

Hearing Date: October 22, 2003
Hearing Time: 2:30 p.m.
Objection Deadline: October 17, 2003 at 4:00 PM

KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 Third Avenue
New York, New York 10022
212-715-9100

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	:	X
	:	
In re:	:	Chapter 11
	:	
GENUITY INC., <u>et al.</u> ,	:	Case No. 02-43558 (PCB)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	
	:	X

COVER SHEET PURSUANT TO UNITED STATES TRUSTEE
GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. §§ 330 AND 331

NAME OF APPLICANT:	Deloitte & Touche LLP	
TIME PERIOD:	March 1, 2003 through July 31, 2003	
ROLE IN THE CASE:	Financial Advisors for the Official Committee of Unsecured Creditors	
APPLICATION:	Fees Requested:	\$375,000.00
	Expenses Requested:	\$4,448.38
PRIOR APPLICATIONS:	Fees Previously Requested:	\$668,710.00
	Fees Previously Awarded:	\$473,710.00
	Expenses Previously Requested:	\$13,590.39
	Expenses Previously Awarded:	\$11,255.64

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

In re:)	
)	
GENUITY, INC., <u>et al.</u>)	
)	
Debtors.)	Chapter 11
)	Case No. 02-43558 (PCB)
)	(Jointly Administered)

**SECOND INTERIM APPLICATION OF DELOITTE & TOUCHE LLP AS
CONSULTANTS AND FINANCIAL ADVISORS FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS**

Deloitte & Touche LLP (“Deloitte”) hereby applies to this Court for Allowance of Fees and Expenses of Deloitte as Consultants and Financial Advisors to the Official Committee of Unsecured Creditors of Genuity, Inc. (“the Committee”) for the period Second Interim Period, March 1, 2003 through July 31, 2003, pursuant to Title 11 U.S.C. §330 and §331, Fed. R. Bankr Pro 216 and MBLR 2016-1. In support of the Application, Deloitte states:

Background

On November 27, 2002 (the “Petition Date”), the Debtors commenced their cases under Chapter 11 of the Bankruptcy Code. The Debtors have continued in the management and operation of their

business and properties as debtors-in-possession pursuant to §1107 and §1108 of the Bankruptcy Code.

1. The Debtors' offices are located at 225 Presidential Way, in Woburn, Massachusetts.

2. On December 10, 2002, the Committee was duly appointed by the United States Trustee.

On the same date, the Committee selected Kramer Levin Naftalis & Frankel LLP as its counsel.

3. On January 7, 2003, the Committee filed an application for authority to employ Deloitte as Consultants and Financial Advisors nunc pro tunc to December 10, 2002.

4. On January 23, 2003, the Court authorized the employment of Deloitte as Consultants and Financial Advisors nunc pro tunc to December 10, 2002.

5. Under §330 and §331 of the Bankruptcy Code, Deloitte is entitled to "reasonable compensation for actual, necessary services" and reimbursement for actual and necessary expenses.

6. The Debtors and their non-Debtor affiliates and subsidiaries operated a global fiber optic network, as a leading provider of IP networking services to both enterprises, and other communications services providers, who provided comprehensive suites of managed Internet infrastructure and value added connectivity services.

7. As more fully described in the attachments to this application, Deloitte has rendered consulting and financial services to the Committee during the Second Interim Period, March 1, 2003 through July 31, 2003. In accordance with the requirements outlined in the January 7, 2003 Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Compensation Order"), Deloitte has submitted to the parties identified in the Compensation Order (the "Notice Parties") the following required and supplemental

documentation; (a) monthly invoices requesting payment from the Debtors for 80% of fees and 100% of incurred, reimbursable expenses, and (b) detailed monthly statements identifying;

- (i) The Partners and employees who provided services during each monthly period,
- (ii) Their titles,
- (iii) Billing rates,
- (iv) Aggregate hours invested, and
- (v) The disbursements underlying the request for reimbursement of expenses.

