

Hearing Date: October 21, 2013 at 9:45 a.m. (prevailing Eastern time)
Objection Deadline: October 14, 2013 at 4:00 p.m. (prevailing Eastern time)

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Counsel for the Reorganized Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11 Cases
	:	
Adelphia Communications Corporation, <u>et al.</u> ,	:	Case No. 02-41729 (REG)
	:	
Reorganized Debtors.	:	Jointly Administered
	:	
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NOTICE OF HEARING ON REORGANIZED DEBTORS’ MOTION FOR ORDER CLARIFYING CERTAIN AMBIGUITIES IN THE CONFIRMED PLAN

TO: ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE ABOVE-CAPTIONED REORGANIZED DEBTORS

YOU ARE RECEIVING THIS NOTICE OF THE MOTION REFERENCED HEREIN BECAUSE IT MAY AFFECT YOU. PLEASE TAKE NOTICE OF THE FOLLOWING:

The Motion

1. On September 23, 2013, the reorganized debtors in the above-captioned cases (the “**Debtors**”) filed a motion (the “**Motion**”) for entry of an order, pursuant to section 105(a) of the Bankruptcy Code, clarifying certain provisions of the First Modified, Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain of its Affiliated Debtors, as Confirmed (the “**Plan**”).¹ Paragraph 3 below sets forth instructions for obtaining copies of the Motion, and paragraphs 4 through 6 below contain a summary of the relief being requested in the Motion.

¹ Capitalized terms used but not defined herein have the meanings assigned to them in the Motion.

The Hearing

2. On October 21, 2013 at 9:45 a.m. (prevailing Eastern time), or as soon thereafter as counsel may be heard, a hearing (the “**Hearing**”) will be held before Honorable Robert E. Gerber of the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), in Courtroom 523 of the Bankruptcy Court, One Bowling Green, New York, New York 10004, to consider the relief requested in the Motion.

Obtaining Copies of the Motion

3. The Motion is on file with the clerk of the Bankruptcy Court, and copies of the same may be obtained by parties in interest free of charge on the dedicated webpage related to these cases of the Debtors’ claims and noticing agent, Epiq Bankruptcy Solutions, LLC (<http://www.adelphiarestructuring.com/ImportantDocs.aspx>). Copies of the Motion are also available for inspection during regular business hours at the office of the clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004. In addition, copies of the Motion may be viewed on the Internet at the Bankruptcy Court’s website (<http://www.nysb.uscourts.gov>) by following the directions for accessing the ECF system on such website.

Summary of the Motion²

4. By the Motion, the Debtors are seeking entry of an order interpreting certain ambiguous and conflicting provisions in the Plan that bear on how Plan Consideration (*i.e.*, Cash and/or shares of TWC Class A Common Stock) and any Remaining Assets (collectively, the “**ACC Assets**”) are to be distributed to the holders of ACC Senior Notes Claims, ACC Trade Claims, ACC Other Unsecured Claims, and ACC Subordinated Notes Claims (collectively, the “**ACC Senior Stakeholders**”), as well as the holders of Claims and Equity Interests in all Classes junior in priority thereto (*i.e.*, ACC Existing Securities Laws Claims, ACC Preferred Stock Interests, ACC Common Stock Interests, and ACC Subsidiary Equity Interests) (collectively, the “**ACC Junior Stakeholders**”).

5. Specifically, the Debtors are requesting that the Court find that the Plan requires, among other things, ACC Assets to be distributed in accordance with the following waterfall (in each case, solely to the extent that sufficient ACC Assets exist to make such distributions):

- first, to the holders of Claims in the ACC Senior Stakeholder Classes until they have received Payment in Full of their Allowed Claims;
- second, to the ACC Senior Stakeholders on account of post-petition interest outstanding on their Allowed Claims: (a) for the period from the Commencement Date to the Effective Date, at the applicable contract rate (in the case of ACC Senior Notes Claims and ACC Subordinated Notes Claims) or 8% annual rate (in the case of ACC Trade Claims and ACC

² The following summary is qualified in its entirety by the contents of the Motion. To the extent that anything in this summary conflicts with the Motion, the Motion shall control.

Other Unsecured Claims); and (b) after the Effective Date, at the annual rate of 8.9% on the outstanding portion of Allowed Claims (plus interest accrued on such Claims through the Effective Date) (collectively, (a) and (b), and as applicable to each class, the “**Post-Petition Interest Rate**”);

- third, to the ACC Existing Securities Law Claims Class, until the Claims in such class have received the full Allowed amount of the Claims and post-petition interest at the applicable Post-Petition Interest Rate;
- fourth, to the ACC Preferred Stock Interests Class, until the Equity Interests in such Class have received the full Allowed amount of their ACC Preferred Stock Interests pursuant to the applicable Liquidation Preference; and
- fifth, to the holders of ACC Common Stock Interests.

6. The proposed order granting the Motion would require the Plan and all Plan Documents to be interpreted consistent with the foregoing.

Objections to the Motion and Related Matters

7. Objections, if any, to the Motion must: (a) be made in writing; (b) state with particularity the grounds therefor; (c) be filed with the Bankruptcy Court (with a copy to the Judge’s chambers); and (d) be served upon: (i) counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Paul V. Shalhoub, Esq. and Andrew D. Sorkin, Esq.); and (ii) the U.S. Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attn: Tracy Hope Davis, Esq.), so as to be received no later than **4:00 p.m. (prevailing Eastern time) on October 14, 2013** (the “**Objection Deadline**”). Should you have any questions about the Motion or the relief requested therein, please contact the Plan Administrator, Quest Turnaround Advisors LLC, by mail at 800 Westchester Avenue, Suite S-520, Rye Brook, NY 10573 (Attn: Barry Shalov), by telephone at (914) 253-8100, or by email at bshalov@qtadvisors.com.

8. If no responses or objections are received by the Objection Deadline, the relief may be granted as requested in the Motion without further notice or a hearing.

9. You need not appear at the Hearing if you do not object to the relief requested in the Motion.

10. The Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

Dated: New York, New York
September 23, 2013

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UNITED STATES BANKRUPTCY COURT
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**REORGANIZED DEBTORS’ MOTION FOR ORDER CLARIFYING
CERTAIN AMBIGUITIES IN THE CONFIRMED PLAN**

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The reorganized debtors in the above-captioned cases (collectively, the “Reorganized Debtors”) hereby move for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), clarifying certain ambiguous and conflicting provisions in the First Modified, Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain Affiliated Debtors (the “Plan”).¹ In support of the Motion, the Reorganized Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

The Reorganized Debtors have incurred substantial net operating losses, both pre-petition and post-petition, a significant portion of which are pre-Effective Date losses that remain unused.

¹ Capitalized terms used but not defined herein have the same meanings as set forth in the Plan.

In order for ACC to avail itself of those losses to offset post-Effective Date income, it must first satisfy intricate and numerous income tax rules concerning the preservation of net operating losses. The most significant such rule in this case is the one requiring holders of Equity Interests to retain their pre-petition economic entitlements, notwithstanding the cancellation of their stock under the Plan, such that if there are enough assets to pay all of ACC's creditor classes in full -- an event that is extremely unlikely to occur -- any excess assets would be distributed to the classes of Equity Interests in ACC.² While Plan provisions covering the distribution of these excess assets, if any, are ambiguous in some respects and conflicting in others, the Plan Administrator has determined that the Plan ultimately harmonizes these ambiguous and conflicting provisions in a distribution schematic that follows the contours of the absolute priority rule by providing to the holders of ACC Equity Interests a right (albeit almost certainly hypothetical) to all distributions after the holders of Claims against ACC have been paid in full with interest.

