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Objections Due: May 28, 2008 at 4:00 p.m. (Eastern)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION OF THE ADELPHIA RECOVERY TRUST FOR APPROVAL
OF (I) AMENDMENT TO ITS AMENDED AND RESTATED
DECLARATION OF TRUST, AND (II) ALLOCATION OF ART DISTRIBUTIONS**

The Adelfia Recovery Trust (the “ART”, f/k/a the “Contingent Value Vehicle” or “CVV”),¹ by its undersigned counsel, submits this motion (the “Motion”) for approval of (I) an amendment to that certain Amended and Restated Declaration of Trust for Adelfia Recovery Trust, dated February 13, 2007 (the “Trust Declaration”), and (II) allocation of distributions from

¹ On March 15, 2007, the Contingent Value Vehicle changed its name to the Adelfia Recovery Trust. See Docket No. 13283.

the ART to deficiency amounts prior to dividends thereon,² and respectfully represents as follows:³

PRELIMINARY STATEMENT

The ART seeks approval and authorization from the Court on two issues that may impact the recoveries of Holders of Trust Interests (each defined below). First, the ART seeks approval and authorization of an amendment to the Trust Declaration, the document (with the Plan and the Confirmation Order) that governs the ART, for the purpose of ensuring that the ART is accorded pass-through treatment for income tax purposes. As a condition to receiving a private letter ruling confirming the ART's pass-through tax treatment, the United States Internal Revenue Service (the "IRS") required the Trust Agreement to be amended to delete any requirement that the ART Trustees⁴ list the Trust Interests on a national exchange or actively engage in other market-making activities. As discussed below, this amendment is sought to maximize recoveries by the Trust Interest Holders from the corresponding tax savings.

The Trust Declaration requires that the ART be characterized for tax purposes as a pass-through entity (i.e., a grantor/liquidating trust) to eliminate the potential for any trust-level taxes, allowing Holders to receive maximum recoveries from the ART. If the ART were not recognized as a pass-through entity, it would be subject to a combined federal and state tax rate of up to 43.7%; Holders also would be responsible for their own taxes on distributions received from the ART in addition to this 43.7% tax. The provisions of the Trust Declaration (which is not binding upon the IRS) provide for pass-through tax treatment. However, there was no

² The Official Committee of Unsecured Creditors for the above-referenced Debtors has not taken a position on the allocation of ART Distributions; Jenner & Block LLP, co-counsel to the ART, will be sole counsel regarding this issue on behalf of the ART.

³ Capitalized terms not defined herein shall have the meanings set forth in the Trust Declaration.

⁴ For the purpose of this Motion "ART Trustees" shall mean the "CVV Trustees" as defined in the Trust Declaration.

guarantee that the IRS would agree with that characterization. Together with their tax professionals, the ART Trustees carefully considered the risk that the IRS might not accept the characterization of the ART as a pass-through grantor trust and concluded that it was in the best interest of the ART and its beneficiaries to achieve certainty that the IRS would recognize the ART as a pass-through entity. To that end, the ART Trustees directed the ART's tax counsel to submit a private letter ruling request to the IRS seeking confirmation that the ART will be treated in this manner. After numerous discussions in which tax counsel to the ART Trustees negotiated for both pass-through treatment and the public listing for the Trust Interests, the IRS informed the ART Trustees that it would issue a favorable ruling conditioned upon (i) the amendment to the Trust Declaration to delete any reference to public listing of Trust Interests on a national exchange, and (ii) the ART's agreement that the ART would not seek to take steps to list the Trust Interests on a national exchange or otherwise engage in market-making activities.

