

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

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

**FINAL APPLICATION OF BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS & LINCENBERG, APC
AS SPECIAL LITIGATION COUNSEL FOR DEBTORS
AND DEBTORS-IN-POSSESSION, FOR ALLOWANCE OF COMPENSATION
FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
SEPTEMBER 1, 2003 THROUGH FEBRUARY 13, 2007**

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg (formerly Bird, Marella, Boxer & Wolpert), A Professional Corporation (“Bird Marella”), special litigation counsel for the above-captioned debtors and debtors-in-possession in these cases (collectively, “Debtors”), in support of its final application (“Final Application”) for allowance of compensation for professional services rendered and reimbursement of expenses incurred from September 1, 2003 through February 13, 2007 (“Final Application Period”), respectfully represents:

PRELIMINARY STATEMENT

1. By this Final Application and pursuant to sections 330, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Bird Marella requests that this Court authorize: (a) allowance of compensation for professional services Bird Marella rendered to the Debtors during the Final Application Period in the amount of \$256,437.00; and (b) the reimbursement of actual and necessary expenses Bird Marella incurred in connection with the rendering of such professional services in the amount of \$5,760.18.

2. This Court has jurisdiction over this Final Application pursuant to 28 U.S.C. §§ 157 and 1334 and the “Standing Order of Referral of Cases to Bankruptcy Judges,” dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of these cases and this Final Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 330, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

GENERAL BACKGROUND

3. On June 10, 2002, Century Communications Corporation (“CCC”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, and on June 25, 2002 (the “Petition Date”), Adelphia Communications Corporation and certain of its subsidiaries and affiliates (together with CCC, “ACC”) commenced cases under chapter 11 of the Bankruptcy Code. On September 30, 2002, Century/ML Cable Venture (“CML”) filed a

voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. By order dated June 26, 2002, the Debtors' cases, except for CML, were consolidated for procedural purposes only and are being jointly administered.

5. No trustee or examiner has been appointed in these cases.

6. On July 11, 2002, an Official Committee of Unsecured Creditors was appointed in these cases, and on July 31, 2002, an Official Committee of Equity Security Holders was appointed in these cases (together, the "Committees").

7. By order dated February 5, 2004, the employment and retention of Bird Marella as special litigation counsel for the Debtors was authorized pursuant to sections 327(a) and 328 of the Bankruptcy Code.

BIRD MARELLA'S PRIOR FEE APPLICATIONS

8. Bird Marella previously submitted eight fee applications for interim allowance of compensation for services rendered: (1) the First Application for the period September 1, 2003 through February 29, 2004;¹ (2) the Second Application for the period March 1, 2004 through June 30, 2004;² (3) the Third Application for the period July 1, 2004 through October 31, 2004;³ (4) the Fourth Application for the period November 1, 2004 through February 28, 2005;⁴ (5) the Fifth Application for the period March 1, 2005 through August

¹ Attached hereto as Exhibit A.

² Attached hereto as Exhibit B.

³ Attached hereto as Exhibit C.

⁴ Attached hereto as Exhibit D.

31, 2005;⁵ (6) the Sixth Application for the period September 1, 2005 through February 28, 2006;⁶ (7) the Seventh Application for the period March 1, 2006 through August 31, 2006;⁷ and the Eighth Application for the period September 1, 2006 through February 13, 2007;⁸

9. During the First Application Period, Bird Marella rendered services in the amount of \$73,214.00, but sought authorization for only 80% of the total, \$58,571.20, due to its (erroneous) belief that it was required to “hold back” 20% until making the Final Application. The difference, \$14,642.80, equals 20 percent of total fees incurred and subject to a “hold-back.”

10. During the Second Application Period, Bird Marella rendered services in the amount of \$13,497.50, but inadvertently sought authorization for only \$10,798.00 in its Second Application. The difference, \$2,699.50, equals 20 percent of total fees incurred and subject to a hold-back. (See para. 9, explaining Bird Marella’s error.)

