DEPARTMENT OF THE AIR FORCE
ARLINGTON, VA 22203-1613

Office of the Deputy General Counsel

SEP 19 2008

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

JOHN J. RIGAS
TIMOTHY J. RIGAS

Effective April 4, 2005, the Air Force suspended John J. Rigas (John) and Timothy J. Rigas (Timothy) (collectively "Respondents") from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. On September 28, 2007, the Air Force terminated the Respondents' suspensions and proposed that they be debarred from Government contracting and from directly or indirectly receiving the benefits of federal assistance programs. These actions were taken pursuant to the Federal Acquisition Regulation (FAR) Subpart 9.4.

By correspondence dated February 19 and April 4, 2008, the Respondents, through counsel, submitted arguments and matters in opposition to the proposed debarments (the submissions). On August 22, 2008, the Respondents' counsel presented arguments in person on behalf of his clients. I have read and carefully considered the submissions, including the transcript of the presentation and all the information in the administrative record (the record).

INFORMATION IN THE RECORD

Information in the record establishes that at all times relevant hereto:

1. Adelphia Communications Corporation (ACC), d/b/a Adelphia Business Solutions, Inc., d/b/a Telcove, a/k/a Adelphia Business Solutions Investments, LLC (collectively "Adelphia") was a publically traded Delaware corporation engaged in the business of operating cable television systems across the United States. In 2003 the Air Force awarded a contract to Adelphia for commercial communication services at McConnell Air Force Base in Kansas.

2. John was the founder, Chairman of the Board of Directors, Chief Executive Officer, President, a shareholder of Adelphia, and the father of Timothy.

3. Timothy was a Director, Executive Vice President, Chief Financial Officer, Chief Accounting Officer, Treasurer, and a shareholder of Adelphia.

4. Michael C. Mulcahey (Mulcahey) was the Director of Internal Reporting, an Executive Vice President, and Assistant Treasurer for Adelphia. He was responsible for internal record keeping regarding expenditures on behalf of John, Timothy and other members of the Rigas family and entities that they owned and controlled. Mulcahey orchestrated the sham stock transactions used to exclude substantial portions of Adelphia bank debt from its consolidated

financial statements and issue additional stock in order to preserve the Rigas Family's voting control of the company.

5. John owned, either by himself or with at least one other member of the Rigas Family, Eleni Interiors, Inc. (EII) and ErgoArts, Inc. (EAI), New York corporations, Niagara Frontier Hockey, LP (NFH), a limited partnership, and SongCatcher Films, LLC (SCF), a New York limited liability company.

6. John also held the material beneficial interest in Highland Holdings (Highland), a general partnership, and Wendy Creek Farms, Inc. (WCF), a company engaged in the business of providing facilities maintenance, such as lawn care service and snow removal.

7. John and Timothy, together or with other members of the Rigas Family, owned outright or controlled all the equity interest in Highland Prestige Georgia, Inc. (HPG), a Delaware corporation, and Doris Holdings, LP (DH), a Delaware limited partnership.

8. Doris Rigas, John's wife and Timothy's mother, owned Dobaire Designs (DD), a sole proprietor design services business.

9. The following business transactions occurred among Adelphia, Adelphia's subsidiaries, and the Rigas Family businesses:

a. During 2001, Adelphia provided management services, such as supervision of technical, business, and accounting operations to HPG.

b. During 2001, Adelphia provided similar management services to Highland, DH, and NFH, which cumulatively paid approximately $11 million to Adelphia.

c. During 2001, Adelphia paid approximately $12 million to EII and approximately $371,000 to DD, for office furniture, fixtures, and design services.

d. Adelphia paid approximately $2 million to WCF for various maintenance services such as lawn care, snow removal, and electrical and heating services and repairs.

e. Adelphia paid an aggregate of approximately $100,000 to John, Timothy, and other members of the Rigas Family and/or the businesses owned by them for office and warehouse rental space.

10. Adelphia paid $744,000 to NFH for luxury suite rentals and tickets for Adelphia employees to attend Sabres' games at the arena in Buffalo, New York.

11. On occasion Adelphia assisted NFH in finding providers of programming carried on Adelphia's cable systems for NFH to solicit in connection with the sale of advertising or promotional space in the arena. Adelphia did not receive any compensation for this service.

12. ACC, a subsidiary of Adelphia, leased arena office space from NFH, but did not pay rent. In lieu of rent, ACC performed interior renovations on the office space.

13. As recently as 2001, Adelphia issued unsecured funds to EAI and SCF. As of December 2001, EAI and SCF owed Adelphia outstanding balances of approximately $677,000 and $3 million, respectively. These funds were issued to EAI and SCF in connection with the production of documentary films and the creation and production of a movie entitled *SongCatcher*.

14. In February of 2000, John, Timothy and other members of the Rigas Family paid $464,930.00 for 3,656 acres of land located in Potter County, Pennsylvania (the land). Adelphia paid $26,535,070 for the rights to timber on the land. Under the terms of the purchase, the timber rights would automatically revert to the owner of the underlying land at either the earlier of twenty years or if the percentage of Adelphia stock held by John fell below fifty percent (50%) of all the outstanding company stock. Contrary to Generally Accepted Accounting Principles, neither the occurrence of this purchase, nor the terms of the agreement were properly disclosed in public filings or disclosed to Adelphia investors.

