IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
FREEDOM COMMUNICATIONS HOLDINGS, INC., et al.,	:	Case No. 09-13046 (BLS)
	:	Jointly Administered
Debtors.[1]	:	**Hearing Date: December 17, 2009** **Docket Ref. Nos. 372, 487, 745, 801, 802, 812 and 818**

DEBTORS' OMNIBUS RESPONSE TO OBJECTIONS TO DISCLOSURE STATEMENT

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by their undersigned counsel, hereby submit this response (the "Response") to the objections (together, the "Objections") filed by the Official Committee of Unsecured Creditors (the "Committee"), the Gonzalez class action plaintiffs (the "Gonzalez Plaintiffs"), the Acting United States Trustee (the "U.S. Trustee"), Pacific Employers Insurance Company, *et al.* (collectively,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Freedom Communications Holdings, Inc. (2814); Freedom Communications, Inc. (0750); Freedom Broadcasting, Inc. (0025); Freedom Broadcasting of Florida, Inc. (6581); Freedom Broadcasting of Florida Licensee, L.L.C. (1198); Freedom Broadcasting of Michigan, Inc. (6110); Freedom Broadcasting of Michigan Licensee, L.L.C. (1122); Freedom Broadcasting of New York, Inc. (6522); Freedom Broadcasting of New York Licensee, L.L.C. (9356); Freedom Broadcasting of Oregon, Inc. (7291); Freedom Broadcasting of Oregon Licensee, L.L.C. (9295); Freedom Broadcasting of Southern New England, Inc. (7274); Freedom Broadcasting of Southern New England Licensee, L.L.C. (1177); Freedom Broadcasting of Texas, Inc. (2093); Freedom Broadcasting of Texas Licensee, L.L.C. (1147); Freedom Broadcasting of Tennessee, Inc. (7961); Freedom Broadcasting of Tennessee Licensee, L.L.C. (9430); Freedom Magazines, Inc. (0328); Freedom Metro Information, Inc. (1604); Freedom Newspapers, Inc. (3240); Orange County Register Communications, Inc. (7980); OCR Community Publications, Inc. (9752); OCR Information Marketing, Inc. (7983); Appeal-Democrat, Inc. (4121); Florida Freedom Newspapers, Inc. (4227); Freedom Arizona Information, Inc. (5796); Freedom Colorado Information, Inc. (7806); Freedom Eastern North Carolina Communications, Inc. (5563); Freedom Newspapers of Illinois, Inc. (2222); Freedom Newspapers of Southwestern Arizona, Inc. (5797); Freedom Shelby Star, Inc. (8425); Illinois Freedom Newspapers, Inc. (8308); Missouri Freedom Newspapers, Inc. (8310); Odessa American (7714); The Times-News Publishing Company (0230); Victor Valley Publishing Company (6082); Daily Press (3610); Freedom Newspaper Acquisitions, Inc. (4322); The Clovis News-Journal (5820); Freedom Newspapers of New Mexico L.L.C. (5360); Gaston Gazette LLP (4885); Lima News (6918); Porterville Recorder Company (7735); Seymour Tribune Company (7550); Victorville Publishing Company (7617); Freedom Newspapers (7766); The Creative Spot, L.L.C. (2420); Freedom Interactive Newspapers, Inc. (9343); Freedom Interactive Newspapers of Texas, Inc. (8187); Freedom Services, Inc. (3125). The address for Freedom Communications Holdings, Inc. and certain other Debtors is 17666 Fitch, Irvine, California 92614.

"ACE USA") and Maricopa County to the Debtors' *Disclosure Statement With Respect to Joint Plan of Reorganization Under Chapter 11, Title 11, United States Code of Freedom Communications Holdings, Inc., et al., Debtors* (as amended as of the date hereof, the "Disclosure Statement").[2] The Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. On October 31, 2009, the Debtors filed a 114 page disclosure statement, plus exhibits [Docket No. 372] that provided adequate information to allow holders of claims and interests in these cases to vote on the Plan.

