

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re: )  
 ) Case No. 09-10867 (KG)  
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PRIMUS TELECOMMUNICATION, ) Chapter 11  
INCORPORATED, et al., )  
 ) Joint Administration Pending  
 )  
Debtors.<sup>1</sup> )  
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**DEBTORS' APPLICATION FOR ORDER UNDER BANKRUPTCY  
CODE SECTIONS 327(a) AND 329 AND BANKRUPTCY RULES 2014 AND 2016  
AUTHORIZING EMPLOYMENT AND RETENTION OF SKADDEN,  
ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATED LAW  
PRACTICE ENTITIES AS ATTORNEYS FOR DEBTORS-IN-POSSESSION**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") hereby apply (the "Application") for entry of an order under sections 327(a) and 329 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the employment and retention of Skadden, Arps, Slate, Meagher & Flom LLP and its affiliated law practice entities (collectively, "Skadden" or the "Firm"), effective as of the Petition Date (as defined herein), under a general retainer as the Debtors' bankruptcy counsel. In support of the Application, the Debtors rely upon and incorporate by reference the Declaration of George N. Panagakis in Support of Debtors' Application for Order Under 11 U.S.C. §§ 327(a) and 329 and Bankruptcy Rules 2014 and 2016 Authorizing Employment and Retention of Skadden, Arps, Slate, Meagher & Flom, LLP and

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<sup>1</sup> The Debtors consist of: Primus Telecommunications Group, Incorporated; Primus Telecommunications Holding, Inc.; Primus Telecommunications IHC, Inc.; and Primus Telecommunications International, Inc.

Affiliated Law Practice Entities as Attorneys for Debtors-in-Possession (the "Panagakis Declaration"), attached hereto as Exhibit A. In further support of the Application, the Debtors respectfully represent:

## **BACKGROUND**

### **A. The Chapter 11 Filings**

1. On March 16, 2009 (the "Petition Date"), Primus Telecommunications Group, Incorporated ("Primus") and three holding company subsidiaries (together with Primus, the "Debtors") each commenced a case by filing a petition for relief under chapter 11 of the title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases (the "Chapter 11 Cases") be jointly administered.

2. Also on the Petition Date, the Debtors filed the Joint Plan Of Reorganization Of Primus Telecommunications Group, Incorporated And Its Affiliate Debtors (Docket No. \_\_\_) (the "Plan"), and the Disclosure Statement with respect to the Plan (Docket No. \_\_\_) (the "Disclosure Statement"). The Debtors have not yet requested a hearing on the adequacy of the Disclosure Statement.

3. No creditors' committee has been appointed in these Chapter 11 Cases by the United States Trustee. No trustee or examiner has been appointed in any of the Debtors' Chapter 11 Cases.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 327(a) and 329 as supplemented by Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1.

**B. Background and Current Business Operations**

6. The Debtors are holding companies that own 100% of the stock of various operating subsidiaries. These operating companies, which are not involved in these chapter 11 cases, operate as an integrated facilities based telecommunications services provider offering a portfolio of international and domestic voice, wireless, internet, voice-over-internet protocol (VOIP), data and hosting services to business and residential retail customers and other carriers located primarily in the United States, Australia, Canada, the United Kingdom, and western Europe. A complete factual background relating to the Debtors' commencement of their Chapter 11 Cases is set forth in detail in the Kloster Declaration, filed contemporaneously herewith.

**C. The Debtors' Plan of Reorganization**

7. Prior to the Petition Date, the Debtors commenced negotiations with a majority of their senior noteholders. Those negotiations led to an agreement (the "Plan Support Agreement") between the Debtors and the holders of significant majorities of the outstanding principal amount of the Debtors' 14 ¼% Senior Secured Notes due May 2011 (the "Second Lien Notes") and the outstanding principal amount of the Debtors' 5% Exchangeable Senior Notes due June 2010 and 8% Senior Notes due January 2014 (collectively, the "Senior Notes"), and the Plan reflects that agreement.

