CONFIDENTIAL/FILED UNDER SEAL

Decision of Trustee Regarding Real Estate Owned by Adelphia Communications Corp in Mooresville, NC, and the Employment and Severance of Adelphia System Employees

I. Settlement Agreement

The July 28, 2006 Settlement Agreement ("Settlement Agreement") between Time Warner Cable ("Time Warner" or "TWC"), Adelphia Communications Corp, et al., ("Adelphia") and the local franchising authorities represented by the Charlotte-Mecklenburg Office of Cable and Franchise Management ("Consortium") required that between July 31 and August 30, 2006 "Consortium, TWC and Adelphia [would] negotiate and finalize an Asset Purchase Agreement based on Adelphia/TWC APA with schedules based on [the Adelphia] system, such as equipment to be transferred, so that the parties agree on what Consortium is buying."

Additionally, the Settlement Agreement required that by August 25, 2006 the Consortium and TWC ("Parties") would file simultaneous briefs and reply briefs with the Bankruptcy Court regarding the per-subscriber purchase price for those portions of the Adelphia System ("Adelphia System") serving the Towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman, and portions of Mecklenburg County, North Carolina ("Mooresville System").

[In an August 18, 2006 Declaration submitted to the Bankruptcy Court, Time Warner Cable Senior Vice President-Investments Satish Adige stated that "The total purchase price of $14.114 billion to be paid by TWNY was for the acquisition of cable systems (including the Mecklenburg cable system) with 3.704 million subscribers at the anticipated closing time. Dividing the total purchase price by the total number of subscribers derived the Purchase Price Per Subscriber of $3,810…In determining the purchase price, the parties in general did not conduct valuations of individual systems included in the Asset Purchase Agreement, and specifically did not conduct a valuation of the Mecklenburg cable system…TWNY understood when it made its offer to Adelphia, therefore, that the offer represented a price of $3,810 for each subscriber in each cable system acquired from Adelphia, regardless of the particular characteristics of that system…Although in negotiating the TWNY Asset Purchase Agreement the parties were aware that some local franchising authorities had rights of first refusal…the $3,810 per-subscriber purchase price was determined without any consideration of these rights of first refusal." (See Declaration of Satish R. Adige, August 18, 2006, filed by TWC with the US Bankruptcy Court)]

[In it's submission to the Bankruptcy Court, the Consortium argued that the purchase price for the Mooresville System should be $2,433/subscriber based on an August 14, 2006 analysis of the system's cash flows and characteristics done by Douglas Dawson, President, CCG Consulting, LLC of Beltsville, Maryland. The Consortium's proposed per-subscriber valuation was supported by the Declaration and Expert Opinion of Richard D. Treich, Chief Executive Officer of Front Range Consulting, Inc. Based upon his review of Time Warner Inc.'s data regarding the entire package of Adelphia assets it was to acquire, Mr. Treich estimated that the average cost per subscriber Time Warner was purchasing would be in the range of $2674 to $2744. Mr. Treich further opined that the cost per subscriber for the Consortium system should be decreased from this range to account for unfavorable characteristics of the Consortium system and other factors.]

The Settlement Agreement required that by August 28 "TWC engineers [shall] design a plan ("Separation Plan") to efficiently and quickly separate the system serving Consortium Communities from the Iredell/Statesville system ("Iredell/Statesville System"). The Mooresville and Iredell/Statesville Systems shall "be wholly separated physically, although the engineers may agree on limited subscriber swaps to avoid splitting nodes." The Settlement Agreement allowed "TWC to have facilities within the Consortium Communities as necessary for the sole purpose of the separation…so that TWC can serve the Iredell/Statesville customers as soon as possible and no later than the Consortium Purchase Date."

Between the date by which the Consortium elects to purchase the Mooresville System ("Election Date") and the Election Date plus 120 days, ("Consortium Purchase Date" or "Closing Date"), the Settlement Agreement requires that transition issues be dealt with and the system separation be completed. Among other things, the Settlement Agreement provides that the Consortium will hire employees during this 120 day transition period "so that Consortium can operate the [Mooresville] system as of the Consortium Purchase Date."

Additionally, the Settlement Agreement provides: "TWC shall release without penalty any and all former employees and managers from TWC employment who accept job offers to become employees of the Consortium."

II. Time Warner Cable/Consortium Asset Purchase Agreement

Despite good faith efforts to negotiate and finalize the TWC/Consortium APA by the August 30, 2006 deadline, TWC and the Consortium have been unable to resolve key issues involving the allocation, if any, of the Mooresville real estate, and the employment and severance of Adelphia System employees. As a result, TWC and the Consortium have yet to finalize the APA and have now agreed to submit these issues to the Trustee for final determination.

On January 8, 2007, the Consortium and TWC submitted letter briefs to the Trustee and on January 11, 2007, each party submitted its reply. See Letters to Trustee from Consortium Counsel Nicholas P. Miller dated 1/8/07 and 1/11/07, and Letters to Trustee from TWC Counsel Gardner F. Gillespie dated 1/8/07 and 1/11/07, Attachments #1, #2, #3 and #4, respectively.)

A. <u>Background</u>

1. Real Estate

As described in the Trustee's October 12, 2006 Decision Regarding Time Warner Cable's Proposed Separation Plan for the Adelphia Cable System:

> *To operate independently, a cable system must have a headend where the signals of over the air broadcast stations and satellite program networks are received and processed for distribution over fiber optics and coaxial cable networks through nodes to discreet groups of subscribers. A headend facility can also house servers, switchers, routers, multiplexers, QAM modulators and other devices related to the carriage of digital services.*
>
> *If a system does not have its own headend facilities, then it must have one or more hubs to which it transports signals from a regional headend via microwave, super trunk, fiber or other means. Typically,*

cable systems that cover large geographic areas have one or more hubs.

To function as an ongoing business, cable systems also need other facilities including business offices, customer service offices, studios, warehouses, tech work areas, garages, etc. It is not essential that these facilities be co-located with a headend or hub, or even located together, but it is desirable from an economic standpoint and customer service standpoint that they be in reasonably close proximity to a majority of the system's subscribers. Depending upon distances, the facilities may be located within or a short distance from the franchise area.

The TWC Separation Plan for the Adelphia System, as approved by the Trustee, provides for a new 720-square foot hub building to be built on a half-acre parcel in Iredell County at a cost of approximately $2 million, including electronics. The hub building and land represent about $550,000 of the total. The new hub will enable TWC to continue to serve subscribers in the TWC portion of the system who currently receive services via the Mooresville headend. The cost of the hub is to be shared by the parties. The Separation Plan further provides that "Mooresville headend will transition to Consortium upon close."

As part of the Separation Plan, TWC will construct a fiber transport link to connect existing TWC plant near Kannapolis, NC to the new Iredell hub. The fiber link will transport video and data signals between regional TWC cable facilities and the Iredell hub. TWC will also connect the Iredell and Statesville hubs via a new fiber link. The costs of these fiber links will be shared by the parties as well.

Since August 1, 2006, TWC has transferred billing, data and call center activities from Adelphia facilities in Buffalo, NY to Time Warner regional facilities in the Charlotte, NC area.

In addition to the Mooresville headend and an existing hub in Statesville, the Adelphia Cable System currently includes a customer service office/studio/warehouse facility and garage/carport in Mooresville, and a customer service office/ warehouse/garage that are co-located with the Statesville hub. According to Attorney Gillespie's January 8, 2007 to the

Trustee, the latter consists of a 4,800 square foot structure that "contains some limited office, customer service and warehouse space and a two-bay garage. The structure was used by Adelphia, and continues to be used by TWC, to allow customers to exchange cable boxes and make payments, as well as to help in maintaining and servicing the northern portion of the system." TWC has also provided the Trustee with a floor plan and photographs showing the interior and exterior of the Statesville facility.