The Plan Administrator believes, however, that its determination alone, without this Court's affirmation through entry of an order clarifying the Plan, will fall short of the certainty required for ACC to attract the significant investor capital necessary to generate the level of income required to maximize use of these losses, and thereby provide potential incremental value to ACC and its stakeholders. Without such investor capital, these losses, a very significant asset of the Reorganized Debtors, will expire unused, without any benefit to ACC or its stakeholders. To be clear, the Reorganized Debtors are not asking for this Court's interpretation of relevant tax law -- the Reorganized Debtors are relying on the advice of their own counsel for such interpretation -- or this Court's approval of the Reorganized Debtors' participation in any

² In addition, if the Plan did not preserve the economic entitlements of the ACC Equity Interests to 100% of any excess assets after all of the ACC creditor classes are paid in full, ACC's substantial post-Effective Date losses also would not be available for use by ACC under certain circumstances.

particular transaction or investment (though the Reorganized Debtors may ask for this Court's approval of such participation in the future). Rather, the Reorganized Debtors merely seek issuance of an order clarifying the Plan as proposed below. Accordingly, the Reorganized Debtors request that this Court grant the Motion.

RELEVANT BACKGROUND

A. General

1. On June 10, 2002, Century Communications Corporation commenced a case under chapter 11 of the Bankruptcy Code. On June 25, 2002, Adelphia Communications Corporation (“ACC”), and certain of its affiliates each commenced a case under chapter 11 of the Bankruptcy Code. On October 6, 2005, November 15, 2005, and March 31, 2006, certain additional subsidiaries of ACC also commenced cases under chapter 11 of the Bankruptcy Code.

2. On January 5, 2007, this Court entered an order confirming the Plan, as modified [Docket No. 12952] (the “Confirmation Order”), and on February 13, 2007 (the “Effective Date”), all conditions to the Effective Date and consummation of the Plan were satisfied or waived in accordance with the Plan.

3. The Plan was the culmination of many months of negotiations amongst key parties that resulted in the Global Settlement of numerous inter-creditor and inter-debtor issues. At its heart, the Global Settlement provided that unsecured creditors of the Subsidiary Debtors were to be Paid in Full, except for certain amounts that were given to the ACC unsecured creditors. After making the payments to the creditors of the Subsidiary Debtors, the consideration given up by the unsecured creditors of the Subsidiary Debtors, the remaining Plan Consideration,³ and any Remaining Assets (collectively, the “ACC Assets”) were to be

³ The full definition of “Plan Consideration” is “with respect to a Class of Claims or Equity Interests entitled to distribution under this Plan, one or more of Cash and/or shares of TWC Class A Common Stock, as applicable.

distributed Pro Rata to the holders of Allowed Claims in the ACC Senior Notes Claims Class, the ACC Trade Claims Class, the ACC Other Unsecured Claims Class and the ACC Subordinated Notes Claims Class (collectively, the “ACC Senior Stakeholders”), subject to the Plan provisions giving effect to the subordination provisions of the ACC Subordinated Notes. At no time during the negotiations or the confirmation of the Plan was it contemplated that these ACC Assets (which exclude the Causes of Action contributed to the CVV) would be sufficient to pay the ACC Senior Stakeholders in full, let alone with interest. Indeed, the Disclosure Statement for the Plan estimated recoveries to the holders of ACC Senior Notes, ACC Trade Claims and ACC Other Unsecured Claims (excluding the Causes of Action transferred to the CVV) would be between 30% and 69%. Discl. Stmt., at DSS2-33.

JURISDICTION

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Article XV of the Plan and paragraph 60 of the Confirmation Order. Venue of this proceeding and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

5. As discussed in greater detail below, the Plan contains certain ambiguities and inconsistencies that the Debtors seek to reconcile by this Motion. First, the Plan is ambiguous in that it does not clearly state what amount of distributions constitutes full payment of the claims

For purposes of distributions and reserves, the value of any Plan Consideration shall be its Deemed Value.” Plan, Ex. A, at A-31. Plan Consideration excludes the Causes of Action that were transferred to the Contingent Value Vehicle (the “CVV”) pursuant to the Global Settlement. The CVV is a publicly traded entity, which has been completely separate from the Adelpia estate since its formation on the Effective Date. The Causes of Action are administered by the CVV Trustees and distributions of the proceeds of such Causes of Action are made to the holders of CVV Interests as directed by the CVV Trustees. Such distributions, when made, are made to the holders of the various series of CVV Interests pursuant to a waterfall specified in the Plan that follows the relative priority of the original creditors and Equity Interest holders who received such CVV Interests, such that junior stakeholders (including holders of Equity Interests that received CVV Interests) are not entitled to any distributions on account of their CVV Interests until the more senior stakeholders receive Payment in Full, including post-Petition Date and post-Effective Date interest.

of the ACC Senior Stakeholders under the Plan. Second, the Plan contains inconsistent provisions concerning to whom funds should be distributed in the unlikely event that the ACC Senior Stakeholders actually receive full payment, regardless of how full payment is actually determined.

6. To resolve the ambiguities and inconsistencies in the Plan, the Reorganized Debtors are seeking entry of an order clarifying that under the Plan, the Reorganized Debtors are to make distributions to the stakeholders of ACC in order of absolute priority, meaning: (1) to the ACC Senior Stakeholders until their Allowed Claims are Paid in Full; (2) then to the ACC Senior Stakeholders until they are paid post-Petition Date and post-Effective Date interest in full, accruing at the rates otherwise set forth in the Plan; and (3) then to the holders of ACC Existing Securities Law Claims, the ACC Preferred Stock Interests and the ACC Common Stock Interests (collectively, the “ACC Junior Stakeholders”), all as detailed below.

ARGUMENT

A. This Court Has the Authority to Clarify Ambiguous Provisions of the Plan.

7. The Bankruptcy Court has inherent authority to enter orders clarifying or interpreting a confirmed plan. In particular, “a bankruptcy court may clarify a plan where it is silent or ambiguous.” *Beal Bank, S.S.B. v. Jack’s Marine, Inc.*, 201 B.R. 376, 380 (E.D. Pa. 1996); *see also In re Petrie Retail, Inc.*, 304 F.3d 223, 230 (2d Cir. 2002) (“A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization.”); *In re Johns-Manville Corp.*, 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989) (even without specific retention provision in plan, court has post-confirmation jurisdiction over “fundamental questions of interpretation and administration of a plan” and to “interpret and enforce its own orders in aid of their proper execution.”); *Levine v. Telco Systems, Inc. (In re World Access, Inc.)*, 324 B.R. 662, 682 (Bankr. N.D. Ill. 2005)

(court retained post-confirmation jurisdiction when plan so provides and retention is necessary for implementation of plan or to clarify ambiguities in plan).

8. Courts routinely enter orders clarifying or interpreting a plan, even after substantial consummation of a plan. *See In re Airadigm Commc'ns, Inc.*, 547 F.3d 763, 770 (7th Cir. 2008) (affirming bankruptcy court's decision post-substantial consummation to grant post-petition interest to creditor based on changed circumstances, ruling that bankruptcy court "did not rewrite the plan so that it would include a provision that was originally precluded," but rather granted interest under § 1129(b)(2)(A) as a result of its "mere interpretation of its own plan."); *Terex Corp. v. Metropolitan Life Ins. Co. (In re Terex Corp.)*, 984 F.2d 170, 173 (6th Cir. 1993) (finding it unnecessary to delve into particularities of section 1127(b), because bankruptcy court's award of interest was action to interpret, rather than modify, plan to ensure that award of interest would not run afoul of plan's provisions); *United States for the Internal Revenue Service v. APT Indus., Inc.*, 128 B.R. 145, 146 (W.D.N.C. 1991) (clarification of plan was "exercise of the Bankruptcy Court's continuing authority to supervise the plan pursuant to §105 of the code," when clarifying order did not change any material terms of plan, but instead clarified plan); *Scott Medical Group, LLC v. American Int'l Specialty Lines Ins. Co. (In re Baltimore Emergency Services II, LLC)*, 334 B.R. 164, 171 (Bankr. D. Md. 2006) (although bankruptcy court may not rewrite plan, it has jurisdiction to clarify plan "to fill in gaps to fulfill the intent of the Plan").

