionally heated among the lawyers packed into a courtroom that Judge Burton R. Lifland, who is overseeing Blockbuster's Chapter 11 proceedings, made available for the auction.

Mark Shinderman of Milbank Tweed Hadley & McCloy LLP, which represents the Cobalt group, complained that Blockbuster hadn't handed over copies of all the bids so that everyone could compare "apples to apples," a move he said was "very troubling."

"The auction needs to be more transparent," he said.

And earlier in the day Tuesday, Blockbuster rejected a \$284.5 million bid by SK Telecom Co. Ltd., much to the South Korean company's chagrin.

Blockbuster attorney Stephen Karotkin of Weil Gotshal & Manges indicated that, although SK Telecom's offer gave movie studios \$50 million in additional, incremental value through renegotiated distribution deals, it was still inferior to an earlier offer by the stalking-horse bidders. Karotkin refused to elaborate on how the debtor reached that conclusion.

SK Telecom attorney David Feldman of Gibson Dunn & Crutcher LLP said the South Korean company intended to keep the ailing movie rental chain alive, unlike other bidders that have vowed to liquidate it.

"We believe there's significant incremental value [to Blockbuster's bankruptcy estate] in the additional assumption of liabilities in our bid over and above the amounts proposed in the other bids," Feldman said.

The auction's \$290 million threshold price, a proposal that included a \$5 million breakup fee, was set by the stalking horse bidders before the auction opened.

The five groups of bidders submitted qualified bids ahead of the auction's start Monday morning, with Dish emerging as the initial high bidder at \$284 million, followed by Icahn's group at \$280.9 million. While the initial bids had lower headline numbers than Cobalt's initial stalking horse bid, they reflected purchase price adjustments in Cobalt's agreement that track through the other bids, including changes in cash, expenses and inventory and separate payments to studios.

Blockbuster evaluated the various initial bids throughout the day Monday, with negotiations dragging on into the early-morning hours Tuesday before formal bidding began at 10:30 a.m. Tuesday.

A sale hearing is scheduled for April 7.

Weil Gotshal & Manges LLP represents Blockbuster.

The case is In re: Blockbuster Inc., case number 1:10-bk-14997, in the U.S. Bankruptcy Court for the Southern District of New York.