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SPECIAL COUNSEL FOR THE DEBTORS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: § Case No. 04-81694-HDH-11
§
VARTEC TELECOM, INC., et al., §
§ Hearing: Fee Applications
Debtors. § December 29, 2005 at 9:00 a.m.

FEE APPLICATION COVER SHEET

Third Interim Fee Application of Kane, Russell, Coleman & Logan, P.C.

Time Period: July 1, 2005 through October 31, 2005

Capacity: Special Counsel for the Debtors

Chapter: 11

Current Fee Application:

Amount Requested:

Reductions:

Fees: \$223,928.50

Voluntary Reduction: \$ -0-

Expenses: \$9,132.19

Voluntary Expense Reduction: \$ -0-

Total: \$233,060.69

Prior Fee Applications:

First Interim Fee Application

Amount Requested:

Fees: \$149,007.50

Expenses: \$8,463.63

Total: \$157,471.13

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Voluntary Reduction: \$48.00

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Second Interim Fee Application

Amount Requested:

Fees: \$157,028.50

Expenses: \$4,816.78

Total: \$161,845.28

Reductions:

Voluntary Reduction: \$ 250.00

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Expenses:

WestLaw/Lexis/Online Research: \$

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Faxing Per page:

(a) Local: 0.50¢

(b) Long Distance: 0.75¢

(c) Receipt of faxes: No charge

Hourly Rates: Attorney

Paralegal:

Highest Rate: \$400.00 per hour

\$125.00 per hour

Hours Billed: 685.9

89.3

Average: \$313.69 per hour

\$98.19 per hour

/s/ Michael L. Scanlon
Signature:

December 2, 2005
Date:

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	§	(Jointly Administered)
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**THIRD INTERIM APPLICATION OF KANE, RUSSELL,
COLEMAN & LOGAN, P.C., SPECIAL COUNSEL FOR THE DEBTORS FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
DECEMBER 29, 2005 AT 9:00 A.M. BEFORE JUDGE HARLIN D. HALE
AT THE UNITED STATES BANKRUPTCY COURT, 1100 COMMERCE
STREET, DALLAS, TEXAS 75242.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST
RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH
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THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF
REQUESTED.**

Kane, Russell, Coleman & Logan, P.C. ("KRCL" or "Applicant"), Special Counsel for
Vartec Telecom, Inc., and its affiliated entities (collectively, the "Debtors") in the above-
numbered and styled jointly administered bankruptcy proceeding, files this *Third Interim
Application for Allowance of Compensation and Reimbursement of Expenses* (the

"Application"). In support of the Application, the Applicant would respectfully show the Court as follows:

CASE BACKGROUND

1. This Court has jurisdiction over the subject matter of this Application pursuant to the provisions of 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(B) and (O). This Application is filed pursuant to 11 U.S.C. §§ 331 and 503(b)(2) and Rule 2016 of the Federal Rules of Bankruptcy Procedure.

2. The Chapter 11 cases of the Debtors were commenced by the filing of each Debtor's respective voluntary petition under Chapter 11 of Title 11 of the United States Code (hereinafter the "Bankruptcy Code") on or about November 1, 2004 (the "Petition Date"). Since the Petition Date, the Debtors have managed their property and operated their businesses as debtors-in-possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code.

EMPLOYMENT/RETAINER INFORMATION

3. On or about November 18, 2004, the Debtors filed the *Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Application") [Docket No. 226].

4. On December 3, 2004, this Court entered its *Final Order Approving Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Order") [Docket No. 455].

5. The terms of KRCL's employment as special counsel to the Debtors are outlined in the Employment Application and in two amended employment applications [Docket Nos. 1348, 1485, and 1936], and the Court's orders thereon.

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CURRENT FEE APPLICATION PERIOD

7. From July 1, 2005 through October 31, 2005 (the "Third Interim Application Period") the Applicant has expended a total of 775.2 hours of attorney and paralegal time in conjunction with service as special counsel to the Debtors. Total fees for the Third Interim Application Period are \$223,928.50. Costs and expenses advanced by Applicant on behalf of the Debtors during the Third Interim Application Period total \$9,132.19.

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9. Applicant seeks interim allowance of compensation for services performed and reimbursement of expenses incurred in connection with service as special counsel to the Debtors in this proceeding during the Third Interim Application Period. A summary setting forth the

monthly total of hours worked by attorneys and paralegals for whom compensation is sought and the standard hourly rates charged for their services during the Third Interim Application Period is attached Exhibit "A."

10. Monthly invoices for the Third Interim Application Period, showing time and expenses incurred for which compensation has not been received are attached hereto as Exhibit "B." The invoices comprising Exhibit "B" are generated by Applicant in the ordinary course of its business and are compiled from manually prepared daily time sheets submitted generally on a contemporaneous basis by the attorneys and paralegals employed by KRCL. Exhibit "B" contains a detailed listing of all services performed as special counsel to the Debtors by KRCL, the time spent and dates on which those services were performed, the attorneys and paralegals who performed the services, and rates charged during the Third Interim Application Period. KRCL seeks allowance of all fees and expenses incurred on behalf of the Debtors during the Third Interim Application Period.

11. Pursuant to the guidelines promulgated by the United States Trustee Office on March 22, 1995, Applicant has prepared a Project Summary indicating the hours spent and cost of services in regard to specific subject areas or matters of the case, which is attached as Exhibit "C."

12. Applicant requests the Court award as interim compensation the total sum of \$233,060.69 for services rendered and expenses incurred from July 1, 2005 through October 31, 2005, and requests the Court order the Debtors to pay all amounts not previously paid in accordance with the previously submitted Monthly Fee Statements.

EVALUATION STANDARDS

13. The fees and expenses requested by this Application are an appropriate award for KRCL's services in acting as special counsel for the Debtors in connection with this jointly administered bankruptcy case. Accordingly, they should be granted in the amounts requested herein.

A. LODESTAR RULE

14. The United States Supreme Court has stated its preference for the "lodestar" approach in determining allowable attorney fees. *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 106 S.Ct. 3088 (1986). The *Delaware Valley* case approved a two-step method of computing legal fees, which has come to be known as the "lodestar" method. The "lodestar" is determined by multiplying the number of attorney hours reasonably expended by a reasonable hourly fee rate. The "lodestar" derived through this calculation is presumed to be the reasonable fee to which counsel is entitled. *Blum v. Stenson*, 465 U.S. 886 (1984).

