

Larren M. Nashelsky (LN-3675)
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
(212) 468-8000

Cheryl A. Tritt
Kenneth W. Irvin
William McCarron, Jr.
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-1500

*Special Counsel for Genuity Inc., et al.,
Debtors and Debtors-in-Possession*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**SUMMARY SHEET FOR FIRST INTERIM
FEE APPLICATION OF MORRISON & FOERSTER LLP AS SPECIAL
COUNSEL FOR DEBTORS-IN-POSSESSION, FOR
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED
AND REIMBURSEMENT OF EXPENSES INCURRED**

Applicant: Morrison & Foerster LLP

Role: Special Labor, Creditor-Side Bankruptcy And Communications Regulatory
And Business Counsel For The Debtors.

Application Period: November 27, 2002 through February 28, 2003.

Fees/Expenses previously requested: None.

Fees/Expenses previously paid under Administrative Order: November 27, 2002
through December 31, 2002: \$114,182.00 in fees and \$4,791.24 in expenses; January
2003: 90,594.00 in fees and \$4,471.49 in expenses; February 2003: \$74,385.00 in
fees and \$2,949.58 in expenses.

Unpaid monthly balances of fees under Administrative Order for application period: November 27, 2002 through December 31, 2002: \$28,545.50; January 2003: \$22,648.50; February 2003: \$18,596.25.

Total unpaid fees for application period: \$69,790.25.

Retainers held: \$150,000 general retainer received prepetition and partly applied to unpaid prepetition fees and expenses under the Court's retention order, with the remaining balance of \$64,545.18 to be held as a post-petition retainer applicable towards fees and expenses approved by a final fee application. Received an additional retainer of \$200,000 in connection with defending Genuity and several co-defendants in a recently dismissed action by a former employee alleging claims for unpaid commissions and wrongful discharge; \$193,268.08 remains of such additional retainer.

Fees requested: Allowance of \$279,161.00 paid; allowance and payment of an additional \$69,513.90.¹

Expenses requested: Allowance of \$12,212.31 paid.

Blended Hourly Rate: \$346.67

Professionals: See Exhibit A entitled "Summary of Professional Services"

¹ Though in its monthly billing statements for the application period, the firm billed at its customary rates of \$.21 per page for photocopies and \$2.00 per page for outgoing national long distance faxes, the firm has reduced its request for payment of fees by \$276.35, the amount by which such disbursements exceeded the rates permitted by the Local Guidelines (as defined in the Application), so as to ensure compliance therewith.

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**FIRST INTERIM FEE APPLICATION OF
MORRISON & FOERSTER LLP AS SPECIAL COUNSEL
FOR DEBTORS IN-POSSESSION FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

TO THE HONORABLE PRUDENCE CARTER BEATTY,
UNITED STATES BANKRUPTCY JUDGE:

Morrison & Foerster LLP, as special labor, creditor-side bankruptcy and communications regulatory and business counsel (“Morrison”, “Applicant” or “Special Counsel”) for the above captioned debtors (“Genuity” or the “Debtors”), hereby submits its first interim application for entry of an order allowing compensation for services rendered and reimbursement of expenses incurred (the

“Application”) under 11 U.S.C. § 331 and Fed. R. Bankr. P. 2016 for the period from November 27, 2002 through February 28, 2003 (the “Application Period”), and in support thereof, respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On November 27, 2002 (the “Petition Date”), each Debtor filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases. On December 5, 2002, the United States Trustee appointed an official committee of unsecured creditors in these cases.

4. On January 8, 2003, this Court entered its Administrative Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Administrative Order”). The Administrative Order established

procedures whereby a professional, upon serving designated persons with copies of each monthly billing statement and absent any timely objection thereto, would be entitled to receive payment from the Debtors of 80% of the fees and 100% of the expenses stated therein.

5. On January 24, 2003, this Court entered an order (the “Sale Order”) authorizing certain of the Debtors to sell substantially all of their assets (the “Sale”) to Level 3 Communications, LLC and its assignee, Greenland Managed Services, LLC (collectively, “Level 3”). The Sale under the parties’ asset purchase agreement (“APA”) was consummated and closed on February 4, 2003.

6. Through the Sale and otherwise, the Debtors have been engaged in the orderly liquidation of their remaining assets and the wind-down of their businesses, as well as the businesses of their subsidiaries.

