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Hearing Date: October 8, 2003, at 11:00 a.m.
Objection Deadline: October 5, 2003, at 5:00 p.m.

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Unsecured Creditors for Metromedia Fiber Network, Inc., et al.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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)

**APPLICATION BY THE COMMITTEE FOR REIMBURSEMENT
OF FEES AND EXPENSES INCURRED BY CERTAIN COMMITTEE
MEMBERS PURSUANT TO BANKRUPTCY CODE § 503(B)**

The Official Committee of Unsecured Creditors of Metromedia Fiber Network, Inc., et al., (the "Committee") by and through its undersigned counsel, hereby files this application for Reimbursement of Fees and Expenses Incurred by Certain Committee Members pursuant to §503(b) of the Bankruptcy Code (the "Application"), and respectfully represents as follows:

PRELIMINARY STATEMENT

1. Certain members of the Committee, specifically Committee Co-Chairs, Goldman, Sachs & Co. ("Goldman Sachs") and AT&T Corp. ("AT&T"), and Committee members, Franklin Mutual Advisors, LLC ("Franklin") and Verizon

Communications, Inc. ("Verizon" together with Goldman Sachs, AT&T and Franklin, the "Substantial Contribution Members"), actively participated in lengthy intercreditor negotiations over the distribution structure and equity split amongst the various unsecured creditor constituencies. These negotiations ultimately culminated in a term sheet (the "Term Sheet") approved and presented by the Committee which formed the basis for the equity allocation and other central provisions of the Debtors' plan of reorganization, including the settlement of competing claims and legal theories regarding substantive consolidation of the Debtors' bankruptcy estates and the allocation of value between the Debtors' operating subsidiaries and its parent company. The terms of the Term Sheet were intensely negotiated over a period of several weeks and each of the Substantial Contribution Members, with the assistance of their respective outside counsel, effectively negotiated as a representative of their respective creditor constituencies, resulting in a fair and universally acceptable compromise that allowed the Debtors' reorganization to proceed. It was the Term Sheet, together with the Kluge Equitization¹ and the treatment of the senior secured notes, that effectively formed the basis for the Second Amended Plan of Reorganization proposed by the Debtors and approved overwhelmingly by the creditors. Therefore, the Committee believes that each of the Substantial Contribution Members has made a substantial contribution to the these chapter 11 cases, as the term "substantial contribution" is used in sections 503(b)(3),(4) and (5) of the Bankruptcy Code, and should be entitled to the reimbursement of the fees and expenses incurred in connection with the negotiation and finalization of the Committee's Term Sheet, including reasonable attorneys' fees.

¹ As such term is defined in the Debtors' Second Amended Plan of Reorganization.

BACKGROUND

A. The Debtors' Bankruptcy Cases.

2. On May 20, 2002 (the "Commencement Date"), Metromedia Fiber Network, Inc. and its various debtor subsidiaries² (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors continued in the management and operation of their business and properties as Debtors-in-Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner was appointed. The cases were jointly administered pursuant to an order dated May 20, 2002.

3. On May 29, 2002, the Office of the United States Trustee appointed an eleven member official committee of unsecured creditors (the "Committee"), which engaged Chadbourne & Parke, LLP as its counsel.

4. The Debtors' Plan of Reorganization was confirmed by the Bankruptcy Court on August 21, 2003. The plan went effective on September 8, 2003, and the Debtors emerged from bankruptcy and are now known as AboveNet, Inc.

B. The Debtors' Corporate and Claims Structure.

5. As the Court is well aware, the Debtors consisted of various affiliated entities. Principally, there was the parent entity, Metromedia Fiber Network,

² The subsidiaries who have filed Chapter 11 petitions are: Metromedia Fiber Network Services, Inc., AboveNet Communications, Inc., SiteSmith, Inc., PAIX.net, 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.

Inc., (“MFNI”) and three operating subsidiaries, Metromedia Fiber Network Services, Inc. (“MFNS”), AboveNet Communications Inc. (“AboveNet”) and SiteSmith Inc. (“SiteSmith” and, together with MFNS and AboveNet, collectively, the “Operating Subsidiaries”).

6. The Debtors had a complicated financial structure with MFNI being the principal obligor of various senior secured claims totaling over \$100,000,000 as of the Commencement Date, over \$1,600,000,000 of senior bonds as the Commencement Date and approximately \$975,000,000 of subordinated bonds as of the Commencement Date (the "Subordinated Notes"). In addition, each of the Operating Subsidiaries had numerous trade creditors including various junior secured noteholders. MFNI also had its own, direct trade creditors.

7. This debt and equity structure raised numerous and complex issues with respect to the proper allocation of the value of the Debtors’ assets among the various corporations, the appropriate distribution of the claims among the various corporations, the reallocation of the Subordinated Notes, the value of the collateral securing the junior secured notes, and the resulting allocation of the reorganization value of the Debtors among the various constituencies. This was a key component of any plan. Also, there were issues regarding the appropriateness of consolidating the Debtors’ bankruptcy estate.

