

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: February 10, 2003
Hearing Time: 10:30 a.m.

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

DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 363 AUTHORIZING AND APPROVING DEBTORS' EMPLOYMENT AND COMPENSATION OF WILLIAM SCHLEYER AS CHAIRMAN AND CHIEF EXECUTIVE OFFICER AND RONALD COOPER AS PRESIDENT AND CHIEF OPERATING OFFICER OF ADELPHIA COMMUNICATIONS CORPORATION

Adelphia Communications Corporation (“ACC”) and the other above-captioned debtors and debtors in possession (collectively with ACC, the “Debtors”), by their attorneys, respectfully state as follows:

PRELIMINARY STATEMENT

In late March 2002 the Board of Directors (the “Board”) of ACC was faced with a series of challenges rarely confronted by any board. In the face of startling revelations indicating serious breaches of duty and financial misconduct by the Rigas family, the Board began a process that resulted in the termination of all of the senior executives of the company and departure from the Board of all Rigas family members who had constituted a majority of the directors.

To temporarily fill the void in senior management, Erland E. Kailbourne, a director, agreed to assume the position of Interim CEO, and a Special Committee consisting of outside directors expanded its role to supervise an investigation and to support the Interim CEO in efforts to stabilize the business.

Those roles have been admirably and ably performed by Mr. Kailbourne and the Special Committee with assistance from outside legal and financial advisors. It has, however, been recognized from the outset of this effort that ACC needed to identify, recruit and engage a permanent team of seasoned cable-industry executives to run its businesses, restore its credibility and restructure its finances.

The choice of such a team is among the most important actions ACC and its Board will take in these cases, and, therefore, the Board has conducted a comprehensive search for new senior management. Throughout the process, the Board has (i) solicited and sought to harmonize, and, to the extent possible, incorporated the comments of the lenders and official committees, (ii) relied upon current case precedent, such as In re WorldCom, Inc. et al., Case No. 02-13533 (AJG) (“WorldCom”), and (iii) aggressively negotiated the terms of the employment agreements with William Schleyer to become Chairman and Chief Executive Officer (“CEO”) and Ronald Cooper to become President and Chief Operating Officer (“COO”) of ACC. Approval of those arrangements is sought by this motion.

RELIEF REQUESTED

1. By this motion (the “Motion”), the Debtors seek entry of an order authorizing and approving the Debtors’ employment and compensation of William Schleyer as Chairman and CEO and Ronald Cooper as President and COO pursuant to agreements with each of them (the “Schleyer Agreement” and the “Cooper Agreement” and, together, the “Employment Agreements”), copies of which are annexed hereto as Exhibits A and B.¹

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicate for the relief

¹ At a future date, the Debtors may enter into more definitive agreements embodying the terms of these Employment Agreements.

requested herein is section 363 of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BASIS FOR RELIEF REQUESTED

A. The Debtors’ Need for New Senior Management

3. Since the founding of ACC’s predecessor cable companies in 1952 by John J. Rigas through May 2002, John Rigas and certain members of his immediate family (collectively, the “Rigas Family”) served in various positions of senior management of the Debtors. However, on May 15, 2002, John Rigas stepped down from his positions as Chairman, President and Chief Executive Officer of ACC. With the subsequent resignations of, among others, Timothy J. Rigas, ACC’s Executive Vice President, Chief Financial Officer and Chief Accounting Officer, Michael Rigas, the former executive vice president for operations, and James Rigas, the former executive vice president for strategic planning, the Rigas Family no longer participates in the management of ACC. In addition, Peter Venetis, John Rigas’ son-in-law, resigned from the Board on June 11, 2002. The resignation and subsequent indictment of John, Timothy and Michael Rigas and three other former senior managers – James R. Brown, the former vice president for finance, Michael C. Mulcahey, the former director of internal reporting and Timothy Werth, the former director of accounting – further eviscerated the Debtors’ senior management.

