

CONFIDENTIAL—FILED UNDER SEAL

**Decision of Trustee Regarding Adelphia System Separation Plan--
Huntersville Addendum**

I. Background

This decision modifies the Trustee's October 12, 2006 decision regarding the Time Warner Cable ("Time Warner" or "TWC") Separation Plan ("Separation Plan") for the Adelphia Cable System ("Adelphia System"). *See* "Decision of Trustee Regarding Time Warner Cable's Proposed Separation Plan for Adelphia Cable System, 10/12/06" (Attachment #1)

The Separation Plan was based upon the July 28, 2006 Settlement Agreement ("Settlement Agreement") between Time Warner Cable, Adelphia Communications Corp, et al., and the Consortium communities. (Attachment #2) Both assumed that all the communities represented by the Charlotte-Mecklenburg Office of Cable and Franchise Management—the Towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman, North Carolina and portions of Mecklenburg County, NC ("Consortium")—would exercise their individual rights of first refusal under their franchises collectively if they decided to purchase those portions of the Adelphia System that serve their communities ("Mooresville System). Such a division approximately would have resulted in the Mooresville System passing 38,235 homes and serving 16,771 basic subscribers while other portions of the Adelphia System served by TWC would have passed 61,501 homes and served 20,363 basic subscribers.

On May 3, 2007, Consortium Counsel Nicholas Miller advised Time Warner Cable Counsel Gardner Gillespie and the Trustee via email that "Huntersville has informally indicated that it will transfer its Adelphia subscribers to Time Warner rather than exercise the right to purchase when given the opportunity to act, consistent with the terms of the Settlement Agreement."

On May 30, 2007, during a joint- engineering meeting, Consortium representatives informed TWC that the Town of Troutman was also planning to decline to exercise its right of first refusal. Consortium Counsel Miller confirmed that while Troutman had not taken any formal action, the Mayor of Troutman had advised the Town of Davidson Manager that Troutman would not be exercising its first refusal right.

Assuming that the Towns of Huntersville and Troutman do not to exercise their rights of first refusal, 25,348 homes passed and 10,565 equivalent basic subscribers would remain in the Consortium communities of Cornelius, Davidson, Mooresville and portions of Mecklenburg County. Homes passed and basic subscribers served by TWC would increase by 12,887 and 6,206, bringing the total number of homes passed and basic subscribers to 74,388 and 26,569 for TWC's portion of the Adelpia System. (These numbers are approximate, based on TWC subscriber data.)

At the time the Settlement Agreement was entered into, the parties anticipated that TWC would serve approximately 55% and the Consortium would serve approximately 45% of former Adelpia subscribers. TWC will now serve 72% and the Consortium 28% of subscribers. Assuming that Huntersville and Troutman do not exercise their first refusal rights, TWC's plant will pass 75% and the Consortium's plant 25% of homes in the Adelpia System.

Since Troutman and Huntersville are the northernmost and southernmost communities in the Consortium, their decisions to be served by TWC significantly alter the geographic configurations of the separated system as well as the number of homes passed and subscribers to be served by TWC and the Consortium.

Time Warner Cable and the Consortium disagree not only about key elements of Time Warner's Adelpia Separation Plan Addendum-Huntersville ("Huntersville Addendum") but about the applicability of the Settlement Agreement to the Huntersville Addendum and whether and how the additional costs of the plan should be allocated between themselves. Having failed to reach agreement, the Settlement Agreement requires the Trustee to decide whether or not the Huntersville Addendum "is unreasonable under the circumstances."

The Settlement Agreement establishes a process by which Time Warner is "to design a plan to efficiently and quickly separate" the Mooresville System from the other communities served by Adelpia ("Iredell/Statesville System"). "The design shall be based on TWC standards... These systems are to be wholly separated physically, although the engineers may agree upon limited subscriber swaps to avoid splitting nodes... The plan will include the approximate cost to separate the system... The Consortium shall have the right to review and approve the separation plan, [and] such approval shall not be unreasonably withheld... If the parties disagree the Trustee shall decide if TWC's plan is unreasonable under the circumstances...." *See* Settlement Agreement at p. 1.

