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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
	:	
ADELPHIA COMMUNICATIONS CORPORATION, *et al.*,	:	**Case No 02-41729 (REG)**
	:	
	:	**(Jointly Administered)**
Debtors.	:	
	:	

DECLARATION OF HARRISON J. GOLDIN

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HARRISON J. GOLDIN**,** being duly sworn under oath, deposes and says:

I. INTRODUCTION

1. My name is Harrison J. Goldin. I am the Senior Managing Director and founder of Goldin Associates, L.L.C. ("Goldin Associates"), a financial advisory and turnaround consulting firm specializing in underperforming businesses and distressed situations, including financial and operational restructurings, crisis management and bankruptcies.

2. In relation to the above-captioned bankruptcy cases (the "Adelphia Bankruptcy") I have been asked whether, in my view and based on my experience, a Chapter 7 or Chapter 11 fiduciary for the ACC Senior Noteholders would conclude that the settlement embodied in the Plan falls within a reasonable range of fairness. As discussed in more detail later, it is my opinion that the settlement falls significantly below the reasonable range of fairness as to the ACC Senior Noteholders and that a Chapter 7 or Chapter 11 fiduciary would not agree to it on behalf of the estate of Adelphia Communications Corp. ("ACC").

3. In connection with this assignment Goldin Associates assembled a team of financial analysts and certified public accountants to review the Motion in Aid ("MIA") issues, including the Debtors' accounting records. This team reviewed much of the record of the MIA hearings, including depositions and briefs on the legal issues, and accessed many, but not all, the trial transcripts and exhibits. The team also reviewed documents from certain electronic databases, including both pre-petition and restatement databases. The team also had significant discussions concerning the claims. My views as a fiduciary were informed by these discussions. Based on my long experience as a fiduciary, including as Comptroller of New York as an interim chief executive officer and as a trustee, examiner and special master to the court, I believe it would be unusual for a fiduciary assessing the issue outlined in paragraph 2, above, or a decision maker approximating that role, to read the transcripts of a vast litigation record (including depositions and litigation files) before arriving at a conclusion as to whether a proposed settlement is fair and reasonable.

4. The facts underlying my testimony derive from the sources listed in my report, as well as the work performed by my colleagues at Goldin Associates.

5. Among the reasons for my opinion that the settlement falls significantly below the range of reasonableness are the following:

- The settlement provides the ACC Senior Noteholders with a recovery *significantly lower* than the recovery they would obtain were distributions based on the Debtors' books and records and, more significantly, far below any reasonable settlement range that a Chapter 7 or Chapter 11 fiduciary would agree to on behalf of ACC's estate. The settlement purports to resolve certain interdebtor disputes, but the recoveries under the proposed settlement unreasonably assume that the Senior ACC Noteholders would lose all or nearly all the interdebtor disputes that have a significant impact on creditor recoveries. Indeed, Arahova's positions on the three interdebtor issues that are the most significant to creditor recoveries all require the Bankruptcy Court to disregard the Debtors' books and records, which were subjected to an exhaustive and thorough analysis and restatement by PricewaterhouseCoopers ("PwC"), an independent auditing and accounting firm, Tatum Partners, a consulting firm, and the Debtors' newly-retained senior management for its accounting department.

- Other terms of the settlement are also unfair to the ACC creditors. The Plan allocates all costs, expenses and other risks of loss to ACC's creditors. In addition, the Plan provides for a reduction in ACC creditors' recoveries unless they accept the Plan, while simultaneously offering special consideration, releases and exculpation to ACC creditors who accept the Plan. These provisions further illustrate the Plan's unfairness.

- The so-called "True-Up Mechanism" for the Time Warner Class A Stock (the "Stock") that is to be distributed as part of the settlement and Plan is based on a fiction. The Plan sets the "deemed value" of the stock at an artificially low $5.4 billion. Based on market research, the current value of the stock is at least $6 billion. Thus, the True-Up Mechanism has a practical upside cap of approximately $500 million at most insofar as ACC creditors are concerned, but a downside exposure to them of nearly $2 billion.

II. EXPERIENCE AND BACKGROUND

6. In addition to my role at Goldin Associates, I am also the Chief Executive Officer of Refco, Inc. ("Refco"), a multi-billion dollar commodities and

futures brokerage firm. Refco is in bankruptcy; I was asked to become CEO to help steer the company through the bankruptcy.

