

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153-0119  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Martin J. Bienenstock, Esq. (MB 3001)  
Brian S. Rosen, Esq. (BR 0571)  
Sylvia A. Mayer, Esq. (*Pro Hac Vice*)  
James T. Grogan, Esq. (*Pro Hac Vice requested*)  
Eleanor Heard Gilbane, Esq. (EG 0764)

Counsel to ACC Bondholder Group

STUTMAN, TREISTER & GLATT P.C.  
1901 Avenue of the Stars, 12 Floor  
Los Angeles, CA 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Isaac M. Pachulski (*Pro Hac Vice*)  
Stephan M. Ray (*Pro Hac Vice*)

Special Conflicts Counsel<sup>1</sup>

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**In re** :  
 : **Chapter 11**  
 :  
 :  
**ADELPHIA COMMUNICATIONS** : **Case No 02-41729 (REG)**  
**CORPORATION, et al.,** :  
 : **(Jointly Administered)**  
 :  
**Debtors.** :  
 :  
 :  
-----X

**ACC BONDHOLDER GROUP'S OBJECTION TO APPROVAL OF THE  
GLOBAL SETTLEMENT AND CONFIRMATION OF THE FIFTH AMENDED  
JOINT CHAPTER 11 PLAN FOR ADELPHIA COMMUNICATIONS  
CORPORATION AND CERTAIN OF ITS AFFILIATED DEBTORS**

TO THE HONORABLE ROBERT E. GERBER,  
UNITED STATES BANKRUPTCY JUDGE:

<sup>1</sup> Special Conflicts Counsel has been retained by Aurelius Capital Management, LP, Catalyst Investment Management Co., LLC, Drawbridge Global Macro Advisors LLC, Drawbridge Special Opportunity Advisors LLC, Elliott Associates, LP, Farallon Capital Management, L.L.C., Noonday Asset Management, L.P., Perry Capital LLC, and Viking Global Investors LP.

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Aurelius Capital Management, LP, Banc of America Securities LLC, Catalyst Investment Management Co., LLC, Drawbridge Global Macro Advisors LLC, Drawbridge Special Opportunities Advisors LLC, Elliott Associates, LP, Farallon Capital Management, L.L.C., Noonday Asset Management, L.P., Perry Capital LLC, Viking Global Investors LP, and Global Principal Strategies Business of Lehman Brothers, Inc. (collectively, the “ACC Bondholder Group”), holders and/or investment advisors to certain holders of notes and debentures issued by Adelpia Communications Corporation (“ACC”), hereby object to approval of the Global Settlement and confirmation of the Fifth Amended Joint Chapter 11 Plan for Adelpia Communications Corporation and Certain of its Affiliated Debtors, dated as of October 16, 2006 (the “Plan”), and respectfully represents as follows:<sup>2</sup>

## **I. SUMMARY OF ARGUMENT**

1. The Supreme Court long ago declared that “the object of bankruptcy laws is the equitable distribution of the debtor’s assets amongst *his* creditors.”<sup>3</sup> The Supreme Court recently reiterated this principle: “[W]e are mindful that the Bankruptcy Code aims, in the main, to secure equal distribution among creditors.”<sup>4</sup> For a Court to determine whether a creditor is receiving its fair, reasonable and equitable distribution of its debtor’s assets, the Court must determine, at least roughly, where the creditor stands in the hierarchy of claims, the assets available to satisfy these claims, and the number and amount of claims that must be paid before such creditor is entitled to any distribution. The Supreme Court commented on this elementary

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<sup>2</sup> Unless otherwise defined herein, capitalized terms shall have the meanings that are ascribed to such terms in the Plan. In addition, unless otherwise noted herein, all references to “Second Disclosure Statement Supplement” or “DSS2” refer to that certain Second Disclosure Statement Supplement Relating To Fifth Amended Joint Chapter 11 Plan For Adelpia Communications Corporation And Certain Affiliated Debtors, dated October 16, 2006 (Docket No. 12198).

<sup>3</sup> *Kuehner v. Irving Trust Co.*, 299 U.S. 445, 451 (1937) (emphasis supplied).

<sup>4</sup> *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 126 S. Ct. 2105, 2109 (2006).

principle in a case reversing a confirmation order based on the lower court's failure to exercise its informed and independent judgment on these base points: "In the first place, there must be a determination of what assets are subject to the payment of the respective claims."<sup>5</sup>

2. For that reason, section 521 of the Bankruptcy Code requires every debtor to file a list of creditors, a schedule of assets and liabilities, a schedule of current income and expenditures, and a statement of the *debtor's* financial affairs. In those cases involving affiliated corporate debtors with a common parent, the Bankruptcy Code and decades of case law have recognized two paradigms for addressing the allocation of value among creditors of the different entities: (a) determine the assets and liabilities of each entity and allocate value in accordance with the each entity's assets and liabilities or (b) if the financial affairs of the affiliated entities are so entangled that it would be prohibitively expensive and time consuming to sort out the entities' separate assets and liabilities, substantively consolidate, with the result that all assets and liabilities are pooled, intercompany claims and corporate guarantees are eliminated, and unsecured creditors share in the common pool of assets on a ratable basis.

3. Two years ago, these Debtors spent \$100 million on an accounting analysis that included a determination of a central component of each Debtor's assets and liabilities: Intercompany Claims. That enormous and labor-intensive effort produced sworn schedules of assets and liabilities that reveal the following: ACC Senior Noteholders are entitled to a distribution of 96.5%, and Arahova Noteholders are entitled to 29.8%.<sup>6</sup>

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<sup>5</sup> *Consol. Rock Prods. Co. v. DuBois*, 312 U.S. 510, 520 (1941).

<sup>6</sup> Waterfall distributions computed from base case analysis (May 2005 Schedules adjusted to eliminate Historic Entries) assuming TWC Stock value of \$5.4 billion, before CVV value, as reflected on the ACC Bondholder Group's Position Statement, attached as Exhibit GG to the Second Supplemental Disclosure Statement. Percentage recovery is based on principal and pre-petition interest. Clearly, creditor recoveries vary based on the TWC Stock valuation used. By way of comparison, if TWC Stock is valued at \$6.48 billion, then ACC Senior Noteholders are entitled to a distribution of 112.9%, and Arahova Noteholders are entitled to 33.0 %.

4. Without explanation, the Plan strips value from the ACC Noteholders and reduces their recovery to only 69% while, again without explanation, gifting ACC's assets to Arahova inflating the Arahova Noteholders recovery to 99%. On its face, the Plan robs ACC Senior Noteholders to pay Arahova Noteholders. The Court should summarily deny confirmation because the Plan Proponents have violated the fundamental precept from which our bankruptcy laws derive. The statutory and constitutional requirement of a fair and rational distribution of each Debtor's assets to its creditors require no less.

5. Moreover, the Court cannot approve the Global Settlement as a justification for this redistribution of value because it reaches an irrational result. Under the guise of the Global Settlement, the Plan provides for a bastardized form of substantive consolidation, whereby distributions are made to unsecured creditors on a non-ratable basis out of a single pool of assets, under a formula whereby Intercompany Claims are ignored and distributions are made without any demonstrable correlation between the distribution regime and any plausible determination of the assets and liabilities of the parent, ACC, on the one hand, and the various subsidiaries, including Arahova, on the other. **This point is highlighted by the fact that, even if ACC lost on thirteen of the fourteen MIA Issues identified by this Court, ACC creditors would still achieve a better recovery than that afforded under the Plan.**

6. Almost four decades ago, in reversing the approval of a settlement that was part of a reorganization plan in a case that had been pending for *ten* years, the Supreme Court made clear that a court faced with a request to confirm a plan that embodies a contested settlement must make an independent determination of whether the settlement is *fair and equitable* in relation to the underlying *merits* of the dispute.<sup>7</sup> In doing so, the Supreme Court

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<sup>7</sup> See *Protective Comm. for Indep. Stockholder TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“The requirements . . . that plans of reorganization be both ‘fair and equitable’ apply to

made clear that the desire to avoid delay and expense could not excuse a non-merits based settlement. The Global Settlement fails to satisfy that standard for reasons that include the following:

- a. The putative settlement cannot be approved because it strips more than \$1 billion of ACC's assets to pay Arahova Noteholders based on faulty accounting and absurd legal positions that pretend that Arahova is somehow exempt from federal bankruptcy law.
- b. The putative settlement cannot be approved because it was crafted in secret without consent, is divorced from any consideration of the merits, disregards the Debtors' sworn financial statements, and achieves unreasonable results that leave ACC creditors worse off than they would be under any plausible litigated result.
- c. The putative settlement cannot be approved because there is no arms' length bargain, but instead a proposal spun from whole cloth by creditors of other estates that shifts all risk of loss and all costs to ACC creditors and then—as salt in the wounds—strips those creditors of their statutory rights to equal treatment unless they concede defeat in the Inter-Creditor Dispute.