4. With intensive participation by the Special Committee of the Board, Erland E. Kailbourne, as Chairman and Interim Chief Executive Officer, Christopher Dunstan, as Chief Financial Officer, Steven Teuscher, as Controller, and the Debtors’ outside restructuring advisors, Conway, Del Genio, Gries, & Co. (“CDG”), among others, have stepped in to fill many

key senior management roles. Under their stewardship and notwithstanding the substantial loss of senior management, ACC continues to operate a viable business enterprise, generating substantial cash flow from operations. Mr. Kailbourne, ACC's independent directors and CDG, with assistance from all of their financial and legal advisors, have taken the initial steps necessary to stabilize and maintain the Debtors' operations and the value of the Debtors' estates.

5. While the stewardship of current management has been exemplary, the Board recognizes and acknowledges that ACC's long term growth prospects, reputation and credibility with customers, suppliers, employees, franchisors and creditor and equity constituencies require that new, experienced senior executives with cable industry experience be engaged to develop the Debtors' business strategies and lead the Debtors through the chapter 11 process. Therefore, commencing in July 2002, the Board began a comprehensive search for such senior management.

B. The Search Process

6. In July 2002, the Board established a nominating committee (the "Nominating Committee"), which consisted of two independent directors, both of whom have some experience in the cable industry. The Nominating Committee was charged with the task of identifying experienced senior managers who would: (i) lead ACC through the restructuring process; (ii) restore ACC's credibility with its vendors and the financial and franchising authority communities; (iii) be supported by all or substantially all of the stakeholders in these cases; and (iv) be available with a management team that could be quickly assembled.

7. Using their industry contacts, the Nominating Committee created a list of potential candidates and contacted many of them on a confidential basis. It became clear through

this process that the pool of available candidates with extensive industry experience was limited. Furthermore, many of these potential candidates had successful and extremely profitable careers in the industry and, therefore, were only mildly interested in taking on the massive commitment of time and personal dislocation that leadership of ACC entails.

8. At the inception of the search process, representatives of the Debtors and their professionals met with the representatives of the unsecured creditors committee (the “Creditors Committee”) and its professionals to discuss the process and to share information regarding potential candidates. At the Debtors’ request, the Creditors Committee formed a subcommittee (the “Subcommittee”) to work with the Nominating Committee as the search process unfolded. The Subcommittee was comprised of a representative of Home Box Office and two representatives of the holders of ACC’s public debt, each of which through his or her institutions has extensive investments in cable companies. By the end of July 2002, the Nominating Committee had compiled a list of 19 individuals to be considered. Many of these individuals were viewed as potential COO (but not CEO) candidates. Furthermore, it became evident quite quickly that many were not available in the near term. Throughout the rest of the summer of 2002, the Nominating Committee and the Subcommittee and its advisors met to refine further the list of potential candidates.

9. On July 31, 2002, the United States Trustee for the Southern District of New York (the “US Trustee”) appointed the equity committee (the “Equity Committee”). Since the CEO search was well underway at that point, the Debtors undertook to apprise the Equity Committee of the status of the search and keep it informed as the search progressed.

10. In late July 2002, the Nominating Committee identified an available and experienced candidate for the CEO position (the “First Candidate”).² On or about August 1, 2002, representatives of the Debtors met with the Subcommittee to discuss progress in the CEO search. The Subcommittee reviewed with the Debtors a list of approximately 28 candidates, of which almost half were on the Nominating Committee’s list. The representatives of the Debtors and the Subcommittee discussed the candidacy of the First Candidate as well as other individuals on the lists of both the Nominating Committee and the Subcommittee. Members of both the Nominating Committee and Subcommittee agreed to contact a short list of select candidates. Although Messrs. Schleyer and Cooper were discussed as potential candidates, the Nominating Committee and the Subcommittee agreed that since both were deeply involved in running the AT&T Broadband businesses and the then pending (but now completed) merger of that business with Comcast, they would not be considered as candidates at that point in time.³ Approximately six potential candidates were contacted for the CEO position. During this process, advisors to the Equity Committee were informed of the activities of the Nominating Committee and the possibility that the First Candidate was likely to be recommended and expressed no disagreement at such time to the process.