7. I have served as chief executive officer, advisor, trustee or examiner during some of the largest and most complicated bankruptcies of the past two decades, including Bruno's, Cityscape, Coram Healthcare, Drexel Burnham Lambert, Enron North America, First Interregional Advisors Corp., Loral Space & Communications, Monarch Capital Corporation, Rockefeller Center Properties and many others. As in my assignment here, I analyzed the fairness of the proposed settlements and plans in both in both the Corum Healthcare and Enron North America bankruptcies.

8. Before founding Goldin Associates I was the elected Comptroller of The City of New York, a position in which I served for 16 years. I played a major role in New York City's financial restructuring in the mid-1970s, which resulted in New York City's successful return to the public credit markets, its achievement of investment grade ratings and the restoration of its full borrowing capacity. As chief financial officer of New York City I directed its financial and investigative audit units and managed its $40 billion pension fund. I also supervised its large issuances of debt, oversaw the work of its underwriters and financial advisors (for whose selection I was responsible) and represented it to the credit rating agencies.

9. I am Chairman Emeritus of the Council of Institutional Investors and a Fellow of the American College of Bankruptcy.

10. I was previously an Adjunct Professor of Accounting at the Stern Graduate School of Business at New York University. I also taught finance at Columbia Law School and as an Adjunct Professor of Law at Cardozo and New York Law Schools.

11. I was previously an attorney for the United States Department of Justice and at the New York law firm of Davis Polk & Wardwell.

12. I received an A.B. *summa cum laude* from Princeton University (Phi Beta Kappa) and an LL.B. from Yale Law School, where I was articles editor of the *Yale Law Journal* and elected to the Order of the Coif. I was also a Woodrow Wilson Fellow at the Harvard Graduate School.

III. BACKGROUND OF INTERDEBTOR DISPUTES

13. As in many large bankruptcy cases, the Adelphia Bankruptcy involves a substantial number of interdebtor disputes. To resolve these various disputes, the Court scheduled a series of hearings ("MIA Hearing"). The parties in these cases challenge the Debtors' intercompany accounting policies on multiple grounds (the "MIA Litigation"). The merits of these disputes have been briefed extensively and presented in the course of these hearings ("MIA 2 Hearing"). On March 6, 2006 the Bankruptcy Court identified 14 specific interdebtor disputes, annexed hereto as Exhibit 1 ("14 MIA Issues"). In addition, the MIA Litigation concerned the Ad Hoc Committee of Arahova Noteholders' ("Arahova Noteholders Committee") request for recovery of an alleged fraudulent conveyance and the allocation of proceeds from the Time Warner Cable/Comcast sale. An analysis and resolution of these MIA Issues are relevant to the merits of a settlement. Accordingly, I have analyzed the proposed settlement under the Plan giving consideration to the probability (or more accurately, the improbability), of the Arahova Noteholders hitting a "home run" on certain of the 14 MIA Issues in the MIA Litigation.

A. The Restatement Process Was An Exhaustive And Comprehensive Review Of The Debtors' Books And Records

14. As in many complex bankruptcy cases, the identification of assets and liabilities for each estate has been a prominent issue throughout the Adelphia Bankruptcy. The Debtors retained new senior management for its accounting department, who were heavily involved in the Restatement. In 2003 the Debtors hired PwC and Tatum Partners and spent approximately $100 million to restate and audit financial statements for 1999 and 2000, prepare financial statements for 2001, 2002 and 2003 and review over seven million lines of intercompany transactions (collectively, the "Restatement"). PwC set forth in painstaking detail – including the creation of a voluminous audit trail of nearly 130 "issue summaries" totaling over 1,000 pages – the various items it confronted in the Restatement process. The intensity of the Restatement's scrutiny of the Debtors' books and records is evidenced by its adjustments to entries smaller than $1 million.

15. In May, 2005, after two years and over 5,000 hours of work performed by more than 25 independent accounting employees and accounting professionals, the Debtors completed the Restatement of their books and records and, based on those books and records, filed with the Bankruptcy Court Amendments to Schedules of Liabilities, dated May 11, 2005 ("May, 2005 Schedules").

16. The Debtors' used Adelphia Cablevision, LLC (the "Bank of Adelphia") as the centralized cash management system for the Debtor entities. As I discuss further below, many of the interdebtor issues in the Adelphia Bankruptcy relate to the Debtors' use of the Bank of Adelphia as a centralized cash management system.

