

Objection Deadline: September 1, 2015 at 4:00 p.m. (Eastern)
Hearing Date: September 9, 2015 at 9:45 a.m. (Eastern)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
In re)	Chapter 11 Cases
Adelfia Communications Corporation, <i>et al.</i> ,)	Case No. 02-41729 (REG)
)	
Reorganized Debtors.)	Jointly Administered
_____)	

**MOTION FOR ORDER FURTHER EXTENDING THE TERM
OF THE ADELPHIA RECOVERY TRUST AND AUTHORIZING
AND DIRECTING CERTAIN WIND-DOWN STEPS**

The Adelfia Recovery Trust (the “Trust”) moves the Court for entry of an order pursuant to 11 U.S.C. § 105(a) and the terms of the *First Modified Fifth Amended Joint Chapter 11 Plan for Adelfia Communications Corporation and Certain of its Affiliated Debtors*, dated January 3, 2007 (the “Plan”) extending the term of the Adelfia Recovery Trust through the end of 2016 with a voluntary modification of the Trustees’ compensation, and authorizing and directing the Trust to take certain cost-reducing wind-down steps, namely cancelling terminally out-of-the money Trust interests. In support of this motion (the “Motion”), the Trust respectfully represents as follows:

INTRODUCTION

1. Pursuant to the terms of the Plan, the Trust was formed on February 13, 2007, with an initial five-year term, subject to the Trustees' right to extend the term of the Trust with the Bankruptcy Court's approval where "necessary for purposes of resolving [the Trust's] Causes of Action and distributing the proceeds to the holders of CVV Interests." Plan § 9.1(a).¹ With the Court's approval, the term of the Trust has been extended twice, primarily to provide the Trust the time needed to prosecute its remaining Causes of Action, and then provide the Trustees with sufficient time to make final distributions to the Trust's beneficiaries, perform the tasks necessary to wind down and terminate the Trust, and otherwise fulfill their responsibilities under the Trust. As a result of the prior extensions, the Trust is presently set to expire on September 23, 2015. *See* Docket No. 14615.

2. One material Cause of Action remains unresolved: the FPL Case (defined below). The FPL Case is on appeal to the Court of Appeals for the Second Circuit (the "FPL Appeal"), following a judgment entered by the District Court on March 17, 2015. The FPL Appeal will not be resolved prior to September 23, 2015, the date on which the Trust is presently set to expire. The Trust therefore seeks to extend its term until December 31, 2016 (the "Third Extension Period") to responsibly prosecute the FPL Appeal and for the additional reasons set forth below.

3. At the same time, the Trust seeks to continue in as balanced and equitable a manner as possible by using the Third Extension Period to commence a staged wind-down. Because the Trust's last remaining potential large asset is the FPL Case, the upper limit of distributions the Trust conceivably may make now is calculable, at least with respect to which

¹ Capitalized terms that are not defined herein are intended to have the definitions provided by the Plan.

classes of Trust interests conceivably could benefit from future distributions. At the time of the formation of the Trust, there was a remote possibility that junior classes of Trust interests could received distributions. Subsequently, it has become certain that even complete success in the FPL Case, together with miscellaneous assets and cash on hand, will fall billions of dollars short of providing sufficient assets to fund any distributions to certain junior classes of Trust interests (the “Junior Certificates”).² The Trust therefore seeks an order cancelling the Junior Certificates because doing so is equitable and in the best interests of both junior and senior certificate holders for the following reasons.

4. First, cancelling the Junior Certificates will allow the holders of Junior Certificates to close their positions and realize tax losses without having to continue to await the full administration of the Trust for the benefit of the more Senior Certificates (defined below). Second, the Trustees have observed trading in the Junior Certificates at prices that imply multi-million dollar market valuations for worthless interests. Cancelling the Junior Certificates will prevent uninformed or misinformed market participants from purchasing worthless instruments and eliminate the expense incurred by those sellers who are simply trying to realize the tax benefits of their losses without waiting for the Trust’s termination. Third, cancellation of the Series ACC-7 interests will permit the Trust to deregister as a public reporting issuer with the SEC. That will accelerate the ultimate wind-down of the Trust and also eliminate the expense associated with preparing such reports and filings. (The Trust will continue to provide periodic reports regarding the results of its operations to certificate holders in accordance with section 3.11(a) of the Declaration of Trust.) Therefore, in the interest of fairness and maximizing value for Trust beneficiaries, the Trust requests the Court to direct cancellation of the Junior