7. By application dated November 27, 2002, the Debtors applied to this Court for authorization to retain Morrison as its Special Counsel (the “Employment Application”). By order dated January 2, 2002, this Court approved Morrison’s retention *nunc pro tunc* to November 27, 2002. A copy of the January 2, 2002 Order is annexed hereto as Exhibit B.

8. Pursuant to the Administrative Order, Morrison has received payment from the Debtors of 80% of its fees or \$279,161.00 for services rendered during the

Application Period and 100% of its expenses or \$12,212.31 incurred in connection with such services (the “Paid Fees and Expenses”).

9. Morrison submits this Application pursuant to 11 U.S.C. § 331 for: (i) interim allowance of the Paid Fees and Expenses; and (ii) interim allowance and payment of the balance of unpaid compensation for professional services rendered on the Debtors’ behalf during the Application Period equaling \$69,513.90 (the “Unpaid Balance”).²

10. During the Application Period, Morrison spent a total of 1,021 hours on its representation of the Debtors. Attached hereto as Exhibit A is a schedule that sets forth the number of hours expended by Morrison's attorneys and legal assistants who rendered services to the Debtors, their hourly rates and the year in which each attorney was admitted to practice. The rates for Morrison’s professionals involved in this representation as set forth in the attached Summary of Professional Services are the same hourly rates that Morrison charged other clients for comparable services during the Application Period. Hourly billing rates are periodically reviewed and revised. Attached hereto as Exhibit C are Morrison’s time records (the “Time Summary”) that detail the services performed and the time expended by each attorney and legal assistant during the Application Period. The name of each Morrison professional who rendered services for the Debtors and a statement of the

hours worked and tasks performed by each individual broken out by specific matter, project or category are set forth in the Time Summary. The Time Summary consists of the contemporaneous time records of Morrison and provides details of the services performed, the dates on which such work was performed, the identity of the professionals and paraprofessionals performing the work and the time spent by each reflected in tenth of an hour increments.

11. Morrison has not filed any other applications for compensation and reimbursement of expenses for the Application Period.

12. Morrison has received no payment and no promises for payment from any source other than the Debtors for services rendered or to be rendered in any capacity whatsoever in connection with these cases. In addition, there is no agreement or understanding between Morrison and any other person other than members of the firm for the sharing of compensation to be received for services rendered in these cases.

**DESCRIPTION OF SERVICES RENDERED BY
MORRISON DURING THE APPLICATION PERIOD**

13. The attached Time Summary sets forth in detail the services rendered as to certain specific tasks and categories. The following narrative represents an overview of the projects and matters undertaken by Morrison as special labor,

² Though in its monthly billing statements for the Application period, Morrison billed at its customary rates of \$.21 per page for photocopies and \$2.00 per page for national long distance outgoing faxes, Morrison has reduced its request for payment of fees by \$276.35, the amount by which such disbursements exceeded the rates permitted by the Local Guidelines (as defined below), so as to

creditor-side bankruptcy and communications regulatory and business counsel to the Debtors, the importance of those projects to the Debtors and their estates and the benefits and results achieved.

Creditor-Side Bankruptcy Matters

14. Since the Petition Date, Morrison has represented one or more of the Debtors in connection with numerous bankruptcies in which a Debtor(s): (i) is (or was) a provider of services to the other debtor; (b) acquired an indefeasible right of use (“IRUs”) in telecommunications fibers from the other debtor; (c) is a party to an executory contract or unexpired lease with the other debtor; and/or (d) is a creditor of the other debtor (collectively, the “Creditor-Side Matters”).

15. For example, Morrison provided a variety of critical services for the Debtors in the Metromedia Fiber Network, Inc. (“MFN”) bankruptcy cases. Morrison prepared and filed several proofs of claims including ones preserving the Debtors’ rights with respect to IRUs acquired from debtor Metromedia Fiber Network Services Inc. (“MFNS”) for which Genuity Solutions Inc. (“GSI”) had paid over \$179 million. Throughout the MFN cases, Morrison has monitored the proceedings for rejection motions and other filings which might affect Debtors’ interests such as their IRUs and advised the Debtors regarding such proceedings.