C. Creditor Negotiations of Plan Allocations.

8. As a result, starting in December 2002, the Committee’s legal and financial professionals, Chadbourne & Parke LLP and Lazard Freres & Co. LLC, began to explore the competing claims and asset allocations and the prospects of substantive

consolidation of the Debtors' bankruptcy estates. Because they had an obligation to all of the creditors as a whole, and because of the wide variation of potential recoveries by creditors given different resolutions of these issues, the Committee's professionals looked to the Substantial Contribution Members to advocate for and negotiate a resolution of the various potential allocations.

9. To facilitate these discussions, the Committee's professionals convened numerous in-person and telephonic meetings at which the Substantial Contribution Members and their respective attorneys engaged in discussions to reach a mutually-agreeable allocation of the Debtors' equity value.

10. In particular, Franklin Mutual and Andrews & Kurth, LLP ("Andrews & Kurth"), counsel to Lehman Commercial Paper, Inc., agent for the Nortel Noteholders,³ performed analyses and prepared for and participated in the meetings to represent the interests of the junior secured noteholders (Franklin Mutual holds in excess of 50% of the Nortel Notes). Likewise, Goldman Sachs and its counsel, Fried, Frank, Harris, Shriver & Jacobson ("Fried Frank"), participated in these meetings to articulate and advocate the interests of the bondholders whose claims were solely at the MFNI level. AT&T also participated in these discussions representing the interests of general unsecured trade creditors of the Operating Subsidiaries. Because Verizon holds large general unsecured claims against both the Operating Subsidiaries and the parent MFNI, it participated in these meetings to represent both general unsecured trade

³ Means holders of claims arising under or relating to (i) that certain financing agreement, entered into among certain of the Debtors and Nortel, dated September 6, 2001, pursuant to which, inter alia, certain of the Debtors issued to Nortel 14% Term Notes due 2007, in the aggregate principal amount of \$231,036,842 (the "Nortel Notes"), (ii) the Nortel Notes, (iii) the Amendment to the Note Agreement dated September 28, 2001, and (iv) the Security Agreement dated September 28, 2001.

constituencies. Like the other Substantial Contribution Members, AT&T relied substantially on the active participation of its outside bankruptcy counsel, Riker, Danzig, Scherer, Hyland & Perretti LLP ("Riker Danzig"), and Verizon was assisted by Weil, Gotshal & Manges LLP ("Weil Gotshal").

D. The Filed Plans and Confirmation.

11. The Debtors filed an initial plan of reorganization on March 13, 2003. This plan, while essentially a preliminary version, contained the distribution structure and equity split compromise agreed upon by the Substantial Contribution Members.

12. Subsequently, the Debtors drafted and circulated a revised plan and proposed disclosure statement incorporating further the allocation adopted by the Substantial Contribution Members. But, inevitably, the drafts and comments from creditor constituencies outside the main negotiating group led to modifications of the allocation, each of which had to be reviewed by the Substantial Contribution Members to analyze their impact on the constituencies they represented.

13. Ultimately, the negotiations resulted in an approved disclosure statement and the plan which was accepted by a considerable majority of the creditors in each class.

RELIEF REQUESTED AND CAUSE THEREFOR

14. It is generally recognized that a creditor which incurs fees and expenses (including counsel fees) in providing a substantial contribution to a debtor's reorganization is entitled to be paid these fees and expenses by the debtor's bankruptcy

estate. Here, the Substantial Contribution Members actively participated in numerous meetings and negotiation sessions and analyzed and advocated various factual and legal scenarios in a successful effort to reach a fair and universally acceptable allocation of the Debtors' value among various competing creditor constituencies.

A. Legal Principles of Substantial Contribution.

15. The Bankruptcy Code grants a creditor whose efforts make a "substantial contribution" to resolving a reorganization case administrative priority for its fees and expenses:

after notice and a hearing, there shall be allowed administrative expenses ... including - - (3) the actual, necessary expenses, other than compensation or reimbursement specified in paragraph (4) of this subsection incurred by ... (D) a creditor ... in making a substantial contribution in a case under Chapter 9 or 11 of this title ... (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowed under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and costs of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant...

11 U.S.C. § 503(b).

16. "Substantial contribution" is not specifically defined in the Bankruptcy Code. Accordingly, bankruptcy courts have looked to the following issues in determining whether a creditor's fees, costs and expenses provided a "substantial contribution" to the bankruptcy case:

- (1) were the services rendered solely to benefit all the parties to the case?

- (2) did the services provide a direct, significant and demonstrable benefit to the estates?
- (3) were the services rendered duplicative of services rendered by attorneys for the Committee, the Committee members' themselves, or the debtor and its attorneys?

In re Baldwin - United Corp., 79 B.R. 321, 338, (Bankr. S.D. Ohio 1986) (citations omitted). See also In re Jensen - Farley Pictures, Inc., 47 B.R. 557, 589 (Bankr. D. Utah 1985) ("the unmistakable purpose of § 503(b) is to enable individual creditors, indenture trustees, equity security holders, unofficial committees and custodians to recover costs and expenses for professional services of attorneys and accountants which were reasonably occurred in aid of the administration under the estate and which inure to the benefit of the estate.")

