

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
In re)	Chapter 11 Cases
Adelphia Communications Corp., <u>et al.</u> ,)	Case No. 02-41729 (REG)
Debtors.)	Jointly Administered
_____)	

**FINAL APPLICATION OF DUFF & PHELPS, LLC, AS LITIGATION
CONSULTANTS FOR DEBTORS AND DEBTORS IN POSSESSION, FOR
COMPENSATION FOR SERVICES RENDERED**

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

Duff & Phelps, LLC¹ (“Duff & Phelps” or the “Applicant”), litigation consultants for the above-captioned debtors and debtors in possession in these cases (the “Debtors”) and their counsel, Willkie Farr & Gallagher LLP (“WF&G”), in support of its Final Application² (the “Final Application”) for allowance of compensation for professional services rendered, coming subsequently to various interim fee applications (“Interim Fee Applications”) respectfully represents:

¹ Based on the Affidavit of Allen M. Pfeiffer dated February 14, 2003 and in accordance with the Bankruptcy Rule 2016, this Court issued the Order Authorizing Debtors To Retain Standard & Poor’s Corporate Value Consulting As Litigation Consultants Pursuant To Sections 327(a) And 327(b) Of The Bankruptcy Code dated March 17, 2003. (Refer to Exhibits A and B attached hereto). Pursuant to the First Supplemental Affidavit of Allen M. Pfeiffer Filed In Conjunction With Retention Of Duff & Phelps, LLC As Litigation Consultants For Debtors and Debtors In Possession dated November 14, 2005 and submitted to this Court, Standard & Poor’s Corporate Value Consulting merged with Duff & Phelps, LLC on September 30, 2005. (Refer to Exhibit C attached hereto). Based on the Second Supplemental Affidavit of Allen M. Pfeiffer Filed In Connection With Retention Of Duff & Phelps, LLC As Litigation Consultants For Debtors and Debtors In Possession dated February 22, 2006 and submitted to this Court, this Court issued the Supplemental Order Expanding Scope Of Employment And Retention Of Duff & Phelps, LLC As Litigation Consultants For Debtors and Debtors In Possession dated March 30, 2006. (Refer to Exhibit L attached hereto).

PRELIMINARY STATEMENT

1. By this Final Application and pursuant to sections 330 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Duff & Phelps requests that this Court authorize the final allowance of compensation for professional services Duff & Phelps rendered to the Debtors in the amount of \$2,440,726.69. Of that amount, \$460,738.40 has been subject to “holdback.”

2. This Court has jurisdiction over this Final Application pursuant to 28 U.S.C. §§ 157 and 1334 and the “Standing Order of Referral of Cases to Bankruptcy Judges,” dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of these cases and this Final Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 330 and 331 of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

BACKGROUND

3. On June 10, 2002, Century Communications Corp. (“Century”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code. On June 25, 2002, Adelpia Communications Corp. (“Adelpia”) commenced cases under Chapter 11 of the Bankruptcy Code (the “Petition Date”). The Chapter 11 cases of Century and Adelpia have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of this court entered on June 26, 2002.

4. ML Media Partners, L.P. (“ML Media”) and Century each hold a 50-percent interest in Century/ML Cable Venture (the “Joint Venture”), which was

formed in 1986 and owns and operates a cable television system in Puerto Rico. Pursuant to the Amended and Restated Management Agreement and Joint Venture Agreement, dated July 1, 1994 (the “Joint Venture Agreement”), Century, which has been indirectly owned and controlled by Adelphia since October 1999, was appointed manager of the Joint Venture’s cable system.

5. In March 2000, ML Media brought suit in the Supreme Court of the State of New York, New York County, against Century, Adelphia and Century’s immediate parent, Arahova Communications, Inc., one of the Debtors, alleging various breaches of the Joint Venture Agreement (the “State Court Action”). On December 13, 2001, the parties negotiated a settlement suspending the litigation and entered into a Leveraged Recapitalization Agreement (the “Recap Agreement”), which provided for the Joint Venture’s purchase of ML Media’s 50-percent interest in the Joint Venture for approximately \$275 million.

6. The Recap Agreement provided for a September 30, 2002 closing of the purchase of ML Media’s 50-percent interest unless there occurred an event that gave rise to an acceleration of the closing date (“Acceleration Event”), in which case the closing was to take place ten business days after the Acceleration Event (the “Accelerated Closing Date”). The Recap Agreement also purported to require Adelphia to purchase ML Media’s Joint Venture interest in the event that the Joint Venture failed to consummate its purchase obligation.