9. The Plan here provides that this Court retained jurisdiction, *inter alia*, "(v) to consider any modifications of the Plan and/or Plan Documents, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order" and "(vii) to hear and determine all controversies, suits and disputes that may relate to, impact upon, or arise in connection with the Plan, the Plan

Documents or their interpretation, implementation, enforcement, or consummation.” Plan, Article XV. Moreover, the language of subsection (v), which lists modifications separately from the remedy of any defect or omission or the reconciliation of any inconsistency, demonstrates that the remedy of any defect or omission and the reconciliation of any inconsistency is not a modification of the Plan.

10. Additional authority can be found in section 105(a) of the Bankruptcy Code, which grants bankruptcy courts broad authority and discretion to take such actions and implement such procedures as are necessary to enforce the provisions of the Bankruptcy Code and the Court’s general equitable powers. *See* 11 U.S.C. § 105(a); *In re Terex*, 984 F.2d at 173-74 (upholding bankruptcy court’s use of its inherent equitable powers to grant post-effective date interest to creditor whose claim was later allowed). Accordingly, this Court has the authority and jurisdiction to remedy any defects and correct any inconsistencies or ambiguities in the Plan.

11. This Court has previously clarified the Plan following its substantial consummation. On or about November 2, 2007, this Court entered the Order Regarding Plan Distributions Made Through Depository Trust Company [Dkt. No. 13903], in which this Court, because of certain issues in connection with the Depository Trust Company’s compliance with the provisions of the Plan, adopted the Reorganized Debtors’ proposed construction of provisions of the Plan relating to the Distribution Record Date.⁴ In addition, on or about June 4, 2008, this Court entered the Order Granting Motion of the Adelpia Recovery Trust for Approval of (I) Amendment to its Amended and Restated Declaration of Trust, and (II) Allocation of ART Distributions [Dkt. No. 14135] (the “June 2008 Order”), by which this Court

⁴ The Reorganized Debtors at the hearing in connection with this order stated that the Reorganized Debtors were seeking “a ruling of this Court that, if DTC were to distribute to the holders of record as of the close of business today, that that would be in compliance with the terms of the plan, or at least a reasonable interpretation of the plan.” (Tr., 8/21/07, 4:6-10) (emphasis added).

allowed an amendment to the Adelpia Restructuring Trust's (the "Trust") Trust Declaration that would prevent the Trust from seeking to list the CVV Interests on an exchange and/or actively engage in other "market-making" activities, notwithstanding the fact that section 9.4 of the Plan provided that the Trust would use reasonable best efforts to list the CVV Interest on an exchange.

12. This Court has also entered an order granting relief with respect to subject matters that were related to, but were not fully addressed in, the Plan. For example, in the June 2008 Order, this Court, in addition to authorizing the amendment to the Trust's Trust Declaration, ordered that the Trust could treat Trust distributions as first allocated to payment of deficiency claims before the payment of dividends, a subject not addressed in the Plan. In addition, on or about September 6, 2007, this Court entered the Order Granting Joint Motion of the Reorganized Debtors and the Adelpia Recovery Trust for Order Approving and Authorizing Cooperation Protocol [Dkt. No. 13807], by which this Court approved a cooperation protocol governing the conduct of and cooperation between the Reorganized Debtors and the Adelpia Recovery Trust with respect to common litigation, a protocol that was not specifically addressed in the Plan and/or the Plan Documents.

13. The Reorganized Debtors are now seeking clarification of conflicting and ambiguous Plan provisions that could impact the question of whether the holders of Equity Interests in ACC retained under the Plan their "economic entitlements, having the same priority and the same entitlement to distribution as when [ACC's] stock was outstanding." *See, e.g., IRS Ruling No. 201228023* (July 13, 2012, at 7). If the Court concludes the Plan should not be read in the manner in which the Plan Administrator believes it should, which would preserve these entitlements and provide the opportunity to pursue a value-enhancing investment or transaction,

the value of the remaining NOLs would be lost. Based on the authorities cited above, the clarification of these provisions is well within the authority of this Court and is appropriate on the facts here.

B. The Plan Requires the Reorganized Debtors to Make Payments to the Stakeholders of ACC in Order of Absolute Priority.

14. The Plan provides that each of the Creditor Classes of the Subsidiary Debtors were to have received specific sums of Plan Consideration (along with, in some cases, specific interests in the CVV), with the rest of the Debtors' assets (*i.e.*, the ACC Assets) to be distributed to the stakeholders of ACC, generally in accordance with the stakeholder's relative absolute priority. Section 5.1 of the Plan, which governs the distributions at the ACC level, provides that the Reorganized Debtors were to distribute the ACC Assets Pro Rata to the ACC Senior Stakeholders (except as required by the subordination provisions governing the ACC Subordinated Notes). Though section 5.1 references the allowance and payment of the Allowed Claims, it does not contain an express ceiling on distributions. This reflected the implicit understanding of the proponents of the Plan and the parties to the Global Settlement that there would not be ACC Assets of sufficient value to allow for Payment in Full of the Allowed Claims of the ACC Senior Stakeholders, let alone with interest.⁵ Indeed, as to the ACC Senior Stakeholders' CVV Interests, which the parties to the Global Settlement believed held the only possibility of Payment in Full with interest ("Complete Payment")⁶ to the ACC Senior

⁵ To date, the only non-priority, unsecured creditor class of ACC that has approached Complete Payment is the ACC Senior Notes Class, which has received full payment of its principal and pre-petition accrued interest and some post-petition interest. However, the ACC Senior Notes Class will not receive Complete Payment until the Reorganized Debtors make additional distributions to the ACC Senior Stakeholders totaling approximately \$3.3 billion as of June 30, 2013, which is very unlikely to occur. That the ACC Senior Notes Class has received more total distributions than the other ACC Senior Stakeholder Classes is a result of application of the subordination provisions of the indenture governing the ACC Subordinated Notes. Plan, § 5.1(f)(i).

⁶ With respect to the CVV, the Causes of Action were deemed to have been distributed to the creditors and equity interest holders who received CVV Interests, who were then deemed to have contributed the Causes of Action to the CVV. (Discl. Stmt., at DSS2-90). While this was necessary in order for the CVV to qualify as a grantor

Stakeholders, the parties specifically agreed to limit recoveries on the CVV Interests received by the ACC Senior Stakeholders to Complete Payment, taking into account distributions from both the CVV and the Reorganized Debtors. Plan, § 5.1(c)(ii), (d)(ii), (e)(ii), (f)(ii); Plan, Ex. A at A-2 and 4-6 (definition of “ACC Other Unsecured Deficiency”, “ACC Senior Notes Deficiency”, “ACC Subordinated Notes Definition”, and “ACC Trade Deficiency”). Given that the limitations on CVV distributions take into account the distributions from Reorganized Adelpia, if the Plan’s distribution scheme is to work properly, the distribution of the ACC Assets to the ACC Senior Stakeholders by the Reorganized Debtors cannot be limitless and should be similar to the distribution requirements governing the relevant CVV Interests.