15. In adopting Bankruptcy Code Section 330, Congress intended a retreat from doctrines that strictly limited fee awards to bankruptcy counsel to less than what attorneys might have received for services of the same professional quality in non-bankruptcy cases. *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 690 (9th Cir. 1988). In so holding, the *Manoa* court relied on the legislative history of section 330 and the express policy of that section:

To compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11.

Id. at 690 (quoting 124 Cong.Rec 33, 994 (1978), reprinted in 1978 U.S.Code Cong. & Admin.News 6505, 6511 (remarks of Sen. DeConcini in introducing an amendment to section 330)).

16. Congress intended courts to rely on the prevailing market as the ultimate arbiter of appropriate fees. *See In re Busy Beaver Building Center, Inc.*, 19 F.3d 833 (3rd Cir. 1994) (noting that, under section 330(a), "the court should carefully consider relevant, competent evidence submitted with the fee application, provided as a supplement to the fee application, or presented at the hearing. . .even if the evidence directly contradicts the court's own judgment"). *See also In re Continental Illinois Securities Litigation*, 962 F.2d 566, 568 (7th Cir. 1992), in which Judge Posner overruled the district court's refusal to allow fees at the market rate on the grounds that:

[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order.

962 F.2d at 568 (emphasis added); *see also In re JEF SABA, Inc.*, 172 B.R. 786 (Bankr. E.D.Pa. 1994); *In re Rothman*, 206 B.R. 99 (Bankr. E.D.Pa. 1997).

17. As these courts have recognized, the congressional mandate is clear. Under section 330(a), bankruptcy professionals must be compensated at rates commensurate with non-bankruptcy professionals. As the *Busy Beaver* court noted in allowing paralegal fees under section 330(a) that would be otherwise payable in the non-bankruptcy market:

Congress has unmistakably and expressly made a policy choice favoring full compensation for [professionals] over greater proportionate compensation to the debtor's creditors, and when in our constitutional republic a statute is constitutional, courts are not at liberty to substitute their favored policies for those Congress enacts, no matter how unwise the court finds them to be.

Busy Beaver, 19 F.3d at 851. Consequently, the fees requested in this case by KRCL should be allowed at those rates ordinarily billed by its professionals.

18. After the determination of the "lodestar," the Court may make adjustments to the "lodestar," but adjustments are proper in "rare" and "exceptional" cases. *Id.* at 898-901. Because

of the emphasis on the amount of attorney time expended, the "lodestar" approach provides a more analytical framework than the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). In fact, many of the *Johnson* factors, including the "novelty and complexity of the issues," "the special skill and experience of counsel," the "quality of representation," and the "results obtained" are normally reflected in the "lodestar" approach.

19. In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Court set forth the following guidelines for the determination of a reasonable fee:

Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are more excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client are not properly billed to one's adversary pursuant to statutory authority." *Copeland v. Marshall*, 205 U.S. App. D.C. 390, 401, 641 F.2d 880, 891 (1980) (en banc) (emphasis omitted).

103 S. Ct. at 1933, 76 L. Ed.2d 40. The *Hensley* Court indicated that the court may also evaluate each case's facts in relation to the *Johnson* factors, although many of these factors are subsumed in the "lodestar" calculation.

20. This case presents numerous novel and complex issues which require the special skills and experience of Applicant's members. Because of its members' skills and experience, Applicant believes it has minimized fees and other expenses incurred while serving as special counsel to the Debtors. Applicant has expended a total of 775.2 hours in time and labor serving as special counsel to the Debtors in this case. Applicant maintains the "lodestar" value for the Third Interim Application Period is \$223,928.50.

B. FIRST COLONIAL FACTORS

21. Applicant's fees and expenses are also justified under the criteria set forth in *Johnson* and in *In re First Colonial Corp.*, 544 F.2d 1291 (5th Cir. 1977). A brief statement with regard to each of the 12 elements set out in the *Johnson* case follows:

a. **The time and labor required:** Applicant has expended a total of 775.2 hours in serving as special counsel to the Debtors during the Third Interim Application Period. Applicant has incurred \$223,928.50 in legal fees in the representation of the Debtors during the Third Interim Application Period. The time and hourly billing rate of each attorney performing legal services on behalf of the Debtors are reflected in the summary attached hereto as Exhibit "A." A detailed description of the services rendered is provided in invoices attached as Exhibit "B." In order to better detail the hours billed to the Debtors, effective August 1, 2005, Applicant has specifically detailed time entries and expenses relating to the Unipoint matters on the invoices Exhibit "B" by utilizing matter number 43670.00004.000.

b. **The novelty and difficulty of questions:** Applicant represents to the Court that the legal questions encountered in representing the Debtors were of a specific, complex and specialized nature, requiring a high degree of analytical skill and understanding in obtaining the results that have been obtained to date. Specifically, matters addressed by the Applicant during the Third Interim Application Period include: (1) continued analysis of Debtors' contractual agreements with SBC; (2) advising the members of Debtors' management team regarding impact of the assumption/rejection of SBC contracts on the Debtors' estate and the impact of the same on the sale procedure proposed by the Debtors; (3) analysis and advising the Debtors' management team

concerning bankruptcy case issues arising in connection with certain rate litigation presently pending in Wisconsin state court; (4) research and analysis of setoff issues concerning the Debtors' contracts with SBC; (5) specific research, analysis and advising the Debtor regarding the contracts with Unipoint Holdings, Inc.; (6) matters relating to the rejection of certain circuit agreements with SBC; and (7) other matters relating to SBC and the recovery of assets for the Debtors.

c. **Skill requisite to perform services properly:** Applicant's law firm has members who have performed services on behalf of the Debtors who specialize in the practice of bankruptcy law. Because of their expertise and skill in this specialized area of law, Applicant believes more time could easily have been employed by less experienced counsel. The array of legal considerations presented in this proceeding and the prompt and skillful action taken to resolve those problems by Applicant required a meaningful degree of expertise and experience. Applicant's personnel were accordingly utilized as evidenced by Exhibit "B."

d. **Exclusion of other employment:** Applicant has not declined other employment, but has insured it has sufficient personnel to serve as special counsel to the Debtors in this case. Applicant does not believe this factor, the exclusion of other employment, by itself is meaningful to this Court's review of the Applicant's requested fees and expenses.

e. **Customary fees:** The fees applied for herein are equivalent to customary fees in other proceedings for similar services rendered and results to date. Applicant's cost structure minimizes expenses for two reasons:

i) costs charged are well below market; and

- ii) favorable rates from firm vendors further reduce costs.