2. In lieu of dealing with a variety of objections to the Disclosure Statement, the Debtors made the following offer to the Committee and the Gonzalez Plaintiffs: instead of taking up precious estate assets and the time of the Court, and in lieu of any objections to the Disclosure Statement, each of them may draft a supplement to the Disclosure Statement explaining why they opposed the Plan. The Debtors further offered to attach each of those supplements to the Disclosure Statement. *See* email correspondence attached hereto as Exhibit A. Neither the Committee nor the Gonzalez Plaintiffs accepted that offer, preferring instead to litigate with the Debtors. On the other hand, the Debtors were able to informally address many comments the U.S. Trustee made to the Disclosure Statement, which narrowed the scope of the U.S. Trustee's formal Objection.

3. To accommodate the disclosure issues raised by the Committee, the U.S. Trustee and the Gonzalez Plaintiffs, the Debtors supplemented their disclosure in that certain Second Proposed Disclosure Statement dated as of December 14, 2009 [Docket No. 831]. For the convenience of the Court and these other parties in interest, the Debtors hereby submit a chart

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[2] Capitalized terms used, but not defined, herein shall have the meanings given to them in the Plan.

that provides a roadmap of how the Debtors accommodated the issues raised in each of the Objections. That chart is annexed hereto as Exhibit B.

4. Although the hearing on the Disclosure Statement is supposed to be about the adequacy of the Debtors' disclosure for purposes of enabling an informed vote on the Plan, the Committee, the Gonzalez Plaintiffs and the U.S. Trustee have chosen to litigate confirmation issues well in advance of the confirmation hearing. As described in summary fashion below, none of those confirmation issues have merit or should block approval of the Disclosure Statement.

RESPONSE

I. The Objections To Disclosure By The Committee and the Gonzalez Plaintiffs Should be Overruled Because No Amount of Disclosure Will Lead Them to Support the Plan and Each of Them Has Have Had Substantial Access to the Debtors Information

5. In the context of these cases, the objections to the Disclosure Statement by the Committee and the Gonzalez Plaintiffs are particularly not well-taken. Both of these parties have already voiced total opposition to the Plan, and no amount of disclosure will change their vehement objections that have been and continue to be articulated in these cases. Moreover, both have received substantial information from the Debtors. It is well-established that an objecting party's access to information is important in evaluating a claim of lack of adequate disclosure. For example, in *In re Cajun Elec. Power Co-op, Inc.*, 230 B.R. 715 (Bankr. M.D. La. 1999), the court noted that:

> "These parties who now complain of the lack of disclosure are substantial players in this proceeding, and not just ordinary creditors who are entitled to rely upon the information disseminated in an approved disclosure statement. The court finds it disingenuous at best for these cooperatives to argue that they did not receive adequate information regarding their treatment."

Id. at 731. *See also, e.g.*, *In re Simplot*, 2007 Bankr. LEXIS 2936 (Bankr. D. Idaho August 28, 2007) (holding same, and finding holding reflects "the general requirement of materiality and adversity, and the concept that the objecting party's access to information is important in evaluating a claim of lack of adequate disclosure");

6. As with the cooperatives in *Cajun Electric*, the Committee and the Gonzalez Plaintiffs have been active and informed participants in these cases. Each has had the benefit of experienced counsel and financial advisors, paid for at the expense of these estates. Each has had access to millions of pages of information and documents produced by the Debtors, meetings with the Debtors' advisors and transcripts from more than a dozen examinations of the Debtors' current and former executives and board members and financial advisors, as well as the agent to the Existing Lenders. The Creditors Committee or the Gonzalez Plaintiffs cannot credibly claim they lack adequate information with respect to the Plan. Accordingly, the Debtors request that the Court place their Objections into proper context and overrule them.