7. Just as the Global Settlement fails to satisfy the standards for approval, the

Plan's violations of the Bankruptcy Code's confirmation requirements are numerous and include:

- a. The treatment of Intercompany Claims is both illogical and illegal, because claims of different priorities are classified together and, with no explanation, are simultaneously denied the right to vote and receive distributions (violating 11 U.S.C. §§ 1122(a), 1126(g)).<sup>8</sup>
- b. The Plan also discriminates unfairly and violates absolute priorities with respect to Intercompany Claims because it pays them nothing while other claims are paid, and each Debtor retains the equity of its subsidiaries.<sup>9</sup>

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compromises . . . There can be no informed and independent judgment as to whether the proposed settlement is fair and equitable until the judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.” )

<sup>8</sup> See Plan §§ 2.1, 2.3, 3.4, Ex. A at A-24-25 (defining “Intercompany Claim”).

<sup>9</sup> See Plan §§ 5.1(k), 5.2, 5.3.

- c. The Plan lacks any appropriate means for its implementation, and violates basic due process, by obfuscating the capital structure, eliminating Intercompany Claims, and then distributing the Debtors' combined assets to favored creditor groups without bothering to follow the rules of substantive consolidation.<sup>10</sup>
- d. The Plan is not in the best interests of the ACC Bondholder Group because the Plan Proponents have presumed solvency for some Debtors that are insolvent according to the Debtors' own schedules, arbitrarily value the Debtors' assets, and then offer to pay excessive interest to the favored creditors of those Debtors in violation of section 1129(a)(7) of the Bankruptcy Code.<sup>11</sup>
- e. In violation of section 1123(a)(4) of the Bankruptcy Code, the Plan attempts to buy acceptance through illegal payoffs in the form of exculpation, releases of estate claims, releases of other creditors' claims, and non-ratable distributions of millions of dollars for "expenses" without any showing of a substantial contribution to these cases.<sup>12</sup> The United States Supreme Court made clear in *Young v. Higbee*,<sup>13</sup> that it is illegal for a few members of a class to receive better treatment than other members of the class; and section 1123(a)(4) codifies this rule.
- f. The Plan threatens reprisal against creditors who vote to reject by depriving dissenting creditors of their statutory right to object to claims, while preserving that right for so-called "Settlement Parties."<sup>14</sup>
- g. The illegal payoffs in the Plan made the entire solicitation of acceptances illegal, thereby showing the Plan was irreparably proposed in violation of law and not in good faith, the reverse of what is required by 11 U.S.C. § 1129(a)(1), (3).<sup>15</sup>

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<sup>10</sup> See Plan §§ 2.2, 8.5(a).

<sup>11</sup> See Plan §§ 5.2(f)(i), 5.2(h), 5.2(i)(i), 5.2(j)(i); Plan Ex. A at A-7, A-11, A-14 (defining "Applicable Contract Rate," "Case Contract Interest," and "Deemed Value," respectively); see also, e.g., Schedule of Assets and Liabilities for Arahova Communications, Inc., Case No. 02-41815-REG, Docket No. 7 (stating that the Debtor's liabilities exceed assets by \$1,643,601,639.76).

<sup>12</sup> See Plan §§ 6.2(d)(i), 16.3, 16.15.

<sup>13</sup> *Young v. Higbee Co.*, 324 U.S. 204 (1945).

<sup>14</sup> See Plan § 11.1.

<sup>15</sup> See *Kane v. Johns-Manville Corp.*, (*In re Johns-Manville Corp.*), 843 F.2d 636, 649 (2d Cir. 1988) (holding that a plan is proposed in good faith if its provisions are lawful).

8. While perhaps worthy of a third-world country, the “process” that created the Plan has no relation to the one Congress envisioned when it enacted the Bankruptcy Code. This Court has already recognized that the issues before it “raise questions of extraordinary importance not only in this case, where there are billions of dollars at stake (and at risk), but in dozens of other multi-debtor chapter 11 cases, in this district and elsewhere.”<sup>16</sup> At this juncture, and in light of the successful liquidation of all the Debtors’ assets, the only concern should be the fair allocation and distribution of those sale proceeds among creditors. Expediency cannot trump due process or the substantive rights of creditors.

## **II. SUMMARY OF FACTS**

### **A. GENERAL BACKGROUND**

#### **1. COMMENCEMENT OF THESE CHAPTER 11 CASES**

9. On June 10, 2002, Century Communications Corp. (“CCC”), a subsidiary of ACC, filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. Thereafter, commencing on June 25, 2002 (the “Commencement Date”), and continuing periodically thereafter, ACC and substantially all its subsidiaries (collectively, together with CCC, the “Debtors”) filed voluntary petitions under chapter 11 of the Bankruptcy Code.

#### **2. FORMATION OF STATUTORY COMMITTEES**

10. On July 11, 2002, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed a statutory committee of unsecured claimholders pursuant to section 1102 of the Bankruptcy Code (the “Creditors Committee”).<sup>17</sup> On July 31,

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<sup>16</sup> See *In re Adelpia Commc’ns Corp.*, 336 B.R. 610, 635-36 (Bankr. S.D.N.Y. 2006), *aff’d*, 342 B.R. 122 (S.D.N.Y. 2006).

<sup>17</sup> As of July 21, 2006, the members of the Creditors Committee are Appaloosa, W.R. Huff Asset Management Co., LLC, Dune Capital Management LP, Law Debenture Trust Company of New York, U.S. Bank National Association, as Indenture Trustee, Sierra Liquidity Fund, LLC, Wilmington Trust Company,

2002, the U.S. Trustee appointed a committee to represent the interests of equity holders of the Debtors.

**3. FORMATION OF AD HOC COMMITTEES**

11. ACC Senior Noteholders. As of the Commencement Date, ACC had approximately \$4.9 billion in aggregate principal amount of ACC Senior Notes that are held by various parties (the “ACC Senior Noteholders”). In November 2004, an ad hoc committee of holders, or investment advisors to, or managers of certain holders of ACC Senior Notes was formed (the “ACC Noteholders Committee”). The ACC Bondholder Group includes, but is not limited to, certain members of the ACC Noteholders Committee.

12. Arahova Noteholders. As of the Commencement Date, Arahova Communications, Inc. (“Arahova”) had approximately \$2.0 billion in aggregate principal amount of notes and debentures (collectively, the “Arahova Notes”) that are held by various parties (the “Arahova Noteholders”). On or before May 2005, an ad hoc committee of holders or indenture trustee on behalf of, or investment advisors, to holders of Arahova Notes was formed (the “Arahova Noteholders Committee”).

13. Crossover Committee. In April 2006, certain holders or investment advisors to certain holders who hold primarily both ACC Senior Notes and Arahova Notes formed an ad hoc committee (“Crossover Committee”). Although the Crossover Committee members hold a greater face amount of ACC Senior Notes, the Crossover Committee has an economic incentive to maximize the recovery for the Arahova Notes at the expense of the ACC

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as Indenture Trustee, Tudor Investment Corporation, and Highfields Capital Management. See Docket No. 11643.

Senior Notes.<sup>18</sup> As the Court has noted, the Inter-Creditor Dispute is a “zero sum game” between the holders of ACC Senior Notes and Arahova Notes.<sup>19</sup> The Arahova Noteholders Committee and the Creditors Committee have essentially conceded this point.<sup>20</sup> While it is a “zero sum game”, the economics are such that every percentage point of lower recovery by the ACC Senior Notes equals three percentage points of higher recovery on the Arahova Notes. Because any decrease in the recovery of the ACC Senior Notes produces a disproportionate increase in the recovery of the Arahova Notes, the Crossover Committee holds a predominant economic interest in maximizing the recovery on Arahova Notes, even if at the expense of ACC Senior Notes.