These reasons are discussed in more detail below.

First, Applicant's internal cost structure is substantially below market. Applicant's firm charges fifteen cents per in-house copy, which is approximately ten cents below the normal market rate. This has resulted in a savings to the Debtors' estates. Further, Applicant charged seventy-five cents per page for sending long distance facsimiles, despite the telephone and related costs to the Applicant being at least equal to, and most likely in excess thereof. Despite customary charges by most law firms for receiving facsimiles, Applicant did not charge a fee for facsimiles received. As a result of Applicant's cost structure being significantly below market, these savings have been passed on to the estates.

Second, KRCL has taken steps to obtain volume-discount and exclusive-use vendor price reductions where possible in connection with this type of case. For example, KRCL specifically negotiated an outside copy rate of 7-9 cents per page for this type of case. Accordingly, KRCL's overall average copy charges applicable to this case result in savings of approximately 10-12 cents per page below market rates.

f. **Time limitations:** A summary of hours expended and the detailed description of the work performed during each of those hours is described in Exhibit "B" attached hereto. Acting as special counsel to the Debtors often required prompt and intensive action in many of the activities of the case.

g. **Amount involved and results obtained:** Applicant has been an active participant on behalf of the Debtors in these proceedings. Applicant has actively participated in the matters for which it was retained as special counsel, and continues the process of identifying issues relevant to this case.

h. **The experience, reputation and abilities of the attorneys:** Applicant would show that Joseph M. Coleman earned his law degree from Southern Methodist University in 1985 and has been practicing in the area of bankruptcy and creditors' rights since that time. Mr. Coleman practices in the area of bankruptcy throughout the country, having represented 23 unsecured creditors committee in 17 different courts over the preceding six years. Mr. Coleman has charged an hourly rate of \$400.00 per hour for all time billed during the Third Interim Application Period. Applicant believes Mr. Coleman's rate is reasonable and is justified in light of his experience and is well within local market rates. Similarly, other professionals of Applicant who rendered services to the Debtors during the Third Interim Application Period are well-qualified and skilled to perform the services required.

i. **Undesirability of the case:** Applicant does not feel the subject case or the representation of the Debtors as special counsel in this proceeding was "undesirable."

j. **The nature and length of the professional relationship with the client:** Applicant's relationship with the Debtors is a single event.

k. **Awards in similar cases:** Applicant believes that the fees requested herein are certainly reasonable and are less than or at least in line with fees for cases of similar difficulty and complexity.

APPLICANT REPRESENTATIONS

22. Applicant maintains the services rendered on behalf of the Debtors are of a reasonable value in the amount of \$223,928.50. Applicant further represents that the fees applied for are in conformity with fees allowed in similar proceedings for similar services rendered and results obtained. Applicant's expenses incurred on behalf of the Debtors are

reasonable and are of the kind and price normally charged to non-bankruptcy clients of KRCL. KRCL respectfully requests that the Court take judicial notice of the awards which have been made in similar proceedings in this Court and in other bankruptcy courts in the State of Texas.

23. Applicant has made no agreement for the sharing of compensation of expenses herein although such fees are shared by members of the firm according to the firm's agreement.

24. Applicant was at all times a "disinterested person" and has not represented or held an interest adverse to the estate on the matters on which it was employed in compliance with 11 U.S.C. § 327(a).

WHEREFORE, Applicant respectfully prays that the Court (1) allow the reasonable compensation for professional services rendered herein as special counsel for the Debtors in the sum of \$223,928.50 and for reimbursement of out-of-pocket expenses incurred herein as special counsel for the Debtors in the sum of \$9,132.19 for a total of \$233,060.69 for the Third Interim Application Period; (2) order the Debtors to make payment to Applicant of its previously unpaid fees and expenses, and (3) order such other and further relief as this Court deems just.

Dated: December 2, 2005

Respectfully submitted,

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

By: /s/ Michael L. Scanlon

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SPECIAL COUNSEL FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing *Third Interim Application of Kane, Russell, Coleman & Logan, P.C., Special Counsel for the Debtors for Allowance of Compensation and Reimbursement of Expenses* was served via the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas on December 2, 2005. This is also to certify that the foregoing document was served via First Class United States Mail, postage pre-paid, on the parties listed below this 2nd day of December, 2005.

Mr. Michael G. Hoffman
VarTec Telecom, Inc.
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Carrollton, TX 75006

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2001 Ross Avenue
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Michael J. Collins
Bickel & Brewer
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201

/s/ Michael L. Scanlon

Michael L. Scanlon

SUMMARY OF EXHIBITS

Exhibit "A" – Billing Summary

Exhibit "B" – Monthly Invoices

Exhibit "C" – Project Summary

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11. Pursuant to the guidelines promulgated by the United States Trustee Office on March 22, 1995, Applicant has prepared a Project Summary indicating the hours spent and cost of services in regard to specific subject areas or matters of the case, which is attached as Exhibit "C."

12. Applicant requests the Court award as interim compensation the total sum of \$233,060.69 for services rendered and expenses incurred from July 1, 2005 through October 31, 2005, and requests the Court order the Debtors to pay all amounts not previously paid in accordance with the previously submitted Monthly Fee Statements.

EVALUATION STANDARDS

13. The fees and expenses requested by this Application are an appropriate award for KRCL's services in acting as special counsel for the Debtors in connection with this jointly administered bankruptcy case. Accordingly, they should be granted in the amounts requested herein.

A. LODESTAR RULE

14. The United States Supreme Court has stated its preference for the "lodestar" approach in determining allowable attorney fees. *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 106 S.Ct. 3088 (1986). The *Delaware Valley* case approved a two-step method of computing legal fees, which has come to be known as the "lodestar" method. The "lodestar" is determined by multiplying the number of attorney hours reasonably expended by a reasonable hourly fee rate. The "lodestar" derived through this calculation is presumed to be the reasonable fee to which counsel is entitled. *Blum v. Stenson*, 465 U.S. 886 (1984).