Under the Settlement Agreement Adelpia is to pay TWC the lesser of (a) one-third of actual separation costs or (b) \$1,000,000. The Consortium and TWC are to share equally in all separation costs other than those covered by the Adelpia contribution. *See Settlement Agreement at p.2.*

The Separation Plan, as approved by the Trustee, provides that the Mooresville headend would transfer to the Consortium. From the Mooresville headend, video, and data signals were to be transmitted via fiber to 50 nodes in North Mecklenburg County, Davidson, Cornelius, Huntersville, Mooresville and Troutman. TWC would construct a new distribution hub in Iredell County from which it would feed video and data signals to about 35 nodes currently served by the Mooresville headend. TWC would continue to use the Statesville Hub to serve 48 nodes in Iredell County. In addition, TWC would transition 7 nodes currently served by the Mooresville headend to the Statesville Hub, bringing to 55 the number of nodes that would be served by the Statesville Hub and 90 the total number of nodes to be served from the Iredell and Statesville hubs. Twelve of the Iredell/Statesville system nodes were to serve small areas of Mooresville and Troutman as well. As a result of this system reconfiguration, The Statesville Hub would serve about 45,000 homes passed while the new Iredell Hub would serve about 16,000 homes passed.

To separate the Adelpia System and provide video and data signals to the Iredell and Statesville hubs, TWC would build a new and distinctly separate transportation and distribution fiber overlay including 51 miles of aerial plant and 25 miles of underground construction. As part of this plan TWC would construct a fiber link to transport video and data signals from TWC plant near the Cabarrus/Iredell County border to the new Iredell Hub. TWC would also connect the Iredell and Statesville hubs via a new fiber link. To achieve total system separation, TWC would construct new coaxial distribution cable rather than sharing aerial strand or underground facilities with the Mooresville system.

To minimize the need to split nodes and reduce construction costs, the Separation Plan provides that nodes which served homes in both the City of Mooresville and Iredell County would be allocated to the Mooresville System or to the Iredell/Statesville System based upon whichever system contains a majority of the homes served from the node. The agreed upon objective was to maintain the roughly 64%/36% ratio of homes served respectively by the Mooresville area and Iredell County nodes.

As originally approved by the Trustee, the Separation Plan cost \$5,258,629 of which Adelphia was to pay \$ 1,000,000 and the Consortium and TWC were each to pay \$2,129,315.

In light of the Town of Troutman's apparent decision not to exercise its right of first refusal, TWC projects that the cost of the Separation Plan can be reduced by approximately \$435,283. Originally, TWC had planned to do underground directional boring to bring 5.5 miles of fiber through Troutman. Since TWC will now own the existing aerial plant in Troutman, it indicates that it can overlash new fiber on the aerial plant and thereby avoid doing more costly underground construction. This will reduce the Consortium and TWC's individual contributions to \$1,911,673. *See* Letter to Trustee from TWC Counsel Gillespie dated 6/1/07 at p. 10 (Attachment #3).

II. Cost Sharing

Time Warner Cable asserts that it "has no legal obligation to allow the New Consortium to go forward with a purchase different from the one agreed to in the Settlement Agreement" but "is willing to allow the New Consortium to acquire the newly configured system with the understanding that...the New Consortium will bear responsibility for all incremental costs caused by the alteration in the make-up of the consortium and the change in system architecture," comply with the Settlement Agreement in all other respects, and that no other changes occur in the make-up of the "New Consortium." *See* Gillespie Letter to Trustee dated 6/1/07, and Gillespie Letter to Consortium Counsel Miller dated 5/14/07 (Attachment #4).

On June 5, 2007 Counsel for TWC amplified the Company's reasons for refusing to share any financial responsibility for the Huntersville separation: "[T]he 'formulation' in the July 2006 Settlement Agreement for sharing separation costs was tied inextricably to the configuration of the six-member consortium system. TWC accepted the obligation to pay a portion of separating out the system covering the six communities that executed the Agreement...TWC did not accept the obligation to pay for any other costs associated with the Consortium's system...The only costs TWC accepted any obligation to share in the Settlement Agreement are the costs of separating out the consortium system as originally configured...." *See* Gillespie Letter to Trustee dated 6/5/07 at pp. 2-3. (Attachment #5)

In response to a question from the Trustee asking TWC "why... the Separation Plan should be governed by all the terms of the Settlement Agreement except for

the cost-sharing provisions?” TWC responded: “The short answer is that TWC is unwilling to proceed on any other basis. TWC does not debate the original right of the different consortium communities to decide individually whether or not to exercise their first refusal rights. But those communities restricted their rights to act wholly independently by entering into the Settlement Agreement—in which the parties plainly assumed common action by all the communities. Furthermore, nothing in the communities ordinances or the Settlement Agreement itself requires TWC to pay the costs of a different separation than was anticipated in the Agreement.” *See* Gillespie Letter to Trustee dated 6/5/07 at p. 3.

