

United States Bankruptcy Court  
SOUTHERN DISTRICT OF NEW YORK

In re

**ADELPHIA COMMUNICATIONS  
CORPORATION, et al.,**  
Debtors.

Case No. 02-41729 (REG)

Chapter 11  
Jointly Administered

Hon. Robert E. Gerber

**FINAL APPLICATION OF MUNGER, TOLLES & OLSON LLP,  
SPECIAL CONFLICTS COUNSEL FOR  
ADELPHIA COMMUNICATIONS CORPORATION, ET AL.,  
FOR COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED  
FROM APRIL 27, 2004 THROUGH FEBRUARY 12, 2007**

Munger, Tolles & Olson LLP ("MTO"), as special conflicts counsel for debtors Adelpia Communications Corporation, et al. ("Debtors" or "Adelpia"), in support of its final application (the "Final Application") for allowance of compensation for professional services rendered and reimbursement of expenses incurred from April 27, 2004 through February 12, 2007 (the "Retention Period"), respectfully requests:

**PRELIMINARY STATEMENT**

1. By this Final Application and pursuant to §§ 330 and 331 of title 11 of the United States Code ("Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), and 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 Committee Members dated August

9, 2002 (the "Compensation Order"), MTO seeks (1) allowance and payment of professional fees in the amount of \$4,259,038.06,<sup>1</sup> of which \$3,308,371.65 has been paid to date, and (2) reimbursement for expenses incurred by MTO in the amount of \$134,596.42, of which \$125,119.69 has been paid to date. Pursuant to the Compensation Order, MTO anticipates additional interim payments of \$348,065.53 in fees and \$9,476.73 in reimbursement of expenses on outstanding invoices, such that once all outstanding invoices are paid, a total "holdback" amount of \$737,197.30 will remain unpaid for the Retention Period.

### **JURISDICTION**

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 statutory predicates for relief sought herein are §§ 330 and 331 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

### **MTO'S RETENTION**

3. By order dated July 8, 2004, this Court approved *nunc pro tunc* MTO's retention as special conflicts counsel (the "Retention Order") to provide services to the Debtors in connection with their chapter 11 cases. Specifically, MTO was retained to

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<sup>1</sup> This amount reflects MTO's total fees billed of \$4,288,534.00, less \$29,495.94 in fees that MTO has agreed to write off pursuant to prior agreement with the Fee Committee, as reflected in previous orders of this Court approving MTO's requested compensation on an interim basis. As noted below, MTO has additionally voluntarily written off well over \$100,000 in fees that were never billed to the estates.

provide legal representation (the "MTO Retention") to the Debtors including, but not limited to: (i) negotiations and possible litigation with Comcast Communications Corporation and its affiliates (collectively, "Comcast") relating to the Debtors' proposed plan of reorganization and/or the sale of some or all of the Debtors' assets; (ii) resolution of claims asserted by Comcast; and (iii) representation with respect to certain corporate issues. See Affidavit of Mark Shinderman ("Shinderman Aff.") annexed hereto as Exhibit "A."

4. Consistent with the Retention Order, Debtors entered into a Retention Agreement with MTO, as amended from time to time, setting forth the scope of MTO's retention.

5. By supplemental order dated January 31, 2006, this Court approved *nunc pro tunc* the expansion of MTO's scope of employment to include: (a) negotiations and possible litigation with Scientific-Atlanta, Inc., and its affiliates and subsidiaries (collectively, "S-A"), relating to claims asserted against the Debtors by S-A and the Debtors' potential counterclaims against S-A; (b) negotiations and possible litigation with Motorola, Inc. and its affiliates and subsidiaries (collectively, "Motorola"), relating to claims asserted against the Debtors by Motorola and the Debtors' potential counterclaims against Motorola.

6. In accordance with § II(b) of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, dated May 30, 1995, and as stated in the Affidavit of Mark Shinderman annexed hereto as Exhibit "A", MTO makes the following disclosures:

- a. MTO represents that it has no agreement or understanding that may be prohibited by 18 U.S.C. § 155.
- b. No agreement or understanding exists between MTO and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case.
- c. MTO has no retainer from Debtors for its services.