15. In adopting Bankruptcy Code Section 330, Congress intended a retreat from doctrines that strictly limited fee awards to bankruptcy counsel to less than what attorneys might have received for services of the same professional quality in non-bankruptcy cases. *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 690 (9th Cir. 1988). In so holding, the *Manoa* court relied on the legislative history of section 330 and the express policy of that section:

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16. Congress intended courts to rely on the prevailing market as the ultimate arbiter of appropriate fees. *See In re Busy Beaver Building Center, Inc.*, 19 F.3d 833 (3rd Cir. 1994) (noting that, under section 330(a), "the court should carefully consider relevant, competent evidence submitted with the fee application, provided as a supplement to the fee application, or presented at the hearing. . .even if the evidence directly contradicts the court's own judgment"). *See also In re Continental Illinois Securities Litigation*, 962 F.2d 566, 568 (7th Cir. 1992), in which Judge Posner overruled the district court's refusal to allow fees at the market rate on the grounds that:

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of the emphasis on the amount of attorney time expended, the "lodestar" approach provides a more analytical framework than the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). In fact, many of the *Johnson* factors, including the "novelty and complexity of the issues," "the special skill and experience of counsel," the "quality of representation," and the "results obtained" are normally reflected in the "lodestar" approach.

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20. This case presents numerous novel and complex issues which require the special skills and experience of Applicant's members. Because of its members' skills and experience, Applicant believes it has minimized fees and other expenses incurred while serving as special counsel to the Debtors. Applicant has expended a total of 775.2 hours in time and labor serving as special counsel to the Debtors in this case. Applicant maintains the "lodestar" value for the Third Interim Application Period is \$223,928.50.

B. FIRST COLONIAL FACTORS

21. Applicant's fees and expenses are also justified under the criteria set forth in *Johnson* and in *In re First Colonial Corp.*, 544 F.2d 1291 (5th Cir. 1977). A brief statement with regard to each of the 12 elements set out in the *Johnson* case follows:

a. **The time and labor required:** Applicant has expended a total of 775.2 hours in serving as special counsel to the Debtors during the Third Interim Application Period. Applicant has incurred \$223,928.50 in legal fees in the representation of the Debtors during the Third Interim Application Period. The time and hourly billing rate of each attorney performing legal services on behalf of the Debtors are reflected in the summary attached hereto as Exhibit "A." A detailed description of the services rendered is provided in invoices attached as Exhibit "B." In order to better detail the hours billed to the Debtors, effective August 1, 2005, Applicant has specifically detailed time entries and expenses relating to the Unipoint matters on the invoices Exhibit "B" by utilizing matter number 43670.00004.000.

b. **The novelty and difficulty of questions:** Applicant represents to the Court that the legal questions encountered in representing the Debtors were of a specific, complex and specialized nature, requiring a high degree of analytical skill and understanding in obtaining the results that have been obtained to date. Specifically, matters addressed by the Applicant during the Third Interim Application Period include: (1) continued analysis of Debtors' contractual agreements with SBC; (2) advising the members of Debtors' management team regarding impact of the assumption/rejection of SBC contracts on the Debtors' estate and the impact of the same on the sale procedure proposed by the Debtors; (3) analysis and advising the Debtors' management team

concerning bankruptcy case issues arising in connection with certain rate litigation presently pending in Wisconsin state court; (4) research and analysis of setoff issues concerning the Debtors' contracts with SBC; (5) specific research, analysis and advising the Debtor regarding the contracts with Unipoint Holdings, Inc.; (6) matters relating to the rejection of certain circuit agreements with SBC; and (7) other matters relating to SBC and the recovery of assets for the Debtors.

c. **Skill requisite to perform services properly:** Applicant's law firm has members who have performed services on behalf of the Debtors who specialize in the practice of bankruptcy law. Because of their expertise and skill in this specialized area of law, Applicant believes more time could easily have been employed by less experienced counsel. The array of legal considerations presented in this proceeding and the prompt and skillful action taken to resolve those problems by Applicant required a meaningful degree of expertise and experience. Applicant's personnel were accordingly utilized as evidenced by Exhibit "B."

d. **Exclusion of other employment:** Applicant has not declined other employment, but has insured it has sufficient personnel to serve as special counsel to the Debtors in this case. Applicant does not believe this factor, the exclusion of other employment, by itself is meaningful to this Court's review of the Applicant's requested fees and expenses.

e. **Customary fees:** The fees applied for herein are equivalent to customary fees in other proceedings for similar services rendered and results to date. Applicant's cost structure minimizes expenses for two reasons:

i) costs charged are well below market; and

- ii) favorable rates from firm vendors further reduce costs.

These reasons are discussed in more detail below.

First, Applicant's internal cost structure is substantially below market. Applicant's firm charges fifteen cents per in-house copy, which is approximately ten cents below the normal market rate. This has resulted in a savings to the Debtors' estates. Further, Applicant charged seventy-five cents per page for sending long distance facsimiles, despite the telephone and related costs to the Applicant being at least equal to, and most likely in excess thereof. Despite customary charges by most law firms for receiving facsimiles, Applicant did not charge a fee for facsimiles received. As a result of Applicant's cost structure being significantly below market, these savings have been passed on to the estates.

Second, KRCL has taken steps to obtain volume-discount and exclusive-use vendor price reductions where possible in connection with this type of case. For example, KRCL specifically negotiated an outside copy rate of 7-9 cents per page for this type of case. Accordingly, KRCL's overall average copy charges applicable to this case result in savings of approximately 10-12 cents per page below market rates.

f. **Time limitations:** A summary of hours expended and the detailed description of the work performed during each of those hours is described in Exhibit "B" attached hereto. Acting as special counsel to the Debtors often required prompt and intensive action in many of the activities of the case.

g. **Amount involved and results obtained:** Applicant has been an active participant on behalf of the Debtors in these proceedings. Applicant has actively participated in the matters for which it was retained as special counsel, and continues the process of identifying issues relevant to this case.

h. **The experience, reputation and abilities of the attorneys:** Applicant would show that Joseph M. Coleman earned his law degree from Southern Methodist University in 1985 and has been practicing in the area of bankruptcy and creditors' rights since that time. Mr. Coleman practices in the area of bankruptcy throughout the country, having represented 23 unsecured creditors committee in 17 different courts over the preceding six years. Mr. Coleman has charged an hourly rate of \$400.00 per hour for all time billed during the Third Interim Application Period. Applicant believes Mr. Coleman's rate is reasonable and is justified in light of his experience and is well within local market rates. Similarly, other professionals of Applicant who rendered services to the Debtors during the Third Interim Application Period are well-qualified and skilled to perform the services required.

i. **Undesirability of the case:** Applicant does not feel the subject case or the representation of the Debtors as special counsel in this proceeding was "undesirable."

j. **The nature and length of the professional relationship with the client:** Applicant's relationship with the Debtors is a single event.

k. **Awards in similar cases:** Applicant believes that the fees requested herein are certainly reasonable and are less than or at least in line with fees for cases of similar difficulty and complexity.

