

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

RADIOSHACK CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 15-10197 (BLS)

(Jointly Administered)

Related Docket Nos.: 1668, 1768, 1822, 1831, 1851,
1852, 1867, 1871

**DEBTORS' CONSOLIDATED REPLY IN SUPPORT OF IP BIDDING PROCEDURES
AND RESPONSE TO REQUEST FOR CASE MANAGEMENT ORDER**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby (a) reply to the objections to the Debtors' Combined Motion For Entry of Orders: (I) Establishing Bidding and Sale Procedures; (II) Approving the Sale of Certain IP and Related Assets; and (III) Granting Related Relief [D.I. 1768] (the "Bidding Procedures Motion")² filed by the State of Texas [D.I. 1822], the U.S. Trustee [D.I. 1867] and the Ad Hoc Committee of U.S. Dealers and Franchisees (the "Ad Hoc Committee") [D.I. 1871] (collectively, the "Objections"), and (b) respond to the State of Texas' motion to establish a case management order [D.I. 1668] (the "Case Management Motion").³

¹ The Debtors are the following eighteen entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): RadioShack Corporation (7710); Atlantic Retail Ventures, Inc. (6816); Ignition L.P. (3231); ITC Services, Inc. (1930); Merchandising Support Services, Inc. (4887); RadioShack Customer Service LLC (8866); RadioShack Global Sourcing Corporation (0233); RadioShack Global Sourcing Limited Partnership (8723); RadioShack Global Sourcing, Inc. (3960); RS Ig Holdings Incorporated (8924); RSIgnite, LLC (0543); SCK, Inc. (9220); Tandy Finance Corporation (5470); Tandy Holdings, Inc. (1789); Tandy International Corporation (9940); TE Electronics LP (9965); Trade and Save LLC (3850); and TRS Quality, Inc. (5417). The address of each of the Debtors is 300 RadioShack Circle, Fort Worth, Texas 76102.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Motion.

³ While the Case Management Motion is not technically an objection to the Bidding Procedures Motion, it is related to the objection filed by the State of Texas.

Objections Related to Customer Data

1. Each of the Objections and the Case Management Motion raise issues regarding the potential sale of the Debtors' customer data. The objection filed by the State of Texas is joined by the States of Oregon [D.I. 1831], Pennsylvania [D.I. 1851] and Tennessee [D.I. 1852]. Responses to the substantive arguments presented in the Objections are set forth in the chart in paragraph 4, below. However, the State of Texas has also raised process concerns regarding the Debtors' alleged lack of responsiveness and the State of Texas' purported inability to access needed information, which the Debtors believe merit a separate response.

2. Specifically, the State of Texas has alleged that "the Debtors have failed to address any of the State's concerns or to reach out to the states" and "the Debtors appear to have adopted the strategy of ignoring over 70% of the state attorneys' general in the United States in hopes that the matter will somehow go away and States will not continue to advocate for consumers' rights." (Texas Objection ¶¶ 2, 5) The Debtors submit that the record reflects that these statements are not true.

3. As an initial matter, counsel for the Debtors have had numerous conversations with the State of Texas throughout these cases. In addition, the Debtors have produced, on an expedited basis, documents requested by the State of Texas related to the Debtors' privacy policies and customer data. Further, the Debtors have made two witnesses available for deposition by the State of Texas, again on an expedited basis. The State of Texas has also communicated with the Debtors' General Counsel and has participated in joint calls with the Debtors' counsel and the Consumer Privacy Ombudsman. More recently, counsel for the Debtors have had conversations with the State of Texas regarding the Case Management Motion and separate correspondence from the State of Texas requesting that the Debtors agree to

mediate any dispute with the State of Texas. The Debtors have in fact consented to mediation following the conclusion of the auction and have also reached agreements with respect to the relief sought in the Case Management Motion. In short, allegations that the Debtors have failed to reach out or have otherwise ignored the State of Texas are incorrect.

4. With regard to the specific objections to the sale of customer data, the Debtors have summarized the objections and noted their responses in the chart below:

