

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: December 4, 2002
Hearing Time: 10:00 a.m.

-----X
In re : Case Nos. 02 B 11732 through 02 B 11736
: and 02 B 11975 through 02 B 11979(ALG)
:
Flag Telecom Holdings Limited, et al., : Chapter 11
:
: Jointly Administered
Debtors. :
:
-----X

**OBJECTION OF THE UNITED STATES TRUSTEE REGARDING
APPLICATIONS FOR FINAL ALLOWANCE OF COMPENSATION
AND FOR REIMBURSEMENT OF OUT OF POCKET EXPENSES**

TO THE HONORABLE ALLAN L. GROPPER, BANKRUPTCY JUDGE:

The United States Trustee for the Southern District of New York (the “United States Trustee”) has reviewed the following applications seeking final awards of compensation and reimbursement of out-of-pocket expenses.

Applicant	Time Period	Compensation	Expenses	Hours
Gibson Dunn & Crutcher, LLP, Attorneys for the Debtors	4/12/02 through 10/9/02	\$5,392,174.50	\$321,978.65	14,068.9
Friedman, Wang & Bleiberg, P.C., special counsel to the Debtors	4/29/02 through 10/31/02	\$110,088.02	\$7,777.52	394.20
Akin Gump Strauss Hauer & Feld, LLP, Attorneys for the Official Committee of Unsecured Creditors	5/3/02 through 10/9/02	\$1,923,211.75	\$115,469.46	5,494.85
Appleby Spurling & Kempe, special counsel to the Debtors	4/12/02 through 10/9/02	\$415,899.00	\$12,309.77	487.98

Kasowitz, Benson, Torres & Friedman LLP, Attorney for Steering Committee of Noteholders Pursuant to § 503(b)	4/12/02 through 10/31/02	\$125,000	NA	2,076.55
Anderson Kill & Olick, PC Conflicts Counsel for the Official Committee of Unsecured Creditors	7/29/02 through 10/9/02	\$129,072.50	\$1,509.97	360.20
Anderson Kill & Olick, PC on behalf of PPM America, Inc. for Substantial Contribution Pursuant to § 503(b)(3)(D)	6/7/02 through 7/28/02	\$109,187.50	\$1,793.92	288.40
Innisfree M&A Incorporated	6/24/02 through 10/9/02	\$49,268.60	\$14,912.05	60.9

Background

1. On April 12, 2002, Flag Telecom and certain of its subsidiaries and affiliates (the “Debtors”) filed voluntary petitions under Chapter 11 of the Bankruptcy Code.
2. The Debtors continue to operate their businesses and manage their property as Debtors-in-Possession pursuant to §§ 1107(a) and 1108 of the Code.
3. On May 3, 2002, the United States Trustee appointed a seven member committee of unsecured creditors (the “Committee”) in these cases.
4. By order dated September 26, 2002, the Court confirmed the Debtors’ Third Amended Chapter 11 Plan (as amended or modified, the “Plan”). Upon information and belief, the Plan became effective on or about October 9, 2002.

Objection

Gibson Dunn & Crutcher

1. The United States Trustee objects to the allowance of compensation at the normal billing rate for the time entries that relate to travel.

2. As evidenced by the time records submitted, the Applicant seeks compensation in the amount of \$147,303.50 for non-working travel time. Applicant's request for compensation relating to these services appears excessive because the fee application states that no other compensable work was performed during travel. See e.g. In re Bennett Funding Group, Inc., 213 B.R. 234, 251 (Bankr. N.D.N.Y. 1997) (Court ruled that travel time is compensable at one-half normal rates unless the court is satisfied that work was performed during travel.) Thus, it is the position of the United States Trustee that based upon the time records provided, the time entries at issue should be compensable at one-half the normal rate. Id.

3. The Applicant has several entries where the description for the time charged has been blacked out as follows.

Billing Category	Month	# of entries	amount requested
Secured Creditor/ Collateral Issues	May	17	\$10,647.00
	June	1	\$ 140.00
Asset Disposition	June	11	\$ 7,413.00
	July	77	\$80,844.00
	August	all entries	\$15,185.00
	September	all entries	\$ 4,139.50
Plan Exclusivity	July	all entries	\$49,427.50
Securities Litigation	July	6	\$ 7,087.50

The application should be amended to disclose what work was done for the entries mentioned above or additional information should be provided explaining why the description of the services rendered cannot now be disclosed in the final fee application.

