

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELWARE

COPY

In re

HEARTLAND WIRELESS
COMMUNICATIONS, INC.

Debtor

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Case No. 98-2692

Chapter 11

**FIRST AND FINAL APPLICATION OF KPMG LLP FOR COMPENSATION AND FOR
REIMBURSEMENT OF EXPENSES**

Name of Applicant: KPMG LLP

Authorized to Provide Professional Services to: Debtor and Debtor in Possession

Date of Retention: December 4, 1998

Period for which compensation and reimbursement are sought: December 4, 1998 through
March 15, 1999.

Amount of compensation sought as actual, reasonable, and necessary:

First and Final Application \$ 127,868.65

Amount of expense reimbursement sought as actual, reasonable, and necessary: \$ 0.

This is a : _____ interim X final application _____ monthly statement

The total time expended for the preparation of this application is approximately 3 hours and the
corresponding fees for same is approximately 12.2 hours x \$245. = \$2989.00.

2125

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In re

HEARTLAND WIRELESS
COMMUNICATIONS, INC.

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Case No. 98-2692

**FIRST AND FINAL APPLICATION OF KPMG LLP FOR COMPENSATION
AND FOR REIMBURSEMENT OF EXPENSES**

Pursuant to 11 U.S.C §§ 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, and in accordance with the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals dated December 4, 1998 (the "Administrative Order"), the Debtors' First Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated January 19, 1999, KPMG LLP (KPMG), files this final application (the "Application") for allowance of compensation and reimbursement of expenses in connection with KPMG LLP's services to Heartland Wireless Communications, Inc., debtor in possession (the "Debtor").

This Final Application seeks approval of the compensation and expenses as described more fully herein for the period December 4, 1998 through March 15, 1999.

By this Application, KPMG LLP seeks final allowance of (i) \$127,868.65 as compensation and \$0 for reimbursement for actual and necessary expenses for a total of \$127,868.65 for the Application Period¹.

Pursuant to the Administrative Order and its monthly billing statements to the Debtor, KPMG LLP has received or, in respect of its latest monthly statement, expects to received for the period December 4, 1998 through March 15, 1999 the aggregate sum of

¹ Pursuant to Section 14.2 of the Plan, from and after the date of the entry of an order confirming the Plan, Heartland Wireless Communications, Inc., the Debtor and the Reorganized Debtor shall, in the ordinary course of business and without the necessity for approval by the Court, pay the reasonable fees and expenses of professional pensions thereafter incurred.

\$18,515.28 in respect of fees. Thus, the aggregate unpaid amounts for which KPMG LLP seeks payment is \$109,353.37 in respect of fees for the period December 4, 1998 through March 15, 1999. Of this amount, \$51,277.40 will be applied against retainer funds leaving a balance payable of \$58,075.97.

In support of its Application, KPMG LLP respectfully represents as follows:

Background

1. The Debtor, Heartland Wireless Communications, Inc. filed a bankruptcy petition for relief under Chapter 11, Case No. 98-2692 on December 4, 1998 in the United States Bankruptcy Court for the District of Delaware.

Employment

2. Applicant's employment by the Debtor was approved effective December 4, 1998 pursuant to the Court's "Order Pursuant to Section 327(a) of the Bankruptcy Code authorizing the Employment of KPMG LLP as Accountants and Consultants for Heartland Wireless Communications Inc." a copy of which is attached as Exhibit "A".

Prior Compensation

3. On or about December 4, 1998, Applicant began providing services to the Debtor for accounting and consulting services including the annual audit, and tax compliance and bankruptcy related services including fresh start asset valuations and bankruptcy court compliance assistance. Pursuant to the Court's "Administrative Order Pursuant to 11 U.S.C. Sections 105(a) and 331 Establishing Procedure for Interim Compensation and Reimbursement of Expenses for Professionals", Applicant filed a "Statement of KPMG LLP of Fees For Professional Services Rendered and Disbursements Incurred as Accountants for the Debtor for the Period December 4, 1998

through January 31, 1999". This Statement sought Interim Compensation of 80% of the fees incurred in the amount of \$18,515.28. The statement is attached as Exhibit G.

Confirmation of Plan

4. From the Petition Date to the effective date of the Plan, Heartland operated its business and managed its assets as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. By order dated March 16, 1999, the Court confirmed the Plan. The Plan became effective on April 1, 1999.