Objection	Debtors' Response
The Debtors must specify what data they intend to market with greater specificity (Texas Objection ¶ 7, Case Management Motion ¶ 6.a, 6.b, U.S. Trustee Objection ¶ 12)	The Debtors have provided additional detail on the types of data collected, as well as the data that is being marketed for sale on <u>Exhibit A</u> to this reply, and the Debtors submit that the provision of this additional information should resolve the objection.
The Bidding Procedures should require bidders to separately allocate a purchase price for customer data and should not permit bidders to condition bids on the receipt of customer data (Texas Objection ¶ 8)	The Debtors believe that requiring bidders to essentially agree that customer data must be purchased separately will potentially chill the bid process because bidders may only be interested in purchasing a package of assets at a particular price based on the inclusion of the customer data.
The Debtors have failed to provide a copy of the proposed APA (Texas Objection ¶ 9)	The Debtors provided a copy of the requested APA to the State of Texas prior to the filing of this reply.
The Court should require the Consumer Privacy Ombudsman to file her report within a specified timeframe (Case Management Motion ¶ 6.c)	The Debtors, the State of Texas and the Consumer Privacy Ombudsman have resolved this issue, as the Consumer Privacy Ombudsman has agreed to file her report before 9:00 a.m. on May 18, 2015.
The Court should require sufficient time to allow parties to conduct discovery on any buyer of customer data (Case Management Motion ¶¶ 6.d, 6.e)	This objection has been resolved as the Debtors have agreed to move the sale hearing from May 15 to May 20 to allow additional time for parties to conduct relevant discovery following the conclusion of the auction.
The Court should determine time limits for parties in connection with the Sale Hearing (Case Management Motion ¶ 7.a)	The Debtors believe this request is premature and should be addressed, if necessary, at the sale hearing when the extent of any remaining objections and the specific issues raised by those objections will be known. In that regard, the Debtors have agreed to a mediation of any outstanding State of Texas objections on May 14, 2015.
The Court should take judicial notice of	The Debtors have no objection to this request that the Court

state statutes alleged to prohibit the sale of customer data (Case Management Motion ¶ 7.b)	take judicial notice of applicable state statutes.
The Court should take testimony regarding damages associated with any sale of customer data (Case Management Motion ¶ 7.c)	The Debtors do not fully understand this request. Section 363(b)(1) of the Bankruptcy Code provides that the Court may only approve a sale of customer data if "no showing was made that such sale or such lease would violate applicable nonbankruptcy law." Accordingly, it does not appear to the Debtors that damages would be an issue. Instead, the question should be whether there is or is not a violation of applicable state law.
Any sale of the Debtors' assets should not impair the Dealer/Franchisee's use of data (Ad Hoc Committee Objection ¶ 9)	Any data in the Debtors' customer database is owned by the Debtors and may be sold. The Debtors do not believe that a sale of such data or the other assets would impair a dealer/franchisee's ability to retain and use its own data.

Objections to Potential Bid Protections

5. Two parties have objected to the prospective approval of bid protections. (Texas Objection ¶ 10, U.S. Trustee Objection ¶¶ 13-17) Pursuant to the Bidding Procedures Motion, the Debtors are seeking authority to provide an expense reimbursement and/or break-up fee not to exceed 3% of the total purchase price (excluding assumed liabilities) without further approval or order of the Court. The Debtors, with the support the Creditors' Committee and the SCP Secured Parties, believe that the ability to secure a stalking horse bid is important to the overarching goal of the process: maximizing the value that can be generated from the assets. Among other things, a stalking horse bid would set a floor and provide a framework or structure for other bids. Authorization to offer a prospective stalking horse bidder reasonable bid protections will encourage that bidder to spend the time and resources necessary to conduct due diligence and enter into an asset purchase agreement, which will serve to preserve and maximize the value of the Debtors' estates.

6. As recognized by the Third Circuit in Calpine Corp. v. O'Brien Environmental Energy, Inc. (In re O'Brien Environmental Energy, Inc.), 181 F.3d 527 (3d. Cir.

1999), bid protections, including break-up fees that foster competitive bidding and serve to induce bids that may otherwise not have been made, can constitute actual and necessary costs of preserving the Debtors' estates. Id. at 536-37 ("As we have recognized, such a benefit [to the debtors' estate] could be found if assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited."). In addition, while the court in O'Brien did not formally adopt a set of factors to determine the allowance of break-up fees, it did consider the following factors as applied by the Bankruptcy Court: "(1) is the relationship of the parties who negotiated the break-up fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage bidding; (3) is the amount of the fee unreasonable relative to the proposed purchase price; (4) did the unsuccessful bidder . . . place the estate property in a sales configuration mode to attract other bidders to the auction; (5) did the request for a break-up fee serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders; (6) does the fee requested correlate with a maximization of value to the Debtor's estate; (7) are the principal secured creditors and the official creditors' committee supportive of the concession; (8) were safeguards beneficial to the debtor's estate available; and (9) was there a substantial adverse impact on unsecured creditors, where such creditors are in opposition to the break-up fee?" Id. at 536.

7. The Debtors submit that all of the factors are satisfied here: (1) the Debtors are not aware of any party that could reasonably be considered a potential bidder that could taint a bid by self-dealing or manipulation, (2) the proposed fee will encourage bidding, (3) the maximum fee and expense reimbursement is 3% of the total purchase price, a fee on the low end of the spectrum in bankruptcy cases, (4) a stalking horse bid will provide a framework to

attract other bidders to the auction, (5) the fee will attract other bidders or set a floor for the auction, (6) the fee correlates with a maximization of the value to the Debtors' estates (7) the principal secured creditors and the Creditors' Committee support the fee, (8) few, if any, other safeguards are available to the Debtors to encourage bidding, and (9) as previously discussed, the Creditors' Committee supports the fee. Accordingly, the Debtors submit that their request for a prospective break-up fee/expense reimbursement be approved as a necessary cost and expense of preserving the estate.

