

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**FINAL FEE APPLICATION OF FOCUSED BUSINESS SOLUTIONS, LLC
AS COST RECOVERY CONSULTANTS FOR DEBTORS AND DEBTORS IN
POSSESSION, FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
MARCH 1, 2004 THROUGH FEBRUARY 13, 2007**

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

Focused Business Solutions, LLC ("FBS"), Cost Recovery Consultants for the above-captioned debtors and debtors in possession in these cases (the "Debtors"), in support of its Final Fee Application (the "Final Application") for allowance of compensation for professional services rendered and reimbursement of expenses incurred from March 1, 2004 through February 13, 2007, respectfully represents:

PRELIMINARY STATEMENT

By this Final Application and pursuant to section 330 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), FBS requests that this Court authorize the final allowance of compensation for professional services FBS rendered to the Debtors during their representation of the Debtors from March 1, 2004 to February 13, 2007 in the amount of \$1,746,562.10. FBS, in accordance with their fee agreement with the Debtors is responsible for all expenses associated with their

cost recovery efforts and is, therefore, not requesting reimbursement for expenses. Expenses are presented in this petition for disclosure purposes only.

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 section 330 of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

FBS'S FEES AND EXPENSES

FBS's services in their cost recovery cases have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout their representation of the Debtors, the variety and complexity of the issues involved in these cost recovery efforts and the need to address those issues on an expedited basis have required FBS, in discharge of its professional responsibilities, to devote substantial time by cost recovery professionals, including attorneys, on a daily basis, and often through night and weekend work.

In accordance with Section II.B. of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, issued January 30, 1996 (the "UST Guidelines"), FBS has been advised by the Debtors Attorney's Willkie Farr & Gallagher LLP (WF&G) that all required disclosures necessary for this Final Application Period have been made to the Court in WF&G's Final Application to this Court.

FBS made seven applications for interim allowance of compensation for professional services. FBS's first application was for the Sixth Application Period (March 1, 2004 through June 30, 2004). FBS's second application was for the Seventh Application Period (July 1, 2004 through October 31, 2004). FBS's third application was for the Eight Application Period (November 1, 2004 through February 28, 2005). FBS's fourth application was for the Ninth Application Period (March 1, 2005 through August 31, 2005). FBS's fifth application was for the Tenth Application Period (September 1, 2005 through February 28, 2006). FBS's sixth application was for the Eleventh Application Period (March 1, 2006 to August 31, 2006). FBS's seventh application was for the Twelfth Application Period (September 1, 2006 to February 13, 2007). FBS is a contingency based cost recovery consultant. As such, FBS only invoices for services rendered when an actual recovery is received by the Debtors. The employees of FBS began working on this Cost Recovery project in July, 2003. The first recovery on behalf of the Debtors was received in June of 2004 in the amount of \$959,517.10. This recovery resulted in the first statement of services rendered being presented to the Debtors in July 2004 for the period June 1, 2004 to June 30, 2004. Subsequently, during the Seventh Period, Eighth Period, Ninth Period, Tenth Period, Eleventh Period and Twelfth Interim Application Period, as fully set forth below, FBS obtained recoveries during one or more months in the application period.

For the seven interim applications for compensation noted above, pursuant to the Compensation Order, FBS has received \$1,676,738.28 in payments for services rendered. These fees were billed in the interim periods noted below.

Interim Period	Total Fee for Interim Period	Amount Paid Based on Monthly Fee Statement	10% Holdback Paid after Interim Application	Final Holdback Paid on Effective Date	Hold Back Still Pending
Sixth (FBS's 1 st Application)	\$239,879.30	\$191,903.44	\$23,987.93	\$23,987.93	0
Seventh	\$332,799.30	\$266,239.44	\$33,279.93	\$33,279.93	0
Eighth	\$347,600.00	\$278,080.00	\$34,760.00	\$34,760.00	0
Ninth	\$376,424.60	\$301,139.68	\$37,642.46	\$37,642.46	0
Tenth	\$201,479.60	\$161,183.68	\$20,147.96		\$20,147.96
Eleventh	\$11,854.20	\$9,483.36			\$2,370.84
Twelfth	\$236,525.10	\$189,220.08			\$47,305.02
Total	\$1,746,562.10	\$1,397,249.68	\$149,818.28	\$129,670.32	\$69,823.82

As noted above FBS, under their agreement with the Debtors, is not entitled to the reimbursement of expenses incurred in connection with the rendering of such professional services. The payment received represents 80% payment for services rendered by FBS, as well as some of the “hold backs”, as noted above. By this Final Application, FBS seeks allowance of compensation in full for services rendered during their representation of the Debtors.