15. In construing the provisions of the Plan, this Court should construe them in a manner that does not undermine the overall treatment and distribution scheme established by the Plan. Chapter 11 plans are construed in accordance with contract law. *See In re WorldCom, Inc.*, 352 B.R. 369, 377 (Bankr. S.D.N.Y. 2006) (“The Court must interpret the provisions of the Plan to resolve this issue, a task akin to interpreting a binding contract.”). In construing a contract, “the meaning from one provision of a contract cannot control if that provision’s meaning would contradict the meaning of the entire contract.” *In re G-I Holdings, Inc.*, 477 B.R. 542, 564 (Bankr. D.N.J. 2012); *see also Prudence Realization Corp. v. Jackson*, 212 F.2d 362, 365-66 (2d Cir. 1954) (in interpreting provisions of plan relating to whether creditor had received full payment under such plan as a result of payments received from debtor’s guarantor,

trust (*i.e.*, a pass-through entity for tax purposes), it caused the Debtors to record income for tax purposes in the amount of the value of the Causes of Action on the Effective Date (the “CA Income”). Likewise, the creditors who received CVV Interests were deemed to receive value equal to the amount of the CA Income, each proportionate to their CVV Interests, on the Effective Date. Accordingly, when this Motion discusses “Complete Payment” or the amount of the distributions received or to be received by a creditor, it is referring to the total amount of distributions of cash and TWC Class A Common Stock from the Reorganized Debtors and, to the extent applicable, the proportionate amount of the CA Income.

court noted that its interpretation was supported by “a general reading of other provisions of the Plan, which continually recognize the unique nature of [the Appellant’s] claim . . .”).

16. Here, notwithstanding section 5.1’s silence with respect to a cap on distributions to the ACC Senior Stakeholders, various other sections of the Plan provide for certain limitations on distributions and/or otherwise support an overall treatment and distribution scheme that follows the general contours of the absolute priority rule. Unfortunately, in the course of addressing various aspects of the waterfall that the Reorganized Debtors should follow, these provisions are ambiguous and, at times, conflicting. The Plan Administrator believes that the best way to harmonize the various provisions is by interpreting the Plan to require the Reorganized Debtors to: (1) make distributions to the ACC Senior Stakeholders until the ACC Senior Stakeholders receive Payment in Full of their Allowed Claims; (2) distribute any assets then remaining to the ACC Senior Stakeholders on account of post-petition and post-Effective Date interest on their claims; and (3) distribute any assets then remaining to the ACC Junior Stakeholders.

1. The Plan Should Be Construed to Require the Reorganized Debtors to Make Distributions to the ACC Senior Stakeholders Until Paid in Full on Their Allowed Claims.

17. Section 10.7(c) of the Plan -- which involves the recognition that a payment to an Agent, which includes indenture trustees,⁷ constitutes a payment to the beneficial holders -- states that the payments made through indenture trustees need not continue once they are “sufficient to result in Payment in Full of such Claims” This limitation, which applies to the distributions to the ACC Senior Notes and the ACC Subordinated Notes, should also be

⁷ The Plan defines “Agent” to include indenture trustees. Plan, Ex A., at A-6.

applied to the other ACC Senior Stakeholder Classes, in order for the distribution scheme to work because the distributions to these Classes are tied together through their Pro Rata treatment.

18. The Plan provides that all distributions to the ACC Senior Stakeholders are to be made Pro Rata (subject to the pay-over provisions governing the ACC Subordinated Notes). In other words, each creditor that holds an ACC Senior Stakeholder Claim receives, on account of its Claim, its Pro Rata percentage of distributions, taking into account the claims of all ACC Senior Stakeholders. For example, if claims in the ACC Trade Claims Class represented 2% of the total amount of the claims of the ACC Senior Stakeholders, then 2% of each applicable distribution to ACC Senior Stakeholders would be paid to the holders of ACC Trade Claims. The entire Pro Rata scheme amongst the ACC Senior Stakeholders would be disturbed if the distributions to some creditors were subject to a cap, and distributions to others were not.⁸ Accordingly, at the very least, all ACC Senior Stakeholders should be treated alike and are entitled (to the extent there are sufficient ACC Assets) to Payment in Full of their Allowed Claim in the first instance.

⁸ This is made clear in the provisions that accomplish the Pro Rata treatment through their use in their calculations of the “Allowed” amount of claims. For example, as to the ACC Trade Claims, the Plan provides that they are to receive, among other things, a Pro Rata Share of “the ACC Trade Allocable Portion” of Plan Consideration and Remaining Assets. Plan, § 5.1(d)(1). The ACC Trade Allocable Portion is the total ACC Trade Claims’ percentage of the total amount of claims of the ACC Senior Stakeholder Classes. The provisions of the Plan governing distributions to each of the other ACC Senior Stakeholders are similar (excepting the impact of the pay-over from the holders of the ACC Subordinated Notes to the holders of the ACC Senior Notes). Plan, § 5.1(c)(1), (e)(1). *See also* Plan, Ex. A, at A-2, A-4, A-5 (definitions of “ACC Other Unsecured Allocable Portion,” “ACC Senior Notes Allocable Portion,” “ACC Subordinated Notes Allocable Portion” and “ACC Trade Allocable Portion”). Since these definitions require a calculation of the percentage of each class’ Allowed Amount (and estimated Allowed Amount) of claims of the total amount of “Allowed Claims,” the definitions only operate correctly if there is the same cap on distributions to each of the ACC Senior Stakeholder Classes.

2. After Payment in Full of the Allowed Claims of the ACC Senior Stakeholders, Any Assets Remaining Should be Distributed to the ACC Senior Stakeholders on Account of Post-Petition and Post-Effective Date Interest.

19. If the Reorganized Debtors still have assets after Payment in Full of the Allowed Claims of the ACC Senior Stakeholders, several sections of the Plan support the distribution of such assets to the ACC Senior Stakeholders on account of post-petition and post-Effective Date interest that has accrued with respect to their claims, as described below.

a. Section 10.3 of the Plan.

20. Section 10.3 of the Plan, which governs who is to receive Plan Consideration that is otherwise undeliverable, provides for the redistribution of such Plan Consideration “(x) to the holders of Allowed Claims or Equity Interest in the Class of such forfeiting holder or (y) in the event such Class members have received Payment in Full plus accrued interest, to the stakeholders of the ACC Debtors.” Plan, § 10.3 (emphasis added). Accordingly, to the extent that a distribution to be made to an unsecured creditor of ACC is undeliverable, section 10.3 requires that the funds should be redistributed to other members of the same Class until they have received “Payment in Full, plus accrued interest” (*i.e.*, Complete Payment). Given that the term “Payment in Full” already includes all pre-petition accrued interest,⁹ the addition of the words “plus accrued interest” in section 10.3 should be construed as a reference to post-petition and post-Effective Date accrued interest in order for such words to have meaning. Thus, the redistribution of undeliverable distributions must be made to the members of the same class until their Allowed Claims and post-petition and post-Effective Date interest are fully paid.

21. Section 10.3 therefore supports the notion that the Plan would require, if the ACC Assets are sufficient, payments of post-petition and post-Effective Date interest to the ACC

⁹ The Plan defines “Payment in Full” as “payment in Plan Consideration and/or other consideration in an aggregate amount with Deemed Value equal to the Allowed amount thereof.” Plan, Ex. A, at A-28.