### **INTERIM APPLICATIONS OF MTO**

Pursuant to the Compensation Order, MTO has submitted a total of seven previous applications for approval of interim compensation, as set forth below.

7. First and Second Applications: On December 8, 2004, MTO submitted its First Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("First Application") for the period April 27, 2004 through June 30, 2004 (the "Sixth Interim Period"). Pursuant to the First Application, MTO requested \$131,260.50 in fees for professional services rendered and \$473.56 for expenses incurred in connection therewith for the Sixth Interim Period. On May 4, 2005, MTO submitted its Second Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("Second Application") for the period July 1, 2004 through October 31, 2004 ("Seventh Interim Period"). Pursuant to the Second Application, MTO requested \$91,507.50 in fees for professional services rendered and \$12,687.05 for expenses incurred in connection therewith for the Seventh Interim Period. On December 12, 2005, this Court entered an order granting MTO's First and Second Applications and awarded MTO \$123,760.50 in fees and \$473.56 in expenses

for the Sixth Interim Period, and \$84,007.50 in fees and \$12,687.05 in expenses for the Seventh Interim Period.

8. Third Application: On September 8, 2005, MTO submitted its Third Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("Third Application") for the period November 1, 2004 through February 28, 2005 ("Eighth Interim Period"). Pursuant to the Third Application, MTO requested \$134,835.50 in fees for professional services rendered and \$3,321.60 for expenses incurred in connection therewith for the Eighth Interim Period. On April 5, 2006, this Court entered an order granting MTO's Third Application and awarded MTO \$128,007.12 in fees and \$3,321.60 in expenses for the Eighth Interim Period.

9. Fourth Application: On February 7, 2006, MTO submitted its Fourth Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("Fourth Application") for the period March 1, 2005 through August 31, 2005 ("Ninth Interim Period"). Pursuant to the Fourth Application, MTO requested \$244,944.00 in fees for professional services rendered and \$28,721.11 for expenses incurred in connection therewith for the Ninth Interim Period. On December 8, 2006, this Court entered an order granting MTO's Fourth Application and awarded MTO \$237,276.44 in fees and \$28,721.11 in expenses for the Ninth Interim Period.

10. Fifth Application: On June 13, 2006, MTO submitted its Fifth Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("Fifth Application") for the period from September 1, 2005 through February 28, 2006 ("Tenth Interim Period"). Pursuant to the Fifth Application, MTO requested interim allowance of \$277,810.50 in fees for professional services rendered and

\$10,003.58 for expenses incurred in connection therewith for the Tenth Interim Period. To date, fees in the amount of \$55,562.10 from MTO's Fifth Application remain unpaid pursuant to the holdback formula contained in the Compensation Order. See Shinderman Aff. annexed hereto as Exhibit "A."

11. Sixth Application: On October 12, 2006, MTO submitted its Sixth Application For Interim Compensation For Services Rendered And Reimbursement of Expenses Incurred ("Sixth Application") for the period from March 1, 2006 through August 31, 2006 ("Eleventh Interim Period"). Pursuant to the Sixth Application, MTO requested interim allowance of \$1,510,022.50 in fees for professional services rendered and \$46,939.75 for expenses incurred in connection therewith for the Eleventh Interim Period. To date, fees in the amount of \$302,004.50 from MTO's Sixth Application remain unpaid pursuant to the holdback formula contained in the Compensation Order. See Shinderman Aff. annexed hereto as Exhibit "A."

12. Seventh Application: Contemporaneously herewith, MTO has submitted its Seventh Application for Interim Compensation for Services Rendered and Reimbursement of Expenses Incurred ("Seventh Application") for the period of September 1, 2006 through February 12, 2007 ("Twelfth Interim Period"), which seeks interim allowance of compensation in the amount of \$1,898,153.50 in fees for professional services rendered and \$32,449.77 in reimbursement for expenses incurred in connection therewith for the Twelfth Interim Period. To date, MTO has received payment of fees in the amount of \$1,179,934.00 and reimbursement of expenses in the amount of \$22,973.04 during the Twelfth Interim Period. MTO anticipates additional payments on outstanding invoices for the Twelfth Interim Period of \$348,065.53 in fees

and \$9,476.73 in reimbursement of expenses. Thus, in accordance with the terms of the Compensation Order, once these additional amounts are paid, a "holdback" of \$379,630.70 in fees will remain unpaid for the Twelfth Interim Period. See Shinderman Aff. annexed hereto as Exhibit "A."

