

Hearing Date: January 28, 2004, at 2:30 p.m.
Objections Due: January 23, 2004, at 4:00 p.m.

Gary S. Lee (GL 6049)
Karen Ostad (KO 5596)
Dina Gielchinsky (DG 6054)
LOVELLS
900 Third Avenue, 16th Floor
New York, New York 10022
Tel. (212) 909-0600
Fax: (212) 909-0666

Attorneys for Nortel Networks Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**APPLICATION OF NORTEL NETWORKS INC. FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM FOR REIMBURSEMENT OF PROFESSIONAL FEES INCURRED
PURSUANT TO 11 U.S.C. §§ 503(b)(3) AND 503(b)(4)**

TO THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE:

Name of Applicant:	Lovells, on behalf of Nortel Networks Inc.
Period for which compensation and reimbursement is sought:	April 2003 - The Effective Date
Amount of Compensation sought as actual, reasonable and necessary:	\$345,020.00

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TO THE HONORABLE PRUDENCE C. BEATTY
UNITED STATES BANKRUPTCY JUDGE:

Nortel Networks Inc. ("Nortel"), a member of the Official Unsecured Creditors' Committee ("Creditors' Committee") in the above captioned cases, hereby submits this application ("Application") seeking entry of an order, pursuant to sections 503(b)(3) and 503(b)(4) of title 11 of the United States Code (the "Bankruptcy Code"), allowing and authorizing the reimbursement of professional fees incurred by its counsel, Lovells, in connection with the chapter 11 bankruptcy cases of Genuity Inc. and its subsidiaries (the "Debtors"). In support of this Application, Nortel respectfully represents and states as follows:

PRELIMINARY STATEMENT

1. Nortel, with the assistance of Lovells, has played a major role in the Debtors' bankruptcy cases. As the active voice of the interests of the Debtors' trade creditors, which comprised the General Unsecured Creditor class under the Debtors' Joint Consolidated Plan of Liquidation, as Modified ("Plan"), Nortel's and Lovells' diligent efforts culminated in a multilateral settlement (the "Settlement") which enabled the Plan to be confirmed expeditiously, avoiding extensive litigation and delay in distributions to creditors, for the benefit of all creditors of the Debtors' estates.

2. Nortel submits that without Lovells' efforts, the results achieved in these cases would have been far less favorable for creditors as a whole and for trade creditors in particular. Accordingly, Nortel submits this Application for reimbursement of Lovells' fees in forging the Settlement as an administrative expense. Annexed hereto as Exhibit A is the Declaration of Gary S. Lee in support of this Application.

JURISDICTION

3. The Court has jurisdiction to hear this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 503(b)(3) and (4).

RELIEF REQUESTED

4. By this Application, Nortel seeks reimbursement from the GLT Liquidating Trust (the "Liquidating Trust"), as successor in interest to the Debtors, for certain professional services rendered by Lovells from April 2003 (the date of commencement of negotiations on the Plan) through December 2, 2003 (the "Effective Date") in the amount of \$345,020.00 (the "Reimbursement Claim").

5. As set forth in the Second Amended Disclosure Statement for Debtors' Joint Consolidated Plan of Liquidation, as Modified (the "Disclosure Statement"), the Debtors and the Creditors' Committee anticipated Nortel's intention to file the Application in the amount of at least \$450,000 for the period through July 31, 2003, plus amounts incurred thereafter. *See* Disclosure Statement at 36. The actual Reimbursement Claim is lower than the amount estimated in the Disclosure Statement.

6. Kramer Levin Naftalis & Frankel LLP, as counsel to the Liquidating Trust and former counsel to the Creditors' Committee prior to the Effective Date, (a) has reviewed the Motion, (b) believes that Nortel, with the assistance of Lovells, provided a substantial contribution to these cases and their services were actual and necessary in the performance of Nortel's obligations as a representative of the Creditors' Committee (without taking any position on the appropriate amount of the fees) and (c) is willing to attest to such contributions before the Court.

7. The Reimbursement Claim is likewise supported by JPMorgan Chase Bank ("JP Morgan Chase"), a bank lender member of the oversight committee (the "Oversight Committee"), established pursuant to the terms of the Liquidating Trust Agreement, dated as of December 2, 2003, and the former Chair of the Creditors' Committee prior to the Effective Date.

BACKGROUND

8. On November 27, 2002, voluntary bankruptcy petitions were filed by the Debtors. Nortel was appointed as a member of the Creditors' Committee on December 5, 2002, along with JPMorgan Chase (as Committee Chair), BNP Paribas, Mizuho Corporate Bank, Ltd., and Allegiance Telecom. Of these Creditors' Committee members, only Nortel and Allegiance Telecom held trade creditor claims; the other members held bank claims. No trustee or examiner has been appointed in the Debtors' chapter 11 cases.