11. During the week of August 5, 2002, the Nominating Committee and the Subcommittee had further discussions regarding candidates. Thereafter, the Nominating Committee, with the assistance of the Creditors Committee, attempted to negotiate an

² Due to the confidential nature of the negotiations between the Debtors and the First Candidate and to protect the privacy of the First Candidate, the identity of the First Candidate will not be disclosed.

³ At the time, pending the completion of AT&T Broadband’s merger with Comcast Corporation (which was completed on November 18, 2002), Messrs. Schleyer and Cooper were employed by AT&T Corp. as President/Chief Executive Officer and Chief Operating Officer, respectively, of AT&T’s cable business, AT&T Broadband.

employment arrangement with the First Candidate. After a series of discussions, the parties were unable to reach agreement and discussions with the First Candidate terminated.

12. In mid-September 2002, the Subcommittee informed the Nominating Committee that Messrs. Schleyer and Cooper had approached the Creditors Committee and indicated a desire to be considered as candidates.⁴ Messrs. Schleyer and Cooper met with representatives of ACC and the Subcommittee a number of times from mid-September through mid-October. On or about October 1, 2002, ACC invited Messrs. Schleyer and Cooper to indicate the terms upon which they would expect to be compensated and other relevant terms of employment and, at their request, began to provide them due diligence information regarding ACC.⁵ As their candidacies were now more viable, the Nominating Committee continued to conduct its own confidential due diligence on Messrs. Schleyer and Cooper.

13. From mid-September through the end of October 2002, the Nominating Committee continued to consider and meet with a limited number of possible candidates for the CEO position. The population of potential candidates became further defined by mid-October. On or about October 17, 2002, representatives of ACC met with representatives of the Creditors Committee and the Equity Committee to discuss the status of the CEO search. In addition to the candidacy of Messrs. Schleyer and Cooper, one other potential candidate (the “Second Candidate”)⁶ was specifically discussed and although the Subcommittee indicated that it was unlikely the Second Candidate would be acceptable to the Creditors Committee, the Debtors nonetheless continued to pursue discussions with the Second Candidate while at the same time

⁴ The AT&T/Comcast merger was proceeding and was at the point of regulatory review, thereby more clearly defining the near term availability of the candidates.

⁵ The Debtors provided the information to Messrs. Schleyer and Cooper pursuant to confidentiality agreements with the Debtors, dated October 6 and 8, 2002, respectively.

⁶ Due to the confidential nature of the discussions between the Debtors and the Second Candidate and to protect the privacy of the Second Candidate, the identity of the Second Candidate will not be disclosed.

arranging for Messrs. Schleyer and Cooper to meet with representatives of the Debtors' prepetition and postpetition lenders (the "Lenders"), the Creditors Committee, the Equity Committee and their respective advisors. By early November, the candidacies of Messrs. Schleyer and Cooper had gained substantial support among ACC's constituencies, although the Second Candidate remained a possible alternative.

14. Sensitive to the need to bring the process to a conclusion, the Nominating Committee convened sessions commencing on Friday, November 8. ACC's Board met for a full day on November 9. During those sessions, the views of the Creditors Committee regarding the prospective candidates were expressed in person by designated representatives. Messrs. Schleyer and Cooper and the Second Candidate made lengthy presentations and responded to questions from the Board. The Board also sought and received extensive advice and analysis from its legal and financial advisors. After lengthy deliberations, the Board voted to support the appointment of Mr. Schleyer as CEO and Mr. Cooper as COO and charged the compensation committee of the Board (the "Compensation Committee") with the task of negotiating employment agreements with Messrs. Schleyer and Cooper to be brought back to the Board for its approval.

C. The Negotiation of the Terms of the Employment Agreements

15. From mid-November 2002 through mid-January 2003, the Compensation Committee conducted extensive negotiations with Messrs. Schleyer and Cooper. Initial drafts of the Employment Agreements, as well as subsequent drafts, were sent to the Equity Committee for comment. Over the course of these negotiations, the Compensation Committee received extensive comments from the Lenders, the Creditors Committee and the Equity Committee.

Certain of the issues raised by the Lenders and the Creditors Committee were addressed in the subsequent drafts of the Employment Agreements.