II. The Plan Does Not Violate the Absolute Priority Rule

7. The absolute priority rule requires only that a plan not give property to junior claimants "over the objection of a more senior class that is impaired." *In re Armstrong World Industries*, 432 F.3d 507, 513 (3d Cir. 2005). Here, because no junior class of interest holders will receive any distributions under the Plan without the affirmative consent of senior impaired classes of claims – including the holders of general unsecured claims against Freedom Communications Holdings, Inc. and Freedom Communications, Inc. – the Plan does not contravene the absolute priority rule.

8. The Plan provides that holders of Old Freedom Stock Interests would only receive distributions thereunder if *all* of the following events occur: (a) Class A2 (the class of Existing

Lender Claims) votes to accept the Plan, (b) a sufficient number of votes are received in each of the Class A4 sub-classes (the sub-classes of general unsecured creditors) applicable to Freedom Communications Holdings, Inc. and Freedom Communications, Inc. to constitute an acceptance of the Plan by each such sub-Class under Bankruptcy Code section 1126(c), and (c) a sufficient number of votes are received in Class A7 (the class of Old Freedom Stock Interests) to constitute an acceptance of the Plan by Class A7 under Bankruptcy Code section 1126(d). If the class of Existing Lender Claims or the sub-classes of General Unsecured Claims applicable to Freedom Communications Holdings, Inc. and Freedom Communications, Inc. reject the Plan, the holders of Old Freedom Stock Interests will receive *nothing*. Thus, no junior class would receive a distribution over the objection of senior impaired classes.

9. The Disclosure Statement clearly states the foregoing, and counsels holders of Class A7 interests to govern themselves as if Class A4 claims will vote against the Plan and preclude any recovery for the benefit of Class A7 interests. *See* Disclosure Statement Article I.D.5.

10. In addition, the proposed allocation of value by the Existing Lenders for the benefit of junior classes (*e.g.*, Class A4 General Unsecured Claims and Class A7 Old Freedom Stock Interests) also comport with the absolute priority rule. Carve out arrangements in which secured creditors give up a portion of their lien for the benefit of junior classes do not offend the Bankruptcy Code and are supported by case law. The distributions that may be provided to the holders of Old Freedom Stock Interests derive from a carve-out of the Existing Lenders' liens and not from estate property. *See, e.g.*, *In re Genesis Health Ventures, Inc.*, 266 B.R. 591 (Bankr. D. Del. 2001). The First Circuit observed that "creditors are generally free to do whatever they wish with the bankruptcy dividends they receive, including to share them with

other creditors." *Official Unsecured Creditors' Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1313 (1st Cir. 1993); *In re Union Fin. Servs. Group*, 303 B.R. 390, 423 (Bankr. E.D. Mo. 2003); *In re MCorp Fin., Inc.*, 160 B.R. 941, 960 (S.D. Tex. 1993) ("The seniors may share their proceeds with creditors junior to the juniors, as long as the juniors receive at least as much as what they would without the sharing.")

11. *Armstrong World Indus., Inc.*, 432 F.3d 507 (3d Cir. 2005) distinguished, but did not disapprove of, *SPM* and the *Genesis-MCorp* line of authority. Even after *Armstrong*, distributions to junior classes from a carve out of secured creditors' liens (rather than from estate property) are permissible. *See, e.g.*, *In re World Health Alternatives, Inc.*, 344 B.R. 291, 298-99 (Bankr. D. Del. 2006) (stating that "ordinary carve-out[s]" would not offend the absolute priority rule because the property belongs to the secured creditor, and not the estate); *In re TSIC, Inc.*, 393 B.R. 71, 75 (Bankr. D. Del. 2008) ("*Armstrong* makes it clear that the absolute priority rule is violated when a senior class' portion of its share of estate property is allocated to a junior class over the objection of an intervening creditor class, as was the situation in *Armstrong*. Regardless of how one analyzes *Armstrong*, it is beyond cavil that *Armstrong* did not address a payment of property that did not belong to the estate by a non-creditor ... to a junior class outside of a plan of confirmation."). Furthermore, the facts of *Armstrong* are distinguishable from the facts here. Unlike the situation in *Armstrong*, the Existing Lenders have perfected security interests in substantially all of the Debtors' assets, and the Old Equity Share Allocation is being funded as a carve out from the Existing Lenders' collateral. Moreover, unlike the plan at issue in *Armstrong* (in which holders of old equity were to receive warrants regardless of whether the class of general unsecured creditors accepted the plan), under this Plan, if Class A2 or the Class A4 sub-classes applicable to Freedom Communications Holdings, Inc. and Freedom Communications,

