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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: July 26, 2005 @ 9:45 a.m.
Objection Deadline: July 21, 2005 @ 4:00 p.m.

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

**NOTICE OF MOTION FOR AN ORDER PURSUANT TO SECTIONS 105 AND 363 OF
THE BANKRUPTCY CODE AND RULES 2002, 6004 AND 9014 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE SEEKING APPROVAL OF THE SALE OF
DEBTORS' LONG DISTANCE BUSINESS TO
TELECOM MANAGEMENT INC. D/B/A PIONEER TELEPHONE**

PLEASE TAKE NOTICE that a hearing (the "Hearing") will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, on July 26, 2005, 9:45 a.m., or as soon thereafter as counsel may be heard, in Courtroom 621, United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), One Bowling Green, New York, New York 10004, to consider the annexed motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors"), for an order pursuant to 11 U.S.C. §§ 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing and approving the sale of the Debtors' long distance telephone business ("Adelphia Long Distance") to Telecom

Management Inc. d/b/a Pioneer Telephone (“Buyer”), pursuant to an Asset Purchase Agreement (the “Asset Purchase Agreement”), free and clear of liens, claims, encumbrances and interests.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that 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.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion, must: (i) be made in writing; (ii) state with particularity the grounds therefore; (iii) be filed with the Bankruptcy Court (with a copy to chambers); (iv) be served upon the undersigned (Attn: Shelley C. Chapman, Esq.); together with proof of service thereof, so as to be received no later than July 21, 2005 at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE that unless objections are received by that time, the relief may be granted as requested in the Motion.

Dated: June __, 2005

WILLKIE FARR & GALLAGHER LLP
Attorneys for the Debtors and
Debtors in Possession

By: _____
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**MOTION FOR AN ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE AND RULES 2002, 6004 AND 9014 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE SEEKING APPROVAL OF THE SALE OF
DEBTORS' LONG DISTANCE BUSINESS TO
TELECOM MANAGEMENT INC. D/B/A PIONEER TELEPHONE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by their attorneys, respectfully state as follows:

INTRODUCTION

1. The Debtors currently operate a long distance telephone business that provides service to approximately 110,000 subscribers (“Adelphia Long Distance”). Recently, the Debtors determined that continued operation of Adelphia Long Distance was not in the best interests of the Debtors or their creditors. Accordingly, the Debtors filed a motion seeking the authority of this Court to wind down and terminate Adelphia Long Distance (the “Termination Motion”). Subsequent to the filing of the Termination Motion, however, the Debtors were contacted by several parties interested in purchasing this business segment. Having selected the offer made by Telecom Management, Inc. d/b/a Pioneer Telephone (the “Buyer”) as the highest

and best offer for the business, the Debtors hereby seek authority from this court to sell Adelphia Long Distance to the Buyer.

BACKGROUND

2. Adelphia Long Distance is a reseller provider of long distance services offering Adelphia-branded domestic long distance and international long distance services to approximately 110,000 customers in twenty-seven states throughout the United States.

Customer charges are entirely usage-based (approximately \$0.075 per minute for domestic calling) with no minimum charges or monthly service fees.

3. Customer service is provided by Adelphia Long Distance through a team of approximately 25 full-time employees. Adelphia Long Distance had revenue in 2004 of approximately \$8.6 million and earnings before interest, taxes, depreciation, amortization, reorganization expenses and corporate allocations of approximately \$1.0 million.

4. On April 20, 2005, the Debtors entered into an agreement with Time Warner NY Cable LLC (“Time Warner”) in conjunction with Comcast Corporation (“Comcast” and together with Time Warner, “TW-C”) to sell substantially all of the Debtors’ assets to TW-C pursuant to a plan of reorganization (the “TW-C Transaction”). The agreement was the result of an extended bidding process, as well as extensive negotiations between the Debtors and TW-C. The TW-C Transaction is the centerpiece of the Debtors’ plan for emergence from bankruptcy and necessarily commands significant time and attention from members of the Debtors’ senior management.

5. Adelphia Long Distance is not an asset included in the TW-C Transaction. Continued operation of Adelphia Long Distance would thus be a distraction to management and would divert attention (in regulatory, legal, tax, accounting and customer care areas) that would

be better focused elsewhere as the Debtors work to finalize the TW-C Transaction and their plan of reorganization. Moreover, concurrent with the Debtors' efforts to finalize the sale of Adelphia Long Distance to the Buyer, the Debtors have also been engaged in finalizing and filing their Second Amended Disclosure Statement and Second Amended Plan of Reorganization (each of which were filed on June 25, 2005). Given demands such as these, the Debtors believe that they will not be able to support Adelphia Long Distance effectively throughout the reorganization process and subsequent to the consummation of the TW-C Transaction.

