

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
FOCAL COMMUNICATIONS	:	Jointly Administered
CORPORATION, a Delaware	:	Case No. 02-13709 (KJC)
Corporation, <u>et al.</u> ,	:	
	:	Objection Deadline: 20 Days After
	:	Service of Application
Debtors	:	
	:	

SEVENTH MONTHLY AND FINAL FEE AND EXPENSE APPLICATION
COVER SHEET

Name of Applicant: Swidler Berlin Shereff Friedman, LLP
("Swidler")

Authorized to Provide
Professional Services to: Focal Communications Corporation et al.,
debtors and debtors in possession

Date of Retention: December 19, 2002

Period for which compensation
is sought: December 19, 2002 through June 30, 2003

Amount of Compensation sought
as actual, reasonable, and necessary: \$241,879.50

Amount of Expense Reimbursement sought
as actual, reasonable and necessary: \$5,560.41

This is a(n) Monthly interim final application.

**Summary of Previously Filed
Monthly and Quarterly Fee Applications**

Date Filed	Period Covered	Requested		Approved	
		Fees	Expenses	Fees 80%	Expenses 100%
First Monthly February 10, 2003 (Docket Entry 232)	December 19-31, 2002	\$19,718.50	\$1,000.84	\$15,774.80	\$1,000.84
Second Monthly March 25, 2003 (Docket Entry 404)	January 1-31, 2003	\$32,585.00	1,232.45	\$26,068.00	\$1,232.45
Third Monthly March 28, 2003 (Docket Entry 429)	February 1-28, 2003	\$33,947.50	\$705.40	\$27,158.00	\$705.40
First Quarterly April 14, 2003 (Docket Entry 496)	December 19, 2002 – February 28, 2003	\$86,251.00	\$2,938.69	\$86,251.00	\$1,218.44
Fourth Monthly May 21, 2003 (Docket Entry 694)	March 1-31, 2003	\$60,112.50	\$1,218.44	\$48,090.00	\$1,218.44
Fifth Monthly June 16, 2003 (Docket Entry 859)	April 1-30, 2003	\$21,275.00	\$502.53	\$17,020.00	\$502.03
Second Quarterly July 15, 2003 (Docket Entry 979)	March 1, 2003 – May 31, 2003	\$104,713.00	\$2,027.84	Pending	Pending
Sixth Monthly July 16, 2003 (Docket Entry 984)	May 1-31, 2003	\$23,325.50	\$306.87	Pending	Pending

SECTION I: FEE SUMMARY

	<u>To Date</u>	<u>Current Period</u>
Total Fees Requested:	\$190,964.00	\$241,879.50
Total Disbursements Requested:	\$4,966.53	\$ 5,560.41
Total Fees Previously Received by Applicant:	\$117,181.80	\$117,181.80
Total Disbursements Previously Received by Applicant:	\$4,157.13	\$4,157.13
Total Retainer Amount (Held in Escrow)	\$50,000	\$0

SECTION II: SUMMARY BY TASK AREA

<u>Task Area</u>	<u>Total Hours</u>	<u>Total Compensation</u>
Post Petition Activities	330.60	\$105,839.50
State and Federal Regulatory	398.00	118,748.50
Fee Application Preparation	<u>65.70</u>	<u>17,291.50</u>
Total	794.30	\$241,879.50

SECTION III: SUMMARY BY PROFESSIONAL RENDERING SERVICES
December 19, 2002 through December 31, 2002