In contrast, the Consortium asserts that “absent a separate agreement between the Consortium communities and Time Warner...the Settlement Agreement...controls the terms and conditions of the ultimate separation of the Adelphia system between Time Warner and the Consortium communities” regardless of whether all Consortium members exercise their first refusal rights. *See* Miller Letter to Trustee dated 6/1/07 at pp. 1-2. (Attachment #6)

In a letter to the Trustee, counsel for the Consortium further explained: “The Settlement Agreement states that the court appointed Trustee will resolve any disputes over the Separation Plan...It is now necessary to modify the original Separation Plan to exclude Huntersville and Troutman. Both sides exchanged their respective views on an appropriate modification but have not reached an agreement. It therefore comes to the Trustee to order the appropriate modifications to the original Separation Plan Addendum in accordance with the criteria in the Settlement Agreement.” *See* Miller Letter to Trustee dated 6/5/07 at p. 2. (Attachment #7)

In view of the engineering design changes resulting from Huntersville’s and Troutman’s decisions to be served by TWC, the Consortium has offered to pay Time Warner’s “engineering costs in creating the necessary engineering costs and plans for...additional construction...[and to pay] a reasonable amount for the incremental construction costs imposed by [the] adjusted Separation Plan not to exceed \$250,000.” In making this concession, the Consortium argues that “any amount [of additional separation costs] over \$250,000 must...be shared equally by Time Warner and the Consortium under the terms of the Settlement Agreement....” *See* Miller Letter to Trustee dated 6/1/07, and Miller Letter to Gillespie dated 5/16/07 (Attachment #8).

III. Adelphia Separation Plan Addendum-Huntersville

In order to separate the Adelphia System serving the Town of Huntersville from those portions of the Adelphia System serving Cornelius, Davidson, Mooresville and parts of Mecklenburg County and serve 17 Huntersville-area nodes, TWC proposes to build “a new and distinctly separate transportation and distribution fiber overlay” consisting of approximately 31.5 miles of aerial construction and 15 miles of underground construction. Complete new coaxial distribution will also be constructed where necessary to avoid sharing stand or underground facilities with the Mooresville System. *See* Adelphia Separation Plan Addendum-Huntersville, dated 5/25/07 consisting of two documents (Attachments #9 and #10).

Principal elements of the Huntersville Addendum include:

- *One 48 count fiber transport link to connect the existing Time Warner Oakdale Hub in Mecklenburg County to a new Huntersville Hub.
- *A second 48 count fiber transport link to connect the proposed Huntersville Hub to Time Warner’s new Iredell Hub.
- *Six count distribution fibers to service 17 nodes coming to Time Warner.
- *Splitting four nodes which currently serve both Huntersville and New Mooresville System subscribers
- *Constructing a new Huntersville Hub including land acquisition, a new hub building, electronics and network transport/CMTS.

Major cost components of the Huntersville Addendum are: \$184,333 for the fiber transport link from the Oakdale Hub to the proposed Huntersville Hub; \$565,660 for the fiber transport link from the Iredell Hub to the proposed Huntersville hub; \$501,000 for splitting the four Huntersville-area nodes, \$1,459,711 for the proposed Huntersville Hub and \$282,918 for distribution fiber from the proposed new Huntersville Hub to the 17 Huntersville-area 17 nodes. TWC projects that the total construction cost for the Huntersville Separation would be \$2,993,621.

