

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11 Cases
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Adelphia Communications Corporation, et al., : Case No. 02-41729 (REG)
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Debtors. : Jointly Administered
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**APPLICATION OF SULLIVAN & CROMWELL LLP FOR FINAL
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

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

Sullivan & Cromwell LLP (“S&C”), special mergers & acquisitions (“M&A”) counsel for the above-captioned debtors and debtors-in-possession (the “Debtors”), in support of its application (this “Application”) for (i) final allowance of compensation based on hours expended by S&C in rendering professional services to the Debtors during the period from June 11, 2004 through February 13, 2007, inclusive (the “Application Period”), (ii) supplemental compensation (“Supplemental Compensation”) for the extraordinary services rendered by S&C during the Application Period as more fully described elsewhere in this Application, which meaningfully contributed to the resulting greater distributive value for the benefit of stakeholders of the Debtors, and (iii) reimbursement of actual, reasonable and necessary expenses incurred by S&C during the Application Period, respectfully represents:

INTRODUCTION AND BACKGROUND

1. On June 25, 2002, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On February 24, 2004, the Debtors filed a proposed plan of reorganization and related disclosure statement. Subsequent to filing such proposed plan of reorganization and related disclosure statement, based on the then stated position of several stakeholders that greater distributive value might be realized if all or substantially all of the assets of the Debtors were sold through a competitive auction process, as opposed to the Debtors being reorganized through a stand-alone plan of reorganization, the Debtors’ Board of Directors decided to undertake a dual-track emergence strategy and pursue both a sales process and a stand-alone plan of reorganization. On April 21, 2004, the Debtors publicly announced a plan to explore a possible sale of all or part of the Debtors under such dual-track emergence strategy.

3. As a result, the Debtors selected S&C to serve as their special M&A counsel with respect to the possible sale of all or part of the Debtors’ assets in one or a series of transactions. On June 24, 2004, the Debtors filed an Application with this Court for an Order authorizing retention of S&C as special M&A counsel, together with the Declaration of Neil T. Anderson, Esq., a partner of S&C, in support thereof. On July 15, 2004, S&C submitted a Supplemental Declaration of Neil T. Anderson, Esq. in support of the Debtors’ Application. By Order, dated July 21, 2004, this Court authorized employment and retention of S&C as special M&A counsel for the Debtors, *nunc pro tunc* to June 11, 2004, pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code.

4. On June 28, 2006, more than two years after S&C was retained as special M&A counsel for the Debtors and based in large part on S&C's extraordinary efforts in carrying out its assignment, this Court pursuant to its Order approved (i) the relevant asset purchase agreements (the "Purchase Agreements") negotiated by S&C and (ii) the sale pursuant to the Purchase Agreements of substantially all the assets of the Debtors to Time Warner NY Cable LLC ("TWN") and to Comcast Corporation ("Comcast"). On July 31, 2006, the Debtors consummated the sale (the "Sale") of substantially all their assets to TWNY and Comcast (TWN and Comcast being referred to in this Application as the "Purchasers") for approximately 16% of the equity of Time Warner Cable Inc. ("TWC") and approximately \$12.5 billion in cash (collectively, the "Sale Consideration").

5. Based on the value assigned to the 16% equity stake in TWC in the Purchase Agreements, the total value of the Sale Consideration as of April 25, 2005 approximated \$17.6 billion, subject to adjustments. The Sale Consideration (based on the value assigned in the Purchase Agreements) represented a valuation of: (a) over thirteen times 2005 EBITDA of the Debtors; (b) approximately \$3,700 per subscriber of the Debtors; (c) an amount representing more than a 20% premium to the implied stand-alone enterprise value of the Debtors' assets; and (d) an amount representing more than a 60% premium to the Debtors' implied stand-alone equity value (compared to an average premium paid in comparable acquisition transactions since January 1, 2005 of approximately 18% (based on data compiled by Securities Data Corporation)). Based on the value assigned to the 16% equity stake in TWC in the First Modified Fifth Amended

Joint Chapter 11 Plan for the Debtors (the “Plan”), the total value of the Sale Consideration approximated \$18.5 billion, representing more than a 68% premium to the Debtors’ implied stand-alone equity value.