A September 2006 property summary prepared by Time Warner describes the Mooresville real estate as follows:

The headend building, located at 420 South Academy Street, consists of approximately 7,400 square feet. "It has the headend, tech meeting room, construction office and general offices. The exterior is metal with a flat tar roof."

The garage facility, located also at 420 South Academy Street, has approximately 4,500 square feet of interior space. "It has a 2 bay garage with lift, and mechanic. It also has cable and construction storage. Exterior is painted brick with a tar and paper roof. In front of [the garage/warehouse] is a carport and wash bay covering 6,250 square ft. made of metal with metal roof."

A third building, at 435 South Broad Street, abuts the headend and garage facilities. It is a two-story building, consisting of approximately 7,500 square feet. "Top floor has the payment center, commercial and direct sales employees (cubicles and office space). Bottom floor has converter control, warehouse, tech pick up area, video equipment room for local access channel, and office space. The exterior is brick and metal. The front and side are natural brick, and the back is metal with two garage doors. The roof is flat tar."

On October 11, 2006, the Trustee, accompanied by representatives of both Time Warner and the Consortium, visited the Mooresville facilities.

Time Warner's property descriptions are generally consistent with the findings of Bidencope & Associates, an independent real estate appraisal firm retained by the Mecklenburg County Real Estate Services Department to inspect and appraise the Adelphia property in Mooresville. According to the Bidenscope & Associates Appraisal Report ("Appraisal Report"), dated

December 9, 2006, “the appraised property consists of an existing office-industrial mixed use facility… (3 separate parcel’s developed, now combined in a single property) and contains 19,410 square feet of combined Gross Building Area, and 19,410 square feet of Net Rental Area” situated on a 3.73 acre site.” Bidenscope & Associates found the headend/office facility, built in 1989, and the garage/warehouse, built in 1957, to be in “average” condition. They found the customer service office/studio/warehouse, built in 1998, to be in “good” condition. [Bidenscope & Associates found the square footage of the Mooresville headend building (6,910 square feet) to be slightly less and the square footage of the Mooresville garage (5,000 square feet) to be slightly more than Time Warner’s approximations. The Appraisal Report found that the three buildings, land and existing improvements had a fee simple market value of $1,370,000. The appraised value, on a square footage basis ($68-$75 per square foot), falls within the lower to middle range of comparable sales in the Mecklenburg area, according to the report.

At issue between Time Warner and the Consortium is whether and how the Mooresville customer service office/studio/warehouse building and Mooresville garage/warehouse building should be allocated between the parties, and if not divided physically, whether any financial adjustment should be made at Closing.

2. Employment

The Adelphia System currently has 59 employees who work out of its Mooresville and Statesville/Iredell facilities. The employees include a business operations manager, construction supervisor, customer service representatives, direct sales representatives, dispatchers, field auditors, a headend technician, maintenance technicians, service technicians, customer service supervisors, technical supervisors, and administrative support personnel. Time Warner Cable’s regional management and staff provide additional support.

According to a schedule that TWC provided the Trustee, 33 of the 59 employees work out of Mooresville and 16 out of Statesville/Iredell.

Under the Asset Purchase Agreement entered into by Adelphia and Time Warner in April 2005, TWC was generally required to make an offer to all of Adelphia’s system level employees (subject to TWC’s ability to conduct customary background checks) and to pay severance to any such employees who were ultimately not retained.

At issue between Time Warner and the Consortium are the Parties respective rights and responsibilities with respect to retaining Adelphia System employees and paying severance to employees who may not be offered continued employment.

B. Time Warner Position on Real Estate

Time Warner's position is that "both parties are entitled to fully operational cable systems, and a fair division of the Mooresville real estate is necessary for TWC to be able to adequately serve the subscribers it will retain in the Mooresville/Iredell area." Arguing that it will retain approximately 53 percent of the subscribers and approximately 55 percent of the outside plant of the Adelphia System, Time Warner asserts that "many of these subscribers and much of the plant will be markedly closer to Mooresville than Statesville… TWC will require office, warehouse, and garage space in Mooresville to serve subscribers and maintain the plant...for seamless operation of the portion of the cable system it will retain." (Gillespie Letter to Trustee of 1/8/07 at p. 2.)

Time Warner proposes that the Adelphia System real estate be divided between itself and the Consortium based on the System's total square footage of building space, and the relative number of subscribers and miles of outside plant that each party would serve post-Closing. Under TWC's proposal, the Consortium would be allocated approximately 42 percent of the total building space based upon TWC's estimate that the Consortium would serve approximately 47 percent of the system's subscribers and retain approximately 45 percent of the system's outside plant. (Gillespie Letter to Trustee of 1/8/07 at p. 4.)

Time Warner does not contest the Consortium's right to own the Mooresville headend building at 420 South Academy. With respect to the headend, Attorney Gillespie's January 8, 2007 letter states: "Just as TWC and the Consortium are sharing equally the cost of the new [Iredell] hub required so that the system can be separated, it is appropriate that both parties share, in essence, the value of the headend building in Mooresville."

(Gillespie Letter to Trustee of 1/8/07 at p. 6.) TWC points out that the property was previously used as a customer service and bill payment center and suggests that the Consortium could use the property for such purposes in the future.

Under its proposal Time Warner would allocate to itself the adjacent 7,500 square foot customer service office/studio/warehouse building at 435 South Broad Street. TWC would also retain the 4,800 square foot Statesville hub/office/garage and, under the Separation Plan, gain ownership of the new 720-square foot Iredell hub.

Lastly, Time Warner proposes that the Consortium be given a choice of keeping the 4.500 square foot garage/warehouse and 6,250 square foot carport at 420 South Academy and pay TWC $250,000, or of allowing TWC to keep these facilities and pay the Consortium $250,000.

C. Consortium Position on Real Estate

In Attorney Miller's Letter to the Trustee of January 8, 2007, the Consortium states its belief that "Time Warner and the Consortium are each entitled to the facilities located within their respective franchise areas, and that Time Warner is not entitled to any additional compensation for the Consortium cable system other than the per subscriber purchase price to be set by Judge Gerber."

In support of its position, the Consortium offers multiple arguments:

1. That the parties established very early in the Settlement Agreement/Asset Purchase Agreement process related to the Consortium's right of first refusal the principle that each side would be entitled to the real property located in their respective franchise territories. In support of this argument, the Consortium cites a June 9, 2006 letter to the Consortium from Time Warner and Adelphia which stated: " Because the headend of the Cable System is in one of the Consortium Communities (Mooresville) and the Cable System serves communities other than the Consortium Communities ("the Non-Consortium Communities") and Time Warner will acquire the franchises and facilities in the Non-Consortium Communities, it will be necessary for the

Consortium Communities to separate the Non-Consortium Communities and enable Time Warner to serve the non-Consortium Communities on an uninterrupted basis." (Miller Letter to Trustee of 1/8/07 at p. 2.)

2. "The Separation Plan approved by the Trustee on October 12, 2006 was intended to provide both Time Warner and the Consortium protection and replacement of those facilities needed for the two systems to function independently…" (Miller Letter to Trustee of 1/8/07 at p. 2.)

3. "The principle of assigning facilities by service area is the industry standard approach throughout the cable industry. When a cable business is sold, all of the fixed assets located in the customer service territory transfer with the business…" (Miller Letter to Trustee of 1/8/07 at p. 2.)

4. During the due diligence process which preceded the Settlement Agreement, "Adelphia represented to the Consortium and to Time Warner that all the real estate in Mooresville would go to the Consortium. Adelphia indicated that personal property would be subject to further allocation between Time Warner and the Consortium." [The Consortium acknowledges that Adelphia's bankruptcy attorney has recently disputed the Consortium's interpretation of her June 2006 communications about the Mooresville real estate.] (Miller Letter to Trustee of 1/8/07 at p. 3.)