Inc. reject the Plan, then the holders of Old Freedom Stock Interests will not receive the Old Equity Share Allocation. Thus, holders of Old Freedom Stock Interests will not receive anything, unless the applicable sub-classes of general unsecured claims consent. In other words, under this Plan the Existing Lenders are not making a gift to a class of interests over the dissent of an intervening class, which is what *Armstrong* proscribes.

12. *Motorola, Inc. v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452 (2nd Cir. 2007), a case cited by the Committee, is distinguishable and nevertheless is not binding on this Court. In *Iridium*, the senior creditors' liens were only perfected upon court approval of the settlement agreement under which the reallocation would subsequently be made. Here, the Existing Lenders already have valid and perfected first priority liens on substantially all of the Debtors' assets.

III. The Treatment of Trade Unsecured Claims Complies With the Bankruptcy Code

13. Bankruptcy Code section 1123(a)(4) requires the "same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). The treatment of General Unsecured Claims and Trade Unsecured Claims meets this requirement. Under the Plan, all General Unsecured Claims against the Encumbered Debtors, including Trade Unsecured Claims, are classified together. Holders of trade claims that meet certain criteria would receive a distribution from the Trade Escrow Account, which would be funded by property to which the Existing Lenders are otherwise entitled.[3] No distribution to the holders of Trade Unsecured Claims will affect the recoveries of holders of other General Unsecured Claims.

[3] The Plan provides that the funds in the Trade Escrow Account are funds that otherwise would have been distributed to the Existing Lenders as Excess Cash. The Existing Lenders would receive any remaining funds in the Trade Escrow Account after all required payments to holders of Allowed Trade Unsecured Claims are made.

14. For the same reasons that the proposed distribution to holders of Old Freedom Stock Interests is permissible (see *supra*), the treatment of Trade Unsecured Claims under the Plan is also permissible. As a concession to facilitate the Debtors' consensual reorganization, the Existing Lenders have agreed to establish and fund the Trade Escrow Account with a portion of their own recovery under the Plan. This escrow will not be funded with estate property, and will not in any way diminish the distributions to which other general unsecured creditors are entitled.

15. In *In re Journal Register Co.*, 407 B.R. 520 (Bankr. S.D.N.Y. 2009), the court confirmed a plan that classified trade creditors in the same class as other general unsecured creditors, even though trade creditors could receive a distribution under a trade account funded by the secured lenders' recoveries. Like the Plan in this case, the plan in *Journal Register* provided that the funds in the trade account were the property of the secured lenders, with any undistributed portion to revert to the secured lenders.[4] *See id.* at 532. In confirming the plan, the court in *Journal Register* stated:

> "It is concluded that under the facts of these cases the existence of plan provisions that facilitate the Trade Account Distribution do not result in a classification issue or provide any other reason to deny confirmation of this Plan. We start with the proposition that members of an unsecured creditors class may have rights to payment from third parties, such as joint obligors, sureties and guarantors, and these rights may entitle them to a disproportionate recovery compared to other creditors of the same class (up to a full recovery). *See, e.g. Ivanhoe Bldg. & Loan Assn v. Orr*, 295 U.S. 243, 55 S. Ct. 685, 79 L. Ed. 1419 (1935); *Security Nat'l Bank v. Gessin (In re Gessin)*, 668 F.2d 1105, 1107 (9th Cir. 1982); *In re Realty Assocs. Sec. Corp.*, 66 F. Supp. 416, 424 (E.D.N.Y. 1946). The existence of such additional rights to payment does not create a classification problem under § 1123(a). Indeed, a debtor is entitled to voluntarily repay a debt, 11 U.S.C. § 524(f), provided the repayment is truly voluntary. *See In re Birakoye Nassoko*, 405 B.R. 515, 2009 WL 1578541 (Bankr. S.D.N.Y. June 5, 2009). This may