14. FrontierVision Holdco Noteholders. As of the Commencement Date, FrontierVision Operating Partners, L.P., FrontierVision Capital Corporation, FrontierVision Holdings L.P., FrontierVision Holdings Capital Corporation, and FrontierVision Holdings Capital II Corporation had approximately \$529 million in aggregate principal amount of notes and debentures (collectively, the “FrontierVision Notes”). Of the FrontierVision Notes, the holders of FrontierVision Holdings L.P., notes and debentures (the “FrontierVision Holdco Noteholders”) hold approximately \$329 million (the “FrontierVision Holdco Notes”) of the aggregate principal amount. On or before October 2005, an ad hoc committee of holders of FrontierVision Notes was formed (the “FrontierVision Committee”).

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<sup>18</sup> Crossover Committee and the Arahova Noteholders Committee signed the Plan Support Agreement, dated October 11, 2006 (the “Plan Support Agreement”) in their capacities as ad hoc committees. Additionally, certain members of these committees signed the Plan Support Agreement in their individual capacities, including Franklin Mutual Advisers, LLC, Appaloosa, and Deutsche Bank Securities Inc.

<sup>19</sup> *See Adelpia*, 336 B.R. at 638.

<sup>20</sup> *See* Hr’g Tr. 46:19-20, Oct. 13, 2006 (Shore, C.) (“[A]s is the case where there’s always movement in favor of ACC, it’s taking away from Arahova.”); Hr’g Tr. 46:25 – 47:1, Oct. 13, 2006 (Shore, C.) (“[E]very time a move is made to put more on the table for ACC, that means less for Arahova.”); Hr’g Tr. 12:2-4, Oct. 13, 2006 (Friedman, D.) (“I would say almost exclusively, modifications that affect the recovery of Arahova and ACC. They affect Arahova negatively, and they affect ACC favorably.”).

15. Olympus Parent Noteholders. As of the Commencement Date, Olympus Communications, L.P. and Olympus Capital Corporation had \$200 million in aggregate principal amount of notes (collectively, the “Olympus Parent Notes”). On or before March 2006, a committee of holders of Olympus Parent Notes was formed (the “Olympus Committee”).

16. Substantial Overlap in Membership of Subsidiary Noteholder Committees. Substantial overlap exists among the committee membership, as well as between the holdings of certain creditors. For example, Appaloosa Management, LP, is a member of both the Arahova Noteholders Committee and the Creditors Committee.<sup>21</sup> All of the members of the Olympus Committee, or affiliates thereof, are members of the Arahova Noteholders Committee.<sup>22</sup> In addition to bondholders participating in more than one committee, whether statutory or ad hoc, at least one member of the Creditors Committee, Huff, holds both ACC Senior Notes and Arahova Notes, similar to most of the members of the Crossover Committee.<sup>23</sup> Indeed, by its own admission, Huff is the largest holder of Arahova Notes.<sup>24</sup>

**B. INTER-CREDITOR DISPUTE**

17. To illustrate the many obstacles that the Court and parties in interest have faced in attempting to implement a fair and even-handed process for resolving the Inter-Creditor Dispute on the merits, the following is a timeline and summary of events leading to the public dissemination of a term sheet that became the basis for the Plan. These events are described in greater detail below.

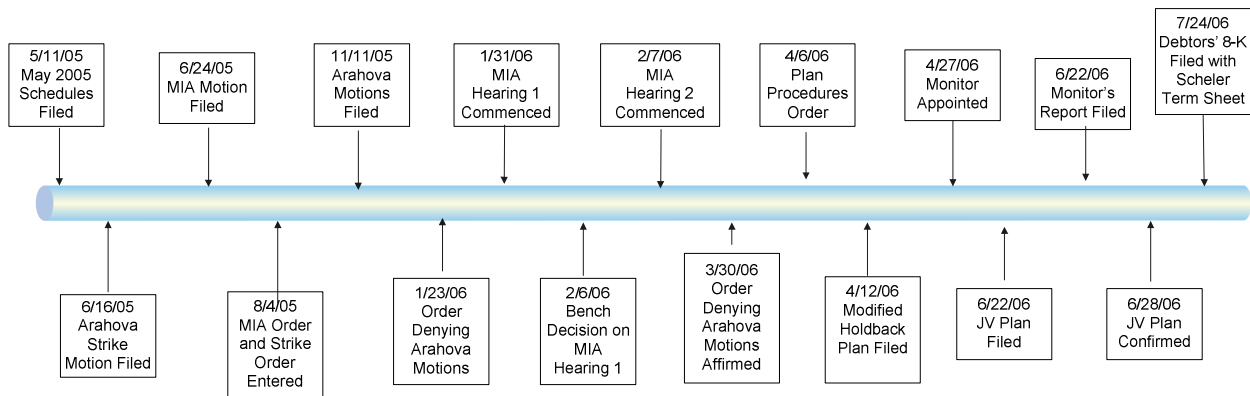
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<sup>21</sup> See Docket No. 11643.

<sup>22</sup> See Docket No. 11501.

<sup>23</sup> See MIA Hearing One Pre-Trial Response Memorandum of W.R. Huff Asset Management Co., L.L.C., dated January 27, 2006.

<sup>24</sup> See *id.*



**1. PERVASIVE INTER-CREDITOR DISPUTES**

18. The identification of assets and liabilities for each estate has been a prominent issue throughout these cases. In 2003, the Debtors hired Pricewaterhouse Coopers, LLP (“PWC”), an independent auditing and accounting firm, and spent approximately \$100 million to audit and restate financial statements for 1999 and 2000, prepare financial statements for 2001, 2002, and 2003, and review over 7 million lines of intercompany transactions (collectively, the “Restatement”).<sup>25</sup> In May 2005, after two years and over 5,000 hours of work performed by more than 25 independent accounting employees and accounting professionals, the Debtors completed the Restatement and, based on the Restatement, filed amended schedules of assets and liabilities (the “May 2005 Schedules”). The Debtors have never amended the May 2005 Schedules, even after filing a chapter 11 plan that essentially rejects those schedules.

19. The May 2005 Schedules listed, *inter alia*, each Debtor’s net intercompany payable to, or receivable from, Adelphia Cablevision, LLC (the “Bank of Adelphia”). The “‘Bank of Adelphia Paradigm’ aggregated Intercompany Transaction balances . . . consistent with the actual flow of funds within the Debtors’ cash management system.”<sup>26</sup>

<sup>25</sup> *Adelphia*, 336 B.R. at 624-25.

<sup>26</sup> *Id.* at 625.

Significant disputes exist among various creditor constituencies regarding the treatment of Intercompany Claims and potential causes of action between Debtors.

20. On June 24, 2005, the Debtors filed a Motion for Order in Aid of Confirmation, Pursuant to Section 105(a) and 105(d) of the Bankruptcy Code, Establishing Pre-Confirmation Process to Resolve Certain Inter-Creditor Issues (the “MIA Motion”, Docket No. 7844). The MIA Motion was created to safeguard due process and adjudicate the Inter-Creditor Dispute on the merits by designing a procedure to (i) ensure prompt access to information and discovery, (ii) create a reasonable but expeditious discovery and litigation schedule, and (iii) give parties an opportunity to be heard (the “MIA Process”).

21. The Court appropriately held that the parties *must* be afforded due process on the Inter-Creditor Dispute and stated that “the purpose of the Motion in Aid was to put the Inter-Creditor Dispute into a judicially approved and supervised framework to resolve outstanding issues” and “to give the creditors who would be affected by the disputes a full opportunity to litigate their needs and concerns.”<sup>27</sup> Accordingly, on August 4, 2005, the Court granted the MIA Motion and entered an Order in Aid of Confirmation (Docket No. 8044, the “MIA Order”).