5. "The second principle established early on by the parties was that, should the Consortium choose to acquire the cable system, the price would be established solely on the number of subscribers served by the Consortium system…In the price submissions to the bankruptcy court neither side proposed an offset to the purchase price nor discussed the comparative value of the capital assets in the Consortium System and in the Statesville/Iredell system…." (Miller Letter to Trustee of 1/8/07 at p. 3.)

6. "…from a functional standpoint the real property in Mooresville is *necessary* to the Consortium's operation of the Consortium system but it is *not necessary* to Time Warner's operation of the Statesville/Iredell system… [because] the Statesville/Iredell system will be integrated into Time Warner's large regional cable system serving the greater Charlotte area… [whereas] the Consortium needs all the facilities…located in Mooresville to operate the Consortium system as a stand-alone cable system." (Miller Letter to Trustee of 1/8/07 at pp. 3-4.)

7. "Time Warner has also stated …to the Bankruptcy Court that the Mooresville head-end and related facilities are not necessary to operation of the entire Adelphia system property if it were acquired by Time Warner. In [Time Warner Cable Senior Vice President-Investments] Satish Adige's words, 'by interconnecting these two cable systems (Charlotte and Mooresville/Statesville), and operating them together as a large urban/suburban system, TWNY will be able to eliminate the cost of operating an additional head-end as well as reduce its marketing, maintenance and labor costs.'" (Miller Letter to Trustee of 1/8/07 at p. 4)

8. "In addition to the Statesville office, Time Warner also has adequate, convenient existing facilities to serve its new Adelphia customers. Time Warner has three existing full service retail service centers within a 20 mile radius of Mooresville. These are located in Kannapolis (19 miles southwest of Mooresville), at the Northlake Mall in Charlotte (18 miles south of Mooresville) and in Salisbury (20 miles northeast of Mooresville)…Time Warner also has significant garage and maintenance facilities in the same general area…." (Miller Letter to Trustee of 1/8/07 at p. 5)

D. Time Warner Reply on Real Estate

In it's Reply, Time Warner argues that "splitting a combined [cable] system between a caretaker operator and a party that holds a right of first refusal for less than half the system—are far from typical or ordinary" and therefore, the Consortium's reliance on standard practices in the cable business involving the transfer of assets in the sale of a cable system should be rejected. (Gillespie Letter to Trustee of 1/11/07 at p. 1.)

Secondly, Time Warner challenges Attorney Miller's "assertion that Adelphia and TWC contemplated that the Consortium would be awarded all of the real estate in Mooresville….[Attorney Miller] provides no support for his statement that Adelphia indicated that the Consortium would be awarded the Mooresville real estate, and, indeed, his statement is contradicted by Adelphia's counsel…His quoting from an earlier TWC letter to the effect that we have always recognized the Consortium's need for a headend [in Mooresville] serves him no better…." (Gillespie Letter to Trustee of 1/11/07 at pp. 2-3.)

Thirdly, Time Warner argues that the Consortium has neither established that TWC does not need the Mooresville real estate nor that the Consortium itself has a need for all of the property. "…[T]he Consortium lists various offices and payment centers that TWC has in the general region. None of these locations…is closer to Mooresville than 17 miles, and some are more than 25 miles away…And the Consortium makes no effort to determine for <u>any</u> customer locations in the southern part of the system [that] TWC will retain the distance to TWC's other customer service centers…For example some of the nodes that TWC will retain to the southwest of Mooresville are not only more than 20 miles from Statesville, they are even farther from Kannapolis and TWC's other locations…[T]hese distances are not merely miles to be traveled, but traffic congestion, which is common in the area, could turn visits to these other TWC locations into round trips taking well over an hour…TWC believes that many of its subscribers would not tolerate the loss of a facility in Mooresville…These distances would significantly increase the cost to TWC of rolling trucks to these subscriber[s]…and adversely impact TWC's ability to address technical problems in a timely manner…." (Gillespie Letter to Trustee of 1/11/07 at pp. 3-4.)

Conversely, Time Warner argues that the Consortium "has provided no details of its own actual needs for real estate in Mooresville. We do not know, for example, how many employees the Consortium intends to locate in Mooresville…Rather than make any effort to discuss candidly the minimum office, warehouse or garage space that it requires, however, the Consortium's strategy is to make the bald and unsupported assertion that it needs it all…." (Gillespie Letter to Trustee of 1/11/07 at pp. 4-5.)

Time Warner's Reply also disputes "the argument that the Consortium's payment of a per-subscriber amount for the system somehow forecloses sharing the combined system's real estate on an equitable basis…To the contrary, were the Mooresville real estate not fairly divided…the Consortium would obtain considerably more in value in real estate than would TWC, even though TWC would retain the larger number of subscribers." [By TWC's calculation, if all of the Mooresville real estate were allocated to the Consortium, the Consortium would acquire approximately 84 percent of the square feet of real estate to serve approximately 47% of the subscribers.] (Gillespie Letter to Trustee of 1/11/07 at p. 5 and Gillespie Letter to Trustee of 1/8/07 at p. 5.)

E. Consortium Reply on Real Estate

In its January 11 Reply, the Consortium argues that Time Warner's need for Mooresville facilities is not "credible" because "[t]he vast majority of the customers in Time Warner's portion of the system are concentrated in and around the town of Statesville."

"According to Time Warner's numbers, the Consortium's system will have approximately 19,000 'active' customers, and Time Warner will retain approximately 21,550 'active' customers…According to Time Warner's walk out data which was used for the node allocation…plan, Time Warner was allocated nodes in unincorporated Iredell County that passed 6,430 homes…At a 45 percent penetration rate, that would translate to about 3,000 subscribers. That means that approximately 18,550 Time Warner subscribers (or 86% of the total Statesville/Iredell Time Warner customer base) are *not* located in the Mooresville/Troutman area of unincorporated Iredell County. Furthermore, hundreds of Time Warner's 3,000 customers in the allocated nodes in unincorporated Iredell County are located north of Mooresville in the Troutman area, which is closer to Statesville than Mooresville…." (Miller Letter to Trustee of 1/11/07 at pp 2-3.)

Reiterating its view that “Time Warner is not entitled to any portion of the Mooresville facilities” [for the reasons stated in its January 8 submission] the Consortium suggests that if the Trustee finds otherwise, that “any use of percentages to identify respective need for the use of real estate should be on the basis [of the fact that the Consortium will have approximately 19,000 subscribers in the Mooresville/Troutman area while Time Warner will have less than 3,000]…In other words, Time Warner cannot credibly request more than 14% of the Mooresville real estate, based upon the respective needs of Time Warner and Consortium subscribers for nearby service locations.” (Miller Letter to Trustee of 1/11/07 at p. 4.)

[At the Trustee’s request, Time Warner commented on the Consortium’s assertion that no more than 14 % of the subscribers that Time Warner will retain would utilize the Mooresville customer service office. Time Warner counters that the Consortium’s analysis “ignored numerous other nodes that are closer to the headend in Mooresville than to the satellite office in Statesville.” Had they been included, Time Warner maintains that “the actual number of subscribers that TWC will retain who are closer to Mooresville than Statesville represents approximately 37% of the subscribers that TWC will retain.” (Gillespie Letter to Trustee of 1/25/07 at pp. 2-4.), Attachment #5]

[The Consortium responds: “[t]he information presented does not provide sufficient information to allow a final and conclusive calculation. And even using Time Warner’s new data as submitted, the data at most yields 20 percent (up from the Consortium’s projected 14 percent) which is far short of the 37 percent now proposed by Time Warner.” (Miller Letter to Trustee of 1/26/07 at p.4), Attachment #6]

The Consortium further argues that “Time Warner’s proposal to allocate real estate on square footage is unworkable and leads to an unfair result…First, Time Warner lumps all of the various structures together in one total amount of raw square footage. Time Warner completely ignores the functions of the various structures…Second, Time Warner uses the square footage measure to grab the best of the buildings…Time Warner would allocate itself the newest building in Mooresville containing the only temperature controlled storage facility, the only studio, and the only functioning customer service center available to the Consortium…Third, Time Warner leaves out certain structures and provides inaccurate data for others. Missing from the list is the new [Iredell] hub facility Time Warner will receive…According to the [Bidencope & Associates] Appraisal, the headend building is not 7500 s.f., as reported by Time Warner, but only 6910 s.f.,…[and] the service garage/warehouse is actually larger than Time Warner reported, that is, 5000 s.f., not 4500 s.f."

