

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

METROMEDIA FIBER NETWORK, INC., et al.,
Debtors.

Chapter 11

Case Nos.
02-22736 (ASH) through 02-
22742 (ASH); 02-22744 (ASH)
through 02-22746 (ASH); 02-
22749 (ASH); 02-22751 (ASH)
through 02-22754 (ASH)

(Jointly Administered)

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**STIPULATION AND AGREED ORDER BETWEEN DEBTORS AND
ERNST & YOUNG LLP REGARDING FINAL ALLOWANCE OF
FEES AND EXPENSES OF ERNST & YOUNG LLP**

WHEREAS, on May 20, 2002 (the “Commencement Date”), Metromedia Fiber Network, Inc. (“MFN”) and its debtor subsidiaries¹ (each a “Debtor” and collectively, the “Debtors”) each filed a Voluntary Petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, on August 5, 2002, the Debtors filed an Application for Order Pursuant to Sections 327 and 328 of the Bankruptcy Code Authorizing the Retention and Employment of Ernst & Young LLP Nunc Pro Tunc to May 28, 2002 as Tax Advisors to the Debtors (Docket No. 348) (the “Retention Application”);

WHEREAS, on August 26, 2002, the Retention Application was granted pursuant to the Order Authorizing the Employment and Retention of Ernst & Young LLP as Tax Advisors to the

¹ The subsidiaries who have filed Chapter 11 petitions are: Metromedia Fiber Network Services, Inc., AboveNet Communications, Inc., SiteSmith, Inc., Metromedia Fiber Network of Illinois, Inc., MFN Purchasing Inc., Metromedia Fiber Network of New Jersey, Inc., MFN of Utah, L.L.C., MFN of Virginia, L.L.C., Metromedia Fiber National Network, Inc., Metromedia Fiber Network International, Inc., MFN International, L.L.C., MFN Japan Backhaul, Inc., and MFN Europe Finance, Inc.

Debtors Nunc Pro Tunc to May 28, 2002 (Docket No. 447);

WHEREAS, on October 16, 2003, Ernst & Young LLP (“E&Y”) filed its Application of Ernst & Young LLP, Tax Advisors For The Debtors, For Final Compensation And Reimbursement Of Expenses (Docket No. 2192) (the “Final Fee Application”);

WHEREAS, pursuant to the Final Fee Application, E&Y sought final allowance of fees totaling \$1,103,420 and reimbursement of expenses in the amount of \$12,916;

WHEREAS, certain disputes have arisen as to the fees requested in the Final Fee Application;

WHEREAS, the Debtors and E&Y have agreed to resolve these matters without the need for litigation;

WHEREAS, the Debtors and E&Y have reduced their agreement relative to the Final Fee Application to this stipulated order (the “Stipulation”);

ACCORDINGLY, IT IS HEREBY ORDERED, as follows:

1. This Stipulation is subject to Court approval and in the event that the Court does not approve this Stipulation, nothing contained herein shall be deemed to be a waiver of any claims or an admission of liability by either party hereto and, in such event, all rights of the parties shall be preserved.
2. Subject to the conditions set forth herein, E&Y has agreed to reduce the amount requested in its Final Fee Application by \$265,750. The parties, thereby, have agreed to the allowance of E&Y’s fees in the amount of \$837,670 and reimbursement of E&Y’s expenses in the amount of \$12,916.
3. The parties agree that upon the execution and Court approval of this Stipulation, the fees and expenses of E&Y, as modified herein, shall be, and are hereby deemed, allowed on a

final basis. Within ten (10) days of Court approval of this Stipulation, the Debtors agree and are hereby directed to pay \$125,000 to E&Y, representing amounts which remain owing to E&Y and which are the subject of E&Y's Final Fee Application and this Stipulation.

4. Notwithstanding the terms of the existing post-Commencement Date engagement letter between E&Y and the Debtors, dated June 28, 2002 (the "Tax Services Engagement Letter"), E&Y shall continue to provide services to the Debtors in connection with tax matters in the jurisdictions of Santa Clara County and Dallas County in accordance with terms of the engagement letter attached hereto as Exhibit "A."

5. The relief granted herein, including, but, not limited to, the allowance of claims and the payment of fees and expenses, is limited to post-Commencement Date period and provision of services identified in the Tax Services Engagement Letter and all of the foregoing shall not serve as precedential or persuasive authority, including, without limitation, as "law of the case," res judicata or any form of estoppel with respect to the Debtors' claims and causes of action, if any, which may be asserted by the Debtors against E&Y arising out of, relating to, or otherwise concerning pre-Commencement Date services provided by E&Y to the Debtors. Except as expressly set forth herein, E&Y reserves all of its rights and defenses with respect to the claims and causes of action, if any, which may be asserted by the Debtors against E&Y with respect to such pre-Commencement Date services.

6. Each individual term and condition of this Stipulation shall be deemed material.

7. This Stipulation may be amended, terminated, extended or otherwise modified only by a writing signed by all parties and approved by the Court.

8. The parties represent and acknowledge in executing this Stipulation, they do not rely and have not relied upon any representation or statement made by any party or any of their

agents, shareholders, representatives or attorneys, with regard to the subject matter, basis or effect of this Stipulation or otherwise, other than as specifically stated in this Stipulation.

9. The parties further declare in making this Stipulation, they have relied entirely upon their own judgment, beliefs and interest and the advice of their counsel (for whose expense each shall be solely responsible) and that they have had a reasonable period of time to consider this Stipulation.

10. The parties acknowledge that each party and its counsel have reviewed this Stipulation, and that each fully understands and voluntarily accepts all the provisions contained in this Stipulation. The parties further agree that this Stipulation was the product of negotiations between the parties and that any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Stipulation.

11. The language of all parts of this Stipulation shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties.

12. Should any provision of this Stipulation be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Stipulation.

13. This Stipulation sets forth the entire agreement between the parties and fully supercedes any and all prior agreements and understandings, written or oral, between the parties pertaining to the subject matter hereof.

14. This Stipulation shall be binding upon and inure to the benefit of the parties, their respective estates, successors, and assigns.

15. This Stipulation shall be interpreted and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of New York, without regard to the conflict of laws of the State of New York.

16. Each person signing this Stipulation represents and warrants that he/she has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of such party and to bind his/her respective party(s) to the terms and conditions of the Stipulation.

17. This Stipulation may be executed in as many counterparts as may be required, and it shall not be necessary that the signature of, or on behalf of, each party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more such counterparts. All counterparts when taken together shall constitute a single agreement.

18. This Court retains exclusive jurisdiction to hear and determine all matters arising out of, and related to, this Stipulation.

ERNST & YOUNG LLP
Tax Advisors for Metromedia Fiber Network, Inc.

/s/ Laura Shanley
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SO ORDERED this 25th day of November, 2003.

/s/ Adlai S. Hardin, Jr.
The Honorable Adlai S. Hardin
United States Bankruptcy Judge