B. The Bank Of Adelphia Paradigm Is Consistent With Common Practice And Accounting Principles

17. The May, 2005 Schedules reflect the intercompany balance of each Debtor entity with the Bank of Adelphia, the Debtors' central cash management entity. In the course of their operations the Debtors recorded millions of intercompany entries, reflecting day-to-day receipt and disbursement activities and other transactions. The Bank of Adelphia – an ACC subsidiary – was a counterparty to all intercompany payables and receivables (the "Bank of Adelphia Paradigm").

18. The use of centralized cash management systems and accounts, such as the Bank of Adelphia, is commonplace in large corporations. Indeed, the use of the Bank of Adelphia Paradigm, as part of the Debtors' efforts to correct erroneous and inconsistent pre-petition accounting entries, was the proper mechanism for achieving optimum accuracy in viewing and interpreting the books and records. Moreover, the Bank of Adelphia Paradigm is consistent with common practice. Absent application of the Bank of Adelphia Paradigm, there is no logic to the Debtors' payables and receivables because the real counterparty was the Bank of Adelphia.

IV. THE PROPOSED SETTLEMENT IN THE PLAN IS UNFAIR BECAUSE IT PROVIDES THE ACC SENIOR NOTEHOLDERS WITH A RECOVERY FAR BELOW ANY REASONABLE SETTLEMENT RANGE THAT A CHAPTER 7 OR CHAPTER 11 FIDUCIARY WOULD AGREE TO ON BEHALF OF THE ACC SENIOR NOTEHOLDERS

19. I have undertaken to determine the lowest reasonable return for the ACC Senior Noteholders. I need to emphasize at the outset that the settlement only delineates the consideration that goes to each class of creditors. It does not identify any disputed issue or specify how it is resolved; that has to be inputted from the value

allocation it provides among the claimant classes. Accordingly, in order to replicate the results in the settlement, an analysis of the settlement must work backwards given the millions of possible outcomes on resolution of the issues.

20. Under my supervision and direction, staff at Goldin Associates analyzed the 14 MIA Issues, as well as the fraudulent conveyance and the sales proceeds allocation issues, and their relative individual and collective impact on recoveries. After considering the Plan, the MIA Litigation and the so-called "settlement" embodied in the Plan, I formed an opinion that the recovery for the ACC Senior Noteholders provided by the settlement embodied in the Plan is below any reasonable settlement zone by at least $600 million. Page 10 of my report, attached hereto as Exhibit 2, presents a chart showing that the minimum acceptable recovery for a settlement of the disputes is $5.1 billion (assuming a TWC stock value of $6.48 billion) for the ACC Senior Noteholders. By contrast, the Plan provides ACC Senior Noteholders with only $4.5 billion in value. Therefore, as a Chapter 7 or Chapter 11 trustee for the ACC Senior Noteholders I would not enter into the settlement. I also concluded that this is not a close question, primarily for the following reasons.

21. Were the ACC Senior Noteholders to lose outright 13 of the 14 MIA issues, they would *still* recover more than the recovery provided to them under the Plan. That is, if they lost all issues except the $16.8 billion ACC Investment Holdings, Inc. ("AIH") receivable ("AIH Receivable") (MIA Issue No. 12)[1], the ACC Senior Noteholders would recover 89% of their claim, as compared to the 88.7% of their claim

[1] For the Court's convenience, I refer in this affidavit to the MIA issue numbers corresponding to the various interdebtor issues listed in the 14 MIA Issues.

accorded them under the Plan. If ACC Senior Noteholders lost all 14 MIA Issues, their recovery would decline by 39 percentage points from the recovery to which they are entitled under a distribution arrangement that is based on the Debtors' books and records (112.9%) (the "Waterfall Distribution"). The AIH Receivable issue alone reduces ACC's recovery by 14.9 percentage points. Therefore, a loss of 13 MIA issues other than the AIH Receivable issue would reduce ACC's recovery by 23.9 percentage points. Thus, the impact of deciding the 13 issues against ACC Senior Noteholders would still leave them with a recovery (89%) that is higher than the 88.7% they are accorded in the Plan.

22. That the proposed settlement in the Plan is unfair is further illustrated by the fact that the settlement embodied in the Plan necessarily assumes that Arahova's creditors would prevail on all or nearly all the MIA issues that have a significant impact on creditor recoveries. The AIH Receivable and the Arahova receivable ("Arahova Receivable")[2] (MIA Issue No. 13) represent over 50% of the recovery value transferred from ACC's creditors to Arahova's creditors in the Plan. The other MIA Issue with a significant impact on creditor recoveries is the silo netting issue ("Silo Netting") (MIA Issue No. 11). Given their significant impact on creditor recoveries (23% combined), I have examined in detail each of these three MIA Issues and have concluded that the ACC Senior Noteholders are highly likely to prevail on those MIA issues.