8. The Plan provides for the exchange of \$173.2 million of outstanding Second Liens Notes for a pro rata share of \$123.4 million of reinstated and modified Second

Lien Notes and a pro rata share of 50% of the equity of the reorganized company distributable to creditors under the Plan.

9. The Senior Notes would be exchanged for 50% of the equity of the reorganized company distributable to creditors under the Plan and warrants exchangeable into additional equity in the reorganized company at predetermined levels of enterprise value. Certain notes junior to the Senior Notes would be converted into warrants exchangeable into equity in the reorganized company, and existing equity would receive contingent value rights exchangeable into equity in the reorganized company after a predetermined level of enterprise value is reached. All other debts, contracts, and obligations would be reinstated and otherwise unaffected by the Plan and these Chapter 11 Cases.

10. The consummation of the restructuring through the Plan will reduce principal debt obligations by approximately \$315 million, or over 50% of the Debtors' current debt obligations, correspondingly reduce interest payments by over 50%, and extend certain debt maturities. As a result, the Debtors expect to emerge in a stronger position to weather current global economic conditions with a stronger balance sheet and increased free cash flow.

#### **RELIEF REQUESTED**

11. By this Application, the Debtors seek to employ and retain Skadden as of the Petition Date to represent the Debtors as their bankruptcy counsel in connection with the Chapter 11 Cases. Accordingly, the Debtors respectfully request entry of an order, substantially in the form of the proposed order in Exhibit C attached hereto, under sections 105, 327(a) and 329 of the Bankruptcy Code, in substantially the form attached hereto, authorizing the Debtors to employ and retain Skadden as their attorneys under a general retainer to perform the legal services that will be necessary during their Chapter 11 Cases, as summarized herein and more

fully described in the Engagement Agreement, dated as of December 1, 2008, between Skadden and the Debtors (attached hereto as Exhibit B) (the "Engagement Agreement").

### **BASIS FOR RELIEF**

12. Prior to the commencement of these Chapter 11 Cases, Skadden represented Primus Telecommunications Group, Incorporated ("Primus") and its subsidiaries with respect to a wide range of corporate matters. In addition, in the time period preceding these Chapter 11 Cases, the Debtors sought the services of Skadden with respect to, among other things, advice regarding restructuring matters in general and preparation for the Debtors' Chapter 11 Cases. In this regard, Skadden has performed extensive legal work for the Debtors in connection with their ongoing restructuring efforts including, but not limited to, financing and creditor issues. As a result of representing the Debtors on such matters, Skadden has acquired extensive knowledge of the Debtors and their businesses and is familiar with the Debtors' capital structure, corporate structure, financing documents and other material agreements.

13. The Debtors believe that continued representation by their pre-Petition Date restructuring and bankruptcy counsel, Skadden, is critical to the Debtors' efforts to restructure their businesses because Skadden is extremely familiar with the Debtors' businesses and legal and financial affairs and, accordingly, is well suited to guide the Debtors through the chapter 11 process. Furthermore, Skadden has vast experience and knowledge in the field of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code. Finally, because Skadden maintains an office in the District of Delaware, the Debtors will be able to minimize duplication of effort in these cases and avoid the expense of retaining local counsel.

14. The Debtors desire to employ Skadden under a general retainer because of the extensive legal services that will be required in connection with the businesses of the Debtors and their affiliates. As noted above, the Debtors believe Skadden is well qualified and uniquely able to act on the Debtors' behalf.

### **SERVICES TO BE RENDERED**

15. The services of attorneys under a general retainer are necessary to enable the Debtors to execute faithfully their duties as debtors-in-possession. Subject to further order of this Court, Skadden will be required to render various services to the Debtors including, among others, the following:

(a) advising the Debtors with respect to their powers and duties as debtors and debtors-in-possession in the continued management and operation of their businesses and properties;

(b) attending meetings and negotiating with representatives of creditors and other parties in interest and advising and consulting on the conduct of these Chapter 11 Cases, including all of the legal and administrative requirements of operating in chapter 11;

