

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 55725 / May 8, 2007

Accounting and Auditing Enforcement
Release No. 2607 / May 8, 2007

Administrative Proceeding
File No. 3-12630

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In the Matter of	:	ORDER INSTITUTING CEASE-AND-
	:	DESIST PROCEEDINGS, MAKING
	:	FINDINGS, AND IMPOSING A CEASE-
MOTOROLA, INC.,	:	AND-DESIST ORDER PURSUANT TO
	:	SECTION 21C OF THE SECURITIES
Respondent.	:	EXCHANGE ACT OF 1934
	:	
_____	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Motorola, Inc. (“Motorola” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

1. This case involves a round-trip of cash between Motorola and Adelphia Communications Corporation ("Adelphia"). Pursuant to a purported marketing support agreement entered into in 2001, Adelphia paid money to Motorola which was immediately returned to Adelphia in the form of marketing support payments. No marketing was specified in the agreement and no marketing was done pursuant to the agreement. Adelphia used Motorola's marketing support payments to falsify its earnings in 2000 and 2001.

2. In the Fall of 2000, Adelphia, a cable television system owner and operator, asked Motorola, a vendor that provided digital cable television set-top boxes used by Adelphia, to enter into a marketing support agreement for the stated purpose of helping Adelphia fund its roll-out of digital cable television service. Adelphia proposed to pre-fund Motorola's marketing support payment obligation through a retroactive and offsetting price increase applied to digital cable television set-top boxes Motorola had supplied Adelphia in the past and was to supply Adelphia in the future pursuant to a pre-existing purchase contract.

3. The marketing support agreement, which was not finalized until March 2001, was backdated to the prior fiscal year and applied retroactively to set-top boxes that had already been sold to Adelphia. The agreement also contained a false reason for the retroactive price increase.

4. The transaction had no economic substance, amounting to a round-trip of cash, and was designed by Adelphia to increase artificially its Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") by reducing operating costs by the amount of the marketing support payments from Motorola. In this manner, Adelphia was able to use the transaction to reduce improperly its operating costs and increase its earnings by approximately \$18.3 million in 2000 and \$28 million in 2001.

5. Motorola knew or should have known that Adelphia was misusing the marketing support agreement. The marketing support agreement was backdated to a prior fiscal year, it applied retroactively to set-top boxes that had already been sold to Adelphia, and it contained a false reason for the price increase. Motorola executives also knew that (i) the marketing support agreement did not identify any marketing to be done by Adelphia and Motorola did not require that any marketing be done pursuant to the agreement; (ii) the transaction was a round-trip transfer of cash; and (iii) Motorola accounted for the transaction as economically neutral to Motorola.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

B. Respondent

6. Motorola is a Delaware corporation, with corporate headquarters in Schaumburg, Illinois. Motorola is a global manufacturer and seller of wireless, broadband, and automotive communications technologies. At all relevant times, Motorola's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was publicly traded on the New York Stock Exchange.

C. Relevant Entity

7. Adelphia is a Delaware corporation, headquartered in Greenwood Village, Colorado. During the relevant period, Adelphia was headquartered in Coudersport, Pennsylvania. Adelphia owns, operates, and manages cable television systems and other related telecommunications businesses. On March 27, 2002, Adelphia announced that it was liable for approximately \$2.3 billion in debt that it had previously failed to disclose. In May 2002, certain members of the Rigas family, who controlled and held officer and director positions with Adelphia, resigned and Adelphia disclosed that it expected to restate its financial statements for fiscal years 2000 and 2001. On July 18, 2002, the Commission filed *SEC v. Adelphia Communications Corporation, et al.*, 02 Civ. 5776 (PKC) (S.D.N.Y.), alleging that widespread, multifaceted financial fraud occurred at Adelphia. On May 31, 2005, the U.S. District Court for the Southern District of New York entered a consent order enjoining Adelphia from violating Section 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-13 under the Exchange Act.

D. Facts

Background

8. In January 2000, Motorola acquired General Instrument Corporation ("General Instrument") for \$17 billion in stock. General Instrument was integrated into Motorola as its broadband communications sector and was a major supplier of digital cable television set-top boxes to Adelphia both prior to and after its integration into Motorola. In fiscal year 2000, the sector's earnings accounted for approximately 43% of the combined earnings reported by all of Motorola's profitable sectors in that year.