### **SUMMARY OF SERVICES RENDERED**

13. MTO's services in these cases have been necessary and beneficial to the Debtors and to their estates, creditors and other parties in interest and provided solely upon the request of Adelpia and its agents. During the Retention Period, significant issues relating to each of the matters with respect to which MTO was retained by the Debtors arose, and the need to address those issues on an expedited basis required MTO, in discharge of its professional responsibilities, to devote substantial time by professionals on a daily basis, and often through night and weekend work.

14. Exhibit "B" indicates the name of each professional rendering service, the service provided, the professional's billing rate and the amount and time of the service provided recorded in one-tenths of an hour increments. The time records contained in this exhibit were compiled from the contemporaneous time records MTO maintains in the ordinary course of its business. The reflected rates are those MTO customarily charges to its non-bankruptcy clients. The blended hourly rate for all services during the Retention Period is \$388.91.<sup>2</sup> Exhibit "B" also contains a biography of each MTO professional.

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<sup>2</sup> The blended hourly rate of \$388.91 is derived by dividing the total fees of \$3,060,577.50 by the total hours of 7,869.50 for all attorneys.

15. Exhibit "C" contains an itemization of the services rendered by all MTO professionals during the Retention Period segregated by category.

16. Exhibit "D" is an itemization of the necessary expenses MTO incurred during the Retention Period in connection with the services described herein. All such expenses are reflected in MTO's books and records contemporaneously recorded in the ordinary course of business.

17. Pursuant to the Administrative Order Regarding Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases dated June 20, 1991, and the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated April 19, 1995 (collectively, the "Administrative Orders"), MTO recorded its services rendered and disbursements incurred on nine different matters reasonably expected to continue over a period of at least three months and to constitute a substantial portion of the fees sought during the Retention Period.

#### **MTO'S ROLE, OBJECTIVES, AND ACCOMPLISHMENTS**

18. Recitation of each and every item of professional services that MTO performed would unduly burden this Court. Hence, the following summary highlights the major areas to which MTO devoted substantial time and attention during the Retention Period, namely certain corporate issues, and matters in which Adelphia was adverse to the following parties: Comcast, Motorola, Scientific-Atlanta, and WilTel Communications LLC ("WilTel"). The full breadth of MTO's services is reflected in the time records submitted with MTO's previous interim applications and the narrative descriptions of services performed for each period. The summary presented below

addresses, for each matter on which MTO represented the Debtors, (i) MTO's role, objective, and accomplishments with respect to such representation; (ii) why such representation was necessary and beneficial to the Debtors at the time services were rendered; (iii) the time frame in which services were performed; and (iv) opposition and problems encountered in connection with such representation.

### **Corporate Issues [101]**

19. During the Retention Period, MTO was called upon to handle on the Debtors' behalf various matters concerning corporate governance issues. Specifically, MTO assisted the Debtors in clarifying certain ethical issues in light of the Debtors' corporate structure and allegations regarding conflicts of interest.

20. Hours spent were 120.30 and fees incurred totaled \$52,696.50 during the Retention Period.

### **Comcast [132]**

21. MTO was engaged by Adelphia as special conflicts counsel to represent the estates with respect to matters involving Comcast. Prior to the effective date of the plan of reorganization for the joint venture Debtors ("JV Debtors"), three subsidiaries of Comcast were partners with Adelphia in three of the JV Debtor entities. MTO has represented Adelphia in three principal matters related to Comcast: (i) analysis of the impact of a stand alone plan of reorganization on Comcast's interests as a joint venture partner with Adelphia; (ii) a dispute over the proper allocation of post petition costs and expenses to the JV Debtors with Comcast; and (iii) the allowance of pre-petition claims asserted by Comcast against Adelphia, which claims were specifically preserved in the asset purchase agreement pursuant to which Comcast and AOL Time Warner acquired

Adelphia's assets. MTO's role, objectives, and accomplishments in each of these categories are described below.