16. By letter dated December 26, 2002, the Equity Committee raised a myriad of fundamental objections to the Employment Agreements as well as other concerns. On January 7, 2003, members of the Board and members of the Equity Committee met in an effort to deal with the Equity Committee's issues regarding the Employment Agreements. In addition, ACC's advisors also communicated with the staff of the Securities and Exchange Commission ("SEC") and the US Trustee to ensure that they were kept current on all developments.

17. On January 8, 2003, the Board convened to further consider the proposed employment of Messrs. Schleyer and Cooper. The chairman of the Creditors Committee and certain of its advisors were invited to address the Board to give their perspectives on the evolving situation and the concerns of the Equity Committee. After synthesizing the various comments and concerns of the various constituencies, the Board determined to revise the terms of the Employment Agreements to resemble more closely the structure of the agreement recently approved for the new CEO appointed in WorldCom. Negotiations proceeded over the next several days in a positive and constructive manner resulting in an overall agreement on revised terms which were generally consistent with the WorldCom structure. The results of the negotiations were promptly communicated to the representatives of the Creditors Committee, the Equity Committee, the US Trustee and the SEC.

18. Creditors Committee and Lender representatives indicated overall support for the new structure, and urged the Debtors to proceed quickly to finalize the agreements. The Equity Committee objected and filed an adversary proceeding on January 9, 2003, which sought

to substantially alter the corporate governance of ACC and effectively to enjoin proceeding with the employment arrangements. This Court has separately dealt with that matter.

19. On the evening of January 13, 2003, drafts of the proposed Employment Agreements were circulated to representatives of the Creditors and Equity Committees and the Lenders, seeking comment and input prior to the Board's consideration of the agreements on January 16. Prompt responses were received from the Lenders and the Creditors Committee, offering support and some comments. The Equity Committee provided comments on January 16 at approximately 3:00 p.m., two hours before the Board convened. The comments were extensive and essentially a reiteration of prior grievances.

20. The Board met on the evening of January 16 and, after full discussions and advice from counsel and financial advisors and hearing an opinion from Pearl Meyer, a respected compensation consultant and expert, that the compensation arrangements were reasonable in these circumstances, determined to approve the Employment Agreements, subject to the approval of this Court.

D. The Qualifications of Messrs. Schleyer and Cooper

21. William Schleyer and Ronald Cooper have outstanding résumés in the cable industry and meet the other requirements set by the Nominating Committee for the type of candidates required to fill the CEO and COO positions.

(i) William Schleyer

22. From October 2001 to December 2002, Mr. Schleyer served as President and Chief Executive Officer of AT&T Broadband, the largest cable provider in the United States.

AT&T Broadband provides telephone service, high speed cable internet access, and home entertainment cable service to more than 13 million homes across the United States.

23. Before joining AT&T Broadband, Mr. Schleyer was a principal in Pilot House Ventures, a venture capital company. Mr. Schleyer also previously served as President and Chief Operating Officer of MediaOne, the broadband services arm of US West Media Group, and President and Chief Operating Officer of Continental Cablevision, Inc., before its merger with US West in 1996. Under Mr. Schleyer's leadership, Continental won the Cable Operator of the Year award several times. Mr. Schleyer also has been involved in key leadership positions at the National Cable Television Association for approximately ten years.

24. Mr. Schleyer earned his bachelor's degree in mechanical engineering from Drexel University and a master's degree in business from Harvard Business School. Currently, Mr. Schleyer serves on the boards of directors of CableLabs, Inc., C-SPAN, NCTA and Rogers Communications, Inc.

(ii) Ronald Cooper

25. From October 2001 to December 2002, Mr. Cooper served as Chief Operating Officer for AT&T Broadband, and was responsible for overseeing the company's voice, video and data businesses. As COO, Cooper's primary focus was the day-to-day operations of all functional and geographic units of AT&T Broadband.