16. Once MFNS commenced an adversary proceeding in its bankruptcy against GSI seeking a declaration that GSI’s IRUs and other interests under relevant contracts (the “IRU Contracts”) merely constituted prepetition claims against MFNS

ensure compliance therewith.

(the “MFNS Adversary Proceeding”), Morrison played a critical role towards reaching a settlement under which MFNS will: (i) acknowledge the validity of certain rights of GSI in telecommunications fiber assigned and delivered to GSI under the IRU Contracts that Level 3 desires to acquire pursuant to the APA; and (ii) consent to the assignment of such rights to Level 3. Morrison, in coordination with Debtors’ general bankruptcy counsel Ropes & Gray, advised the Debtors on litigation strategy which also potentially affected the conduct of the Debtors’ own cases in the exercise of their rights under sections 362 and 365 of the Bankruptcy Code as well as other Creditor-Side Matters. Prior to the parties’ settlement, Morrison filed a motion to dismiss the MFNS Adversary Proceeding as an action which violated the automatic stay of section 362(a)(1) of the Bankruptcy Code and was therefore void *ab initio*. Since filing that motion, Morrison has provided substantial advice to the Debtors concerning negotiating the terms of the parties’ settlement.

17. Prior to the Petition Date, Morrison filed a lift stay motion in the Teleglobe USA Inc. (“Teleglobe”) bankruptcy seeking termination of a contract under which Genuity Telecom Inc. (“GTI”) provided various post-petition services for which GTI had not been paid, and payment of GTI’s resulting claim pursuant to section 503 of the Bankruptcy Code. Afterwards, Teleglobe rejected each of the circuits provided by GTI under the parties’ contract. Following the Petition Date, Morrison negotiated Teleglobe’s agreement to entry of a consent order which granted GTI an allowed claim under section 503 of the Bankruptcy Code in the

amount of \$145,150.87. Since then, Morrison has continued to monitor the Teleglobe bankruptcy regarding the debtors' progress towards filing a plan under which the GTI estate would receive payment of its allowed claim.

18. Morrison has also advised the Debtors regarding the disposition in e.spire's bankruptcy of certain Genuity contracts which Level 3 is potentially interested in having assigned to it under the APA.

19. In the bankruptcy of SLC Liquidating Corporation ("SLC"), f/k/a Software Logistics Corporation and iLogistix, Morrison successfully asserted GSI's claim under section 503 of the Bankruptcy Code. Specifically, the parties have agreed to the allowance of 90% of GSI's asserted claim equaling \$213,153.31 and the debtor's setoff against such amount of \$15,000 in compromise of alleged preferential transfers totaling \$34,738.48 made to GSI. Additionally, the parties are resolving issues raised by the SLC creditors' committee regarding a \$191,849.26 general unsecured claim filed by Morrison on GSI's behalf. Once that final issue is resolved, the parties have agreed to payment of \$198,153.31 within three days after entry of an order in the SLC bankruptcy approving the parties' settlement of the section 503 and preference issues.

20. Morrison is also advising GSI regarding post-petition claims totaling more than \$120,000 it has against Adelphia Business Solutions ("ABIZ") for services provided. Despite being the signatory to the contract under which those services are provided and having designated GSI as a utility under section 366 of the Bankruptcy Code in its bankruptcy, ABIZ has asserted that its former parent

Adelphia Communications is liable for payment for the services instead. Morrison continues to advise GSI as it initially attempts to resolve this matter consensually without need of litigation.

21. In the WorldCom bankruptcy, Morrison worked closely with Genuity and WorldCom's advisors to identify, prepare and timely file twenty-two proofs of claim on behalf of various Debtors. Morrison continues to work with Genuity regarding the potential need to amend several claims and to monitor the WorldCom bankruptcy proceedings. Additionally, Morrison is analyzing WorldCom's recently filed disclosure statement and plan of reorganization so as to properly advise the Debtors regarding the effect of these documents on the Genuity proofs of claim.

22. Finally, in numerous other Creditor-Side Matters, Morrison has advised Genuity, filed claims, notices of automatic stay and/or other pleadings, and/or monitored such matters.

