

**UNITED STATES OF AMERICA**  
**before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Securities Exchange Act of 1934**  
**Release No. 54030 / June 22, 2006**

**Accounting and Auditing Enforcement**  
**Release No. 2444 / June 22, 2006**

**Administrative Proceeding**  
**File No. 3-12339**

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<b>In the Matter of</b>	:	<b>ORDER INSTITUTING CEASE-AND-</b>
	:	<b>DESIST PROCEEDINGS, MAKING</b>
	:	<b>FINDINGS, AND IMPOSING A CEASE-</b>
<b>WALLACE G. HAISLIP,</b>	:	<b>AND-DESIST ORDER PURSUANT TO</b>
	:	<b>SECTION 21C OF THE SECURITIES</b>
<b>Respondent.</b>	:	<b>EXCHANGE ACT OF 1934</b>
_____	:	

**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 Wallace G. Haislip (“Haislip” 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 him 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 finds<sup>1</sup> that:

#### **Summary**

1. In the fall of 2000, Adelphia Communications Corporation ("Adelphia"), a cable television system owner and operator, asked Scientific-Atlanta, Inc. ("Scientific-Atlanta"), a vendor that provided digital cable set-top boxes used by Adelphia, to enter into a marketing support transaction. Following negotiations between Adelphia and Scientific-Atlanta, the parties agreed that Scientific-Atlanta would make marketing support payments for the stated purpose of helping Adelphia increase demand for digital set-top boxes provided by Scientific-Atlanta and, in return, Scientific-Atlanta would receive a corresponding increase in the price of digital set-top boxes it had supplied Adelphia in the past and was contractually obligated to supply in the future pursuant to a long-term purchase contract that had been entered into in May 2000. Adelphia did not use the marketing support payments to help increase demand for digital set-top boxes. Adelphia recorded the price increases it paid Scientific-Atlanta as capital expenditures, and recognized the marketing support payments paid by Scientific-Atlanta as a contra marketing expense, thereby artificially reducing its marketing expense and increasing Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA"). In this manner, Adelphia was able to use the transaction to reduce improperly its operating costs and increase its earnings by approximately \$16.8 million in 2000 and \$26.2 million in 2001.

2. Respondent, Scientific-Atlanta's CFO at the time, was the most senior finance executive responsible for approving the transaction. Respondent was not involved in documenting the transaction or signing the transaction documents.

#### **Respondent**

3. Respondent, age 56, is currently Senior Vice President, Finance and Operations for Scientific-Atlanta. From 1998 to 2003, Respondent was Senior Vice President of Finance, CFO, and Treasurer.

#### **Relevant Entities**

4. Scientific-Atlanta is a Georgia corporation, with corporate headquarters in Lawrenceville, Georgia. Scientific-Atlanta sells end-to-end networks used by programmers and cable operators and provides customer service and support for the cable television industry. At all relevant times, Scientific-Atlanta's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was publicly traded on the New York Stock Exchange.

5. Adelphia is a Delaware corporation, formerly headquartered in Coudersport, Pennsylvania. Adelphia owns, operates, and manages cable television systems and other related

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

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 had misrepresented its financial performance for the fiscal years 2000 and 2001 by, among other things, overstating its earnings. 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 July 8, 2004, two Adelphia executives were convicted on 18 counts of securities fraud, bank fraud, and conspiracy. 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.

### **The Year 2000 Marketing Support Agreement**

6. In May 2000, Adelphia entered into a purchase agreement for digital set-top boxes with Scientific-Atlanta. The agreement, which expired on December 31, 2001, required Adelphia to purchase digital set-top boxes and transmission equipment at prices fixed by the terms of the agreement, and contained no provision regarding marketing.

7. In June 2000, Adelphia realized that its second quarter reported EBITDA would fall below analysts' expectations. Adelphia devised a plan to increase EBITDA by reducing operating costs through a marketing support agreement with Scientific-Atlanta. The business rationale for the marketing support agreement that Adelphia stated to Scientific-Atlanta was to assist Adelphia in the roll-out of its digital cable service, which was in direct competition with satellite television. The request was consistent with the cable industry's use of marketing campaigns to introduce digital service and to compete with satellite television. Pursuant to the agreement, Scientific-Atlanta would make marketing support payments to Adelphia. The transaction, however, would have no economic impact on Scientific-Atlanta's net revenue or income from the sales of set-top boxes to Adelphia because Adelphia would pay to Scientific-Atlanta an amount equal to the marketing support payments in the form of a price increase applied to each set-top box that Adelphia purchased. The parties ultimately agreed that the marketing support would average approximately \$20 per set-top box. Based upon the number of boxes that Adelphia was required to purchase, the marketing support came out to approximately \$16.8 million for the year 2000 and \$22.4 million for the year 2001.