26. Before joining AT&T Broadband, Mr. Cooper was a founder, president and chief operating officer of RELERA, a company which provided outsourced managed hosting and solutions to underserved markets through industry-leading infrastructure and technology. RELERA built and operated 11 data centers across the country, providing information services to

corporate customers. Prior to his tenure at RELERA, he served as Executive Vice President of MediaOne, the broadband services arm of US West Media Group, where he was responsible for all operations of the broadband services company. In prior assignments with MediaOne, he oversaw the operations of the company's marketing, product management, programming, technology, human resources and advertising sales functions. Cooper joined Continental Cablevision, before its merger with US West in 1996, in 1982. At Continental, he held various positions, including marketing manager, general manager, regional vice president and senior vice president.

27. Mr. Cooper is a graduate of Wesleyan University with a bachelor of arts degree in liberal arts. He is active in the National Cable Television Association, CTAM, and numerous state trade associations and industry and community organizations.

E. The Employment Agreements⁷

28. The Debtors and Messrs. Schleyer and Cooper have negotiated the terms of compensation for their service to the Debtors as Chairman and CEO, and COO and President, respectively (collectively, the "Executive Compensation").

(i) William Schleyer

29. The Debtors seek this Court's authority to enter into the Schleyer Agreement, under which Mr. Schleyer would serve as Chairman of the Board and Chief Executive Officer of ACC for a term commencing on this Court's approval of the Schleyer Agreement (the "Effective Date") and through and including December 31, 2005, with annual

⁷ In the event of any inconsistency between the summary and the Employment Agreements, the terms of the Employment Agreements shall control. Terms not defined herein shall have the same meaning ascribed to them in the applicable agreement.

renewals of the term thereunder unless either party were to give notice of nonrenewal at least six months in advance. The Debtors propose to compensate Mr. Schleyer as follows in consideration of his service:

- (i) an annual base salary of \$1,275,000 (the “Schleyer Base Salary”);
- (ii) an annual target bonus (the “Target Bonus”) equal to 100 percent of the Schleyer Base Salary. For 2003 only, the target bonus is guaranteed pro rata for the period between the Effective Date and December 31, 2003, and is equal to 100 percent of the Schleyer Base Salary. For subsequent years, the bonus is subject to achievement of performance criteria set by the Board;
- (iii) a signing bonus of \$1,700,000, to be paid ratably over the initial employment period (until December 2005) (the “Schleyer Signing Bonus”). Payment of the Schleyer Signing Bonus would cease if Mr. Schleyer does not complete the initial term of employment for any reason other than termination without Cause, resignation, for Good Reason, death or disability;
- (iv) participation in all of ACC’s benefits for employees and executives;
- (v) upon termination without Cause or resignation for good Reason, a severance payment of three times the sum of the Schleyer Base Salary and the Target Bonus. Mr. Schleyer would also receive the remaining unpaid balance of the Schleyer Signing Bonus, and eighteen months of continued health coverage;
- (vi) death or disability benefits for Mr. Schleyer or his estate of an amount equal to the Schleyer Base Salary, a pro rata portion of the Target Bonus for the year of termination, and the remaining unpaid balance of the Schleyer Signing Bonus;
- (vii) upon the Debtors’ emergence from chapter 11, an initial equity award of restricted shares valued at \$10.2 million at the time of emergence (the “Emergence Date”), which shall vest ratably over the three-year period commencing on the first anniversary and ending on the fourth anniversary of the Effective Date;
- (viii) upon the Debtors’ emergence, Mr. Schleyer may receive an additional grant of restricted shares of up to \$5.1 million, if the Board determines that Mr. Schleyer’s performance during the pre-emergence period has been exemplary or significantly exceeded

the level of performance that could reasonably have been expected;

- (ix) for each full calendar year following the calendar year of the Emergence Date, subject to the achievement of performance goals set by the Board, an annual equity award valued at two times the sum of the Schleyer Base Salary and Target Bonus;
- (x) at the time of emergence and in each calendar year thereafter, stock options may be awarded at the Board's discretion, based on performance;⁸
- (xi) reimbursement of all reasonable transaction costs and moving expenses associated with relocation in accordance with the Debtors' normal policies;
- (xii) upon termination of employment (other than expiration of the Schleyer Agreement without renewal), Mr. Schleyer is prohibited for a period of one year from engaging in competition with ACC or soliciting customers on behalf of ACC's competitors;
- (xiii) reimbursement of reasonable legal costs and other out-of-pocket expenses associated with the negotiation of the Schleyer Agreement; and
- (xiv) indemnification rights pursuant to an indemnification agreement, substantially in the form attached to the Schleyer Agreement.