11. During the Third Application Period, Bird Marella rendered services in the amount of \$14,725.50, but inadvertently sought authorization for only \$11,779.60 in its Third Application. The difference, \$2,944.90, equals 20 percent of total fees incurred and subject to the hold-back. (See para. 9, explaining Bird Marella’s error.)

12. In the course of discussions with Legal Cost Control’s auditors concerning the

⁵ Attached hereto as Exhibit E.

⁶ Attached hereto as Exhibit F.

⁷ Attached hereto as Exhibit G.

⁸ Attached hereto as Exhibit H.

First, Second, and Third Applications, Bird Marella discovered that it had erroneously requested authorization of only 80 percent (rather than 100 percent) of the fees incurred in each of the three prior Application Periods. This error resulted from the exclusion of fees subject to the 20 percent hold-back from the total amount requested in each application.

13. A Supplemental Application was filed, in which Bird Marella sought interim allowance of the compensation for services rendered from September 1, 2003 through October 31, 2004 (“Supplemental Application Period”), but erroneously omitted from the First, Second, and Third Fee Applications, totaling \$20,287.20. Bird Marella did not seek release of the entire hold-back amount at the time, but merely sought authorization for such payment at a time deemed appropriate by this Court.

14. During the Fourth Application Period, Bird Marella rendered services in the amount of \$57,363.00.

15. During the Fifth Application Period, Bird Marella rendered services in the amount of \$45,829.00.

16. During the Sixth Application Period, Bird Marella rendered services in the amount of \$30,710.00.

17. During the Seventh Application Period, Bird Marella rendered services in the amount of \$21,210.00.

18. During the Eighth Application Period, Bird Marella rendered services in the amount of \$312.00.

19. By this Final Application, Bird Marella seeks the allowance of compensation for services rendered during the Final Application Period.

20. For the convenience of the Court and parties-in-interest, these previous Interim Fee Applications are attached hereto as Exhibits A, B, C, D, E, F, G, respectively.⁹ Each of these prior Applications had been reviewed by Legal Cost Control and approved by this Court. Exhibit H, the Eighth Application for the period September 1, 2006 through February 13, 2007, has been filed concurrently with this Final Application and pending review by Legal Cost Control and by this court. Bird Marella's Supplemental Application for "hold back" fees erroneously excluded from its First, Second, and Third Applications is attached as Exhibit I.

BIRD MARELLA'S FEES AND EXPENSES

21. Bird Marella's services as special litigation counsel for the Debtors have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the previous Interim Application Periods, the various issues involved in these cases and the need to address those issues have required Bird Marella, in discharge of its professional responsibilities, to respond with both skill and dispatch.

22. For the previous Interim Application Periods, pursuant to this Court's Order Under Local Rule 2016 1 and 11 U.S.C. §§105(a) and 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002 (the "Compensation Order"), Bird Marella has received

⁹ Copies of the daily time records are being provided to the Court and the Office of the United States Trustee. Parties in interest required to be served with Bird Marella monthly fee statements pursuant to the compensation Order have previously been furnished with such daily time records. Copies of the time records will be made available to other parties in interest upon reasonable request.

\$244,527.07 as payment for services rendered and expenses incurred in these cases. Pursuant to the Compensation Order, 20% of the fees for professional services is subject to a “hold back.” During the Final Application Period, Bird Marella determined, in the exercise of its billing judgment, to waive \$49,965.00 in fees, including all fees attributable to time and activities devoted to bankruptcy-related filings, including Bird Marella’s fee statements and fee applications.

23. By this Final Application, Bird Marella seeks allowance in full of compensation for services rendered and expenses incurred during the Final Application Period, except for the amounts waived.

24. No agreement or understanding exists between Bird Marella and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case. See Affidavit of Thomas R. Freeman, Esq., annexed hereto as Exhibit I.