Senior Stakeholders. The alternative reading – interpreting the Plan to provide for payment of post-petition and post-Effective Date interest only where the ACC Assets to be distributed are available due to the return of undeliverable distributions – would draw arbitrary distinctions within an otherwise homogenous pool of distributable ACC Assets, and make the distribution scheme contemplated by the Plan more difficult to administer by requiring the Plan Administrator to be able to trace the source of the ACC Assets available for distribution prior to making any distribution of such assets.

b. Section 11.5(d) of the Plan.

22. Similarly, Section 11.5(d) of the Plan, which governs the reallocation of funds formerly reserved for disputed claims once such claims become disallowed, also supports an interpretation of the Plan that requires payment of post-petition and post-Effective Date interest (to the extent assets are sufficient) to the ACC Senior Stakeholders. Section 11.5(d) of the Plan provides a waterfall for the allocation of funds that no longer need to be reserved for a disputed claim once the disputed claim is disallowed. Although there is a certain amount of variation in the waterfall depending on the Class in which the disallowed claim was situated, the last bucket in the waterfall is consistently a distribution “to the holders of Allowed Claims and Equity Interests of the ACC Debtors in accordance with the relative priorities set forth in the Plan.” *Id.* Section 11.5(d) specifies that the amount of funds to be so redistributed is the amount of Plan Consideration formerly reserved that is “in excess of the Maximum Exposure” of any remaining Disputed Claims and Equity Interests. “Maximum Exposure” is defined as the sum of the aggregate claims in such class and “interest accruing from the Commencement Date to the Effective Date on such Disputed Claims, as set forth for each Class of Claims in this Plan.” Plan, Ex. A, at A-27 (emphasis added). Thus, the Plan provision governing release of funds formerly reserved for Disputed Claims upon disallowance assumes that all Classes of Claims –

including the ACC Senior Stakeholder Classes – are paid post-petition interest, at least through the Effective Date.¹⁰ As with undeliverable distributions, it would make little sense for the Plan to permit funds formerly reserved for Disputed Claims be distributed to such Classes on account of post-petition interest, while prohibiting the use of other distributable funds for that purpose.

c. Section 5.1(f)(i) of the Plan.

23. Providing post-petition interest to the ACC Senior Stakeholders (to the extent there are sufficient assets) also would be consistent with section 5.1(f)(i) of the Plan, which, in accordance with section 510(a) of the Bankruptcy Code, enforces the subordination provisions of the indenture governing the ACC Subordinated Notes. Section 5.1(f)(i) provides that all of the distributions to be made to the holders of ACC Subordinated Notes are to be paid over to the holders of the ACC Senior Notes (*i.e.*, all distributions other than the CVV Series ACC-4 Interests that the holders of ACC Subordinated Notes received and any distributions to be made thereon) until the ACC Senior Notes have received Complete Payment, stating that the pay-over was “[i]n recognition and as a result of the enforcement of the contractual subordination rights of the holders of ACC Senior Notes Claims.” Plan, § 5.1(f)(i) (referring to the ACC Subordinated Notes Indentures, § 15.3(b)) (as amended).

24. The pay over provisions require that once the total amount of payments received by the holders of ACC Senior Notes directly from the Reorganized Debtors and indirectly through the pay over are sufficient to Pay in Full the Allowed Claim of the holders of the ACC Senior Notes, the pay over continues on account of the post-petition interest accrued on the ACC Senior Notes. By virtue of its incorporation of the pay over provisions of the ACC Subordinated Notes Indentures, the Plan implicitly recognizes the entitlement of the holders of ACC Senior

¹⁰ Moreover, as discussed in part D below, section 11.5(d) also contemplates the possibility of distributions of Plan Consideration to Allowed Equity Interests, notwithstanding other sections of the Plan to the contrary.

Notes Claims to post-petition interest prior to junior stakeholders receiving a recovery. In turn, if the Plan is construed as permitting the payment of post-petition interest to the holders of ACC Senior Notes Claims (as the Plan Administrator submits it should be), to avoid upsetting the Pro Rata distribution scheme applicable to the ACC Senior Stakeholders, the Plan must also provide for the payment of post-petition interest on the claims of other ACC Senior Stakeholders.

Therefore, considered in the context of the general distribution scheme embodied in sections 5.1(c) through (f) of the Plan, section 5.1(f)(i) of the Plan also supports the payment of post-petition interest to the ACC Senior Stakeholders.

25. Consistent with the foregoing sections of the Plan (*i.e.*, sections 10.3, 11.5(d) and 5.1(f)(i)), which provide for the possible payment or otherwise support the payment of post-petition interest, this Court should interpret and clarify the Plan to provide for distributions of post-petition interest (both pre-and post-Effective Date) to the ACC Senior Stakeholders to the extent the amount of ACC Assets exceeds the amount necessary to make Payment in Full of the ACC Senior Stakeholders' Allowed Claims.¹¹ *In re Terex Corp.*, 984 F.2d at 172-75 (upholding bankruptcy court's "interpretation" of chapter 11 plan to require payment of post-effective date

¹¹ Of the categories of assets to be distributed to the ACC Senior Stakeholders under the Plan, the only one that is not a fixed amount of funds and could theoretically provide the ACC Senior Stakeholders with distributions exceeding Complete Payment is "Remaining Assets." The Plan defines "Remaining Assets" as:

all Cash including the proceeds from the distribution sale, receipt and/or liquidation, as applicable, of, property, assets, stock, reserves, receivables, escrowed amounts, litigation (other than the Causes of Action transferred to Contingent Value Vehicle), and TWC Class A Common Stock, remaining after the satisfaction of Claims against and Equity Interests in the Subsidiary Debtors and the ACC Debtors, in each case to the extent expressly provided in the Plan, and the funding of all escrows, holdbacks, funds and reserves contemplated by the Plan, including pursuant to Section 13.2(f) [of the Plan] . . .

Plan, Ex. A, at A-33. The definition of "Remaining Assets" is circular, however, in that it provides that Remaining Assets consist of certain consideration remaining after "satisfaction of Claims against . . . the ACC Debtors, in each case, to the extent expressly provided in the Plan," *id.*, while simultaneously providing for the claims of ACC Senior Stakeholders to be paid from the Remaining Assets. *See* Plan §§ 5.1(c)(i)(i)(c), (d)(i)(i)(c), (e)(i)(i)(c), (f)(i)(i)(c). The Plan Administrator believes that the Court should not undermine the numerous other Plan provisions that contemplate distributions consistent with the absolute priority rule (*e.g.*, Plan, §§ 10.3, 10.7, 11.5(d)) by adopting a literal interpretation of an inherently circular definition.

interest to claim allowed after “distribution date” of plan, even though plan was silent as to post-petition interest, merely stating that applicable allowed claims “shall be paid” by debtors on distribution date).

**d. Post-Petition and Post-Effective Date Interest
Should be Payable at the Same Rate as is Payable
With Respect to the Relevant CVV Interest.**

26. As discussed above, the Plan should be interpreted to require payment of post-Petition Date and post-Effective Date interest to the ACC Senior Stakeholders to the extent the ACC Assets are sufficient. There remains the question (which could be theoretical), however, of the interest rate that should be used when calculating the amount of such interest payments. The Reorganized Debtors respectfully submit that this Court should use the applicable post-petition and post-Effective Date interest rates for the respective CVV Interest that each such ACC Class received under the Plan.

27. Bankruptcy courts have broad equitable discretion to determine what the appropriate rate of postpetition interest should be based on the facts and circumstances of the case. *See Vanston Bondholders*, 329 U.S. at 165 (“It is manifest that the touchstone of each decision on allowance of interest in bankruptcy, receivership and reorganization has been a balance of equities between creditor and creditor or between creditors and the debtor.”); *Coram Healthcare*, 315 B.R. at 346 (“[W]e conclude that the specific facts of each case will determine what rate of interest is ‘fair and equitable.’”); *see also* Adelpia Decision Tr., 12:19-23 (“[T]he Court has a large amount of discretion in deciding what the appropriate rate of interest should be under a chapter 11 plan for a solvent debtor.”) (internal quotation omitted); Loral Decision Tr., 24:25-25:4 (same).