As to its own needs, the Consortium argues that "[u]nlike Time Warner (or even Adelphia), the Consortium will be operating a standalone system, and will need sufficient employees and all of the available space in the Mooresville site to accomplish the multitude of functions required to operate a cable system on a standalone basis." To counter Time Warner's argument that "the Consortium will not need all of the space in the existing Mooresville buildings…that is currently used to service a much larger system …" the Consortium proffers the Declaration of Stacey E. Bright, Executive Vice President and Chief Financial Officer of Bristol Virginia Utilities ("BVU"). [BVU was retained by the Consortium to address and assist in issues related to the acquisition and transfer of the Mooresville System. It has also been selected as the system operator if a decision is made by the Consortium to purchase the System.] In her Declaration, Ms. Bright states that "BVU has thoroughly reviewed the operations, geographical coverage, outside plant assets, offices, garage and warehouse facilities, studio requirements and employee requirements. Based on this review, I conclude that the Consortium will require all of the real property located in Mooresville to conduct efficient, effective and improved operations to better serve the Consortium system subscribers." Ms. Bright's Declaration provides details of the Consortium's anticipated use for each of the Mooresville buildings. Finally, Ms. Bright further attests that "the Consortium will have at least the number of employees as Time Warner has operating from this building complex." (Miller Letter to Trustee of 1/11/07 at p. 6 and Reply Declaration of Stacey E. Bright dated 1/11/07.)

F. <u>Time Warner Position on Employment and Severance</u>

Time Warner proposes to "take full responsibility for all of the employees who work out of the Statesville office" and to allow the Consortium to "make offers to those [Mooresville] employees it desires to hire *in competition* with TWC," after permitting the Consortium "reasonable access" to the system's Mooresville employees for interviews as well as reasonable access to their employment records. (Gillespie Letter to Trustee of 1/8/07 at pp. 7-8, emphasis added.)

In proposed Sec. 5.5(b) of the TWC/Adelphia APA, (Attachment F to the Gillespie Letter to Trustee of 1/8/07) Time Warner sets forth what it means by giving the Consortium "reasonable access" to the Mooresville employees:

> *During a period commencing on the 30th day prior to Closing and ending 10 days thereafter (the "Interview Period"), Buyer may conduct interviews and background checks of all Employees, at times and locations that are approved by Seller in advance and that do not interfere with the ability of Seller to conduct the business of the Acquired Systems during the period.*

Time Warner also sets forth in Sec. 5.5(b) what it means by the Parties making competing job offers:

> *During a period commencing on the last day of the Interview Period and continuing for five business days thereafter (the "Offer Period"), Buyer and Seller may, but shall have no obligation to, make a written offer of employment to any Employee on terms and conditions determined in their respective sole discretion. Each employee shall have until the Closing to decide whether to accept or reject any such offer of employment. As of the day following the last day of the Offer Period, Buyer and Seller shall each provide the other with a list of all Employees to whom an offer was extended during the Offer Period and, if applicable, whether the employee rejected or accepted any such offer. Buyer and Seller agree that, upon expiration of the Offer Period and until the Closing, neither Buyer nor Seller shall solicit for employment any employee to whom an offer was extended during the Offer Period or take any action to preclude or discourage any Employee from accepting any offer of employment extended by the other party. To the extent that any Employee accepts an employment offer with the Buyer, Buyer shall hire such employee effective immediately following the Closing. Each such Employee shall be treated as having voluntarily resigned his or her employment with the Seller as of the Closing without any penalty or other adverse consequence to such Employee. Nothing shall prohibit Seller from, after the Closing, continuing to employ any Employee who does not receive an offer of employment from the Buyer or who rejects any offer of employment received by* (sic) *Buyer or Seller pursuant to this Section 5.5.*

Under Time Warner's proposal, "[t]he Consortium would have the sole responsibility for severance for any of the Mooresville employees with job titles that TWC does not require because of overlap with existing employees in the Charlotte system. TWC and the Consortium would split, however, on a 50/50 basis the responsibility for paying severance to any other employees who are not hired by either party." (Gillespie Letter to Trustee of 1/8/07 at p. 8.) [In a separate schedule provided the Trustee, TWC has identified 12 Mooresville and 3 Statesville positions which overlap with existing employees Charlotte.]

Time Warner points out that "[h]ad the Consortium acquired the Mooresville cable system directly from Adelphia …the Consortium would have had to match the responsibility for hiring Adelphia's employees that TWC had accepted." (Gillespie Letter to Trustee of 1/8/07 at pp. 6-7.)

G. Consortium Position on Employment and Severance

The Consortium argues that the starting point for consideration of the employment offer process should be the Adelphia/Time Warner APA: "Most notably, information about the employees had to be provided by Adelphia within 14 Business Days of entering into the APA…and employment offers had to be made by Time Warner no later than 40 Business Days prior to the Closing Date…The Consortium was informed during due diligence that all employees were given until midnight Friday June 23, 2006 (i.e. 5 weeks prior to the closing which occurred on July 31, 2006) to indicate his/her acceptance of Time Warner's employment offer." (Miller Letter to Trustee of 1/8/07 at p. 6.)

If it elects to purchase the Mooresville system, the Consortium proposes an interview process that would commence 15 days from the signing of the TWC/Consortium Asset Purchase Agreement and end thirty days thereafter (the "Interview Period"). During the Interview Period, the Consortium would have the right conduct interviews and background checks of all employees, at times and locations that are approved by TWC and do not interfere with system operations. The Consortium would then have five business days to make a written offer of employment, contingent on Closing, to any employee on terms and conditions the Consortium solely determines.

The employee would then have 14 days to accept or reject the Consortium's employment offer. (Exhibit 4 to Miller Letter to Trustee of 1/8/07)

Under the Consortium's proposal, Time Warner would be prohibited from soliciting for employment or taking any action to preclude or discourage any employee from accepting employment by the Consortium except for any employee who, as of the date of the TWC/Consortium APA, is identified on a schedule to the APA that the Parties mutually agree upon. (Exhibit 4 to Miller Letter to Trustee of 1/8/07)

Noting "that the normal industry practice is for the seller to assume any severance obligations for employees not hired by the buyer…[and that] the Consortium's start up circumstances and Time Warner's status as a major employer in the Charlotte region are two entirely different circumstances which require different treatment," the Consortium proposes that Time Warner be solely responsible for any severance obligations to any employees who are not employed by the Consortium nor retained by Time Warner. (Miller Letter to Trustee of 1/8/07 at p. 7)

H. <u>Time Warner Reply on Employment and Severance</u>

In its January 11, 2007 Reply, Time Warner points out that "the timing set forth in the TWA/Adelphia APA was to accommodate TWC's need to integrate a workforce of 8,000 into its payroll benefit plans and organizational structure, not so that it could make individualized decisions of who to hire and to negotiate with individual employees—Time Warner was required to hire all system level employees at their existing salary levels. Nevertheless, TWC is willing to revise its proposal to give the Consortium earlier access to the employees, though not to allow the Consortium to make offers without giving Time Warner the same opportunity." (Gillespie Letter to Trustee of 1/11/09, at p. 8)

Under Time Warner's revised proposal, "the Consortium [would] have an opportunity to interview and conduct background checks on any of the Mooresville employees starting 60 days prior to the Closing Date" and "both parties [would] have an opportunity to make offers beginning 30 days prior to the Closing Date…TWC believes that starting the Consortium's hiring process earlier than 60 days before Closing would be unnecessarily disruptive to TWC's interim operation of the system." (Gillespie Letter to Trustee of 1/11/09 at p. 8.)