No agreement or understanding exists between FBS and any other entity for the sharing of compensation to be received for services rendered in or in connection with the cost recovery engagements being performed on behalf of the Debtors. See Affidavit of David C. Anderson, Esq., annexed hereto as Exhibit A.

FBS maintains written records of the time expended by attorneys, paraprofessionals and administrative support in rendering professional services to the Debtors. FBS is not a law firm, but does have attorneys that perform the duties of project managers. The employees of FBS began working on this Cost Recovery project in July, 2003. At any given time, FBS has a number of open cost recovery cases for the Debtors. Some of these projects do not result in recoveries, while others do. As such, we do not attempt to distinguish between individual recoveries in our accounting system. We have, in the present case, documented the hours spent working on cost recovery matters for the Debtors as noted in our fees statement included in each of our Interim Fee Applications.

For the convenience of the Court and parties-in-interest, annexed to each of the Interim Fee Applications as part of Exhibit B is a list of the attorneys, paraprofessionals and administrative support who have worked on matters during the applicable Interim Application Period and the aggregate time expended by each individual during that Interim Application Period. Additionally, annexed as Exhibit B of each of FBS's Interim Applications is an explanation of the recoveries received on behalf of the Debtors during that application period.

FBS 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 to FBS's Interim

Applications as a part of Exhibit B. Again, FBS is not authorized, under their agreement with the Debtors, to obtain reimbursement for expenses. This information is provided for the purpose of disclosure only.

Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the “Administrative Order”), FBS recorded its services rendered and disbursements incurred on all ongoing recovery projects.

SUMMARY OF SERVICES RENDERED

The professional services that FBS performed during each of the Interim Application Periods are detailed in Exhibit B of the Interim Applications for Compensation. This exhibit incorporates FBS's annexed time records, including the time spent by each member of FBS's staff on cost recovery services. All hours spent have been in Service Category 108 – Tax Issues. FBS is a cost recovery consultant that is compensated for its services on a contingency basis, based on actual recoveries received. During the representation of the Debtors during its bankruptcy FBS recovered \$7,552,530.54 for the Debtors. All recoveries were of Sales and Use Tax erroneously paid by the Debtor.

EVALUATING FBS'S SERVICES – REASONABLENESS OF FEES

Pursuant to Section 330 of the Bankruptcy Code FBS asserts that its fees were reasonable and necessary. In support of this assertion FBS avers as follows:

- a. The Final Applicant's role, objectives, and accomplishments in the Adelpia Case: FBS is a cost recovery company. As such, their role was to identify consumption taxes that were erroneously paid by the Debtors and recovery those

payments. FBS identified all major markets that the Debtors had business activity in during the statutory periods open for refund claims. FBS then did extensive reviews of accounts payable records, both electronic and physical, to determine refund opportunities. FBS then filed all administrative claims necessary to recover the funds. During their representation of the Debtors, FBS identified and recovered \$7,552,530.54 in erroneously paid Sales and Use Tax.

- b. The time billed for the services and the billing rates: FBS is a contingency recovery company. As such, FBS is paid a percentage of the amounts they are able to recover on behalf of their client. FBS does not bill on an hourly bases and does not have an hourly billing rate. As a point of comparison only, FBS's attorneys and administrative staff expended 7,051 hours on this project. FBS's total contingency compensation was \$1,746,562.10. As such, FBS's fee for this engagement, when illustrated as an hourly fee is \$247.70 per hour. Since FBS bears the risk of not recovering taxes, finances the project in its entirety and pays all expenses, without reimbursement, the net fee is substantially lower. The total amount of time spent on this project also highlights the substantial time and effort put into this project, much of which occurred under substantial pressure and during nights and weekends.
- c. Steps taken by the Final Applicant to provide services solely within their scope of employment, as prescribed by their respective retention orders: Since FBS was compensated on a contingency basis, only work within their scope of services was performed. All projects were reviewed by the Debtor's Tax Manager prior to

work commencing to ensure they were within the scope of our retention order. Regularly scheduled updates were also provided to the Tax Manager to ensure that the services were meeting the Debtors expectations. Furthermore, because FBS was only compensated for recoveries received there was no incentive, nor any fee paid, for work that was not within the scope of their retention order.