For the five (5) months comprising the Second Interim Period, Deloitte's aggregate fees and reimbursable expenses were \$375,000 and \$4,448.38, respectively. During the same period, Deloitte's monthly invoices totaled \$304,448.38, representing requests for payment of 80% of professional fees, or \$300,000, and reimbursement of expenses incurred totaling \$4,448.38. As of this application, Deloitte has received \$182,113.63 from the Debtors in connection the monthly invoices presented during the Second Interim Period. Of this amount, \$180,000 and \$2,113.63 related to professional fees and reimbursement of incurred expenses, respectively. As of this application, amounts due to Deloitte in connection with the monthly invoices presented during the Second Interim Period totaled \$122,335.75, of which \$120,000 and \$2,335.75 represent unpaid professional fees and un-reimbursed expenses incurred, respectively. In each month of the second interim period, Deloitte did not seek payment for 20% of its monthly professional fees (the "Hold Back Amount"). In addition to the unpaid amounts due in connection with Deloitte's monthly invoices, the aggregate Hold Back amount accumulated during the Second Interim Period totaled \$75,000.

8. Subject to the Court's approval and pursuant to the terms of the Smith Affidavit, Deloitte has agreed that its compensation shall be the Fixed Monthly Fees, subject to an aggregate fee cap that

limits its total fees in these Chapter 11 cases to the lesser of; (i) the Aggregate Fee Amount, or (ii) the Aggregate Fee Cap Amount, as such capitalized terms are defined in the paragraphs below:

- i. The Fixed Monthly Fees: With respect to the Fixed Monthly Fees, Deloitte will initially charge the estate a fixed monthly fee of \$125,000 per month (the "Initial Monthly Fee Rate"). Subsequently, Deloitte will reduce the fixed fee amount to \$75,000 per month (the "Post-Closing Fee Rate"). The Initial Monthly Fee Rate will be utilized from the December 10, 2002, prorated for the first month, through the consummation of a transaction to dispose of substantially all of the assets of the Debtors' estates. Thereafter, the monthly fee will be reduced to the Post-Closing Fee Rate throughout the remainder of these Chapter 11 cases.
- ii. The Aggregate Fee Amount: The Aggregate Fee Amount shall be the sum of; (i) the fixed monthly fee for the then current month, and (ii) the aggregate value of the fees requested in all prior months, including those previously approved or adjusted by the Court.
- iii. The Aggregate Fee Cap Amount: The Aggregate Fee Cap Amount shall be the product of (i) the cumulative actual time expended by all Deloitte personnel for the current and all prior months multiplied by (ii) 80% of the applicable billing rates for such personnel. The applicable billing rates for Deloitte's Partners, Principals and employees are described in paragraph 9, below.

9. Each month, prior to submitting its monthly invoices and billing statements, Deloitte will calculate the Aggregate Fee Cap Amount, and compare it to the Aggregate Fee Amount. If the Aggregate Fee Amount exceeds the Aggregate Fee Cap Amount, Deloitte will voluntarily reduce the amount sought for the then current month by the amount of such excess. As of July 31, 2003, the Aggregate Fee Cap Amount equaled \$935,635, exceeding the Aggregate Fee Amount of \$668,710 by \$266,925. Thus, Deloitte has not voluntarily reduced the fees sought for any of the five months comprising the Second Interim Period.

10. The hourly rates charged by Deloitte for the services provided by its personnel differ based upon, among other things, each professional's level of experience, geographic differentials,

and types of services being provided. In the ordinary course of business, Deloitte periodically revises its hourly rates to reflect promotions and other changes in personnel responsibilities, increases in experience, and the increases in the cost of doing business. Presently, Deloitte's standard billing rates by classification are as follows:

<u>Level</u>	<u>Billing Rates</u>		
Partner/Principal	\$600	To	\$660
Senior Manager	\$500	To	\$575
Manager	\$400	To	\$475
Senior Consultant	\$250	To	\$350
Consultant	\$180	To	\$275
Support Staff	\$70	To	\$100

11. All professional services for which compensation is being sought in this application were performed solely for and on behalf of the Committee. Further, there is no agreement or understanding between Deloitte and any other person for the sharing of the compensation requested in this application.

12. Attached hereto as **Exhibit A** is a summary of the compensation sought and awarded in this case to date.

13. Attached hereto as **Exhibit B** is a narrative description of the services rendered in the period covered by this application.