In its response, Time Warner reiterates it "believes that its proposal for dividing the severance responsibility is a fair one." (Gillespie Letter to Trustee of 1/11/07 at p. 9.)

I. Consortium Reply on Employment and Severance

In its January 11, 2007 Reply, the Consortium "reiterates its concern that the process offered by Time Warner is significantly less generous than the original Adelphia-Time Warner Asset Purchase Agreement….[and] asserts that "if the process remains in the unworkable and late stage form that Time Warner has proposed, regrettably the Consortium will have no choice but to seek to staff its operations from other sources." (Miller Letter to Trustee of 1/11/07 at p. 6.)

The Consortium objects to Time Warner's proposal that the Consortium be solely responsible for severance for those Mooresville employees "with job titles that TWC does not require because of overlap with existing employees in the Charlotte system." (Miller Letter to Trustee of 1/11/07 at p. 7.)

At the same time, the Consortium states that if the Trustee finds that the Consortium should be responsible for severance obligations, that [the Consortium] "is willing, consistent with its position that each party should be entitled to all the real property in its respective service territory, to accept full responsibility for any severance obligations that may have to be paid to employees in its service territory who are not retained by either party." The Consortium conditions its willingness on a "fair employment process like the one proposed in the Consortium's [January 8] letter to the Trustee." (Miller Letter to Trustee of 1/11/07 at p. 8.)

III. Discussion of Real Estate

In determining whether (and if so, how) the Adelphia System real estate should be allocated between Time Warner and the Consortium, the Trustee has analyzed the issue from a number of perspectives. The Trustee has considered the July 28, 2006 Settlement Agreement, the Adelphia/TWNY APA, the October 12, 2006 Separation Plan, the parties submissions to the Bankruptcy Court about system price, the parties submissions to the Trustee about real estate, as well as the Trustee's first-hand observations based on visiting the Mooresville property. The Trustee has not given any weight to "normal industry practices" because the separation of a cable system into two operationally distinct systems is a unique occurrence.

To the extent that the Settlement Agreement is helpful, it is in establishing the principle that on the Consortium Purchase Date each party should be positioned to operate its portion of the Adelphia Cable System without interruption of service to subscribers. Given the emphasis in the Settlement agreement placed on TWC's development of a technical Separation Plan, and the lack of any mention of the allocation of real estate, one can conclude that issues regarding the allocation of real estate were not deemed to be in dispute at the time the Settlement Agreement was negotiated or were simply postponed until the negotiation and finalization of the Asset Purchase Agreement. If there were serious disagreements about the allocation of real property assets as there were about technical facilities, the Parties could easily have included real property in the Separation Plan.

The Settlement Agreement provided that by August 30, 2006, "Consortium, TWC and Adelphia [would] negotiate and finalize an Asset Purchase Agreement based on Adelphia/TWC APA, with schedules based on this system, such as equipment to be transferred, so that the parties agree on what the Consortium is buying." This provision can be read to include "real property" schedules.

On the other hand, during the Consortium's due diligence efforts which preceded the Settlement Agreement, counsel for the Consortium asked Adelphia's bankruptcy counsel to provide it with information concerning " 6. local non-network assets that would come with the cable system, including real property (e.g. buildings) and personal property (e.g. trucks, furniture, equipment, inventory, etc.)" (See e-mail of 6/16/06 from Consortium Attorney Gail Karish to Adelphia Attorney Rachel Strickland).

Attorney Strickland wrote back the same day stating, “Some of the information you requested is attached….To the extent that other aspects of your request are readily available, we will similarly provide it.” Attached to Attorney Strickland’s e-mail was a document titled “Mooresville Real Property Owned & Leased 6-16-06.xls.” [The document listed the Mooresville headend and garage buildings located at 420 Academy, the customer service office at 435 South Broad as well as a “hub” at 9003 Gilead in Huntersville, NC. The document bore a disclaimer which stated ‘Adelphia makes no representations or warranties with respect to the information contained herein, either as to its accuracy or completeness.’] Attorney Strickland sent a copy of her e-mail to Time Warner’s counsel.

On June 19, 2006, Adelphia’s counsel wrote again to the Consortium’s counsel: “With respect to question #6, the real property information was forwarded to you last Friday. The personal property information is in the works and will be provided on an estimated basis. Personal property is not currently allocated on this granular a level. Accordingly, when provided, that detail will remain subject to adjustment and review.”

Later on the same day, Adelphia’s counsel wrote once again: “I have attached information on personal property, including the office inventory, IT inventory (laptops, cell phones, etc.) and vehicles. I am still waiting for the inventory list from the warehouse. Again this property is for the entire Mooresville system and would have to be allocated for the Consortium areas….”

On December 27, 2006 five months after the Settlement Agreement was entered into, Attorney Miller wrote to Attorney Strickland asking her to confirm the Consortium’s interpretation of her June 2006 email i.e. that the purchase price for the Consortium portion of the Adelphia System included the Mooresville real estate. In response, Attorney Strickland denied any such intent on her part and said that she “had no familiarity with the attachments” and had not discussed the matter with her client at the time she provided the real estate schedule to the Consortium and Time Warner. (Attachment D to Gillespie Letter to Trustee of 1/8/07.)

Notwithstanding Attorney Strickland's recent denial, the Trustee believes it was reasonable for the Consortium to infer from her communications that the Mooresville real estate was included in the portion of the Adelphia system that the Consortium would be purchasing. In response to a direct question about what assets "would come with the [Consortium] system," Attorney Strickland sent counsel for the Consortium and Time Warner a schedule which listed the three Mooresville buildings. The only references in Attorney Strickland's communications to dividing non-network assets pertained to personal property.

Even assuming the Consortium's inference was reasonable, the Trustee believes that any agreement among the Parties with respect to allocation of the Mooresville real estate should have been explicitly stated in the July 28, 2006 Settlement Agreement. Instead, the Settlement Agreement appears to have left open questions regarding the allocation of property for negotiation and finalization in the APA.

As previously noted, the Parties inability to resolve the allocation of real property during APA negotiations have held up finalization of the APA and resulted in this matter being brought to the Trustee for determination.

Allocating the Adelphia system real estate between the parties based on total square footage relative to the percentage of subscribers in their respective portions of the Adelphia System is not as simple as Time Warner suggests. While converters, cable, electronics and vehicles can be divided fairly easily based upon the relative number of subscribers served, real estate is less fungible. In the case of real estate, consideration must be given to where the property is located, its condition, and the purpose(s) for which it is used.

Also to be considered are the circumstances which led to the instant dispute. The Settlement Agreement arises out of a right of first refusal to purchase the cable system serving the Consortium communities that was reserved in the Consortium communities' cable ordinances. In the Trustee's view, this right of first refusal entitles the communities to purchase the system as a going concern. This means that the Consortium is entitled to purchase not only the technical facilities but the administrative, customer service, warehouse, studio and garage facilities and equipment which are necessary for it to serve subscribers. According to the August 18, 2006 Declaration of Time Warner Senior Vice President Satish Adige, Time Warner was aware that some Adelphia franchises contained rights of first refusal but Time

Warner made its decision to purchase the Mooresville System without consideration of such rights or any system specific characteristics. In view of these circumstances, the Trustee believes that where real property owned by Adelphia within the Consortium Communities does not practicably lend itself to division, the Consortium has superior claims to ownership.