9. In May 2000, Adelphia and Motorola entered into a purchase agreement that governed the pricing of digital cable television set-top boxes through December 2001 based upon the contemplated purchase by Adelphia of 1.6 million set-top boxes over the life of the contract. The purchase agreement did not require Adelphia to purchase any set-top boxes and it did not provide for a penalty if Adelphia purchased less than the 1.6 million set-top boxes contemplated by the agreement.

10. In June 2000, Adelphia realized that its second quarter reported EBITDA would fall below analysts' expectations. Adelphia executives devised a plan to inflate artificially EBITDA by reducing operating costs through the purported marketing support agreement with Motorola.

11. In late August 2000, Adelphia approached Motorola with the idea of entering into the marketing support agreement.

Key Factors That Should Have Put Motorola On Notice That Adelphia Was Not Using The Marketing Support Agreement For Its Intended Purpose

12. Between August 2000 and March 2001, when the marketing support agreement documents were signed, the executives who reviewed, or were told the substance of, the proposed transaction, were confronted with the following unusual facts unique to this transaction:

- Adelphia's request was the first time any customer had asked the Motorola executives to increase the price of Motorola's products;
- The marketing support agreement, which Adelphia provided to Motorola, contained a false reason for the price increase;
- Motorola executives insisted as a condition to entering into the transaction that Adelphia provide a letter from its counsel that Adelphia would not use the transaction in contravention of federal regulations governing cable television rates. Instead, an Adelphia finance executive who was later implicated in Adelphia's fraud sent a short confirmatory letter to Motorola without advising Motorola whether its counsel had been consulted;
- The marketing support agreement did not contain any details of marketing to be done by Adelphia and required no input from Motorola's marketing department;
- The marketing support agreement was backdated and the price increase and marketing support payment obligation were made retroactive to the beginning of the prior fiscal year and applied to products that had already been sold to and paid for by Adelphia;
- The transaction was a "wash" transaction with no economic impact on Motorola; and
- Motorola did not treat the transaction as a marketing transaction for accounting purposes.

Motorola Asked Adelphia To Purchase More Set-Top Boxes Than Adelphia Needed In Exchange For Signing The Marketing Support Agreement

13. Shortly before the marketing support agreement was due to be signed in March 2001, Adelphia's orders for set-top boxes declined below the number called for under the May 2000 purchase agreement. Motorola knew that Adelphia did not need any additional set-top boxes at that time, but told Adelphia that it wanted Adelphia to purchase 100,000 additional set-top boxes. Adelphia agreed to make the purchase before the marketing support agreement was signed and before the close of Motorola's first quarter for fiscal year 2001.

Motorola Signed The Backdated Marketing Support Agreement And Made A Retroactive Marketing Support Payment

14. On or about March 21, 2001, Motorola signed the marketing support agreement documents that were backdated to the prior fiscal year. The marketing support agreement did not specify any marketing to be done by Adelphia and it contained a false reason for the price increase. In the document memorializing the price increase, Motorola stated falsely that the purpose of the price increase was to secure “incremental component volumes and factory capacity” to meet Adelphia’s needs. In fact, Motorola executives knew that the true purpose of the price increase was to pre-fund Motorola’s marketing support payment obligation to Adelphia.

15. In May 2001, Motorola made the first \$18.3 million marketing support payment for marketing purportedly done in 2000. The payment was funded by Adelphia three days earlier when it paid Motorola the retroactive price increase on set-top boxes previously purchased by Adelphia in 2000.

Motorola Again Asked Adelphia To Purchase More Set-Top Boxes Than It Needed And Defrayed The Costs Of Warehousing The Boxes In A Third-Party Warehouse In Exchange For Maintaining The Marketing Support Agreement

16. In early June 2001, Adelphia told Motorola that it would be reducing its orders of set-top boxes due to decreased demand. Motorola knew that Adelphia had excess inventory that would carry it to the middle of the following year. Nevertheless, Motorola insisted that Adelphia purchase an additional 150,000 set-top boxes. Motorola proposed to finance the purchase through Motorola Credit Corporation, so that Adelphia would be able to pay for the additional set-top boxes in two installments over a period of one year and Motorola would be able to record the sales before the close of its second fiscal quarter.

17. To implement the deal and protect Motorola, Motorola insured the Adelphia receivable. Motorola knew or should have known that Adelphia did not actually need any additional set-top boxes, so it offered Adelphia credits that could be used for other Motorola services, including marketing, to offset the cost of warehousing the 150,000 set-top boxes in a third-party warehouse. Adelphia agreed to purchase the additional set-top boxes before the close of Motorola’s second quarter for fiscal year 2001.

Motorola Agreed To Increase Its Marketing Support Payment Obligation In Exchange For Adelphia’s Agreement To Purchase More Set-Top Boxes In 2002

18. In mid-December 2001, at the end of Adelphia’s fiscal year, Adelphia asked Motorola to amend the marketing support agreement to require that Motorola make an additional \$10 million marketing support payment for 2001 funded by an another retroactive price increase on set-top boxes previously delivered to Adelphia. Motorola agreed to the amendment after Adelphia agreed to purchase 200,000 set-top boxes in 2002. The amended marketing support agreement contained the same false reason for the price increase that the original agreement contained.

Adelphia Used The Marketing Support Agreement To Artificially Decrease Marketing Expenses And Increase EBITDA

19. Adelphia recorded the marketing support payments as a contra-expense to marketing costs. This accounting treatment lowered the amount of recorded marketing expenses and, in turn, artificially inflated Adelphia's EBITDA. Adelphia recorded the price increases paid to Motorola as capital expenditures, which are depreciated over time and, therefore, have no impact on EBITDA and a minimal impact on earnings.

20. In total, from April 2000 through December 2001, Adelphia recorded improperly approximately \$46.3 million in marketing support payments as reductions in current operating expenses, with the intended effect of inflating its reported EBITDA by \$46.3 million over that period. Adelphia's accounting treatment violated Generally Accepted Accounting Principles ("GAAP") because it reflected the round-trip transaction as decreasing its reported expenses and increasing its reported earnings when it did not have that effect.

Legal Analysis

21. The Exchange Act and Exchange Act rules require every issuer of registered securities to file reports with the Commission that accurately reflect the issuer's financial performance and provide other true and accurate information to the public.

22. Adelphia violated Section 13(a) and Rules 13a-1, 13a-13, and 12b-20 by filing with the Commission reports from April 2000 through December 2001, each containing materially false and misleading earnings in the financial statements for each reporting period.

23. Adelphia violated Section 13(b)(2)(A) by improperly recording the marketing support payments as a contra-expense to Adelphia's marketing costs, and by recording as capital expenditures the artificial price increase on the set-top boxes. Certain officers of Adelphia knowingly falsified, and caused others to falsify, Adelphia's books, records and accounts, including the fraudulent journal entries of the price increases and marketing support payments.

24. Section 21C of the Exchange Act provides that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation."² Based on the conduct described above, Respondent was a cause of Adelphia's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 of the Exchange Act.

² Where the primary violations underlying a finding that a person is "a cause of" violations do not themselves require a finding of scienter, the standard of liability for being "a cause of" such violations under Section 21C of the Exchange Act is negligence. *See KPMG LLP v. SEC*, 289 F.3d 109, 112 (DC Cir. 2002).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanction agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. Respondent is hereby ordered pursuant to Section 21C(e) of the Exchange Act to pay disgorgement in the amount of \$18 million and prejudgment interest in the amount of \$7 million, for a total payment of \$25,000,000. Within 10 days of entry of this Order, Motorola shall deliver this payment into the Registry of the Court for the United States District Court for the Southern District of New York in the case captioned *Securities and Exchange Commission v. Adelpia Communications Corp., et al.*, 02 Civ. 5776 (PKC). Simultaneously, Motorola shall transmit by hand delivery to the Clerk of the Court, United States District Court for the Southern District of New York, a letter specifying that the payment is made in connection with the Commission's administrative proceeding and a copy of the letter shall be simultaneously transmitted by facsimile to Alistaire Bambach, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, New York, NY 10281 (212) 336-1324 (facsimile). In accordance with Rule 1102 of the Commission's Rules of Practice [17 C.F.R. 201.1102], the procedures set forth herein shall govern the distribution of any funds paid pursuant to this Order.

By the Commission.

Nancy M. Morris
Secretary