7. The dispute before this Court concerned, among other things, ML Media’s claim that two independent Acceleration Events have occurred, such that the

Joint Venture and Adelpia were obligated to redeem ML Media's Joint Venture interest in advance of the Recap Agreement's September 30, 2002 closing date.

8. By a Decision and Order dated January 17, 2003, this Court denied the parties' cross motions for summary judgment on the issue of whether there was an acceleration of the closing date under the Recap Agreement, explaining that, at least with respect to the acceleration date issue, "the interpretation of the Recap Agreement requires resort to extrinsic evidence." The Court also denied summary judgment on the basis of arguments advanced by Adelpia, Century and the Joint Venture that the Recap Agreement should be avoided as a fraudulent conveyance. Specifically, the Court found that their "contentions as to fraudulent conveyance [are] sufficient to warrant the denial of summary judgment" and that such "allegations [should be] fleshed out" and "any necessary discovery with respect to that matter" should be conducted.

9. On January 11, 2003, the Applicant was retained by WF&G to assist the law firm and the Debtors. On January 12, 2006, the applicant was engaged by Willkie, Farr & Gallagher to assist the law firm and Adelpia with the litigation related to Adelpia's relationship to Across Media Networks.

10. On February 18, 2003, the Debtors filed the Debtors' Application for Order Authorizing Retention of Standard & Poor's Corporate Value Consulting³ as Litigation Consultants Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code.

11. On March 17, 2003, the Court entered an Order Authorizing Debtors to Retain Standard & Poor's Corporate Value Consulting as Litigation

³ Standard & Poor's Corporate Value Consulting is now Duff & Phelps, LLC as a result of the merger of Standard & Poor's Corporate Value Consulting with Duff & Phelps, LLC on September 30, 2005. (Refer to the First Supplemental Affidavit of Allen M. Pfeiffer attached hereto as Exhibit C).

Consultants Pursuant to Sections 327(a) and 327(b) of the Bankruptcy Code (the “Retention Order”). Refer to Exhibit A attached hereto.

12. The Retention Order authorizes the retention of the Applicant to render to the Debtors the following essential services, which include, but are not limited to, the following:

[The Applicant] will advise the Debtors and WF&G in connection with the Debtors’ consideration, preparation, and prosecution of an action to set aside the Recap Agreement on, among other theories, fraudulent conveyance grounds.

13. The Applicant, at the request of the Debtors, may provide additional litigation consulting services deemed appropriate and necessary to the benefit of the Debtors’ estates. As of January 12, 2006, Duff and Phelps was retained to assist the Debtor and its counsel in an additional litigation matter, which was the Debtor’s litigation with Across Media Networks.

DUFF & PHELPS’ FEES

14. Duff & Phelps’ services in these cases have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the Application period, the variety and complexity of the issues involved in these cases and the need to address those issues on an expedited basis have required Duff & Phelps, in discharge of its professional responsibilities, to devote substantial time by its professionals on a daily basis and occasionally through night and weekend work.

15. In accordance with section II.B. of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, issued January 30, 1996 (the “UST Guidelines”), Duff & Phelps makes the following disclosures:

- (a) On February 25, 2004, the Debtors filed their proposed Plan of Reorganization and related Disclosure Statement. On February 4, 2005, the Debtors filed their First Amended Joint Plan of Reorganization and related Disclosure Statement. On April 21, 2005, the Debtors announced that they had signed definitive agreements to sell substantially all of their U.S. assets to Time Warner NY Cable LLC and Comcast Corporation. On June 24, 2005, the Debtors filed their Second Amended Plan of Reorganization and related Disclosure Statement. On September 28, 2005, the Debtors filed their Third Amended Plan of Reorganization and related Disclosure Statement. On November 21, 2005, the Debtors filed their Fourth Amended Plan of Reorganization and related Disclosure Statement. By order dated November 23, 2005, the Bankruptcy Court approved the adequacy of the disclosures contained in the Disclosure Statement and authorized the Debtors to begin solicitation of votes on the Plan.
- (b) To the best of Duff & Phelps’ knowledge, all quarterly fees have been paid to the U.S. Trustee and all required monthly operating reports have been filed;

- (c) Duff & Phelps is advised that as of February 28, 2007, the Debtors had approximately \$2,162,612,013.00 in cash and cash equivalents, which amount includes certain restricted cash;
- (d) With the exception of asserted liens of the Debtors' prepetition and postpetition lenders and various contractors, the Debtors' funds are generally unencumbered.