22. The MIA Order contemplated six hearings to resolve the Inter-Creditor Dispute, with such hearings covering the following issues: (1) avoidance of inter-estate transactions; (2) the treatment of Intercompany Claims; (3) asset ownership and potential fraudulent conveyance claims; (4) allocation among the Debtors of plan currency, tax, and other liabilities resulting from the Debtors’ sale of substantially all assets to TW NY and Comcast,

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<sup>27</sup> *Id.*, 336 B.R. at 633-34.

economic costs of the plan reserves, and the costs and benefits of a settlement with the government; (5) substantive consolidation; and (6) any remaining disputed issues.<sup>28</sup>

23. The primary parties authorized by the Court to participate as litigants in the MIA Process were: (a) the ACC Noteholders Committee, (b) the Arahova Noteholders Committee, (c) various trade creditor committees, (d) the FrontierVision Committee, (e) Huff, (f) the Debtors, and (g) the Creditors Committee (collectively, the “MIA Participants”).<sup>29</sup> However, while nominally authorized as MIA Participants, neither the Debtors nor the Creditors Committee did so in light of the Debtors’ court-ordered neutrality and the Creditors Committee’s similar inherent conflicts of interest.

24. In early 2006, the first evidentiary hearing, commonly referred to as Hearing 1, was initially scheduled to address the avoidability of Intercompany Claims, but ultimately addressed whether the scheduled Intercompany Claims were entitled to the standard presumption of validity typically afforded to scheduled claims in a chapter 11 case. On February 6, 2006, the Court issued a bench decision concluding, *inter alia*, that the May 2005 Schedules constitute prima facie evidence of the Debtors’ assets and liabilities. Also in early 2006, the second evidentiary hearing, Hearing 2, which implicated many of the key substantive issues, was well under way when the process was stayed to allow the Debtors to focus on concluding a sale of substantially all of their assets to TW NY and Comcast.

## **2. PRIOR ATTEMPT TO SETTLE UNILATERALLY THE INTER-CREDITOR DISPUTE**

25. Over the course of this case, certain creditors have attempted to force coercive settlements of the Inter-Creditor Dispute on the holders of ACC Senior Notes. For

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<sup>28</sup> See MIA Order.

<sup>29</sup> See MIA Order, at ¶ 3(f).

example, on November 9, 2004, the Creditors Committee issued a press release announcing that its six members (five of whom still sit on the Creditors Committee),<sup>30</sup> which, at the time, did not include any holders of the ACC Senior Notes, “unanimously approved a settlement term sheet that resolved all ‘inter-creditor’ disputes and ‘enjoy[ed] the support of other holders of Adelpia's unsecured debt.’”<sup>31</sup> These unilateral “settlement” attempts drew sharp criticism from the Court, which was surprised to discover that “holders of over a billion dollars of funded debt claims had not agreed to the purported settlement.”<sup>32</sup> The Court expressed its dismay that “creditors of Adelpia Parent had not been included, at least in any meaningful way, in the intercreditor negotiations that had led to the announced settlement.”<sup>33</sup> The Court recalled that it only learned that holders of over a billion dollars of funded debt claims had not agreed to the purported settlement from counsel to the ACC Noteholders Committee at a subsequent chambers conference.<sup>34</sup> The Court further noted the U.S. Trustee appointed two creditors of ACC to the Creditors Committee in response to the imbalance in the membership of the Creditors Committee that had arisen over time.<sup>35</sup>

### 3. *ABUSIVE TACTICS INTENDED TO UNDERMINE THE MIA PROCESS*

26. Most of the parties appreciated the importance of the MIA Process because it embraces due process and allows the merits of the Inter-Creditor Dispute to be heard.

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<sup>30</sup> As of November 9, 2004, the Creditors Committee membership included Huff, Appaloosa Management, LP, MacKay Shields LLC, Law Debenture Trust Company of New York, U.S. Bank National Association, and Sierra Liquidity Fund, LLC. *See* Docket No. 5631.

<sup>31</sup> *Adelpia*, 336 B.R., at 631.

<sup>32</sup> *Id.* at 631-32.

<sup>33</sup> *Id.* at 631.

<sup>34</sup> *Id.* at 631-32.

<sup>35</sup> *Id.* at 632 n.34.

Other parties, however, such as the Arahova Noteholders Committee, took drastic steps to undermine the MIA Process in an attempt to keep the merits of the Inter-Creditor Dispute hidden from the Court. The extreme and desperate measures to which the Arahova Noteholders Committee resorted in an attempt to avoid a merits-based MIA process speak volumes about its concern that it could not prevail on the merits, and reflect a consistent strategy of attempting to escape a merits-based resolution of the Inter-Creditor Dispute.

27. As previously noted by the Court, the Arahova Noteholders Committee resorted to abusive tactics designed to leverage their negotiating position and avoid adjudication of the Inter-Creditor Dispute.<sup>36</sup> For example:

- a. On June 16, 2005, the Arahova Noteholders Committee moved to strike the May 2005 Schedules, rather than let the merits dictate the result.<sup>37</sup> The Court denied this request.<sup>38</sup>
- b. Next, the Arahova Noteholders Committee vigorously fought the MIA Motion, appealed the MIA Order, and sought to stay the MIA Process while their appeal was pending, all of which efforts also failed.<sup>39</sup>
- c. Undaunted, the Arahova Noteholders Committee filed motions requesting orders (a) appointing a chapter 11 trustee for Arahova and its operating company subsidiaries (collectively, the “Arahova Debtors”); (b) disqualifying the Debtors’ counsel from representing the Arahova Debtors and any of the other debtors in the Inter-Creditor Dispute; and (c) terminating the Debtors’ exclusive right to file a reorganization plan (collectively, the “Arahova Motions”).<sup>40</sup> With the significant exception of ordering the Debtors and their counsel to remain neutral in the Inter-

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<sup>36</sup> *Id.* at 677 (recognizing that the Arahova Noteholders Committee was employing such tactics because “it does not want to subject the Interdebtor Disputes to Court scrutiny, and wants to use the plan process to have its way instead.”).

<sup>37</sup> *See* Docket No. 7801.

<sup>38</sup> *See* Docket No. 8049.

<sup>39</sup> *See* Docket Nos. 7895, 7990, 7993, 8006, 8047-54.

<sup>40</sup> *See* Docket Nos. 8856, 8857 and 8855, respectively.

Creditor Dispute, the Court subsequently denied all of these requests in a decision affirmed by the District Court.<sup>41</sup>

- d. On October 17, 2005, the Arahova Noteholders Committee entered into an agreement with the Debtors whereby the parties agreed that the Arahova Noteholders Committee would refrain from filing any pleadings or motions, including motions to disqualify Debtors' counsel and appoint a trustee, because the parties were engaged in settlement negotiations.<sup>42</sup> The Court recognized this gave the Arahova Noteholders Committee an opportunity to exert a considerable amount of influence over the Debtors with respect to the Inter-Creditor Dispute and their settlement negotiations, particularly given the then-pending Arahova Motions to disqualify Debtors' counsel and appoint a trustee.<sup>43</sup>

28. In its January 23, 2006 opinion (the "January Opinion"), the Court sharply criticized the Arahova Noteholders Committee's tactics by noting that this committee originally sought a stay pending appeal of the MIA Order and, when that was denied, it filed the Arahova Motions because it was "not content with a mechanism that will pay them in full . . . if, but only if, the underlying facts and law support their position."<sup>44</sup> The Court, understandably dismayed at this tactic, made further observations that the Arahova Noteholders Committee took a "scorched earth" approach and "wished to push the 'nuclear war button' and put the closing of a \$17.6 billion transaction at risk to augment its personal recovery."<sup>45</sup> The Court also noted that the Arahova Noteholders Committee repeatedly took inconsistent positions and "has not given the Court comfort that there is an objective other than disrupting things."<sup>46</sup>

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<sup>41</sup> *Adelphia*, 336 B.R. 610, *aff'd*, 342 B.R. 122.

<sup>42</sup> *See* Docket No. 8762.

<sup>43</sup> *See* Hr'g Tr. 68:22 – 69:7; 80:25 – 81:12, Oct. 28, 2005.

<sup>44</sup> *In re Adelphia Commc'ns Corp.*, 336 B.R. at 635 (emphasis added).

<sup>45</sup> *Id.* at 662.