The ART Trustees then had a choice to make: (i) ensure pass-through tax treatment for the ART, as required by the Trust Declaration, thereby maximizing any cash distributions to Holders, or (ii) risk diminishing the cash returns to Holders by potentially subjecting the ART to tax by taking steps to list the Trust Interests on a national exchange (which would require a corresponding withholding of as much as 43.7% from all distributions in a reserve to protect against any tax liability the ART might have). The choice was clear. Accordingly, the ART Trustees were advised and they unanimously agreed that they must take the necessary steps to ensure pass-through recognition. Counsel to the ART, with the approval of the Trustees, revised the Trust Declaration to conform to the IRS's position and provided the draft to the IRS. After reviewing the Second Amended Trust Declaration (as defined herein) and further discussions with tax counsel to the ART Trustees, the IRS issued its ruling that the ART would be

recognized as a pass-through liquidating/grantor trust, conditioned upon the amendment to the Trust Declaration and the ART Trustees' agreement not to list the Trust Interests on a national exchange or otherwise engage in market-making activities.

Therefore, in accordance with the Trust Declaration's amendment procedures, the ART Trustees are seeking approval of the Second Amended Trust Declaration for cause. The ART Trustees submit that, for the reasons set forth herein, sufficient cause exists for the Court to approve and authorize the implementation of the Second Amended Trust Declaration. Given (i) the cost to the ART and holders of Trust Interests of not being a pass-through entity, (ii) the efforts made to convince the IRS otherwise, (iii) the requirement of maintaining pass-through treatment for the ART and (iv) that there currently is a measure of liquidity for the Trust Interests (as the ART understands that certain financial institutions are acting as clearinghouses for the Trust Interests, which, without any action by the ART, are trading on the NASDAQ OTC Pink Sheets (the "Pink Sheets")), the ART Trustees believe their attempts to negotiate with the IRS are consistent with the Trust Declaration's requirement that the ART Trustees use their "reasonable best efforts" to have the Trust Interests traded on an exchange, and that the amendment is in the best interests of Trust Interest holders. In any event, in the view of the ART Trustees, the tax savings outweighs any potential diminution in the value of the Trust Interests from the reduced liquidity, if any.

Second, the ART seeks approval that distributions from the ART to Holders ("ART Distributions") be allocable first to paying down the "Deficiency"⁵ for the various classes that

⁵ Deficiency with respect to a series (a "Series") of Trust Interests means an amount with respect to the corresponding Class of Claims equal to the aggregate amount of Allowed Claims and reserves for Disputed Claims, plus Case Contract Interest or Case 8% Interest as applicable, less the aggregate Plan Distributions with respect to the Class of Claims (each of the capitalized terms in this footnote, unless otherwise defined herein, have the meanings set forth in the Plan).

receive Trust Interests, and second to non-cumulative post-Effective Date Dividends accrued thereon.

As set forth in greater detail below, the ART Trustees unanimously agreed that ART Distributions should be applied first to the Deficiency and then to Dividends. However, although the Plan and Trust Declaration give the ART Trustees broad powers to manage the ART, neither the Plan or the Trust Declaration expressly grant the ART Trustees the authority to prescribe an ordering rule characterizing the nature of ART Distributions, and out of an abundance of caution, the ART Trustees seek the Court's authorization and approval to apply distributions in this manner.

BACKGROUND

1. On January 5, 2007, this Court entered an order (the "Confirmation Order") confirming the Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain Affiliated Debtors, dated January 3, 2007 (the "Plan").

2. On February 13, 2007, the Plan became effective and initial distributions under the Plan were commenced.

THE ADELPHIA RECOVERY TRUST

3. 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 Debtors' various groups of creditors and then to the ART. Plan, § 9.2; Confirmation Order, ¶17.

4. The ART was created for the purpose of liquidating the transferred Causes of Action for the benefit of holders (the "Holders") of interests in the ART ("Trust Interests"). Certain classes of creditors and the United States government, on behalf of the Restitution Fund, in exchange for their interests in the Causes of Action received various series (the "Series") of

Trust Interests as part of their recoveries under the Plan. See Plan §§ 5.1, 5.2(f)-(m), 9.3. The Trust Interests entitle the Holders to distributions from the ART from the proceeds, and interest thereon, from the transferred Causes of Action less expenses of the ART, in accordance with the distribution methodology set forth in the Plan.