22. Representation Regarding Stand Alone Plan: Prior to selling its assets to Comcast and AOL Time Warner, Adelphia had proposed a stand alone plan of reorganization pursuant to which Adelphia's joint venture interest in the Comcast-affiliated JV Debtors would be rolled up into a reorganized entity. This proposal presented a number of practical and legal hurdles for the estate, such as the continuing rights of Comcast, the then-minority interest holder, and Adelphia's ability to confirm the plan over Comcast's objection considering allegations that at least one of the JV Debtors was not insolvent.

23. MTO helped Adelphia identify these hurdles, develop ways to address them, and assessed the likelihood of prevailing. Based on this work, and the work of others, Adelphia then decided to pursue an alternative strategy — the sale of assets. However, having the stand alone plan as a potentially viable option for creditors and other parties in interest remained a material part of Adelphia's strategy. In the end, the work of MTO and many others with respect to the stand alone plan helped to ensure that there remained a viable option to the proposed sale of assets to Comcast and AOL Time Warner, and as such, was necessary and beneficial to the Debtors' estates.

24. Representation Regarding the Allocation of Post Petition Costs and Expenses: Shortly after MTO was engaged to address the stand alone plan of reorganization, Adelphia moved for approval of a DIP loan that would change borrowing limits throughout the organizational structure. Comcast objected to such proposal, in part, because of the debt that would be imposed — needlessly in Comcast's opinion —

on the Comcast-affiliated JV Debtors. Comcast argued, among other things, that such borrowing was not necessary, at least with respect to the joint venture silos, if costs of the bankruptcy case and post petition operations were properly allocated throughout the enterprise.

25. In formulating a response to these contentions, MTO, along with Adelphia's financial team, began to analyze how post petition bankruptcy costs (which eventually totaled over \$500 million) were being allocated to the Comcast joint ventures. MTO eventually determined that costs were not being allocated properly under the partnership agreements of the JV Debtors. The problem, however, was that any reallocation of costs to or from the JV Debtors would result in material changes to other Adelphia entities — the proverbially zero sum game — such that this issue took on global significance in the larger context of negotiations surrounding the plan of reorganization. Several interim agreements were reached as to how to allocate costs, thus affecting both the allocation to other Adelphia entities and the amount of DIP loans needed, while the parties sorted through a significant amount of accounting data.

26. In the end, with MTO's guidance, Adelphia negotiated an allocation methodology that was acceptable to Comcast, the DIP lenders, and all other parties in interest. This methodology not only affected the allocation of costs to the Comcast-affiliated JV Debtors, but also affected the post petition allocation of hundreds of millions of dollars of costs that was eventually accepted by most parties and approved by the court in connection with confirmation of the plan of reorganization. But for the settlement that MTO helped structure, significant litigation over this matter likely would

have ensued, and thus the above services of MTO were necessary and beneficial to the Debtors' estates when rendered.

27. Settlement of Comcast's Pre-Petition Claims: In the asset purchase agreement pursuant to which Adelphia sold its assets, Comcast reserved a claim of up to \$30 million (reflected in its proofs of claim) for mismanagement, negligence, and the like relating to Adelphia's management of the Comcast-related joint ventures. During the bankruptcy case, MTO, on behalf of Adelphia, negotiated with Comcast to create appropriate reserves for this claim and to find out more about the claim without spending the estate's money on what might otherwise prove to be wasteful litigation. As a result of MTO's efforts, Adelphia was able to ascertain the nature and extent of Comcast's alleged claims and continues to negotiate a resolution of those claims in a reduced amount. Duplicate claims were eliminated and appropriate sums reserved should Comcast prevail. These services were necessary and beneficial to the Debtors' estates when rendered because they allowed Adelphia to understand, challenge, and ultimately seek a negotiated resolution of Comcast's retained claim.