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[4] The plan in *Journal Register* provided that the trade account "shall not constitute property of the Debtors or the Reorganized Debtors" and "[a]fter all Trade Claim Payments have been distributed [. . .] the undistributed portion of the Trade Account Distribution, if any, shall become the sole and exclusive property" of the secured lenders. A "Plan Distribution Agent" would be responsible for the additional Trade Account Distribution and all other plan distributions. *See id.* at 527.

> result in the debtor providing a benefit to certain creditors that is disproportionate to the plan recovery, but it has never been thought to raise any question of plan classification."
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> "Since there is no principle that would preclude the Secured Lenders from making the "gift" totally outside the Plan and the chapter 11 process, the further question is whether the fact that certain provisions of the Plan facilitate the "gift" and provide that it is one of the "means of execution of the Plan" should cause the Court to invalidate it. Under the circumstances, the provisions of the Plan relating to the Trade Account Distribution are immaterial and do not cause it to be an inappropriate distribution "under the Plan." The fact that the Plan provides for an administrator to make the distribution and for the Court to resolve any disputes does not implicate the classification scheme under the Plan."

Id. at 533. For the reasons the court in *Journal Register* overruled the classification objection to that plan, the objections pertaining to the treatment of the Trade Unsecured Claims should also be overruled.

16. *In re Sentry Operating Co. of Texas, Inc.*, 264 B.R. 850 (Bankr. S.D. Tex. 2001), which the Gonzalez Plaintiffs cite in their Objection, is distinguishable from the facts here. In *Sentry*, the court stated that the classification scheme in which trade creditors were afforded different treatment than other unsecured creditors "was designed to preserve and to enhance the value of assets to be sold under the plan. The Court concludes that this purpose is permissible, and therefore the classification of creditors in the plan would be permissible if the classification were sufficiently narrowly drawn to achieve the stated purpose." *Id.* at 861. However, the court observed that the plan at issue proposed to pay many entities that did not appear to be related to the ongoing goodwill and continued operations of the debtor's business, and that the plan's classification scheme would permit the debtors to gerrymander an impaired accepting class of creditors, which is prohibited under *In the Matter of Greystone III Joint Venture,* 995 F.2d 1274 (5th Cir. 1992). Accordingly, the court held that the class of trade creditors in the plan at issue

was not defined appropriately to achieve the permitted purpose if preserving the value of the debtors' assets. *See Sentry*, 264 B.R. at 861.[5]

17. Here, the Debtors are not placing Trade Unsecured Claims in a class separate from other General Unsecured Creditors, and the Debtors will treat as Trade Unsecured Creditors only certain creditors with whom they intend to do business post-emergence. The Trade Unsecured Creditors are important business partners to the Encumbered Debtors, who would provide value to the Reorganized Debtors by maintaining preexisting trade credit terms. In consideration for the value the Trade Unsecured Creditors would provide to the Encumbered Debtors, such Trade Unsecured Creditors' prepetition Claims may be paid in full. Moreover, there is no evidence that the Debtors are attempting to gerrymander an impaired accepting class of creditors.[6]

18. In any event, as described in the Disclosure Statement (at page 73) and as set forth in the Plan (section 5.10(d)), if this Court finds at confirmation that the treatment of Trade Unsecured Claims is somehow prohibited, no creditor shall be treated as holding a Trade Unsecured Claim. Instead, any creditor who otherwise would have been treated as holding a Trade Unsecured Claim will, as a result of any challenge by the Committee, receive the treatment accorded to holders of General Unsecured Claims. Accordingly, the treatment of Trade Unsecured Claims comports with the Bankruptcy Code and should not block approval of the Disclosure Statement.