Overview

6. The Debtor achieved the goal of any chapter 11 case of emerging from chapter 11 under a consensual plan of reorganization. That goal was obtained with few contested matters requiring the Court's attention during the case. In sum, the Debtor's case is nearly a model for the use of chapter 11 enabling a financially distressed company to address its financial and operating problems, negotiate with its creditors and other parties in interest toward a consensual plan of reorganization and emerge with its operational and financial issues addressed under a consensual plan of reorganization.

7. KPMG LLP was retained to assist the Debtor with respect to the normal public accounting, tax advisory, consulting, and auditing services. KPMG LLP rendered numerous services during this period including:

- (1) performing the 1998 annual audit of the financial statements.
- (2) assisting and advising the Debtor in connection with tax issues including audits by the State of Texas and Missouri, filing state tax extensions and preparing the 1998 Federal Income tax return.

(3) rendering accounting assistance in connection with reports and filings required by the Court.

(4) rendering consulting services in connection with Y2K issues.

(5) providing accounting assistance in connection with the tax and GAAP issues of the bankruptcy filing.

8. The professional services rendered by the Applicant in this Application are more particularly described below in paragraph 9 and in the attached Exhibit "C" which states the dates on which the services were rendered, the persons rendering such services, a description of the service rendered, and the time expended with respect thereto. No expenses for which reimbursement is sought were incurred in this period. The services were reasonable and necessary and in the best interest of the estate and are reasonable for the services involved.

9. The billings reflected in Exhibit "C - F" are organized according to the following categories:

<u>CATEGORY</u>	<u>HOURS</u>	<u>FEES</u>
<u>Corporate Recovery</u>		
Providing assistance on bankruptcy related matters including fee applications.	20.6	5,047.00
<u>Valuation and Appraisal</u>		
Valuation of fixed assets	26.6	5,187.00

Tax Compliance

Tax issues including tax audits, Preparation of Federal & State tax returns	249.40	62,475.00
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Assurance

Annual Audit	496.6	107,797.50
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Subtotal	702.7	\$180,506.50
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Voluntary Reduction		\$(52,637.85)
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Requested Fees		\$127,868.65
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10. In sum, KPMG LLP believes it assisted the Debtor in this case in an efficient and cost effective manner and, under all the circumstances, its request for final approval of charges and reimbursement of expenses should be approved as requested.

Compensation Paid and Its Source

11. All services for which compensation is requested by KPMG LLP were performed for or on behalf of the Debtor.

12. During the Application Period other than pursuant to this Court's administrative order dated December 4, 1998 (the "Administrative Order"), KPMG LLP has received no payment and no promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with the matters covered in this application. There is no agreement or understanding between KPMG LLP and any other person other than members of the firm for the sharing of compensation to be received for services rendered in this case.

Fee Statements

13. The billing statements for each month of the Application Period are attached hereto as Exhibits C through F. These statements contain daily time logs describing the time expended by each professional for this period. Pursuant to Local Order 32, KPMG LLP states that, in all material respects, this Application complies with the requirements of Section IV of Local Order 32 regarding time entries.

Actual and Necessary Expenses

14. KPMG LLP has not charged for out of pocket expenses.

Evaluation Standards

15. The sum of \$127,868.65 is a reasonable compensation for the professional services rendered by Applicants, applying the standard first set for in Johnson v Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) and made applicable to bankruptcy cases in First Colonial Corporation of America, 544 F.2d 1291 (5th Cir.) cert. Denied, 431 U.S. 904 (1977). In determining the reasonableness of its fees, the Court should weigh and consider the following:

- a. Time and Labor Required. Applicants have expended a total of 702.7 hours of professional services on the Committee's behalf during the Application Period. Applicant has maintained time records for professional services provided to this client. These records consist of diary entries by professional. The diary entries include the name of the client, the name of the professional rendering the service, the time spent to the tenth of an hour on the project, and a brief description of the services performed. The diary descriptions of the services performed by Applicants are attached as Exhibit "C-F". The Applicants have

voluntarily reduced its fees by \$45,404.85 in accordance with the Applicants' retention.