- d. Coordination of the Final Applicant's services with those of other professionals in the Adelpia Case to limit or prevent duplication of work being done: To the best of FBS's knowledge there were no other consumption tax cost recovery companies performing work for the Debtor's while FBS was engaged to perform said services. As such, there was no duplication of effort with any other professional working on the Adelpia Case.
- e. Whether the services were necessary to the administration of, or beneficial at the time at which the services were rendered: The services rendered by FBS were both necessary and beneficial to the administration of the estate. FBS identified time sensitive refund opportunities and recovered \$7,552,530.54 for the Debtors. If not for the efforts of FBS, these refunds would have been time barred by the applicable state statute of limitations and would have been forever lost. The taxes recovered by FBS were available to the Debtors to meet other obligations.
- f. Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed: All services performed by FBS were efficiently undertaken, within a reasonable amount of time commensurate with the complexity,

importance and nature of the recoveries undertaken. The services rendered by FBS during their representation of the Debtors were performed diligently and efficiently. Throughout the engagement FBS assigned discrete projects or tasks to particular project managers. These project managers, who are also attorneys, ensured the efficient resolution of all cost recovery projects assigned, with an eye towards optimizing the recoveries in the shortest time possible. Since FBS is compensated based on a contingency of recoveries actually made, the amount of time spent on actually tasks, although efficiently undertaken, had no bearing on the amount that the Debtors were billed for FBS's services.

- g. The opposition encountered and the problems that arose: During the engagement, FBS encountered certain novel and complex cost recovery issues, often requiring extensive research and coordination with taxing authorities. In order to address these issues FBS brought to bear their extensive expertise in their specialty of tax. However, since FBS is compensated based on a contingency of recoveries actually made, the amount of time spent on issues and challenges encountered, although efficiently undertaken, had no bearing on the amount that the Debtors were billed for FBS's services.
- h. Compliance with Fee Committee Memorandum: To the best of FBS's knowledge, FBS complied with all Fee Committee Memorandum. At no time was FBS informed of any issues of noncompliance by the Fee Committee, the Court or any other party in interest.

- i. Any amounts by which the fees of the Final Applicant have been reduced voluntarily, with respect to an Interim Application or otherwise, prior to their submission to or review by the Fee Committee identified by work code or, if none, by description: FBS has had no voluntary reductions in fees (Chart at Exhibit D).

- j. Any amounts by which the fees of the Final Applicant have been reduced at the recommendation of the Fee Committee, with respect to an Interim Application or otherwise, identified by work code or, if none, by description: No reductions of FBS's fees on any of their Interim Applications have been recommended by the Fee Committee (Chart at Exhibit D).

- k. Any amounts by which the expenses of the Final Applicant have been reduced voluntarily, with respect to an Interim Application or otherwise, prior to their submission to or review by the Fee Committee identified by expense category: FBS is responsible for all expenses incurred in the performance of their engagement and, in accordance with their contract with the Debtor cannot and is not requesting reimbursement of expenses (Chart at Exhibit D).

- l. Any amounts by which the expenses of the Final Applicant have been reduced at the recommendation of the Fee Committee, with respect to an Interim Application or otherwise, identified by expense category: In accordance with their agreement

with the Debtor FBS does not request reimbursement for expenses incurred as part of their engagement. As such, the fee committee has not reviewed the expenses of FBS and has not made any recommendations for reductions (Chart at Exhibit D).

