

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**FINAL APPLICATION OF HOLME ROBERTS & OWEN LLP,
AS SPECIAL COUNSEL TO THE DEBTORS AND DEBTORS IN
POSSESSION, FOR INTERIM ALLOWANCE OF
COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
MAY 1, 2004 THROUGH FEBRUARY 13, 2007**

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

Holme, Roberts & Owen LLP (“HRO”), special counsel for the above-captioned debtors and debtors in possession in these cases (the “Debtors”), in support of its final interim application (the “Final Application”) for allowance of compensation for professional services rendered and reimbursement of expenses incurred from May 1, 2004 through February 13, 2007 (the “Final Application Period”), respectfully represents:

PRELIMINARY STATEMENT

1. By this Final Application and pursuant to sections 330 and 331 of 11 U.S.C. § 101 et al. (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), HRO requests that this Court authorize allowance of compensation for professional services HRO rendered to the Debtors during the Final

Application Period in the amount of \$3,988,251.46;¹ (of which \$3,707,071.83 has previously been paid and \$281,179.63 remains outstanding).

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 Sixth 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 and 331 of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

GENERAL BACKGROUND

3. On June 25, 2002, the Debtors filed for relief under chapter 11 of Title 11 of the Bankruptcy Code. The Debtors continue in possession of their respective properties and the management of their respective business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been procedurally consolidated.

4. On July 11, 2002, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors in these cases.

HRO’S FEES AND EXPENSES

5. HRO’s services in these cases have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the Final Application Period, the variety and complexity of the issues involved in these cases and

¹ As set forth in HRO’s monthly fee statements submitted during the Final Application Period, HRO “wrote off” approximately \$236,580.28 in fees and expenses in the exercise of its billing judgment. Such write off amounts are not included in the amounts requested in this Final Application. Accordingly, the fees and reimbursements requested herein represent the amounts that have been reduced by the billing adjustment amounts.

the need to address those issues on an expedited basis have required HRO, in discharge of its professional responsibilities, to devote substantial time by professionals from many legal disciplines on an ongoing and, at certain times, daily basis.

6. HRO maintains written records of the time expended by attorneys and paraprofessionals in the rendition of professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by the person rendering such services. Time records of the Final Application Period are broken down by matter and the amount of time spent in performing the services, is attached hereto as Exhibit B.

7. For the Final Application Period, pursuant to the Compensation Order, HRO has received \$3,707,071.83 as payment for services rendered and expenses incurred in these cases. This amount represents 100% payment of the reimbursement for expenses incurred and 80% payment for services rendered by HRO during the Final Application Period. HRO has not yet received payment for the monthly fee application of February, 2007. Payment for this monthly fee application is currently pending and is estimated to be received by April 15, 2007. Pursuant to the Compensation Order, 20% of the fees for professional services is subject to a "holdback." By this Final Application, HRO seeks interim allowance in full of compensation for services rendered and expenses incurred during the Final Application Period.

8. During the Final Application Period, HRO determined, in the exercise of its billing judgment, to write off approximately \$236,580.28 in fees and expenses, as reflected in the monthly billing statements served pursuant to the Compensation Order.

9. No agreement or understanding exists between HRO 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 Elizabeth K. Flaagan, Esq., annexed hereto as Exhibit A.

10. For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit C is a list of the attorneys, law clerks 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 HRO's fees attributable to each individual. Additionally, annexed hereto as part of Exhibit B is a list of all the matters for which services were rendered during the Final Application Period and the aggregate amount of hours and fees expended for each of those matters.

11. HRO 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 D.

12. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases, (the "Administrative Order"), HRO recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors during the Final Application Period.

SUMMARY OF SERVICES RENDERED

13. Recitation of each and every item of professional services that HRO performed during the Final Application Period would unduly burden the Court. Hence, the following summary highlights the major areas to which HRO devoted substantive time and attention during the Final Application Period. The full breadth of HRO's services is reflected in HRO's annexed time records. Additionally, Exhibit C annexed hereto lists: (a) all attorneys, law clerks and paraprofessionals who have performed services in each respective Service Category;

and (b) a breakdown of the hours spent and the amount of compensation requested for each attorney, law clerk and paraprofessional within each Service Category.

A. SEC Issues

14. During the Final Application Period, HRO continued to advise the Debtors regarding Sarbanes-Oxley compliance issues and in connection with various general corporate issues..

B. Asset Sales

15. During the Final Application Period, HRO advised the Debtors and rendered significant services in connection with the Debtors' proposed sales of the following assets: (i) a home security business headquartered in Florida; (ii) a home security business headquartered in Maine; (iii) certain cable assets located in Brazil and Venezuela; and a television system in St. Mary's, Pennsylvania. HRO has represented the Debtors in all aspects of these proposed sales including due diligence, drafting and analysis of necessary documents, negotiations with potential buyers and coordination with Debtors' bankruptcy counsel, as necessary. Further, and significantly during the Final Application Period, HRO advised and represented the Debtors with regard to the proposed sale of substantially all of their assets to Comcast and Time Warner. Particularly, HRO provided significant services to the Debtors in connection with responding to interrogatories and requests for production of documents from the FTC relating to the FTC's Hart-Scott-Rodino Act review and approval of the proposed sale.

C. Bankruptcy Matters.

16. During the Final Application Period, in accordance with the Court's order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002, HRO has served monthly

statements on the relevant service parties and has filed two prior interim fee application with the Court. In addition, HRO has worked to comply with the directives of the fee committee (the “Fee Committee”) and the requirements of the fee protocol approved by the Court on March 7, 2003, by participating in negotiations with the Fee Committee and providing relevant fee materials so that the Fee Committee may monitor the fees incurred in these cases.

D. ML Media/Puerto Rico

17. During the Final Application Period, HRO rendered services to the Debtors in connection with the Debtors’ ongoing litigation with ML Media and in connection with the sale of the assets of Century/ML Media Joint Venture.

E. Tax Matters

18. During the Final Application Period, HRO rendered services to the Debtors in connection with the completion of a series of sales tax incentive transactions the Debtors had entered into with Erie County Industrial Development Authority in 2001.

F. Litigation

19. During the Final Application Period, HRO rendered services to the Debtors in connection with various contested matters and litigation. In particular, HRO provided significant services in connection with a contested matter involving former professionals of the Debtors, including responding to interrogatories and requests for production of documents from Boies, Schiller & Flexner. Additionally, HRO provided services in connection with representing the Debtors in the cases of DirecTV v. William W. Wilkins/Third Party Subpoena and TV Guide Online, Inc. v. Tribune Media Services.

EVALUATING HRO'S SERVICES

20. As highlighted above, during the Final Application Period, HRO provided services to the Debtors in connection with their continuing disposition of assets and various litigation, SEC, General Corporate, and tax matters. All of these services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

21. “[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”).

22. “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). HRO’s hourly rates and fees charged are consonant with the market rate for comparable services. The hourly rates and fees charged by HRO are the same as (or less than) those generally charged to, and paid by, HRO’s other clients. Indeed, unlike fees paid by most HRO clients, due to the “holdbacks” of fees from prior monthly fee statements and the delays inherent in the fee application process, the present value of the fees paid to HRO by the Debtors is significantly less than fees paid monthly by other HRO clients.

23. The hours expended by HRO 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.

GENERAL CRITERIA

24. Bankruptcy courts have suggested various factors for consideration in awarding compensation in bankruptcy cases. These factors include the following:

A. **Time and Labor Required:** During the Final Application Period, HRO accumulated a total of 14,044.15 hours of time in providing legal services to the Debtors, with a value of \$3,917,649.20 and for which compensation is sought. As stated above, the figures for hours and compensation are net of a voluntary write-offs in excess of \$236,580.28.

B. **Novelty and Difficulty of the Questions:** The level of skill and knowledge required in this case was very wide. HRO provided services for a variety of different transactions, including asset sale transactions and H-S-R review in connection with the sale of substantially all of the Debtors’ assets, in addition to providing services in a variety of complex litigation cases involving the Debtors. Accordingly, HRO has had to devote considerable skill and time to understanding that transactions, gathering background information, and advocating

on behalf of the Debtors. Additionally, many of the services provided by HRO had to be accomplished under very tight time-frames.

C. **Skill Required to Perform the Services Properly:** As stated above, HRO was required to utilize a variety of professionals associated with HRO for various aspects of these cases. HRO has utilized persons with skills encompassing the full range of legal skills such as litigation, transactional and multi-party negotiations.

D. **Preclusion From Other Employment:** HRO has not refused other employment because of this case. However, HRO could have devoted the time spent on this case to other cases for which HRO would have been compensated, without the contingencies and delays involved in obtaining compensation in cases of this nature, at HRO's normal hourly rates.

E. **Customary Fees:** The rates and expenses charged by HRO in these cases are the normal charges HRO bills its clients. HRO's normal hourly rates and charges are those typically paid by HRO's other clients during the period covered by this Application and are consistent with the rates charged by other attorneys with the same degree of experience and expertise as HRO's attorneys and paraprofessionals.