23. As discussed below, the ACC Senior Noteholders have the far stronger equities respecting the key disputed issues that drive value allocation.

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[2] Although MIA Issue No. 13 references a $1.44 billion "payable," the May, 2005 Schedules indicate that Arahova has a $1.44 billion *receivable*. *See* May 2005 Schedules, at 3. Accordingly, I refer in this affidavit to the "Arahova Receivable" in connection with MIA Issue No. 13.

24. **AIH Receivable**: The imputed treatment in the Plan of the AIH Receivable, on which I believe ACC's creditors are entitled to receive significant recovery value, represents the dominant factor influencing ACC and Arahova creditor recoveries. As discussed in the testimony of David W. Prager, dated December 4, 2006 (the "Prager Declaration"), subordination or elimination of AIH's receivable balance would have the following estimated impact on creditor recoveries (at a value of $6.48 billion for the TWC Stock):

ACC	Arahova	FrontierVision
-14.9%	+41.4%	+0.4%

25. I believe the ACC Senior Noteholders have a very small probability of losing the AIH Receivable issue because:

- a central cash management system, such as the Bank of Adelphia Paradigm, is standard in multi-tiered corporations;
- as discussed above, PwC and Tatum Partners conducted an in-depth and detailed review – at a cost of $100 million – of the Debtors' accounting and made the use of the Bank of Adelphia Paradigm uniform and consistent;
- the AIH Receivable balance – in the main – reflects actual exchanges of value;
- parent entities routinely provide value to their subsidiaries in the form of intercompany advances;
- as in other major bankruptcy cases in my experience where individuals have engaged in fraud, the fraud does not result in the unreliability and rejection of books and records in their entirety; rather, the areas of fraud are typically identified – as they were here – and the records adjusted to reflect how the debtors actually conducted business, as PwC has done;
- while the Bankruptcy Court has not ordered substantive consolidation of the Debtors' estates, the ACC Senior Noteholders would in any event do quite well

under substantive consolidation: their recovery would be 110.5% compared to 79.1% for Arahova Noteholders; and

- I have not seen any compelling reason offered by the Arahova creditors for disregarding the AIH Receivable.

26. Accordingly, were I a Chapter 7 or Chapter 11 trustee for ACC, I would consider the ACC Senior Noteholders highly likely to prevail on the merits of the AIH Receivable issue.

27. **Arahova Receivable**: The Arahova Receivable – another interdebtor dispute representing a substantial value transfer from ACC to Arahova – arises from an attempt by Arahova's creditors to disaggregate its receivable balance with the Bank of Adelphia, separating that net receivable into its gross receivable and gross payable components. As discussed in the Prager Declaration, subordinating the gross payable portion of the net Arahova receivable would have the following estimated impact on creditor recoveries:

ACC	Arahova	FrontierVision
-5.4%	+17.0%	--

28. I believe the ACC Senior Noteholders have a very small probability of losing the Arahova Receivable Issue because:

- for the Arahova creditors to prevail on the Arahova receivable issue, the $1.4 billion account receivable from the Bank of Adelphia would first have to be "unnetted" into a $2.9 billion account receivable and a $1.5 billion account payable and the $1.5 billion account payable then would have to be subordinated or somehow eliminated;

- the unnetting of the $1.4 billion account receivable would be inconsistent with the Debtors' uniform application of the Bank of Adelphia Paradigm, whereby

advances to, and payments from, Arahova are routed through the Bank of Adelphia and netted;

- the elimination of the $1.5 billion account payable that would result from the unnetting would be arbitrary and inconsistent with the way Adelphia did business and kept its books;

- the unnetting would be inconsistent with Arahova's positions that not only should accounts receivable and accounts payable by one entity to and from the Bank of Adelphia be netted, but also that the accounts receivable and accounts payable of multiple entities in a silo with the Bank of Adelphia should be netted across each silo entity, *see* ¶¶ 30-32, below;

- the unnetting and elimination of the accounts payable may run into serious legal hurdles respecting the right of setoff; and

- I have not seen any compelling reason offered by the Arahova creditors for unnetting the Arahova account receivable from the Bank of Adelphia and eliminating the resulting account payable.