APPLICANT REPRESENTATIONS

22. Applicant maintains the services rendered on behalf of the Debtors are of a reasonable value in the amount of \$223,928.50. Applicant further represents that the fees applied for are in conformity with fees allowed in similar proceedings for similar services rendered and results obtained. Applicant's expenses incurred on behalf of the Debtors are

reasonable and are of the kind and price normally charged to non-bankruptcy clients of KRCL. KRCL respectfully requests that the Court take judicial notice of the awards which have been made in similar proceedings in this Court and in other bankruptcy courts in the State of Texas.

23. Applicant has made no agreement for the sharing of compensation of expenses herein although such fees are shared by members of the firm according to the firm's agreement.

24. Applicant was at all times a "disinterested person" and has not represented or held an interest adverse to the estate on the matters on which it was employed in compliance with 11 U.S.C. § 327(a).

WHEREFORE, Applicant respectfully prays that the Court (1) allow the reasonable compensation for professional services rendered herein as special counsel for the Debtors in the sum of \$223,928.50 and for reimbursement of out-of-pocket expenses incurred herein as special counsel for the Debtors in the sum of \$9,132.19 for a total of \$233,060.69 for the Third Interim Application Period; (2) order the Debtors to make payment to Applicant of its previously unpaid fees and expenses, and (3) order such other and further relief as this Court deems just.

Dated: December 2, 2005

Respectfully submitted,

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

By: /s/ Michael L. Scanlon

Joseph M. Coleman
State Bar No. 04566100
Michael L. Scanlon
State Bar No. 17707500

1601 Elm Street
3700 Thanksgiving Tower
Dallas, Texas 75201
Telephone: (214) 777-4200
Telecopy: (214) 777-4299

SPECIAL COUNSEL FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing *Third Interim Application of Kane, Russell, Coleman & Logan, P.C., Special Counsel for the Debtors for Allowance of Compensation and Reimbursement of Expenses* was served via the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas on December 2, 2005. This is also to certify that the foregoing document was served via First Class United States Mail, postage pre-paid, on the parties listed below this 2nd day of December, 2005.

Mr. Michael G. Hoffman
VarTec Telecom, Inc.
2440 Marsh Lane
Carrollton, TX 75006

Daniel C. Stewart
William L. Wallander
Vinson & Elkins, LLP
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201

Toby L. Gerber
Fulbright & Jaworski, LLP
2200 Ross Avenue; Suite 2800
Dallas, Texas 75201

Office of the United States Trustee
1100 Commerce Street; Room 976
Dallas, Texas 75242

Stephen A. Goodwin
Carrington, Coleman, Sloman &
Blumenthal, LLP
200 Crescent Court; Suite 1500
Dallas, Texas 75201

John K. Cunningham
Craig H. Averch
White & Case LLP
200 South Biscayne Boulevard
Miami, Florida 33131

Michael J. Collins
Bickel & Brewer
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201

/s/ Michael L. Scanlon
Michael L. Scanlon

SUMMARY OF EXHIBITS

Exhibit "A" – Billing Summary

Exhibit "B" – Monthly Invoices

Exhibit "C" – Project Summary

Joseph M. Coleman
State Bar No. 04566100
Michael L. Scanlon
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Telephone: (214) 777-4200
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SPECIAL COUNSEL FOR THE DEBTORS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: § Case No. 04-81694-HDH-11
§
VARTEC TELECOM, INC., et al., §
§ Hearing: Fee Applications
Debtors. § December 29, 2005 at 9:00 a.m.

FEE APPLICATION COVER SHEET

Third Interim Fee Application of Kane, Russell, Coleman & Logan, P.C.

Time Period: July 1, 2005 through October 31, 2005

Capacity: Special Counsel for the Debtors

Chapter: 11

Current Fee Application:

Amount Requested:

Reductions:

Fees: \$223,928.50

Voluntary Reduction: \$ -0-

Expenses: \$9,132.19

Voluntary Expense Reduction: \$ -0-

Total: \$233,060.69

Prior Fee Applications:

First Interim Fee Application

Amount Requested:

Fees: \$149,007.50

Expenses: \$8,463.63

Total: \$157,471.13

Reductions:

Voluntary Reduction: \$48.00

Voluntary Expense Reduction: \$ -0-

Second Interim Fee Application

Amount Requested:

Fees: \$157,028.50

Expenses: \$4,816.78

Total: \$161,845.28

Reductions:

Voluntary Reduction: \$ 250.00

Voluntary Expense Reduction: \$ -0-

Expenses:

WestLaw/Lexis/Online Research: \$

Copies per page:

(a) Internal: 0.15 ¢

(b) Outside: 0.07¢ to 0.14¢

Faxing Per page:

(a) Local: 0.50¢

(b) Long Distance: 0.75¢

(c) Receipt of faxes: No charge

Hourly Rates: Attorney

Paralegal:

Highest Rate: \$400.00 per hour

\$125.00 per hour

Hours Billed: 685.9

89.3

Average: \$313.69 per hour

\$98.19 per hour

/s/ Michael L. Scanlon
Signature:

December 2, 2005
Date:

Joseph M. Coleman
State Bar No. 04566100
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In re:	§	Case No. 04-81694-HDH-11
	§	(Jointly Administered)
VARTEC TELECOM, INC., et al.,	§	
	§	Hearing: Fee Applications
Debtors.	§	December 29, 2005 at 9:00 a.m.