5. The ART was established as a Delaware statutory trust governed by Chapter 38 of Title 12 of the Delaware Code. In that regard, holders of Trust Interests were to be treated as grantors of the trust, and the ART Trustees are to file tax returns for the ART as a grantor trust pursuant to Section 1.671-4(a) of the United States Treasury Regulations. The primary purpose for this form of trust vehicle is to obtain pass-through tax treatment for the ART, thus limiting overall tax liability, and ultimately maximizing recoveries for the Holders.⁶ The mandate that the ART be maintained as a liquidating/grantor trust is found throughout the Trust Declaration. See Trust Declaration, Recitals, §§ 2.07, 2.08(c), 3.11(f)(iv), 12.01(f)(iv).

6. The primacy of the “pass-through” tax treatment for the ART is well established under the Trust Declaration, which provides that the Trustees are:

authorized and directed to conduct the affairs of the [ART] and to operate the [ART] so that the [ART] will not fail to be classified as a liquidating trust as described in Treasury Regulations Section 301.7701-4(d) and as a grantor trust for United States federal income tax purposes. In this connection, the Trustees are authorized to take any action, not inconsistent with applicable laws, the Certificate of Trust or this Declaration, as amended from time to time, that the Institutional Trustee or the [ART] Trustees, as the case may be, determine in their discretion to be necessary or desirable for such purpose, even if such action adversely affects the interests of the CVV Holders.

The [ART] Trustees may retain counsel (which may be counsel to the Contingent Value Vehicle) and outside advisors that they reasonably believe to be experts with respect to the foregoing tax

⁶ Under Section 9.2(f) of the Plan, certain Trust Interests relating to Disputed Claims and Equity Interests are required to be treated as held in a separate “disputed ownership fund” (the “DOF”). The DOF will be taxable as a corporation for United States federal income tax purposes, regardless of whether the amendment to the Trust Declaration is approved.

matters, and the Trustees shall be deemed to have satisfied the provisions of this Section 3.11(h) by employing such expert(s) for such purpose and by following the advice of such experts in connection with the foregoing, and the Trustees shall not be liable for any actions taken or not taken at the direction of such expert(s).

Trust Declaration, § 3.11(h) (emphasis added).

7. Trust Interests are exempt from securities law registration requirements under section 1145 of the Bankruptcy Code. With the exception of the interests issued for the benefit of the Restitution Fund (and held by the United States government), the Trust Interests are freely tradable. Plan, § 9.5; Confirmation Order, ¶32.

8. To further promote liquidity and transferability of the Trust Interests, the current Trust Declaration provides that the ART Trustees shall “use their reasonable best efforts to have the [Trust] Interests ... listed on a national securities exchange.” Trust Declaration, § 3.11(e); see also Plan, § 9.4. It is this provision which may, based on the conversations with the IRS, jeopardize “pass-through” tax treatment.

9. Although the ART Trustees have not taken affirmative action to list the Trust Interests on a public exchange, the Trust Interests are currently trading on the Pink Sheets, and the ART Trustees understand that certain financial institutions have acted as clearinghouses for the trading of Trust Interests, providing some current measure of liquidity for the Trust Interests.

10. The ART expects to register as a reporting company under Section 12(g) of the Exchange Act and file periodic reports with the Securities and Exchange Commission. This public reporting obligation exists independently of whether the Trust Interests are listed on a national exchange.

JURISDICTION

11. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. In addition, the Court has

specifically retained jurisdiction pursuant to the Plan and Trust Declaration. Plan, Art. XV; Trust Declaration, § 13.01(b).

RELIEF REQUESTED

12. The ART hereby requests that the Court approve and authorize (I) the implementation of the Second Amended Trust Declaration, and (II) the allocation of ART Distributions to pay the Deficiency with respect to a given class of Trust Interests before paying accrued Dividends thereon.

I.

THE AMENDMENT

13. Section 2.07 of the Trust Declaration specifies that the ART was established as a liquidating trust as described in Treasury Regulations Section 301.7701-4(d) and that, unless the IRS or a court of competent jurisdiction required a different treatment, the ART was to be treated as a “grantor trust” for United States federal income tax purposes pursuant to Section 1.671-4(a) of the U.S. Treasury Regulations. Trust Declaration, § 2.07; see also Plan, § 9.6.

14. If the IRS disagreed with the characterization of the trust as a grantor trust, the IRS likely would take the position that the ART is subject to tax at the entity level. Such tax liability could be as high as 43.7% of the pre-tax net income of the ART from the proceeds of the transferred Causes of Action and related income, before distributions to Holders (based on potential Federal and state tax rates). To date, the ART has received proceeds of approximately \$180 million from the settlement of certain Causes of Action.

15. Due to the complex nature of the Debtors’ corporate structure, and in order to craft a mechanism to ensure distributions in accordance with the intricate global settlement, the ART had two features that have not been previously publicly addressed by the IRS. *Declaration of Barbara M. Flom* (attached as Exhibit A hereto, the “Flom Decl.”) ¶ 6. First, the Trust

Interests were divided into multiple series, with each series of Trust Interests subject to distinctive treatment under the Plan. See Plan, §§ 5.1, 5.2, 9.3. Second, in order to provide the greatest possible liquidity to Holders, the ART Trustees were to use their “reasonable best efforts” to list the Trust Interests on a national securities exchange or an over-the-counter market. See Plan, § 9.4(a)(iii); Trust Declaration, § 3.11(e)(x).

16. At the same time, the ART Trustees were granted the authority to take actions, that, in the event the ART Trustees “determine that the [ART] Holders or the [ART] may, will or have become subject to adverse tax consequences, taking such actions that will, or are intended to, alleviate such adverse tax consequences” Trust Declaration, § 3.11(e)(vi).

17. Accordingly, tax counsel to the ART Trustees analyzed the potential tax status of the ART. Flom Decl. ¶ 8. Following thorough discussions with counsel, the ART Trustees concluded that it was in the best interests of the ART proactively to attempt to achieve certainty as to whether the IRS would treat the ART as a pass-through entity. Id. On the advice of the ART’s tax professionals, on or about June 7, 2007, the ART Trustees sought a ruling (the “Ruling Request”) from the IRS that the ART would be treated as a pass-through liquidating/grantor trust. Flom Decl. ¶ 9.

18. Upon review of the Ruling Request, the IRS advised the ART’s tax representatives that the IRS would not recognize the ART as a pass-through entity if the Trust Interests were listed on a public exchange. Flom Decl. ¶ 10. However, the IRS agreed that it would recognize the ART as a pass-through entity if the Trust Declaration were amended to eliminate the possibility that the ART Trustees would seek to list the Trust Interests and/or actively engage in other “market-making” activities. Id. Tax counsel to the ART informed the IRS that Holders were trading Trust Interests on the Pink Sheets, and that this trading was

outside the ART's control. Flom Decl. ¶ 11. The IRS agreed that the Trust Interests could continue to trade on the Pink Sheets so long as the ART did not engage in "market-making" activities or otherwise facilitate a market for the Trust Interests. Id.

19. The ART Trustees, upon being advised of the IRS' position, weighed the relative benefits of (a) pass-through tax treatment as a liquidating/grantor trust and (b) the potential public listing of the Trust Interests. Flom Decl. ¶ 12. The ART Trustees concluded that, consistent with the express terms of the Trust Declaration, they should obtain certainty regarding the pass-through tax treatment of the ART. Id. In addition, the Holders will benefit from cost savings resulting from Trust Interests not being listed on an exchange. Id.

20. The ART Trustees unanimously voted in favor of amending the Trust Declaration to conform to the IRS' comments, subject to the approval of the Bankruptcy Court. Flom Decl. ¶ 13. The Trust Declaration was then modified and submitted to the IRS for its review. Id. A form of the amended Trust Declaration (the "Second Amended Trust Declaration"), modified to eliminate the public listing provisions and the ART Trustees' ability to engage in market-making activities (as well as immaterial modifications, including changing references in the Trust Declaration from the "Contingent Value Vehicle" to the "Adelphia Recovery Trust"), and substantially in the form submitted to the IRS, is attached as Exhibit B hereto.