6. By any measure, the Sale has been an overwhelming success in creating meaningfully greater distributive value for the stakeholders of the Debtors. S&C played an essential role on behalf of the Debtors in the achievement of these results through its perseverance, professional judgment, negotiation skills and unqualified dedication to the M&A sales process undertaken by the Debtors. The professional services provided by S&C to the Debtors were innovative and unique and unquestionably delivered extraordinary value. The entire M&A sales process undertaken by the Debtors presented extremely novel and complex structural, legal and accounting issues for the Debtors, the bidders and the Purchasers. S&C not only consistently negotiated a way forward, but also did so while minimizing the securities law issues and the auditing, legal and restructuring fees that otherwise would have been incurred so as to achieve the most favorable and cost-effective resolution for the Debtors. Accordingly, S&C’s skill and effort in this matter justify this Application. In particular, S&C respectfully submits that its request for Supplemental Compensation in an amount less than 15% of the amount of compensation being requested based on hours expended during the Application Period is both fair and reasonable in the context of the extraordinary results that were achieved for the benefit of the Debtors and their stakeholders and the essential role played by S&C in obtaining such results. S&C believes that its extraordinary efforts during the more than two years of the Application Period present one of those admittedly rare but appropriate circumstances where Supplemental Compensation is fully justified.

INTERIM ALLOWANCE FOR COMPENSATION

7. On August 9, 2002, this Court entered an order establishing procedures for interim compensation and reimbursement of expenses for professionals retained in these cases (the “Interim Compensation Order”), authorizing, on an interim basis and subject to certain conditions, payment to professionals retained in these cases of 80% of their fees and 100% of their expenses described in monthly fee statements (the “Monthly Fee Statements”) and subsequent payment of a portion of the 20% holdback (the “Holdback”) pursuant to Orders granted from time to time by this Court. The Interim Compensation Order provides that all payments on Monthly Fee Statements are subject to interim and final approval by this Court.

8. Pursuant to the Interim Compensation Order, S&C has submitted Monthly Fee Statements covering all of the months in the Application Period. Other than with respect to the Monthly Fee Statements for January 2007 and for the period from February 1, 2007 to the February 13, 2007 Effective Date which have only recently been submitted, S&C has been paid 80% of the fees set forth on such Monthly Fee Statements and 100% of the expenses described in the Monthly Fee Statements in accordance with the Interim Compensation Order.

9. In connection with determining the amount of monthly billing for professional advice and services set forth on its Monthly Fee Statements, S&C in its discretion voluntarily reduced its fees based on hours set forth on the Monthly Fee Statements for various factors, such as transitory timekeepers, unnecessary duplication of work, less than sufficient description of work performed as set forth in time entries, and

other factors outlined in the Debtors' Fee Committee memoranda regarding billing. In addition, S&C in its discretion voluntarily decided for the period covering the last six months of 2004 and for the period subsequent to December 31, 2006 to continue to use its hourly rates in effect for the immediately preceding periods, notwithstanding general increases in such hourly rates that had been implemented by S&C. In the aggregate, all of these voluntary reductions by S&C in the amount of fees based on hours set forth in the Monthly Fee Statements have totaled \$709,237.90 over the Application Period.¹

10. On April 29, 2005, S&C filed its First Application for Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from June 11, 2004 through October 31, 2004 (the "S&C First Interim Application"). Pursuant to discussions and agreement with the Debtors' Fee Committee, the amount of S&C's fee for professional services for the S&C First Interim Application was reduced by an additional \$46,660.83. Pursuant to an Order Awarding Interim Allowance of Compensation and Reimbursement of Expenses, dated October 14, 2005, this Court granted S&C: (a) interim allowance of compensation of \$1,846,863.87 for professional services rendered during the period covered by the S&C First Interim Application and (b) reimbursement for expenses in the amount of \$27,615.95 incurred during the period