[In response to a follow-up question from the Trustee, TWC indicates that elimination of the proposed Huntersville Hub would substantially reduce the construction cost for the Huntersville Separation. “In summary, were it possible,

fair, consistent with TWC's standards and otherwise advisable to run distribution fiber from the Oakdale hub to the 17 nodes in Huntersville, the total incremental costs would be estimated at \$989,318 plus the costs of splitting the four nodes. Were it similarly fair, consistent with TWC's standards and otherwise advisable to run distribution fiber from the new Iredell hub to the 17 nodes in Huntersville, the total incremental costs (beyond those included in Separation Plan I) would be estimated at \$1,077,203 plus the cost of splitting the four nodes." *See* email from Gillespie to Trustee dated 6/7/07 7:38 p.m.]

TWC states that the new Huntersville hub is necessary in order to meet Time Warner's engineering standards which specify that new hubs should serve no more than 20,000 homes passed and a radius of 5-7 miles. With serving all of Huntersville, TWC will gain 5,824 subscribers and 11,891 homes passed. TWC points out that "[t]he new 'Iredell' hub to be constructed under the existing Separation Plan is 18 miles from the southern portion of the former Adelpia system serving Huntersville...[and] will already serve cable plant passing 15,200 homes." Moreover, TWC notes that the Oakdale hub currently serves plant that passes 32,500 homes, precluding use of the Oakdale Hub to serve all of Huntersville in accordance with Time Warner's system upgrade standards.

[By virtue of the Town of Huntersville having annexed portions of unincorporated Mecklenburg County, TWC currently provides cable service to approximately 2,975 Huntersville subscribers from its Oakdale Hub.]

TWC states that "to provide necessary redundancy consistent with TWC's construction standards," it is necessary to construct both a 16.49 mile fiber transport link from Oakdale to the proposed Huntersville Hub and a 5.3 mile fiber transport link from Huntersville to TWC's planned Iredell fiber.

Finally, TWC states that the splitting of four Huntersville nodes is necessary for TWC "to serve all of Huntersville." According to TWC, not splitting the nodes would remove approximately 323 Huntersville homes from its service area. However, if the Consortium "does not wish to absorb the [\$501,000] cost of splitting the nodes," TWC says that it "would be willing to accept all of the subscribers in the four nodes...and give up the right to obtain the \$3,810 [per subscriber] purchase price...for the subscribers in those portions of the nodes that are outside Huntersville." *See* Gillespie letter to the Trustee dated 6/1/07 at pp. 5-6. According to TWC, this would require the Consortium to give up the right to acquire approximately 762 Adelpia subscribers served by the four nodes that are

located outside Huntersville. *See* Gillespie Letter to the Trustee dated 6/5/07 at p. 4.

IV. Consortium Response to TWC's Proposed Huntersville Addendum

The Consortium maintains that the Huntersville Addendum “makes the Separation Plan unreasonable because it exceeds the necessary costs for the separation of the Huntersville portion of the Adelpia system by tenfold. Most of these unnecessary costs are related to TW’s desire to add a new hub to upgrade the portions of the Adelpia system that it will own and integrate into its larger TW Charlotte System. The [plan] is also unreasonable because TW refuses ‘to agree on limited subscriber swaps to avoid splitting nodes’ as required by the Settlement Agreement...Finally it also builds in redundancies, something that the Trustee declared to be unreasonable in his earlier Separation Plan decision.” *See* Miller Letter to Trustee dated 6/1/07 at p. 5.

The Consortium contends that “the proposed construction of a second \$1.5 million hub facility is not the result of or caused by the separation of the Consortium System’s nodes from the TW portions of the Adelpia System” but rather of Time Warner’s need for a new Hub to serve existing TW subscribers who are currently served by Time Warner’s Oakdale Hub, noting that the Oakdale Hub currently serves 32,500 homes passed, “already exceeding Time Warner’s [20,000 homes passed and 5-7 mile radius] standards for hub construction.” *See* Miller Letter to Trustee dated 6/1/07 at pp.5-6

Secondly, the Consortium argues that the \$501,000 node-splitting cost is unnecessary and could be avoided by swapping four Huntersville-area nodes “between the Consortium and TW in such a manner that results in neither party experiencing a 2% shift in overall subscriber counts in the Huntersville area...the total number of Huntersville passings that would transfer to the Consortium is about 300 out of a total of approximately 12,000 homes passed in Huntersville.... *See* Miller Letter to Trustee dated 6/1/07 at p. 7

Finally, the Consortium argues that “the transport fiber estimated to cost \$750,000 includes redundant connections—from the new Huntersville Hub to the Oakdale Hub, and from the New Huntersville Hub to the new Iredell Hub...[O]ur estimate is that approximately 50% of these costs are for the redundancy...”*See* Miller Letter to the Trustee dated 6/1/07 at p. 7.