B. Substantial Contribution Members' Contributions in these Cases.

17. The negotiations among AT&T and Verizon, as the primary representatives of the unsecured trade creditors, Goldman Sachs, as representative of the bondholders, and Franklin Mutual, as representative of junior secured noteholders resulted in the adoption of the Term Sheet which assigned the equity of the reorganized debtor among the various competing classes of creditors. The Term Sheet became the basis for the plan of reorganization which was resoundingly approved by all creditor constituencies.

18. Under these circumstances, there can be little, if any, doubt that the services of the Substantial Contribution Members' respective outside attorneys – in preparing for and participating in these negotiations, reviewing and analyzing the factual and legal materials undergirding the competing claims to the assets, and

translating these competing claims into the Term Sheet and, ultimately, the overwhelmingly-approved plan of reorganization – constitutes a substantial contribution to the success of the Debtors' bankruptcy case.

19. The efforts of the Substantial Contribution Members benefited not only, or even primarily, the individual members, but broadly benefited all of the Debtors' unsecured creditors.

20. Without these services, the resolution worked out within the manageable confines of the negotiations would have been played out in open court through objections to confirmation, litigation for substantive consolidation and other contested motion practice. The resulting costs to creditors and the Debtors' bankruptcy estate would have been significant, as would the likely delay in moving the Debtors to confirmation of a plan of reorganization.

SERVICES FOR WHICH THE SUBSTANTIAL
CONTRIBUTION MEMBERS SEEK COMPENSATION

21. During the period from December 2002 through July 2003, AT&T's counsel Riker Danzig provided services totaling \$34,603.50 and incurred expenses totaling \$96.69 in preparing for, participating in and memorializing the terms of the Term Sheet.

22. During the period from December 2002 through July 2003, Goldman Sachs' counsel Fried Frank provided services totaling \$144,327.35 in fees and incurred expenses in preparing for, participating in and memorializing the terms of the Term Sheet.

23. During the period from December 2002 through July 2003, Verizon's counsel Weil Gotshal provided services totaling \$2,514.99 in preparing for, participating in and memorializing the terms of the Term Sheet.

24. During the period from December 2002 through July 2003, Andrews & Kurth provided services totaling approximately \$125,000⁴ and incurred expenses totaling approximately \$10,000 in preparing for, participating in and memorializing the terms of the Term Sheet.

25. Generally, the fees and expenses for which the Substantial Contribution Members seek reimbursement includes the time spent by their respective outside counsel in participating in three in-person and at least three additional telephonic conferences and negotiating sessions related to the value allocation issues and the resulting term sheet. Moreover, the Substantial Contribution Members seek reimbursement for the time their respective outside attorneys spent in reviewing materials in preparation for the various meetings and conference calls. In addition, the Substantial Contribution Members seek compensation for the fees and expenses incurred by their respective outside attorneys in reviewing and revising the various drafts of the Term Sheet, and monitoring the Debtors' efforts to modify its initial plan of reorganization and draft disclosure statement to conform to the allocations resulting from these negotiations. Likewise, they seek reimbursement for the fees and expenses incurred in communicating with other, similarly-situated creditors on the Committee to

⁴ The final and exact amounts for the requested fee and expense reimbursement will be set forth in an affidavit sworn to by a representative of Andrews & Kurth, which affidavit will be filed prior to the hearing on the Application.

relay and coordinate the position of these parties with respect to the allocation of the assets.

26. To the extent required by the Court, the Debtors, the Office of the United States Trustee, or any other creditor in connection with their evaluation of the Application, each of the Substantial Contribution Members' respective counsel will make redacted copies of its invoices available to any party upon request.

27. The Committee respectfully submits that the requested fees and expenses incurred by the Substantial Contribution Members are reasonable and were necessary to the role they played in the Debtors' bankruptcy cases. Moreover, the Committee respectfully submits that the Substantial Contribution Members' efforts did, in fact, substantially contribute to the resolution of the intercreditor allocation issues. Moreover, inasmuch as the Committee and its professionals were constrained by their fiduciary obligations to all creditors, the Committee submits that the Substantial Contribution Members' efforts, and those of their respective outside attorneys, were not duplicative of any services rendered by the Committee's professionals or the Debtors' professionals.

CONCLUSION

WHEREFORE, the Committee, respectfully requests that the Substantial Contribution Members be reimbursed as follows: (1) AT&T should be awarded \$34,603.50 as compensation for legal services rendered by Riker Danzig, as well as the sum of \$96.69 for disbursements incurred by said counsel for a total award of \$34,700.19; (2) Goldman Sachs should be awarded \$144,327.35 as compensation for legal services rendered by Fried Frank; (3) Verizon should be awarded \$2,514.99 as

compensation for legal services rendered by Weil Gotshal; and (4) Franklin Mutual should be awarded approximately \$125,000 as compensation for legal services rendered by Andrews & Kurth, as well as the sum of approximately \$10,000 for disbursements incurred by said counsel for a total award of approximately \$135,000. The requested amounts represent a substantial contribution to the debtors successful reorganization.

Dated: September 22, 2003
New York, New York

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