

EXHIBIT A

MBLY RETENTION ORDER

Please Refer to MBL Y's First Monthly Fee Application

Filed: 3/18/03

Docket No: 390

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FOCAL COMMUNICATIONS)	Case No. 02-13709 (KJC)
CORPORATION., <u>et al.</u> , ¹)	(Jointly Administered)
)	
Debtors.)	

**ORDER PURSUANT TO 11 U.S.C. §§ 327(A) AND 328(A) AND
FED. R. BANKR. P. 2014(A), 2016 AND 5002 AUTHORIZING THE RETENTION AND
EMPLOYMENT OF MILLER BUCKFIRE LEWIS & CO., LLC
AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO THE DEBTORS AND
DEBTORS IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the "Application") of the above-captioned debtors and debtors-in-possession (the "Debtors") for an Order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rules 2014(a), 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the retention of Miller Buckfire Lewis & Co., LLC ("MBL") as financial advisor and investment banker to the Debtors *nunc pro tunc* to the Petition Date; and the Court having reviewed the Application and the attached Affidavit of Kenneth A. Buckfire (the "MBL Affidavit"); and it appearing to the Court that: (i) it has jurisdiction over this matter pursuant to

¹ The Debtors are the following entities: Focal Communications Corporation, Focal Communications Corporation of California, Focal Communications Corporation of Colorado, Focal Communications Corporation of Connecticut, Focal Communications Corporation of Florida, Focal Communications Corporation of Georgia, Focal Communications Corporation of Illinois, Focal Communications Corporation of Massachusetts, Focal Communications Corporation of Michigan, Focal Communications Corporation of the Mid-Atlantic, Focal Communications Corporation of Minnesota, Focal Communications Corporation of Missouri, Focal Communications Corporation of New England, Focal Communications Corporation of New Jersey, Focal Communications Corporation of New York, Focal Communications Corporation of Ohio, Focal Communications Corporation of Pennsylvania, Focal Communications Corporation of Texas, Focal Communications Corporation of Virginia, Focal Communications Corporation of Washington, Focal Communications Corporation of Wisconsin, Focal Financial Services, Inc., Focal International Corp., and Focal Telecommunications Corporation, Focal Equipment Finance, LLC and Focal Fiber Leasing, LLC.

28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iii) MBL does not hold or represent any interest adverse to the Debtors' estates, and (iv) MBL is a "disinterested person" as required by section 327(a) of the Bankruptcy Code; and the Court finding that notice of the Application given by the Debtors is appropriate under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Application and the Affidavit establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Application is granted; and it is further

ORDERED that, pursuant to 11 U.S.C. §§ 327(a) and 328(a), the Debtors are authorized to retain MBL as their financial advisor and investment banker to perform the services described in the Application, pursuant to the terms of the Engagement Letter, dated as of September 9, 2002 as amended and restated on December 11, 2002 (as so amended and restated, the "Engagement Letter"), *nunc pro tunc* to December 19, 2002; and it is further

ORDERED that MBL will file fee applications for interim and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, any applicable Bankruptcy Rules, the applicable local bankruptcy rules, any orders of this Court, and any procedures as may be fixed by order of this Court; and it is further

ORDERED that, notwithstanding the foregoing, fee applications filed by MBL shall be subject to review only pursuant to the standards set forth in section 328(a) of the

Bankruptcy Code and not subject to any other standard of review under section 330 of the Bankruptcy Code, except that the United States Trustee retains the right to object to the fees payable under Section 2(c) and Section 2(e) of the Engagement Letter after the conclusion of the engagement on the following bases only: (i) such fees prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions, or (ii) such fees are excessive when compared to the fees paid to, and results obtained by, other comparable investment banking and financial advisory firms in other Chapter 11 cases involving comparable services; and it is further

ORDERED that requests by MBL for reimbursements of expenses shall be subject to review pursuant to the standards set forth in section 330 of the Bankruptcy Code; and it is further

ORDERED, notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, any orders of this Court or any guidelines regarding submission and approval of fee applications, MBL and its professionals (i) shall only be required to maintain contemporaneous time records for services rendered post-petition, in half-hour increments and (ii) shall not be required to provide or conform to any schedule of hourly rates; and it is further

ORDERED that the indemnification provisions of the Engagement Letter are approved, subject to the following modifications:

(a) Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, MBL, in accordance with the

Engagement Letter, for any claim arising from, related to or in connection with MBL's performance of the services described in the Engagement Letter;

(b) MBL shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services other than the financial advisory and investment banking services provided under the Engagement Letter, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;

(c) Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen solely from that person's gross negligence or willful misconduct, or (ii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order;

(d) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, MBL believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, MBL must file an application before this Court, and the Debtors may not pay any such amounts to MBL before the entry of an

order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the court shall have jurisdiction over any request for fees and expenses by MBL for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify MBL; and

(e) Notwithstanding subparagraphs (a) through (d) supra, the U.S. Trustee, and only the U.S. Trustee, shall have the right to object to the indemnification provisions approved herein if, during the Debtors' cases, the United States Court of Appeals for the Third Circuit issues a ruling with respect to the appeal from the decision of the United States District Court for the District of Delaware with respect to indemnification rights in In re United Artists Theatre Company, Case No. 00-3514 (SLR) (D. Del.); provided that the U.S. Trustee shall be required to file any such objection within 60 days after the date the United States Court of Appeals for the Third Circuit issues such ruling; and it is further

ORDERED that paragraph 5 of the Engagement Letter shall be deleted and replaced by the following:

"The Company agrees that none of MBL, its affiliates or their respective directors, officers, agents, employees and controlling persons, or any of their respective successors or assigns ("Covered Persons") shall have any liability to the Company or any person asserting claims on behalf of the Company or in the Company's right for or in connection with this engagement or any transactions or conduct in connection therewith except for losses, claims, damages, liabilities or expenses incurred by the Company which are finally judicially determined to have resulted primarily from the gross negligence or willful misconduct of such Covered Person."

and it is further

ORDERED, that the first sentence of paragraph 7 of the Engagement Letter shall be deleted and replaced by the following:

"MBL has been retained under this agreement as an independent contractor with no agency relation to the Company or to any other party, it being understood that MBL shall have no authority to bind, represent or otherwise act as agent, executor, administrator, trustee, lawyer or guardian for the Company, nor shall MBL have the authority to manage money or property of the Company.";

and it is further

ORDERED that notwithstanding any provision in the Engagement Letter to the contrary, to the extent this Court has jurisdiction over any matters arising out of or related to the Engagement Letter, such matter shall be heard in this Court; and it is further

ORDERED that notwithstanding any provision in the Engagement Letter to the contrary, MBL shall not seek reimbursement from the Debtors of any expenses related to any services rendered by DrKW without separate relief from the Court or separate retention of DrKW in these chapter 11 cases; and it is further ORDERED that to the extent that this Order is inconsistent with any prior order or the Engagement Letter, the terms of this Order shall govern.

Dated: Feb 4, 2003


United States Bankruptcy Judge