29. Accordingly, were I a Chapter 7 or Chapter 11 trustee for ACC, I would consider the ACC Senior Noteholders highly likely to prevail on the merits of the Arahova Receivable issue.

30. **Silo Netting**: The Silo Netting issue (MIA Issue No. 11) arises from the Arahova Noteholders Committee's attempt to treat all legal entities within each silo as a single entity for purposes of netting that silo's payables and receivables with the Bank of Adelphia. As discussed in the Prager Declaration, the silo netting issue impacts the Adelphia Senior Noteholders' Waterfall Distribution by 2.8 percentage points:

ACC	**Arahova**	**FrontierVision**
-2.8%	+7.0%	+0.5%

31. I believe the ACC Senior Noteholders have a very small probability of losing the Silo Netting issue because:

- the Debtors netted the accounts receivable and accounts payable of each legal entity in a silo with the Bank of Adelphia;
- the silo concept was used by the Debtors as a convenient method of grouping entities to simplify the Debtors' corporate structure for the purpose of calculating distributions under the Waterfall Distribution;
- the Bankruptcy Court has not ordered substantive consolidation, whereby the assets and liabilities of more than one legal entity would be combined; netting across legal entities would constitute a partial consolidation, which raises serious legal hurdles;
- Arahova inappropriately seeks to create mutuality which does not exist among legal entities; and
- I have not seen any compelling reason offered by Arahova creditors to substantiate silo netting.

32. Accordingly, were I a Chapter 7 or Chapter 11 trustee for ACC, I would consider the ACC Senior Noteholders highly likely to prevail on the merits of the Silo Netting issue.

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33. In sum, the Plan provides the ACC Senior Noteholders a recovery significantly below the minimum level of the zone of reasonableness: it inherently assumes that Arahova would prevail on at least two of the three MIA issues that have a significant impact on creditor recoveries, when to the contrary, the ACC Senior Noteholders are likely to prevail on those issues.

34. In arriving at a minimum acceptable recovery for a reasonable settlement as to the ACC Senior Noteholders, based on my experience as a fiduciary, I

determined an appropriate risk weight for each disputed issue. It both provides for a reasonable settlement of each issue and accounts for such considerations as incremental costs that might arise were the Plan not confirmed and a new settlement not reached expeditiously.

35. In determining the minimum level of the zone of reasonableness, I tried to make sure that if I erred in the calculation of probable outcomes, I erred by assigning the Arahova Noteholders a generous probability of success. On the issues that have a significant impact on the recoveries of the respective creditors – the AIH Receivable, Arahova Receivable and Silo Netting MIA issues – I assigned the Arahova Noteholders a risk weight of 20% each, the aggregate result giving them some $650 million of value in settlement of those intercreditor disputes.

36. Significantly, under the foregoing analysis Arahova is accorded value equal to as much as 50% of the disputed values on the fraudulent conveyance and value allocation issues; Arahova is accorded value up to 20% of the three disputed MIA issues that have a significant impact on the recoveries of the respective creditors.

37. Notably, the Arahova Noteholders would receive a 31.4% recovery in a Waterfall Distribution and a 79.1% recovery in a substantive consolidation, while the ACC Senior Noteholders would receive a 112.9% recovery in a Waterfall Distribution and a 110.5% recovery in a substantive consolidation. This compares to the Plan, which provides the Arahova Noteholders a 99.5% recovery and the ACC Senior Noteholders an 88.7% recovery.

38. **Other Interdebtor Disputes**: A number of other interdebtor issues have only a modest impact on creditor recoveries. As discussed more fully in the

Prager Declaration, the remainder of the 14 MIA Issues have the following combined impact on creditor recoveries:

ACC	**Arahova**	**FrontierVision**
-16.0%	+43.5%	+37.8%

39. For those remaining interdebtor issues, a Chapter 7 or Chapter 11 fiduciary would likely approve a settlement up to a maximum of 50% of the desired value transfer sought.

V. ADDITIONAL TERMS OF THE PLAN ARE UNIFORMLY UNFAIR TO ACC CREDITORS

40. In addition to the unfair economic terms of the proposed settlement in the Plan, I believe the Plan also involves unfair mechanisms for distributing the Debtors' assets, unfairly shifts all risks of loss to ACC's creditors and contains provisions designed to coerce acceptance by ACC's creditors. These additional reasons make more emphatic the likely view of a fiduciary for the ACC estate that the economic settlement is not a reasonable minimum compromise.