- b. The Novelty and Difficulty of the Question Involved. The services provided by Applicants have presented several novel and difficult issues in assessing the impact of the bankruptcy filing on normal audit procedures and in establishing taxable income for the Federal Income Tax Return. Consideration had to be given to going concern issues, valuation of assets after bankruptcy for the reorganized company, and the impact of the transfer of debt to equity both for GAAP audit issues and for Federal Income Tax issues.
- c. The Skill Requisite to Perform the Services Properly. The Applicants' professionals have extensive experience with the financial issues and requirements necessary to perform annual audits, prepare federal and state income tax returns and assist the Debtor in accounting for the financial impact of the bankruptcy and the reorganization plan.
- d. Preclusion of Other Employment. The Applicants have not been precluded from other employment; however, the services provided have, to varying degrees, required selected professional to largely focus their efforts on this case.
- e. The Fee Customarily Charged. The hourly rates of compensation for the professional persons acting on behalf of the Applications are set forth in Exhibit "B." The fees are comparable to those charged by other accountants, consultants and financial advisors performing services in related or similar matters. It should also be noted that in accordance with

an agreement with the Debtor's management, Applicant have voluntarily reduced their hourly rates for audit, tax and valuation to 70% of standard.

- f. Whether the Fee is Fixed or Contingent. Applicant has been employed at its regular hourly rates based on time and standard billable charges to be approved by this court, and for such and other compensation and reimbursement of expenses as is just. Applicant has received a retainer from the Debtor prior to this bankruptcy proceeding of which \$51,277.50 remains. Applicants' compensation is contingent upon the approval of the Bankruptcy Court.
- g. Time Limitations Imposed. The Applicants' rendering of services to the Debtor have not precluded them from rendering services to other clients.
- h. Amounts Involved and Results Obtained. Applicants' fees and expenses total \$127,868.65 (including \$0 of expenses). These fees are reasonable for the services rendered in the annual audit, assisting the Debtor with state tax audits, the preparation of state and federal income tax returns, and assisting the Debtor in preparing the necessary accounting entries to record the bankruptcy and the reorganization of the company.
- i. The Experience, Reputation and Ability of the Accountants, Consultants and Financial Advisors. Applicants believe that its professionals possess the requisite degrees of skill and are well qualified to perform the services required in this case. In all instances, tasks were delegated to the lowest level of staff consistent with maintaining the quality of the work performed in order to minimize the expense. See attach Exhibit "B" for a

brief description of the background of key professionals who actively provided services to the Debtor.

- j. Undesirability of the Case. This case was not undesirable.
- k. Nature and Length of Professional Relationship with Client. Applicant has provided audit and tax services to the Debtor for several years prior to the filing of the petition, thus giving Applicant the familiarity with the Debtor to render these services in a cost effective manner.
- l. Awards on Similar Cases. Applicants believe that the compensation sought in connection with the services rendered and the expenses incurred in this case are not excessive and are commensurate with or less than compensation sought and awarded in similar bankruptcy cases.

Of the twelve Johnson factors, Judge Wisdom of the Fifth Circuit has stated that four of the factors deserve "special heed": "(a) the time and labor involved, (e) the customary fee, (h) the amount involved and the results obtained, and (i) the experience, reputation and ability of the accountants, consultants and financial advisor." Id. At 583. These factors should be considered in the following framework:

- (1) Ascertain the nature and extent of the services supplied by the accountants, consultants and financial advisors;
- (2) Value the services according to the customary fee and quality of the work;
- (3) Adjust the compensation on the basis of the other Johnson factors that may be of significance in the particular case. Id. (relying on First Colonial, 544 F.2d at 1299-1300), Johnson, thus interpreted, adopts a standard much like the lodestar method of the Second, Third and District of Columbia

Circuits. The "lodestar" is equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community of similar work. The lodestar is then adjusted to reflect other factors such as the contingent nature of the suite and the quality of representation.

16. The Applicants respectfully submit that the information provided in this fee application addresses the Johnson factors and requests that the Court grant Applicants' request for approval of fees and expenses.

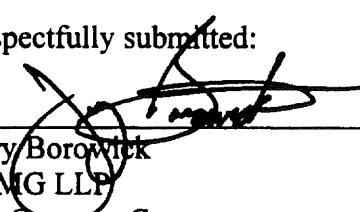
Conclusion

WHEREFORE KPMG LLP respectfully requested that (i) final allowance be made to it in the sum of \$127,868.65 as compensation for necessary professional services rendered to the Debtor in contemplation of and in connection with the chapter 11 case and the sum of \$0 for reimbursement of actual, necessary costs and expenses incurred during those periods, for a total of \$127,868.65 and (ii) that such sums be authorized for payment and application against retainer including amounts previously requested by KPMG LLP pursuant to the Administrative Order but unpaid of \$18,515.28; and an application against retainer of \$51,277.40 an aggregate payment of \$58,075.97; and (iii) for such other and further relief as is just.

Dated: Wilmington, Delaware

April 27, 1999

Respectfully submitted:



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