Name of Professional	Position	Year Admitted	Practice Group	Hourly Billing Rate	Hours	Compensation For Application Period
Richard M. Rindler	Partner	1969	Telecommunications	\$360.00	24.30	\$8,748.00
Jonathan P. Guy	Partner	1993	Litigation/Bankruptcy & Creditors Rights	\$310.00	0.60	\$186.00
Paul O. Gagnier	Partner	1994	Telecommunications	\$310.00	0.30	\$93.00
Patrick J. Donovan	Of Counsel	1976	Telecommunications	\$325.00	0.30	\$97.50
Michael Fleming	Associate	1994	Telecommunications	\$310.00	0.50	\$155.00
Kathleen L. Greenan	Associate	1995	Telecommunications	\$290.00	16.70	\$4,843.00
Brian M. McDermott	Associate	1998	Telecommunications	\$215.00	20.20	\$4,343.00
Wendy Creeden	Associate	1999	Telecommunications	\$195.00	0.40	\$78.00
Danielle Burt	Associate	2002	Telecommunications	\$170.00	1.00	\$170.00
M. Renee Britt	Senior Legal Assistant	N/A	Telecommunications	\$150.00	3.00	\$450.00
Rahel Menassie	Legal Assistant	N/A	Telecommunications	\$120.00	2.90	\$348.00
Christine D. Johnson	Legal Assistant	N/A	Telecommunications	\$115.00	1.80	\$207.00
Total Hours					72.00	\$19,718.50
Blended Hourly Rate				\$273.87		

SECTION III: SUMMARY BY PROFESSIONAL RENDERING SERVICES (CONT'D)
January 1, 2003 through June 30, 2003

Name of Professional	Position	Year Admitted	Practice Group	Hourly Billing Rate	Hours	Compensation For Application Period
Richard M. Rindler	Partner	1969	Telecommunications	\$380.00	147.00	\$55,860.00
Brian W. Fitzgerald	Partner	1981	Government Affairs	\$460.00	6.70	\$3,082.00
Jean L. Kiddoo	Partner	1980	Telecommunications	\$470.00	3.40	\$1,598.00
Tamar E. Finn	Partner	1994	Telecommunications	\$340.00	0.90	\$306.00
Russell M. Blau	Partner	1982	Telecommunications	\$450.00	0.70	\$315.00
Eric Branfman	Partner	1972	Telecommunications	\$425.00	0.70	\$297.50
Andrew Ray	Partner	1991	Corporate	\$385.00	0.30	\$115.50
Kathy Cooper	Partner	1994	Telecommunications	\$340.00	2.00	\$680.00
Patrick J. Donovan	Of Counsel	1976	Telecommunications	\$360.00	15.90	\$5,724.00
Rebecca Dick	Of Counsel	1977	Anti-trust & Trade	\$390.00	9.40	\$3,666.00
Rogena Harris	Of Counsel	1975	Telecommunications	\$260.00	1.00	\$260.00
William T. O'Neil	Counsel	1990	Insurance Coverage	\$335.00	1.30	\$435.50
Kathleen L. Greenan	Associate	1995	Telecommunications	\$325.00	205.50	\$66,787.50
Harisha J. Bastiampillai	Associate	1992	Telecommunications	\$330.00	1.50	\$495.00
Michael Fleming	Associate	1994	Telecommunications	\$330.00	21.00	\$6,930.00
Michael Sloan	Associate	1995	Telecommunications	\$325.00	1.00	\$325.00
Gary G. Gallant	Associate	1992	Government Affairs	\$310.00	51.60	\$15,996.00
Michael Donahue	Associate	1996	Telecommunications	\$310.00	2.60	\$806.00
Harry Malone	Associate	1997	Telecommunications	\$290.00	41.70	\$12,093.00
Jonathan Frankel	Associate	1995	Telecommunications	\$290.00	0.60	\$174.00