**THIRD INTERIM APPLICATION OF KANE, RUSSELL,
COLEMAN & LOGAN, P.C., SPECIAL COUNSEL FOR THE DEBTORS FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
DECEMBER 29, 2005 AT 9:00 A.M. BEFORE JUDGE HARLIN D. HALE
AT THE UNITED STATES BANKRUPTCY COURT, 1100 COMMERCE
STREET, DALLAS, TEXAS 75242.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST
RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH
PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED
BY THE COURT, YOU MUST FILE YOUR RESPONSES WITH THE
CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS
FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU
MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO
SENT YOU THE NOTICE, OTHERWISE THE COURT MAY TREAT
THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF
REQUESTED.**

Kane, Russell, Coleman & Logan, P.C. ("KRCL" or "Applicant"), Special Counsel for
Vartec Telecom, Inc., and its affiliated entities (collectively, the "Debtors") in the above-
numbered and styled jointly administered bankruptcy proceeding, files this *Third Interim
Application for Allowance of Compensation and Reimbursement of Expenses* (the

"Application"). In support of the Application, the Applicant would respectfully show the Court as follows:

CASE BACKGROUND

1. This Court has jurisdiction over the subject matter of this Application pursuant to the provisions of 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(B) and (O). This Application is filed pursuant to 11 U.S.C. §§ 331 and 503(b)(2) and Rule 2016 of the Federal Rules of Bankruptcy Procedure.

2. The Chapter 11 cases of the Debtors were commenced by the filing of each Debtor's respective voluntary petition under Chapter 11 of Title 11 of the United States Code (hereinafter the "Bankruptcy Code") on or about November 1, 2004 (the "Petition Date"). Since the Petition Date, the Debtors have managed their property and operated their businesses as debtors-in-possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code.

EMPLOYMENT/RETAINER INFORMATION

3. On or about November 18, 2004, the Debtors filed the *Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Application") [Docket No. 226].

4. On December 3, 2004, this Court entered its *Final Order Approving Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Order") [Docket No. 455].

5. The terms of KRCL's employment as special counsel to the Debtors are outlined in the Employment Application and in two amended employment applications [Docket Nos. 1348, 1485, and 1936], and the Court's orders thereon.

6. By further order of this Court, all professionals employed by the Debtors herein were to have provided monthly fee statements to other professionals on a monthly basis for review (the "Monthly Fee Statement"). After review of the Monthly Fee Statement, if no professional raised any objection to the Monthly Fee Statement as requested, the professional requesting payment was entitled to receive eighty percent (80%) of the fees requested and one hundred percent (100%) of the expenses incurred on said Monthly Fee Statement.

CURRENT FEE APPLICATION PERIOD

7. From July 1, 2005 through October 31, 2005 (the "Third Interim Application Period") the Applicant has expended a total of 775.2 hours of attorney and paralegal time in conjunction with service as special counsel to the Debtors. Total fees for the Third Interim Application Period are \$223,928.50. Costs and expenses advanced by Applicant on behalf of the Debtors during the Third Interim Application Period total \$9,132.19.

8. Applicant has requested a total of \$223,928.50 in fees and \$9,132.19 in expenses on account of its Monthly Fee Statements as previously presented to the other professionals employed by the Debtors' estate for their review and objection. To date, Applicant has submitted invoices as directed in this Court's order regarding interim compensation, seeking 80% of fees and 100% of expenses for the time period covered by this Third Interim Fee Application. By this Application, Applicant seeks compensation for and reimbursement of (i) the twenty percent (20%) "hold-back" of fees not previously paid by the Debtors; and (ii) full interim compensation for all outstanding fees and expenses billed during the Third Interim Fee Application Period.

9. Applicant seeks interim allowance of compensation for services performed and reimbursement of expenses incurred in connection with service as special counsel to the Debtors in this proceeding during the Third Interim Application Period. A summary setting forth the

monthly total of hours worked by attorneys and paralegals for whom compensation is sought and the standard hourly rates charged for their services during the Third Interim Application Period is attached Exhibit "A."

10. Monthly invoices for the Third Interim Application Period, showing time and expenses incurred for which compensation has not been received are attached hereto as Exhibit "B." The invoices comprising Exhibit "B" are generated by Applicant in the ordinary course of its business and are compiled from manually prepared daily time sheets submitted generally on a contemporaneous basis by the attorneys and paralegals employed by KRCL. Exhibit "B" contains a detailed listing of all services performed as special counsel to the Debtors by KRCL, the time spent and dates on which those services were performed, the attorneys and paralegals who performed the services, and rates charged during the Third Interim Application Period. KRCL seeks allowance of all fees and expenses incurred on behalf of the Debtors during the Third Interim Application Period.

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i) costs charged are well below market; and

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These reasons are discussed in more detail below.

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f. **Time limitations:** A summary of hours expended and the detailed description of the work performed during each of those hours is described in Exhibit "B" attached hereto. Acting as special counsel to the Debtors often required prompt and intensive action in many of the activities of the case.

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k. **Awards in similar cases:** Applicant believes that the fees requested herein are certainly reasonable and are less than or at least in line with fees for cases of similar difficulty and complexity.

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WHEREFORE, Applicant respectfully prays that the Court (1) allow the reasonable compensation for professional services rendered herein as special counsel for the Debtors in the sum of \$223,928.50 and for reimbursement of out-of-pocket expenses incurred herein as special counsel for the Debtors in the sum of \$9,132.19 for a total of \$233,060.69 for the Third Interim Application Period; (2) order the Debtors to make payment to Applicant of its previously unpaid fees and expenses, and (3) order such other and further relief as this Court deems just.

Dated: December 2, 2005

Respectfully submitted,

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

By: /s/ Michael L. Scanlon

Joseph M. Coleman
State Bar No. 04566100
Michael L. Scanlon
State Bar No. 17707500

1601 Elm Street
3700 Thanksgiving Tower
Dallas, Texas 75201
Telephone: (214) 777-4200
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SPECIAL COUNSEL FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing *Third Interim Application of Kane, Russell, Coleman & Logan, P.C., Special Counsel for the Debtors for Allowance of Compensation and Reimbursement of Expenses* was served via the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas on December 2, 2005. This is also to certify that the foregoing document was served via First Class United States Mail, postage pre-paid, on the parties listed below this 2nd day of December, 2005.

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VarTec Telecom, Inc.
2440 Marsh Lane
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William L. Wallander
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2001 Ross Avenue
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1100 Commerce Street; Room 976
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Stephen A. Goodwin
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Blumenthal, LLP
200 Crescent Court; Suite 1500
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John K. Cunningham
Craig H. Averch
White & Case LLP
200 South Biscayne Boulevard
Miami, Florida 33131

Michael J. Collins
Bickel & Brewer
4800 Bank One Center
1717 Main Street
Dallas, Texas 75201

/s/ Michael L. Scanlon

Michael L. Scanlon

SUMMARY OF EXHIBITS

Exhibit "A" – Billing Summary

Exhibit "B" – Monthly Invoices

Exhibit "C" – Project Summary

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SPECIAL COUNSEL FOR THE DEBTORS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: § Case No. 04-81694-HDH-11
§
VARTEC TELECOM, INC., et al., §
§ Hearing: Fee Applications
Debtors. § December 29, 2005 at 9:00 a.m.