² The “Junior Certificates” are Series ESL, Series ACC-4, Series ACC-5, Series ACC-6B, Series ACC-6B1, Series ACC-6D, Series ACC-6D1, Series ACC-6E/F, Series ACC-6E/F1, Series ACC-7, and Series ACC-7A. The Series ESL, Series ACC-5 and Series ACC-6B1 certificates do not have any holders.

Certificates.

5. Finally, the Trustees recognize that the amount of time and service they are required to provide has diminished as the Trust begins to wind down. The Trustees bear in mind the objection to the prior extension request and the Court's comments on that subject at that time. While the Trustees believe that that objection failed to account for the extent of the responsibilities of the Trustees and the personal risk involved in serving as a Trustee that each Trustee has assumed, they give the Court's comments great deference and therefore voluntarily will reduce their own compensation by \$444,000 (over 28%) for the proposed Third Extension Period (preserving their rights to recoup that amount in the event the FPL Case should generate significant proceeds). The Trust therefore submits that the further extension of the Trust term under such terms is fair and equitable, and in the best interest of Trust beneficiaries.

JURISDICTION

6. This Court has jurisdiction over this Motion pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1334. Further, pursuant to the Plan, the Court retained jurisdiction to "issue such orders in aid of execution and consummation of the Plan and/or Plan Documents" and to "hear and determine all matters related to the [Trust]." *See* Plan, Article XV(iv) and (xvii). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157.

FACTS

A. Background.

7. On June 25, 2002, Adelphia Communications Corp. ("ACC") and many of its affiliates and subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On January 5, 2007, this Court entered an order (the "Confirmation Order") confirming the Plan, which provided for the creation of the Trust and appointment of five trustees for the

Trust (the “Trustees”).³ Plan § 9.1(a), (b). As a result of the extraordinary degree of inter-creditor litigation during the chapter 11 case, the number of Trustees, the method of their selection, and the waterfall for the distribution of proceeds from the Trust were all highly negotiated provisions of the Plan. The Trust was set up with no employees or senior management other than the Trustees, such that the Trustees’ responsibilities include all facets of operating the Trust and overseeing the administration of its assets.

8. The Trust was formed on February 13, 2007, when the Plan became effective, pursuant to the terms of the Amended and Restated Declaration of Trust for Adelpia Recovery Trust dated February 13, 2007 (the “Trust Declaration”).⁴ Pursuant to the Plan and Confirmation Order, title to certain of the Debtors’ causes of action (the “Causes of Action”) were deemed to be assigned, granted and transferred to the Trust. Plan, § 9.2; Confirmation Order, ¶17. On June 4, 2008, the Court approved the Second Amended and Restated Declaration of Trust for Adelpia Recovery Trust. [Docket No. 14135]

9. The Trust was created for an initial term of five years and, thus, was scheduled to dissolve on February 13, 2012, unless extended with this Court’s approval. Section 9.1(a) of the Plan provides:

The Contingent Value Vehicle shall be dissolved upon the earlier of the distribution of all of its assets to holders of CVV Interests and the fifth anniversary of the creation of the Contingent Value Vehicle, provided that, if warranted by the facts and circumstances involved in resolving the Causes of Action, upon application to, and if approved by, the Bankruptcy Court upon a finding such extension is necessary for purposes of resolving such Causes of Action and distributing the proceeds to the holders of CVV Interests, the term of

³ The Trust was originally named the “Contingent Value Vehicle” or “CVV.” On or about March 15, 2007, the Trust changed its name to Adelpia Recovery Trust pursuant to a Certificate of Amendment to Certificate of Trust filed with the Delaware Secretary of State.