41. **Unfair Distribution System**. Ordinarily, a debtors' books and records are the starting point for any resolution of complex plan economics. According to the books and records here, ACC's creditors are entitled to distributions from *two* sources: (1) ACC's ownership interest in the value of various subsidiary Debtors and (2) ACC's large intercompany claims. By starting with the debtors' books and records, creditors are able to ascertain how value flows through the capital structure. I sometimes refer to this construct as a "Waterfall Distribution." According to Goldin Associates' analysis, ACC Senior Noteholders are entitled to a $5.768 billion share in a Waterfall

Distribution (112.9%).[3] In turn, Arahova Noteholders are entitled to a $548 million share in a Waterfall Distribution (31.4%.).[4]

42. Despite the presumptive validity of the Debtors' books and records, the Plan completely abandons a Waterfall Distribution in favor of a construct that pays Arahova Noteholders as if they are structurally senior to ACC creditors, not only as to assets held by Arahova and its direct and indirect subsidiaries, but also as to assets held by other subsidiaries in which Arahova holds no interest. Instead of determining a rational value for each estate's assets and then determining distributions, the Plan posits that, regardless of asset value, "the Debtors and Creditors Committee, as co-Plan Proponents, would file the Plan under which all holders of Allowed Claims against the subsidiary Debtors would receive payment in full . . . of all principal and accrued interest."[5]

43. This distribution methodology is driven by a "virtual" partial substantive consolidation that satisfies claims against the subsidiary Debtors from a common pool of assets, including the assets contributed by ACC; but creditors of ACC receive lower recoveries than they would under actual substantive consolidation because of an implicit assumption in the Plan that creditors of subsidiary Debtors are senior to ACC creditors, despite books and records to the contrary.

44. The asset reallocation created by this virtual partial substantive consolidation supports the conclusion that the Plan is unfair to ACC's creditors. The

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[3] Calculated with a TWC Stock valuation of $6.48 billion.

[4] *Id.*

[5] DSS2 – 12.

Plan allocates the Debtors' combined assets solely to the Subsidiary Debtor estates. As a result, Arahova Notes and FrontierVision Holdco Notes receive 99.5% and 127.1% of par, respectively. In turn, the Plan treats ACC as if it has no assets, because all its assets are allocated to other estates. Thus, recoveries to ACC creditors are limited either to so-called "give ups" from creditors of the subsidiary Debtors or to any residual value remaining after claims against subsidiary Debtors have been paid in full, plus accrued interest.

45. **"Give Ups".** In my view the "give ups" offered by the creditors who benefit from this virtual substantive consolidation are for two reasons not a reasonable surrogate for the benefits of either Waterfall Distributions or distributions that would result from strict application of substantive consolidation.

46. First, the proposed "give ups" still unwarrantedly reduce the recoveries to which ACC Senior Noteholders are entitled under generally recognized distribution methods. That is, if the Plan followed the Debtors' books and records through a Waterfall Distribution, ACC Senior Noteholders would receive a 112.9% recovery. Alternatively, if the Plan strictly applied principles of substantive consolidation, it would provide ACC Senior Noteholders with a 110.5% recovery.[6] Through the "give up" approach, ACC Senior Noteholders are limited to a recovery that has been reduced to 88.7% of par.

47. This large discrepancy is a further indication that the Plan reaches an unfair result designed to shift value from one group of creditors to another group of

[6] These recoveries assume a TWC Stock value of $6.48 billion. In addition, consistent with the Debtors' modeling of substantive consolidation, they assume that ACC Senior Noteholders are the sole beneficiary of the subordination of the ACC Subordinated Notes.

creditors without justification. Neither the Plan nor the Second Disclosure Statement Supplement explain the basis for asset consolidation and subordination of ACC's creditors. Indeed, the Plan does not show how a single entry in the Debtors' books and records has been changed to produce the results achieved by the Plan. In my experience, substantive consolidation is typically implemented only when there is no alternative because a debtor cannot file schedules of assets and liabilities. By contrast, the Plan appears to have been designed solely to favor Arahova's creditors to the overwhelming disadvantage of ACC's creditors.

48. Second, the proposed "give ups" are largely illusory. All "give ups" are subject to certain Plan provisions that provide for repayment of these "give ups" (plus interest at specified rates) from the contingent value vehicle ("CVV") and, in certain cases, other sources of value, thereby offsetting the so-called "give ups" with "take backs."[7] Further, the $1.080 billion settlement "give up" is susceptible to economic deterioration as a function of tactical changes in certain of the reserves specified by the Debtors.