16. By order, dated December 18, 2003, a copy of which is annexed hereto as Exhibit D, this Court approved Duff & Phelps' request for interim allowance of compensation for professional services rendered to the Debtors from November 1, 2002 through February 28, 2003 (the "Second Application Period") and from March 1, 2003 through June 30, 2003 (the "Third Application Period") in the amount of \$308,584.13 and the reimbursement of actual and necessary expenses incurred by Duff & Phelps in connection with the rendering of such professional services in the amount of \$2,812.00.⁴ For the Second Application Period and the Third Application Period combined, Duff & Phelps has received \$230,792.07 in payments for services rendered and \$2,812.00 for expenses incurred in connection with the rendering of such professional services in these cases. These amounts represent 100% payment for expenses incurred and approximately 75% payment for services rendered by Duff & Phelps. Pursuant to this Court's Order Under Local Rule 2016-1 and 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation And Reimbursement Of Expenses Of Professionals And

⁴ Duff & Phelps determined, in the exercise of its billing judgment, to "write off" and exclude from its Interim Application filed for the Third Application Period \$13,380.00 in fees for professional services rendered by Duff & Phelps in these cases during the Third Application Period. This amount is reflected in the monthly fee statement covering the period April 1, 2003 through April 30, 2003 and served pursuant to the Compensation Order.

Committee Members, dated August 9, 2002 (the “Compensation Order”), \$25,193.25 of Duff & Phelps’ total request for compensation of professional services rendered in these cases during the Second Application Period and the Third Application Period remains “held back.”⁵

17. On February 23, 2006, Duff & Phelps filed a Ninth Application seeking allowance of compensation in full for professional services rendered in the amount of \$252,329.85 and for expenses incurred of \$219.10 in connection with the rendering of such professional services in these cases during the Ninth Application Period covering February 1, 2005 through August 31, 2005. Pursuant to the Compensation Order, Duff & Phelps has received \$201,863.88 in payments for services rendered and \$219.10 for expenses incurred for the Ninth Application Period. This amount represents 100% payment for expenses incurred and 80% payment for services rendered by Duff & Phelps. Pursuant to the Compensation Order, 20% of the fees of \$252,329.85 for professional services are subject to a “hold back.”

18. On June 16, 2006, Duff & Phelps filed a Tenth Application seeking allowance of compensation in full for professional services rendered in the amount of \$1,179,723.18 and for expenses incurred of \$8,027.13 in connection with the rendering of such professional services in these cases during the Tenth Application Period covering September 1, 2005 through February 28, 2006. Pursuant to the Compensation Order, Duff & Phelps has received \$943,778.54 in payments for services

⁵ Based on Duff & Phelps’ settlement resolution with the Fee Committee dated December 23, 2003, Duff & Phelps agreed to a voluntary reduction of \$52,598.81 in compensation for professional services rendered during the Second Application Period and the Third Application Period combined. The Second Application Period includes fees and expenses incurred by Duff & Phelps during January and February of 2003. The Third Application Period includes fees and expenses incurred by Duff & Phelps during March of 2003.

rendered and \$8,027.13 for expenses incurred for the Tenth Application Period. This amount represents 100% payment for expenses incurred and 80% payment for services rendered by Duff & Phelps. Pursuant to the Compensation Order, 20% of the fees of \$1,179,723.18 for professional services are subject to a “hold back.”

19. On October 8, 2006, Duff & Phelps filed an Eleventh Application seeking allowance of compensation in full for professional services rendered in the amount of \$236,079.13 and for expenses incurred of \$262.93 in connection with the rendering of such professional services in these cases during the Eleventh Application Period covering March 1, 2006 through August 31, 2006. Pursuant to the Compensation Order, Duff & Phelps has received \$188,863.30 in payments for services rendered and \$262.93 for expenses incurred for the Eleventh Application Period. This amount represents 100% payment for expenses incurred and 80% payment for services rendered by Duff & Phelps. Pursuant to the Compensation Order, 20% of the fees of \$47,215.83 for professional services are subject to a “hold back.”