⁴ See Notice of: (I) Entry of Order Confirming First Modified Fifth Amended Joint Chapter 11 Plan for Adelpia Communications Corporation and Certain of its Affiliated Debtors; (II) Occurrence of Effective Date; and (III) Deadline for Filing Administrative Claims and Claims Arising From Rejection of Executory Contracts or Unexpired Leases [Docket No. 13184].

the Contingent Value Vehicle may be extended by the CVV Trustees for a specified, finite term, but each such extension must be approved by the Bankruptcy Court within 6 months of the beginning of each such extension.

10. In late 2011, the Trust requested an initial extension of its term. On December 15, 2011, this Court found that “such extension [wa]s necessary for purposes of resolving such Causes of Action and distributing the proceeds to the holders of CVV Interests” and entered an Order approving an extension of the Trust’s term to December 31, 2014. [Docket No. 14539]

11. In 2014, the Trust applied for a second extension of its term. At a hearing held on September 23, 2014, the Court granted the Trust’s motion for a second extension of its term, extending it for one year from the hearing date, through September 23, 2015. On December 30, 2014, the Court entered its written Order Extending the Term of the Adelpia Recovery Trust “without prejudice to further extensions sought upon proper justification[.]” *See* Docket No. 14615.

B. Status of the Trust’s Causes of Action and Administration.

12. Since the Trust was formed, the Trustees have diligently administered the Trust and pursued the Causes of Action transferred to the Trust under the Plan. During its first five-year term, the Trust resolved Causes of Action against (a) ACC’s former outside auditor, (b) Adelpia’s pre-petition lenders, (c) David Rosenzweig, Leonard Tow, and Mr. Tow’s wife, and (d) Motorola. The Trust also distributed approximately \$215 million to holders of CVV Interests during that time period. During the extension periods, the Trust (a) resolved causes of action against Buchanan Ingersoll, ACC’s former primary outside law firm, (b) argued the *Goldman* appeal in the Second Circuit, which resulted in the resolution of that case, and (c) tried the FPL Case, conducted further “*Stern v. Marshall*” proceedings in the District Court, and began prosecuting the FPL Appeal. The Trust also distributed an additional \$60 million to CVV Interest Holders during the extension periods. As the Court is aware, many of these matters were

highly complex, hotly contested, involved novel issues, and took years to resolve.

13. The Trust's most significant remaining litigation continues to be *Adelphia Recovery Trust v. FPL Group, Inc., et al.* (04-03295) (the "FPL Case"). As this Court is of course aware, the Trust seeks to recover from FPL Group ("FPL") a \$149 million fraudulent transfer made by ACC to repurchase shares of its common stock from FPL. Trial began on April 30, 2012 and the Court heard testimony through May 3, 2012. The parties submitted post-trial briefs in June 2012, and the Court heard closing arguments on July 25, 2012. On May 6, 2014, the Court issued proposed findings of fact and conclusions of law (the "Proposed Findings") for review by the District Court.

14. On or about March 17, 2015, the Honorable Valerie Caproni entered a Judgment and Opinion that "affirmed" the Proposed Findings. *See Adelphia Recovery Trust v. FPL Group, Inc. (In re Adelphia Commc'ns Corp.)*, No. 14-CV-5532, 2015 U.S. Dist. LEXIS 33229 (S.D.N.Y. Mar. 17, 2015) (the "FPL Decision").

15. The Trust, for the reasons set forth in its appellate brief filed on July 15, 2015, has appealed from the FPL Decision to the Second Circuit. The Trust participated in the Second Circuit's newly created outside mediator program, which included a one-day session attended in person by one of the Trustees (and for which all of the Trustees were available), but it did not result in a settlement of the FPL Appeal. Briefing of the FPL Appeal is in progress and scheduled to be completed October 28, 2015. It is impossible to predict how long the Court of Appeals may require thereafter to hear argument and issue a ruling. Professional fees associated with prosecuting the FPL Appeal have been limited and will continue to be limited.