49. **ACC Bears All Risks Under The Plan**. In my opinion, the Plan unreasonably and unfairly allocates all risk to ACC's creditors.

50. First, on the Effective Date the Plan allocates first priority to Available Cash to subsidiary Debtor creditors.[8] Accordingly, ACC creditors will recover in TWC Stock and CVV Interests, whereas other creditors receive significant protection against value deterioration by getting much of their recovery in cash.

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[7] DSS2 – 12, DSS2 – 38-45.

[8] *See* Plan § 10.13.

51. Second, the costs of *all* estates, including accrual of post-petition interest, the costs of any initial public offering of TWC stock and additional administrative expenses, are borne *solely* by ACC's creditors. This is true of generally all risks to estate value because the base recovery for all other creditor groups is essentially fixed, while ACC creditors receive the variable value of any surplus assets. The Plan forces ACC creditors to bear the entire risk of value degradation.

52. Third, ACC's creditors also bear the risk of additional claims allowances. To the extent claims against subsidiaries become allowed claims, those would be paid before value flows to ACC. Although ACC's creditors bear this risk, subsidiary trade creditors receive the benefit of claims disallowances – recoveries on disallowed claims go to offset their so-called "give-up," thereby increasing recoveries for subsidiary trade creditors.

53. Fourth, ACC's creditors bear the risk of loss due to delayed distributions. ACC's creditors must wait for the release of holdbacks relating to the sale of the Debtors' assets and of disputed claims reserves before they receive their full-allocated recoveries. Other creditors, however, are paid their entire recoveries upon consummation, subject to a 60-day adjustment for the TWC Stock market price.

54. Fifth, the Plan further degrades ACC's assets by paying post-petition interest to other creditor groups at their contract rate of interest (or in the case of Subsidiary Trade Claims, 8% Interest). The Plan thereby deprives ACC's creditors of protections they would otherwise enjoy were this a case under Chapter 7 of the Bankruptcy Code and any post-petition interest were paid only at the Federal judgment rate.

55. For all these reasons, the Plan is unfair to ACC's creditors.

56. **The Plan Contains Provisions Designed To Coerce Acceptance**. The Plan contains several coercive elements designed to force ACC Senior Noteholders to accept the Plan. For example, the Plan threatens to reduce "give ups" by $50 million unless ACC creditors vote to accept the Plan.[9] Thus, absent a favorable vote by Class ACC-3 (ACC Senior Notes Claims), money to which ACC creditors are entitled would be reallocated to creditors of the subsidiary Debtors. Similarly, pursuant to the definition of the "Deemed Value" of the TWC Stock in the Plan, were Class ACC-3 not to accept the Plan, the deemed value of the TWC Stock would be reduced by $300 million and the cap on the adjusted value of the TWC Stock, pursuant to the True-Up Mechanism, would be reduced by $360 million. Because the distributions to ACC creditors consist of shares of TWC Stock, this reduction in deemed and adjusted value correspondingly reduces recoveries to ACC creditors.

57. The Plan also coerces ACC creditors' acceptance by offering special consideration on an individual basis in exchange for votes in favor of the Plan. The Global Settlement provides that Settlement Parties who vote in favor of (or, in the case of ad hoc committees, who support) the Plan, including the ACC Settling Parties, receive special individual benefits not available to other creditors. Pursuant to § 16.3 of the Plan, such parties receive broad exculpation and releases from claims by the Debtors and third parties.[10] In addition, pursuant to § 6.2(d) of the Plan, members of the ACC

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[9] DSS2 – 67.

[10] Section 16.3(a) of the Plan provides each of the Settlement Parties shall not be liable, to the extent permitted by law, for "Covered Matters." "Covered Matters" include:

Noteholders Committee who do not accept the Plan forfeit their entitlement to reimbursement of professional fees incurred after June 28, 2006. Further, § 11.1 of the Plan deprives parties-in-interest of the right to object to claims if they fail to join the ACC Settling Parties' subclass, while preserving that right for the Settlement Parties.[11] Accordingly, the Plan contains a number of coercive elements that are designed to force ACC Senior Noteholders to accept the Plan.

58. In my view, these provisions further illustrate the Plan's unfairness.

VI. THE TRUE-UP MECHANISM IN THE PLAN NO LONGER WORKS

59. In my opinion, the Plan imposes an unfair cap on any upside to the value of TWC Stock, while disproportionately shifting the risk of any loss of value to ACC's creditors.