(ii) Ronald Cooper

30. Subject to this Court's approval, the Debtors seek to enter into the Cooper Agreement, under which Mr. Cooper will serve as President and Chief Operating Officer of ACC for a term commencing on this Court's approval of the Cooper Agreement (the "Effective Date") and through and including December 31, 2005, with annual renewals of the term thereunder unless either party were to give notice of nonrenewal at least six months in advance. The Debtors propose to compensate Mr. Cooper as follows in consideration of his service:

- (i) an annual base salary of \$850,000 (the "Cooper Base Salary");

⁸

In general, 75 percent of the shares granted to Mr. Schleyer as restricted shares or acquired by him upon exercise of options (excluding any shares needed to pay applicable taxes) cannot be sold by Mr. Schleyer until six months following the date he terminates employment with ACC.

- (ii) an annual target bonus (the “Target Bonus”) equal to 100 percent of the Cooper Base Salary. For 2003 only, the target bonus is guaranteed pro rata for the period between the Effective Date and December 31, 2003, and is equal to 100 percent of the Cooper Base Salary. For subsequent years, the bonus is subject to achievement of performance criteria set by the Board;
- (iii) a signing bonus of \$1,130,000, to be paid ratably over the initial employment period (until December 2005) (the “Cooper Signing Bonus”). Payments of the Cooper Signing Bonus would cease if Mr. Cooper does not complete the initial term of employment for any reason other than termination without Cause, resignation, for Good Reason, death or disability;
- (iv) participation in all of ACC’s benefits for employees and executives;
- (v) upon termination without Cause or resignation for good Reason, a severance payment of three times the sum of the Cooper Base Salary and the Target Bonus. Mr. Cooper would also receive the remaining unpaid balance of the Cooper Signing Bonus, and eighteen months of continued health coverage;
- (vi) death or disability benefits for Mr. Cooper or his estate of an amount equal to the Schleyer Base Salary, a pro rata portion of the target bonus for the year of termination, and the remaining unpaid balance of the Cooper Signing Bonus;
- (vii) upon the Debtors’ emergence from chapter 11, an initial equity award of restricted shares valued at \$6.8 million at the date of emergence (the “Emergence Date”), which shall vest ratably over the three-year period commencing on the anniversary and ending on the fourth anniversary of the Effective Date;
- (viii) upon the Debtors’ emergence, Mr. Cooper may receive an additional grant of restricted shares of up to \$3.4 million, if the Board determines that Mr. Cooper’s performance during the pre-emergence period has been exemplary or significantly exceeded the level of performance that could reasonably have been expected;
- (ix) for each full calendar year following the calendar year of the Emergence Date, subject to achievement of performance goals set by the Board, an annual equity award valued at two times the sum of the Cooper Base Salary and Target Bonus;

- (x) at the time of emergence and in each calendar year thereafter, stock options may be awarded at the Board's discretion, based on performance;⁹
- (xi) reimbursement of all reasonable transaction costs and moving expenses associated with relocation in accordance with the Debtors' normal policies;
- (xii) upon termination of employment (other than expiration of the Cooper Agreement without renewal), Mr. Cooper is prohibited for a period of one year from engaging in competition with ACC or soliciting customers on behalf of ACC's competitors;
- (xiii) reimbursement of reasonable legal costs and other out-of-pocket expenses associated with the negotiation of the Cooper Agreement; and
- (xiv) indemnification rights pursuant to an indemnification agreement, substantially in the form attached to the Cooper Agreement.