16. Subsequent to the September 23, 2014 hearing, the Trust has made further progress toward bringing the aftermath of the Adelphia bankruptcy to a conclusion. On October

30, 2014, the Plan Administrator filed its *Renewed Motion for an Order Authorizing the Destruction of Business Records*. [Docket No. 14610] That motion was granted by order entered on November 14, 2014 [Docket No. 14613], which authorized the Plan Administrator to cease maintaining and destroy collections of business records known as the “Trailer Records,” the “Warehouse Records,” and the “Merrill Database” which were being maintained in connection with the Trust’s claims against Goldman, Sachs & Co. and Prestige Communications of NC. As a result, the Reorganized Debtors are shedding annual expenses of approximately \$365,000.

17. The Trust was a party to a settlement between Leonard and Claire Tow and Adelpia (the “Tow Settlement”). As a result of the Tow Settlement, Reorganized Adelpia agreed to pay the Trust \$4.875 million plus 8% simple interest when certain life insurance policies mature. A first-to-die rider in one of the insurance policies triggered a payment of \$2.1 million from Adelpia to the Trust in October 2014. In the event the insured is still alive when the Trust is prepared to wind down, the Trust will be tasked with finding a way to monetize its material but illiquid interest in the Tow Settlement as part of its winding-down procedures.

18. In addition to resolving the FPL Case, the Trust will have to make final distributions to holders of CVV Interests and must perform significant managerial tasks necessary to wind down and terminate the Trust, such as tax reporting and providing final reports to the Trust beneficiaries. The Trust has spent significant time preparing for the dissolution and outlining the steps required, all of which are the responsibilities of the Trustees. The Trust anticipates filing its Form 10-Q for the period ended June 30, 2015 shortly after filing this Motion. The Form 10-Q will report the financial results and cash position of the Trust.

C. Trust Beneficiaries.

19. Pursuant to a complex, negotiated waterfall approved in connection with the Plan,

eight classes of Trust beneficiaries were to receive, in varying proportions, the first (approximately) \$4.9 billion of Trust distributions. That amount has increased to approximately \$5.8 billion as of June 30, 2015 as a result of interest accrued pursuant to the terms of the Plan, and net of distributions that were made. Those eight classes are Series RF, Series Arahova, Series FrontierVision, Series FPL, Series Olympus, Series ACC-1, Series ACC-2 and Series ACC-3 (the “Senior Certificates”). (Series RF interests were paid in full by a March 1, 2012 distribution and are not entitled to any further distributions.)

20. Under the Plan, certain claims and interests subject to dispute or subordination under section 510(b) of the Bankruptcy Code were placed in the ART Disputed Ownership Fund. On July 25, 2012, the Reorganized Debtors filed the “Debtors’ Motion to Conditionally Disallow Certain Section 510(b) Claims” (the “Disallowance Motion”; Docket No. 14553). Through the Disallowance Motion, the Reorganized Debtors sought to conditionally disallow the 510(b) claims on the grounds that the Trust would be required to recover over \$4.9 billion before any recovery could be available to the section 510(b) claims (were they to be allowed), subject to automatic reinstatement should the Trust recover amounts approaching the threshold required to pay in full senior interest holders.⁵

21. By order entered September 6, 2012, the Bankruptcy Court conditionally disallowed the 510(b) claims, subject to automatic reinstatement in the event the Trust recovered sufficient litigation proceeds to make a distribution on those Interests, if and to the extent allowed. *See* Docket No. 14554. The door to reinstatement was left open at that time because the possibility of the Trust recovering the necessary billions of dollars of litigation proceeds to fund a distribution for the 510(b) claims was highly improbable, but not absolutely impossible

⁵ As noted above, the threshold amount has since increased to approximately \$5.8 billion as a result of accrued Plan interest.

because, among other things, the Goldman and Prestige cases were still pending. Today, recovery by the Trust of the amounts needed to make distributions in respect of the Junior Certificates is impossible.

22. To date, the Trust has distributed approximately \$275 million. The Trust would need to recover and distribute another \$5.8 billion (subject to rounding and interest accruals) before the Junior Certificates can obtain any recovery, as reflected in the Trust's most recent Form 10-Q. Complete success for the Trust in the FPL Case, and favorable disposition of the Trust's modest other miscellaneous assets, cannot reach the threshold required to generate any distribution for Junior Certificates.