14. Attached hereto as **Exhibit C** is a summary of the time incurred during the period covered by this application.

15. Attached hereto as **Exhibits D** and **D1-D12** are the time details indicating the date, responsible individual, service category and time charged for the period covered by the application.

16. Attached hereto as **Exhibit E** is a summary of the expenses incurred during the period covered by this application.

17. Attached hereto as **Exhibit F** is an Aggregate Fee Cap Worksheet, which summarizes the calculations performed by Deloitte in determining the amount by which it was required to voluntarily reduce its fees.

18. Attached hereto as **Exhibit G** is an Invoice & Payment History schedule summarizing the monthly invoicing and payment activity which has transpired during the five (5) months comprising the Second Interim Period.

19. **Wherefore**, Deloitte respectfully requests that this Court (i) enter an Order awarding fees of \$375,000 and the reimbursement of expenses totaling \$4,448.38 to Deloitte in connection with services it rendered to the Committee between March 1, 2003 through July 31, 2003, the Second Interim Period, (ii) authorizing and directing the Debtors to pay to Deloitte both the \$75,000 Hold Back Amount and the \$122,360.75 unpaid amounts due in connection with the monthly invoices presented for payment by Deloitte during the Second Interim Period, of which \$120,000 and \$2,335.75 represent unpaid fees and un-reimbursed expenses, respectively, and (iii) grant such other and further relief as is just and necessary. In connection with this request, Deloitte understands and acknowledges that such interim order is subject to the Court's final review and approval of our total aggregate fees and expense reimbursement requests during the entirety of the aforementioned Chapter 11 cases, and that it is within the Court's purview to make changes and modifications to amounts awarded and authorized under this Interim Order.

Respectfully submitted,

Deloitte & Touche LLP

By:



Sheila T. Smith

Principal

Deloitte & Touche
200 Berkeley Street
Boston, MA 02116
617-437-3854

Date:

9/11/03

Sworn to and subscribed before me, a notary public for the State of Massachusetts, County of Suffolk, this 11th day of September, 2003.

Seborah Leadois
my commission expires
Feb 19, 2004

Genuity, Inc. et al
Chapter 11 Case 02-43558
Deloitte Touche LLP
Second Interim Fee Application
EXHIBIT A - SUMMARY OF COMPENSATION
Chapter: 11 Case No.: 02-43558

In Re:
GENUITY, INC. et al
Debtor

Fees Previously Requested	\$ 668,710.00
Fees Previously Awarded	\$ 225,078.00
Expenses Previously Requested	\$ 13,590.39
Expenses Previously Awarded	\$ 12,289.42

NAME OF APPLICANT:
Deloitte & Touche LLP

ROLE IN CASE:
Consultants & Financial Advisors

FEE APPLICATION	CURRENT APPLICATION	RATE (80%)	TOTAL FOR APPLICATION
NAMES OF PROFESSIONALS/ PARAPROFESSIONALS			
<u>Partners</u>			
Smith, Sheila T.	58.0	\$480	\$27,840
<u>Director</u>			
Maman, Hasan	26.0	\$488	\$12,688
<u>Senior Managers</u>			
Kolchmeyer, Peter	3.0	\$400	\$1,200
Lisciandro, John	145.2	\$424	\$61,565
Pollock, James P.	295.7	\$400	\$118,280
Skarupski, Christopher	2.0	\$400	\$800
<u>Manager</u>			
Nagle, Brooke	65.1	\$384	\$24,998
Taylor, Michael G.	414.4	\$360	\$149,184
<u>Senior Consultants</u>			
Clarke, Adrian	4.0	\$320	\$1,280
Hines, Eric	19.0	\$280	\$5,320
Mason, Kazumi	1.0	\$280	\$280
Peterson, John D G	195.2	\$280	\$54,656
White, Cheryl	20.5	\$280	\$5,740
<u>Consultants</u>			
Cheung, Kitty	1.0	\$220	\$220
Konig, Avigdor	54.8	\$220	\$12,056
Maheshwari, Anshul	2.3	\$170	\$391
Miller, Karen	72.5	\$220	\$15,950
Qadir, Shujah	2.0	\$220	\$440
<u>Intern</u>			
Siegel, Adam	5.0	\$80	\$400
Totals - Second Interim Period	1,366.7		\$493,288
Fee Cap Disclosure:			
Totals - First Interim Period	1,236.3		\$442,347
Totals - Second Interim Period	1,366.7		\$493,288
Totals Case To Date	2,623.0		\$935,635
Fixed Monthly Fees - Case to Date			
Totals			\$668,710
Amounts Sought for Second Interim Period			
Fixed Monthly Fees	\$ 180,000	\$ 120,000	\$ 75,000
Incurred Expenses	2,113	2,336	-
Total Fees & Expenses	\$ 182,113	\$ 122,336	\$ 75,000
Unpaid Amounts	\$	\$ 122,336	\$
Hold Back			75,000
Total Amount Sought	\$ -	\$ 122,336	\$ 75,000