<sup>46</sup> *Id.* at 676. One of the bitter ironies of the Plan is that the Arahova Noteholders Committee will be reimbursed huge amounts of attorneys' fees and expenses generated by its scorched earth tactics and

29. In denying the Arahova Motions, the Court identified the two cornerstones of a fair resolution of the substantial inter-estate and inter-creditor disputes in these cases. First, the Court noted that the Debtors had proposed, and the Court, with some fine tuning, had approved, a mechanism “for the Intercreditor Disputes to be litigated in a fashion that would give the creditors whose ox might be gored in the controversy a full and fair opportunity to press their respective positions (and where the creditors affected by the outcome would have the incentive, and the resources, to press their respective interests).”<sup>47</sup> Second, the Debtors:

stayed neutral in the [Inter-Creditor Dispute], and had confirmed their intention to remain so, proposing a reorganization plan that would effectively escrow the disputed value pending further determinations of the Court on the intercreditor issues.<sup>48</sup>

The District Court affirmed these cornerstones of a fair process for resolving the Inter-Creditor Dispute. These cornerstones are now being swept aside.

30. In refusing to let the Arahova Noteholders Committee destroy the procedural protections of the MIA Order that have been relied upon by the parties, the Court quite aptly noted that the Arahova Motion was just a continuation of a common theme to keep the “the Interdebtor Disputes [from] Court scrutiny, and . . . to use the plan process to have its way instead.”<sup>49</sup> This observation is as equally true now as it was then.

31. Upon rendering its decision on MIA Hearing 1, the Court commenced Hearing 2 of the MIA Process, which addresses issues related to the validity, priority, characterization, and allowance of the Intercompany Claims, on February 7, 2006. Hearing 2

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disruptive litigation. This, of course, is on top of the substantial fees and costs incurred by the estates and others in successfully opposing such tactics.

<sup>47</sup> *Id.* at 618.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 677.

progressed to the point where the Court was able to identify fourteen specific issues that it wanted the parties to address (the “14 MIA Issues”). Thus, even though currently incomplete, substantial progress has been made in litigating the most significant MIA issues through the completion of MIA Hearing 1 and the progress of MIA Hearing 2.<sup>50</sup>

**C. PREVIOUS PLAN ATTEMPTS**

**1. THE DEBTORS’ ABANDONED HOLDBACK PLAN**

32. On November 21, 2005, the Debtors filed their Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket No. 8973, the “Holdback Plan”). The Holdback Plan addressed a number of pressing issues in these chapter 11 cases, including providing a means to stop the continued accrual of postpetition interest, while allowing the MIA Process to continue. The Holdback Plan did not force a settlement on creditors, but instead allowed for confirmation of a plan, subject to holdbacks on distributions to the holders of ACC Senior Notes, Arahova Notes, and FrontierVision Holdco Notes pending resolution of the Inter-Creditor Dispute and completion of the MIA Process. The Holdback Plan was supported by the ACC Noteholders Committee, but, not surprisingly, vociferously opposed by the Arahova Noteholders who objected to being exposed to fair adjudication of the Inter-Creditor Dispute. Although votes were solicited on the Holdback Plan, no confirmation hearing was held on it.

**2. THE PLAN PROCEDURES ORDER**

33. Thereafter, on April 6, 2006, the Court entered an order (the “Plan Procedures Order”) authorizing the Debtors to file a dual track chapter 11 plan, which would incorporate a settlement of the Inter-Creditor Dispute but also provide for an alternative plan

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<sup>50</sup> On March 1, 2006, the Court remarked that it considered MIA Hearing 2 “within three or four days of completion.” Hr’g Tr. 9:16-17, March 1, 2006.

mechanism to allow the plan to be confirmed and the MIA Process to continue should the creditors reject the proposed settlement.<sup>51</sup> At the hearing on this matter, the Court expressed its concerns about preserving the Debtors' neutrality in the settlement context:

Let me just talk a moment about the cram-down option. Mr. Abrams said in very nearly these exact words: 'The cram-down door remains shut.' That is properly so now, and perhaps also forever. If ever that were to change, I would, indeed, have serious concerns vis-à-vis neutrality, which was a premise under which both I and Judge Scheindlin ruled. And I'm very sympathetic to the observation that a settlement, by definition, is a two-way street and one can't settle with oneself.<sup>52</sup>

**3. THE DEBTORS' ABANDONED DUAL TRACK PLAN**

34. Consistent with the Plan Procedures Order, on April 12, 2006, the Debtors filed their Modified Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket No. 10410, the "Dual Track Plan"), which garnered little support from the creditor body. The failure to confirm the Holdback Plan or the Dual Track Plan – or otherwise pay the bank debt following the Debtors' sale of substantially all of their assets – has resulted in the continued accrual of postpetition interest.

**D. EVENTS LEADING TO THE PLAN AGREEMENT**

**1. THE COURT APPOINTS A MONITOR**

35. Over the last year, the parties have expended tremendous amounts of time, resources, and money on the MIA Process. With discovery completed, pretrial briefing substantially completed and a significant portion of the evidentiary hearings completed, the MIA Process was well on its way toward a final adjudication of the Inter-Creditor Dispute on the

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<sup>51</sup> See Docket No. 10359, Plan Procedures Order, ¶3.

<sup>52</sup> Hr'g. Tr. 54:14-22, Apr. 6, 2006.

merits. As the litigation progressed, in a parallel process, the Court instructed the MIA Participants to explore settlement.

36. After a series of unproductive settlement discussions, in April 2006, the Court appointed the Honorable Cecelia Morris, U.S.B.J. to serve as a monitor (the “Monitor”) to facilitate settlement dialogue regarding the Inter-Creditor Dispute.<sup>53</sup> The Court expressly stated that the Monitor would act as a “hall monitor” to facilitate settlement talks regarding the Inter-Creditor Dispute.<sup>54</sup> The Monitor was not to serve as a mediator, delve into the merits of the Inter-Creditor Dispute, or take sides on any of the issues.<sup>55</sup> Several meetings were held with the Monitor during which the MIA Participants attempted to reach a consensual resolution of the Inter-Creditor Dispute.

**2. *THE ACC NOTEHOLDERS COMMITTEE’S ADVERSARIES BEGIN COLLATERAL ATTACKS***

37. After Appaloosa and the other members of the Arahova Noteholders Committee were tarnished by the Court’s scathing denunciation of their tactics in its January Opinion on the Arahova Motions, Huff took up the mantle in pursuing the strategy of prosecuting or threatening litigation to obtain better plan treatment for Arahova Notes without judicial adjudication of Intercompany Claims.

38. While the Monitor process was ongoing, Huff and other adversaries of the ACC Noteholders Committee began a collateral attack on certain holders of ACC Senior Notes designed to further the adversaries’ agenda in any settlement negotiations. Huff’s role in this process should not be underestimated. Michael McGuiness of Huff was Chairperson of the

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<sup>53</sup> Corrected Hr’g Tr. 32:6-10, Apr. 27, 2006 (Docket No. 11149).

<sup>54</sup> Hr’g Tr. 173:6-7, 11-13, Apr. 24, 2006.

<sup>55</sup> Hr’g Tr. 173:6-13, 174:17-22, 175:1-3, Apr. 24, 2006.

Creditors Committee and a signatory to the Plan and Global Settlement currently before this Court. Moreover, as noted above, Huff maintains that it is the *largest* holder of Arahova Notes.

39. On April 24, 2006, Huff filed an Expedited Motion for an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Directing the Taking of Depositions and Production of Documents (the “Huff Motion”, Docket No. 10562) purportedly to investigate the creation and dissemination of a letter sent by certain members of the ACC Noteholders Committee to the Board of Directors of ACC on April 17, 2006 (the “ACC Noteholders Committee Letter”).<sup>56</sup> Huff sought this discovery (the “Rule 2004 Discovery”) allegedly on the premise that dissemination of the ACC Noteholders Committee Letter was an attempt to manipulate the market and an improper solicitation under section 1125(b) of the Bankruptcy Code with respect to the Dual Track Plan.<sup>57</sup> These assertions are not credible.

40. Instead, subsequent events indicate that Huff started and pursued the Rule 2004 Discovery process to begin applying litigation pressure to as many members of the ACC Noteholders Committee as possible, to force them to acquiesce in an unfair Arahova-biased settlement of the Inter-Creditor Dispute. The fact that this was Huff’s underlying motivation is clear from the Creditors Committee’s later admission that there is nothing improper about the creation and dissemination of the ACC Noteholders Committee Letter.<sup>58</sup> On May 17, 2006, this Court entered an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Directing Document Production and Taking of Depositions (the “Discovery Order”, Docket No. 10868), which, among other things, authorized Huff to take discovery of members of the ACC

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<sup>56</sup> See Huff Motion ¶ 3.