28. The CVV Interests received by the ACC Senior Stakeholders expressly include post-petition interest at a specified rate: (a) from the Commencement Date up to the Effective

Date, either the non-default contract rate or simple interest at 8% per annum on the amount of Allowed Claims (as applicable to each ACC Senior Stakeholder Class); and (b) after the Effective Date, 8.9% per annum on the outstanding portion of the Allowed Claims (plus interest accrued through the Effective Date) (collectively and as applicable to each Class, the “Post-Petition Interest Rate”). Plan, §§ 5.1(c)(ii), (d)(ii), (e)(ii), (f)(ii), (g)(ii), (h)(ii). This rate was a heavily negotiated term of the Global Settlement and was approved by this Court as appropriate when it confirmed the Plan. Given that the total amount of distributions to be made on each of the ACC Class’ CVV Interests are calculated by counting distributions made by the Reorganized Debtors as well as the CVV, the easiest and most logical way to calculate the interest to be paid by the Reorganized Debtors to the ACC Senior Stakeholders is to use the same rates the CVV does, which reflects the intent and agreement of the parties in respect of post-petition and post-Effective Date interest.

3. After Complete Payment to the ACC Senior Stakeholders, Any Remaining Funds Should be Distributed to the ACC Junior Stakeholders in Order of Absolute Priority.

29. If there are any ACC Assets remaining after making Complete Payment to the ACC Senior Stakeholders, the Reorganized Debtors respectfully submit that any such excess ACC Assets should be distributed to the ACC Junior Stakeholders, who at that point, in accordance with absolute priority and consistent with the CVV waterfall, would be the only remaining stakeholders of the Debtors.

30. The Plan, however, contains conflicting provisions on this question. While the Plan states that the ACC Junior Stakeholders “shall not be entitled to any distribution” except for CVV Interests, Plan, § 5.1(g)-(i), there is only one provision of the Plan (section 10.3(b)) that specifies where funds should be distributed once the ACC Senior Stakeholders receive Complete Payment. Section 10.3(b), which governs the redistribution of initially undeliverable

distributions, provides that after certain efforts are made to deliver Plan Distributions, any undeliverable or unclaimed Plan Distributions shall be distributed:

“(x) to the holders of Allowed Claims or Equity Interests in the Class of such forfeiting holder or (y) in the event such Class members have received Payment in Full plus accrued interest, to the stakeholders of the ACC Debtors.”

Plan, § 10.3(b) (emphasis added). Thus, notwithstanding sections 5.1(g) through (i), section 10.3(b) provides for the possibility of distributions to Allowed Equity Interests and distributions to “the stakeholders of the ACC Debtors,” which would include the ACC Junior Stakeholders, once more senior Classes receive Complete Payment.

31. In addition, other sections of the Plan make specific reference to possible distributions of Plan Consideration (which excludes distributions by the CVV) to holders of Equity Interests, consistent with the Plan’s general scheme of absolute priority distributions. For example:

- **Definition of “Plan Distribution”**. The definition of Plan Distribution provides that Plan Consideration could be distributed to a holder of an Allowed Equity Interest, by defining Plan Distribution to mean “the payment or distribution under the Plan of Plan Consideration to the holder of an Allowed Claim or Allowed Equity Interest.” Plan, Ex. A, at A-31 (emphasis added).
- **Section 11.5(d)**. The provisions governing the distribution of Plan Consideration that had been reserved for Disputed Claims once such Disputed Claims are disallowed provide that the Plan Consideration formerly so reserved should, after the payment of certain “Earn Back Rights” or possible funding of Reserved Cash, be distributed “to holders of Allowed Claims and Equity Interests of the ACC Debtors in accordance with the relative priorities set forth in the Plan.” Plan, § 11.5(d) (emphasis added).
- **Section 10.8**. Section 10.8 of the Plan provides that all rights of holders of Equity Interests “shall be settled and compromised in full exchange for the Plan Distributions to be made to the holders of all Allowed Equity Interests.” Plan, § 10.8 (emphasis added). “Plan Distribution” is defined as “the payment or distribution under the Plan of Plan Consideration to the holder of an Allowed Claim or Allowed Equity Interest.” Plan, Ex. A, at

A-31.

Additionally, section 10.8 states that “[o]n the Effective Date, all Equity Interests in ACC shall be cancelled and annulled, and all rights thereunder shall be settled and compromised in full exchange for the Plan Distributions to be made to the holders of all such Allowed Equity Interests.” Plan, § 10.8 (emphasis added).

32. In examining these provisions of the Plan, it is important to note that the Disclosure Statement estimated that net proceeds from litigation received by the CVV would need to exceed \$6.5 billion before holders of ACC Subordinated Notes Claims and the ACC Junior Stakeholders could expect any recovery on their CVV Interests. *See* Discl. Stmt., at DSS2-121. In the end, however, there is no reason to believe that the Plan was intended to preclude distributions to the ACC Junior Stakeholders, even after the ACC Senior Stakeholders have received Complete Payment.

C. The Interpretation of the Plan That Requires Payments to the Stakeholders of ACC in Order of Absolute Priority is Consistent with the Bankruptcy Code.

33. The Reorganized Debtors’ proposed interpretation of the Plan is also consistent with the requirements of the Bankruptcy Code. “When multiple interpretations of a chapter 11 plan are possible, courts should favor an interpretation that is consistent with the Bankruptcy Code over one that contravenes it.” *Forklift LP Corp. v. iS3C, Inc. (In re Forklift LP Corp.)*, 363 B.R. 388, 394 (Bankr. D. Del. 2007). *See also In re Terex Corp.*, 984 F.2d at 174-75 (ruling that interpretation of the plan by the bankruptcy court requiring payment of post-effective date interest complies with various provisions of the Bankruptcy Code); *In re Monclova Care Ctr., Inc.*, 254 B.R. 167, 173 (Bankr. N.D. Ohio 2000) (“[A]mbiguities contained in a Chapter 11 plan are interpreted so as to comport with, rather than contravene, express provisions of the Bankruptcy Code.”). The Plan expressly provides that, to the extent a rule of law is supplied by the Bankruptcy Code, such rule of law shall govern construction of the Plan. *See* Plan, § 16.7.

34. Interpreting the Plan to require that the Reorganized Debtors make payments in order of absolute priority as described above is consistent with the requirements of the Bankruptcy Code, including the best interests of creditors test and the absolute priority rule.

1. The Interpretation Complies With the Best Interests of Creditors Test.

35. Requiring the Reorganized Debtors to make distributions to the stakeholders of ACC in accordance with the absolute priority rule as discussed above is consistent with the “best interests of creditors” test of section 1129(a)(7)(A) of the Bankruptcy Code. That section provides that a chapter 11 plan may only be confirmed if, with respect to each creditor or equity interest holder in an impaired class of claims or interests:

- (A) each holder of a claim or interest of such class –
 - (i) has accepted the plan; or
 - (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date; . . .

11 U.S.C. § 1129(a)(7). Thus, section 1129(a)(7)(A)(ii) ensures that dissenting creditors in an impaired class will receive at least as much under a chapter 11 plan as they would in a chapter 7 liquidation conducted on the effective date of the plan.