Name of Professional	Position	Year Admitted	Practice Group	Hourly Billing Rate	Hours	Compensation For Application Period
Brian M. McDermott	Associate	1998	Telecommunications	\$260.00	72.60	\$18,876.00
Brett P. Ferenchak	Associate	1997	Telecommunications	\$260.00	52.80	\$13,728.00
Philip Macres	Associate	1997	Telecommunications	\$260.00	1.80	\$468.00
Joel Ruderman	Associate	1995	Bankruptcy and Creditors Rights	\$260.00	0.80	\$208.00
Wendy Creeden	Associate	1999	Telecommunications	\$240.00	0.40	\$96.00
Melissa Keppel	Associate	2001	Antitrust and Trade	\$200.00	3.40	\$680.00
Daniella Burt	Associate	2002	Telecommunications	\$180.00	17.10	\$3,078.00
M. Renee Britt	Senior Legal Assistant	N/A	Telecommunications	\$165.00	47.60	\$7,854.00
Deborah Rachielson	Legal Assistant	N/A	Litigation	\$145.00	0.20	\$29.00
Christine D. Johnson	Legal Assistant	N/A	Telecommunications	\$125.00	3.20	\$400.00
Felix Otchere	Legal Assistant	N/A	Telecommunications/ Energy	\$105.00	7.60	\$798.00
Total Hours					722.30	\$222,161.00
Blended Hourly Rate				\$307.57		

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
FOCAL COMMUNICATIONS CORPORATION, a Delaware Corporation, <u>et al.</u>,	:	Jointly Administered
	:	Case No. 02-13709 (KJC)
	:	
	:	Objection Deadline: 20 Days After Service of Application
Debtors	:	
	:	

**SEVENTH MONTHLY AND FINAL FEE APPLICATION OF
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
FOR ALLOWANCE AND PAYMENT OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES AS
SPECIAL REGULATORY COUNSEL FOR THE DEBTORS**

TO: THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

This Application is submitted pursuant to Sections 330(a) and 503(b)(1)(A) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., Rule 2016 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and the Court’s Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professional and Committee Members entered in this case on January 23, 2003¹. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§157 and 1334.

Swidler Berlin Shereff Friedman, LLP (“Swidler”), Special Regulatory Counsel for Focal Communications Corporation, Inc. et al., submits this Seventh Monthly and Final Fee Application for Allowance of Compensation and Reimbursement of Expenses for the period

¹ In re Focal Communications Corporation, et al. U.S. Bankr. Dist. of Delaware, Case No. 02-13709 (KJC), order entered January 23, 2003.

from December 19, 2002 through June 30, 2003 (the “Final Period”). This Application specifically details the services rendered and expenses incurred during the final period and seeks allowance of compensation and reimbursement of expenses for that period.

In support of its Seventh Monthly and Final Fee Application, Swidler respectfully represents as follows:

1. Voluntary petitions for relief under Chapter 11 of the Bankruptcy Code were filed by the Debtors on December 19, 2002. By application dated December 23, 2002, the Debtor sought to retain Swidler as Special Regulatory Counsel pursuant to §327(e) of the Bankruptcy Code (the “Retention Application”). On January 23, 2003, the Court entered an Order authorizing the retention and employment of Swidler as of the Petition Date (the “Retention Order”).

2. This Seventh Monthly and Final Fee Application is filed pursuant to the provisions of the Court’s Order Establishing Procedures for Interim Compensation and Reimbursement. Copies of Swidler’s monthly statements for services performed and expenses incurred from December 19, 2002 through May 31, 2003 are incorporated herein by reference.² Copies of Swidler’s monthly statement for services performed and expenses incurred from June 1, 2003 through June 30, 2003 is attached hereto as Exhibit A.

² Swidler provided copies of its statements for services performed from December 19, 2002 through May 31, 2003 as Exhibit A to each monthly fee application and quarterly fee application previously submitted to the Court in this proceeding. These monthly fee applications and quarterly fee applications were docketed as Entry Nos. 232, 404, 429, 496, 694, 859, 979, 984.

3. Prior to the filing of this Application, Swidler submitted monthly and quarterly fee applications to the Court setting forth Swidler's fees for professional services rendered and expenses incurred in connection with these cases for the period December 19, 2003 through May 31, 2003 as set forth in Section II of the Application Cover Sheet. During the period of June 1, 2003 through June 30, 2003 Swidler rendered 165.30 hours of services in connection with this proceeding, which totaled \$50,915.50 in fees and \$593.88 in expenses. These amounts are included in the compensation and expense reimbursement totals provided in this Application.