28. Hours spent were 2,175.20 and fees incurred totaled \$917,675.00 during the Retention Period.

**Motorola [133]**

29. During the Retention Period, MTO provided services with respect to litigation of claims by and between Motorola and the Debtors. Specifically, Motorola has filed proofs of claim totaling over \$66 million against various subsidiary debtors even though most if not all of such claims arise under a contract with the Debtors' parent company. Following a comprehensive analysis and evaluation of Motorola's claims and

the objections, defenses, and counterclaims of the Debtors thereto, MTO engaged in settlement communications with Motorola on behalf of Adelphia in an effort to resolve such claims without costly litigation. When such efforts proved unsuccessful, MTO prepared and filed an adversary complaint (the "Complaint") on behalf of the Debtors against Motorola, as well as three transferees of claims filed by Motorola (the "Claim Transferees"), in the Bankruptcy Court.

30. The Complaint seeks recovery on behalf of the Debtors' estates on various affirmative claims against Motorola and, additionally, raises certain objections and defenses of the Debtors to the claims asserted by Motorola in the Debtors' bankruptcy cases. Among other relief, the Complaint seeks damages from Motorola for aiding and abetting breaches of fiduciary duty by the Company's former management in manipulating the Company's consolidated financial statements and performance results for the fiscal years 2000 and 2001. The Complaint also seeks avoidance and recovery of preferential and fraudulent transfers of more than \$60,000,000 made to Motorola pursuant to Sections 544, 547, 548 and 550 of the Bankruptcy Code and applicable state law. The Complaint further seeks avoidance of purported (but unperfected) liens asserted by Motorola against property of the Debtors pursuant to Section 544 of the Bankruptcy Code. The Complaint also seeks disallowance of some or all of the Motorola Claims to the extent that the claims are improperly asserted against subsidiaries of the Company rather than the Company itself. The Complaint further seeks equitable subordination under Bankruptcy Code Section 510(c) of the Motorola Claims, including claims held by the Claim Transferees, to the extent, if any, that such claims are allowed.

31. On August 14, 2006, Motorola filed its answer to the Complaint, denying all allegations of wrongdoing on Motorola's part and asserting various affirmative defenses including *in pari delicto*, lack of cognizable damages or causation, and setoff. On September 6, 2006, the Claim Transferees also answered the Complaint. In their answer, the Claim Transferees denied the allegations regarding the allowance, secured status and subordination of the Motorola Claims and asserted various affirmative defenses. The parties have made an initial exchange of documents and have commenced written discovery. In preparation for such discovery, MTO has analyzed and organized over 4 million pages of potentially relevant documents, building a comprehensive database that allows for ready identification and production of potentially responsive documents as well as aiding preparation for trial.

32. In addition, MTO has extensively analyzed various legal and factual issues relating to the Motorola litigation, including the defenses raised by the defendants as well as the necessary elements of the Debtors' prima facie case for aiding and abetting breach of fiduciary duties, recovery of preferential and fraudulent transfers, and equitable subordination. MTO has also devoted substantial efforts to preparing various early motions on behalf of the Debtors, including a motion to strike the defendants' jury demand, and for determination that the Debtors' claims against Motorola are "core" bankruptcy claims that may be heard and determined by the bankruptcy court, as well as motions seeking determination of whether the purported liens securing the Motorola Claims may be avoided, and whether the Motorola Claims should be allowed at Adelphia Communications Corporation only.

33. The above services were necessary and beneficial to the Debtors' estates when rendered because Motorola's claims represent a significant potential liability for the estates that may be subject to subordination, disallowance, or allowance at the parent level only. In addition, the Debtors' affirmative claims against Motorola present an opportunity for recovery by the estates of a potentially significant portion of the damages suffered by the corporation as a result of the actions of Motorola and others. Moreover, such services have been timely performed inasmuch as, in less than one year, MTO has conducted a comprehensive evaluation of the relevant claims and issues, commenced litigation against Motorola, processed and organized a huge volume of potentially relevant documents for purposes of propounding and responding to discovery, and set the stage for an early resolution of many of the key legal and factual issues raised.

34. Hours spent were 10,912.20 and fees incurred totaled \$2,395,957.00 during the Retention Period.<sup>3</sup>

**Scientific-Atlanta [134]**

35. MTO has also provided services with respect to the investigation of claims by and between Scientific-Atlanta, Inc. ("S-A") and the Debtors, which presented issues that were in many respects similar to those described above in connection with the claims of Motorola. Indeed, a significant portion of the fees billed in connection with the Motorola litigation relate to analysis and research that was equally applicable to Adelphia's claims against S-A. In addition, MTO was called upon to analyze, and

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<sup>3</sup> A significant portion of the research and analysis performed by MTO with respect to the Motorola litigation was equally applicable to the dispute with S-A (described immediately below). MTO did not allocate such jointly beneficial time equally to each matter for billing purposes.

ultimately defuse, S-A's objection to confirmation of the Debtors' plan of reorganization and related discovery requests. The fees billed in this category reflect services that were unique to the S-A dispute.