6. As set forth above, the Termination Motion was filed on May 23, 2005 and sought the authority of this Court to wind down and terminate Adelphia Long Distance. As more fully set forth in the Termination Motion, the Debtors contacted eleven parties throughout the first two quarters of 2005 in connection with efforts to sell Adelphia Long Distance as a going concern. The Debtors did not receive any bids for Adelphia Long Distance in connection with this original solicitation process, and, accordingly, concluded that their only viable option with respect to Adelphia Long Distance was to wind down the business.

7. Subsequent to the filing of the Termination Motion, however, the Debtors received additional indications of interest that had not been submitted during the original solicitation process. The Debtors engaged in preliminary discussions with the bidders that had submitted the most attractive initial indications of interest, and, after carefully evaluating and scrutinizing these indications of interest, the Debtors preliminarily concluded, in an exercise of their business judgment, that the offer made by the Buyer for Adelphia Long Distance was the highest and best offer. Upon reaching this conclusion, the Debtors pursued negotiations with the Buyer, which negotiations ultimately resulted in the parties agreeing to the principal terms and salient provisions of an asset purchase agreement (the "Asset Purchase Agreement").

8. The terms of the Asset Purchase Agreement provide that the Debtors shall sell, transfer, convey, assign and deliver to Buyer, and Buyer will purchase and pay for, all of the Debtors' right, title and interest in the Subscriber¹ accounts, the information contained in the Subscriber database, and the Receivables (collectively, the "Purchased Assets"). Such sale shall be free and clear of all liens, claims, encumbrances and interests. As set forth in the Asset Purchase Agreement, the aggregate purchase price for the Purchased Assets shall be equal to (i) \$80,000.00 plus (ii) two times the average monthly long distance service usage amounts billed by the Debtors to Subscribers for the three full calendar months prior to entry of the Court Order (the "Billed Revenues"). The Billed Revenues shall be reduced by the amount of billings to Subscribers whose bills, as of the end of the last full month prior to entry of the Court Order, include amounts overdue more than fifty nine (59) days after the date listed on the invoice. Thus, the total purchase price to be paid as consideration by the Buyer for the Purchased Assets is estimated at \$1,180,000.00, subject to reduction as set forth above (the "Purchase Price").

9. Consistent with their fiduciary duty to all of their creditors, the Debtors acknowledge that the proposed sale of Adelphia Long Distance as contemplated by the Asset Purchase Agreement remains subject to higher and or otherwise better offers. Pursuant to section 11.2(b) of the Asset Purchase Agreement, the Debtors may terminate the Asset Purchase Agreement if the Debtors receive an offer to purchase Adelphia Long Distance that represents, in their sole discretion, a higher or otherwise better offer than the offer made by the Buyer. Pursuant to Section 2.5 of the Asset Purchase Agreement, upon a sale of Adelphia Long Distance to a party other than the Buyer, the Buyer will be entitled to recoup the \$110,000 deposit paid to the Debtors upon execution of the Asset Purchase Agreement.

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Asset Purchase Agreement.

JURISDICTION

10. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELIEF REQUESTED

11. By this motion (the “Motion”), the Debtors seek entry of order, substantially in the form annexed hereto as Exhibit A, pursuant to 11 U.S.C. §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014 authorizing and approving the sale of Adelpia Long Distance to the Buyer pursuant to the Asset Purchase Agreement, substantially in the form annexed hereto as Exhibit B, free and clear of liens, claims, encumbrances and interests (the “Encumbrances”).² Moreover, by this Motion, the Debtors seek to withdraw the Termination Motion effective as of the Closing.

RELEVANT AUTHORITY

The Proposed Sale

12. The Debtors submit that ample authority exists for the approval of the proposed sale of Adelpia Long Distance. Section 363(b)(1) of the Bankruptcy Code provides,

² The Asset Purchase Agreement defines an “Encumbrance” as: “any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, cure claim, preference, right of possession, lease, tenancy, license, encroachment, covenant, infringement, interference, order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect, impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset) and any other right of a third party.”

in pertinent part, that “[t]he 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)(1). To sell property under section 363(b), the Debtors must demonstrate to the Court a legitimate business justification for the proposed action. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. at 656 (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

13. A chapter 11 debtor may sell substantially all of its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, provided the court finds a good business reason to grant such relief. See In re Lionel Corp., 722 F.2d at 1069, 1071 (in considering sale outside plan of reorganization, judge must not be shackled with unnecessarily rigid rules when exercising broad administrative power granted him under Bankruptcy Code, but must simply find “a good business reason” supporting sale); see also Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 144 (2d Cir. 1992) (upheld debtor’s sale of subsidiary because “good business reason” existed supporting sale).