4. To date, Swidler has received a total of \$121,338.93 in payments. Swidler has received the following individual payments: On April 18, 2003, Swidler received payment in the amount of \$16,775.65 and, on June 30, 2003, Swidler received a payment in the amount of \$104,563.29.

5. Swidler has expended a total of \$247,439.91 in fees and expenses during the Final Fee Period and received a total payment of \$121,338.93 during the Final Fee Period. Therefore, the amount for the Final Fee Period for which Swidler is seeking payment is \$126,100.98, which represents \$124,697.70 in fees and \$1,403.28 in expenses.

Swidler's Representation of the Debtors

6. For over five years prior to the filing of the petition in this case, Swidler and certain of its partners and associates have rendered legal services to the Debtors in connection with various matters. Swidler's services related primarily to counseling the Debtors on federal and state telecommunications regulatory issues arising from the Debtors' construction, installation, operation and acquisition of telecommunications networks and their provision of telecommunications services. As a result, Swidler is intimately familiar with the complex legal

issues that have arisen and are likely to arise in connection with the Debtors' business and operations, their restructuring, and their strategic and transactional goals. The Debtors sought authorization for Swidler to (a) advise them as to telecommunications regulatory requirements arising from a filing under the Bankruptcy Code; (b) represent Debtors as needed before telecommunications regulatory agencies and other federal regulatory agencies; (c) advise Debtors on telecommunications regulatory issues involved with sales of assets or transfer of control by Debtors, if required, and Debtors' chapter 11 plan, including making any required regulatory filings, seeking required regulatory approvals, ensuring continued ability of Debtors and, if applicable, purchasers, to obtain telecommunications services from unrelated telecommunications vendors, and any other activities required to implement the asset sales and/or chapter 11 plan or to consummate any transactions contemplated thereby; (d) to assist in adversary actions against other telecommunications providers arising out of, or related to, agreements or arrangements approved by state or federal telecommunications regulatory agencies; and (e) any other necessary legal services and advice related to the matters described above. There is no overlap between the services provided by Swidler and those provided by Pachulski, Stang, Ziehl, Young & Jones, P.C., as general bankruptcy counsel.

7. Swidler's service on behalf of the Debtors has been performed by attorneys within the Telecommunications Practice Group of Swidler's Washington, D.C. office. The supervisory responsibility has been borne by Richard M. Rindler, Partner, other partners and Kathleen Greenan, Associate. Where appropriate, work has been delegated to senior- and junior-level associates. In addition, Swidler has utilized legal assistants to handle certain matters, where appropriate. Swidler's efforts to allocate specific areas of responsibilities and to utilize

associates and legal assistants have resulted in efficient and lower cost services to the Debtor than would otherwise have been the case. During the Period, Swidler has performed the following services on behalf of the Debtor.

Summary of Services Performed During the Current Compensation Period

8. As is reflected in the Seventh Monthly and Final Fee and Expense Application Cover Sheet (the Cover Sheet”), Swidler has rendered a total of 794.30 hours of legal services in the representation of the Debtors from December 19, 2002 through June 30, 2003. Based on the nature of the services rendered, the time required, the value of the services to the Debtors and their estates, and the cost of comparable services other than in a case under the Bankruptcy Code, the compensation for these services should not be less than a total of \$241,879.50. This total represents hours of Swidler attorney and other professional time, at an average hourly rate of \$304.51. The hourly rate for each attorney and other professionals who performed services for the Debtors is set forth in Section III of the Application Cover Sheet.