36. S-A, like Motorola, filed proofs of claim against various subsidiary debtors even though the claims arise under a contract with the Debtors' parent company. After a careful analysis of the underlying claims, and many discussions and meetings between representatives of the Debtor and S-A, the parties reached a confidential settlement (filed under seal) that was approved by the Bankruptcy Court and provided tens of millions of dollars in value to the estates. In this way, with the assistance of MTO, the Debtors were able to achieve a favorable result with respect to the dispute with S-A without costly litigation and all of the uncertainty that it entails.

37. Hours spent were 3,218.90 and fees incurred totaled \$791,504.50 during the Retention Period.

a. **WilTel Communications [138]**

38. MTO has also provided services with respect to resolution of a claim asserted by WilTel against the Debtors in the amount of \$16,071,384.62, as amended (the "WilTel Claim"). Before MTO became involved in this matter, the Debtors filed their First Omnibus Objection To The Allowance of Certain Claims (the "First Omnibus Objection"), seeking, inter alia, to expunge various claims, including the WilTel Claim. The WilTel Claim sought recovery of damages associated with the joint rejection by the Debtors and their erstwhile affiliates, Adelphia Business Solutions, Inc. ("ABIZ") and its affiliated debtors (collectively with ABIZ, the "ABIZ Debtors"), of an IRU agreement originally entered into by affiliates of ABIZ and WilTel and purportedly assigned to ACC

as part of the spin-off of ABIZ from ACC in January of 2002. In the First Omnibus Objection, the Debtors had requested that the WilTel Claim be expunged pursuant to the terms of the order of the Bankruptcy Court entered March 23, 2004 (the “ABIZ Settlement Order”) approving a global settlement between the Debtors and ABIZ under which the ABIZ Debtors agreed to assume all liability in connection with the WilTel Claim. WilTel subsequently filed its Response to the First Omnibus Objection (“WilTel Response”), claiming that the WilTel Claim could not be expunged pursuant to the ABIZ Settlement Order because WilTel did not receive sufficient notice that its claim against ACC would be expunged by operation of the global settlement between ABIZ and ACC.

39. MTO became involved in this matter during the Spring of 2006, and, following a comprehensive analysis of the underlying merits of the WilTel Claim and the Debtor’s previously filed objection thereto, MTO engaged in settlement discussions with the holder of the WilTel Claim. Though prospects for settlement without additional litigation appeared favorable, a final agreement proved elusive for several months (in part due to personnel changes on both sides of the table during the relevant time period). Accordingly, MTO proceeded with litigation of the previously filed objections to the WilTel Claim by (1) negotiating and drafting a stipulated order setting forth the relevant facts for the Court’s consideration in connection with the issues raised in the First Omnibus Objection and establishing a schedule for briefing and hearing of the matter; and (2) preparing and filing the Debtors’ Reply to the WilTel Response.

40. MTO’s efforts with respect to the WilTel Claim during the Retention Period were necessary and beneficial when rendered, as demonstrated by the fact that they have recently resulted in an agreement between the parties that the holder of the WilTel

Claim will receive a \$2.25 million allowed claim against Adelphia Communications Corporation in full and final satisfaction of the WiTel Claim (with a waiver of all potential avoidance actions by the Debtors against WiTel).

Hours spent were 210.50 and fees incurred totaled \$87,992.50 during the Retention Period.

### **Indemnification Claims [139]**

41. MTO has additionally provided services with respect to preserving the Debtors' potential indemnification claims against various vendors (including Motorola) in connection with certain patent infringement litigation commenced by Rembrandt Technologies LP ("Rembrandt") relating to modems purchased by the Debtors from such vendors. Specifically, MTO has analyzed the relevant post petition vendor contracts and made appropriate demands for indemnification under such contracts with respect to the Rembrandt litigation. Such services are necessary and beneficial to the Debtors' estates in order to preserve any potential indemnification rights of the Debtors, and have been timely rendered within the requirements of the relevant vendor agreements.