20. On March 30, 2007, Duff & Phelps filed a Twelfth Application seeking allowance of compensation in full for professional services rendered in the amount of \$450,630 for professional services rendered and \$454.25 for expenses incurred in connection with the rendering of such professional services in these cases. Pursuant to the Compensation Order, Duff & Phelps has or will have received \$360,504.00 in payments for services rendered and \$454.25 for expenses incurred for the Twelfth Application Period. This amount represents 100% payment for expenses incurred and 80% payment for services rendered by Duff & Phelps. Pursuant to the Compensation

Order, 20% of the fees of \$90,126.00 for professional services are subject to a “hold back.”

21. No agreement or understanding exists between Duff & Phelps and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case. See Affidavit of Allen M. Pfeiffer Pursuant To Section 504 Of The Bankruptcy Code And Bankruptcy Rule 2016, annexed hereto as Exhibit E.

22. Interim Fee Applications each provided a list of the Duff & Phelps employees who have provided litigation consulting services to the Debtors during the Application Periods, the aggregate time expended by each individual during the Application Periods, his or her hourly billing rate during the Application Periods, and the amount of Duff & Phelps’ fees attributable to each individual. Additionally, annexed to the Fee Applications were a list of all the subject categories for which services were rendered during the Application Period and the aggregate amount of hours and fees expended for each of those subject categories.

23. Duff & Phelps maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. Schedules setting forth the categories of expenses and amounts for which reimbursement was requested were provided in the Interim Applications.

24. Duff & Phelps also maintains written records of the time expended by its employees in rendering professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by each person rendering such services. A copy of the daily time records for the Interim Applications, broken down by subject category and listing the name of the Duff & Phelps professional, the date on

which the services were performed, and the amount of time spent in performing the services, were annexed to the Interim Applications.⁶

25. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the “Administrative Order”), Duff & Phelps recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought.

SUMMARY OF SERVICES RENDERED

26. Duff & Phelps assisted the Debtors and their counsel, WF&G, in ongoing disputes.⁷ Services related to two of the Debtor’s litigations: the dispute regarding the Debtors joint venture with ML Media in Puerto Rico and the litigation related to the Debtor’s investment in Across Media Networks.

27. Recitation of each and every item of professional services that Duff & Phelps performed Period would unduly burden the Court. The Interim Filings provided highlights of the major areas to which Duff & Phelps devoted time and attention and summaries of Duff & Phelps’ services. The full breadth of Duff & Phelps’ services are reflected in Duff & Phelps’ time records annexed to the interim filings.

28. In rendering these services, Duff & Phelps made every effort to maximize the benefit to the Estate and to work with other professionals employed in the

⁶ Copies of the daily time records have been provided to the Court and the Office of the United States Trustee. Parties-in-interest required to be served with Duff & Phelps’ monthly fee statements pursuant to the Compensation Order have previously been furnished with such daily time records. Copies of the time records will be made available to other parties-in-interest upon reasonable request.

⁷ By order dated September 7, 2005, the Court confirmed the Joint Venture’s plan of reorganization.

case to avoid duplication of effort. The level of services rendered by Duff & Phelps to achieve the results obtained for the benefit of the Estate was reasonable in light of the number and complexity of the issues involved in this case. Duff & Phelps judiciously allocated responsibilities to minimize duplication of effort.

EVALUATING DUFF & PHELPS' SERVICES

29. As highlighted above Duff & Phelps provided extensive services to facilitate the Debtors' discharge of their duties as debtors in possession and otherwise move these cases forward. All of these services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

30. "[T]he 'lodestar' method of fee calculation developed by the Sixth Circuit, see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a 'reasonable' attorney fee in all the federal courts, including the bankruptcy courts." In re Cena's Fine Furniture, Inc., 109 B.R. 575, 581 (E.D.N.Y. 1990); In re Poseidon Pools of America, Inc., 216 B.R. 98, 100 (E.D.N.Y. 1997). Accord In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) ("In determining the 'reasonableness' of the requested compensation under § 330, Bankruptcy Courts now utilize the 'lodestar' method").

31. "The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate, with the 'strong presumption' that the lodestar product is reasonable under § 330." Drexel, 133 B.R. at 22 (citations omitted).

Duff & Phelps' hourly rates and fees charged are consonant with the market rate for comparable services. The hourly rates and fees charged by Duff & Phelps are the same as (or less than) those generally charged to, and paid by, Duff & Phelps' other clients.⁸ Indeed, unlike fees paid by most Duff & Phelps clients, due to the "holdbacks" of fees from prior monthly fee statements and the delays inherent in the fee application process, the present value of the fees paid to Duff & Phelps by the Debtors is significantly less than fees paid monthly by other Duff & Phelps clients.