36. Unlike section 1129(b) of the Bankruptcy Code (discussed below), which applies on a class-by-class basis, the “best interests” test protects creditors and equity interest holders who do not accept a plan, even where their classes vote in favor of a plan. *In re Adelphia Communications Corp.*, 368 B.R. 140, 258 (Bankr. S.D.N.Y. 2007). Here, holders of approximately 6.5% of the ACC Preferred Stock Interests and holders of approximately 8.8% of the ACC Common Stock Interests who voted on the Plan, voted to reject the Plan. *See* Ex. A to

Certification of Jane Sullivan of Financial Balloting Group LLC [Docket No. 12624-1] (the “Sullivan Voting Certification”). Accordingly, the best interests test was required to be satisfied with respect to such stockholders, as well as any stockholders who did not vote at all. At confirmation, the Court found that the best interests test was satisfied, ruling that the Plan satisfied the best interests test with respect to all Impaired Classes of Claims or Equity Interests, including the classes of ACC Preferred Stock Interests and ACC Common Stock Interests. *See* Confirmation Order at ¶ Y.

37. The distribution of property of the estate in a chapter 7 case is governed by section 726 of the Bankruptcy Code. Pursuant to that section, after payment of (a) claims entitled to priority under section 507, (b) unsecured claims (both timely and tardily filed), (c) allowed prepetition claims for fines, penalties, forfeitures, or multiple, exemplary or punitive damages (to the extent such claims are not for compensation for actual pecuniary loss), and (d) post-petition interest at the “legal rate” on all claims in the foregoing categories, any remaining property of the estate is required to be distributed to equity. 11 U.S.C. § 726. Thus, in a chapter 7 liquidation conducted on the Effective Date, the junior creditors and Equity Interest Holders (e.g., the ACC Junior Stakeholders), would be entitled to any surplus over the amount required to make Complete Payment to all senior claims, with post-petition interest paid at the “legal rate.” Put another way, section 726 of the Bankruptcy Code does not provide for creditors to recover any more than Complete Payment and requires any excess be paid to more junior creditors or equity interest holders. Indeed, courts interpreting the best interests test have required that post-petition interest be paid on unsecured claims before a debtor can participate in distributions. *See, e.g., In re Schoenberg*, 156 B.R. 963, 969 (Bankr. W.D. Tex. 1993) (“No justification exists in interpreting § 1129(a)(7) in such a way that would not require interest post-

petition [interest] in a clearly solvent case. That would be a clear unintended windfall for the Debtor.”).¹²

38. If the Plan, as a liquidating plan, is construed as allowing ACC Classes to receive more than Complete Payment, the holders of more junior ACC Classes could never receive the surplus to which they would have been entitled in a chapter 7 liquidation. Accordingly, adopting such a construction would be inconsistent with the best interests test, which had to be satisfied with respect to all ACC creditors and Equity Interest holders. Given these two alternatives, the Court should construe the Plan in the way that makes the Plan continue to satisfy the best interests test – *i.e.*, as preserving the more junior ACC Classes’ right to assets beyond those needed to make Complete Payment to the applicable senior ACC unsecured creditor classes, assets to which they would be entitled in a chapter 7 liquidation.¹³

¹² Section 502(b)(2)’s general disallowance claims for “unmatured interest” (*i.e.*, post-petition interest) does not change this result. 11 U.S.C. § 502(b)(2). Many courts have ruled that notwithstanding Section 502(b)(2), unsecured creditors of a debtor are entitled to payment of postpetition interest before any distributions can be made to the debtor’s stockholders. *See, e.g., In re Coram Healthcare Corp.*, 315 B.R. 321, 344 (Bankr. D. Del. 2004) (“[W]e conclude that payment of postpetition interest before any distribution to equity holders in a chapter 11 case is not prohibited by the Code and, in fact, may be required.”); *see also In re Adelpia Communications Corp.*, Case No. 02-41729 (REG), Transcript of Court Decision (Apr. 27, 2006) (the “Adelpia Decision Tr.”), at 6:2-4 (“Many courts have recognized that the payment of pendency interest to unsecured creditors is appropriate when a debtor is solvent.”); *Loral Decision Tr.*, at 22:18-22 (“[I]t is inequitable and improper for shareholders to recover before the debtor’s unsecured creditors receive postpetition interest.”).

¹³ This Court’s previous ruling rejecting the ACC Bondholders Group’s best interests of creditors argument at confirmation is distinguishable. *See Adelpia*, 368 B.R. at 258-59. There, the Court rejected a best interests of creditors argument based on the possible fluctuation of the TWC Class A Common Stock prior to the Effective Date. *See id.* at 259 (“Is there a possibility that the value of TWC stock could go higher, and be at that level at the time the Plan goes effective? Of course there is, just as there’s a possibility that the value could drop lower. But I don’t think any such alternative value could reasonably be found to affect a Best Interests analysis.”). Here, the question is not a fluctuation of value, but rather a question of distribution mechanics (*i.e.*, whether Classes could receive additional distributions of Plan Consideration once such Classes have received Complete Payment). Moreover, even if the issue here were related to value, and even if one assumes that ACC’s assets were insufficient on the Effective Date to pay the ACC Senior Stakeholders in full but could have sufficiently risen in value post-Effective Date such that the ACC Senior Stakeholders would receive Complete Payment (an event which has not yet happened and is unlikely to occur in the future), case law is clear that in order to determine whether a plan is confirmable, assets are valued as of the Effective Date, so any fluctuation post-Effective Date is irrelevant to the best interests test. *See, e.g., In re Leslie Fay Cos.*, 207 B.R. 764 (Bankr. S.D.N.Y. 1997) (there is no inherent unfair discrimination in proposed plan offering stock options to members of management, where, among other things, stock option prices equaled value of shares at approximately the effective date of plan); *In re Union Meeting Partners*, 165 B.R. 553, 572 (Bankr. E.D. Pa. 1994) (requiring that

2. The Interpretation Complies with the Absolute Priority Rule.

39. Section 1129(b) of the Bankruptcy Code provides that a plan must be “fair and equitable” with respect to any dissenting class in order for such plan to be confirmed. 11 U.S.C. § 1129(b)(1). In order to be “fair and equitable,” a plan must satisfy the absolute priority rule, which generally requires that each holder in a dissenting class of claims or equity interests under a plan receive property of a value equal to the allowed amount of such holder’s claim (or value of such holder’s interest), unless no property is being distributed to the holders of junior claims and interests under such plan. 11 U.S.C. § 1129(b)(2).

40. The Debtors recognize that section 1129(b) was not applicable to the ACC Junior Stakeholders under the Plan, because the relevant Classes voted to accept the Plan. Nevertheless, the Debtors submit that consideration of the absolute priority rule is appropriate here to interpret the ambiguities in the Plan. Given that, at the time of confirmation, it was not anticipated that the Debtors’ estates would be capable of satisfying the claims of the ACC Senior Stakeholders in full, the ACC Junior Stakeholders’ acceptances of the Plan should be seen for what they were: an acknowledgement that there was unlikely to be value available for distribution to such stakeholders, rather than acquiescence to a Plan that would preclude any distributions to such classes even in the unlikely event that all senior Classes were paid in full under the Plan. Under these circumstances, the Debtors submit that consideration of fundamental bankruptcy principles of distribution, including the absolute priority rule, is appropriate notwithstanding the Junior ACC Classes’ acceptances of the Plan.

41. Case law under section 1129(b) supports the interpretation that would require the distributions discussed above (i.e., to the ACC Senior Stakeholders, until they receive Complete

claimants in an impaired class “receive or retain under the plan . . . property of a value, *as of the effective date of the plan*,” equal to the amount such claimants would receive if the debtor were liquidated) (emphasis added).