42. Hours spent were 31.80 and fees incurred totaled \$9,319.00 during the Retention Period.

### **MTO's REQUEST FOR COMPENSATION**

43. The allowance of interim compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in § 331 of the Bankruptcy Code:

[A] debtor's attorney, or any professional person . . . may apply to the court not more than once every 120 days after

an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title. 11 U.S.C. § 331.

44. Concerning the level of compensation, § 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person, including the debtor's attorney:

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.

45. MTO submits that its final request for allowance of compensation is reasonable. The services rendered by MTO, as highlighted above, required significant time and effort, much of which occurred under substantial pressure and during nights and weekends.

46. The services rendered by MTO during the Retention Period were performed diligently and efficiently. Accordingly, when possible MTO delegated tasks to lower cost junior attorneys or, for discrete matters, to attorneys with specialized expertise in the particular task at issue. With the exception of the Motorola and S-A litigation, and certain corporate governance issues, all matters addressed as part of the MTO Retention have been staffed with one partner and one associate taking primary responsibility; others were brought in on an as-needed basis for discrete tasks, and the estates were not billed for expenses incurred by MTO in bringing such individuals up to speed. This leaner staffing approach has delivered exceptional results for the Debtors with respect to the matters comprising the MTO Retention that have been brought to

conclusion thus far, including: (1) withdrawal of S-A's objection to confirmation followed by a settlement worth tens of millions of dollars to the estate; (2) timely and effective resolution of post petition cost allocation issues affecting all silos that could have delayed or threatened confirmation of the Joint Plan; and (3) allowance of the WilTel claim at less than 15% of the face amount at which such claim was reserved.

**STEPS TAKEN BY MTO TO PROVIDE SERVICES WITHIN SCOPE OF EMPLOYMENT AND COORDINATION WITH OTHER PROFESSIONALS**

47. At all times, MTO acted with the knowledge of, and at the direction of Adelphia's senior management with respect to each of the matters described above. For each task, MTO identified what steps it would take to resolve the problem brought to its attention and what to expect. MTO made frequent and regular reports to management regarding such matters, both because of the importance of the issues being handled and the involvement of Adelphia personnel.

48. At every juncture in MTO's representation of the Debtors as described above, MTO has taken affirmative steps to ensure appropriate coordination with other professionals retained by the Debtors and prevent overlap with the work of other professionals in this case. Within appropriate ethical limitations given the relevant conflicts of interest, MTO has worked closely with Willkie, Farr and Gallagher LLP ("Willkie") on each of the above matters to ensure that the efforts of MTO were coordinated with matters being handled by Willkie, particularly as they related to development of a viable plan of reorganization. Indeed, in certain instances (notably the allocation of post petition costs to the Comcast joint ventures) the work of MTO has served as a platform for subsequent work by other professionals in this case. Willkie Farr and MTO have communicated regularly throughout the case to identify the scope

of what was needed from MTO, to identify proposed solutions, and to ensure coordination of efforts.

49. In addition, with respect to the Motorola and S-A claims, MTO conducted a thorough review of the pleadings in other related cases involving similar allegations against these parties, most notably with respect to litigation brought by the Creditors' Committee on behalf of the estate against the Debtors' former auditors, and by the Debtors against their former lenders. On several occasions, MTO has contacted counsel for the Committee and the Debtors in these actions to ensure coordination of efforts and strategy with respect to each of these cases.

#### **VOLUNTARY REDUCTION OF MTO'S UNBILLED FEES**

50. Each month, MTO withheld a significant number of hours (which were not separately recorded) from the bills sent to Adelpia and the Fee Committee. Typically, MTO did not bill for bringing new lawyers up to speed when they were needed to help on discrete tasks, or for supervision, or for looking back over materials prepared earlier in the engagement. Although MTO has not quantified such fees withheld — MTO's billing system does not track such things — MTO estimates that between \$5,000 - \$10,000 per month on average of potential professional fees were not billed to the estate.