21. On December 7, 2007, the IRS issued a favorable ruling (the "IRS Ruling") that the ART qualifies as a pass-through liquidating/grantor trust. The IRS Ruling was conditioned upon implementation of the amended Trust Declaration reflecting the IRS' comments and discussions between tax counsel and the IRS regarding the proposed amendment. Flom Decl. ¶ 14. A copy of the IRS Ruling is attached as Exhibit C hereto.

REQUIREMENTS FOR AN AMENDMENT

22. The Confirmation Order provides that “[a]fter the Effective Date, the Plan Documents [including the Trust Declaration] may be amended and/or modified in accordance with the terms thereof.” Confirmation Order, ¶ 41. The Trust Declaration provides that it may be amended by the Institutional Trustee and the ART Trustees without the consent of the Trust Holders, inter alia

(iv) to modify, eliminate or add to any provision of this Declaration to such extent as may be necessary to ensure that the [ART] (A) will be classified for United States federal income tax purposes at all times as a grantor trust, (B) will not be required to register as an Investment Company under the Investment Company Act (including, without limitation, to conform to any change in any applicable rule under the Investment Company Act or written change in interpretation or application thereof by any legislative body, court, government agency or regulatory authority), (C) is able to issue additional CVV Certificates, or (D) complies with the applicable requirements of the United States Securities and Exchange Commission and is able to satisfy the listing requirements of any national securities exchange on which the CVV Interests are, or are to proposed to be, listed.

Trust Declaration, § 12.01(f)(iv) (emphasis added).⁷

⁷ Section 3806(b) of the Delaware Statutory Trusts provides:

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this subchapter and, without limitation:

* * *

(9) *May provide for the manner in which it may be amended*, including by requiring the approval of a person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing instrument provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended).

12 Del. Laws § 3806(b)(9) (emphasis added).

23. Although the proposed amendment satisfies the foregoing provision as to preserving the ART as a grantor trust, it arguably is inconsistent with the ability to satisfy the listing requirements. In light of this inconsistency, the ART Trustees seek Court approval to amend the Trust Declaration to eliminate such requirements. The proposed amendment is made pursuant to, and is contemplated by section 12.01(c) of the Trust Declaration, which provides that:

[e]xcept as provided in Section 12.01(d), (e) or (f), no amendment shall be made, and any such purported amendment shall be void and ineffective unless, at the request of the CVV Trustees, acting by majority vote, there shall have been obtained (i) the consent of the Requisite CVV Holders⁸, or (ii) *the approval of the Bankruptcy Court after a motion (the “Trustees’ Motion”) seeking such amendment for cause, with notice to the Requisite CVV Holders.* The Requisite CVV Holders shall be the only parties with standing to object to the Trustee’s Motion.

Trust Declaration, § 12.01(c) (emphasis added).

24. The ART Trustees voted unanimously to amend the Trust Declaration as described herein, and the Institutional Trustee has agreed to such amendment. The ART Trustees also determined that the most prudent course of action for the approval of the amendment is to file this Motion, in accordance with section 12.01(c) of the Trust Declaration and with appropriate notice to the necessary parties, to approve and authorize the implementation of the Second Amended Trust Declaration.⁹

⁸ The Trust Declaration defines the “Requisite CVV Holders” as “the CVV Holders holding CVV Interests that would be entitled to receive more than 50% of a hypothetical \$50 million CVV Distribution, if such CVV Distribution were made as of a date for such determination as reasonably fixed by the CVV Trustees.”