(c) taking all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on behalf of the Debtors' estates, the defense of any actions commenced against those estates, negotiations concerning litigation in which the Debtors may be involved, and objections to claims filed against the estates;

(d) preparing, on behalf of the Debtors, motions, applications, answers, orders, reports, and papers necessary to the administration of the estates;

(e) preparing and negotiating on the Debtors' behalf plan(s) of reorganization, disclosure statement(s) and all related agreements and/or documents and taking any necessary action on behalf of the Debtors to obtain confirmation of such Plan(s);

(f) advising the Debtors in connection with any sale of assets;

(g) performing other necessary legal services and providing other necessary legal advice to the Debtors in connection with these Chapter 11 Cases; and

(h) appearing before this Court, any appellate courts, and the United States Trustee and protecting the interests of the Debtors' estates before such courts and the United States Trustee.

16. It is necessary and essential that the Debtors, as debtors-in-possession, employ attorneys under a general retainer to render the foregoing professional services. Skadden has indicated a willingness to act on behalf of, and render such services to, the Debtors.

#### **DISINTERESTEDNESS OF PROFESSIONALS**

17. To the best of the Debtors' knowledge, and except as otherwise set forth herein and in the accompanying Panagakis Declaration, the members, counsel and associates of Skadden (a) do not have any connection with any of the Debtors, their affiliates, their creditors or any other party in interest, or their respective attorneys and accountants, the United States Trustee for the District of Delaware or any person employed in the office of the same, or any judge in the Bankruptcy Court or the United States District Court for the District of Delaware or any person employed in the offices of the same; (b) are "disinterested persons," as that term is defined in Bankruptcy Code section 101(14); and (c) do not hold or represent any interest adverse to the estates.

18. To the best of the Debtors' knowledge and except as set forth in the Panagakis Declaration:

(a) Neither Skadden nor any attorney at the Firm holds or represents an interest adverse to the Debtors' estates.

(b) Neither Skadden nor any attorney at the Firm is or was a creditor or an insider of the Debtors, except that Skadden previously has rendered legal services to the Debtors for which it has been compensated as disclosed below.

(c) Neither Skadden nor any attorney at the Firm is or was, within two years before the Petition Date, a director, officer, or employee of the Debtors.

(d) Skadden does not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason.

(e) No attorney at Skadden is related to any U.S. District Judge or U.S. Bankruptcy Judge for the District of Delaware or to the U.S. Trustee for such district or to any known employee in the office thereof.

19. In view of the foregoing, the Debtors believe that Skadden is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b).

Skadden has informed the Debtors that throughout these cases, Skadden will continue to conduct periodic conflicts analyses to determine whether it is performing or has performed services for any significant parties in interest in these cases and that it will promptly update this Application and disclose any material developments regarding the Debtors or any other pertinent relationships that come to Skadden's attention by way of a supplemental Declaration.

#### **PROFESSIONAL COMPENSATION**

20. In connection with entry into the Engagement Agreement, Skadden received an initial retainer of \$750,000 (the "Initial Retainer") to be applied against anticipated professional services and expenses charged by Skadden. The Initial Retainer was supplemented by an additional retainer in the amount of \$500,000 on 2/26/09 and \$350,000 on 3/13/09.

21. Prior to the Petition Date, Skadden submitted invoices to the Debtors on a periodic basis for professional fees and expenses. Prior to the Petition Date, the Debtors were invoiced and rendered payment to Skadden in the aggregate sum of \$700,814 in the ordinary course of business on account of fees and expenses incurred between 12/1/08 and 1/31/09. Skadden will promptly issue a final billing statement (the "Final Billing Statement") for actual fees, charges, and disbursements for the period prior to the Petition Date once all fees, charges, and disbursements accrued prior to the Petition Date have been finally posted with respect to the Debtors (the "Final Billed Amount"). To the extent that the amounts paid to Skadden exceed the Final Billed Amount with respect to the Debtors, such excess payment shall be returned to the

retainer account and held by Skadden (the "Final Retainer") to pay any fees, charges and disbursements which remain unpaid at the end of the reorganization cases. To the extent that the amounts paid to Skadden are less than the Final Billed Amount, payment for such amount with respect to the Debtors will be waived.