31. The Debtors also seek this Court's authority to enter into the indemnification agreements, substantially in the form annexed to the Employment Agreements. Upon the date of this Court's approval, the indemnification agreements will indemnify Messrs. Schleyer and Cooper in their capacity as officers of ACC and, in the case of Mr. Schleyer, in his capacity as a director of ACC. The indemnification agreements are substantially the same agreements as approved by this Court's Order Granting Debtors' Motion For (i) Approval Of Compensation Of New Directors, (ii) Approval Of Indemnification Agreement By And Among The Debtors And New Directors And (iii) Determination That Indemnification Claims Arising From Postpetition Services Of New Directors Are Entitled To Administrative Expense Status, dated October 22, 2002. A copy of the order is annexed hereto as Exhibit C.

32. Pursuant to any order of this Court authorizing and approving the Debtors' employment and compensation of Messrs. Schleyer and Cooper pursuant to the Employment

⁹ In general, 75 percent of the shares granted to Mr. Cooper as restricted shares or acquired by him upon exercise of options (excluding any shares needed to pay applicable taxes) cannot be sold by Mr. Cooper until six months following the date he terminates employment with ACC.

Agreements, and in light of the possibility of substantial adverse tax consequences to Messrs. Schleyer and Cooper absent such a finding, the Debtors seek a finding that the compensation payable under the Employment Agreements will constitute reasonable compensation for their services and covenants thereunder.

COMMON LAW EMPLOYMENT

33. Messrs. Schleyer and Cooper have been spending and will continue to spend, substantial time analyzing the Debtors' business operations, reviewing relevant financial data and meeting with members of management, legal and financial advisors to ACC and representatives of various constituencies.

34. Pursuant to paragraph 2(b) of the respective Employment Agreements, for the period between the date of execution of the Employment Agreements through the date upon which this Court approves the Employment Agreements, Messrs. Schleyer and Cooper are common-law employees of the Debtors and will be compensated at a daily rate of \$9,600 and \$6,400, respectively, plus all reasonable expenses.¹⁰

35. As noted above, immediate exposure to and involvement in the day-to-day operations of the Debtors' businesses will enable Messrs. Schleyer and Cooper to accelerate the long-term planning and business plan analysis critically essential to the Debtors' reorganization. Messrs. Schleyer and Cooper are now actively recruiting individuals to assume important roles in management of ACC in support of their efforts to build a management team which will restore ACC's credibility in the marketplace. Although the individuals being recruited are unlikely to commence employment until the Employment Agreements for Messrs. Schleyer and Cooper are

¹⁰ The daily rate was based on the respective base salaries of Messrs. Schleyer and Cooper and target bonus for 2003, divided by the number of expected working days in a typical calendar year.

approved, the fact that Messrs. Schleyer and Cooper will be intimately involved in the day-to-day activities of ACC pending such approval is likely to substantially enhance recruiting efforts. They will not have any titles.

LEGAL AUTHORITY FOR RELIEF REQUESTED

36. Section 363(b) of the Bankruptcy Code provides in pertinent part: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business property of the estate.” 11 U.S.C. § 363(b). Courts within this Circuit interpreting section 363(b) have held that transactions should be approved pursuant to this provision when, as here, they are supported by management’s sound business judgment. See, e.g., In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (outlining requirements for sale of assets pursuant to section 363); and In re Phoenix Steel Corp., 82 B.R. 334, 336-36 (Bankr. D. Del. 1987).

37. Courts recognize the applicability of section 363(b) to the use of estate property to compensate individuals employed outside the ordinary course of business. See, e.g., In re McDonald Bros. Construction, Inc., 114 B.R. 989, 994 (Bankr. N.D. Ill. 1990; In re First Services Corp., 25 B.R. 66, 69 (Bankr. D. Conn. 1982).

38. Selecting Messrs. Schleyer and Cooper to fill the two top management posts is the most critical decision the Debtors have made to date in these cases. As detailed above, the Debtors have engaged in a six-month process to select a CEO and COO. The process has been carefully conducted to utilize and benefit from the experience, expertise and views of not only the Board and its financial and legal advisors, but also the Creditors Committee, the Subcommittee, the Lenders, the Equity Committee and their respective professionals, the SEC

and the US Trustee. Throughout the process, the Debtors have evaluated the qualifications of many potential candidates, reviewed numerous potential candidacies with the various constituencies, and engaged in lengthy negotiations with several candidates. The process by which Messrs. Schleyer and Cooper were selected was thorough, fair and reasonable.