At the same time, the Settlement Agreement clearly establishes that Time Warner, as well as the Consortium, must be able to continue to serve the subscribers that it will retain. The Separation Plan will ensure this from a technical standpoint. However, as the Trustee has previously observed:

> *To function as an ongoing business, cable systems also need facilities including business offices, customer service offices, studios, warehouse, tech work areas, garages, etc….[I]t is desirable from both an economic standpoint and customer service standpoint that they be located in reasonably close proximity to the majority of the system's subscribers….*

There is no disagreement about Time Warner retaining a 4,800 square foot hub/ customer service/warehouse/garage facility in Statesville as part of its purchase of the Adelphia System. Under the Separation Agreement, Time Warner will also gain a new hub in Iredell County.

Additionally, Time Warner has stated that it plans to interconnect the Adelphia system with its larger Charlotte regional system. In testimony before the Bankruptcy Court, Mr. Adige testified, "by interconnecting these two cable systems [Charlotte and Mooresville/Statesville], and operating them together as a large urban/suburban system, TWNY will be able to eliminate the cost of operating an additional head-end as well as reduce its marketing, maintenance and labor costs." Indeed, the Separation Plan calls for video and data signals to be transmitted from Time Warner's headend in Kannapolis to the Iredell and Statesville hubs, and Time Warner has already transferred billing, data and call center activities to its Charlotte regional system.

Clearly, where it is possible to achieve operating efficiencies and improve service by consolidating system operations, Time Warner plans to do so. However, there are still some system functions including customer service, installations and repairs, which require a local presence.

The Consortium takes the view that the vast majority of the subscribers that Time Warner will retain reside closer to Statesville than Mooresville, and also points to the fact that Time Warner has three existing full service retail service centers within a 20 mile radius of Mooresville and that Time Warner also has significant garage and maintenance facilities in the same general area.

Time Warner sharply disagrees about the ease with which it can serve Mooresville-area subscribers from its regional facilities, arguing that more than 7,000 subscribers representing 37 percent of its retained subscriber base, will actually live closer to Mooresville than Statesville and that the round-trip drive time to most of its other facilities could easily exceed an hour.

The Consortium claims that Time Warner has wrongfully included nodes north of Mooresville and when Time Warner's subscriber numbers are corrected, no more than 20 percent of the subscribers that Time Warner will retain would live closer to the Mooresville facility.

There are merits to both Parties arguments. Neither is entirely "right" nor entirely "wrong." Today, subscribers from both portions of the Adelphia System utilize the Mooresville customer service office. However, a significant majority of Time Warner's customers live closer to and presumably utilize the Statesville customer service office. At the same time, a not insignificant minority live closer to Mooresville.

Because of its need to have facilities in closer proximity to its Mooresville area customers, Time Warner argues that it should be allocated the customer service office/studio/warehouse building at 435 South Broad Street while the Consortium could use the headend building at 420 South Academy for customer service and other office functions as Adelphia once did before building the newer customer service facility at 435 South Broad Street in 1998. Time Warner would also give the Consortium the option of keeping the garage/carport at 420 South Academy, and paying TWC $250,000 for it, or of allowing TWC to purchase the facilities and pay TWC $250,000.

Since it must operate the Consortium System on a "standalone " basis, rather than part of a larger regional system, the Consortium argues that it will need the headend, customer service office/studio/warehouse and garage/carport facilities in Mooresville to serve the Consortium communities. According to the Declaration of Ms. Bright, "the Consortium will have at least the number of employees as Time Warner has operating from this building complex."

Having had the opportunity to visit the Mooresville headend, customer service/studio/warehouse and garage facilities, the Trustee is of the view that these facilities do not practicably lend themselves to the allocation that Time Warner has proposed. Clearly, the customer service office/studio/warehouse at 435 South Broad is in superior condition to the headend and garage facilities at 420 South Academy. Moreover, it is the sort of facility one would expect a well operated cable system to need. As Bidenscope & Associates noted in its appraisal report, the customer service facility, occupying a steel frame and brick building, constructed in 1998, is in "good condition" whereas the metal paneled headend building, constructed in 1989, and the masonry block garage constructed in 1957, are in "average condition." Attorney Miller puts it more directly: "Time Warner would allocate itself the newest building in Mooresville containing the only temperature controlled storage facility, the only studio, and the only functioning customer service center available to the Consortium…"

The Mooresville property consists of three separate buildings on three parcels that were combined over the years. The buildings serve different functions, all necessary to operate a cable system on a standalone basis. When the total square footage of the three buildings is considered, it may be more than the Consortium needs today to operate the system, but allocating the newest building to Time Warner and relegating the Consortium to use the headend building for customer service, sales, advertising, general offices, tech meeting space, studio facilities, storage, etc., is not a reasonable alternative. 435 South Broad Street was undoubtedly built nine years ago because the headend building at 420 South Academy no longer met Adelphia's business needs. The Trustee does not believe that the Consortium should be required to step back into the past to run its system.

The Trustee is mindful of the fact that at least several thousand Time Warner Mooresville-area subscribers may need to travel to Time Warner's customer service facility in Statesville or to Time Warner facilities in Kannapolis (19 miles southwest of Mooresville), at the Northlake Mall in Charlotte (18 miles south of Mooresville) and in Salisbury (20 miles northeast of Mooresville) if they need to transact business that they cannot do online or by phone. Time Warner may also need to garage vehicles and dispatch service technicians from Statesville or one of its regional sites. While this would be less convenient for Time Warner and some its subscribers, it is unlikely to result in the interruption of cable service to any customers. Time Warner has other regional facilities from which to serve them. Moreover, Time Warner could choose to overcome any resulting inconvenience by establishing new customer service and garage/warehouse facilities near those subscribers who live closer to Mooresville than Statesville. Establishing office, warehouse and garage locations is something that Time Warner has considerable expertise and experience in doing. But it cannot be accomplished without cost.

Allocation of the Mooresville real estate to the Consortium therefore leads to the question of whether Time Warner is entitled to any financial adjustment at closing to account for the fact that the Consortium would receive real property of greater value than TWC as a result of the Adelphia System separation. The Settlement Agreement is quite clear that both parties intended for the Bankruptcy Court to set the price for the Consortium portion of the Adelphia System on a per subscriber basis. In its submissions to the Bankruptcy Court, Time Warner argues that the price should be $3,810 per subscriber regardless of system characteristics based on the average per subscriber price that Time Warner paid Adelphia for 3.7 million subscribers nationwide, including the approximately 19,000 subscribers served by the Consortium portion of the Adelphia System. The Consortium disagrees, arguing that the price should be $2,433 per subscriber based on fair market value of the system's cash flows. Neither the Settlement Agreement nor the Parties submissions to the Bankruptcy Court regarding the per subscriber price the Consortium should pay make any provision for any cash adjustments at Closing , and the Adelphia/TWNY APA, upon which the TWC/Consortium APA is to be based, provides only for closing adjustments based upon variances in the number of basic subscribers.
In contrast, where the Settlement Agreement provided for the separation of technical facilities, it required that Time Warner and the Consortium would share equally in these costs, with Adelphia additionally contributing up to one million dollars.

While the Settlement Agreement is silent with respect to any cash adjustments at Closing, each of the Parties has acknowledged that such a possibility might be necessary to resolve their dispute about the allocation of real estate. For instance, Time Warner has proposed that either the

Consortium should retain the Mooresville garage and pay Time Warner $250,000 at closing, or Time Warner should be given the option of buying the garage and paying the Consortium $250,000 at closing. (Gillespie Letter to Trustee of 1/8/07 at p. 4, fn 5.) And the Consortium has proposed that "if the Trustee determines that Time Warner is entitled to any portion of the Mooresville property that such adjustment should be dealt with as a cash adjustment at Closing and not as an in-kind allocation…." (Miller Letter to Trustee of 1/11/07 at p. 5 fn 3.)