22. During the course of these Chapter 11 Cases, Skadden will invoice the Debtors no less frequently than monthly for services rendered and charges and disbursements incurred. Such invoices will constitute a request for interim payments against the Firm's reasonable fee to be determined at the conclusion of the cases.

23. For professional services, Skadden's fees are based in part on its guideline hourly rates, which are periodically adjusted. Skadden will be providing professional services to the Debtors under its bundled rate schedules and, therefore, Skadden will not be seeking to be separately compensated for certain staff and clerical personnel who also record time spent working on matters. As set forth in the Engagement Agreement, the hourly rates under the bundled rate structure range from \$730 to \$1,050 for partners, \$695 to \$835 for counsel, \$360 to \$680 for associates and \$175 to \$295 for legal assistants and support staff. The hourly rates set forth above are subject to periodic increases in the normal course of the Firm's business, often due to the increased experience of the particular professional.

24. The hourly rates set forth above are the Firm's standard bundled hourly rates for work of this nature. These rates are set at a level designed to compensate Skadden fairly for the work of its attorneys and legal assistants and to cover the fixed and routine overhead expenses, including those items billed separately to other clients under the Firm's standard unbundled rate structure. Consistent with the Firm's policy with respect to its other clients, Skadden will continue to charge the Debtors for all other services provided and for other

charges and disbursements incurred in the rendition of services. These charges and disbursement include, among others, costs of telephone charges, photocopying (at a reduced rate of \$0.10 per page for black-and-white copies and a higher commensurate charge for color copies), travel, business meals (but no overtime meals), computerized research, messengers, couriers, postage, witness fees and other fees related to trials and hearings.

25. Skadden intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in these Chapter 11 Cases in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules and Orders of this Court. Skadden will seek compensation for the services of each attorney and paraprofessional acting on behalf of the Debtors in these cases at the then-current standard bundled rate charged for such services on a non-bankruptcy matter.

26. Skadden has agreed to accept as compensation such sums as may be allowed by the Court on the basis of the professional time spent, the rates charged for such services, the necessity of such services to the administration of the estates, the reasonableness of the time within which the services were performed in relation to the results achieved, and the complexity, importance, and nature of the problems, issues or tasks addressed in these Chapter 11 Cases.

27. Other than as set forth above and in the Panagakis Declaration and Engagement Agreement, no arrangement is proposed between the Debtors and Skadden for compensation to be paid in these cases.

28. Except for sharing arrangements among Skadden, Arps, Slate, Meagher and Flom LLP, its affiliated law practice entities, and their respective members, Skadden has no

agreement with any other entity to share any compensation received, nor will any be made, except as permitted under section 504(b)(1) of the Bankruptcy Code.

The Debtors submit that the engagement and retention of Skadden on the terms and conditions set forth herein and in the Engagement Agreement is necessary and in the best interests of the Debtors, their estates, and their creditors and should be approved.

#### **NOTICE**

29. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Securities and Exchange Commission; (c) the Internal Revenue Service; (d) the United States Attorney's Office for the District of Delaware; (e) counsel for the Ad Hoc Group of Second Lien Noteholders; (f) counsel for the Ad Hoc Group of Senior Noteholders; (g) counsel for the Ad Hoc Group of First Lien Term Lenders; (h) counsel for Guggenheim Corporate Funding, LLC; and (i) the parties included on the Debtors' list of twenty (20) largest unsecured creditors (collectively, the "Notice Parties"). The Debtors submit that, under the circumstances, no other or further notice is required.

#### **NO PRIOR REQUEST**

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

## CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to employ and retain the firm of Skadden, effective as of the Petition Date, under a general retainer as the Debtors' bankruptcy counsel, and (ii) granting such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
March 16, 2009

PRIMUS TELECOMMUNICATIONS GROUP, INCORPORATED,

/s/ Thomas R. Kloster  
Thomas R. Kloster  
Chief Financial Officer