

CONFIDENTIAL—FILED UNDER SEAL

Decision of Trustee on Reconsideration of Trustee’s January 31, 2007 “Decision Regarding Real Estate Owned by Adelpia Communications Corp in Mooresville, NC, and the Employment and Severance of Adelpia System Employees”

I. Background

On January 31, 2007, the Trustee rendered his decision (“Decision”) regarding the assignment of the Mooresville, NC real estate owned by Adelpia Communications Corp, (“Adelpia”) and the employment and severance of employees of the cable system (“Adelpia System”) serving the Towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, and portions of Mecklenburg County, NC, plus the City of Statesville and portions of Iredell County, NC. *See* “Decision of Trustee Regarding Real Estate Owned by Adelpia Communications Corp in Mooresville, NC, and the Employment and Severance of Adelpia System Employees.” (Attachment #1)

The Decision arose out of a dispute between Time Warner Cable (“Time Warner” or “TWC”) and the local franchising authorities represented by the Charlotte-Mecklenburg Office of Cable and Franchise Management (“Consortium”) over negotiation of the Asset Purchase Agreement (“APA”) for the Consortium’s purchase of those portions of the Adelpia System serving the Towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman, and portions of Mecklenburg County, NC (“Mooresville System”). Having been unable to resolve real estate, employment and severance issues among themselves, the Consortium and TWC submitted the issues to the Trustee for final determination.

In May 2007, following a decision by the Town of Huntersville, NC not to exercise its right of first refusal to purchase the portion of the Adelpia System serving its community, Counsel for TWC requested that the Trustee reconsider his January 31, 2007 Decision.

The Trustee granted TWC’s request and invited TWC and the Consortium to submit comments by May 29. On May 30, after Comments were filed, the Consortium advised TWC that the Town of Troutman would also not likely exercise its purchase right.

On June 4, 2007, TWC updated its May 29 Comments to include the effects of Troutman's decision on TWC's calculations of the value of real estate allocated to the parties under the Trustee's prior Decision.

TWC argued that the Trustee's Decision now gives the Consortium "a real estate valuation advantage over the TWC subscribers of \$120 per head." *See* Letter from TWC Counsel Gardner Gillespie to the Trustee of 6/4/07 at p. 6. (Attachment #2)

The decisions of Huntersville and Troutman to continue to be served by TWC accentuates the relative positions of the parties resulting in TWC now serving 71% (26,569) and the Consortium positioned to serve 29% (10,565) of Adelpia System subscribers compared to the 55% (20,363) to 45% (16,771) ratio of subscribers that TWC and the Consortium contemplated serving at the time of the Trustee's Decision.

II. TWC Position on Real Estate Allocation

TWC has asked the Trustee revise his Decision regarding the disposition of the Mooresville real estate "to fit the current facts and to ensure a fair and equitable result for TWC and the Huntersville and Troutman subscribers." *See* Gillespie Letter of 6/4/07 at p. 1

Were your January 31, 2007 Decision not to be revised to reflect the new facts, the New Consortium would receive more than three-quarters (76 percent) of the system's real estate (with a value of \$1,455,750) to serve less than one-third (29%) of the former Adelpia system's subscriber base. TWC, in turn, would receive less than one quarter (24 percent) of the real estate (with a value of \$468,000) to serve 71 percent of the subscribers. The Value differential of the real estate would tilt almost \$1 million in favor of the much smaller New Consortium system. TWC would receive real estate valued at \$17.62 for each of its 26,569 subscribers, while the New Consortium would receive real estate valued at \$137.79 for each of its 10,565 subscribers—a differential of \$120 per subscriber in favor of the Consortium system. See Gillespie Letter of 6/4/07 at p. 4.

As a result of this differential, "TWC proposes that either the headend/office building at 420 South Academy Drive or the office building/warehouse at 435 South Broad Street [in Mooresville] should be allocated to TWC." *See* Gillespie Letter of 6/4/07 at p.8.

However, even if awarded one of the buildings in Mooresville, TWC argues that it “will suffer an imbalance in the value of real estate assets on a per-subscriber basis.” To address this, TWC advocates that it be awarded \$326,248 in cash from the Consortium if the Consortium keeps the headend building and \$370,498 if the Consortium chooses to use the office/warehouse building instead. Were TWC not to receive the right to use any of the Mooresville real estate, it claims that it is entitled to receive compensation from the Consortium in the amount of \$1,356,748. *See* Gillespie Letter of 6/4/07 at p.8.

III. Consortium Position on Real Estate Allocation

The Consortium opposes TWC’s position, arguing that the Trustee’s “original reasoning on the allocation of the buildings on the Mooresville head-end campus was correct... The principles that the Trustee identified in allocating the real estate remain valid...