<sup>57</sup> *Id.* ¶ 4.

<sup>58</sup> Hr’g Tr. 10:10-22, Oct. 30, 2006.

Noteholders Committee with respect to the dissemination to the press and media of the ACC Noteholders Committee Letter. It became apparent very quickly that Huff's only purpose in subjecting these parties to discovery was to coerce them into submission.

41. Huff served subpoenas on or about May 18, 2006, on every signatory of the ACC Noteholders Committee Letter (Highfields, Tudor, Aurelius, Chesapeake Partners, Elliott, Farallon, Drawbridge, Noonday, OZ Management, Perry, and Satellite) requesting document production by June 1, 2006. Huff also scheduled over 15 depositions to begin on June 6 and end on June 15, with two depositions scheduled per day, virtually every day until completion. Huff was pursuing a permutation of the strategy pursued by the Arahova Noteholders Committee and exposed several months earlier: the use of litigation to try to coerce a non-merits based settlement. Documents were produced and Huff focused its depositions only on representatives of Perry, Aurelius, Elliott, Tudor, and Drawbridge.<sup>59</sup> The diversion inflicted on the members of the ACC Noteholders Committee as a result of these document discovery and deposition demands took substantial time.

42. Clearly, the Huff Motion and the Rule 2004 Discovery process were never about alleged improper solicitation, but about creating a venue in which to raise false allegations of market manipulation and improperly pressure the members of the ACC Noteholders Committee. Allegations of market manipulation, as suggested by the Huff Motion, are never taken lightly by the trading community. Thus, through the Rule 2004 Discovery process, and upon information and belief, Huff threatened the members of the ACC Noteholders Committee with spurious, but lengthy, litigation unless they agreed to a settlement.

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<sup>59</sup> Tudor was the only Settling Party whose deposition was taken and that is because it was one of the first scheduled.

43. In addition, on information and belief, one or more of the ACC Noteholders' adversaries suggested to the Monitor that some or all members of the ACC Noteholders Committee were short-selling for an improper purpose. While there is nothing improper about short selling, any such disclosure of confidential trading information was improper and was clearly "leaked" to the Monitor for improper strategic leverage because it did not come from the Rule 2004 Discovery process. It is now clear that these allegations were designed to raise the threat of litigation and intimidate and improperly coerce members of the ACC Noteholders Committee and weaken their negotiation position and resolve.

44. Notwithstanding what the ACC Bondholder Group believes was improper disclosure of confidential trading information, during a June 27, 2006 hearing, the Court *sua sponte* raised the short-selling issue and stated that if short selling "were ever shown, that would be a matter of serious concern to me or it would be, at least if anybody was taking these actions in the plan process by reason of their interest not in their own recoveries but in the lack of success of another constituency. That's a serious accusation to make and I wouldn't expect it to have been said unless it were true."<sup>60</sup> Only *two days later*, Tudor and Highfields had "signed on" to a term sheet drafted by Huff's counsel.

**E. COERCING SUBMISSION TO A FLAWED PLAN AGREEMENT**

45. The term sheet drafted by Huff's counsel evolved into the Plan Agreement which, following further modifications, now serves as the basis for the proposed Plan. Contrary to the construct created by the Court's January Opinion and affirmed by the District Court, the Debtors have forsaken any attempt to maintain neutrality by agreeing to propose a chapter 11 plan based on the Plan Agreement, without a holdback or dual track option.

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<sup>60</sup> Hr'g Tr. 88:1-10, June 27, 2006.

46. Consistent with the goal of the Arahova Noteholders Committee’s past tactics, the Plan Agreement eviscerates the MIA Process, avoids the merits of the Inter-Creditor Dispute, and – at core – gives Arahova Noteholders a full recovery by diverting ACC’s assets. Indeed, according to the Second Disclosure Statement Supplement Relating to the Plan: “The Plan Agreement contemplates that the Debtors and Creditors Committee, as co-Proponents, would file the Plan under which all holders of Allowed Claims against the Subsidiary Debtors would receive payment in full (through a combination of Cash and TWC Class A Common Stock) of all principal and accrued interest. . . .”<sup>61</sup> Significantly, neither the Debtors nor the Creditors considered the merits of the Inter-Creditor Dispute as a basis for formulating this agreement to reallocate ACC’s assets to creditors of Subsidiary Debtors.<sup>62</sup>

47. The Debtors’ decision to support and propose a plan based on the Plan Agreement belies all pretense of neutrality and violates the Plan Procedures Order. Among other egregious provisions, the term sheet and the Plan Agreement, as modified by the Plan, contained not-so-thinly-veiled threats of litigation and continued discovery against ACC Senior Noteholders who refuse to join in the agreement and vote to accept the proposed Plan:

Pursuant to the Plan, the Proponents may [designate votes, subordinate claims, withhold or object to distributions or take discovery (“Distribution Remedies”)] against any Person. . . . The Proponents have determined that they are not going to pursue Distribution Remedies against the ACC Settling Parties . . . .<sup>63</sup>

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<sup>61</sup> DSS2 – 12 (emphasis added).

<sup>62</sup> *See id.*

<sup>63</sup> *See* DSS2 – 19; Plan, Ex. A at A-5, A-32 (definition of “ACC Settling Parties”, and “Settlement Parties”, respectively).

In addition, the Plan Agreement provided for broad and gratuitous exculpation and releases in favor of those ACC Senior Noteholders who agreed to vote to accept the proposed Plan.<sup>64</sup>

48. The Plan Proponents and Settlement Parties created a construct under which holders of ACC Senior Notes had to choose between (a) preserving their ability to oppose the Plan under threats of litigation; and (b) stifling their dissent and agreeing to accept the Plan to obtain broad releases and exculpation or, at a minimum, avoid further challenges through discovery and litigation. Subsequently, on September 12, 2006, the Court ordered that no further discovery could be taken under the Discovery Order without good reason after notice and an opportunity to be heard.<sup>65</sup> By that time, however, the damage had been done.

49. In response to the ACC Bondholder Group's disclosure statement objection that the Plan Proponents were effectively soliciting votes by threatening litigation, the Court created a gatekeeper screen. But, it did not work. The Creditors Committee is now taking on Huff's prior role in "selective prosecution" to produce Plan votes that would not result if parties voted based solely on the economic merits of the proposal. The Creditors Committee sought permission to move to designate the votes of Perry and Aurelius on the ground they sent the ACC Noteholders Committee Letter to *The Wall Street Journal* and had shorted Arahova Notes. At a hearing on October 30, 2006, the transcript of which was not sealed, Mr. Stern, attorney for the Creditors Committee, admitted that neither act alone is a ground to designate votes and failed to demonstrate any basis upon which the two acts, taken together, could be actionable. Nevertheless, the Court allowed the Creditors Committee to take additional very

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<sup>64</sup> See Second Amended and Restated Agreement Concerning Terms and Conditions of a Modified Chapter 11 Plan, dated July 21, 2006, at 17.

<sup>65</sup> Hr'g Tr. 126:10-21, Sept. 12, 2006; *see also* DSS2-19.

limited discovery to ascertain whether to prosecute the motion.<sup>66</sup> To the extent filed, the ACC Bondholder Group will oppose any such motion as baseless and unjustified by the law and the facts.

**F. UNABATED ACCRUAL OF BANK INTEREST AT ACC CREDITORS' EXPENSE**

50. In addition to the harms perpetrated by the Plan Agreement, ACC creditors also suffer the burden of loss from the continued accrual of interest on Bank Claims. Interest on Bank Claims accrues at the rate of approximately \$1.3 million per day<sup>67</sup> or \$40 million a month. Because the Plan Agreement essentially guaranteed fixed payments for the Subsidiary Debtors' creditors, but not for ACC creditors, ACC creditors bear the entire risk of diminished recoveries from such interest.