32. The hours expended by Duff & Phelps were necessary. "[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity or project should be disallowed *only* where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive." Drexel, 133 B.R. at 23 (emphasis added). Moreover, in passing upon the reasonableness of hours expended, courts should be mindful of the "practical judgments, often within severe time constraints, [professionals make] on matters of staffing, assignments, coverage of hearings and meetings, and a wide variety of similar matters." Id. These judgments are presumed to be made in good faith. Id.

33. Duff and Phelps agreed to reduce its rates for each professional by 10 percent. This reduced fees by a total of \$227,673.48.

34. In addition to the reductions described above, based on Duff & Phelps' settlement resolution with the Fee Committee dated December 23, 2003, Duff & Phelps agreed to a voluntary reduction of \$52,598.81 in compensation for professional services

⁸ Duff & Phelps agreed to reduce its hourly rates for each professional by 10.0 percent for its fees incurred.

rendered during the Second Application Period and the Third Application Period combined. Additionally, Duff & Phelps used professional discretion to eliminate fees of \$13,380 for the period of April 2003. Duff & Phelps reduced fees by a total of \$65,978.81 above and beyond the 10 percent reduction described above. Combined, the 10 percent fee reduction, the voluntary reduction, and the discretionary reduction reduced fees by \$293,652.29.

DUFF & PHELPS' REQUEST FOR FINAL COMPENSATION

35. Concerning the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person:

reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney. . . .

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

36. Duff & Phelps submits that its request for interim allowance of compensation is reasonable. The services rendered by Duff & Phelps, as highlighted above, required substantial time and effort, much of which occurred under substantial pressure and occasionally during nights and weekends.

37. The services rendered by Duff & Phelps were performed diligently and efficiently. Accordingly, when possible, Duff & Phelps delegated tasks to lower cost

professionals or, for discrete matters, to professionals with specialized expertise in the particular task at issue. While that approach may have required intra-office conferences or involved individual professionals who spent only a few hours on the matter at hand, the net result was enhanced cost efficiency.

38. During the Twelfth Application Period, Duff & Phelps generally assigned discrete projects or tasks to particular professionals assigned to the case. These professionals would be primarily responsible for performing all related analyses to accomplish particular tasks. The junior professionals would routinely report to the senior professionals as to the status of the analyses and other related issues. Overall, this system of assigning particular matters to individual professionals was cost-effective to the estates.

39. Although duplication of effort has been avoided to the greatest extent possible, some duplication may have occurred as a result of the intensity of the matters in which Duff & Phelps was engaged, the complexity of the issues that arose during these cases, and the urgent basis upon which some of these services were rendered. However, Duff & Phelps believes that any duplication of effort was *de minimis* and was beneficial to the estates in that thorough knowledge of the background and the history of these cases makes each successive task more efficient.

PROCEDURE

40. Duff & Phelps has provided notice of this Final Application to: (i) the Office of the United States Trustee; (ii) counsel to the agents for the Debtors'

prepetition and postpetition bank lenders; (iii) counsel to the Committees; (iv) the Debtors; and (v) the Fee Committee.

41. No previous application for the relief sought herein has been made to this or any other court.

CONCLUSION

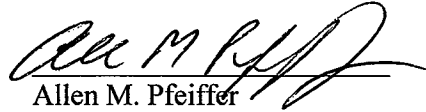
WHEREFORE, Duff & Phelps respectfully requests that this Court enter an order awarding Duff & Phelps:

- (a) final compensation from the Debtors for services rendered for amounts that have been previously subject to holdback in the amount of \$460,738.40;
- (b) such other and further relief as may be just.

DUFF & PHELPS, LLC

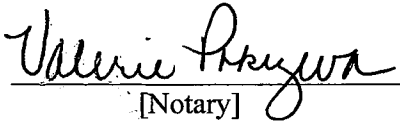
Respectfully submitted,

By:



Allen M. Pfeiffer
Managing Director
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300 Headquarters Plaza
12th Floor
Morristown, NJ 07960
(973) 775-8360

Sworn to before me this
28th day of March 2007.



[Notary]

Valerie Pokrywa
Notary Public of New Jersey
My Commission Expires
September 18, 2008