F. **Whether the Fee is Fixed or Contingent:** In all bankruptcy proceedings, the fees of HRO are subject to the scrutiny, objection and approval of the Court and are, in that regard, contingent. Otherwise, HRO charged its customary hourly rates for time expended by its attorneys and paraprofessionals in representing the Debtors and payment for such representation was not dependent on the outcome.

G. **Amount Involved and Results Obtained:** HRO was retained, in part, to provide services in connection with various assets sales by the Debtors, including the sale

of substantially all of the Debtors' assets to Comcast and Time Warner. Accordingly, the amounts involved were very significant and successful results were obtained in each such instance. HRO also provided services to the Debtors in connection with SEC matters, tax issues and various litigation matters. Such representations produced successful results for the Debtors, some which do not lend themselves to a quantitative analysis, but nonetheless produced the desired results.

H. **Experience, Reputation and Ability of Counsel:** HRO is a full service Denver-based law firm with approximately 265 attorneys. The firm enjoys a national reputation for providing high quality, cost-effective legal advice to its clients. It provides legal services to variety of individuals, and both small and large local, national and international corporations, both domestically and abroad. HRO assigned a number of attorneys and paraprofessionals to this case with varying degrees of professional experience in order to ensure that discrete tasks were addressed by personnel with appropriate levels of expertise.

I. **Awards in Similar Cases:** The compensation sought in this case is consistent with that awarded in other cases of similar size and complexity.

WRITE-OFF OF FEES

25. HRO determined, in the exercise of its billing judgment, to write off approximately \$236,580.28 in fees and expenses, as reflected in the monthly billing statements served pursuant to the Compensation Order.

26. In compliance with the Fee Committee's recommendations, HRO reduced its' fees by \$3,687.63 as some expenses were duplicative or questionable clerical/secretarial fees.

27. HRO reduced its' expenses by \$2,990.51 as some expenses were duplicative.

HRO'S REQUEST FOR COMPENSATION

28. The allowance of 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.

29. Concerning the level of compensation, section 330(a)(1) 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.

30. HRO submits that its request for interim allowance of compensation is reasonable. The services rendered by HRO, as highlighted above, were necessary in order to fulfill the Debtors' requests for legal counsel and to meet the Debtors' obligations to its creditors and parties in interest.

31. The services rendered by HRO during the Final Application Period were performed diligently and efficiently. Accordingly, when possible HRO delegated tasks to lower cost junior attorneys and law clerks or, for discrete matters, to attorneys 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. The blended hourly rate for all attorneys is approximately \$290.39 and the combined blended hourly rate for all attorneys and paraprofessionals is approximately \$278.95, which is within the range of fees normally charged for similar services rendered in similar chapter 11 cases.

32. The services rendered to the Debtors during the Final Application Period required an aggregate expenditure of 14,044.15 recorded hours of the time of attorneys and paraprofessionals. Based upon the number of hours spent and the normal hourly billing rate established by HRO, the value of the recorded services rendered is \$3,917,649.20. Exhibit C sets forth a list of such individuals, the aggregate amount of time expended by each and the current hourly billing rate for each. The fair and reasonable value of the services rendered and recorded by HRO as special counsel to the Debtors during the Final Application Period is set forth in Exhibit B and summarized above.

DISBURSEMENTS

33. HRO 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 D.² By this Final Application, HRO respectfully requests allowance of such reimbursement in full.

34. The disbursements for which HRO seeks reimbursement include the following:

² HRO's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in HRO's accounting system.

- (a) Duplicating - Charged at \$0.10 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;
- (b) Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$1.00 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by HRO for machine maintenance, phone line rental and supplies used in operating the fax machine;
- (c) Computer Research Charges - HRO's practice is to bill clients for LEXIS and Westlaw research at actual cost; and
- (d) Delivery Services - HRO's practice is to charge postal, overnight delivery and courier services at actual cost.

PROCEDURE

35. HRO 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 postpetition 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.

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

CONCLUSION

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

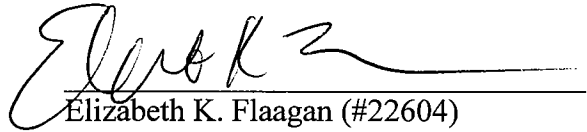
- (a) compensation for services rendered from May 1, 2004 through February 13, 2007, inclusive, in the amount of \$3,917,649.20;
- (b) reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$70,602.26;

- (c) authorizing immediate payment to HRO of \$281,179.63, representing the collective “holdback” pursuant to the prior interim fee applications submitted by HRO, plus those fees and expenses not yet paid to HRO by the Debtors;
- (d) such other and further relief as may be just.

Dated: March 28, 2007

HOLME ROBERTS & OWEN LLP

By:



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