REQUEST FOR RELIEF

A. Extension of Trust Term.

23. As discussed above, the Plan provides that the Court may extend the term of the Trust upon finding that "such extension is necessary for purposes of resolving such Causes of Action and distributing the proceeds to the holders of CVV Interests." Plan § 9.1(a). The FPL Appeal will not be resolved by September 23, 2015, nor will the Trust be fully liquidated by then. The Trustees, in the exercise of their sound discretion, have concluded that it is in the best interest of the Trust's beneficiaries for the Trust to be afforded the opportunity to continue to pursue the appeal.⁶ That decision was informed by the merits, based upon privileged advice of counsel and the reasons set forth in the Trust's Appellate Brief, as well as the very large potential recoveries compared with the modest incremental cost of pursuing the appeal. Briefing of the appeal is in progress and due to be completed by October 28, 2015. The Trust hopes, and believes it is reasonable to expect, that a ruling will be issued before the end of 2016, but it is

⁶ In the event the appeal is unsuccessful, the Trustees will determine at that time whether it is appropriate and desirable to pursue any further remedies.

impossible to predict how long the Court of Appeals may require to reach its decision and issue an opinion.

24. The Trust also will use the additional time to attempt to complete other managerial matters necessary to the winding down of the Trust. Such tasks include attempting to monetize the Trust's miscellaneous assets, including its interest in the Tow Settlement, and preparing tax information. In the past, there has been no objection to extension of the Trust term *per se*, but only to the costs involved. That is addressed below.

B. Cancellation of Junior Certificates.

25. Consistent with its desire to mitigate any possible interest-holder concerns over the extension of the Trust's term and generally maximize value for all, the Trust requests the Court to order the cancellation of indubitably out-of-the-money Trust interests. The benefits of doing this are multifold.

26. First, under SEC rules, the Trust is an SEC public reporting issuer due solely to the existence of one class of Trust interests, Series ACC-7 interests. The ACC-7 interests are among the Junior Certificates that no longer have any possibility of obtaining a distribution from the Trust. Cancellation of these interests will permit the Trust to deregister as an SEC reporting issuer. The Trustees estimate that deregistration will save the Trust at least \$100,000 per year in professional fees associated with meeting reporting requirements. At this stage, there is no logical reason why the funds available for distribution to in-the-money stakeholders should be diminished to meet Commission reporting requirements necessitated solely by a class of worthless interests. (Certificate holders will continue to have access to periodic reports regarding the results of the Trust's operations as required by section 3.11(a) of the Declaration of Trust.) In addition, deregistration will be required as part of the liquidation of the Trust. Taking the deregistration step now should help to accelerate the final termination date.

27. Second, cancellation of the Junior Certificates should create a tax realization event for the holders of those interests that will enable them to realize losses where appropriate. Reorganized Adelphia maintains telephone and email services to facilitate creditor inquiries, which are received by Adelphia's SVP for Bankruptcy Administration. On the basis of communications received from creditors, the Trust has concluded (albeit from a small and unscientific sample) that stakeholders seek closure and would favor cancellation of interests that are not going to receive recoveries. The expiration of the Trust's term would provide such a result, but permitting that to happen now would be to the detriment of interest holders who might realize recoveries from the FPL Case (and in any event might not be possible given all of the steps required to liquidate the Trust). Cancellation of the Junior Certificates – in essence, a hybrid extension of the Trust's term only for holders of Senior Certificates who potentially will benefit from the extension – appears to the Trustees to offer an ideal balance between the best interests of the holders of Senior Certificates and Junior Certificates.

28. Third, the Trust has observed that millions of ACC-7 interests have traded over the past several years, and often at prices that impute a multi-million dollar market capitalization to that class of certificates. At this point, these are worthless securities that should not be purchased. The Trust believes there are two possible explanations for this trading activity. One is that uninformed or misinformed investors are purchasing the interests in the hope of a potential recovery that will not occur, despite that the Trust's public disclosures have made it clear that these interests are hopelessly out of the money. The other is that holders are incurring transaction costs in order to close their positions so that they can take tax losses, close securities accounts, liquidate decedents' estates, or for other legitimate reasons (which still might involve the sale of the interests to naive investors). In the first case, cancellation of the Junior

Certificates is in the public interest. In the latter case (and some combination of both could be occurring), cancellation of the Junior Certificates is beneficial to their holders.