Genuity Inc. et al
Chapter 11 Case 02-43558 (PCB)
Deloitte & Touche, LLP
Second Interim Fee Application

Exhibit B – Narrative Description of Professional Services

This narrative describes the major areas addressed during the period covered by this application, March 1, 2003 to July 31, 2003, on behalf of the Official Committee of Unsecured Creditors of the Debtors (the "Committee") during these Chapter 11 proceedings. For purposes of consolidation and simplification, certain month-to-month categories have been grouped in this interim fee application, only to the extent where such categories are similar in functional area and intent. Any grouping of individual monthly categories has been denoted by bold italic sub-headings under the appropriate interim fee application category.

Bankruptcy Analysis:

This category includes: initial work performed identifying and quantifying potential avoidance actions; work in identifying, quantifying and understanding the reasons for material changes in the Debtors' pre-petition trade payables and accrual liabilities; research related to the status of negotiations, claims, and counterclaims related to the Debtors' fiber lease with Micro Fiber Networks ("MFN"); research related to pleadings in Micro Fiber Network's bankruptcy proceeding; evaluation of the terms of the agreements negotiated by the Debtors with MFN and Level 3 in connection with said fiber lease agreement; and evaluation and communication of findings to the Creditors Committee in connection with the stipulation agreement executed to recover a significant portion of the funds held in escrow for bond interest payments.

Bankruptcy Court Hearings:

Prepared and attended BRC hearing regarding fee application approval and various claims issues, such as stipulations and arguments regarding application of deposits.

Creditor Committee:

Included in this category is time associated with the preparation for and participation in meetings and conference calls with the Committee, including the preparation and review of discussion documents and other deliverables provided to the Committee. Deloitte also participated in Committee meetings with Estate personnel to provide advisory services and comment on an ad hoc basis.

Current Operating Results, Budgets, Settlements, and Related Matters:

Deloitte's efforts in connection with such matters included the time to review and analyze the Debtors' Monthly Operating Reports ("MOR"), Monthly Trial Balances and supporting schedules for key account groups, such as Accounts Receivable and Accounts Payable, Weekly Flash Reports, and Monthly Budgets, and validation of key assertions justifying the terms of settlements negotiated by the Debtor in connection with disputed or erroneous receivable balances. Such activities included, but were not limited to: review time, spreadsheet analysis, comparisons to prior periods, and conversations with the Debtors' Management and Advisors. Deloitte also made limited inquiry/diligence regarding an assessment of professional fees and expenses presented to the Estate for payment in connection with post-petition services.

Estate Employee Compensation:

Reviewed estate incentive and proposed staffing plan. Researched on Pacer other plans filed and compared.

Executory Contracts and Claims Analysis:

Included activities related to Deloitte's review of executory contracts; assumption, rejection, cure costs and rejection claims. Deloitte reviewed analyses prepared by other professionals both pre and post-petition as to these claims. Deloitte held and participated in numerous meetings with the Debtors and their Advisors on the subject of cure costs and rejection claims, and prepared multiple analyses to demonstrate the sensitivity of the creditors' recoveries to the accept/reject decisions on executory contracts. Finally, in certain instances Deloitte performed various review and analysis procedures with respect to certain issues related to the executory contracts, such as the potential impact of abandoned assets, and reviewed all rejection/assumption motions and the underlying support for the proposals made by the Debtors.

Fee Application:

Included time related to the recording, summarizing, reporting and review of hours worked and expenses incurred for the February, March, April, May, June, and July fee application filings.