8. Several facts existed that, taken together, should have put Respondent on notice that it was unlikely that Adelphia was using the marketing support agreement to market Scientific-Atlanta set-top boxes. Respondent understood that the price increase was designed to ensure that there would be no impact on Scientific-Atlanta's net revenue or income. Respondent also knew that the marketing support transaction provided operating expense benefits to Adelphia. During negotiations in October 2000, Adelphia put intense pressure on Scientific-Atlanta to agree to pay marketing support of \$50 per set-top box. Respondent rejected that proposal as commercially unreasonable, and the parties eventually agreed that Scientific-Atlanta would pay approximately \$20 per set-top box over the life of the contract, with Adelphia paying the same amount to Scientific-Atlanta in the form of price increases applied to Adelphia's set-top orders. Adelphia

requested, and Scientific-Atlanta agreed, that the marketing support contracts apply retroactively to set-tops shipped during the period from April 2000 to December 2000. Respondent also understood that part of the rationale for the marketing support payments was that Adelphia had already incurred marketing expenses in prior quarters.

9. Pursuant to the contracts, on May 10, 2001 Adelphia paid Scientific-Atlanta \$16.8 million in price increases and Scientific-Atlanta immediately returned to Adelphia \$16.8 million in marketing support payments. Scientific-Atlanta did not ask for any proof of marketing before making the \$16.8 million payment.

### **The Year 2001 Modifications To The Marketing Support Agreement**

10. In June 2001, Adelphia advised Scientific-Atlanta that it would be ordering fewer set-top boxes than required by the long-term purchase agreement. Because Adelphia would be ordering fewer set-top boxes than previously agreed to by the parties, the prior price increase for the set-top boxes would not be sufficient to cover Scientific-Atlanta's marketing support payment obligation of \$22.4 million for the year 2001. To ensure that Scientific-Atlanta's marketing support payment obligation equaled the amount of the overall price increase, Scientific-Atlanta agreed to expand coverage of the marketing support arrangement beyond digital set-top boxes to include price increases applied to Adelphia's purchases of digital cable transmission equipment from Scientific-Atlanta, retroactive to 2000.

11. In December 2001, Adelphia demanded an increase in the amount of marketing support for 2001 from the previously agreed \$22.4 million to between \$28-29 million. The parties ultimately agreed that Scientific-Atlanta would pay \$26.2 million in marketing support, which covered set-tops purchased in 2001 and transmission equipment purchased between July 2000 and December 31, 2001.

12. In late 2001, at Respondent's direction, Scientific-Atlanta repeatedly asked Adelphia for documentation of the marketing that had been done using the marketing support payments. Adelphia failed to deliver to Scientific-Atlanta any documentation of credible marketing activity by Adelphia. Notwithstanding the lack of credible evidence of marketing done, Respondent approved the payment of \$26.2 million for 2001.

### **Adelphia Misused The Marketing Support Transaction To Artificially Decrease Marketing Expenses And Increase EBITDA**

13. In internal journal entries, Scientific-Atlanta recorded the price increases as an increase in revenue and the marketing support payments to Adelphia as contra-revenue. The net result was no change in the revenue line item reported in Scientific-Atlanta's publicly-filed income statement.

14. Adelphia, however, 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 Scientific-Atlanta as capital expenditures, which are depreciated over time and, as such, have no impact on EBITDA and a minimal impact on earnings. In total, over seven quarters from April

2000 through December 2001, Adelphia recorded improperly approximately \$43 million in marketing support payments as reductions in current operating expenses, with the intended effect of inflating improperly its reported EBITDA by \$43 million over that period. Adelphia's accounting treatment violated Generally Accepted Accounting Principles ("GAAP") because it improperly reflected the transaction as having substance when in fact Adelphia did not make the necessary marketing expenditures.

15. On March 27, 2002, approximately one month after Scientific-Atlanta paid Adelphia \$26.2 million for marketing support, Adelphia announced that the company was liable for \$2.3 billion in off-balance sheet liabilities. On June 10, 2002, Adelphia filed a Form 8-K with the Commission, making downward revisions of its 2000 and 2001 reported EBITDA, citing improper accounting of marketing support agreements with two unnamed vendors (one of which was Scientific-Atlanta). Adelphia stated that properly accounting for the marketing support agreements would reduce EBITDA by approximately \$54 million in 2001 and \$37 million in 2000, of which \$26.2 million and \$16.8 million, respectively, is attributable to the transactions with Scientific-Atlanta.

### **Legal Conclusions**

16. 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.

17. Adelphia violated Section 13(a) and Rules 13a-1, 13a-13, and 12b-20 by filing with the Commission a Form 10-Q for each of the quarters from the fourth quarter of 2000 through the fourth quarter of 2001, and a Form 10-K for the year ended December 31, 2000, each containing materially false and misleading earnings in the financial statements for each reporting period.

18. Adelphia violated Sections 13(b)(2)(A) and 13(b)(2)(B) by improperly recording the marketing support payments as a contra-expense to Adelphia's marketing costs, and by recording as capital expenditures the payments owed by Adelphia to Scientific-Atlanta under the price increase provisions of the marketing support agreement. 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. In doing so, each of them knowingly circumvented the internal accounting controls that existed at Adelphia.

19. 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."<sup>2</sup> Based on

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<sup>2</sup> 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).

the conduct described above, Respondent was a cause of Adelpia's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 of the Exchange Act.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest 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 causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

By the Commission.

Nancy M. Morris  
Secretary