9. Nortel retained the law firm of Lovells to represent it in connection with, among other things, Nortel's performance of its duties as a member of the Creditors' Committee.

10. On January 24, 2003, this Court entered an order approving a sale of substantially all of the assets and business of the Debtors to certain affiliates of Level 3 Communications, Inc. On October 6, 2003, this Court entered an order approving the adequacy of the Disclosure Statement. On November 21, 2003, this Court entered an order confirming the Plan. On or about December 2, 2003, the Effective Date of the Plan occurred.

NORTEL'S CONTRIBUTIONS TO THE PLAN

11. The Plan reflects the extensive negotiations that Nortel, with the assistance of Lovells, entered into in an effort to resolve consensually the numerous and complicated intercreditor and debtor-creditor issues among the Debtors, the Bank Lenders¹, Verizon and the General Unsecured Creditors, while maximizing the value of the estates for the benefit of all creditors. In fact, the Disclosure Statement acknowledges that without the Settlement, the recovery of the General Unsecured Creditors could have been as little as 3%-6% of their allowed claims. *See* Disclosure Statement at 38. Currently, distributions have been made amounting to approximately 17.8%, with additional distributions to come in 2004 bringing the likely recovery in excess of 25%.

12. A summary of the intercreditor and debtor-creditor issues is set forth in Part IV(A) of the Disclosure Statement, pages 38-39:

The potential causes of action being resolved pursuant to the Settlement include:

(a) whether the intercompany debt held by Genuity Inc. against Genuity Solutions, in whole or in part, could be recharacterized as equity infusions from Genuity Inc. into Genuity Solutions, (b) fraudulent conveyance actions by Genuity Inc. against Genuity Solutions and other subsidiaries in connection with the downstreaming of funds to those subsidiaries at times the Bank Lenders could argue Genuity Inc. and Genuity Solutions were

¹ All undefined capitalized terms herein shall have the meaning ascribed to them in the Disclosure Statement.

insolvent, (c) an objection to the allowed amount of the Subsidiary Guaranty Claims asserted by the Bank Lenders against Genuity Solutions and Genuity Telecom under the Bank Credit Agreement, (d) preference actions by Genuity Solutions against Genuity Inc. and by Genuity Inc. against the Bank Lenders for receipt of certain payments during the applicable preference periods, (e) the equitable subordination of the Verizon claims to all other claims, (f) fraud claims against the officers and directors of Genuity Inc. in connection with making the July 2002 Draw [from the Bank Lenders], (g) cross-claims and counterclaims of those directors and officers against Verizon and other parties, and (h) substantive consolidation of the Debtors' estates.

13. The Debtors acknowledged the formidable task borne by members of the Committee in resolving these complex issues in Part IV of the Disclosure Statement, page 37:

Discussions among the Creditors' Committee members regarding intercreditor issues began in April 2003. After more than a month of analysis and due diligence on these issues, in late May 2003 the Creditors' Committee members, led by JPMorgan Chase, on behalf of the Bank Lenders, **and Nortel**, on behalf of the General Unsecured Creditors, began to negotiate the terms of a global intercreditor resolution. This negotiation culminated in an agreement in principle reached, and approved by, the full Creditors' Committee in early July 2003.

14. Nortel's efforts culminated in a multilateral Settlement embodied in the Plan, which, among other things, enables creditors of Genuity Inc. (primarily Bank Lenders), the parent holding company of the Debtors, as well as creditors of Genuity Solutions, Inc., the primary operating subsidiary of the Debtors, to share in an agreed distribution of the estates' assets, avoiding the alternatives of extensive and costly litigation and forfeiture of one entity's creditors of any appreciable recovery on their claims.

15. The Disclosure Statement reflects the value of the Settlement by declaring that:

regardless of the eventual outcome of the disputes resolved by the Settlement, continued litigation would result in substantial cost to the estates and extensive delays - at least several months and potentially more than a year - in confirming a plan of liquidation.... These costs and delays would certainly diminish the amount of cash available for distribution to unsecured creditors.

See Disclosure Statement, page 38.