51. On August 18, 2006, the Debtors and the Creditors Committee jointly filed an expedited Motion seeking, among other things, approval of a draft version of the Second Disclosure Statement Supplement (the "DS Motion"). To support a proposed order to show cause, counsel for the Creditors Committee asserted the exigencies of these cases – exigencies previously identified by the ACC Bondholder Group, such as the continued accrual of staggering sums of interest on billions of dollars of debt – necessitated an expedited hearing on the DS Motion. Notably, while the Creditors Committee invoked the substantial adequate protection payments to the Bank Lenders as a basis to curtail due process and justify expedited consideration of the DS Motion, neither the Debtors nor the Creditors Committee, in the exercise of their fiduciary duties to all estates to maximize value, have taken any affirmative steps to stop this loss of value, such as seeking authorization to pay the bank debt immediately, without prejudice to all estate claims.

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<sup>66</sup> Hr'g Tr. 60-61, Oct. 30, 2006.

<sup>67</sup> The \$1.3 million/day figure is a gross number that does not reflect any offset for interest earnings.

52. On September 11 and 12, 2006, the Debtors and the Creditors Committee requested that a hearing to consider confirmation of the Plan be held during October, 2006 and stated that, if such schedule were kept and the Plan confirmed, the effective date of the Plan would occur on or about October 31, 2006. By a bench decision, dated September 19, 2006, the Court indicated that a hearing to consider confirmation would be held within “6 to 8 weeks.”<sup>68</sup> In denying the ACC Bondholder Group’s motion to terminate the Debtors’ exclusive period to file a plan, the Court accepted the Plan Proponents’ representations and ruled that “within just a few more weeks, we’ll be able to ascertain the level of creditor support for the Joint Plan. . . . [W]e’ll know whether the Joint Plan has secured the necessary votes and is confirmable in just a few weeks. . . .”<sup>69</sup>

53. By Order to Show Cause, on September 22, 2006, the ACC Bondholder Group filed an Emergency Motion requesting entry of an order authorizing and directing the Debtors to pay all Bank Claims in full immediately and thereby end the recurring financial drain on these estates, subject to disgorgement consistent with the provisions of the Plan. On September 22, 2006, the Court entered the Order Show Cause, scheduling an on-the-record, non-evidentiary conference with respect to scheduling of matters related to that Emergency Motion for September 26, 2006.<sup>70</sup> At the scheduling conference, the Court declined to set the Emergency Motion for expedited consideration and found that adjourning the Emergency Motion would, among other things, “avoid[] interference with the solicitation process.”<sup>71</sup>

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<sup>68</sup> See Bench Decision at 7, 17, Docket No. 12034.

<sup>69</sup> *Id.* at 19, 22.

<sup>70</sup> See Docket No. 12056.

<sup>71</sup> Hr’g Tr. 54:13-19, Sept. 26, 2006.

54. On September 27, 2006, the Plan Proponents filed a notice of settlement of order regarding an earlier version of the Second Disclosure Statement Supplement, which provided that an order approving such disclosure statement would be presented to the Court on September 28, 2006 at 4:00 p.m. (Eastern Time) (the “Settlement Time”).<sup>72</sup> The Plan Proponents then filed several notices of adjournment regarding the Settlement Time, while continuing to oppose the ACC Bondholder Group’s motion to compel payment of the Banks. Despite these self-imposed delays, the Plan Proponents continue to use the ongoing accrual of postpetition interest as convenient leverage to scare ACC Senior Noteholders into voting for the Plan.<sup>73</sup>

**G. UNDERVALUING TWC CLASS A COMMON STOCK HARMS ACC CREDITORS**

55. Substantially all of the Debtors’ operating assets were liquidated when this Court approved certain Sale Transactions with Comcast Corporation and Time Warner NY Cable LLC (“TW NY”), a subsidiary of Time Warner Inc. Effective July 31, 2006, the Debtors received approximately \$12.5 billion in Cash and 155,913,430 shares of TWC Class A Common Stock (“TWC Stock”) of Time Warner Cable Inc. (“TWC”), a subsidiary of TW NY. These shares represent approximately 16% of the outstanding equity securities of TWC.

56. The facts will demonstrate that the Plan intentionally and artificially undervalues TWC Stock in order to dilute recoveries that the ACC Bondholder Group would otherwise enjoy and overpay creditors of the Subsidiary Debtors. Based upon a reasonable discounted cash flow analysis, and the equity values for comparable enterprises during this year, including Comcast Corporation, the ACC Bondholder Group submits that the Debtors’ TWC

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<sup>72</sup> See Docket No. 12088.

<sup>73</sup> Indeed, counsel for the Creditors Committee recently argued to this Court that the Plan must be confirmed quickly because “there are certain creditors that receive interest to the effective date and there are others who receive the residual value. The ongoing accrual of interest has economic consequences to many parties in this case and it is yet another factor.” Hr’g Tr. 14:24 – 15:3, Nov. 15, 2006.

Stock currently has a market value of \$6.3 billion to \$7.3 billion. This value substantially exceeds the alternative Deemed Values under the Plan of \$5.1 billion or \$5.4 billion. The Plan then imposes a collar—called a “True-Up Mechanism”—on this value to the detriment of ACC creditors. Given the substantial increase in value of cable stocks this year, the Plan provisions regarding TWC Stock effectively grant subsidiary creditors an in-the-money call option worth approximately \$150 to \$370 million, at the expense of ACC creditors.<sup>74</sup>

57. According to the Plan, TWC Stock will have a deemed value of only \$5.1 billion if the ACC Senior Notes Class rejects the Plan, but will increase to \$5.4 billion if the ACC Senior Notes Class votes to accept the Plan.<sup>75</sup> Thus the Deemed Value will rise or fall, not based on any market conditions, but according to an unjustified “death trap” voting provision.<sup>76</sup> Provisions such as this generally have been approved as an inducement to accept a plan where the affected creditors are otherwise entitled to nothing at all.<sup>77</sup> By contrast, the death trap employed here manifests the extraordinary effort by the Plan Proponents to dilute ACC’s rightful entitlements and avoid proper value allocation through whimsical plan tactics. Instead of offering to give ACC Senior Noteholders value to which they would not otherwise be entitled, as consideration for voting to accept the Plan, the Plan threatens to take away value from ACC Senior Noteholders to which they are entitled, unless they accept the Plan.

58. Section 10.12 of the Plan restricts proper adjustments to Deemed Value through use of the True -Up Mechanism mentioned above. This arbitrary collar on the value of

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<sup>74</sup> See Plan, Ex. A, at A-14 (definition of “Deemed Value”); Plan § 10.12 (defining and explaining the “True-Up Mechanism”).

<sup>75</sup> See Plan, Ex. A at pp. A-14-15; DSS2-23-24.

<sup>76</sup> *In re MCorp Financial, Inc.*, 137 B.R. 219, 236 (Bankr. S.D. Tex. 1992).

<sup>77</sup> See *In re Drexel Burnham Lambert Group Inc.*, 138 B.R. 714, 716-17 (Bankr. S.D.N.Y. 1992).

TWC Stock proposes to adjust the Deemed Value up or down by 20% based on the volume weighted average trading price per share during the sixty days following the Effective Date. By virtue of this mechanism, the value can be increased or decreased by 20%, which translates into a range of value of \$4.08 billion to \$6.48 billion. Because the highest possible valuation falls in the lowest range of any reasonable valuation analysis, the ACC Bondholder Group bears 100% of the risk of declining prices in cable stock, but receives little of the benefit from an increase in prices. For example, if the market value for TWC Stock is actually \$7.3 billion, ACC creditors will forfeit \$800 million to creditors of other Debtors due to the cap imposed by the True-Up Mechanism. Thus by setting the Deemed Value far below the current market value, and then applying a collar to restrict the adjustment of that value, the Settlement Parties have preserved any upside for themselves. Moreover, given the materially understated valuation used for the Deemed Value, any purported downside protection is entirely fictional. Further, the combination of an artificially low Deemed Value and an arbitrary collar mechanism allows holders of claims against Subsidiary Debtors to further enhance their disproportionate recoveries by increasing the number of shares they receive while correspondingly reducing the number of shares received by ACC creditors.