Labor Matters

23. In addition to Creditor-Side Matters, Morrison also represents Genuity in a variety of labor matters. In a prepetition action brought by a former Genuity sales employee against Genuity and three current/former alleged "supervisors" indemnified by Genuity, Morrison obtained not only plaintiff's recognition of the automatic stay in Genuity's bankruptcy, but also plaintiff's consent to a stay of the proceedings against the alleged "supervisors" indemnified by Genuity. Shortly thereafter, Plaintiff's counsel dismissed the case in its entirety.

24. In several other labor actions, Morrison has effectively asserted the benefit of Genuity's automatic stay under section 362(a) of the Bankruptcy Code, thereby freezing those proceedings.

Business and Dispute Resolution Matters

25. During these cases, Morrison has also assisted Genuity with its analysis of several hundred communications services agreements and fifteen thousand telecommunications circuits. Such services were necessary in order to respond in a timely manner to the weekly directives from Level 3 requiring Genuity either to reject or to assume and assign particular contracts, or individual circuits, within the time frames set forth in the APA, and to enable Genuity: (i) to determine whether the rejection of an individual circuit or service would result in an objection by the circuit or service vendor (e.g., that the rejection constitutes improper "cherry-picking"); (ii) to determine whether the rejection of a particular communications services agreement would result in an objection (e.g., that the attempted rejection would not be effective because the services agreement is not executory); and (iii) to map the circuits to the applicable governing contractual arrangement, so that rejection damages and cure amounts could be properly calculated.

26. Morrison advised Genuity regarding the weekly directives from Level 3 under the APA to reject or to assume and assign particular contracts and individual circuits. Such advice was necessary in order to determine the existence of potential objections from the communications vendors.

27. Morrison reviewed and analyzed various objections filed by communications vendors in Genuity's bankruptcy cases objecting to Genuity's rejection notices (either objecting to the individual circuit or service rejection, or objecting to the service agreement rejection) and participated in the fact-finding efforts necessary to prepare comprehensive replies to such objections. Morrison advised Genuity and its primary bankruptcy counsel, Ropes & Gray, with regard to the preparation of Genuity's reply to each such communications vendor objection. Morrison and Ropes & Gray have assiduously worked together on these matters to ensure that their respective efforts in this regard do not overlap.

28. Morrison advised Genuity regarding the calculation of cure amounts for communications services agreements designated by Level 3 pursuant to the APA for assumption by Genuity and assignment to Level 3.

29. Morrison advised Genuity concerning various other communications services agreements, settlement agreements and license agreements, as needed, when such matters arose in connection with third-party communications vendors.

Regulatory Matters

30. During these bankruptcy cases, Morrison advised them in connection with proceedings before the Federal Communications Commission ("FCC") addressing various licenses and authorizations held by the Debtors. Morrison initially prepared and submitted to the FCC applications seeking authority to transfer the relevant licenses and authorizations from Genuity to Genuity, debtors-in-

possession. Pursuant to the initial filing, Morrison conducted various meetings and conversations with FCC personnel to ensure proper prosecution of the initial filings.

31. Morrison assisted in identifying each state in which assignment applications were required to be filed with the public utility commission seeking authority to assign the relevant licenses from Genuity to Genuity, debtors-in-possession. Morrison continued to work with local counsel to ensure that the applications were properly handled and approved.

32. Morrison then assisted Genuity with the preparation and negotiation of the APA with Level 3 to ensure that any regulatory issues were properly considered and included in the transaction documents.

33. Upon the execution of the APA between Genuity and Level 3, Morrison advised Genuity in connection with the assignment of multiple FCC licenses and authorizations from Genuity, debtors-in-possession, to Level 3. Morrison worked closely with Level 3's in-house and outside counsel to research, prepare and file various applications with the FCC to seek approval for the assignment of multiple licenses and authorizations to Level 3. Morrison attorneys joined with Level 3 counsel to conduct multiple meetings at the FCC with staffs from various bureaus assigned to process the applications and with FCC commissioner advisors to brief them on the structure of the Sale and to discuss the public interest benefits of the transaction. Morrison also responded to subsequent FCC inquiries regarding the applications and other miscellaneous regulatory issues affecting Genuity.

34. Morrison assisted Genuity in connection with the relinquishment of several FCC licenses and authorizations that Genuity no longer required following the closing of the Sale to Level 3. Morrison attorneys researched, prepared and filed a number of applications with the FCC seeking approval to relinquish the authorizations and discontinue service to various customers. Morrison also assisted in the preparation of customer notices informing customers that Genuity intended to discontinue service. Morrison also worked with FCC staff to ensure that the Debtors accounted for all regulatory fees owed to the FCC.