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[5] *In re Snyders Drug Stores, Inc.*, 307 B.R. 889 (Bankr. N.D. Ohio 2004), another case cited by the Gonzalez Plaintiffs, is also distinguishable. There, the court acknowledged that "[a] plan may reasonably discriminate if the 'proposed discrimination protect[s] a relationship with specific creditors that the debtor need[s] to recognize successfully'." *Id.* at 895. However, it concluded that the debtors did not provide sufficient evidence that the proposed discrimination was appropriate. The Debtors expect to produce evidence at the confirmation hearing to justify the Plan's treatment of Trade Unsecured Creditors.

IV. The Plan is Being Proposed in Good Faith

19. The good faith standard of Bankruptcy Code section 1129(a)(3) requires that the plan be "proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code." *In re Zenith Electronics Corp.*, 241 B.R. 92, 107 (Bankr. D. Del. 1999). The Plan, which is the product of negotiations between the Debtors and a group of Existing Lenders, has been proposed in good faith. In *Zenith*, the court concluded that the plan was proposed in good faith where (a) the plan was proposed with the legitimate purpose of restructuring the debtor's finances to allow the debtor to reorganize successfully, (b) the debtors had suffered substantial losses and was financially troubled; and (c) readjustment of the debtor's debt structure and forgiveness of a substantial amount of its debt is necessary of it to operate profitably. *See id.* Thus, according to the court in *Zenith*, "this reorganization is exactly what chapter 11 of the Bankruptcy Code was designed to accomplish." *Id.*

20. The case at bar falls squarely within *Zenith's* purview. The Debtors are financially troubled and are valued at less than the amount of their secured debt claims. Therefore, the Debtors proposed a plan to restructure their debt structure, forgive a substantial amount of debt and enable the Debtors to reorganize successfully.

21. In its Objection, the Committee identifies fifteen examples that purport to demonstrate a lack of good faith. Although the Debtors vigorously disagree with the Committee's position, the Debtors, in order to accommodate the concerns of the Committee have revised the Plan and Disclosure Statement accordingly. *See* Plan and Disclosure Statement filed

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[6] In fact, the Debtors would not need to gerrymander an impaired accepting class of creditors to confirm the Plan, since they expect that Class A2 will vote to accept the Plan.

on December 14, 2009 and the chart describing the objections and responses that is annexed hereto as Exhibit B.

V. The Plan Does Not Violate the Best Interests of Creditors Test

22. Bankruptcy Code section 1129(a)(7) sets forth the best interests of creditors test, which requires that: "With respect to each impaired class of claims or interests –

(A) each holder of a claim or interest of such class --

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

11 U.S.C. § 1129(a)(7).

23. Both the Committee and the Gonzalez Plaintiffs assert that the Plan violates the best interests of creditors test. This is a confirmation issue, to be determined based upon the evidence presented by the Debtors and other parties at the confirmation hearing. In the Disclosure Statement, the Debtors identified the Committee's and Gonzalez Plaintiffs' assertion, and addressed it by describing how (a) there is no unencumbered value for holders of General Unsecured Claims in Class A4 and (b) that Class A4 is receiving more under the Plan than they would in a chapter 7 liquidation (after factoring in, for example, the Existing Lenders' substantial adequate protection administrative claims). Any party is free to try to refute the Debtors'

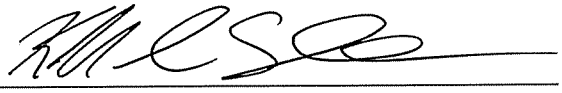
position during the confirmation hearing, but in any event the current disclosure satisfies the test for approval of the Disclosure Statement.[7]

[7] The Committee is undertaking extensive discovery in an attempt to gather evidence in support of their allegations against the Existing Lenders and others, and it will be free to argue that the Plan violates the best interests of creditors test during the confirmation hearing.

24. For the reasons set forth above, the Debtors respectfully request that this Court overrule the Objections, and approve the Disclosure Statement.

Dated: Wilmington, Delaware
December 15, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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