59. The Plan Proponents attempt to validate this capricious methodology by stating that the Deemed Value was an integral component of various compromises embodied in the Plan.<sup>78</sup> The Plan Proponents admit, however, that the Deemed Value will not necessarily be indicative of the actual equity value of TWC Stock.<sup>79</sup> Moreover, the Deemed Value ascribed to the TWC Stock under the Plan (whether or not there is an ACC Senior Notes Claims Accepting Class) is based upon an arbitrary valuation inconsistent with both the earnings capacity of TWC

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<sup>78</sup> See DSS2 - 111.

<sup>79</sup> See DSS2 - 23.

and the market prices of comparable enterprises. Instead of disclosing the methodology used, or better yet, providing adequate financial information, the Plan Proponents urge the Court to accept their arbitrary valuation because “valuation of the TWC Class A Common Stock is an exercise fraught with inherent complexities and is dependent on numerous assumptions, including TWC achieving financial results projected in financial projections prepared by TWC’s management.”<sup>80</sup> As a result, the current valuations provided in the Plan derive solely from agreements between the Plan Proponents and those creditors receiving special consideration under the Plan.<sup>81</sup>

#### **H. APPROVAL OF THE SECOND DISCLOSURE STATEMENT SUPPLEMENT AND SOLICITATION**

60. On October 17, 2006, the Court approved the Second Disclosure Statement Supplement in its amended form dated October 16, 2006, and authorized solicitation of votes relating to the Plan.<sup>82</sup> The Confirmation Hearing to consider the Plan, as well as the *TMT Trailer* hearing to consider the Global Settlement embodied therein, is scheduled to commence on December 7, 2006. The members of the ACC Bondholder Group have each voted to reject the Plan.

#### **III. RELIEF REQUESTED**

61. In light of the arguments set forth herein and in the Memorandum of Law in Support filed concurrently, the ACC Bondholder Group respectfully requests that the Court enter an order denying confirmation of the Plan and ordering the parties to the Inter-Creditor

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<sup>80</sup> DSS2 - 111.

<sup>81</sup> *Id.* at 111 – 112.

<sup>82</sup> *See Order: (I) Approving Second Supplement to Disclosure Statement (II) Fixing A Record Date; (III) Approving Forms of Ballots; (IV) Establishing Voting Deadlines; (V) Establishing Objection Procedures in Respect of Confirmation of Fifth Amended Joint Plan of Reorganization of Adelphia Communications Corporation and Certain of its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code; and (VI) Granting Related Relief (Docket No. 12202).*

Dispute to resume settlement talks while preparing to resume litigation of the Inter-Creditor Dispute on a streamlined and expedited basis.

#### IV. OBJECTION

62. The Global Settlement and the Plan are premised on clear and direct violations of the provisions and underlying policies of the Bankruptcy Code. As discussed in greater detail below and in the Memorandum of Law filed contemporaneously herewith, the Global Settlement fails to satisfy the requirements of *TMT Trailer* and cannot be approved and, similarly, the Plan fails to satisfy the requirements of Chapter 11 of the Bankruptcy Code and cannot be confirmed. To the extent the Plan Proponents elect to seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code, the ACC Bondholder Group reserves the right to supplement this Objection in opposition thereto. Moreover, the ACC Bondholder Group also intends to file an addendum to their Memorandum of Law on November 27, 2006, as provided by the Court, addressing in greater detail the specific issues identified by the Court at the end of the hearing on September 26, 2006, including the list of fourteen MIA issues prepared by the Court (the “14 MIA Issues”).

##### A. THE PROPOSED “GLOBAL SETTLEMENT” IS FATALLY FLAWED AND THEREFORE CANNOT BE APPROVED

63. The Global Settlement fails to satisfy the standards set forth in *TMT Trailer* because of its silence and obfuscation as to how the distributions under the Plan correlate with a likely resolution of the issues in the Inter-Creditor Dispute is resolved, and because creditor recoveries under the settlement are completely divorced from the merits of the litigation, as well as the Debtors’ own schedules of assets and liabilities.<sup>83</sup> The Arahova Scenarios<sup>84</sup> are

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<sup>83</sup> See *Protective Comm. for Indep. Stockholder TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“The requirements . . . that plans of reorganization be both ‘fair and equitable’ apply to compromises . . .”).

implausible and cannot be relied upon to determine the range of likely litigation outcomes and the reasonableness of the Global Settlement. As the Supreme Court made clear in *TMT Trailer*, avoidance of cost and delay is neither factually nor legally a basis to approve the Global Settlement. There is no settlement and certainly not an arm's length, good faith settlement.

64. The Court should be under no illusion that the hybrid substantive consolidation in the Plan and Global Settlement resemble a merits-based settlement of the disputes between ACC and Arahova. The Plan Proponents – the Debtors and the Creditors Committee – have admitted that their proponenty is not a function of a merits-based evaluation of the Inter-Creditor Dispute. Instead, it is a matter of expediency. If the ACC Senior Notes Class accepts the Plan, that will be the result of including the votes of Huff (who has previously stated that it is the largest holder of Arahova Notes and has aligned itself with the Arahova Noteholders Committee) and the members of the Crossover Committee whose holdings in Arahova Notes predominate and align their economic interest with the Arahova Noteholders Committee. The Global Settlement is not a result driven by any demonstrable correlation between the merits of the Inter-Creditor Dispute and the distributions under the Plan. Bias and expediency, instead, drive the outcome. Thus, the ultimate issue before the Court is whether expediency will replace principle as the model for resolving large chapter 11 cases with complex capital structures involving multiple debtors.

**B. THE PLAN CANNOT BE CONFIRMED BECAUSE IT FAILS TO SATISFY THE REQUIREMENTS OF 11 U.S.C. § 1129**

65. The tortured treatment of Intercompany Claims impermissibly classifies dissimilar claims in a single class, violates the statutory voting requirements, violates rights of

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<sup>84</sup> See Arahova Noteholders Committee Position Statement, DSS2 at Ex. BB (setting forth various “Scenarios” of possible litigation outcomes).

setoff under section 553 of the Bankruptcy Code, and necessarily creates a rejecting class that cannot be crammed down because of unfair discrimination and disregard for the absolute priority rule. The Plan effectuates an illegal hybrid of substantive consolidation. The Plan fails the best interest of creditors test with respect to ACC creditors and the Intercompany Claims. The Plan illegally discriminates against creditors within a single class, in violation of sections 1123(a)(4) and 1129(a)(1) of the Bankruptcy Code, because some creditors receive special consideration in exchange for their accepting votes, and creditors who vote to reject are stripped of statutory rights. The Plan contains illegal release, exculpation, and injunctive provisions designed to coerce and manipulate Plan acceptance. The solicitation process is irreparably tainted and violates sections 1122 and 1126 of the Bankruptcy Code.

66. Finally, and for the reasons set forth above and as more fully discussed in the Memorandum of Law in Support of their Objection to Approval of the Global Settlement and Confirmation of the Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain Affiliated Debtors, the Plan was filed in bad faith and cannot be confirmed.

## V. CONCLUSION

The ACC Bondholder Group requests that the Court deny confirmation of the Plan and grant the ACC Bondholder Group such other and further relief as is just and appropriate.

Dated: November 24, 2006  
New York, New York

/s/ Martin J. Bienenstock  
Martin J. Bienenstock, Esq. (MB 3001)  
Brian S. Rosen, Esq. (BR 0571)  
Melanie Gray, Esq. (*Pro Hac Vice*)  
Sylvia Mayer, Esq. (*Pro Hac Vice*)  
James T. Grogan, Esq. (*Pro Hac Vice requested*)  
Eleanor Heard Gilbane, Esq. (EG 0764)

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153-0119  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Counsel to ACC Bondholder Group

/s/ Isaac M. Pachulski  
Isaac M. Pachulski (*Pro Hac Vice*)  
Stephan M. Ray (*Pro Hac Vice*)  
STUTMAN, TREISTER & GLATT P.C.  
1901 Avenue of the Stars, 12 Floor  
Los Angeles, CA 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788

Special Conflicts Counsel<sup>85</sup>

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<sup>85</sup> Special Conflicts Counsel has been retained by Aurelius Capital Management, LP, Catalyst Investment Management Co., LLC, Drawbridge Global Macro Advisors LLC, Drawbridge Special Opportunity Advisors LLC, Elliott Associates, LP, Farallon Capital Management, L.L.C., Noonday Asset Management, L.P., Perry Capital LLC, and Viking Global Investors LP.