16. Nortel's efforts in achieving the Settlement entailed the active assistance of Lovells. In brief, Nortel, assisted by Lovells:

- formulated theories and potential interdebtor and debtor-creditor causes of action to maximize recoveries to creditors, and trade creditors in particular;
- researched such potential causes of action;
- interviewed the Debtors' representatives to conduct due diligence on the validity on such potential causes of action;
- formulated theories of recovery for various creditor constituents based on the causes of action considered;
- met with JPMorgan Chase and their advisers, as well as with Creditors' Committee professionals to discuss fair recovery scenarios considering the various causes of action and other issues uncovered;
- helped negotiate and document the Settlement and the Plan, Disclosure Statement and Liquidating Trust Agreement which integrate the Settlement, and helped get unanimous Creditors' Committee approval of the Settlement;
- participated in addressing objections to the Plan and Disclosure Statement, which raised issues about the fairness of the Settlement;
- participated in responding to discovery demands made on the Creditors' Committee and its members regarding the Settlement; and
- attended hearings to approve the Disclosure Statement and Plan.

BASIS FOR RELIEF

17. Sections 503(b)(D) and (F) of the Bankruptcy Code provide for the allowance of certain administrative claims for the necessary expenses of, respectively, (i) an individual creditor who makes a substantial contribution to a case, and (ii) a member of a creditors' committee in the performance of its duties. Additionally, creditors qualifying for reimbursement pursuant to sections 503(b)(3)(D) and (F) may also recover attorneys' fees and expenses pursuant to section 503(b)(4).

A. **Nortel is Entitled to Reimbursement of its Attorneys' Fees, Incurred as a Result of its Substantial Contribution to the Debtors' Estates**

18. Nortel's efforts culminating in the implementation of the Settlement constitute a "substantial contribution" to the administration of the Debtors' estates and are thus compensable under the Bankruptcy Code. 11 U.S.C. § 503(b)(3)(D), in conjunction with 11 U.S.C. § 503(b)(4), provides for the "reasonable compensation for professional services rendered by an attorney" paid by a "creditor...in making a substantial contribution in a case under chapter 9 or 11 of this title."

19. As broadly defined by the courts in this District, "substantial contributions" are those services "which foster and enhance, rather than retard or interrupt the progress of reorganization." *In re U.S. Lines, Inc.*, 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989) quoting *In re Richton Int'l Corp.*, 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981). In *U.S. Lines*, the court held that "services which confer a significant and demonstrable benefit ... which have not been rendered solely on behalf of a creditor's own interest should be compensated." *Id.* at 430. In that case, negotiation of a settlement agreement creating funds for the estate was held to constitute a substantial contribution. Therefore, the test is satisfied where "the services rendered have substantially contributed to an actual and demonstrable benefit to the debtor's estate, its creditors, and to the extent relevant, the debtor's shareholders." *In re U.S. Lines, Inc.*, 103 B.R. at 429.

20. Other courts have held that creditor actions which

led to the appointment of a chapter 11 trustee, changed the treatment for all unsecured creditors under a plan, negotiated transactions that resulted in funds becoming available to the estate and resulted in a reduction of fees charged by counsel for the debtor

constituted "substantial contributions." See LAWRENCE P. KING, COLLIER ON BANKRUPTCY § 503.10[5] (15th Ed. Rev. 2003) (citations omitted).

21. Nortel's and Lovells' efforts in helping conceive and implement the Settlement constitute a substantial contribution to the Debtors' estates under section 503(b)(3)(D); therefore,

Nortel is entitled to reimbursement of the fees and expenses incurred by Lovells in connection therewith, pursuant to sections 503(b)(3)(D) and (4) of the Bankruptcy Code.

B. Nortel is Entitled to Reimbursement of its Attorneys' Fees Incurred as a Result of its Role as a Member of the Committee in Facilitating the Settlement

22. Nortel is also entitled to reimbursement of its attorneys' fees incurred in facilitating the Settlement a member of the Creditors' Committee. The Third Circuit recognized in *First Merchants Acceptance Corp. v. J.C. Bradford & Co. (In re First Merchants Acceptance Corp.)*, 198 F.3d 394 (3d Cir. 1999), that the 1994 Bankruptcy Reform Act's addition of subsection 503(b)(3)(F) to 11 U.S.C. § 503, affords a member of an official committee a statutory right to reimbursement of expenses incurred in connection with service on the committee, including attorneys' fees. *See id.* at 399 ("We fail to find an ambiguity in § 503(b)(3)(F) or § 503(b)(4) that would overcome the straightforward reading of the provision as permitting the committee members to recover attorney's fees for work performed in connection with that entity's service on the committee.")

23. The court in *First Merchants Acceptance* listed two factors in determining whether attorneys' fees should be awarded to committee members: (i) whether the fees were "demonstrably incurred" or "actual" and (ii) whether the duties were necessary to the committee. *Id.* at 403.

24. "Necessary" services describe those services provided as a member of the committee under section 1103(c) of the Bankruptcy Code on behalf of all creditors, implying that services provided solely on the member's behalf are not "necessary." *Id.* at 399.