39. Based on the circumstances of these cases and an examination of the compensation packages paid to other senior executives in the cable industry and in other large chapter 11 cases, the Debtors believe the Employment Agreements are reasonable.

(i) Circumstances of these Cases

40. The egregious activities of prior management have created monumental uncertainties for ACC, making it very difficult to attract qualified executives to serve in senior management. The numerous challenges confronting ACC, including (i) the prospect of participating in a search process that required input from so many constituencies with conflicting agendas and parochial concerns, (ii) the unusual complexity of ACC's bankruptcy and the elevated uncertainty involved with any chapter 11 case involving allegations of fraud and misconduct; (iii) the pendency of multiple civil and criminal proceedings; (iv) ACC's urgent need to restore its credibility with its vendors and the financial and franchising authority communities; (v) the paucity of highly qualified candidates; (vi) the need for a management team that could be assembled quickly, placed tremendous burdens on the process. These circumstances were made all the more difficult by the unfortunate leaks to the financial and industry press. Nonetheless, the Debtors goals have been achieved. Seasoned, experienced executives have been engaged and are assembling a team of professional managers, who, with the new CEO and COO, will lead the reorganization process.

(ii) Comparable Compensation: The WorldCom Compensation Package

41. As described above, the Debtors modeled the terms of the Employment Agreements on those terms adopted in connection with the employment of Michael D. Capellas as President, Chief Executive Officer and Chairman of the Board of Directors in In re WorldCom, Inc. et al., Case No. 02-13533 (AJG) (the “Capellas Agreement”). For the convenience of the Court, annexed hereto as Exhibits D and E, respectively, are a copy of the motion (with exhibits) seeking authority to enter into the Capellas Agreement and the order approving the motion, dated December 16, 2002.

42. The members of the Nominating Committee and the Subcommittee have experience in the cable industry and extensive investments in cable companies, respectively, which provides them with a knowledge of comparable compensation paid to other senior managers in the industry. Moreover, additional context for the determination of the reasonableness of the Employment Agreements was provided by the Debtors’ discussions and negotiations with other potential candidates and the report from Pearl Meyer, the compensation consultant and expert.

43. The Debtors submit that the employment of Messrs. Schleyer and Cooper on the terms reflected in the Employment Agreements is not only based on the Debtors’ reasonable business judgment, but is in the best interest of the Debtors’ estates. The terms of the Employment Agreements are the result of an extensive search process and substantial arms’ length negotiations or discussions between the Debtors and the executives, with continuing participation from major parties in interest.

44. By reaching agreement with Messrs. Schleyer and Cooper, the Debtors have achieved the most significant milestone to date in these cases. Good faith efforts have been made to understand and accommodate, where possible, the positions and objections of the major constituencies. The Debtors now seek this Court's approval so that the new and necessary momentum towards reorganization can be set in motion.

PROCEDURE

45. The Debtors will provide notice of this Motion to: (i) the US Trustee; (ii) counsel to the agents for the Lenders; (iii) counsel to the Creditors Committee; (iv) counsel to the Equity Committee; (v) the SEC; (vi) all parties who have filed a request for service of all pleadings pursuant to Bankruptcy Rule 2002 as of the day prior to the service hereof; and (vii) counsel to Messrs. Schleyer and Cooper.

46. As this Motion presents no novel issue of law, the Debtors request that the Court dispense with the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith.

47. No previous request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as this Court may deem just or proper.

Dated: January 21, 2003

WILLKIE FARR & GALLAGHER¹¹
Attorneys for the Debtors and
Debtors in Possession

By: /s/ Myron Trepper
Myron Trepper (MT-2636)
(A Member of the Firm)
Marc Abrams (MA-0735)
(A Member of the Firm)
Shelley C. Chapman (SC-4691)
(A Member of the Firm)

787 Seventh Avenue
New York, New York 10019-6099
(212) 728-8000

¹¹ All inquiries concerning this Motion should be directed to Morris J. Massel at 212-728-8980.