35. Morrison assisted Genuity with research and analysis in connection with the bidding process for Genuity's assets, and helped to brief Genuity executives and the Board of Directors on related regulatory implications.

DISBURSEMENTS

36. In connection with the provision of legal services detailed in the Exhibits hereto and summarized above, Morrison has incurred out-of-pocket disbursements for the Application Period in the amount of \$12,212.31.

37. Photocopying expenses were charged at the rate of 21 cents per page, which is the rate Morrison generally charges its clients for such service. In accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the "Local Guidelines"), Morrison charged the Debtors its customary rates of \$1.00 per page for outgoing local faxes, \$1.25 per page for outgoing national long distance faxes sent, and \$2.50 per page for outgoing

international long distance faxes sent. Morrison did not charge for any faxes received. Outside copy service charges, delivery expenses and computer research time are billed at actual rates charged to Morrison. A breakdown of the disbursements charged to the Debtors is set forth in the Disbursement Summary attached hereto as Exhibit D.

38. Consistent with Morrison's policy with respect to its other clients, Morrison has charged the Debtors for all disbursements and expenses incurred in addition to its prevailing hourly rates for services rendered. These disbursements and expenses set forth in Exhibit D are for costs such as telephone charges, photocopying, travel, business meals, computerized research, messengers, couriers, postage, witness fees and other fees related to trials and hearings. Charges and disbursements have been invoiced monthly pursuant to Morrison's Billing Policies and Procedures Statement, which explains the basis of its bills, and in accordance with the Court's Administrative Order.

ALLOWANCE OF COMPENSATION

39. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 of the Bankruptcy Code to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 provides that a court may award a professional employed under section 327 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered . . . and reimbursement for actual, necessary expenses."

11 U.S.C § 330(a)(1). Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

(A) the time spent on such services;

(B) the rate charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

40. In the instant case, Morrison respectfully submits that the services for which it seeks compensation in this Application were necessary for and beneficial to the Debtors' rehabilitation and reorganization efforts. Moreover, the compensation and reimbursement requested herein is fair and reasonable with respect to: (a) the time spent on the services; (b) the rates charged for the services; (c) the benefits of the services realized by the Debtors; and (d) the amount of work done and the skill required.

Time Spent. As more specifically described above, Morrison professionals and paraprofessionals worked 1,021 hours on behalf of the Debtors during the Application Period. The hours spent by Morrison reflect its diligent and effective efforts in advising and otherwise assisting Genuity on a broad variety of matters, thereby helping to maximize the going concern value to be realized by certain of the Genuity estates from the sale to Level 3 as well as the value to be realized from other aspects of Genuity's liquidation and wind-down.

Rates Charged. The hourly rates charged by Morrison for the services performed in these proceedings are reasonable and customary for the degree of skill and expertise required in this case. The fees requested herein have been computed in accordance with Morrison's standard hourly rates for services rendered to non-bankruptcy clients.

Benefit of the Services Rendered. Morrison respectfully submits that its services were highly beneficial to the Debtors in preserving the value to be realized by the Genuity estates.

Services Performed in Reasonable Time. Morrison represents that the services were performed in a reasonable amount of time, given the complexity of the issues involved.

Reasonable Compensation. The compensation sought in connection with the services rendered and expenses incurred in connection with these cases are reasonable and are commensurate with those rates charged by comparable, skilled practitioners.

CONCLUSION

Morrison respectfully requests that this Court enter an order (i) allowing interim compensation paid to Morrison for professional services rendered as Special Counsel for the Debtors in the amount of \$279,161.00 for the Application Period; (ii) directing the Debtors to pay the Unpaid Balance for the Application Period of \$69,513.90 to Morrison; (iii) allowing reimbursement of actual and necessary disbursements incurred by Morrison during the Application Period in the amount of \$12,212.31 and (iv) granting Morrison such other and further relief as is just and proper.

Dated: April 28, 2003
New York, New York

Respectfully submitted,

/s/ Larren M. Nashelsky
Larren M. Nashelsky (LN-3675)
MORRISON & FOERSTER LLP
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