FEE APPLICATION COVER SHEET

Third Interim Fee Application of Kane, Russell, Coleman & Logan, P.C.

Time Period: July 1, 2005 through October 31, 2005

Capacity: Special Counsel for the Debtors

Chapter: 11

Current Fee Application:

Amount Requested:

Reductions:

Fees: \$223,928.50

Voluntary Reduction: \$ -0-

Expenses: \$9,132.19

Voluntary Expense Reduction: \$ -0-

Total: \$233,060.69

Prior Fee Applications:

First Interim Fee Application

Amount Requested:		Reductions:	
Fees:	\$149,007.50	Voluntary Reduction:	\$48.00
Expenses:	\$8,463.63	Voluntary Expense Reduction:	\$ -0-
Total:	\$157,471.13		

Second Interim Fee Application

Amount Requested:		Reductions:	
Fees:	\$157,028.50	Voluntary Reduction:	\$ 250.00
Expenses:	\$4,816.78	Voluntary Expense Reduction:	\$ -0-
Total:	\$161,845.28		

Expenses: WestLaw/Lexis/Online Research: \$

Copies per page:

- (a) Internal: 0.15 ¢
- (b) Outside: 0.07¢ to 0.14¢

Faxing Per page:

- (a) Local: 0.50¢
- (b) Long Distance: 0.75¢
- (c) Receipt of faxes: No charge

Hourly Rates: Attorney	Paralegal:
Highest Rate: \$400.00 per hour	\$125.00 per hour
Hours Billed: 685.9	89.3
Average: \$313.69 per hour	\$98.19 per hour

/s/ Michael L. Scanlon
Signature:

December 2, 2005
Date:

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State Bar No. 04566100
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UNITED STATES BANKRUPTCY COURT
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In re:	§	Case No. 04-81694-HDH-11
	§	(Jointly Administered)
VARTEC TELECOM, INC., et al.,	§	
	§	Hearing: Fee Applications
Debtors.	§	December 29, 2005 at 9:00 a.m.

**THIRD INTERIM APPLICATION OF KANE, RUSSELL,
COLEMAN & LOGAN, P.C., SPECIAL COUNSEL FOR THE DEBTORS FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
DECEMBER 29, 2005 AT 9:00 A.M. BEFORE JUDGE HARLIN D. HALE
AT THE UNITED STATES BANKRUPTCY COURT, 1100 COMMERCE
STREET, DALLAS, TEXAS 75242.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST
RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH
PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED
BY THE COURT, YOU MUST FILE YOUR RESPONSES WITH THE
CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS
FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU
MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO
SENT YOU THE NOTICE, OTHERWISE THE COURT MAY TREAT
THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF
REQUESTED.**

Kane, Russell, Coleman & Logan, P.C. ("KRCL" or "Applicant"), Special Counsel for
Vartec Telecom, Inc., and its affiliated entities (collectively, the "Debtors") in the above-
numbered and styled jointly administered bankruptcy proceeding, files this *Third Interim
Application for Allowance of Compensation and Reimbursement of Expenses* (the

"Application"). In support of the Application, the Applicant would respectfully show the Court as follows:

CASE BACKGROUND

1. This Court has jurisdiction over the subject matter of this Application pursuant to the provisions of 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(B) and (O). This Application is filed pursuant to 11 U.S.C. §§ 331 and 503(b)(2) and Rule 2016 of the Federal Rules of Bankruptcy Procedure.

2. The Chapter 11 cases of the Debtors were commenced by the filing of each Debtor's respective voluntary petition under Chapter 11 of Title 11 of the United States Code (hereinafter the "Bankruptcy Code") on or about November 1, 2004 (the "Petition Date"). Since the Petition Date, the Debtors have managed their property and operated their businesses as debtors-in-possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code.

EMPLOYMENT/RETAINER INFORMATION

3. On or about November 18, 2004, the Debtors filed the *Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Application") [Docket No. 226].

4. On December 3, 2004, this Court entered its *Final Order Approving Application to Employ Kane, Russell, Coleman & Logan, P.C. as Special Counsel* (the "Employment Order") [Docket No. 455].

5. The terms of KRCL's employment as special counsel to the Debtors are outlined in the Employment Application and in two amended employment applications [Docket Nos. 1348, 1485, and 1936], and the Court's orders thereon.

6. By further order of this Court, all professionals employed by the Debtors herein were to have provided monthly fee statements to other professionals on a monthly basis for review (the "Monthly Fee Statement"). After review of the Monthly Fee Statement, if no professional raised any objection to the Monthly Fee Statement as requested, the professional requesting payment was entitled to receive eighty percent (80%) of the fees requested and one hundred percent (100%) of the expenses incurred on said Monthly Fee Statement.

CURRENT FEE APPLICATION PERIOD

7. From July 1, 2005 through October 31, 2005 (the "Third Interim Application Period") the Applicant has expended a total of 775.2 hours of attorney and paralegal time in conjunction with service as special counsel to the Debtors. Total fees for the Third Interim Application Period are \$223,928.50. Costs and expenses advanced by Applicant on behalf of the Debtors during the Third Interim Application Period total \$9,132.19.

8. Applicant has requested a total of \$223,928.50 in fees and \$9,132.19 in expenses on account of its Monthly Fee Statements as previously presented to the other professionals employed by the Debtors' estate for their review and objection. To date, Applicant has submitted invoices as directed in this Court's order regarding interim compensation, seeking 80% of fees and 100% of expenses for the time period covered by this Third Interim Fee Application. By this Application, Applicant seeks compensation for and reimbursement of (i) the twenty percent (20%) "hold-back" of fees not previously paid by the Debtors; and (ii) full interim compensation for all outstanding fees and expenses billed during the Third Interim Fee Application Period.

