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*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 SECOND 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, Cure Dispute, Communications
Regulatory And Business Counsel for The Debtors.

Application Period: March 1, 2003 through July 31, 2003.

Fees/Expenses previously requested: Fees of \$348,674.90 and expenses of
\$12,212.31 awarded by Order signed on June 11, 2003.

Fee/Expenses previously paid under Administrative Order: March 2003:
\$107,818.20 in fees and \$1,838.10 in expenses; April 2003: \$79,754.40 in fees and

\$6,737.10 in expenses; May 2003: \$80,630.00 in fees and \$576.40 in expenses; July 2003: \$41,684.80 in fees and \$3,128.01 in expenses.

Unpaid monthly balances of fees and expenses¹ under Administrative Order for application period: March 2003: \$26,954.55; April 2003: \$19,938.60; May 2003: \$20,157.50; June 2003: \$136,634.19; July 2003: \$10,421.20.

Total unpaid fees for application period: \$209,967.35.

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 in the additional retainer.

Fees requested: Allowance of total of \$519,854.75, of which \$309,887.40 already has been paid; allowance and payment of remaining \$209,967.35.

Expenses requested: Allowance of total of \$16,418.30, of which \$4,138.69 remains unpaid.²

Blended Hourly Rate: \$366.91

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

¹ Only the sum stated for the month of June includes unpaid expenses (totaling \$4,138.69); all other sums stated as "Unpaid monthly balances" are for fees only.

² These sums exclude \$48.92 in inadvertent overcharges.

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**SECOND 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, cure dispute,¹ communications regulatory and business counsel (“Morrison,” “Applicant” or “Special Counsel”) for the above-captioned debtors (“Genuity” or the “Debtors”), hereby submits its second 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 March 1, 2003 through July 31, 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

¹ See discussion *infra* pp. 3-4.

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. On August 26, 2003, the Debtors filed their Disclosure Statement and Joint Consolidated Plan of Liquidation. A hearing on approval of the Disclosure Statement has been scheduled for September 30, 2003 at 2:30 p.m.

8. By application dated November 27, 2002, the Debtors applied to this Court for authorization to retain Morrison as its Special Counsel. By order dated

January 2, 2002, this Court approved Morrison's retention *nunc pro tunc* to November 27, 2002 (the "Original Retention Order").

9. By Order dated August 1, 2003, this Court authorized the Debtors to expand the scope of Morrison's employment, effective as of May 15, 2003, "to encompass representing the Debtors with respect to the Cure Objections interposed by MCI and other telecommunications service providers, as well as any other Cure Objections for which the Debtors may request Morrison & Foerster's assistance" (collectively with the Original Retention Order, the "Retention Orders"). A copy of each of the Retention Orders is annexed hereto as Exhibit B.

10. On June 11, 2003, this Court granted Morrison's first interim fee application, allowing Morrison's requested compensation of \$348,674.90 in fees and reimbursement of \$12,212.31 in expenses for the period of November 27, 2002 to February 28, 2003.

11. Pursuant to the Administrative Order, Morrison has received payment from the Debtors of fees of \$309,887.40 for services rendered during the Application Period and expenses of \$12,279.61 incurred in connection with such services (the "Paid Fees and Expenses").

12. 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 balances of unpaid compensation for professional services rendered

and expenses incurred on the Debtors' behalf during the Application Period respectively equaling \$209,967.35 and \$4,138.69 for a total of \$214,106.04(the "Unpaid Balance").

13. During the Application Period, Morrison spent a total of 1,416.85 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.

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

15. 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**

16. 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, creditor-side bankruptcy, cure dispute, 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

17. During the Application Period, 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”).

18. Morrison assisted Genuity Solutions Inc. (“GSI”) in finalizing its settlement with debtor Metromedia Fiber Network Services Inc. (“MFNS”) under which MFNS has: (i) acknowledged the validity of certain rights of GSI in telecommunications fiber assigned and delivered to GSI that Level 3 desires to acquire pursuant to the APA; and (ii) consented to the assignment of such rights to Level 3. Morrison monitored the jointly administered bankruptcy proceedings of MFNS and certain of its affiliates respecting MFNS’ motion seeking court approval of the parties’ settlement, MFNS’ plan confirmation process and other developments in MFNS’ bankruptcy which might potentially affect GSI’s rights.

19. In the bankruptcy of SLC Liquidating Corporation (“SLC”), f/k/a Software Logistics Corporation and iLogistix, Morrison obtained entry of an order allowing GSI’s claim under section 503 of the Bankruptcy Code and procured payment of the claim in the amount of \$198,153.31, a sum which also incorporates SLC’s setoff of \$15,000 in compromise of alleged preferential transfers totaling \$34,738.48 made to GSI.

20. Morrison filed a pending motion against debtor Adelphia Business Solutions (“ABIZ”) asserting GSI’s claim under section 503 of the Bankruptcy Code for \$120,537 for post-petition services rendered. Morrison has been advising GSI in settlement negotiations with ABIZ as well as Adelphia Communications Corporation, which ABIZ asserts is in fact liable for that claim.