¹ Prior to submitting this Application, S&C again carefully reviewed each of the Monthly Fee Statements that was prepared and submitted by S&C during the Application Period. Based upon such further review, including a review of the application of the criteria previously used by S&C as set forth above to determine the amount of voluntary reductions in S&C fees based on hours set forth on its Monthly Fee Statements, S&C has voluntarily determined to further reduce its fees based on hours during the Application Period by an additional \$84,311.10. The total fee based on hours that is being requested in this Application has been adjusted to account for this further reduction. As a result of such additional reduction, and also taking into account the further reductions in its fees based on hours with respect to the S&C First Interim Application and the S&C Second Interim Application as described in paragraphs 10 and 11 of this Application, the total voluntary or agreed reduction by S&C in its fee based on hours for the Application Period aggregates \$896,077.45.

covered by the S&C First Interim Application. Subsequently, S&C was paid an additional \$142,691.64 out of the Holdback for the period covered by the S&C First Interim Fee Application.

11. On September 15, 2005, S&C filed its Second Application for Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from November 1, 2004 through February 28, 2005 (the "S&C Second Interim Application"). Pursuant to discussions and agreement with the Debtors' Fee Committee, the amount of S&C's fee for professional services for the S&C Second Interim Application was reduced by an additional \$55,867.62. Pursuant to an Order Awarding Interim Allowance of Compensation and Reimbursement of Expenses, dated June 6, 2006, this Court granted S&C: (a) interim allowance of compensation of \$3,455,295.38 for professional services rendered during the period covered by the S&C Second Interim Application and (b) reimbursement for expenses in the amount of \$41,000.07 incurred during the period covered by the S&C Second Interim Application. Subsequently, S&C was paid an additional \$295,249.00 out of the Holdback for the period covered by the S&C Second Interim Application.

12. On February 16, 2006, S&C filed its Third Application for Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from March 1, 2005 through August 31, 2005 (the "S&C Third Interim Application"). On May 24, 2006, S&C filed its Fourth Application for Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from September 1, 2005 through February 28, 2006 (the "S&C Fourth Interim Application"). On October 5, 2006, S&C filed its Fifth Application for Interim Allowance of

Compensation for Services Rendered and Reimbursement of Expenses Incurred from March 1, 2006 through August 31, 2006 (the “S&C Fifth Interim Application”). On March 28, 2007, S&C filed its Sixth Application for Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from September 1, 2006 through February 13, 2007 (the “S&C Sixth Interim Application”). The S&C Third Interim Application, S&C Fourth Interim Application, S&C Fifth Interim Application and S&C Sixth Interim Application have not yet been the subject of an Order of this Court awarding interim compensation.²

RELIEF REQUESTED

13. By this Application, S&C requests an award (the “Final Award”) approving: (i) final allowance of compensation in the amount of \$12,253,864.75 based on hours expended by S&C in rendering professional services to the Debtors during the Application Period (after voluntary reductions by S&C in its fees based on hours aggregating \$896,077.45, as described elsewhere in this Application), which final allowance of compensation includes all compensation paid to date upon submission of S&C’s Monthly Fee Statements and on an interim basis, (ii) the granting of Supplemental Compensation to S&C in the amount of \$1,800,000.00 for the extraordinary and value-added professional services rendered by S&C to the Debtors during the more than two years of the Application Period (which amount of Supplemental Compensation being

² As set forth above in Note 1, based on a further review of the Monthly Fee Statements in connection with preparing this Application, S&C has voluntarily determined to further reduce its fee based on hours for the Application Period. As a result, S&C is voluntarily reducing the fee based on hours for the S&C Third Interim Application by a further \$35,625.00, for the S&C Fourth Interim Application by a further \$30,976.50, and for the S&C Fifth Interim Application by a further \$17,709.60. The fee based on hours that is being requested in this Application has been adjusted to account for these further reductions.

requested is less than 15% of the requested final allowance for compensation based on hours as set forth in clause (i) of this paragraph 13), and (c) final reimbursement of \$123,890.17 for actual, reasonable and necessary expenses S&C incurred in connection with rendering such professional services during the entire Application Period. S&C's requests, including its request for Supplemental Compensation, reflect the requisite time, skill, and effort S&C expended in connection with all aspects of the M&A sales process undertaken by the Debtors and the extraordinary results achieved.

14. This Court has jurisdiction over this 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 Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein are sections 327, 328 and 330 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**EXTRAORDINARY SERVICES RENDERED BY S&C AND
S&C'S REQUEST FOR COMPENSATION**

15. While a detailed recitation of the professional services that S&C provided during the entire Application Period would unduly burden this Court and would be duplicative of the S&C Interim Applications and the S&C time records as previously provided to this Court, the Office of the United States Trustee and other parties-in-interest, a summary of the reasons why S&C believes that its services warrant both the approval of its compensation based on hours on a final basis and the approval of the Supplemental Compensation requested by this Application follows.

16. The Sale represented the culmination of more than two years of exceptional effort and contribution by S&C under extremely difficult circumstances, many of which were neither foreseen nor foreseeable at the time S&C was retained as special M&A counsel for the Debtors. As detailed below, S&C was instrumental in assisting the Debtors in obtaining the Sale Consideration, in preventing erosion to the Sale Consideration when the Sale was effected pursuant to Section 363 of the Bankruptcy Code, in transforming the Sale into a workable sale pursuant to Section 363 of the Bankruptcy Code, in preserving the Sale Consideration in the face of purchase price adjustment demands from the Purchasers and ultimately in effecting the confirmation of the Debtors' cases in the most value-positive and efficient manner.

17. From the inception of S&C's retention as special M&A counsel for the Debtors, S&C created added value for the Debtors. S&C negotiated an extremely pro-Debtors engagement letter with the Debtors' financial advisors. Then, working with those financial advisors, the Debtors, and the Debtors' general bankruptcy counsel, Willkie, Farr & Gallagher LLP, S&C helped to create the strategic framework for ensuring a robust auction that maximized the potential sale consideration and minimized the potential for re-trade once agreements were entered into. Specifically, S&C was instrumental in the formulation and execution of the cluster strategy bidding structure that ensured multiple bidders and guaranteed competition to the strategic bidders, including the Purchasers, S&C designed and implemented confidentiality barriers (that ensured that the Debtors would control which bidders, if any, could jointly bid or talk to each other), S&C structured a Court-approved pre-auction break-up fee mechanism that ensured that bidders would put forth their best offers in the first instance, S&C designed a Sale

process that obviated the need for a two-step auction, S&C advocated for (and convinced the Purchasers to bid on the basis of) the asset sale structure over possible alternatives to overcome the deep discount potential bidders would apply to the Debtors' tax attributes, while simultaneously minimizing the taxes paid by the Debtors in respect of the Sale (which enhanced the Sale Consideration by several billion dollars), and S&C fostered good relations between the Debtors and their creditors during the M&A sales process.

18. During the pre-bid and the bid periods, S&C also performed the role that it ordinarily performs in the context of a sale transaction, assisting in the creation of a successful auction, including the following:

- Negotiating over 55 confidentiality agreements with potential bidders, and negotiating numerous limited cross-talk consents;
- Reviewing and commenting on 45 initial indications of interest from potential bidders;
- Assisting the Debtors in the due diligence process involving 22 bidders;
- Assisting in the preparation and reviewing and commenting on the confidential information memorandum provided to potential bidders;
- Participating in conducting reverse due diligence on TWC necessitated by the fact that part of the Sale Consideration was in the form of TWC equity;
- Drafting three separate forms of an asset purchase agreement for each of a whole company bid, a cluster only bid, and a bid by each of TWNY and Comcast;
- Helping the Debtors prepare schedules to the asset purchase agreement for each of the aforementioned forms of agreement;
- Negotiating (together with the creditor representatives and the Debtors and their other advisors) with the Purchasers and multiple other potential buyers to improve the key bidders' offers during the

period from the January 31, 2005 submission of final bids through the April 21, 2005 signing of the Sale;

- Ultimately negotiating to conclusion two separate Purchase Agreements with each of TWNY and Comcast in order to protect the consummation of the Sale;
- Devising and implementing various strategies with the Debtors, their other advisors and the creditors in order to maximize the amount of the Sales Consideration; and
- Attending numerous meetings with management, the Board of Directors of the Debtors, creditors, potential bidders and the Purchasers and their advisors.

19. S&C was critical to the realization of the exceptional Sale Consideration.

S&C helped to design the unique sale process that created a competitive dynamic throughout the process, leading to the healthy bid from the Purchasers. S&C, as the principal negotiators for the Debtors in connection with the Sale, also extracted significant improvements in the Purchasers' bid by rendering crisp and creative strategic advice and tireless and effective day-to-day negotiating.

20. Specifically, applying its successful negotiating skills, S&C was able to, among other things, (a) limit the size of the escrows for the Sale ("Sale Escrows") to 4% of the purchase price (TWC had demanded 5% and Comcast had demanded 10%); (b) obtain a significant basket with respect to indemnification claims under the Purchase Agreements (the Purchasers had originally demanded that the escrows be subject only to thresholds (with claims being reimbursed entirely once the threshold was met)); (c) limit claims under the Purchase Agreements to the Sale Escrows; (d) limit the Sale Escrows to one year, with a partial release six months after closing; (e) limit the proposed price adjustments for subscriber losses; (f) limit the potential for the TWC and Comcast to

prevent the occurrence of the closing under the Purchase Agreements; (g) reduce the amount of severance payments the Debtors would be required to incur; (h) reduce the break-up fee under the Purchase Agreements from 3% to 2.5%; (i) eliminate the ability of the Purchasers to receive a break-up fee automatically if the transaction was not completed by the so-called “drop-dead” date; (j) extend the “drop-dead” date; (k) divorce the Sale from the planned redemptions/exchange transactions between the Purchasers and their affiliates; (l) limit the scope of the basis for the Purchasers to comment on and object to the Plan; and (m) limit the extent of the representations and warranties by the Debtors in the Purchase Agreement.

21. One of many significant contributions made by S&C that was integral to the consummation of the Sale on the least costly basis possible was the legal argument S&C helped TWC construct to convince the staff of the Securities and Exchange Commission (“SEC”) of the applicability of Section 1145 of the Bankruptcy Code to exempt the TWC common stock from registration under the Securities Act of 1933, as amended (the “Securities Act”), and of the availability to TWC of “successor registration” status under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), pursuant to Rule 12g-3 of the Exchange Act. S&C helped to construct statutory and policy reasons for the availability of the registration exemption based on Section 1145 of the Bankruptcy Code and thereby helped to ensure a timely closing, as well as following the 363 Approach (as defined below), an alternative to a forced public sale of one-third of the TWC shares, a forced sale that likely would have eroded the Sale Consideration received by the Debtors. In addition, it was S&C that constructed the alternative that the Debtors’ own audited financial statements (rather than audited

financial statements of each of the four Specified Businesses (as defined in the Purchase Agreements)) could be used to satisfy financial statement requirements pursuant to Rule 3-05 of Regulation S-X under the Securities Act, thereby permitting the Debtors to satisfy their closing conditions to the Sale in a timely manner without the expenditure of substantial additional auditing fees.

22. S&C was also integral to achieving a successful Sale by engineering the conversion of the Sale pursuant to a plan of reorganization into a Sale pursuant to Section 363 of the Bankruptcy Code (the “363 Approach”) without an erosion of the Sale Consideration (despite market indications at the time that the value of cable stocks had decreased since the execution of the Purchase Agreements). Starting in early 2006, S&C began the process of building momentum for a shift to the 363 Approach and began discussions with the Purchasers seeking agreement to effectuate the 363 Approach when it appeared that delays in the approval process for the Plan would permit the Purchasers to terminate the Purchase Agreements or leverage that right of termination into significant price concessions. S&C had drafted the original Purchase Agreement provisions that allowed the Debtors to argue they could unilaterally (without the consent of the Purchasers) convert the Sale to the 363 Approach (based on the explicit provisions and the implied covenant of good faith under New York law). This allowed the Debtors to use as leverage the fact that the break-up fee would not be payable simply because the “drop-dead” date occurred since the Plan had yet to be voted down (a critical condition to earning the break-up fee). Without these provisions in the original Purchase Agreements and the negotiating leverage they provided, the Purchasers would have been confident in

their receipt of the break-up fee (a fee of more than \$440 million) and would not have agreed to the 363 Approach without a significant price renegotiation.

23. Moreover, in connection with the conversion of the Sale to the 363 Approach, S&C was able to negotiate an extremely shareholder friendly registration rights agreement for the 16% stake in TWC received as Sales Consideration by the Debtors and their estates (the “Estate”). The registration rights agreement, among other things, (a) provided the Estate with demand, piggyback and additional registration rights, (b) provided the Estate with a three-month window in which to decide to sell after the registration statement for the shares to be sold was declared effective by the SEC, (c) concomitantly prohibited TWC from effecting any sale efforts for up to three months following the SEC declaring the registration statement effective, thereby providing the Estate with extraordinary leverage, (d) limited the outside lock-up date to 180 days, (e) limited the fees payable by the Estate to the underwriter gross spread and legal and accounting fees, and (f) permitted the Estate to determine the price of the offering.

24. Although the 363 Approach was implemented, S&C has continued to make significant contributions to the Debtors and the Estate in connection with confirmation of the Plan. S&C assumed primary responsibility for coordinating the dual track filing by TWC of a registration statement with respect to the TWC shares (including negotiating the underwriting agreement relating thereto and reviewing and commenting on the registration statement) and successfully convincing TWC that it did not have blocking rights with respect to the distribution of the TWC shares immediately following emergence.

25. S&C believes that its request for Supplemental Compensation is warranted given the nature of this engagement, the value added by S&C and the disproportionately significant contribution made by S&C to the Estate. Throughout the Application Period, S&C effectively was on constant call to respond on a moment's notice to a host of unanticipated "crises", requiring not only a considerable amount of time but also the focus, experience and creativity of dedicated and senior team members. Throughout, S&C demonstrated a total commitment to the Estate, the Debtors and the Sale. At every turn, S&C sought (usually successfully) to preserve the value of the Estate for the benefit of its stakeholders. S&C was always available and responsive to management, stakeholders, the Board of Directors of the Debtors, and other advisors to the Debtors and stakeholders. Whether commenting on briefs filed in connection with the Sale, achieving a greater Sale Consideration by convincing the Purchasers to effect an asset sale as opposed to a merger or stock purchase, ensuring a savings of \$1.39 million of interest on the Sale by effecting the Closing early, finding holes in arguments posed by the Purchasers, developing arguments to ensure franchise approvals, developing arguments to prevent erosion in the Sale Consideration or briefing creditors on various issues, S&C consistently added value. The fact that the Sale bumped up against the lengthy "drop-dead" date in the Purchase Agreements, and then was transformed into an entirely different deal required the continued and constant attention of S&C. At the time that S&C was retained as special M&A counsel to the Debtors, nobody could have envisioned that the Sale would entail the creation of four separate specified business buckets ensuring significantly more complication and resource dedication. Nobody could have imagined that there would be so many versions of the Plan and so many twists and turns

on the road to confirmation. The fact is that at the time that S&C was retained S&C did not anticipate that its active participation would be necessary over an extended period of time in so many elements of the confirmed Plan and Sale process.

S&C'S FEES BASED ON HOURS AND EXPENSES

26. S&C incurred the hours and expenses for which allowance is sought by this Application in discharging S&C's professional responsibilities as the Debtors' special M&A counsel in these cases. S&C's services have been substantial, necessary and beneficial to the Estate. Throughout the Application Period, the variety and complexity of the issues involved and the frequent need to address those issues on an expedited basis have required substantial time by S&C professionals from many legal disciplines, often through night and weekend work. By the nature of work involved, considerable time and effort on an on-going basis was required to be expended by senior and experienced M&A lawyers of S&C to the exclusion of their ability to work on other M&A assignments for the firm.

27. As set forth in the affidavit of Neil T. Anderson, Esq., annexed hereto as Exhibit A: (a) S&C has not received any promise of payment for the services rendered in these cases other than as disclosed herein or in S&C's retention application; and (b) no agreement or understanding exists between S&C and any other entity for the sharing of the compensation S&C receives in these cases.

28. Throughout the Application Period, S&C has worked diligently to assure an appropriate division of labor among the various professionals representing the Debtors to minimize duplication of effort and maximize efficiency. S&C believes the division of

labor among the Debtors' professionals has been appropriate and has served the Debtors by taking advantage of the varied expertise and experience of the Debtors' chosen attorneys.

29. S&C maintains written records of the time expended by attorneys and paraprofessionals in rendering professional services to the Debtors. Such time records are made at or near the time that each person rendered such services. For the convenience of this Court and parties-in-interest, annexed hereto as Exhibit B is: (i) a list of the attorneys and paraprofessionals who have rendered professional services to the Debtors during the Application Period; (ii) the date of law school graduation for each attorney; (iii) the aggregate time expended by each attorney and paraprofessional; (iv) the range of hourly billing rates for each attorney and paraprofessional over the Application Period; and (v) the amount of S&C's fees attributable to each attorney and paraprofessional.³

30. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the "Administrative Order"), S&C recorded its services rendered on different matters reasonably expected by the Debtors to constitute a substantial portion of the fees being sought. Annexed hereto as Exhibit C is a list of all the matters for which services were rendered during the Application Period and

3 Exhibit B has been prepared based on the Monthly Fee Statements of S&C and, other than for the netting line at the bottom of Exhibit B, such Exhibit does not reflect the further reductions in S&C's fee based on hours which were made subsequent to the submission of such Monthly Fee Statements as described in this Application in (i) note 1 to paragraph 9 and (ii) paragraphs 10 and 11.

the aggregate amount of hours and fees expended for each of those matters during the Application Period.⁴

31. S&C also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the performance of professional services. Exhibit D annexed hereto sets forth the categories of expenses and amounts for which reimbursements are requested for the Application Period.

EVALUATING S&C'S FEES BASED ON HOURS EXPENDED

32. “[T]he ‘lodestar’ method of fee calculation developed by the Third Circuit, see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973), is the method used to determine a ‘reasonable’ attorney fee in 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.”).

33. “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). S&C’s

⁴ Exhibit C has been prepared based on the Monthly Fee Statements of S&C and, other than for the netting line at the bottom of Exhibit C, such Exhibit does not reflect the further reductions in S&C’s fee based on hours which were made subsequent to the submission of such Monthly Fee Statements as described in this Application in (i) note 1 to paragraph 9 and (ii) paragraphs 10 and 11.

hourly rates and fees charged are consonant with the market rate for comparable services. As set forth in the Certification of Neil T. Anderson, Esq., annexed hereto as Exhibit E, the hourly rates and fees charged by S&C are the same as (or less than) those generally charged to, and paid by, S&C's other clients.

34. The hours expended by S&C were necessary. “[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity should be disallowed *only* where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken the 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 with 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.

35. In addition, S&C respectfully submits that its services in this case present one of those admittedly rare but appropriate circumstances where an attorney has achieved exceptional results in which an enhancement of the lodestar method of compensation is appropriate. See, e.g., In re Penn-Dixie Industries, Inc., 18 Bankr. 834 (Bankr. S.D.N.Y. 1982). See also, In re Interco Systems, Inc., 206 B.R. 61, 64 & n. 2 (Bankr. W.D.N.Y. 1997). The skill, ingenuity, effectiveness and tenacity shown by S&C was in large measure responsible for the unexpectedly favorable result and return to stakeholders of the Debtors. S&C respectfully requests that this Court exercise its discretion to enhance the lodestar amount requested and recognize the contribution to S&C to these cases by awarding the Supplemental Compensation.

S&C'S REQUEST FOR COMPENSATION

36. This Court's authority to allow final compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 330(a)(1) of the Bankruptcy Code:

[T]he court may award to a ... professional person employed under section 327 or 1103

(A) reasonable compensation for actual necessary services rendered by the ... professional person, or attorney and by any paraprofessional person employed by such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). 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.

37. S&C submits that its request for final allowance of compensation based on hours is reasonable. The services rendered by S&C, as highlighted above, required substantial time and effort, much of which occurred under significant pressure and during nights and weekends. In addition, the services rendered by S&C during the Application Period were performed skillfully and efficiently, deftly bringing the resources of the firm to bear so as to add value to the process with little additional cost. That attorneys with specialized expertise in the particular task at issue were consulted may have required intra-office conferences and may have involved individual attorneys who spent only a few hours on the matter at hand, but the net overall result was extraordinarily innovative and effective and ultimately enhanced cost efficiency for the benefit of the Estate.

38. S&C submits that its request for Supplemental Compensation is fair and reasonable based on the extraordinary effort of S&C during the Application Period and the resulting added value to the Estate, as described elsewhere in this Application.

39. During the Application Period, S&C encountered numerous novel and complex legal issues, some of which are summarized above in this Application, often requiring extensive research and drafting. S&C brought to bear legal expertise in many areas, including M&A, corporate, securities law, tax, employee benefits, environmental law and litigation. S&C attorneys have rendered advice in all of these areas with skill and dispatch.

40. In sum, S&C's request for final compensation reflects the time, skill and effort expended toward the goals of maximizing the value of the Debtors' assets and confirming the Plan for the benefit of all creditors. The professional services rendered and expenses incurred have been necessary and beneficial to the Estate.

41. Consequently, S&C requests that the Court award S&C final compensation aggregating \$14,053,864.75 for professional services rendered during the Application Period, consisting of (i) \$12,253,864.75 based on hours expended by S&C and (ii) \$1,800,000.00 as Supplemental Compensation (which is less than 15% of the amount for compensation based on hours set forth above in clause (i) of this paragraph 41).

EXPENSE REIMBURSEMENT

42. The expense reimbursement sought by S&C includes the following:

a. Duplicating - S&C's practice is to bill at \$0.10 per page, based upon the cost of duplication services. The charge per page includes a charge for maintaining the duplicating facilities.

- b. Telecommunications - S&C's practice is to bill long distance calls that are made outside of the states of New York, New Jersey and Connecticut and that are in excess of \$1.00 at actual cost;
- c. Computer Research Charges - S&C's practice is to bill clients for computer research (including LEXIS and Westlaw) at actual cost;
- d. Overtime Expenses - S&C's practice is to allow attorneys, law clerks, paraprofessionals and secretaries working late to charge a working meal. The meal charge is limited to \$20 per person;
- e. Local Car Service - S&C's practice is to allow attorneys, law clerks, paraprofessionals and secretaries to charge car service (at actual cost) to the appropriate client after 8:00 p.m. or for local transportation in connection with client meetings out of the office;
- f. Delivery Services - S&C's practice is to charge postal, overnight delivery and courier services at actual cost; and
- g. Word Processing Charges - S&C's practice is to bill clients for word processing charges.

43. Accordingly, S&C hereby respectfully requests that the Court award S&C \$123,890.17 for reimbursement of expenses. S&C has taken care to avoid incurring unnecessary expenses. Each of the expenses incurred by S&C was necessary, reasonable and justified under the circumstances.

PROCEDURE

44. Willkie Farr & Gallagher LLP, counsel for the Debtors, on behalf of S&C, has provided notice of this Application to: (i) the Office of the United States Trustee, (ii) counsel to the agents for the Debtors' pre-petition and post-petition bank lenders, (iii) counsel to the Committees, (iv) the Fee Committee, (v) the Debtors and (vi) all other parties that have filed a notice of appearance in these cases prior to the date hereof.

45. As this Application presents no novel issue of law, S&C requests that the Court dispense with the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith.

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

47. Attached hereto as Exhibit F is the Summary Sheet pursuant to United States Trustee guidelines.

CONCLUSION

WHEREFORE, S&C respectfully requests that this Court enter an order awarding S&C:

(i) A final allowance of compensation based on hours expended for professional services rendered by S&C as special M&A counsel for the Debtors during the Application Period in the aggregate amount of \$12,253,864.75;

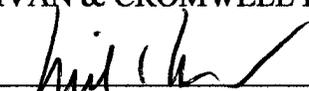
(ii) Supplemental Compensation in the aggregate amount of \$1,800,000.00 for extraordinary services rendered by S&C during the Application Period which resulted in added value to the Estate

(iii) A final allowance of reimbursement of actual, reasonable and necessary expenses incurred by S&C in connection with the rendition of professional services during the Application Period, in the aggregate amount of \$123,890.17; and

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

Dated: March 29, 2007

SULLIVAN & CROMWELL LLP

By: 
Neil T. Anderson, Esq.
125 Broad Street
New York, New York 10004
(212) 558-4000