25. Bird Marella maintains written records of the time expended by attorneys, law clerks and paraprofessionals in rendering professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by each person rendering such services. For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit K is a list of the matters for which services were rendered and the aggregate amount of hours and fees expended for each of those matters. Additionally annexed hereto as part of Exhibit L is a list of the attorneys and paraprofessionals who have worked on those matters during the Final Application Period, the aggregate time expended by each individual during the Final Application Period, his or her hourly billing rate during the Final Application

Period, and the amount of Bird Marella's fees attributable to each attorney. Copies of the time records for the Final Application Period, broken down by matter and listing the name of the attorney, the date on which the services were performed, and the amount of time spent in performing the services have been previously submitted with prior monthly statements or Interim Applications. In accordance with the Final Compensation Procedures, they will not be re-submitted with this Final Application.

26. Bird Marella also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit M. Bird Marella also, in addition to its voluntary fee waivers, made fee reductions, as requested by the Fee Committee in the amount of \$2,485.00. A report furnished by the Fee Committee is annexed hereto as Exhibit N. The Fee Committee made no requests for expense reductions.

27. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the "Administrative Order"), Bird Marella recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of time and to constitute a substantial portion of the fees sought during the Final Application Period.

SUMMARY OF SERVICES RENDERED

28. In the fall of 2003, the City of Thousand Oaks (the “City”) had refused to issue to Adelphia Communications Corporation and Adelphia California Cablevision LLC (collectively, “Adelphia”) certain construction permits necessary for the integration of newly-acquired assets, formerly owned by Verizon, located in Thousand Oaks. Bird Marella has been representing Adelphia in the ensuing litigation. During the Interim Application Periods, Bird Marella worked to defend Adelphia’s interests by, among other things, seeking and obtaining an appellate reversal of a Preliminary Injunction, Summary Adjudication, and settlement of the dispute.

29. Also during the Final Application Period, a new dispute arose between Adelphia and Verizon wherein Adelphia discovered that certain of Verizon’s contractors were interfering and/or using Adelphia’s cable equipment without Adelphia’s consent. Bird Marella worked with Adelphia and Verizon representatives, conducted research relevant to the issues raised and represented Adelphia in negotiations between the parties. Bird Marella attorneys worked expeditiously and efficiently in the handling of these settlement activities.

30. Further, in accordance with the Court’s order, Bird Marella has performed bankruptcy-related activities, including serving its monthly statements on the relevant parties, preparing fee applications and responding to fee audits by Legal Cost Controls.

EVALUATING BIRD MARELLA’S SERVICES

31. As highlighted above, Bird Marella provided essential litigation services to further the Debtors’ interest in relation to the Adelphia-Verizon transaction in the City of

Thousand Oaks, and to ensure the Debtors' employment, retention, and payment of Bird Marella complied with the requirements of the Bankruptcy Code.

32. "[T]he 'lodestar' method of fee calculation developed by the Third Circuit, *see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a 'reasonable' attorney fee in all the federal courts, including the bankruptcy courts." *In re Cena's Fine Furniture, Inc.*, 109 B.R. 575, 581 (E.D.N.Y. 1990); *In re Poseidon Pools of America, Inc.*, 216 B.R. 98, 100 (E.D.N.Y. 1997). *Accord In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) ("In determining the 'reasonableness' of the requested compensation under § 330, Bankruptcy Courts now utilize the 'lodestar' method").

33. "The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate, with the 'strong presumption' that the lodestar product is reasonable under § 330." *Drexel*, 133 B.R. at 22 (citations omitted). Bird Marella's hourly rates and fees charged are consonant with the market rate for comparable services. The hourly rates and fees charged by Bird Marella are the same as or less than those generally charged to, and paid by, Bird Marella's other clients. Indeed, unlike fees paid by most Bird Marella clients, due to the "holdbacks" of fees from prior monthly fee statements, the delays inherent in the fee application process, and Bird Marella's waiver of certain fees, the present value of the fees paid to Bird Marella by the Debtors is significantly less than fees paid monthly by other Bird Marella clients.