[In the time available between TWC's response to the Trustee's question about eliminating the Huntersville Hub and issuance of the Trustee's decision, the Consortium's engineers did not have sufficient opportunity "to review and understand" TWC's analysis of bringing distribution fiber from Oakdale or the Iredell Hub to the 17 Huntersville-area nodes. However, based upon their preliminary observations, the Consortium's engineers noted several areas where further cost savings might be achieved. *See* Miller email to Trustee dated 6/7/07 9:58 p.m.]

V. Discussion

A. Background

As with respect to the previous decisions resolving disputes between the parties involving the original Separation Plan; Line Extensions, New Developments and Digital Set-Top Boxes; and Real Estate and Employment Issues, the starting point for the Trustee is the July 28, 2006 Settlement Agreement.

As the US Bankruptcy Court has made clear, the rights of first refusal contained in the local ordinances of the Consortium communities are independent rights that each community must individually decide. *See* Decision of US Bankruptcy Court on "Determination of Purchase Price" dated 5/16/07 at pp. 3-4.

At the time the parties negotiated the Settlement Agreement, it was assumed by the Consortium and TWC that the six Consortium communities would act in concert to exercise their rights of first refusal. (Nothing in the Settlement Agreement guaranteed that this would occur.) The parties' assumption that all the Consortium cities would act in concert was reflected in the provision of the Settlement Agreement requiring TWC to prepare by August 28, 2006 a plan to physically separate the Adelphia System between TWC and the six Consortium communities. This Separation Plan was subsequently the subject of considerable debate among the parties. When the parties could not reach agreement about it, the Settlement Agreement required the Trustee to decide whether the Separation Plan submitted by TWC was "unreasonable under the circumstances." The Trustee approved the Plan subject to several conditions including the elimination of a redundant transport fiber link.

B. The Settlement Agreement

In considering the Adelphia Separation Plan—Huntersville Addendum, the Trustee must again be guided by the Settlement Agreement. As in the case of the original Adelphia Separation plan, TWC and the Consortium hold widely divergent views about what is necessary “to efficiently and quickly” separate the Adelphia system “based on TWC [engineering] standards.” Since the Settlement Agreement clearly states that “the design shall be based on TWC standards,” the Trustee must first look to these standards. [These standards, developed by TWC in August 1998, provided corporate guidelines for plant upgrades and rebuilds. Since no “system separation guidelines” are known to exist, the Trustee believes that it is reasonable to look to these standards insofar as new cable construction is concerned. With that said, the standards allow systems some flexibility. As the preface to a section on Plant Architecture says: "There is no single right System Architecture! The architecture should be determined independently for each type of plant...." See August 1998 TWC Plant Upgrade Guidelines, Sec. 6., p. 1 of 5.]

The Trustee finds the Settlement Agreement’s mandate to separate the Adelphia System “efficiently and quickly” less helpful because what can be accomplished quickly (within 120 days), is not always most cost effective. For instance, underground directional boring often can be accomplished more quickly than aerial construction due to utility “make-ready” requirements. But it can cost 5-10 times as much per mile as aerial construction. However, where cost-effectiveness and timeliness do not conflict, the Trustee must take account of these considerations as well.

C. Proposed Huntersville Hub

The Consortium argues that Time Warner’s plan to add a new hub in North Mecklenburg County is driven largely by “TW’s desire to add a new Hub to upgrade the portions of the Adelphia system that it will own and integrate into its larger Charlotte System.”

Time Warner has not hidden its plans to upgrade the former Adelphia System or integrate it into its existing Charlotte-area cable system. In testimony before the US Bankruptcy Court in July 2006, Time Warner Senior Vice President Satish Adige testified that TWC planned to interconnect the Adelphia Cable System with TWC’s Charlotte-area system, “operating them together as a large urban/suburban system....”

Time Warner's consolidation plans notwithstanding, the Trustee must determine whether the proposed plan for a new Huntersville Hub is based on TWC standards and reasonable under the circumstances.