Remaining Objections

8. The Ad Hoc Committee has raised two additional objections⁴ to the Bidding Procedures: (a) the Ad Hoc Committee should be included as a Consultation Party (Ad Hoc Committee Objection ¶¶ 4-7) and (b) any order approving the Bidding Procedures should indicate that the Dealer/Franchisees' rights to use the Debtors' trademarks are preserved under section 365(n) of the Bankruptcy Code (id. ¶ 8). The Debtors have agreed to amend the Bidding Procedures to include the Ad Hoc Committee as a Consultation Party. With respect to the Dealer/Franchisees' request regarding any section 365(n) rights, the Debtors are willing to include a provision in the Bidding Procedures Order that (a) discloses that the Ad Hoc Committee has asserted that the Dealer/Franchisees have section 365(n) rights in the trademark and (b) states that any section 365(n) rights Dealer/Franchisees may have will not be affected by entry of the Bidding Procedures Order.

⁴ The Ad Hoc Committee has also requested an extension of the cure deadline from May 1 to May 6 and requested that parties be permitted to provide cure objections to Prime Clerk, instead of requiring objections to be filed on the docket. The Debtors have already agreed to these requests, and the cure notice that has been disseminated incorporated these changes.

Conclusion

WHEREFORE, the Debtors respectfully request that the Court (i) overrule the Objections to the extent not otherwise resolved, (ii) grant the relief requested in the Bidding Procedures Motion, and (iii) grant such other relief as may be just and proper.

Dated: April 24, 2015
Wilmington, Delaware

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Summary of the Debtors' Customer Data

The Debtors' Customer Database

1. The Debtors collect consumer data at retail points-of-sale, through their e-commerce platform and through dealer franchise locations. All collected consumer data, regardless of its original source, is pooled and maintained in a single database (the "Customer Database") that is hosted and managed by the Debtors.

2. The Customer Database contains approximately 117 million records (including consumer and commercial customers) with some or all of the following data elements: (a) first and last name; (b) physical mailing address; (c) e-mail address; (d) phone number; (e) transaction data;¹ and (f) credit or debit card number.² The records in the Customer Database were collected over the course of many years, and many of the records are likely duplicates, may not contain current consumer information, and the overall accuracy of the source data is not known with any degree of certainty. As a result, while the Customer Database may contain approximately 117 million records, a much smaller subset is practically useable.

3. RadioShack does not maintain a field in the Customer Database noting a particular record's point of entry into the RadioShack system. In other words, it is not possible to determine whether a customer first provided information on the website, a RadioShack-owned brick and mortar store, or a dealer franchise location. In addition, many customers have provided information to RadioShack from multiple sources or locations, and to the extent a customer's information can be matched to an existing record, no new record is created.

¹ Historically, the Debtors deleted customer transaction data after three years, unless the customer purchased a service plan or warranty, in which case the transaction data was retained for the life of such plan or warranty. During the last five years, however, the Debtors have retained all transaction data as a result of litigation holds.

² After 120 days, a consumer's credit or debit card information is modified through marking or hashing thereby rendering it unrecognizable.

4. Generally, the Debtors rely on a subset of the Customer Database for marketing purposes—those customers who have (i) opted-in to receive email communications from the Debtors within the last twelve months or (ii) made a purchase within the past twelve months and provided a name and physical mailing address. Specifically, the Debtors' Customer Database consists of approximately 8.5 million opt-in email addresses, of which approximately 3.1 million were active within the last twelve months, and approximately 65 million complete customer name and physical address files, of which approximately 11.9 million were active within the last twelve months. It is possible to extract consumer files from the Customer Database to account for data considered more relevant for marketing or other purposes.

5. Pursuant to separate agreements with each of Verizon, Sprint, AT&T and other wireless carriers (collectively, the "Wireless Carriers"), the Debtors were required to collect customer information (including sensitive information such as social security numbers and other government issued identification numbers unique to each consumer ("Sensitive Information")) in connection with enrolling consumers in phone and data service plans with the Wireless Carriers. While the Debtors would add some or all of the information described above in paragraph 2 to the Customer Database from information collected in connection with data accumulated for the Wireless Carriers, Sensitive Information and the fact that a customer may have applied for service from a Wireless Carrier is not added or retained in Customer Database.

Customer Information Offered For Sale

6. In connection with the proposed sale process, the Debtors have marketed and are proposing to sell a subset of the Consumer Database. Specifically, the Debtors are seeking to sell what it considers to be the most relevant data—the 8.5 million opt-in e-mail addresses and the 65 million complete customer name and physical address files. The records offered for sale

may contain information in one or more of the following categories: (a) first and last name; (b) physical mailing address; (c) e-mail address; (d) phone number; and (e) transaction data. The Debtors are not seeking to sell any credit or debit card numbers, and as previously discussed, the Customer Database does not contain any Sensitive Information.