29. Fourth, with declining levels of substantive litigation activity left on the horizon, the Trust finds itself with a great deal of managerial work to perform in the course of winding down. From the perspective of record-keeping and administration, addressing these matters in a staged process by cancelling the Junior Certificates at the present time is administratively advantageous and will shorten the time needed to cease Trust operations after the FPL Case is concluded.

C. Voluntary Reduction of Trustee Compensation.

30. In response to the Trust's previous request for an extension of its term, one party, which purchased Trust interests after Plan confirmation, lodged an objection. At the September 23, 2014 hearing on the Trust's motion, the objector clarified that its objection was circumscribed to the amount of fees that would be incurred for the Trustees' continuing service.

31. The Trustees' fees were established through a lengthy and complex negotiation with the Creditors Committee. The compensation package took into account many factors, including the level of work and involvement required, the fact that the Trustees would effectively serve as the management of the Trust given that there was no other senior management in place, the work involved during both the heavy litigation period (which lasted longer than had been anticipated) as well as the wind-down of the Trust, and the personal risk involved with serving as a Trustee in light of the litigious nature of the ACC bankruptcy proceeding. Legally, there are no grounds for modifying the amount of the fees. That said, the Trustees are sensitive to the concern that extending the Trust term also extends the amount of fees payable, and do not wish the issue of their fees to serve as an impediment to the extension of the Trust term. The Trustees

therefore voluntarily will conditionally reduce their future fees substantially for the duration of the Third Extension Period.

32. On a per annum basis, the Trustees are entitled to an aggregate fee of \$1,225,000. This amount is comprised of a flat \$175,000 fee per Trustee (the “Base Fee”), plus \$350,000 of incremental fees (the “Incremental Fee”) that are divided and allocated among the Trustees to reflect the relative time and effort of each during the relevant time period. If the total amount appears to be relatively high, that is not because any Trustee is receiving an above-market fee, but because Adelpia’s major unsecured creditor groups insisted on having a panel of five Trustees to represent their disparate (and in times past, quite hostile) interests.

33. The Trustees will conditionally eliminate the Incremental Fee during the requested Trust extension period. The Incremental Fee for the period from September 23, 2015 through year-end 2016 amounts to approximately \$444,000, and a reduction of the total fees by over 28%. The “condition” is only that the Trustees be permitted to obtain the Incremental Fee in the event they obtain a successful result in the FPL Case that brings substantially more funds into the Trust.⁷ In combination with the reduction in reporting costs that will result from the proposed cancellation of the Junior Certificates, the Trust’s administrative costs will be substantially reduced going forward, commensurate with the staged wind-down of the Trust, notwithstanding that the Trustees expect that they will be confronted with a sharp increase in their managerial tasks to shepherd the wind-down of the Trust.

34. The Trustees believe that the integrated package of measures presented by this Motion offers a well-sorted compromise between the opportunity to potentially increase distributions by pursuing the FPL Case, while doing so in a manner that minimizes costs to in-

⁷ The Trust will leave the measure of “substantially more funds” for another date given the highly conditional nature of obtaining such a result.

the-money beneficiaries, and provides necessary relief and finality for the holders of out-of-the-money Junior Certificates. The Trust reserves the right to seek an additional extension of the term of the Trust should one become necessary and appears to be in the best interest of the Trust and its beneficiaries.

CONCLUSION

For the above-stated reasons, the Trust respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, that (a) finds that an extension is necessary for purposes of resolving the remaining Causes of Action, distributing proceeds to holders of Trust interests, and performing other tasks necessary to wind down and terminate the Trust; (b) approves an extension of the Trust's term to and including December 31, 2016, without prejudice to further extensions; and (c) orders the cancellation of the Junior Certificates (as identified above) as part of a staged wind-down; and grants in favor of the Trust such other and further relief as the Court deems appropriate.

Dated: August 13, 2015
New York, New York

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