Time Warner standards provide that for new construction, hubs should serve no more than 20,000 homes passed within a 5-7 mile radius. *See* TWC Plant Upgrade Guidelines, August 1998, Sec. 1, p. 3 of 3.

Under the original Separation Plan, the Statesville/Iredell system would have passed 61,501 homes and the Mooresville system would have passed 38,235 homes. Since the Consortium was gaining the Mooresville headend, the Trustee found it reasonable for Time Warner to add a new Hub in Iredell County as it did new construction to serve subscribers formerly served by the Mooresville headend.

The question presented by the Huntersville Addendum is whether the addition of 11,891 homes passed in Huntersville justifies TWC's construction of a second new hub closer to Huntersville.

Because the new Iredell hub will already serve about 16,000 homes formerly served by the Mooresville headend, adding another 12,000 homes to the Iredell Hub would cause TWC to exceed both its 20,000 homes passed and 5-7 mile radius standards for hub construction. A reasonable reading of this provision of the Settlement Agreement therefore appears to support TWC's proposal to construct a new Huntersville-area hub. However, when one considers whether this is the most efficient way to separate Huntersville, it is a much closer call. Since the Settlement charges the Trustee with determining whether or not TWC's Separation Plan is "unreasonable under the circumstances," factors such as whether separation costs are to be shared by the parties must also be considered.

D. Node Splitting

Time Warner Cable's proposal to split four Huntersville-area nodes at a cost of more than half a million dollars is an inordinately expensive solution to a similar problem that the parties resolved at virtually no cost for Mooresville-area nodes that served subscribers in both Consortium and TWC franchise areas. Through a series of swaps assigning overlapping nodes to the party that served a majority of a node's subscribers, the parties exchanged roughly equivalent numbers of subscribers. The Consortium has proposed a similar solution for the four Huntersville-area nodes but claims TWC has "refused to 'agree to limited subscriber swaps to avoid splitting nodes' as required by the Settlement

Agreement.” The Consortium asserts that TWC “does not have a right to require node splits in Huntersville if the result is irrational economic costs added to the separations plan.” See Miller Letter to Trustee dated 6/5/07 at pp.5-6.

In response, TWC points out that “the Settlement Agreement explicitly does *not* require that nodes be swapped. The Settlement Agreement does no more in this regard than allow the parties to ‘agree’ to swap, rather than split nodes.” See Gillespie Letter to Trustee dated 6/6/07 at p. 4.

In the Trustee’s view, Time Warner’s reading of node swapping language in the Settlement Agreement is correct. The provision *permits* but does not *require* node swaps. In relevant part the Settlement Agreement reads: “...the engineers *may* agree upon limited subscriber swaps to avoid splitting nodes.” (Emphasis added.) See Settlement Agreement at p. 1.

Though Time Warner is not obligated to swap nodes with the Consortium, its refusal to consider a Mooresville-like solution imposes an uneconomic cost of approximately half a million dollars or \$1300 for each of the 323 Huntersville homes served by overlapping nodes on the Huntersville separation. Time Warner’s desire to serve all of Huntersville is understandable but given the fact that a very small percentage of Huntersville subscribers would be involved in node swaps, Time Warner’s unwillingness to consider a Mooresville-like solution is unfortunate.

Time Warner has offered “to accept” all of the subscribers served by the four Huntersville-area nodes including the approximately 762 located outside of Huntersville. Time Warner’s offer would enable the Consortium to avoid the \$501,000 node splitting cost and also reduce its purchase price by nearly \$3 million. At the same time, however, it would reduce the Consortium’s subscriber base to approximately 9,800 subscribers. Whether or not this trade-off is acceptable to the Consortium is for the Consortium alone to decide.

E. Redundant Fiber Transport Links

Time Warner also proposes to construct redundant fiber transport links from its Oakdale Hub (at a cost of \$184,333) and from Iredell County (at a cost of \$565,660) to the new Huntersville Hub, arguing that TWC construction standards require such route redundancy.

Noting that the Trustee found a similar route redundancy to be unreasonable in the original Separation Plan, the Consortium counters that the redundant fiber transport is not necessary for purposes of separating Huntersville from the Mooresville System and should not be included in the separation costs.