⁹ Notwithstanding that Section 12.01(e) of the Trust Declaration provides that Section 12.01 (Amendments) thereof shall not be amended without the consent of all of the CVV Holders affected thereby, the proposed amendment to Section 12.01(f)(iv) does not require any further consent. As noted above, Sections 12.01(f)(i) and 12.01(f)(ii) of the Trust Declaration permit the Institutional Trustee and the ART Trustees to amend the Trust Declaration without the consent of the Holders to cure any ambiguity of the Trust Declaration and to correct or supplement any provision in the Trust Declaration that may be defective or inconsistent with any other provision of the Trust Declaration. The primary purpose of this motion is to excise the language in Section 3.11(e), which requires the ART Trustees to “use reasonable best efforts to have the [Trust] Interests ... listed on a national

THERE IS CAUSE TO APPROVE THE AMENDMENT

25. The ART Trustees are working diligently to follow the directives in the Trust Declaration and fulfill their duties in order to maximize recoveries for the Trust Holders. As the Court is aware, the Trust Declaration, like all the Plan Documents, was the subject of substantial and intricate negotiations. However, the IRS has spoken, and the ART Trustees are now faced with a choice between two goals of the negotiators -- (i) ensuring pass-through tax treatment for the ART and (ii) attempting to list the various Trust Interests on an exchange.

26. The ART Trustees have thoroughly analyzed and weighed the options and their responsibilities under the Trust Declaration, particularly in connection with the ultimate purpose of the ART -- to maximize the proceeds from the Causes of Action with the ultimate goal of maximizing recoveries to Holders. The ART Trustees unanimously agreed that the Trust Declaration should be amended to eliminate any authority or requirement to list the Trust Interests and other terms regarding the trading of the Trust Interests on a public exchange to ensure that the ART is recognized as a pass-through entity for tax purposes in accordance with the Trust Declaration.

27. The potential loss to Holders of as much as 43.7% of the net recoveries obtained by the ART far outweighs the value of having the Trust Interests listed on a public exchange, particularly where, as here, there is some liquidity available because the interests trade on the Pink Sheets. Accordingly, the ART Trustees assert there is sufficient cause to amend the Trust Declaration and hereby request that the Court approve and authorize the implementation of the Second Amended Trust Declaration.

securities exchange” -- the primary language that the IRS asked the ART to eliminate. Accordingly, if the Court approves this Motion, the language in 12.01(f)(iv) regarding amendments to the Trust Declaration and impact on listing requirements will be irrelevant, and, as such, may be modified without further action of the Holders.

II.

ART DISTRIBUTIONS

28. The second request by this Motion is that the Court approve and authorize the ART Trustees to deem ART Distributions to Holders with respect to a given Class of Trust Interests as first allocated to the Deficiency thereof before being allocated to Dividends thereon.

29. As described above, the Plan provides for the accrual of non-cumulative post-Effective Date Dividends for certain Series of Trust Interests. Dividends accrue based on the outstanding Deficiency for the Series, and therefore, the basis for the accrual changes each time the Deficiency on each Series changes -- whether through a Plan Distribution, through the disallowance or settlement of a Disputed Claim, or through an ART Distribution. If Dividends are deemed paid first in an ART Distribution, a larger comparative Deficiency balance will remain outstanding and thus greater Dividends will accrue than if the Deficiency is deemed paid first. That is because the Dividends are *not cumulative*, and are not added to the balance on which Dividends are calculated.

30. The ART is required to furnish certain information annually to Holders to enable them to calculate their potential tax liability. Trust Declaration, § 8.02. Whether the Deficiency or Dividends is deemed paid first may impact the Holders' tax reporting because Dividends could be considered by the IRS as taxable because (a) the Plan refers to them as "dividends" and (b) they economically represent an interest-like return on the amount of a Holder's Allowed Claim.

31. The Plan and other governing trust documents are silent on the specific question of whether ART Distributions should be treated as paying the Deficiency or accrued Dividends first. Accordingly, in order to calculate the Dividend accrual, a determination must be made regarding how ART Distributions will be applied to the Deficiency and accrued Dividends.

32. Whether the Deficiency or accrued Dividends are deemed paid first has no impact on the aggregate amount distributed by the ART. However, the choice impacts the amount that Holders who receive distributions in the first tiers of the waterfall will receive relative to other classes, to the benefit or detriment of those other classes. See Exhibit D attached hereto. Treating the ART Distributions as Dividends first would mean that Dividends would continue to accrue on the full Deficiency of a Series for a longer period of time and so each class of Holders would be entitled to a greater piece of the distribution pie -- to the relative detriment of Holders in a lower tier. Thus, Holders who receive all or most of their distributions at lower tiers of the waterfall would be expected to receive a smaller amount under a “Dividends first” distribution plan than upon a distribution of the Deficiency first.