The Trustee finds that the Mooresville real estate should be assigned to the Consortium. In so finding, the Trustee is aware that this will result in a disproportionate division of the Adelphia System's real property. Nevertheless, the Trustee believes that the totality of the circumstances warrants such an outcome.

If the Consortium elects to purchase its portion of the Adelphia System, the Consortium will receive the Mooresville headend building, customer service/studio/warehouse building and garage/carport. Time Warner will receive the new Iredell hub and the smaller Statesville customer service office/warehouse/ garage building.

Time Warner's Separation Plan for the Adelphia System, which the Trustee approved October 12, 2006, provided that the Mooresville headend building would transfer to the Consortium and that Time Warner would gain ownership of a new $ 2 million hub in Iredell that would be interconnected to Time Warner's headend near Kannapolis. Included with the Iredell hub was a half acre parcel of land with building improvements estimated to cost approximately $550,000. From a technical standpoint the new Iredell hub and existing Mooresville headend will put Time Warner and the Consortium in approximately equal positions to serve their respective customers. To the extent the Consortium will get more space, Time Warner will benefit by getting brand new signal processing equipment. In the Trustees view, this is a fair trade-off.

By virtue of its purchase of the Adelphia System, Time Warner will also gain ownership of the 4,800 square foot Statesville hub/customer service/ office building including a two-bay garage. The Trustee has not visited this facility but based upon the color interior and exterior photographs provided by Time Warner, the one story brick building appears to be in good condition.

As previously indicated, the Trustee has determined that the Consortium should be allocated the 7,500 square foot, two-story, brick facility which houses the Mooresville customer service office/studio/warehouse. As a result, the Consortium will have use of a 2,700 square foot larger customer service facility to serve a customer base that is slightly smaller than that which Time Warner would retain at Closing.

In Bidenscope & Associates Appraisal Report, Bidenscope & Associates note that recent sales of buildings of comparable construction and condition in the Mooresville area were in the $68-$75 per square foot range. Given the comparable construction and good condition of the Mooresville and Statesville customer service facilities, if one applies the $75 high end of this per square foot range to the relative square footage of the two buildings, it yields a difference in value between the two of $202,500 ($562,500-$360,000).

The Trustee has also determined that the Mooresville garage/carport should be allocated to the Consortium. In its January 8, 2007 Letter to the Trustee Time Warner offered to buy or let the Consortium keep and pay it $250,000 for the garage/carport facility. Because of Time Warner's willingness to "buy" or "sell" the garage at this price, the Trustee finds this offer to be a reasonable approximation of fair market value. Adding the $202,500 difference in approximate value between the two customer service facilities to the $250,000 in value for the garage/carport, yields a total difference in value of the real estate that the Consortium will receive of approximately $452,500.

In the Trustee's view, the Bankruptcy Court's ultimate decision on the price the Consortium should pay if it elects to purchase the Mooresville System bears directly on whether or not it should pay Time Warner a $452,500 cash adjustment at Closing.

As Time Warner Senior Vice President-Investments Satish Adige stated in his August 18, 2006 Declaration to the Bankruptcy Court, Time Warner's offer to Adelphia "represented a price of $3,810 for each subscriber in each cable system acquired from Adelphia regardless of the particular characteristics of that system."

The Consortium has told the Bankruptcy Court that the price it should pay for its portion of the Adelphia System should not be based on the average price per subscriber that Time Warner asserts it paid for 3.7 million Adelphia subscribers across the US, but rather on the particular characteristics of the Adelphia System serving the Consortium communities and Iredell/Statesville. Based on such a system-specific valuation, the Consortium maintains that the per-subscriber price should be $2,433.

In the Trustee's judgment, if the Bankruptcy Court finds that the price per subscriber should be based upon the Consortium's approach, i.e. on the Adelphia System's particular characteristics, then Time Warner should receive a $452,500 cash adjustment at Closing to compensate for the disparity in value between the Mooresville and Statesville/Iredell real estate. If, however, the Court finds that the price per subscriber should be equal to the average price per Adelphia subscriber that Time Warner has paid for 3.7 million subscribers, without regard to system-specific characteristics, then the Trustee believes Time Warner should not be entitled to any cash adjustment at Closing.

IV. Discussion of Employment and Severance

As in the case of other issues about which the Parties have disagreed, the first place that the Trustee looked for guidance on employment and severance questions was the July 28, 2006 Settlement Agreement.

The Trustee agrees with Attorney Gillespie's observation that "[t]he only direct reference to the 'employee' issue in the Settlement Agreement…is the provision on page 4 that prevents TWC from locking up all the system's employees. 'TWC shall release without penalty any and all former Adelphia system employees and managers from TWC employment who accept job offers to become employees of the Consortium.' The only other—though key—provision in the Settlement Agreement that applies to this issue is the provision on page 2 that the APA between TWC and the Consortium is to be 'based on [the] Adelphia/TWC APA.'"

In seeking to equitably and sensibly resolve these issues, the Trustee has considered the letter and spirit of the Settlement Agreement, the Adelphia/TWC APA, the Parties submissions and the Trustee's own determinations with respect to the allocation of the Adelphia System real estate. In the Trustee's view, there is a direct relationship between the real estate and employee issues. Bricks and mortar alone do not make a business. People do.

If the Consortium exercises its right of first refusal, it must be in a position to operate its portion of the Adelphia System as a standalone cable system as of the Closing Date. As the Trustee observed in discussing the allocation of real estate, the Settlement Agreement establishes the principle that on the Closing Date each party should be positioned to operate its portion of the System without interruption of service to cable customers. For the Consortium to serve its customers, it must have its workforce in place. For TWC to serve its customers, it too must have its workforce in place. However, the Parties do not start out in equal positions. The Mooresville System would be a standalone business, and at that a "start-up." The Statesville/Iredell System would be part of Time Warner's much larger Charlotte regional cable system.

Had the Adelphia System consisted solely of the Consortium communities, real estate and employee issues would have been very straightforward. As the purchaser, the Consortium would have stepped into the shoes of Adelphia, retaining all of the system's network and non-network assets and have been required by Adelphia to hire all system level employees at their existing salary levels pursuant to the Adelphia/TWNY APA. Likewise, the Consortium would have been required to provide severance benefits for any employees whom it did not retain.

As with the issue of real estate, what complicates the employment issue is the fact that the Mooresville facility, which serves most of the Mooresville/Troutman subscribers, also serves at least several thousand Statesville/Iredell subscribers, and the Statesville/Iredell facility serves most of the Statesville/Iredell subscribers and some, albeit a very small number, of Mooresville/Troutman subscribers.

The Consortium proposes that it be given the first right to hire the Mooresville employees. The Consortium has not expressed its view with regard to employment of the Statesville/Iredell employees but in a related matter suggests that each party be responsible for any severance for employees in its service area who are not retained by either party.

Time Warner proposes retaining 13 out of 16 Statesville/Iredell employees, i.e. all except those whose job descriptions overlap with the job descriptions of some of its Charlotte system employees. Time Warner also proposes competing with the Consortium for the right to hire all but 12 of the Mooresville system's 43 employees, the 12 also being employees whose job descriptions overlap with those of some of its Charlotte system employees.

The Trustee believes that a competition for the Mooresville employees would prove disruptive for the Mooresville office and adversely affect the ability of the Consortium to provide cable service to its subscribers upon Closing. One of the mandates in the Settlement agreement is for "the Trustee to assure that TWC preserves the system assets, both tangible and intangible, and the ongoing business value of the cable system, for eventual assignment…." The employees are among the system's most valuable assets. Assuring the right of the Consortium to try to keep the Mooresville workforce largely intact is consistent with this mandate and with the spirit of the Settlement provision which prohibits TWC from "locking up" the system's employees. Accordingly, the Trustee finds that the Consortium should be afforded the first right to employ all the Mooresville employees, provided the Consortium offers them salary and benefits that are equal in value to their existing compensation.