34. The hours expended by Bird Marella were necessary. "[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an

activity or project should be disallowed only where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive.” *Drexel*, 133 B.R. at 23 (emphasis added). Moreover, in passing upon the reasonableness of hours expended, courts should be mindful of the “practical judgments, often within severe time constraints, [professionals make] on matters of staffing, assignments, coverage of hearings and meetings, and a wide variety of similar matters.” *Id.* These judgments are presumed to be made in good faith. *Id.*

BIRD MARELLA’S REQUEST FOR FINAL COMPENSATION

35. The allowance of final compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

[A] debtor’s attorney, or any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

36. Concerning the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor’s attorney:

reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney....

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and

competent practitioners to bankruptcy cases.

37. Bird Marella submits that its request for final allowance of compensation is reasonable. Bird Marella expended time, effort and litigation expertise to further the Debtors' interest in the Adelphia-Verizon transaction in the City of Thousand Oaks during the Final Application Period and successfully resolved disputes without the need to request assistance from the courts.

38. The services rendered by Bird Marella during the Final Application Period were performed diligently and efficiently. When possible, Bird Marella delegated tasks to lower cost junior attorneys or, for discrete matters, to a single attorney with specialized expertise in the particular task at issue. While that approach may have required intra-office conferences or involved individual attorneys who spent only a few hours on the matter at hand, the net result was enhanced cost efficiency. Any duplication of effort was *de minimus* and is covered by Bird Marella's write-offs in the exercise in billing judgment.

39. During the Final Application Period, Bird Marella encountered certain novel and complex legal issues, often requiring extensive research and drafting. Bird Marella brought to bear legal expertise in areas including litigation and regulatory issues. Bird Marella attorneys have rendered advice in all of these areas with skill and dispatch.

DISBURSEMENTS

40. Bird Marella incurred actual and necessary out-of-pocket expenses during the Final Application Period in connection with the rendition of the professional services

described above, in the amounts set forth in Exhibit M.¹⁰ By this Final Application, Bird Marella respectfully requests allowance of such reimbursement in full.

The disbursements for which Bird Marella seeks reimbursement include the following:

- a. Photocopies - Charged at \$0.10 per page for in-house photocopying, and at actual cost for outside photocopying services;
- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing facsimile transmittals are billed at \$0.50 per page for domestic transmissions and at \$1.00 per page for international transmissions. There is no charge for incoming facsimiles;
- c. Delivery Services - Bird Marella's practice is to charge postal, overnight delivery, attorney and courier services at actual cost;
- d. Special Services - Bird Marella's practice is to charge special items, such as special supplies and transcripts, at actual cost; and
- e. Computer Research Charges - Bird Marella's practice is to bill clients for LEXIS and Westlaw research at actual cost;

PROCEDURE

41. Bird Marella has provided notice of this Final Application to: (i) the Office of the U.S. Trustee; (ii) counsel to the agents for the Debtors' prepetition and post-petition bank lenders; (iii) counsel to the Committees; (iv) the Debtors; and (v) all other parties that have filed a notice of appearance in these cases prior to the date hereof.¹¹

¹⁰ Bird Marella's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in Bird Marella's accounting system.

¹¹ Copies of the daily time records are being provided to the Court and the Office of the United States Trustee. Parties in interest required to be served with Bird Marella monthly fee statements pursuant to the Compensation Order have previously been furnished with such daily time records. (footnote continued)

42. No previous application for the final relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, Bird Marella respectfully requests that this Court enter an order awarding Bird Marella:

- a. final compensation from the Debtors for services rendered from September 1, 2003 through February 13, 2007, inclusive, in the amount of \$256,437.00;
- b. final reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$5,760.18; and
- c. such other and further relief as may be just.

DATED: March 26, 2007

Respectfully submitted,
Thomas R. Freeman
BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS & LINCENBERG, P.C.

By 

Thomas R. Freeman
Special Litigation Counsel for Debtors and
Debtors-In-Possession

Copies of the time records will be made available to other parties in interest upon reasonable request.