As in the case of the redundant fiber transport links that TWC proposed from Cleveland, NC to the Statesville Hub and from Kannapolis to the new Iredell Hub, the Trustee finds that route redundancy is not necessary for the purpose of system separation. And although TWC's standards for new construction generally call for redundant signal sources, this requirement must be balanced against the Settlement Agreement's other requirement that the separation be accomplished efficiently. Weighing the two, the Trustee believes it is unreasonable to impose the cost of redundant fiber transport links to separate Huntersville from the Mooresville System and therefore would disallow the proposed fiber transport link from Oakdale to Huntersville. (Although the Iredell County to Huntersville fiber link is more expensive than the Oakdale to Huntersville fiber, the Oakdale hub does not currently distribute all of the programming services that are carried on the Adelpia system, making it less suitable to be the sole source of content for the former Adelpia subscribers in Huntersville.)

F. Distribution Fibers

Finally, the Huntersville Addendum provides for the construction of six-count distribution fibers (at a cost of \$282,918) to service the 17 Huntersville area nodes coming to TWC. The Consortium has not objected to this element of the Huntersville separation plan.

G. Cost Sharing

Under the Settlement Agreement, if the parties disagree about the reasonableness of the Separation Plan, then "the Trustee shall decide if TWC's plan is unreasonable under the circumstances." As noted above, the Trustee finds construction of a 17-mile redundant fiber transport link from Oakdale to Huntersville—to be unreasonable. However, in the Trustee's view, the overarching question still to be answered is whether the Huntersville separation plan in its totality is "unreasonable under the circumstances."

In the Trustee's view, "the circumstances" must take account of overall costs and how those costs are assigned. The Settlement Agreement provides that the

“Consortium and TWC will share equally in all separation project costs” other than a payment of up to \$1 million that Adelphia agreed to make.

When the Settlement Agreement was entered into in July 2006, none of the parties knew how much system separation would cost. This is apparently why TWC engineers were given 30 days to design a separation plan and determine its approximate costs. This is also apparently why the Settlement Agreement did not stipulate what each party would pay other than to establish that Adelphia’s cost would be capped at \$1 million and that the Consortium and TWC would share equally in all other separation project costs.

Relying on the criteria established by the Settlement Agreement to determine the reasonableness of various technical elements of the Huntersville Addendum, the Trustee cannot ignore the cost-sharing provisions of the Settlement Agreement when determining whether the Huntersville Addendum is “reasonable under the circumstances.”

If the cost-sharing provisions of the Settlement Agreement were followed, then the Trustee would find the Huntersville Addendum to be reasonable under the Settlement Agreement, except the Oakdale to Huntersville fiber transport link and the need to reduce underground construction costs. However, if the entire cost of the Huntersville separation is to be borne by the Consortium without regard to the Settlement Agreement’s cost-sharing provisions, then the Trustee believes that the Huntersville separation can and should be accomplished more efficiently, as Time Warner’s response to the Trustee’s question about eliminating the Huntersville Hub shows.

Time Warner construction standards set guidelines for system upgrades and new construction. However, many existing cable systems, including the Adelphia System and Time Warner’s Charlotte area system operate today under less stringent standards. For instance, the Adelphia system currently passed nearly 100,000 homes between the Mooresville headend and Statesville Hub. TWC’s Oakdale hub serves some 32,500 homes. Both of these cable systems are fully-functioning businesses serving thousands of cable subscribers

If the Consortium alone is to bear the costs of separating Huntersville from the Mooresville system, then the Trustee finds the \$1.5 million cost of the new Huntersville hub to be unreasonable under the circumstances. TWC can serve the additional Huntersville subscribers it will acquire from the Iredell Hub for substantially less than the cost of the new Huntersville Hub. Adding 12,000

Huntersville homes passed to the 16,000 Mooresville area homes to be served by the Iredell County Hub would amount to fewer homes passed than TWC today serves from its Oakdale Hub, and less than it will serve from the Statesville Hub post-Separation.