33. For example, assume a given Series has a Deficiency of \$100,000,000 and accrues Dividends at 8.9%. Assume further that this Series receives an ART Distribution at the beginning of year 3 of the ART of \$10,000,000 and at the beginning of year 5 of \$30,000,000. The remaining amount that this Series must receive in order for it to receive a full payout under the waterfall will vary depending on whether the payments in year 3 and year 5 are deemed to be of Dividends or the Deficiency first, as follows:

[continued on next page]

	Deficiency First		Dividends First	
	Deficiency	Accrued Dividends	Deficiency	Accrued Dividends
Initial Deficiency as of the Effective Date	\$100,000,000	\$0	\$100,000,000	\$0
Deficiency and accrued dividends at end of Y1	\$100,000,000	\$8,900,000	\$100,000,000	\$8,900,000
Deficiency and accrued dividends at end of Y2	\$100,000,000	\$17,800,000	\$100,000,000	\$17,800,000
<i>Y3 Distribution</i>	<i>(\$10,000,000)</i>	<i>\$0</i>	<i>\$0</i>	<i>(\$10,000,000)</i>
Deficiency and accrued dividends after Y3 distribution	\$90,000,000	\$17,800,000	\$100,000,000	\$7,800,000
Deficiency and accrued dividends at end of Y4	\$90,000,000	\$25,810,000	\$100,000,000	\$16,700,000
Deficiency and accrued dividends at end of Y5	\$90,000,000	\$33,820,000	\$100,000,000	\$25,600,000
<i>Y5 Distribution</i>	<i>(\$30,000,000)</i>	<i>\$0</i>	<i>(\$4,400,000)</i>	<i>(\$25,600,000)</i>
Deficiency and accrued dividends after Y5 distribution	\$60,000,000	\$33,820,000	\$95,600,000	\$0
TOTAL REMAINING DEFICIENCY PLUS ACCRUED DIVIDENDS AFTER Y5 DISTRIBUTION		\$93,820,000		\$95,600,000

34. Counsel to the ART has found no authority that requires the application of one approach over the other. Under federal common law and standard market practice applicable to debt instruments, interest (yield) is typically paid before principal. See e.g. Southern Natural Gas Co. v. Pursue Energy Co., 781 F.2d 1079 (5th Cir. 1986). However, the Plan provides that Trust Interests “shall be in the nature of equity interests, and not in the nature of notes, bonds, debentures or evidences of indebtedness.” Plan § 9.7. Indeed, the Trust Interests share characteristics with equity, such as inherently higher risk levels than normal commercial debt. Therefore, the rules commonly applied to debt instruments provide little guidance here. To the ART’s knowledge, there are no rules that compel a particular characterization of undesignated equity payments.

35. The ART Trustees carefully considered the issue, including the potential impact, although relatively small, on the classes relative to one another, and concluded unanimously that

ART Distributions should be allocated first to the Deficiency of each class of Trust Interests and the Deficiency shall be deemed paid before Dividends thereon.

36. There are at least five reasons that support the ART Trustees' conclusion. First, for federal income tax purposes, the Plan provides for a "principal first" approach for distributions made by the Plan Administrator pursuant to the Plan. Plan Section 10.1 provides (emphasis added):

The Plan Administrator shall make all Plan Distributions and the Contingent Value Vehicle shall distribute CVV Interests and make CVV Distributions, in each case, free and clear of all Liens, claims and encumbrances, other than Charging Liens. In the event a distribution shall be payable on a day other than a Business Day, such distribution shall instead be paid on the immediately succeeding Business Day, but shall be deemed to have been made on the date otherwise due. For United States federal income tax purposes, (i) a Plan Distribution and (ii) the deemed transfer of the Litigation Prosecution Fund, Causes of Action and other property transferred to recipients of CVV Interests under Section 9.2(f), will be allocated first to the principal amount of a Claim and then, to the extent the sum of the amounts described in the foregoing clauses (i) and (ii) exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. Without limiting Section 16.14, the holders of each Allowed Claim or Equity Interest receiving a Plan Distribution or CVV Distribution shall be responsible for the payment of taxes that result from such distributions.