9. Applicant seeks interim allowance of compensation for services performed and reimbursement of expenses incurred in connection with service as special counsel to the Debtors in this proceeding during the Third Interim Application Period. A summary setting forth the

monthly total of hours worked by attorneys and paralegals for whom compensation is sought and the standard hourly rates charged for their services during the Third Interim Application Period is attached Exhibit "A."

10. Monthly invoices for the Third Interim Application Period, showing time and expenses incurred for which compensation has not been received are attached hereto as Exhibit "B." The invoices comprising Exhibit "B" are generated by Applicant in the ordinary course of its business and are compiled from manually prepared daily time sheets submitted generally on a contemporaneous basis by the attorneys and paralegals employed by KRCL. Exhibit "B" contains a detailed listing of all services performed as special counsel to the Debtors by KRCL, the time spent and dates on which those services were performed, the attorneys and paralegals who performed the services, and rates charged during the Third Interim Application Period. KRCL seeks allowance of all fees and expenses incurred on behalf of the Debtors during the Third Interim Application Period.

11. Pursuant to the guidelines promulgated by the United States Trustee Office on March 22, 1995, Applicant has prepared a Project Summary indicating the hours spent and cost of services in regard to specific subject areas or matters of the case, which is attached as Exhibit "C."

12. Applicant requests the Court award as interim compensation the total sum of \$233,060.69 for services rendered and expenses incurred from July 1, 2005 through October 31, 2005, and requests the Court order the Debtors to pay all amounts not previously paid in accordance with the previously submitted Monthly Fee Statements.

EVALUATION STANDARDS

13. The fees and expenses requested by this Application are an appropriate award for KRCL's services in acting as special counsel for the Debtors in connection with this jointly administered bankruptcy case. Accordingly, they should be granted in the amounts requested herein.

A. LODESTAR RULE

14. The United States Supreme Court has stated its preference for the "lodestar" approach in determining allowable attorney fees. *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 106 S.Ct. 3088 (1986). The *Delaware Valley* case approved a two-step method of computing legal fees, which has come to be known as the "lodestar" method. The "lodestar" is determined by multiplying the number of attorney hours reasonably expended by a reasonable hourly fee rate. The "lodestar" derived through this calculation is presumed to be the reasonable fee to which counsel is entitled. *Blum v. Stenson*, 465 U.S. 886 (1984).

15. In adopting Bankruptcy Code Section 330, Congress intended a retreat from doctrines that strictly limited fee awards to bankruptcy counsel to less than what attorneys might have received for services of the same professional quality in non-bankruptcy cases. *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 690 (9th Cir. 1988). In so holding, the *Manoa* court relied on the legislative history of section 330 and the express policy of that section:

To compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11.

Id. at 690 (quoting 124 Cong.Rec 33, 994 (1978), reprinted in 1978 U.S.Code Cong. & Admin.News 6505, 6511 (remarks of Sen. DeConcini in introducing an amendment to section 330)).

16. Congress intended courts to rely on the prevailing market as the ultimate arbiter of appropriate fees. *See In re Busy Beaver Building Center, Inc.*, 19 F.3d 833 (3rd Cir. 1994) (noting that, under section 330(a), "the court should carefully consider relevant, competent evidence submitted with the fee application, provided as a supplement to the fee application, or presented at the hearing. . .even if the evidence directly contradicts the court's own judgment"). *See also In re Continental Illinois Securities Litigation*, 962 F.2d 566, 568 (7th Cir. 1992), in which Judge Posner overruled the district court's refusal to allow fees at the market rate on the grounds that:

[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order.

962 F.2d at 568 (emphasis added); *see also In re JEF SABA, Inc.*, 172 B.R. 786 (Bankr. E.D.Pa. 1994); *In re Rothman*, 206 B.R. 99 (Bankr. E.D.Pa. 1997).

17. As these courts have recognized, the congressional mandate is clear. Under section 330(a), bankruptcy professionals must be compensated at rates commensurate with non-bankruptcy professionals. As the *Busy Beaver* court noted in allowing paralegal fees under section 330(a) that would be otherwise payable in the non-bankruptcy market:

Congress has unmistakably and expressly made a policy choice favoring full compensation for [professionals] over greater proportionate compensation to the debtor's creditors, and when in our constitutional republic a statute is constitutional, courts are not at liberty to substitute their favored policies for those Congress enacts, no matter how unwise the court finds them to be.

Busy Beaver, 19 F.3d at 851. Consequently, the fees requested in this case by KRCL should be allowed at those rates ordinarily billed by its professionals.

18. After the determination of the "lodestar," the Court may make adjustments to the "lodestar," but adjustments are proper in "rare" and "exceptional" cases. *Id.* at 898-901. Because

of the emphasis on the amount of attorney time expended, the "lodestar" approach provides a more analytical framework than the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). In fact, many of the *Johnson* factors, including the "novelty and complexity of the issues," "the special skill and experience of counsel," the "quality of representation," and the "results obtained" are normally reflected in the "lodestar" approach.

19. In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Court set forth the following guidelines for the determination of a reasonable fee:

Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are more excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client are not properly billed to one's adversary pursuant to statutory authority." *Copeland v. Marshall*, 205 U.S. App. D.C. 390, 401, 641 F.2d 880, 891 (1980) (en banc) (emphasis omitted).

103 S. Ct. at 1933, 76 L. Ed.2d 40. The *Hensley* Court indicated that the court may also evaluate each case's facts in relation to the *Johnson* factors, although many of these factors are subsumed in the "lodestar" calculation.

20. This case presents numerous novel and complex issues which require the special skills and experience of Applicant's members. Because of its members' skills and experience, Applicant believes it has minimized fees and other expenses incurred while serving as special counsel to the Debtors. Applicant has expended a total of 775.2 hours in time and labor serving as special counsel to the Debtors in this case. Applicant maintains the "lodestar" value for the Third Interim Application Period is \$223,928.50.

B. FIRST COLONIAL FACTORS

21. Applicant's fees and expenses are also justified under the criteria set forth in *Johnson* and in *In re First Colonial Corp.*, 544 F.2d 1291 (5th Cir. 1977). A brief statement with regard to each of the 12 elements set out in the *Johnson* case follows:

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Dated: December 2, 2005

Respectfully submitted,

KANE, RUSSELL, COLEMAN & LOGAN, P.C.

By: /s/ Michael L. Scanlon

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SUMMARY OF EXHIBITS

Exhibit "A" – Billing Summary

Exhibit "B" – Monthly Invoices

Exhibit "C" – Project Summary