In the Settlement Agreement the parties agreed that the separation design plan should be efficient but based on TWC engineering standards. These provisions were part of the overall Settlement Agreement under which the parties agreed to share system separation costs. If, as TWC maintains, the decisions by Huntersville and Troutman not to exercise their rights of first refusal invalidate the cost sharing provisions of the Settlement Agreement, then in the Trustee's judgment adherence to TWC engineering standards should no longer apply either. The Settlement Agreement is a comprehensive agreement—not a menu from which the parties can choose which provisions to follow.

The Trustee has endeavored to determine what he believes to be a reasonable set of outcomes based upon whether or not Huntersville separation costs are shared by the parties under the Settlement Agreement. If they are to be shared, then the Trustee finds TWC's Huntersville Addendum "to be reasonable under the circumstances" except for the Oakdale to Huntersville fiber transport link and the need to reduce underground construction costs. (As noted above, the Settlement Agreement does not require subscriber swaps. However, because the Trustee finds that the node splits proposed by Time Warner to impose substantial uneconomic costs on the Huntersville separation, the Trustee will not require the Consortium to pay the initial \$250,000 of Huntersville separation costs as it has offered, since such additional contribution is not required by the Settlement Agreement. (The \$250,000 is roughly equivalent to what the Consortium will need to pay for its half of the node splitting costs.)

If the Huntersville separation costs were required to be borne by the Consortium alone, then the Trustee finds that the Huntersville Addendum would be "unreasonable under the circumstances." There would be a more efficient way to separate Huntersville from the Mooresville System than TWC engineering standards prescribe. It would include eliminating the Huntersville Hub, eliminating the Oakdale to Huntersville fiber transport link and having TWC serve the 12,000 Huntersville passings from the new Iredell Hub. This would reduce the Huntersville separation costs by almost 45%. TWC has provided the Trustee with preliminary estimates for this alternative approach. TWC's analysis suggests that the cost would be \$1,077,203 plus the \$501,000 node-splitting costs. (In view of the brief time TWC had to prepare its estimate and the lack of opportunity the

Consortium has had to review it, the Trustee would afford the parties additional opportunity to comment before approving these costs, if this scenario were to be followed.)

Ultimately, only the US Bankruptcy Court has the authority to determine if the cost-sharing provisions of the Settlement Agreement are rendered invalid by Huntersville and Troutman's decisions not to exercise their rights of first refusal. Otherwise, the decision of the Trustee approving the Huntersville Addendum--except for the Oakdale to Huntersville fiber transport link and the need to reduce underground construction costs--with separation costs shared equally by the parties, shall apply.

VI. Findings

Considering all the above, the Trustee finds that the Adelpia Separation Plan Addendum-Huntersville proposed by TWC would "not be unreasonable under the circumstances" if TWC modifies it in each of the following ways and TWC and the Consortium share equally in all Huntersville separation costs.

1. The 21.79 mile 48-count transport fiber from the Oakdale Hub to the new Huntersville Hub (at an approximate cost of \$184,333) shall be eliminated from the plan;
2. Best efforts are made to reduce the 5.3 miles and cost of underground boring by constructing new aerial plant or doing trenching, wherever practicable, within the prescribed 120-day implementation period or such longer period as the parties may agree upon subject to the Court's approval; and,
3. Best efforts are made to reduce the average of 2.5 miles and cost of underground fiber construction per split node by constructing new aerial plant or doing trenching, wherever practicable, within the 120-day implementation period or such longer period as the parties may agree upon subject to the Court's approval.

If the Settlement Agreement should be modified by the US Bankruptcy Court to eliminate the cost sharing provisions as they pertain to the Huntersville separation costs, then the Addendum shall be further modified to eliminate the Huntersville Hub (at an approximate cost of \$1,459,711 and instead require TWC to serve the 17 Huntersville-area nodes via distribution fiber from the Iredell Hub subject to final plans to be approved by the Trustee.

The “Decision of Trustee Regarding Time Warner Cable’s Proposed Separation Plan for Adelpia Cable System”_dated October 12, 2006 otherwise shall be unchanged except that TWC shall overlash 5.5 miles of fiber through Troutman instead of doing underground directional boring, reducing the cost of the Adelpia Separation Plan by approximately \$435,283. TWC and the Consortium shall share the savings equally.

Robert Sachs

Robert Sachs, Trustee

Continental Consulting Group, LLC

The Pilot House, Lewis Wharf

Boston, Massachusetts 02110

June 8, 2007