25. As noted in the Disclosure Statement, Nortel (together with JPMorgan Chase) led the charge in forging the Settlement. The Settlement was necessary to allow the filing of the Plan which resulted in sizeable and immediate recoveries to creditors, and avoided the alternative of lengthy and costly litigation over intercreditor issues. Consistent with Nortel's fiduciary responsibilities to unsecured creditors as a whole, Nortel worked diligently with the assistance of

Lovells towards the conception of and implementation of the Settlement. Nortel only seeks reimbursement for fees of Lovells that relate to Nortel's role as a Creditors' Committee member in helping formulate and consummate the Settlement as part of the Plan, and not for fees or expenses incurred by Nortel that do not relate to such role.

26. Those actions taken by Nortel for which Nortel seeks reimbursement were not solely for Nortel's benefit. Indeed, Nortel will, at best, only receive the pro-rata benefits all the other creditors of the Debtors (including trade and non-trade creditors) will receive through Lovells' efforts. The actions taken by Lovells for which Nortel asserts the Reimbursement Claim were necessary, benefited creditors generally and did not relate to the specific claims of Nortel itself.

27. Accordingly, Nortel respectfully submits that, in addition to being compensable under sections 503(b)(3)(D) and (4), the Reimbursement Claim should be allowed under sections 503(b)(3)(F) and (4).

C. **Reasonableness of Compensation for Professional Services**

28. Annexed hereto as Exhibit B is a copy of Lovells' relevant time records and fee details for which Nortel seeks reimbursement, along with the partners, associates, and paraprofessionals of Lovells who provided 503(b) services to the estates, and each such person's billing rate, total billed hours, and fees for such services rendered.

29. Nortel submits that the Reimbursement Claim is reasonable, pursuant to 11 U.S.C. § 503(b)(4). In assessing the reasonableness of professional fees, the Second Circuit has adopted the "lodestar" approach whereby a court determines a reasonable hourly rate and multiplies that by a reasonable number of hours expended for the tasks performed. *See, e.g., The Crescent Publishing Group, Inc. v. Playboy Enterprises, Inc.*, 246 F.3d 142 (2d Cir. 2001).

30. Nortel seeks reimbursement of Lovells' fees at normal rates without any bonus or multiplier. The rates Lovells charged Nortel in these cases are no more than Lovells charges to

other clients seeking similar services, and are reasonable based on the customary compensation charged by skilled practitioners in non-bankruptcy cases in a competitive national legal market. *See In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 17-18, 20&21 (Bankr. S.D.N.Y. 1991).

31. Nortel is also confident that Lovells has sought to achieve economies in every way that would not improperly compromise the interests of the estates or the quality of Lovells' services in helping fulfill Nortel's role in implementing the Settlement. For example, fees have been minimized by arranging for attorneys to participate without duplication of effort wherever practicable.

REQUEST FOR WAIVER OF MEMORANDUM OF LAW

32. Nortel respectfully requests that, with respect to this Application, the Court waive its requirement under Local Bankruptcy Rule 9013-1(b) that all motions filed with the Court be accompanied by a memorandum of law. This Application raises no novel or complex issues of law, and Nortel submits that a waiver of that requirement is appropriate.

NOTICE

33. A copy of this Application has been served on (a) the Office of the United States Trustee, (b) counsel to the Liquidating Trust and (c) counsel to JPMorgan Chase. Notice of the Application has been served on each of the other parties in the Master Service List approved by this Court's Order Pursuant to 11 U.S.C. §§ 102 and 105(a) and (d) and Bankruptcy Rules 2002(m), 9006 and 9007 Establishing Certain Notice, Case Management and Administrative Procedures and Scheduling Initial Case Conference in Accordance with Local Bankruptcy Rule 1007-2(e) dated March 21, 2003, which notice provided instructions on how to request copies of the Application. Nortel submits that, given the nature of the relief requested, no other or future notice need be given.

34. No previous request for the relief sought in this Motion has been made to this Court or any other court.

CONCLUSION

WHEREFORE, Nortel respectfully requests that this Court enter an order in the form annexed hereto as Exhibit C (i) approving this Application, (ii) allowing and directing the Debtors' estates, through the Liquidating Trust, to pay the Reimbursement Claim in the amount of \$345,020.00, as an administrative claim, and (iii) granting Nortel such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 31, 2003

LOVELLS

By: /s/ Gary S. Lee

Gary S. Lee (GL 6049)
Karen Ostad (KO 5596)
Dina Gielchinsky (DG 6054)
900 Third Avenue, 16th Fl.
New York, NY 10022
Phone: (212) 909-0600

ATTORNEYS FOR NORTEL NETWORKS INC.