Payment, then to the ACC Junior Stakeholders), with all ACC Classes (other than the ACC Common Stock Interests Class) limited to Complete Payment. Courts have concluded that the absolute priority rule prohibits senior creditors and preferred equity interest holders from recovering more than the full value of their allowed claims or liquidation preferences, to the detriment of junior creditors and junior equity interest holders, respectively. *See In re Chemtura Corp.*, 439 B.R. 561, 593 (Bankr. S.D.N.Y. 2010) (“It’s undisputed that the ‘fair and equitable’ requirement encompasses a rule that a senior class cannot receive more than full compensation for its claims. Courts will deny confirmation of a plan if a plan undervalues a debtor and therefore would have resulted in paying senior creditors more than full compensation for their allowed claims.”); *In re Granite Broad. Corp.*, 369 B.R. 120, 140 (Bankr. S.D.N.Y. 2007) (“There is no dispute that a class of creditors cannot receive more than full consideration for its claims, and that excess value must be allocated to junior classes of debt or equity, as the case may be.”) (internal citation omitted); *In re Exide Techs.*, 303 B.R. 48, 61 (Bankr. D. Del. 2003) (“[A] corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims.”) (internal quotation omitted).

42. Notably, the failure to cap distributions to a class of creditors under a plan, thereby eliminating the possibility of a recovery to equity, may violate the absolute priority rule. *See In re MCorp Financial, Inc.*, 137 B.R. 219, 235 (Bankr. S.D. Tex. 1992) (“The court finds that the terms of the MCorp plan violate § 1129(b) in that it is not fair and equitable to equity interests. The plan includes a provision which establishes no upper limit on the amount that junior creditors of the Debtors (who are senior to the rejecting equity class) may receive.”).

43. Additionally, courts applying the “fair and equitable” standard have required the payment of interest on claims before equity can receive any distribution under a chapter 11 plan.

See In re Loral Space & Communications Ltd., Case No. 03-41710 (RDD), Bench Ruling in the Matter of Loral Space & Communications Ltd. and Space Systems/Loral, Inc. (July 25, 2005) (the “Loral Decision Tr.”), at 23:9-13 (“In addition, the courts have long recognized the right of unsecured creditors to receive postpetition interest under the fair and equitable rule as part of the cramdown standard.”). This rule stems from case law dating back to before the enactment of the Bankruptcy Code and the legislative history of the Bankruptcy Code. *See Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 164 (1946) (“But where an estate was ample to pay all creditors and to pay interest even after the petition was filed, equitable considerations were invoked to permit payment of this additional interest to the secured creditor rather than to the debtor.”); 140 Cong. Rec. H. 10,768 (Oct. 4, 1994) (“[I]n order for a plan to be fair and equitable, unsecured and under secured creditors’ claims must be paid in full, including postpetition interest, before equity holders may participate in any recovery.”) (internal citation omitted).

44. Section 1129(b) also requires payment of post-effective date interest on delayed distributions under a Plan, mandating that dissenting creditors receive property of a certain value “as of the effective date of the plan.” 11 U.S.C. § 1129(b)(2)(B).¹⁴ Thus, a plan may provide for deferred payments to a creditor, so long as the present value of such payments is equal to the value of the creditor’s effective date entitlements. For the present value of deferred payments to equal a creditor’s effective date entitlement, interest must be paid on such deferred payments. *In re Air Commc’ns, Inc.*, 547 F.3d at 771 (section 1129(b) “requires that an objecting, secured creditor is paid interest if the payment of the principal is deferred”). *See also* 7 COLLIER ON BANKRUPTCY ¶ 1129.04[3][a] (15th ed. rev.) (observing that section 1129(b)(2)(B) requires

¹⁴ The same holds true of the best interests of creditors test, discussed above, which also requires that property be valued as of the effective date of the plan. 11 U.S.C. § 1129(a)(7)(A)(ii).

payment of market rate of interest on deferred distributions to unsecured creditors under a plan). Thus, an interpretation of the Plan that requires that distributions be paid to senior ACC Classes until each such class receives Complete Payment, with any assets remaining then paid to more junior ACC Classes, comports with the absolute priority rule under section 1129(b).

NOTICE

45. Notice of the relief being requested in this Motion will be provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the United States Internal Revenue Service; (c) any party known to be directly affected by the relief sought; and (d) all other parties that have served a written request on the Debtors on or after the date of the Confirmation Order for service of such pleadings as required by paragraph 62 of the Confirmation Order.

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit B, (a) granting this Motion; (b) clarifying that the Plan requires the Reorganized Debtors to make distributions of ACC Assets in order of absolute priority, such that distributions are to be made to the ACC Senior Stakeholders until their Allowed Claims are Paid in Full, with any ACC Assets then remaining to be distributed to the ACC Senior Stakeholders on account of post-petition interest on their claims (which interest accrues at the applicable Post-Petition Interest Rate) until such post-petition interest is fully paid, with any ACC Assets then remaining to be distributed to the ACC Junior Stakeholders in order of absolute priority; and (c) granting such other and further relief as may be just and proper.

Dated: New York, New York
September 23, 2013

WILLKIE FARR & GALLAGHER LLP

By: /s/ Paul V. Shalhoub
Paul V. Shalhoub
Andrew D. Sorkin

787 Seventh Avenue
New York, New York 10019
(212) 728-8000

Counsel to the Reorganized Debtors

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER CLARIFYING PLAN

Upon consideration of the motion (the “Motion”)¹ of the Reorganized Debtors in the above-captioned cases (collectively, the “Reorganized Debtors”) for entry of an order clarifying certain ambiguities and inconsistencies in the confirmed Plan; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b) and 1334, Article XV of the Plan and Paragraph 60 of the Confirmation Order; and notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their creditors and other stakeholders, and their estates; and upon the record of the hearing on the Motion; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND that:

- A. Under the Plan, the holders of Claims in the ACC Senior Stakeholder Classes are entitled to receive (to the extent there are sufficient assets), on account of such Claims, Payment in Full of their Allowed Claims.

¹ Capitalized terms used but not defined herein have the meanings given them in the Motion.

B. If there are ACC Assets remaining after the Payment in Full of the ACC Senior Stakeholders' Allowed Claims as stated in paragraph A of this Order, the Plan requires the Reorganized Debtors to distribute any ACC Assets then remaining to the ACC Senior Stakeholders on account of post-petition interest outstanding on those Allowed Claims at the applicable Post-Petition Interest Rate.

C. If there are ACC Assets remaining after the Payment in Full of the ACC Senior Stakeholders' Allowed Claims (as stated in paragraph A hereof), plus interest (as stated in paragraph B hereof), the Plan requires that the Reorganized Debtors distribute any ACC Assets to the ACC Junior Stakeholders in accordance with the following waterfall: (a) first, to the ACC Existing Securities Law Claims Class, until the Claims in such class have received the full Allowed amount of the Claims and post-petition interest at the applicable Post-Petition Interest Rate; (b) then to the ACC Preferred Stock Interests Class, until the Equity Interests in such Class have received the full Allowed amount of their ACC Preferred Stock Interests pursuant to the applicable Liquidation Preference; and (c) then to the holders of ACC Common Stock Interests.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The findings set forth in this Order are hereby incorporated in the Confirmation Order as if fully set forth therein.
2. The Plan and Plan Documents shall be interpreted consistent with the findings in this Order.
3. All future distributions of Plan Consideration and Remaining Assets shall be made in accordance with the Plan and the Confirmation Order, as interpreted by this Order.

4. This Court shall retain jurisdiction to hear and determine all matters related to this Order and the implementation hereof.

Dated: New York, New York
_____, 2013

THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE