

Hearing Date: May 20, 2004 at 10:00 a.m.
Objection Deadline: May 10, 2004 at 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered

**SUMMARY SHEET PURSUANT TO UNITED STATES TRUSTEE
GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330**

NAME OF APPLICANT:	KIRKLAND & ELLIS LLP	
AUTHORIZED TO PROVIDE PROFESSIONAL SERVICES TO:	DEBTORS	
DATE OF RETENTION:	JUNE 26, 2003 (<i>NUNC PRO TUNC</i> TO MAY 14, 2003)	
PERIOD FOR WHICH COMPENSATION AND REIMBURSEMENT IS SOUGHT:	OCTOBER 1, 2003 THROUGH FEBRUARY 29, 2004	
AMOUNT OF COMPENSATION REQUESTED:	\$3,025,818.50	
AMOUNT OF EXPENSE REIMBURSEMENT REQUESTED:	\$159,307.02	
TOTAL COMPENSATION AND EXPENSE REIMBURSEMENT REQUESTED:	\$3,185,125.52	
PRIOR APPLICATIONS:	COMPENSATION REQUESTED:	\$1,575,506.50
	EXPENSES REQUESTED:	\$87,242.49
	COMPENSATION ALLOWED (LESS ALLOWED 10% HOLDBACK):	\$1,417,955.85
	EXPENSES ALLOWED:	\$87,242.49

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	X
	:	
Allegiance Telecom, Inc., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	X

**SECOND APPLICATION OF KIRKLAND & ELLIS LLP, AS
ATTORNEYS FOR THE DEBTORS, FOR INTERIM ALLOWANCE
OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED
AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES
INCURRED FROM OCTOBER 1, 2003 THROUGH FEBRUARY 29, 2004**

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

Kirkland & Ellis LLP (“K&E”), attorneys for Allegiance Telecom, Inc. (“ATI”) and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), for its second application (the “Application”), pursuant to sections 330(a) 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”), for the interim allowance of compensation for professional services performed by K&E for the period from October 1, 2003 through February

29, 2004 (the "Compensation Period"), and for reimbursement of its actual and necessary expenses incurred during the Compensation Period, respectfully represents:

**SUMMARY OF PROFESSIONAL COMPENSATION
AND REIMBURSEMENT OF EXPENSES REQUESTED**

1. This Application has been prepared in accordance with (a) the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the "Local Guidelines"), (b) the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996 (the "UST Guidelines") and (c) this Court's Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated June 13, 2003 (the "Administrative Order," and, collectively with the Local Guidelines and UST Guidelines, the "Guidelines"). Pursuant to the Local Guidelines, a certification regarding compliance with same is annexed hereto as Exhibit "A."

2. K&E seeks approval of the sum of \$3,025,818.50 for legal services rendered on behalf of the Debtors during the Compensation Period, and \$159,307.02 for the reimbursement of expenses incurred in connection with the rendition of such services, for a total award of \$3,185,125.52. Pursuant to the Administrative Order, K&E has received (a) payment of \$1,373,947.20, representing approximately eighty percent (80%) of K&E's fees for the legal services it rendered during the months of October, November and December of 2003, and (b) reimbursement of \$89,944.53, which represents one hundred percent (100%) of K&E's expenses incurred in connection with the rendition of such services during the months of

October, November and December of 2003.¹ Therefore, K&E seeks payment of \$1,721,233.79 pursuant to this Application, which amount represents the portion of K&E's fees for legal services and expenses rendered during the Compensation Period that have not been paid to K&E pursuant to the Administrative Order.

3. There is no agreement or understanding between K&E and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in these chapter 11 cases.

4. The fees charged by K&E in these chapter 11 cases are billed in accordance with its existing billing rates and procedures in effect during the Compensation Period. The rates K&E charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates K&E charges for professional and paraprofessional services rendered in comparable nonbankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable nonbankruptcy cases in a competitive national legal market.

5. Pursuant to the UST Guidelines, annexed hereto as Exhibit "B" is a schedule setting forth all K&E professionals and paraprofessionals who have performed services in these chapter 11 cases during the Compensation Period, the capacities in which each such individual is employed by K&E, the department in which each individual practices, the hourly billing rate charged by K&E for services performed by such individual, the aggregate number of hours expended in this matter and fees billed therefor, and, if applicable, the year in which each professional was first licensed to practice law.

¹ Pursuant to the Administrative Order, K&E has submitted its monthly fee statements for January and February of 2004 to the Debtors but, to date, has not received any payments on account of such monthly fee statements.

6. Annexed hereto as Exhibit “C” is a schedule specifying the categories of expenses for which K&E is seeking reimbursement and the total amount for each such expense category.

7. Pursuant to Section II.D of the UST Guidelines, annexed hereto as Exhibit “D” is a summary by project categories of the services performed by K&E during the Compensation Period.

8. K&E maintains computerized records of the time spent by all K&E attorneys and paraprofessionals in connection with the prosecution of the Debtors’ chapter 11 cases. Subject to redaction for information subject to confidentiality and the attorney-client privilege, copies of these computerized records (a) will be furnished to the Court and the Office of the United States Trustee for the Southern District of New York (the “U. S. Trustee”) in the format specified by the UST Guidelines, and (b) have been previously furnished to the attorneys for the Committee (as defined below) and to the attorneys for the Debtors’ prepetition senior secured lenders (the “Prepetition Lenders”) in connection with K&E’s monthly fee statements.

9. To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Compensation Period, but were not processed prior to the preparation of this Application, K&E reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

BACKGROUND

10. On May 14, 2003, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The chapter 11 cases are being jointly administered for procedural purposes. The Debtors continue to operate their businesses and manage their

properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. A statutory committee of unsecured creditors (the "Committee") was appointed on May 28, 2003.

12. Pursuant to an order of the Court dated May 15, 2003, the Debtors were authorized to retain K&E as their attorneys to render legal services in the prosecution of these chapter 11 cases on an interim basis, with the retention to become final following a hearing to consider any objections filed to the Debtors' application for authority to employ K&E. On June 11, 2003, the Committee filed an objection to K&E's retention in these chapter 11 cases. On June 21, 2003, K&E filed a response thereto. On June 23, 2003, a hearing was held regarding K&E's retention. At the conclusion of the hearing, the court approved K&E's retention and entered an order in that regard. Upon request of the U.S. Trustee and the Committee, K&E submitted a supplemental affidavit, dated June 20, 2003, disclosing additional information concerning certain of K&E's existing clients that are parties in interest in these chapter 11 cases. Subsequently, K&E submitted a second supplemental affidavit, dated August 5, 2003, disclosing additional information concerning certain of K&E's existing clients that are parties in interest in these chapter 11 cases.

13. On July 15, 2003, the Debtors filed a Statement of Financial Affairs, Schedule of Assets and Liabilities and Schedule of Executory Contracts and Unexpired Leases (collectively, the "Schedules") for twenty-nine (29) of the Debtors. On July 22, 2003, the Debtors filed the Schedules for the remaining ten (10) Debtors. On September 5, 2003, the Debtors filed amendments to the Schedules.

14. On November 11, 2003, K&E filed the First Application of Kirkland & Ellis LLP, as attorneys for Debtors, for Interim Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred From May 14, 2003 Through September 30, 2003 (the "First K&E Fee Application"). On December 19, 2003, this Court entered an order approving, among others, the First K&E Fee Application.

15. K&E has confirmed that, to date, the Debtors have paid all quarterly fees to the U. S. Trustee.

SUMMARY OF SERVICES

16. During the Compensation Period, K&E rendered a substantial amount of professional legal services - frequently under severe time constraints - to deal with various critical issues that arose in these chapter 11 cases.

17. Specifically, K&E devoted a considerable amount of time toward addressing numerous issues in connection with:

- (a) the Debtors' motion seeking entry of orders, pursuant to sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code: (A) (i) fixing the time, date and place for the bidding procedures hearing and (ii) approving the no-shop provisions set forth in the asset purchase agreement with Qwest Communications International Inc. ("Qwest"); (B) (i) establishing bidding procedures and bid protections in connection with the sale (the "Sale") of substantially all of the assets of the Debtors, (ii) approving the form and manner of notices, (iii) approving the asset purchase agreement subject to higher and better offers and (iv) setting a Sale approval hearing date; and (C) (i) approving the Sale to Qwest free and clear of all liens, claims and encumbrances, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases and (iii) granting related relief, dated December 18, 2003 (the "Sale and Bidding Procedures Motion");
- (b) preparing for, attending and participating in the auction (the "Auction") in connection with the Sale, which Auction took place at the offices of K&E commencing on February 12, 2004 and concluding on February 13, 2004;
- (c) negotiating and obtaining Court approval of that certain Asset Purchase Agreement, by and among ATI, Allegiance Telecom Company Worldwide ("ATCW"), a direct subsidiary of ATI and a debtor in these chapter 11

cases, and XO Communications, Inc. (“XO”), the successful bidder at the Auction, dated February 18, 2004 (the “XO Purchase Agreement”), with respect to the sale of (i) substantially all of the assets of ATI and ATCW and (ii) the stock of the reorganized subsidiaries of ATCW, other than Shared Technologies Allegiance, Inc.; and

- (d) negotiating the terms of a consensual chapter 11 plan of reorganization for the Debtors, premised on the Sale to XO, with the Committee, the Prepetition Lenders, XO and other parties in interest and preparing the related disclosure statement.²

18. Other professional services rendered by K&E during the Compensation Period included, among other things, the following matters: (a) preparing pleadings regarding various administrative and operational activities on behalf of the Debtors; (b) negotiating comprehensive settlements of complex disputes with (i) Level 3 Communications LLC (“Level 3”), the Debtors’ largest customer, (ii) AT&T Corporation (“AT&T”) and (iii) Dresdner Bank AG, (c) negotiating modifications to the terms of the Debtors’ key employee retention program, as it related to the Debtors’ senior executives, and obtaining Court approval thereof; (d) obtaining Court approval of the Debtors’ payment of the year-end bonuses for 2003 to the Debtors’ employees, (e) preparing numerous pleadings to reject certain executory contracts and unexpired leases; and (f) communicating and negotiating with the Prepetition Lenders and the Committee (as well as other parties in interest) regarding a variety of issues. In that regard, K&E prepared and/or filed, on behalf of the Debtors, approximately 97 motions, applications, and other relevant documents during the Compensation Period.

² Shortly after the end of the Compensation Period, the Debtors filed the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated March 18, 2004, and the related disclosure statement, both of which were fully supported by the Committee and the Prepetition Lenders.

19. The following is a summary of the significant professional services rendered by K&E during the Compensation Period. This summary is organized in accordance with K&E's internal system of project or work codes.

a. Adversary Proceedings & Contested Matters

- Engaged in numerous telephone conferences with the Debtors regarding litigation strategy in connection with (a) the adversary proceeding commenced by the Debtors against CI Host (the "CI Host Adversary Proceeding") and (b) the adversary proceeding (the "Level 3 Adversary Proceeding") commenced by Level 3 against ATCW.
- Prepared for and attended the status conferences in the CI Host Adversary Proceeding.
- Performed research regarding various "automatic stay" issues in connection with the alleged violation of the automatic stay by CI Host.
- Exchanged correspondence and engaged in numerous telephone conferences with opposing counsel regarding various issues relating to the CI Host Adversary Proceeding and negotiated a consensual resolution thereof.
- Reviewed and analyzed (a) the complaint filed by Level 3 in the Level 3 Adversary Proceeding and (b) the related motion filed by Level 3 in the Debtors' chapter 11 cases with respect to recoupment of certain obligations (the "Recoupment Motion").
- Analyzed pertinent issues regarding a potential turnover action against Level 3 related to the Level 3 Adversary Proceeding and the Recoupment Motion.
- Participated in telephone and office conferences with K&E's attorneys and opposing counsel regarding discovery issues in connection with the Level 3 Adversary Proceeding and the Recoupment Motion.
- Engaged in discussions with Level 3, the Committee and the Prepetition Lenders regarding a potential settlement of the Level 3 Adversary Proceeding and the Recoupment Motion.
- Successfully negotiated a resolution of the Level 3 Adversary Proceeding and the Recoupment Motion, which resulted in Level 3 paying \$54 million to the Debtors.
- Reviewed, commented on and advised the Debtors regarding the settlement agreement with Level 3.

b. Automatic Stay Matters

- Engaged in discussions with EDS/SHL Corporation (“EDS”) regarding EDS’ request to modify the automatic stay to allow a set-off of certain obligations and advised the Debtors regarding this matter.
- Responded to demands of creditors, including Daleen Solutions, Inc. (“Daleen”) and WorldCom, Inc. (“WorldCom”), to lift the automatic stay and take action against property of the Debtors, including drafting objections to motions of Daleen and WorldCom and participating in numerous office and telephone conferences with the Debtors’ management and K&E’s attorneys regarding these matters.
- Prepared (including the preparation of witnesses) for and attended the hearing on Daleen’s motion to lift the automatic stay and obtained denial of such motion from the Court.
- Negotiated several consensual adjournments of the hearing on a motion to lift the automatic stay filed by Kosher Konnection, Inc.

c. Case Administration

- Prepared for and conducted status conferences with various representatives of the Debtors and internal K&E working groups to address and resolve issues dealing with numerous scheduling matters, noticing procedures, court filings and the overall restructuring process.
- Participated in telephone conferences with the Debtors, as well as certain necessary professionals and creditors, regarding significant developments in these chapter 11 cases.
- Coordinated with the staff of this Court to manage ongoing issues in connection with docket scheduling, electronic filing of court documents and upcoming hearing agenda.
- Monitored the court docket to remain current on the status of these chapter 11 cases, maintained case files and calendar of critical deadlines, downloaded and circulated various docket entries and examined various pleadings submitted to this Court.³
- Prepared hearing agendas and binders in preparation for all court proceedings.

³ With certain minor exceptions, such as creating and analyzing critical date timelines, services performed under this project category were almost exclusively rendered by K&E’s paraprofessionals.

- Prepared and/or filed various pleadings, including numerous ordinary course professional affidavits, and coordinated service thereof with the Debtors' claims and noticing agent.
- Reviewed correspondence received by K&E from creditors and other parties in interest in connection with these chapter 11 cases.

d. Cash Collateral

- Engaged in negotiations with the Prepetition Lenders regarding certain amendments to the amended final order authorizing the Debtors to use cash collateral by consent, including the extension of the expiration date of such order through March 1, 2004 and the proposed retention of Lazard Frères & Co. LLC ("Lazard"), as investment banker to the Prepetition Lenders.
- Prepared, filed and obtained Court approval of the second amended final order authorizing the Debtors to use cash collateral by consent (the "Second Amended Final Cash Collateral Order").
- Participated in numerous telephone conferences with the Debtors' management, the Prepetition Lenders and the Committee regarding Committee's opposition to the terms of the Second Amended Final Cash Collateral Order as they relate to the Prepetition Lenders' retention of Lazard, and attended several depositions in connection with such opposition.
- Engaged in discussions with the Prepetition Lenders and the Committee regarding a consensual resolution of Committee's opposition to Lazard's retention.

e. Claims Estimate, Objection & Resolution

- Negotiated, prepared and filed a second stipulation and agreed order, by and among Level 3 and ATCW, regarding certain asserted offsets, reservations of right, and related matters.
- Negotiated, prepared, filed and obtained Court approval of the Debtors' motion, pursuant to Bankruptcy Rule 9019, to settle certain claims with Dresdner Bank AG.
- Negotiated a consensual resolution and withdrawal of the motion to allow certain set offs of claims filed by the City and County of Denver, Colorado.
- Conducted numerous telephone conferences with the Debtors and their notice and claims agent concerning the claims resolution process, publication of the notice of the bar dates (the "Bar Date Notice") for the filing of claims in these chapter 11 cases and customized proof of claims forms.

- Reviewed proofs of claims filed by various creditors and creditors' correspondence regarding such claims.
- Reviewed and analyzed (a) proofs of claim filed by The Bank of New York, as Indenture Trustee under ATI's prepetition bond indentures, and (b) a draft of a complaint prepared by the Committee regarding the priority and validity of the claims of the Prepetition Lenders.

f. Corporate & Securities Matters

- Analyzed the Debtors' insurance policies for the Debtors' directors and officers and participated in telephone conferences with the Debtors regarding coverage under such policies.
- Prepared a letter regarding the Debtors' annual audit.

g. Employee Issues

- Engaged in extensive negotiations with the Prepetition Lenders and the Committee regarding certain modifications to the Debtors' key employee retention program (the "Key Employee Retention Program"), as it related to the Debtors' senior executives.
- Engaged in discussions with the Committee regarding document production issues and scheduling additional depositions in connection with the Debtors' motion for an order approving and authorizing the Key Employee Retention Program (the "KERP Motion").
- Participated in meetings and telephone conferences with Debtors' management regarding the modifications to the terms of the Key Employee Retention Program, as it related to the Debtors' senior executives, proposed by the Committee and the Prepetition Lenders.
- Prepared and filed a supplement (the "KERP Supplement") to the KERP Motion, which memorialized the modified terms of the Key Employee Retention Program, as it related to the Debtors' senior executives.
- Obtained Court approval of the KERP Motion, as it related to the Debtors' senior executives, as modified by the KERP Supplement.
- Prepared and filed the motion (the "Bonuses Motion") authorizing the Debtors to pay year-end bonuses for 2003 to the Debtors' employees.
- Engaged in extensive negotiations with the Committee and the Prepetition Lenders regarding Committee's opposition to the Bonuses Motion and scheduling numerous depositions in connection therewith.

- Responded to Committee's extensive discovery requests in connection with Committee's opposition to the Bonuses Motion.
- Prepared for and attended numerous depositions in connection with Committee's opposition to the Bonuses Motion.
- Negotiated a settlement with the Committee regarding the payment of year-end bonuses under the Bonuses Motion and obtained Court approval thereof.

h. Hearings

- Prepared for, attended and participated in court hearings on October 8, 2003, October 21, 2003, November 7, 2003, November 19, 2003, December 16, 2003, December 18, 2003, January 9, 2004, January 15, 2004, February 4, 2004, February 19, 2004 and February 25, 2004.

i. K&E Fee Applications & Monthly Statements

- Prepared and served K&E's monthly fee statements pursuant to the procedures and standards set forth in the Administrative Order, the Bankruptcy Code, the Bankruptcy Rules and the Guidelines.
- Prepared, filed and served the First K&E Fee Application and obtained Court approval thereof.

j. Leases, Assumption & Rejection

- Reviewed and analyzed numerous executory contracts and unexpired leases for purposes of assumption or rejection under section 365 of the Bankruptcy Code.
- Advised the Debtors regarding the treatment of executory contracts and unexpired leases, including assumption and rejection options and postpetition obligations, in connection with these chapter 11 cases.
- Prepared, filed and served motions to assume or reject executory contracts and/or unexpired leases.
- Prepared, filed and obtained Court approval of the second motion of the Debtors for an order further extending the time within which the Debtors must assume or reject unexpired leases of nonresidential real property.
- Evaluated and responded to numerous landlord demands and negotiated resolutions of various disputes, including the consensual resolution of a dispute regarding the rejection of the Debtors' nonresidential real property lease with Commerce Square Partners - Philadelphia Plaza, L.P.

- Negotiated (a) the terms of assumption of the Debtors' agreements with AT&T and (b) the settlement of certain prepetition disputes with AT&T, and obtained Court approval of such settlement and assumption.

k. Other Fee Applications

- Assisted the Debtors' professionals in preparation and filing of their respective first applications for the interim allowance of fees and reimbursement of expenses.
- Participated in telephone conferences with the Debtors, their professionals and the Committee regarding miscellaneous issues related to payment of fees of professionals retained in these chapter 11 cases.

l. Plan/Disclosure Statement

- Assisted the Debtors in exploring various restructuring alternatives, including a stand-alone plan and asset sales.
- Participated in numerous discussions with the Debtors' financial advisors and the Debtors' management regarding strategies with respect to a stand-alone plan of reorganization and potential sale transactions.
- Conducted legal due diligence in connection with potential sale transactions.
- Reviewed bids submitted by Qwest, XO and other potential bidders, as well as comparative analyses of such bids prepared by the Debtors' financial advisors.
- Prepared for and participated in various telephone and office conferences with the Board of Directors regarding the terms of a stand-alone plan of reorganization and potential sale alternatives.
- Conducted numerous meetings and/or telephone conferences with the Debtors' management, the Debtors' financial and restructuring advisors, the Prepetition Lenders and the Committee and their respective advisors regarding the terms of numerous draft versions of the Debtors' chapter 11 plan of reorganization and a related disclosure statement premised on, among others, (a) a stand-alone restructuring, (b) the sale transaction with Qwest and (b) the Sale to XO.
- Reviewed, prepared and negotiated multiple drafts of plan term sheets and the plan of reorganization and disclosure statement with respect thereto premised on, among others, (a) a stand-alone restructuring, (b) the sale transaction with Qwest and (b) the Sale to XO.

- Prepared, and negotiated the terms of, several assets purchase agreements with certain bidders or potential bidders, including an asset purchase agreement with Qwest and the XO Purchase Agreement.
- Prepared and filed the Sale and Bidding Procedures Motion, responded to numerous objections thereto and obtained Court approval of the bidding procedures.
- Prepared for, attended and participated in the Auction.
- Participated in numerous office and telephone conferences with the Debtors, their financial advisors and Togut Segal & Segal LLP regarding preparation of responses to objections to the Sale filed by certain creditor constituencies, individual creditors and other parties in interest (collectively, the “Sale Objections”).
- Responded to the Sale Objections, obtained Court approval of the Sale to XO and negotiated the terms the proposed form of order approving the Sale to XO.
- Prepared and filed a supplement (the “Exclusivity Supplement”) to the Debtors’ motion to extend their exclusive periods (the “Exclusive Periods”) for filing a plan and soliciting acceptances thereof (the “Exclusivity Motion”), in which the Debtors requested extensions of the Exclusive Periods beyond the dates originally set forth in the Exclusivity Motion.
- Negotiated several consensual adjournments of the hearing on the Exclusivity Motion and a consensual extension of the Exclusive Periods with the Committee and the Prepetition Lenders.
- Obtained Court approval of the Exclusivity Motion, as modified by the Exclusivity Supplement.

m. Retention of Professionals

- Analyzed and responded to the Committee’s objection (the “Impala Objection”) to the application to retain Impala Partners, LLC (“Impala”) as a restructuring advisor to the Debtors, and obtained Court approval of the Debtors’ retention of Impala.
- Prepared for and participated in depositions regarding the Impala Objection.
- Prepared and filed pleadings to retain Swidler Berlin Shereff Friedman, LLP (“Swidler”), as the Debtors’ special regulatory counsel, and obtained Court approval of thereof.

- Engaged in discussions with the U.S. Trustee and Swidler regarding certain additional disclosures regarding client representations by Swidler in connection with Swidler's retention.
- Reviewed applications of the Committee to retain (a) Kelley Drye & Warren LLP, as special counsel to the Committee, and (b) Bilzin Sumberg Baena Price & Axelrod LLP, as special "conflicts" counsel to the Committee, and participated in telephone conferences with the Committee regarding such retention applications.

n. Use/Sale/Lease of Property/Abandonment

- Prepared and filed several motions regarding abandonment of personal property by the Debtors.
- Participated in telephone conferences with the Debtors and certain of their professionals regarding expressions of interest with respect to a potential sale of substantially all of the assets of Hosting.com, Inc. and certain related Debtors (the "Hosting Sale").
- Engaged in negotiations with parties in interest in connection with the Hosting Sale and prepared pertinent documents in connection therewith.

o. Utilities

- Reviewed the motion of certain utility companies to (a) vacate, pursuant to Bankruptcy Rule 9024, an order deeming utilities adequately assured of future performance and establishing procedures for determining requests for additional adequate assurances and (b) determine adequate assurance of future payment, and participated in telephone conferences with Togut, Segal & Segal LLP regarding objecting thereto.

20. The foregoing professional services rendered by K&E on behalf of the Debtors and their estates during the Compensation Period (as described in greater detail in the records furnished to the Court and the U.S. Trustee as set forth in paragraph 8 herein) were reasonable, necessary and appropriate to the administration of the Debtors' chapter 11 cases and related matters. The professional services performed by K&E were in the best interests of the Debtors, their estates, their creditors and other parties in interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance, magnitude, deadlines and nature of the problems, issues or tasks involved. Additionally, the professional

services for which compensation is sought herein were performed expeditiously and in an efficient manner.

21. The great majority of the services performed by partners and associates of K&E were rendered by K&E's Restructuring, Insolvency, Workout & Bankruptcy Group. K&E has a preeminent practice in this area and enjoys a national and international reputation for its expertise in financial reorganizations and restructurings of troubled companies, with approximately 90 attorneys specializing in this area of law. The attorneys at K&E have represented either the debtor or the creditors' committee, or have acted as special counsel, in such chapter 11 cases as NRG Energy, Inc., Conseco, United Airlines, AT&T Latin America Corporation, Williams Communications, Combustion Engineering, Trans World Airlines, Exide Technologies, Polymer Group, Iridium, Telegroup, Chiquita Brands, Dade Behring, United Artists Theatre Company, Babcock & Wilcox, W.R. Grace, USG Corporation, Quality Stores, Armstrong World Industries, AmeriServe Food Distributors, Harnischfeger Industries, Gaylord Container, Teligent, Maruko, Carolco Pictures, Store of Knowledge, Zenith Electronics Corporation, and Dow Corning Corporation. As a consequence, K&E brings to these chapter 11 cases a particularly high level of expertise, which inured to the benefit of the Debtors, their estates, and all parties in interest.

22. The complexity of these chapter 11 cases and the Debtors' business operations require professional expertise beyond the traditional bankruptcy practice area. Thus, a core K&E restructuring team providing services to the Debtors' in these chapter 11 cases, which is comprised of approximately 6 attorneys from K&E's Restructuring, Insolvency, Workout & Bankruptcy Group, has consulted K&E attorneys from other practice areas so as to

assist with a multitude of corporate, intellectual property, labor and employee benefits, litigation and tax matters on behalf of the Debtors and their estates.

23. K&E advised and assisted the Debtors in every phase of these chapter 11 cases during the Compensation Period. To this end, as set forth in detail in Exhibit "B", approximately 80 K&E partners, counsel, associates and paraprofessionals from various K&E practice groups expended almost 7,980 hours during the Compensation Period rendering professional services on behalf of the Debtors and their estates.

24. During the Compensation Period, K&E's hourly billing rates for attorneys ranged from \$225 to \$695. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$422 (based on 6,762.30 recorded attorney hours at K&E's regular billing rates in effect at the time of the performance of services). The fees charged by K&E in these cases are billed in accordance with its existing billing rates and procedures in effect during the Compensation Period. The rates K&E charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates K&E charges for professional and paraprofessional services rendered in comparable non-bankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive national legal market.

ACTUAL AND NECESSARY EXPENSES INCURRED BY K&E

25. As set forth in Exhibit "C" and Exhibit "D" annexed hereto, K&E has incurred \$159,307.02 in expenses on behalf of the Debtors in providing professional services during the Compensation Period. K&E makes the following representations: K&E charges \$.10-.15 per page for internal copying charges; K&E charges for external copying charges at the provider's cost without markup; and K&E charges for computer research at the provider's cost

without markup. The basis for these rates is K&E's calculation of the actual cost of these services. Each of these categories of expenses does not exceed and, in some instances, is well below the maximum rate set by the Guidelines. These charges are intended to cover K&E's direct operating costs, which costs are not incorporated into the K&E hourly billing rates. Only clients who actually use services of the types set forth in Exhibit "C" and Exhibit "D" are separately charged for such services. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and other facilities and services.

26. The time constraints imposed by the circumstances of these chapter 11 cases have required K&E attorneys and other employees to devote time during the evenings and on weekends to perform legal services on behalf of the Debtors. These extraordinary services were essential to meet deadlines, timely respond to inquiries on a daily basis from various creditors and other parties in interest, and satisfy the demands of the Debtors' businesses and the orderly administration of their estates. Consistent with firm policy, as further disclosed in the K&E retention application, attorneys and other K&E employees who worked late in the evenings or on weekends were reimbursed for their reasonable meal and transportation costs. K&E's regular practice is not to include components for those charges in overhead when establishing billing rates, but rather to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of legal services. The reimbursement amounts do not exceed those set forth in the Guidelines.

27. In addition, due to the location of the Debtors' businesses, creditors, and other parties in interest in relation to K&E's offices, frequent long distance telephone calls were required. On many occasions, overnight delivery of documents and other materials was required

as a result of the exigencies and circumstances of these cases. The disbursements for such services are not included in K&E's overhead for the purpose of setting billing rates, and K&E has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were necessary, reasonable, and justified under the circumstances to serve the needs of the Debtors in these chapter 11 cases.

THE REQUESTED COMPENSATION SHOULD BE ALLOWED

28. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 of the Bankruptcy Code to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 of the Bankruptcy Code provides that a court may award a professional employed under section 327 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Section 330 of the Bankruptcy Code also sets forth the criteria for the award of such compensation and reimbursement. Specifically, Section 330(a)(3) of the Bankruptcy Code provides:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, extent, and the value of such services, taking into account all relevant factors, including --

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

29. In the instant case, K&E respectfully submits that the services for which it seeks compensation in this Application were, at the time rendered, believed to be necessary for and beneficial to the Debtors and their estates, and were rendered in order to protect and preserve the Debtors' estates during the pendency of these chapter 11 cases. The services rendered to the Debtors were performed economically, effectively and efficiently, and the results obtained to date have benefited not only the Debtors, but also the Debtors' estates and the unsecured creditor body as a whole. Accordingly, the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Debtors, their estates, and all parties in interest.

30. K&E attorneys and paraprofessionals spent a total of 7,979.20 hours during the Compensation Period, which services have a fair market value of \$3,025,818.50. As demonstrated by this Application and the exhibits attached hereto, K&E spent its time economically and without unnecessary duplication. In addition, the work conducted was carefully assigned to appropriate professionals or paraprofessionals according to the experience and level of expertise required for each particular task.

31. The services provided by K&E during the Compensation Period conferred significant value on the Debtors, their estates and creditors. Specifically, as set forth above, K&E's attorneys successfully negotiated the pending Sale to XO, which provided the Debtors' estates and creditors with \$311.2 million in cash and 45.38 million shares of XO's common stock. The Auction, which resulted in the Sale, was conducted by K&E and the Debtors' financial advisors and lasted almost twenty-four hours.

32. In addition, as a result of extensive negotiations, K&E prepared and filed the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated March 18, 2004, and the related disclosure statement, both of which were *fully supported* by the

Committee and the Prepetition Lenders. Finally, K&E successfully negotiated a consensual resolution of a complex dispute with Level 3. This settlement, which has been approved by this Court, enabled the Debtors to avoid the significant costs of a highly complex, time consuming and technical litigation and resulted in Level 3 paying \$54 million in cash to the Debtors.

33. In sum, the services rendered by K&E were necessary and beneficial to the Debtors and their estates, and were consistently performed in a timely manner commensurate with the complexity, importance, novelty, and nature of the issues involved. Accordingly, approval of the compensation sought herein is warranted.

MEMORANDUM OF LAW

34. K&E respectfully submits that the relevant legal authorities are set forth herein and that this Application presents no novel issues of law. Thus, K&E respectfully submits that this Application satisfies the requirement set forth in rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be filed in support of this Application.

NOTICE

35. No trustee or examiner has been appointed in these chapter 11 cases. Notice of the Application has been provided to: (a) the U.S. Trustee; (b) attorneys for the Committee; and (c) attorneys for the Prepetition Lenders. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

CONCLUSION

WHEREFORE, K&E respectfully requests entry of an order (i) allowing and awarding interim compensation for professional services rendered during the Compensation Period in the amount of \$3,025,818.50 and reimbursement for actual and necessary expenses incurred by K&E during the Compensation Period in the amount of \$159,307.52, without prejudice to K&E's right to seek additional compensation for services performed and expenses incurred during the Compensation Period not processed at the time of this Application; and (ii) granting K&E such other and further relief as is just and proper.

Dated: New York, New York
April 8, 2004

Respectfully submitted,

/s/ Matthew A. Cantor

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