Affording the Consortium the first opportunity to hire the 43 Mooresville employees will put the Consortium on a par with Time Warner in relationship to its retention of some 8,000 Adelphia employees to serve approximately 3.7 million of Adelphia subscribers. Hiring 43 Adelphia employees to serve about 19,000 Mooresville system subscribers equates to one employee for every 440 subscribers. This ratio is virtually identical to the ratio of one employee for every 460 subscribers that Time Warner obtained when it purchased Adelphia.

In the Trustee's view, Time Warner should have the parallel right to retain all of the Statesville/Iredell employees and the right to extend offers of continued employment to those Mooresville employees whom the Consortium does not hire or whom reject an employment offer from the Consortium. To the extent Time Warner finds itself short-staffed, the Trustee believes that TWC is in a superior position to the Consortium to hire new employees, and reassign existing employees, to meet the needs of its customers without service interruption.

If the Consortium exercises its right of first refusal and enters into the APA, both parties will be in a different status than they are today when neither knows with any certainty whether or not the Consortium will exercise its first refusal rights. Today Time Warner has nearly the same incentive to operate the system on its own behalf as it does on the Consortium's since all the subscribers may turn out eventually to be its own subscribers. If the Consortium elects to purchase the Mooresville System, then Time Warner will be in more of a caretaker role since nearly half of the Adelphia System's subscribers will be future Consortium subscribers. The Settlement Agreement recognizes this change in system status giving the Trustee enhanced authority post Election-Date "to supersede the decision of management under normal trustee in bankruptcy powers" should TWC fail to preserve the system assets or the ongoing value of the business.

The Trustee believes that Adelphia System employees, Time Warner and the Consortium will mutually benefit from having greater certainty sooner and therefore finds that the interview, offer and acceptance timetables should be based upon the Adelphia/TWNY APA with minor modification. Commencing 15 days after the APA is entered into, the Consortium will be given a 30-day period to interview, review employment records and check the backgrounds of the Mooresville employees. The Consortium will then have five business days to extend written job offers to those employees whom it chooses to hire, contingent on Closing. The employees in turn will have five business days to accept or reject the Consortium's offer. The Consortium will hire any employee who accepts its offer immediately after Closing. This will afford Time Warner approximately 60 days to know which Mooresville employees may be available for its employment as well as those whom it may need to replace. Time Warner will have 15 days from the close of the acceptance period to interview and consider whether or not to retain those employees who are not given or do not accept employment offers from the Consortium. Time Warner will then have five business days to extend employment offers to those available employees it chooses to retain. The employees in turn will have five business days to accept or reject Time Warner's offer. In order to further assure an orderly transition, during the 30-day period prior to Closing, the Consortium will be granted reasonable access, under the Trustee's supervision, to meet and discuss transition arrangements with those Mooresville employees who have accepted employment offers from the Consortium. Finally, between January 31, 2007 and the Closing Date, or the Election Date if the Consortium does not choose to purchase the Mooresville System, Time Warner shall not solicit for employment any Mooresville employee nor take any action to preclude or discourage any Mooresville employee from accepting any offer of employment extended by the Consortium, except that after the conclusion of the acceptance period, Time Warner may solicit any Mooresville employee who is not offered or has rejected employment by the Consortium.

Finally, the Trustee believes that with the "first right" to hire employees comes the responsibility to pay severance benefits to those employees who are not offered or do not accept employment. Accordingly, the Trustee finds that if the Consortium purchases the Mooresville System then it will be fully responsible for any severance obligations that may have to be paid to employees in its service territory who are not retained by either party. Likewise, Time Warner will be responsible for severance benefits for Statesville/Iredell employees who are not retained by itself or the Consortium.

V. Findings

A.

If the Consortium elects to purchase the portion of the Adelphia System serving the Consortium communities, the Consortium shall be allocated all of the real property constituting the Mooresville headend building, customer service/studio/warehouse building and garage/carport. Time Warner shall be allocated all of the real property constituting the Iredell hub and Statesville customer service office/warehouse/ garage.

B.

If the US Bankruptcy Court finds that the price per subscriber should be set based upon the Consortium's approach, i.e. on the Adelphia System's cash flows and characteristics (though not necessarily at the per subscriber price the Consortium has proposed), then the Consortium shall pay Time Warner a $452,500 cash adjustment at Closing to compensate for the disparity in value between the Mooresville and Statesville/Iredell real property. If, however, the Court finds that the price per subscriber should be equal to the average price per subscriber that Time Warner has paid for approximately 3.7 million Adelphia subscribers, without regard to characteristics of the Adelphia System, then Time Warner shall not be entitled to any cash adjustment at Closing.

C.

The Consortium shall be afforded the first right to employ all the Mooresville employees, provided the Consortium offers them salary and benefits that are equal in value to their existing compensation. The Consortium shall be given a 30-day period to interview, review employment records and check the backgrounds of the Mooresville employees. The Consortium shall then have five business days to extend written job offers to those employees whom it chooses to hire, contingent on Closing. The employees shall then have five business days to accept or reject the Consortium's offer. The Consortium shall hire any employee who accepts its offer immediately after Closing. Time Warner shall have 15 days from the close of the aforementioned acceptance period to interview and consider whether or not to retain those employees whom are not given or do not accept employment offers from the Consortium. Time Warner shall then have five business days to extend employment offers to those available employees it chooses to retain. The employees shall then have five business days to accept or reject Time Warner's offer. During the 30-day period prior to Closing, the Consortium shall be granted reasonable access, under the Trustee's supervision, to discuss transition arrangements with those Mooresville employees whom have accepted employment offers from the Consortium. Between now and the Closing Date, or the Election Date if the Consortium does not choose to purchase the Mooresville System, Time Warner shall not solicit for employment any Mooresville employee nor take any action to preclude or discourage any employee from accepting any offer of employment extended by the Consortium, except that after the conclusion of the acceptance period, Time Warner may solicit any Mooresville employee who is not offered or has rejected employment by the Consortium.

D.

Time Warner shall be afforded the first right to retain all the Statesville/Iredell employees, provided Time Warner offers them salary and benefits that are equal in value to their existing compensation. Time Warner shall be given a 30-day period to interview, review employment records and check the backgrounds of the Statesville/Iredell employees. Time Warner shall then have five business days to extend written job offers to those employees whom it chooses to hire, contingent on Closing. The employees shall then have five business days to accept or reject Time Warner's offer. Time Warner shall retain any employee who accepts its offer. The Consortium shall have 15 days from the close of the aforementioned acceptance period to interview and consider whether or not to retain those employees whom are not given or do not accept employment offers from Time Warner. The Consortium shall then have five business days to extend employment offers to those available employees it chooses to retain. The employees shall then have five business days to accept or reject the Consortium's offer. During the 30-day period prior to Closing, the Consortium shall be granted reasonable access, under the Trustee's supervision, to discuss transition arrangements with those Statesville/Iredell employees whom have accepted employment offers from the Consortium. Between now and the Closing Date, or the Election Date if the Consortium does not choose to purchase the Mooresville System, the Consortium shall not solicit for employment any Statesville/Iredell employee nor take any action to preclude or discourage any employee from accepting any offer of employment extended by the Time Warner, except that after the conclusion of the acceptance period, the Consortium may solicit any Statesville/Iredell employee who is not retained or has rejected employment by Time Warner.

E.

If the Consortium purchases the Mooresville System, then it shall be fully responsible for any severance obligations that may have to be paid to employees in its service territory who are not retained by either Party. Likewise, Time Warner shall be responsible for any severance benefits for Statesville/Iredell employees who are not retained by itself or the Consortium. Severance benefits shall be calculated according to the formula used in the Adelphia/TWNY APA.

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