15. On July 23, 2002, a twenty-three count criminal Indictment against John and Timothy was filed in the United States District Court for the Southern District of New York (USDC-SDNY). The individuals were charged with conspiracy, securities fraud, wire fraud, and bank fraud in connection with their participation in a scheme to defraud investors, creditors, and the public concerning the financial condition and operating performance of Adelphia.

16. On July 24, 2002, the SEC filed a complaint against John, Timothy, *et al.* in the United States District Court for the Southern District of New York. The complaint alleged that Adelphia, directed by John, Timothy, *et al.* fraudulently excluded billions of dollars in liabilities from its financial statements by hiding them on the books of affiliates, falsified operations statistics and inflated earnings, and concealed self dealing by the Rigas Family.

17. On April 25, 2005, the U.S. Department of Justice (DOJ) and Adelphia entered into an agreement (the Settlement Agreement) whereby DOJ would not criminally prosecute Adelphia for specified misconduct. Adelphia agreed to provide $715 million in restitution among other enumerated obligations, and the parties agreed to entry of a consent judgment. Consistent with the terms of this agreement, on May 31, 2005 a final judgment was issued disposing of the SEC's complaint against John, Timothy, et al.

18. John and Timothy were found guilty of violating one count each of conspiracy to commit securities fraud, wire fraud, making false statements and bank fraud, 15 counts of securities fraud, and two counts of bank fraud. On June 20, 2005, John was sentenced to 15 years imprisonment, and was ordered to pay an assessment in the amount of $1,800. On June 20, 2005, Timothy was sentenced to 20 years imprisonment, and was ordered to pay an assessment in the amount of $1,800.

ANALYSIS

In their submissions the Respondents' stated that debarments, 1) were not warranted, 2) were not in the Government's interest, and 3) amounted to punishment. They argued that the criminal case is not over in that the motion for a new trial, denied by the District Court, is on appeal at the Court of Appeals for the 2nd Circuit. Finally, they offered as mitigating factors statements that they settled claims and forfeited property.

John and Timothy, both directors and officers of a large, publically traded corporation, were found guilty of serious violations of the public trust and were sentenced to significant prison terms. In the absence of the Respondents proving their present responsibility, debarments are warranted to protect the Government from potentially doing future business with either John or Timothy. Based on the evidence in the record and their convictions, it is in the Government's interest to protect itself from dealing with these individuals. They participated in serious and repeated breaches of ethics, public faith, and business integrity and neither has presented evidence demonstrating that he is a presently responsible contractor.

Though the Respondents and their counsel may feel strongly that a new trial is required, the 2nd Circuit has not yet decided the issue. In accordance with the statements made by counsel at the presentation as reflected in the transcript, the issues will be fully briefed by the end of 2008 and then argued sometime in the spring of 2009. Counsel anticipates a decision by mid-2009. Until that time, the convictions stand and are valid bases for the debarments.

The Respondents argue that they have entered settlement agreements with the Government and Adelphia resolving all the claims against them. They note that as part of those settlements the Government agreed "to refrain" from imposing further sanctions against them. Respondents submit that debarment would be further punishment. The administrative remedy of debarment is not punishment, but is protection for the Government. Debarment does not impose any additional time to their prison terms, nor does it impose any fines or fees. It simply prohibits them from contracting with the Government and from directly or indirectly receiving the benefits of federal assistance programs. Without this protection the Respondents would be free to do business with the Government, or receive the benefits of federal assistance programs, notwithstanding their imprisonment.

Because of their criminal actions, the Respondents and other members of their family relinquished all ownership and control of Adelphia, forfeited significant real estate holdings, agreed to apply proceeds from their forfeited and relinquished interests to establish a Victim's Fund intended to compensate those who have claims against John, settled all claims from Adelphia, paid the Government all civil and monetary liabilities that were levied, and fulfilled all other significant agreement terms and conditions. I have considered these mitigation factors and weighed them in the Respondents' favor. However, the cumulative aggravating factors as reflected in the record, including the convictions and extended prison terms, require that periods of debarment be greater than the three years that are generally imposed.

BASES FOR THE DEBARMENTS

1. John and Timothy's criminal convictions and civil judgments provide separate bases for their debarments, pursuant to FAR 9.406-2(a)(3) and (5).

2. The improper conduct of John and Timothy is of so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides separate bases for their debarments pursuant to FAR 9.406-2(c).

3. Pursuant to FAR. 9.406-1(b), debarments may be extended to the affiliates of a contractor. In accordance to FAR 9.403, an "identity of interests among family members" is an "indicia of control" so as to make one family member an affiliate of another. Because they are father and son, John and Timothy are affiliates of each other and, at least indirectly, each had the power to control the other. The affiliation of John and Timothy provides separate bases for their debarments.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement Subpart 209.4, and 32 C.F.R. Section 25, and based on the evidence contained in the administrative record and findings herein, John J. Rigas is debarred for a period of 18 years from April 4, 2005, the date he was suspended. His debarment shall terminate on April 3, 2023. Timothy J. Rigas is debarred for a period of 23 years from April 4, 2005, the date he was suspended. His debarment shall terminate on April 3, 2028.

STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)