14. The Debtors submit that the decision to sell Adelphia Long Distance is based upon sound business judgment and should be approved. Since the commencement of these cases, the Debtors have engaged in a process to identify and exit non-core lines of business. In this regard, the Debtors have concluded that Adelphia Long Distance is not critical to their reorganization. Moreover, as noted above, Adelphia Long Distance is not among the Debtors' assets included in the TW-C Transaction. Accordingly, the Debtors have determined that the sale of Adelphia Long Distance at this time is in the best interests of the Debtors and their estates and creditors, as they believe it will provide a greater return to stakeholders than winding down Adelphia Long Distance, including the asset in the reorganization, or any other administration of the business.

15. The Debtors submit that the proposed sale to the Buyer results in a better financial result for the Debtors and their constituents than the decision to exit the long distance telephone business. The Debtors' original strategy, to exit the business via the Termination Motion, was intended as a cost-saving measure for the Debtors and their estates. As set forth in the Termination Motion, the cost to the Debtors of winding down Adelphia Long Distance was estimated at approximately \$700,000.00. Conversely, the Purchase Price as set forth in the Asset Purchase Agreement results in a payment to the Debtors estimated at \$1,180,000.00. Accordingly, entering into the Asset Purchase Agreement to sell the business results in a maximization of value to the Debtors and their creditors.

16. The Debtors further submit that the consideration to be paid by the Buyer is fair and reasonable. The Purchase Price was the subject of extensive negotiations between the Debtors and the Buyer and represents the highest offer after a thorough marketing process.

Accordingly, the Debtors submit that approval of the sale of Adelpia Long Distance to the Buyer is in the best interests of the Debtors and their estates and creditors.

Sale Of Adelpia Long Distance Free And Clear Of Encumbrances

17. Pursuant to the Asset Purchase Agreement, the Debtors seek to sell Adelpia Long Distance free and clear of Encumbrances (except such Encumbrances expressly assumed by the Buyer (the “Assumed Liabilities”). The Debtors submit that it is appropriate that Adelpia Long Distance be sold free and clear of Encumbrances pursuant to section 363(f) of the Bankruptcy Code, other than the Assumed Liabilities, and for any remaining liens, claims, encumbrances, or interests to attach to the net sale proceeds of Adelpia Long Distance. See Circus Time, Inc. v. Oxford Bank and Trust (In re Circus Time, Inc.), 5 B.R. 1, 8 (Bankr. D. Me. 1979) (finding the Court’s power to sell property free and clear of liens has long been recognized). Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

18. To facilitate the sale of Adelphia Long Distance, the Debtors require authorization to sell Adelphia Long Distance free and clear of Encumbrances (except for the Assumed Liabilities), with any such Encumbrances to attach to the net proceeds of the sale with the same rights and priorities therein. See In re Riverside Inv. P'ship, 674 F.2d 634, 640 (7th Cir. 1982) (“Generally, in a ‘free and clear’ sale, the liens are impressed on the proceeds of the sale and discharged at the time of sale”) (citation omitted). Because section 363(f) is stated in the disjunctive, when selling property of the estate it is only necessary to meet one of the five conditions of that section. In re Dundee Equity Corp., No. 89-B-10233, 1992 WL 53743 at *4 (Bankr. S.D.N.Y. Mar. 6, 1992).

19. Each Encumbrance that does not constitute an Assumed Liability satisfies at least one of the five conditions of section 363(f), and the Debtors submit that any such valid Encumbrance will be adequately protected by attachment to the net proceeds of the sale, subject to any claims and defenses that the Debtors may possess with respect thereto. See In re Circus Time, Inc., 5 B.R. at 7. The Debtors are not aware of any valid Encumbrances on any property being sold under the Asset Purchase Agreement. As a result, the sale of Adelphia Long Distance satisfies section 363(f)(3) of the Bankruptcy Code. Moreover, the Debtors believe that each of the parties purportedly holding an Encumbrance on Adelphia Long Distance could be compelled to accept a monetary satisfaction of such interests, satisfying section 363(f)(5) of the Bankruptcy Code. Holders of Encumbrances that have not objected timely to this Motion may be deemed to have consented to the sale of Adelphia Long Distance, satisfying section 363(f)(2) of the Bankruptcy Code. Thus, the Debtors submit that the sale of Adelphia Long Distance free and clear of Encumbrances will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code. Accordingly, the Debtors request that Adelphia Long Distance be transferred to the Buyer

free and clear of Encumbrances except for Assumed Liabilities, with such Encumbrances to attach to the net sale proceeds of Adelpia Long Distance.³

Good Faith Purchaser

20. Section 363(m) of the Bankruptcy Code states:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

21. Section 363(m) provides that a purchaser of property of the estate is protected from the effects of a reversal on appeal of the authorization to sell such property as long as the purchaser acted in good faith and the appellant failed to obtain a stay of the sale.