- m. Any other matters that the Fee Committee believes should be considered by the Bankruptcy Court in its final determination of compensation and expense reimbursement for the Final Applicant: The following discussion should be considered by the Bankruptcy Court in its final determination of the reasonableness of the compensation for FBS in its Final Application:

(i) As highlighted above and in the Exhibits B attached to each of the Interim Applications for Compensation, FBS provided extensive services to facilitate the Debtors' collection of erroneously paid Sales and Use Tax. These services have provided additional financial resources to the Debtors, which is to the benefit of all interested parties of the Debtors.

(ii) In the case of a cost recovery consultant, reasonable compensation is determined by the prevailing contingency rate in the market place. In accordance with the Order Authorizing Employment and Retention of FBS, dated April 2, 2004, FBS was authorized to be compensated under the Cost Recovery Agreement entered into on July 17, 2003, as amended on August 27, 2003 and February 26, 2004. Specifically, FBS is entitled to a contingency fee of twenty five percent (25%) of all sums actually

recovered.¹ Under the contract, FBS is also responsible for all expenses incurred under the contract, regardless of whether or not recoveries are actually received. The risk of incurring expenses and costs, and not recovery funds that trigger the contingency fee, is entirely on FBS. As such, fees incurred during this engagement were calculated by multiplying the amount recovered by the contingency rate, with no additions and no reductions.

(iii) The competitive contingency rate in the market place for providing cost recovery services ranges from 35% to 50% of the recovered amounts, depending on factors such as the size of the company for which the work is to be performed and the industry that the company does business in. The Debtors are a large company and one in an ideal industry for cost recovery services, so a competitive rate for performing services for ACC would be 35%.

(iv) As further proof of the reasonableness of the fee for the services provided to the Debtor, FBS would also like to point to the work they do for the Federal Government, their largest client. FBS's Nationwide Contingency Cost Recovery Contract with the Federal Government (GSA Contract

¹ FBS also has an amendment to their contract with ACC that provides for a reduced contingency of 15% on items previously identified by ACC. None of the recoveries made during their representation of the Debtors while in bankruptcy fall in this contingency category. FBS also had a provision in their contract that provided for a 15% contingency fee, if a case went to trial. This 10% reduction provided for Debtor's payment of a 10% attorney contingency fee on the work necessary for the appeal. This provision was triggered in the PA Sales tax cases, which were resolved at Commonwealth Court. As such, the September 2006 fee statement notes a 15% fee on the Pennsylvania Sales Tax recoveries.

Number GS-07-00-HHD-008) is based on a 30% contingency. The Federal contract was awarded after competitive bidding, review and award procedures under the Federal Acquisition Regulations of the United States. As such, the Debtors' contingency rate for cost recovery services being provided by FBS in the present matter is below market and below the rate that is extended by FBS to Agencies of the United States Government.

- (v) As further proof the reasonableness of the fee for the services provided to the Debtor, FBS would also like to assert that ACC is being given the same base rate, 25%, as FBS's contract with the United States of America's Department of Defense (Defense Logistics Agency). In addition the scope of work performed by FBS for the Debtors was more extensive than the work performed by FBS on behalf of the Department of Defense.

For all the above stated reasons, FBS submits that its fees in the present matter were reasonable and necessary and that its allowance of compensation should, therefore, be granted.

DISBURSEMENTS

FBS incurred actual and necessary out-of-pocket expenses in connection with the rendition of the professional services described above, in the amounts set forth in FBS's Interim Applications for Compensation, Exhibit B. As previously noted, FBS bears all responsibility for expenses incurred and no reimbursement is requested. Disbursements are disclosed for informational purposes only.

PROCEDURE

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

No previous application for the relief sought herein has been made to this or any other court, except for the Interim Applications for Compensation to this court as fully set forth herein.


CONCLUSION

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

- (a) final compensation from the Debtors for services rendered from March 1, 2004² through February 13, 2007, inclusive, in the amount of \$1,746,562.10;
- (b) such other and further relief as may be just.

Dated: March 23th, 2007

FOCUSES BUSINESS SOLUTIONS, LLC

By: 

David C. Anderson, Principal
1110 North Mountain Road
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² July 17, 2003 is the date of FBS's contingency contract with the Debtors and the date that work began on this engagement, however, the first contingency fee earned and billed was in the Sixth Interim period.