60. Specifically, the Plan imposes a collar on any adjustments to the "Deemed Value" of TWC Stock. According to the Plan, TWC Stock has a maximum

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> any Cause of Action arising from and after the applicable Commencement Date from actions or omissions in connection with, relating to, or arising out these Chapter 11 Cases, [the] Plan, the Disclosure Statement, the Sale Transaction Documents and the Sale Transactions, including the solicitation of votes for and in pursuit of confirmation of [the] Plan or the JV Plan, or the implementation of [the] Plan or the JV Plan, the Sale Transaction Documents and the Sale Transactions, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation, confirmation and consummation of [the] Plan . . . .

Plan, § 16.3(a).

[11] *See* Plan § 11.1 (reserving the right to object for "Settlement Parties," which is defined in the Plan at Ex. A at A-32 as, "the ACC Settling Parties, Committee II, the Arahova Noteholders Committee, the FrontierVision Committee, Huff, the ACC Trade Committee, the Subsidiary Trade Committee and the Creditors Committee").

Deemed Value of $5.4 billion in the event the ACC Senior Notes Claims class accepts the Plan. Section 10.12 of the Plan then provides for a True -Up Mechanism to adjust the Deemed Value up or down by no more than 20% based on the volume weighted average trading price per share during the sixty days following the Effective Date. By virtue of this mechanism, the value can increase or decrease by 20%, which translates into a range of value of $4.08 billion to $6.48 billion.

61. The Deemed Value of TWC Stock drives the relative allocation of those shares between ACC's creditors and creditors of the subsidiary Debtors. Any increase in the value of those shares of stock will inure to ACC creditors' benefit (up to a minimum actual value of $6.48 billion) because creditors of the subsidiary Debtors will require fewer shares to satisfy their guaranteed recoveries.

62. This is another unfair aspect of the Plan respecting the allocation of risk to ACC's creditors. While those creditors bear 100% of the risk of declining prices, they receive little of the benefit from an increase in prices. By setting the Deemed Value far below the current market value, and then applying a collar to restrict the adjustment of that value, the Settling Parties have preserved any upside for themselves.

63. A settlement under these terms is unreasonable and unfair.

64. That creditors groups have supported this Plan does not alter my conclusion that the settlement embodied in the Plan is far below the range of reasonableness. First, each of the creditor groups other than the ACC Senior Noteholders is receiving at or near par; hence, it is understandable that each such group would support the Plan. Second, as discussed above, the settlement embodied in the Plan essentially

takes some of the recoveries that the ACC Senior Noteholders would receive under the Debtors' books and records and redistributes those recoveries to other creditor groups.

65. Moreover, that certain ACC Noteholders voted to approve the settlement also does not change my opinions. As discussed above, the Plan contains certain coercive elements calculated to secure the approval of ACC Senior Noteholders regardless of the economic merits of the Plan. For example, the Plan provides that if the ACC Noteholders vote not to approve the Plan, the Deemed Value of the TWC stock will be set at the artificially low value of $5.1 billion. Given that the prevailing view among securities analysts is that the TWC stock will be valued at $6 billion or more when it trades, some investors might have voted to approve the settlement *not* on the merits, but simply to avoid the punitive effect of the reduction of Deemed Value. In addition, I understand that some creditors hold both ACC notes *and* Arahova notes. These creditors may well have decided to vote for the Plan because of their Arahova holdings.

66. I understand there are contentions that if the Plan is not confirmed, the estates may incur additional expenses. In my opinion, the possibility of those expenses is not a valid reason for a fiduciary to approve an otherwise unfair settlement. Moreover, it appears that some or all the expenses can be avoided and, since the proposed settlement terminates if the Plan is not confirmed, *all* parties would have an economic incentive to negotiate a new Chapter 11 plan and try to eliminate or mitigate any incremental expenses.

VII. **CONCLUSION**

67. For the above reasons, and the reasons stated in the Goldin Expert Report, which is incorporated by reference into my testimony, were I a Chapter 7 or

Chapter 11 trustee for ACC I would not enter into the settlement embodied in the Plan. The recovery provided in the Plan for ACC Senior Noteholders is at least $600 million *below* the lowest level of the range of reasonableness and is laden with provisions that are unfair to ACC Senior Noteholders and favor creditors of other Debtors.

/s/ Harrison J. Goldin
Harrison J. Goldin

Sworn to before me this
4th day of December 2006

_____
Notary Public