Plan, § 10.1. There is no compelling reason to treat ART Distributions differently than Plan distributions.

37. Second, a Dividends first approach could result in Holders paying tax earlier than a Deficiency first approach. It is not clear how the ART's "dividends" should be treated for income tax purposes -- as dividends, interest, or something else entirely. Dividends generally are nondeductible to the paying corporation and taxable to the recipient. However, the ART is not a corporation, and the IRS might treat the "dividends" as "interest." If so, the IRS could take the

position that the “dividends” are taxable currently even if not distributed to Holders. Paying the Deficiency first before accrued Dividends reduces to the extent possible the risk that Holders will be taxed currently on amounts they have not yet received and may never receive.

38. Third, the Plan provides that Dividends will be “non-cumulative.” To adopt a “Dividend first” methodology could be viewed as indirectly allowing Dividends to cumulate by deferring payment of the Deficiency to the maximum possible extent.

39. Fourth, the Second Supplemental Disclosure Statement¹⁰ (the “SSDS”), demonstrates that distributions with respect to CVV Series Arahova are intended to be principal first. See SSDS2-37 – SSDS-45, attached as Exhibit E hereto (the “DS Diagram”). The DS Diagram scenarios illustrate various “break points” at which the Series’ relative rights to distributions change. Certain scenarios show that the Plan contemplated that CVV Series Arahova would receive a distribution of its Deficiency (see page DSS2-38, distribution row 4) before it received Dividends (page DSS2-38, distribution row 5).¹¹ Basic fairness would treat Holders of all classes of Trust Interests as following the same rule.

40. Fifth, the Deficiency amount represents allowed claims of Holders that have not recovered the full amount of their allowed claim in the bankruptcy. Unless and until Holders have recovered their full allowed claims, it would be inappropriate to treat anything distributed to that class as “yield” or profit.

41. For the foregoing reasons, the ART Trustees believe that it is appropriate that ART Distributions be allocable and deemed paid on the Deficiency with respect to a series of Trust Interests before the Dividend amounts thereon. However, because the Plan and the other

¹⁰ *Second Disclosure Statement Supplement Relating to Fifth Amended Joint Chapter 11 Plan for Adelpia Communications Corporation and Certain Affiliated Debtors*, dated October 16, 2006.

¹¹ The attachment is one of a series of distribution charts in the Disclosure Statement, all of which separate in the same way distributions of the face amount and dividends to CVV Series Arahova.

documents governing the ART do not explicitly resolve that issue, the ART Trustees request that the Court confirm and approve that ART Distributions are deemed to be applicable to the Deficiency before the Dividend amounts.

WAIVER OF MEMORANDUM OF LAW

42. The ART respectfully requests that the Court waive the requirement of Local Bankruptcy Rule 9013-1(b) of filing a separate memorandum of law in support of this Motion.

NOTICE

43. The ART will provide notice (the “Notice”) of this Motion to: (i) the Holders¹², (ii) counsel for the reorganized Debtors, and (iii) the Office of the United States Trustee for the Southern District of New York. The ART submits that no further or other notice is required.

[continued on next page]

¹² Pursuant to section 12.01(c) of the Trust Declaration, only the Requisite CVV Holders have standing to object to the proposed amendment to the Trust Declaration described in section I of this Motion. See ¶ 23 herein.

CONCLUSION

WHEREFORE, the ART respectfully requests that the Court (i) enter an order, substantially in form of Exhibit F attached hereto (a) approving and authorizing the implementation of the Second Amended and Restated Declaration of Trust for Adelpia Recovery Trust, and (b) approving and authorizing the ART Trustees to treat ART Distributions as payment of the Deficiency before Dividends, and (iii) grant such other and further relief as this Court may deem just or proper.

Dated: New York, New York
April 29, 2008

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