4. The United States Trustee objects to the reimbursement of \$407.63 for “outside temporary help” described as “proofreaders” shown on the September, 2002 disbursement statement. Generally, charges for proofreading are not reimbursable. See General Order M-104(D)(8).

Friedman, Wang & Bleiberg

5. The United States Trustee has identified several time entries of this Applicant that do not adequately describe the services rendered. Paragraph II.D.5 of the United States Trustee Guidelines state that

[s]ervices should be noted in detail and not combined or 'lumped' together, with each service showing a separate time entry.....Time entries for telephone calls, letters. And other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference.

“The party who seeks payment must keep records in sufficient detail that a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed.” Matter of Navis Realty, Inc., 126 B.R. 137, 142 (Bankr. E.D.N.Y. 1991) quoting Hensley v. Echerhart, 461 U.S. 424, 441, 103 S.Ct. 1933, 1943, 76 L.Ed.2d 40 (1983)(Burger, Chief Justice, concurring). See also, In re Cascade Oil Co., Inc., 126 B.R. 99, 104-105 (D.Kan. 1991)(attorneys “must keep meticulous contemporaneous time records to present to the court....[M]erely listing a telephone call, conference, correspondence or research is not enough.”)

Examples of the vague time entries are listed below.

Date	Person	Description	Hrs. Billed
5/2/02	SDC	Review emails	0.1
5/6/02	PNW	Telecon w/ SDC	0.2
5/7/02	SDC	Conf. W/SJS; t/c w/Hamer; conf. w/SJS; email to PNW, SJS and ASF	1.3
5/8/02	SJS	Conference with PNW, SDC,; conference call with D. Hammer	1.1
5/14/02	SJS	Review SDC mems & draft; conf. with SDC	0.7
5/16/02	PNW	(no description provided)	0.8
5/17/02	SJS	Correspondence; conf. with SDC	0.7
5/27/02	SDC	Review & send emails	0.2
6/3/02	SDC	Correspondence; conference with SDC	
6/4/02	SJS	Correspondence; conf. with SDC	0.1
6/28/02	PNW	Conf. re: status	0.2
6/28/02	SDC	Review emails; t/c's w/SJS	0.4
7/1/02	PNW	Telecons w/ Reilly; w/ Van Ophem; Conf. w/ SDC, SJS	0.7
8/28/02	SDC	T/C w/Fraser; t/c w/Guillotte	0.2
9/3/02	SDC	Review emails, t/c w/Guillotte	0.4
9/5/02	SJS	Correspondence; conf. with SDC	0.4
9/6/02	SJS	Correspondence; conf. with SDC	0.4
9/27/02	SDC	Review emails; email to Skadden; t/c w/Hamer; t/c w/Labovitz	1.8
10/2/02	SJS	Correspondence	0.2
10/3/02	SJS	Correspondence; conf. with SDC	0.2

The Applicant has “lumped” multiple entries together throughout the fee application. Billing entries of time in this manner prevents the United States Trustee from determining the value and reasonableness of the services rendered. Thus, the time record should be rewritten to (i) reflect the time spent on each discrete activity, and/or (ii) provide greater detail, else the fees should be denied.

6. The United States Trustee has no objections to the reimbursement of expenses in the amount requested by this Applicant.

Akin Gump Strauss Hauer & Feld

7. The United States Trustee objects to the reasonableness of the following entries where the billing time expended exceeded 14 hours in a day. The fee application should be supplemented to explain the following time entries:

Date	Tkpr	Task	Description	Hours
7/22/02	DF	0022	Drafts, research, review and analysis re Debtors' Plan & Disclosure Statement, comments, & competing Plan & Disclosure Statement	18.80
9/3/02	RJ	0012	Continue claims analysis	14.30
10/8/02	ALL	0022	Review, negotiate & finalize Indenture & Security Agreement(8.8), including numerous conference calls (4.9), telephone calls & e-mails(2.3)	16.00
10/8/02	MPI	0022	Attention to closing matters(.6); telephone conferences re Indenture & Security Agreement(1.1); review & revise same (2.9); revise distribution letter; review & revise closing deliveries(4.3); review & revise opinions (3.4); attend pre-closing(5.5)	17.80

8. The United States Trustee requests back-up invoices and/or an itemization with respect to the Applicant's request for reimbursement of out-of-pocket expenses in the amount of \$115,469.46. Absent the back-up invoices or itemization, the United States Trustee submits that the application provide insufficient information regarding the “reasonableness” of this reimbursement request. Thus, unless the Applicant provides the back-up invoices, the United States Trustee objects to the reimbursement.

Appleby Spurling & Kempe

9. The United States Trustee objects to the allowance of compensation at the normal billing rate for the time entries that relate to travel.

Date	Name	Description	Hrs Billed
4/12/02	JF	Attending meeting at FLAG & travel to and from	5.0
4/19/02	ALDI	Travel to Bermuda	7.0
6/7/02	JF	Travel to meeting with FLAG in London offices, Gary Grant, Kitty Chan, Denise Hamer, Natasha Labovitz etc.	2.75

As evidenced by the time records set forth above, the Applicant seeks compensation for non-working travel time. Applicant's request for compensation relating to these services appears excessive because the fee application does not specify whether services were performed during travel. See e.g. In re Bennett Funding Group, Inc., 213 B.R. 234, 251 (Bankr. N.D.N.Y. 1997) (Court ruled that travel time is compensable at one-half normal rates unless the court is satisfied that work was performed during travel.) Thus, it is the position of the United States Trustee that based upon the time records provided, the time entries at issue should be compensable at one-half the normal rate. Id.

10. The entry for July 18, 2002 by JC, “Drafting Disclosure Statement” for 1.0 hour appears to be a duplicate of the preceding entry.

11. The United States Trustee has identified several time entries of this Applicant that do not adequately describe the services rendered. As set forth in paragraph 5 above, the United States Trustee has identified several time entries of this Applicant that do not adequately describe the services rendered. Paragraph I.D.5 of the United States Trustee Guidelines state that

[s]ervices should be noted in detail and not combined or 'lumped' together, with each service showing a separate time entry.....Time entries for telephone calls, letters. And other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference.

“The party who seeks payment must keep records in sufficient detail that a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed.” Matter of Navis Realty, Inc., 126 B.R. 137, 142 (Bankr. E.D.N.Y. 1991) quoting Hensley v. Echerhart, 461 U.S. 424, 441, 103 S.Ct. 1933, 1943, 76 L.Ed.2d 40 (1983)(Burger, Chief Justice, concurring). See also, In re Cascade Oil Co., Inc., 126 B.R. 99, 104-105 (D.Kan. 1991)(attorneys “must keep meticulous contemporaneous time records to present to the court....[M]erely listing a telephone call, conference, correspondence or research is not enough.”) **Examples** of the vague time entries are listed below.

Date	Person	Description	Hrs. Billed
4/12/02	ALDI	Conference with Johnathon Sumption	7.0
6/28/02	JC	Review	0.6
6/28/02	JC	Discussion	0.3
6/28/02	JC	Review	2.6

6/28/02	JC	Review	1.0
6/28/02	JC	Review	0.1
7/1/02	JC	Review	0.5
7/1/02	JC	Discussion	0.2
7/2/02	JC	Conference Call	0.8
7/2/02	JC	Discussion	0.2
7/3/02	JC	Letter	0.3
7/3/02	JC	Review	0.2
7/5/02	JC	Email	0.2
7/10/02	ALDI	Email from Freshfields	0.1
7/10/02	JC	Discussion with Jennifer Fraser	0.2
7/22/02	JER	Discussion with Jennifer Fraser	0.3
7/31/02	JC	Conference Call	0.3
8/29/02	JL	Email to David Davison	0.3
8/9/02	JC	Email to Kitty Chan	0.1
9/10/02	SD	Organize files	0.75
9/13/02	JC	Miscellaneous issues	0.3
9/16/02	AD	Various e-mails	0.3
9/30/02	SD	Peruse file	0.5
10/2/02	JC	E-mails to Farina Rabbi	0.4
10/3/02	SD	Attendance on conference call	0.75

The Applicant has “lumped” multiple entries together throughout the fee application. Billing entries of time in this manner prevents the United States Trustee from determining the value and reasonableness of the services rendered. Thus, the time record should be rewritten to (i) reflect

the time spent on each discrete activity, and/or (ii) provide greater detail, else the fees should be denied.

12. The United States Trustee objects to the following expenses:

a. Photocopies were billed at \$0.30 per page rather than the maximum amount of \$0.20 per page per General Order M-151(F)(2). The \$2,412 photocopies expense request should be reduced by one-third.

b. Secretarial charges in the amount of \$1,270.77 is being sought without any explanation as to the nature of this expense.

c. An advertising charge of \$363.88 is being requested without any explanation as to the nature of this expense.

Kasowitz, Benson, Torres & Friedman

13. The United States Trustee has no objection to the allowance of fees and the reimbursement of expenses in the amounts requested by the Applicant.

Anderson Kill & Olick

14. The United States Trustee has no objection to the allowance of fees and the reimbursement of expenses in the amounts requested by the Applicant as conflicts counsel for the Official Committee of Unsecured Creditors.

15. The United States Trustee has the following objections to the amount sought under 11 U.S.C. §503(b)(3)(D).

a. Although the United States Trustee is of the view that the time allocated to D&O matters did substantially contribute to the administration of the case since it resulted in the retention of “conflicts counsel” for the committee, the Application provides insufficient information regarding how the time entries pertaining to bondholder and due diligence matters

resulted in a substantial contribution to this estate. Absent additional information, the United States Trustee is of the view that such entries appear to duplicate services rendered by other Court appointed professional and should not be compensable. In re Granite Partners, L.P., 213 B.R. 440, 446 (Bankr. S.D.N.Y. 1997). “To be compensable under section 503(b)(3)(D), post-petition efforts must result in an actual and demonstrable benefit to the bankruptcy estate.” (Citations omitted) In re Lister, 846 F.2d 55, 57 (10 Cir. 1988); In re Granite Partners, L.P., 213 B.R. at 445. The Applicant seeks reimbursement for every action taken during this period. As Chief Judge Bernstein appropriately stated in In re Granite Partners, L.P., “[e]xtensive participation alone is insufficient to justify an award.” Id.

b. Additionally, the Applicant fails to provide adequate description as to the worked performed to allow one to determine the substantial contribution made for such service.

Examples of these entries are as follows:

Date	Services
6/10/02	Work on Bermuda counsel tax issue
6/13/02	Legal research regarding Bermuda law and statutes in Michigan, California & New York
6/14/02	review & revise memo to clients(3,.4); conference with Bring, Glen, etc. (2.4)
6/17/02	conference call with creditors committee (1.0); conference with Rahl & Glen (.5)
6/17/02	creditor committee conference call (1.0); conference Cooper & Glen (.5); conference Glen (.5); email Klein (.5)
6/18/02	committee conference call
6/19/02	committee conference call
6/20/02	review emails re: fees
7/3/02	call Stamer

7/8/02

several conferences Klein

c. Until the Applicant provides additional detail regarding the services rendered, the connection between the services rendered and the substantial contribution made cannot be ascertained.

Innisfree M&A Incorporated

16. The United States Trustee has no objection to the allowance of fees and the reimbursement of expenses in the amounts requested by the Applicant.

WHEREFORE, the United States Trustee respectfully requests that the Court grant such other relief as the Court may deem just and proper.

Dated: New York, New York
November 15, 2002

Respectfully submitted,

CAROLYN S. SCHWARTZ
UNITED STATES TRUSTEE
By: s/ Tracy Hope Davis
Tracy Hope Davis (THD-8154)
33 Whitehall Street - 21st Floor
New York, New York 10004
Tel. No. (212) 510-0500