9. In accordance with Local Rule 2016(d), Exhibit A, attached hereto, contains a detailed chronological narrative of the time spent, the dates and descriptions of the services rendered, and the identity of the attorneys and other professionals who provided services on behalf of the Debtors from June 1, 2003 through June 30, 2003. Copies of Swidler’s monthly statements for services performed and expenses incurred from December 19, 2002 through May 31, 2003 are incorporated herein by reference.³

10. In accordance with Local Rule 2016(d), Swidler respectfully supplements the chronological narrative of the time spent, the dates and descriptions of services rendered by the

³ See footnote 2.

professionals who worked on this engagement and the related disbursements incurred on behalf of the Debtors with the following narrative summary of the services rendered by Swidler:

- a. **Post Petition Activity.** Swidler Berlin rendered service for a total of 330.60 hours and \$105,839.50 in the category Post Petition General Regulatory Advice. This work includes the periodic review and updates of the status of this proceeding, preparing responses to creditor objections relating to Debtor's interconnection agreements and tariff contracts, advice to the Debtors on options and approaches to resolving billing and interconnection agreement disputes, review and analysis of interconnection agreements, analysis of and advice to the Debtors on proposal for and adoption of interconnection agreements, including the preparation of a motion to reject certain interconnection agreements. Work in this category also includes preparing responses to complaints and disputes filed by SBC and Verizon, preparing memoranda in support of a petition before the U.S. Supreme Court regarding the Federal Communications Commissions ("FCC") ISP Remand Order, which limits the amount Focal can charge for some services, and preparing a Supreme Court amicus brief in support of matter involving the right of competitive carriers, such as Focal, to pursue antitrust claims against incumbent competitors. Swidler has provided advice to the Debtor regarding VoIP and CPNI issues, the regulatory treatment of virtual NXX services, a California decision relating to reciprocal compensation and its implications for the Debtors as well as evaluation and analysis of resolutions to a dispute with SBC and other incumbent local exchange carriers.

- b. **Federal and State Regulatory Requirements.** Swidler rendered a total of 398.00 hours and \$118,748.50 of services in connection with federal and state telecommunications regulatory requirements. This project category contains all research, analysis and compliance with Federal Communications Commission (“FCC”) and State Public Utility laws applicable to the Debtors. This work includes researching state and federal regulations on the discontinuance and withdrawal of DS1 service, the requirements for the transfer of assets, analysis of possible regulatory aspects and other requirements for reorganization, researching specific state regulations and procedures relating to approvals for opting into interconnection agreements. Swidler has also assisted the Debtor in negotiating satisfactory customer arrangements in connection with its discontinuance of certain services. This category also includes preparation of documents for Focal/Onsite asset purchase agreements and the preparation, filing and follow-up on status of discontinuance notices, applications and customer notice letters. This category also includes discussions with DC PSC staff regarding annual assessments imposed on local exchange companies and obligations of the Debtors to remit assessment. Swidler has also assisted the Debtor in preparing and filing FEC Reports.
- c. **Fee Application Preparation.** Swidler rendered services for a total of 65.00 hours and \$17,291.50 of services in connection with the preparation of monthly fee applications for compensation.

11. In the course of representing the Debtor, Swidler has provided the highest quality of legal services at the lowest cost possible. Swidler has called upon attorneys with specialized experience with its practice for specific assistance in order to take advantage of Swidler's significant institutional knowledge of a wide range of federal and state telecommunications regulatory issues. Research and initial drafting has been delegated to more junior attorneys and legal assistants with lower billing rates. In sum, Swidler has made all efforts to avoid unnecessary costs and inefficiencies in representing Debtors and respectfully submits that it has effectively provided high quality legal services as efficiently as possible.

12. Swidler believes that the attached invoices reflect the actual, fair and reasonable value of the legal expertise provided to the Debtors, and for the benefit of the Debtors' estates, which required skilled and experienced legal counsel with knowledge of telecommunications regulatory law.

Disbursements

13. It is Swidler's policy to charge its clients in all areas of practice for identifiable non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is Swidler's policy to charge its clients only the amount actually incurred by Swidler in connection with such items. Examples of such expenses include photocopying and printing, certain long distances telephone charges, overnight mail and messenger charges, overtime expenses and computer-assisted legal research. Swidler expended a total of \$5,560.41 for reasonable and necessary expenses in connection with its representation of the Debtors from December 19, 2002, through June 30, 2003. In accordance

with Local Rule 2016(e), Exhibit B, attached hereto and incorporated herein by reference, contains a summary of the expenses incurred by type.