22. The Bankruptcy Code does not define “good faith,” but courts have adopted various definitions. A good faith purchaser is “one who buys property ... for value, without knowledge of adverse claims.” In re Mark Bell Furniture Warehouse, Inc., 992 F.2d 7, 8 (1st Cir. 1993). The requirement that a purchaser act in good faith speaks to the integrity of the purchaser’s conduct in the course of the sale proceedings. In re Abbotts Dairies, Inc., 788 F.2d 143, 147 (3d Cir. 1986).

23. The terms and conditions of the Asset Purchase Agreement were negotiated by the Debtors and the Buyer at arm’s length and in good faith. There is no evidence of fraud or collusion in the terms of the proposed sale. The Debtors and the Buyer are not related companies, and they do not share corporate officers or directors. Additionally, the terms of the Asset Purchase Agreement do not personally benefit any insider of the Debtors. Accordingly,

³ The net sale proceeds will be utilized and applied in accordance with this Court’s order, dated May 6, 2004, authorizing and approving a form of Second Amended and Restated Credit and Guaranty Agreement (the “Extended DIP Order”)

the Debtors request that the Court determine that the Buyer has acted in good faith and is entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code.

Request for Relief Under Bankruptcy Rules 6004(g)

24. Bankruptcy Rule 6004(g) provides that an “order authorizing the use, sale, or lease of property is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(g). To facilitate the expeditious closing of the transaction, the Debtors request that any order approving the sale of Adelphia Long Distance be effective immediately upon entry of such order by providing that the ten-day stay shall not apply.

NOTICE

25. Notice of this Motion has been provided to: (i) the United States Trustee for the Southern District of New York; (ii) counsel for the Creditors’ Committee; (iii) counsel for the Equity Committee; (iv) counsel for the agents to the Debtors’ prepetition lenders; (v) counsel to the agents for the Debtors’ postpetition lenders; (vi) counsel for the Buyer; (vii) all parties who have previously expressed an interest in purchasing Adelphia Long Distance, and (viii) all parties who have filed notices of appearance requesting service of pleadings in these cases in accordance with Bankruptcy Rule 2002, as of the day prior to the date of such service. The Debtors submit that no other or further notice need be provided, except as otherwise proposed above.

26. In accordance with this Court’s Case Management Order No. 3, dated July, 26 2004, ¶ 24, the Debtors respectfully submit the requirement of Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York is deemed satisfied by the Motion itself.

27. No previous motion for the relief sought herein 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 as Exhibit A, granting the relief requested herein and such other and further relief as this Court may deem just or proper.

Dated: June __, 2005

WILLKIE FARR & GALLAGHER LLP
Attorneys for the Debtors and
Debtors in Possession

By: _____
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EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re)	
)	Chapter 11 Cases
Adelphia Communications Corporation, <u>et al.</u> ,)	Case No. 02-41729 (REG)
)	
Debtors.)	(Jointly Administered)
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**ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE
AND RULES 2002, 6004 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE SEEKING APPROVAL OF THE SALE OF DEBTORS' LONG
DISTANCE BUSINESS TO
TELECOM MANAGEMENT INC. D/B/A PIONEER TELEPHONE**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors"), for an order pursuant to 11 U.S.C. §§ 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing and approving the sale of the Debtors' long distance telephone business ("Adelphia Long Distance") to Telecom Management Inc. ("Buyer"), pursuant to the Asset Purchase Agreement, dated June __, 2005 (the "Asset Purchase Agreement"), free and clear of liens, claims, encumbrances and interests; and due and sufficient notice having been given as described in the Motion; and it appearing that no other or further notice is required or necessary; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and other parties-in-interest; and on the record of these cases; and after due deliberation and sufficient cause appearing therefor, it is:

ORDERED, that the Motion is granted; and it is further

ORDERED, that capitalized terms not otherwise defined herein have the meanings given to them in the Motion; and it is further

ORDERED, that the Debtors are authorized to enter into and execute the Asset Purchase Agreement and all related documentation pursuant to section 363 of the Bankruptcy Code; and it is further

ORDERED, that the Debtors are authorized to sell Adelpia Long Distance to the Buyer as set forth in the Asset Purchase Agreement; and it is further

ORDERED, that upon the execution, delivery and closing of the Asset Purchase Agreement, the assets to be sold and the interests to be assigned by the Debtors to the Buyer will have been acquired by the Buyer in good faith and as the result of arm's length negotiations within the scope and meaning of Section 363(m) of the Bankruptcy Code; and it is further

ORDERED, that this Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g) and 7062 or otherwise; and it is further

ORDERED, that the Debtors request that the Termination Motion be withdrawn effective as of the Closing is granted; and it is further

ORDERED, that this Court will retain jurisdiction to construe and enforce the terms of the Motion, the Asset Purchase Agreement and this Order.

Dated: New York, New York
July __, 2005

HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

[Form of Asset Purchase Agreement]