- 1. 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. (January Decision at p. 21)*

- 2. Where real property owned by Adelpia within the Consortium Communities does not practicably lend itself to division, the Consortium has superior claims to ownership. (January Decision at p. 22)*

- 3. [R]elegating 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. (January Decision at p.24)*

- 4. The totality of the circumstances warrants a disproportionate division of the Adelpia System’s real property. (January Decision at p. 26).*

- 5. And, finally, Time Warner itself argued to the Bankruptcy Court that a full sales price of \$3810/subscriber should be assigned the*

Consortium, “regardless of system characteristics [such as real estate holdings]”. (January Decision at p. 25, p. 27).

The Consortium maintains that “none of those facts [detailed in the Trustee’s Decision] are changed by the removal of Huntersville from the Consortium system...Time Warner will undoubtedly argue that a reduction in the number of Consortium subscribers...warrants a reallocation of the real estate assets. As the Trustee stated in the January Decision, this is not relevant when the Bankruptcy Court assigned an Adelphia system-wide average price to the Consortium, a price which was not based on the particular real estate or other assets located at any particular location...Once Time Warner adopted that principle for itself, it cannot now argue that it gets a second bite at the Consortium’s wallet, getting extra compensation for particular real estate parcels located within the Consortium’s system territory.” See Miller Letter of 5/29/07 at p.2. (Attachment #3)

IV. Employment and Severance Issues

Neither TWC nor the Consortium seek any changes in the Trustee’s January 31, 2007 Decision regarding employment and severance issues. See Gillespie Letter of 6/4/07 at p. 10 and Miller Letter of 5/29/07 at pp. 3-4.

V. Discussion and Findings

Having carefully reviewed and considered the parties Comments, the Trustee does not believe that any changes in his January 31, 2007 Decision are warranted by the reduction in the number of subscribers that the Consortium will serve and TWC will gain as a result of the decisions by Huntersville and Troutman not to exercise their rights of first refusal.

The Trustee finds TWC’s argument that real estate should be equally allocated on a per subscriber basis to be unreasonable under the circumstances. Among the factors that the Trustee has considered are TWC’s decision to purchase the Adelphia System with apparent knowledge of the Consortium members rights of first refusal, with making an offer for Adelphia based upon an average price of \$3810 per subscriber for Adelphia’s 3.7 million subscribers “regardless of particular characteristics of [the] system,” and without conducting a valuation of the Mooresville System. To the extent that the changes in the number of subscribers might affect TWC’s ability to serve them, the Trustee has taken note of the facts that TWC already serves about 3,000 Huntersville subscribers from its

nearby Charlotte-region cable system and that TWC's Statesville customer service office is in relatively close proximity to Troutman. While the Settlement Agreement provides that the US Bankruptcy Court would set a price per subscriber for the Adelpia System, the Settlement Agreement does not require that every other cost related to the purchase be allocated on a per-subscriber basis.

For example, TWC and the Consortium agreed to share "equally" in all system separation costs beyond the first \$1,000,000 to be paid by Adelpia. Based upon the original Separation Plan, which assumed that all six Consortium members would exercise their rights of first refusal, the Consortium would have paid \$127 per subscriber (\$2,129,315 divided by 16,711 subscribers) while TWC would have paid \$105 per subscriber (\$2,129,315 divided by 20,363 subscribers). However, in view of the changes in the number of subscribers to be served by each of the parties and increases in the projected separation costs, the Consortium will now pay \$314 per subscriber (\$3,316,317 divided by 10,565 subscribers) while TWC will only pay \$125 per subscriber (\$3,316,317 divided by 26,569 subscribers). This will make the Consortium's purchase of its portion of the Adelpia System more expensive than TWC's by \$187 per subscriber. Had the Trustee accepted TWC's arguments about the allocation of separation costs, an even greater disparity would have resulted. *See* "Decision of Trustee Regarding Adelpia Separation Plan—Huntersville Addendum dated June 8, 2007."

In finding that the Mooresville real estate should be assigned to the Consortium, the Trustee acknowledged in January that "this will result in a disproportionate division of the Adelpia System's real property." Nevertheless, as the Trustee explained in his Decision, "the totality of the circumstances warrants such an outcome." Although the number of subscribers that each party will serve has changed since January, the principles that formed the foundation of the Trustee's Decision have remained the same. For the reasons stated herein and in the Trustee's January 31, 2007 Decision, the Trustee therefore finds that TWC is not entitled to any allocation of the Mooresville real estate nor any cash adjustment for real estate at closing. The Trustee's prior rulings on employment and severance issues also will stand.

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