14. The actual and necessary costs and expenses for which Swidler seeks reimbursement include, *inter alia*, the following:

- a. **Photocopying and Printing** -- It is Swidler's practice to charge all clients of the Firm for duplicating at the in-house rate of 20¢ per page. This charge includes the cost of maintaining the duplicating facilities and the actual cost involved with respect to the duplication.
- b. **Messenger and Courier Service** -- It is Swidler's practice to use Federal Express or similar express mail delivery and third-party messenger services only in exigent circumstances (i.e., when needed to meet a deadline or when a next-day response from the recipient was necessary or beneficial to the Debtors' estate) and only when less costly than other available alternatives.
- c. **Computerized Legal Research** -- It is Swidler's practice to use computer-assisted legal research when time pressure has rendered it impracticable to conduct such research manually. It is also Swidler's practice to use computer-assisted research to assist its clients and to reduce the amount of time spent by attorneys and paraprofessionals in manual research when it was anticipated that the resulting manual research would have resulted in a greater cost to the client.
- d. **Overtime** -- It is Swidler's practice to allow professionals and support staff to charge a car service or cab and a dinner meal allowance to the appropriate client when working at least 2.5 hours of overtime. Swidler endeavored to incur overtime charges only when necessary to benefit the Debtors' estate and in certain exigent circumstances.
- e. **Long Distance Telephone** -- Swidler charges clients for long distance telephone calls but not for local telephone calls.
- f. **U.S. Mail** -- Swidler charges clients for outgoing first class mail packages forwarded to Debtors for the dissemination of information and in conjunction with filings submitted to state and/or federal agencies on behalf of the Debtor.

- g. **Filing Fees** -- Swidler often submits the up front costs required by federal and state agencies in connection with the submission of filing requirements on behalf of the Debtor
- h. **Travel** -- It is Swidler's practice to bill its clients for actual expenses including, but not limited to airfare, meals and ground transportation, incurred in connection with travel on the client's behalf.

Disclosures of Swidler

15. All professional services for which allowance of compensation is requested were performed by Swidler on behalf of the Debtors, and not on behalf of any other entity or person. Swidler is a creditor of the Debtors, and held, as of the Petition Date, a general unsecured claim against the Debtors for legal services provided to the Debtors prior to the Petition Date. On March 14, 2003 Swidler filed a Proof Of Claim in the amount of \$44,905.81 with the Court.

16. Swidler holds a \$50,000 retainer for post-petition services and post-petition expenses.

17. There is no agreement or understanding between Swidler and any other person, other than the members, associates, and employees of Swidler, for the sharing of compensation received or to be received for services rendered in connection with this proceeding, except that fees will be shared with other partners of Swidler as permitted by Bankruptcy Rule 2016(b) and section 504 to the Bankruptcy Code.

Certification

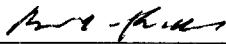
18. As required by Local Rule 2016(f), Exhibit C, attached hereto and incorporated herein by reference, contains Swidler's certification that the facts set forth in this Application are true and correct and that the Application complies with the Local Rules.

WHEREFORE, for all these reasons, Swidler Berlin Shereff Friedman, LLP, as special telecommunications regulatory counsel to the Debtors' and debtors-in-possession, respectfully requests that the Court enter its Order approving its Seventh Monthly and Final Fee Application, (i) authorizing and approving previously received compensation of \$117,181.80 in fees and reimbursement of \$4,157.13 in expenses as approved by the Court and received by Swidler for the period December 19, 2002 through March 31, 2003; (ii) authorizing the use of the \$50,000 retainer currently being held in escrow by the Applicant for compensation of services rendered during the period of April 1, 2003 through June 30, 2003; (iii) authorizing, approving and directing the immediate payment of \$76,100.98 (after adjusting for the application of the \$50,000 retainer) for the period April 1, 2003 through June 30, 2003; and (iv) granting such other relief as this Court deems just and proper.

Dated: July 31, 2003

Respectfully submitted,

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

By: 
Richard M. Rindler