51. In addition, MTO has identified approximately \$11,000 in recorded fees that were never billed to the estates, and MTO additionally identified a billing error of approximately \$15,000 in the estates' favor that MTO voluntarily decided not to correct. MTO also discontinued its former practice of billing the estates for expenses incurred for most electronic research.

## NEGOTIATED REDUCTION OF MTO'S BILLED FEES

52. In addition to the amounts voluntarily withheld by MTO described above, following consultations with the Fee Committee, MTO has also agreed to reduce the amount of fees sought for the Sixth, Seventh, Eighth, and Ninth Interim Periods by a total of \$29,495.94 as summarized in the following chart:

<b>Munger, Tolles &amp; Olson LLP Summary of Fee and Expense Reductions</b>					
Interim Period	Total Amount Billed		Negotiated Reductions	Interim Allowance	
	Fees	Expenses	Fees	Fees	Expenses
6 <sup>th</sup> /7 <sup>th</sup>	\$222,768.00	\$ 13,160.61	\$ 15,000.00	\$ 207,768.00	\$ 13,160.61
8 <sup>th</sup>	134,835.50	3,321.60	6,828.38	128,007.12	3,321.60
9 <sup>th</sup>	244,944.00	28,721.11	7,667.56	237,276.44	28,721.11
10 <sup>th</sup>	277,810.50	10,003.58		277,810.50 *	10,003.58 *
11 <sup>th</sup>	1,510,022.50	46,939.75		1,510,022.50 *	46,939.75 *
12 <sup>th</sup>	1,898,153.50	32,449.77		1,898,153.50 *	32,449.77 *
<b>TOTAL</b>	<b>\$ 4,288,534.00</b>	<b>\$ 134,596.42</b>	<b>\$ 29,495.94</b>	<b>\$ 4,259,038.06</b>	<b>\$ 134,596.42</b>

*\* Pending*

## DISBURSEMENTS

53. MTO incurred actual and necessary out-of-pocket expenses during the Retention Period, in connection with the rendition of the professional services described above, in the amounts set forth in Exhibit "D."<sup>4</sup> By this Final Application, MTO respectfully requests allowance of such reimbursements in full.

54. The disbursements for which MTO seeks reimbursement include the following:

- a. Duplicating — Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities. Binding charges (spiral and velobinding) are billed at \$2.50 per set.
- b. Telecommunications — Long distance telephone calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$1.00 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by MTO for machine maintenance, telephone line rental and supplies used in operating the fax machine.
- c. Delivery Services — MTO's practice is to charge postal, overnight delivery and courier services at actual cost.
- d. Filing Fees — MTO's practice is to charge court filing fees, recordation fees, etc. at actual cost.

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<sup>4</sup> MTO's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in MTO's accounting system.

e. Computer Research Charges — Until December 31, 2006, MTO's practice was to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment.

55. In consultation with the Fee Committee, MTO has not reduced the amount of reimbursement sought for any of the expenses incurred by MTO.

### **PROCEDURE**

56. MTO has provided notice of this Final Application to the Court, and to the parties designated in the Compensation Order, including the Office of the United States Trustee, the Debtors, counsel to the Debtors, the Fee Committee, counsel to the Unsecured Creditors' Committee, counsel to the Equity Committee, counsel for the Debtors' pre-petition lenders and counsel for the Debtors' post petition Lenders.

### **CERTIFICATION**

57. Pursuant to the Administrative Orders, attached hereto as Exhibit "E" is MTO's Certifying Professional's Certification with respect to this Final Application for the Retention Period. Attached hereto as Exhibit "F" is the Summary Sheet Pursuant to United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330.

## CONCLUSION

WHEREFORE, MTO respectfully requests that this Court enter an order awarding MTO:

(A) Total compensation from the Debtors for services rendered from April 27, 2004 through February 12, 2007, inclusive, in the amount of \$4,259,038.06;

(B) Reimbursement of actual and necessary expenses incurred in connection with the rendition of such services in the amount of \$134,596.42; and

(C) Such other and further relief as may be just.

Dated: March 30, 2007

MUNGER, TOLLES & OLSON LLP  
Special Conflict Attorneys for Debtors

By:           s/Mark Shinderman            
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