21. Following Morrison's assistance during the pre-Application Period in identifying, preparing and timely filing twenty-two proofs of claim on behalf of various Debtors in the WorldCom bankruptcy, Morrison has continued to monitor those bankruptcy proceedings and WorldCom's efforts to reorganize.

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

Labor Matters

23. A variety of employment law actions in which Morrison is counsel to Genuity have been suspended by Genuity's automatic stay. With respect to one of those matters, Morrison assisted Ropes & Gray in preparing an objection to a proof of claim filed by the plaintiff.

Business, Cure Dispute and Other Dispute Resolution Matters

24. During these cases, Morrison has also assisted Genuity with its analysis of numerous services agreements, telecommunications circuits and services, and in particular, the analysis of several thousand circuits and approximately twenty services agreements between Genuity, MCI WorldCom Communications ("MCI"), and various affiliates of MCI. Such services were necessary in order to respond to the cure objection filed by MCI and to enable Genuity: (i) to determine its liability to MCI to cure any defaults existing under certain services agreements assumed by Genuity and assigned to Level 3, including underlying circuits or services; (ii) to respond to claims by MCI WorldCom for amounts allegedly owed under services agreements which have been rejected by Genuity; (iii) to respond to claims by MCI

for amounts associated with circuits which have been disconnected; and (iv) to respond to claims by MCI associated with the application of a substantial security deposit to amounts allegedly owed by Genuity.

25. Additionally, Morrison advised Genuity regarding the calculation of cure amounts for communications services agreements with other vendors designated by Level 3 pursuant to the APA for assumption and assignment by Genuity to Level 3. Morrison also successfully negotiated the consensual resolution of a cure objection filed by Electric Lightwave, LLC.

26. Morrison advised Genuity regarding various 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 damages claims and objections filed by communications and other vendors in Genuity's bankruptcy cases in response to Genuity's rejection notices and participated in fact-finding efforts needed to prepare comprehensive replies to such objections. Morrison advised Genuity and assisted its general 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 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

29. Morrison continued assisting Genuity in confirming final customer acceptances from Level 3. Following such confirmation, Morrison amended Genuity's Federal Communications Commission ("FCC") discontinuance application to reflect the customers not being assigned to Level 3 and filed the amended application with the FCC. In connection with the amended discontinuance application, Morrison consulted with FCC staff regarding questions and timing of the public notice of the discontinuance.

30. Morrison also consulted with Level 3's regulatory counsel to ensure that all required consummation notices were filed with the FCC following the closing of the Level 3 transaction. In addition, Morrison identified all remaining FCC licenses that are not to be transferred to Level 3 and advised Genuity of the requirements for relinquishing the remaining licenses.

31. Morrison continued to work with the Universal Service Administrative Company ("USAC") to correct certain billing errors for Genuity's contributions to the Universal Service Fund ("USF"). Specifically, Morrison negotiated with USAC to credit Genuity's payments to the proper post-petition invoices and to issue revised invoices to Genuity, as well as informing USAC of

Genuity's final service discontinuance to ensure that no further invoices would be submitted.

32. Morrison assisted Genuity in reviewing miscellaneous regulatory issues, including issues arising from back-billing of a customer and research on statutes of limitations that could apply to back-billing.

DISBURSEMENTS

33. 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 \$16,418.30.²

34. 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 for photocopying expenses at the rate of 20 cents per page, outgoing domestic faxes at the rate of \$1.25 per page and outgoing international long distance faxes at the rate of \$2.50 per page, with the exception only of the Overcharges which Morrison has eliminated from this Application.³ 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

² This sum excludes \$48.92 in inadvertent overcharges (the "Overcharges").

³ As reflected in the Summary Sheet and the Disbursement Summary attached hereto as Exhibit D, Morrison has reduced the amount of the unpaid expenses for which it seeks reimbursement approval by the amount of the Overcharges, as required by the Local Guidelines.

disbursements charged to the Debtors is set forth in the Disbursement Summary attached hereto as Exhibit D.

35. 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

36. 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).

37. 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 1,416.85 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 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 of \$309,887.40 paid to Morrison for professional services rendered as Special Counsel for the Debtors and expenses reimbursed in the amount of \$12,279.61 for the Application Period; (ii) allowing and directing the Debtors to pay to Morrison the Unpaid Balance for the Application Period of \$214,106.04, comprised of unpaid interim compensation of \$209,967.35 and unreimbursed expenses of \$4,138.69; and (iii) granting Morrison such other and further relief as is just and proper.

Dated: September 11, 2003
New York, New York

Respectfully submitted,

/s/ Larren M. Nashelsky
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INDEX OF EXHIBITS

- Exhibit A - Summary of Professional Services
- Exhibit B - Retention Orders
- Exhibit C - Time Summary
- Exhibit D - Disbursement Summary
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