Liquidation Analysis – Waterfall, Recovery, and Settlement:

Liquidation Analysis: Included time related to obtaining financial information, legal documents, claims analysis and discussions with professionals to update the “waterfall” analysis of the proceeds available for distribution, the dividend to, and the classes of claims. Deloitte obtained and developed estimates of secured, administrative, priority and unsecured claims classes. Deloitte reviewed structural seniority issues, contractual prohibitions, legal settlements, intercompany claims, guarantees and cross collateralization issues to the extent that they may have had an impact on the “waterfall” analysis. Various different scenarios were analyzed at the request of counsel and the Committee. Further effort was expended understanding, validating the reasonableness of, gaining support for, and then negotiating the Creditor Committee’s review rights in connection with the Debtors’ proposed plan to wind-down its international subsidiaries and branch operations without entering formal insolvency proceedings in most locations. Deloitte analyzed the liquidation of the Estate’s international operations in a phased approach, or ‘international wind down’, to consider the impact on creditors. Deloitte also reviewed the proposals and financial analysis of the Estate and their advisors relative to several different ‘international wind down’ scenarios. This category also includes the abandonment of fixed assets, and the consideration of intercompany debt.

Recovery Analysis & Intercreditor Settlement Agreement: Included time expended to gather and analyze up-to-date financial information, legal documents, claims analyses needed to update and enhance the reliability of Deloitte’s wind-down/“waterfall” analysis of the proceeds available for distribution, the classes of claims, and the potential dividend expected to be paid to the unsecured creditors. Various different scenarios were analyzed at the request of counsel and the Committee. Significant emphasis was given to understanding the nature, magnitude and accuracy of intercompany receivable and payable balances carried on the Debtor’s books and records, potential avoidance actions and guarantees by subsidiaries.

M&A Transactions:

Deloitte reviewed and analyzed Level 3 purchase price adjustment report and also rejection claims report. Deloitte held meetings with various personnel to discuss such issues and findings.

Plan & Disclosure Statement:

Deloitte reviewed various drafts of the plan & disclosure statement to assess agreement with our understanding of such major factors as; terms of the inter-creditor agreement, various stipulations with the Estate’s creditors, as well as calculations and estimates of distributable proceeds, claims, claims classifications and recovers of the various creditor classes.

Planning, Administration Supervision and Review:

Included activities related to the organization, management, staffing and execution of the engagement. Deloitte prepared, maintained and revised multiple information requests, and updated contact databases as necessary. In addition, Deloitte established, maintained, and updated, our case documents and electronic file storage systems with files prepared by or received from PACER, Attorneys, or the Debtor.

Strategic and Operational Assessment:

Deloitte made limited inquiry/diligence regarding a proposed plan to migrate the Estate off the SAP computer system to a less robust, yet less costly MIS package. Category also includes the drafting of Deloitte’s interview questions concerning the continuity of the Estate’s electronic information systems to discern need and potential impact on creditor recovery.

Genuity, Inc., et al
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Deloitte & Touche LLP
Second Interim Fee Application

EXHIBIT C - FEES AND EXPENSES SUMMARY

Category Description	Hours	Total
Bankruptcy Analysis	27.5	\$8,474.00
Bankruptcy Court Hearings	3.0	\$1,200.00
Creditor Committee	131.8	\$52,560.80
Current Operating Results, Budgets, Sett	236.2	\$67,015.80
Estate Employee Compensation	31.4	\$11,704.00
Executory Contracts & Claims Analysis	146.1	\$58,622.40
Fee Application	55.6	\$17,006.00
Liquidation Analysis – Waterfall, Recovery	694.7	\$257,344.40
M&A Transactions	4.8	\$2,034.40
Plan & Disclosure Statement	8.1	\$3,268.80
Planning, Administration, Supervision & R	47.1	\$13,945.60
Strategic and Operational Assessment	0.4	\$112.00
	<hr/>	<hr/>
	1,386.7	\$493,288.20
Plus: Out-of-Pocket Expenses		<hr/>
		\$4,474.38
		<hr/>
Total Fees Expenses		\$497,762.58
		<hr/> <hr/>