

Exhibit II-12. Order Establishing Fee Application Procedure and Fee Guidelines

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:)
) Case No. 98-05162-R
COMMERCIAL FINANCIAL) Chapter 11
SERVICES, INC. and)
)
CF/SPC NGU, INC.,) Case No. 98-05166-R
) Chapter 11 Jointly
Debtors.) Administered
) with Case No. 98-05162-2

ORDER ESTABLISHING FEE APPLICATION PROCEDURE AND FEE GUIDELINES FOR PROFESSIONALS

This matter comes on before the Court *sua sponte*. A status conference and a case management conference were held on January 5, 1999, wherein the Court accepted comments from counsel regarding a procedure for applying for professional fees and expenses. The Court FINDS that good cause exists for establishing an orderly and uniform procedure for professionals seeking compensation and reimbursement of expenses from the estate.

Further, because of the size and complexity of the case, the possibility of numerous appeals, the number of professionals retained or to be retained by the estate, and the existence of various committees and creditors whose counsel may seek compensation from the estate for services benefiting the estate, the Court finds that good cause exists for establishing fee guidelines in order to (1) encourage professional to cooperate with other professionals in making assignments of tasks with the goal of minimizing duplication of efforts and cost to the estate; (2) inform professionals in advance as to the categories of fees and expenses the Court generally will or will not allow to be paid from the estate so that professionals may make informed decisions in the course of their employment; and (3) promote more expedient, beneficial and meaningful fee applications.

IT IS THEREFORE ORDERED that the Fee Application Procedure and Fee Guidelines set forth below are applicable and shall be followed in this case.

FEE APPLICATION PROCEDURE

1. Budgets

All professionals seeking to be employed by the estate shall file with the Court a projected quarterly budget. Quarterly budgets shall be filed and served on the 15th day of each March, June, September and December for the subsequent calendar quarter for as long as the professional remains employed by the estate. Each pro-

jected budget shall contain descriptions of services to be rendered and expenses to be incurred, the approximate dates and anticipated costs of such services and expenses, and a description of any actual expense incurred or service performed (or not performed) that deviated significantly from budgeted expenses or service. Budgets shall be served upon the Debtor-in-Possession and all persons and entities listed on the most recent Master Service List.

2. Allocation of Work and Preparation of Billing Statements

- a. **Least Costly Means of Obtaining Desired Result.** Professional shall allocate the work to be performed by members of their firms in accordance with the best interests of their clients and shall exercise billing judgment especially with regard to time spent in inter- or intra-office communications, research, revision and editing. Work shall be assigned so as to obtain reliable results in the most economic fashion possible. **The rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it.**
- b. **Rules and Procedures Applicable to Preparation of Billing Statements.** Billing statements submitted to the Debtor-in-Possession and attached to the fee application shall comply in all respects with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, the Guidelines for Compensation of Professionals prepared by the Office of the United States Trustee, and the Fee Guidelines set forth below in this Order. To the extent possible, all professionals shall coordinate to establish uniform category designations for areas of representation in which more than one professional participates.
- c. **Apportionment Between and Among Different Estates.** Professionals may apply for compensation only in connection with the scope of representation set forth in the application for retention, as modified by the retention order. Professionals authorized to perform services for more than one debtor shall apportion fees and expenses between such estates according to the relative benefit to each estate.

3. Fee Applications

- a. **Interim fee applications.** Professionals shall file interim applications for the allowance and payment of fees and expenses pursuant to 11 U.S.C. § 331 every 120 days. All allowances of interim fees and expenses are subject to the Court's review of the same upon submission of a final fee application pursuant to 11 U.S.C. § 330.
- b. **Review of Proposed Application.** Before filing an application for allowance and payment of compensation and reimbursement of expenses, the professional seeking compensation and/or reimbursement shall submit a **proposed application** and supporting billing statements (the "Proposed Application") to the Debtor-in-Possession, the Assistant United States Trustee and the Creditors' Committee(s) (the "Reviewing Entities") for review and comment. The professional and the Reviewing Entities shall confer in good faith to at-

tempt to clarify ambiguities and resolve objections to the Proposed Application.

- c. **Apportionment Between and Among Different Estates.** Professionals may apply for compensation only in connection with the scope of representation set forth in the application for retention, as modified by the retention order. Professionals authorized to perform services for more than one debtor shall apportion fees and expenses between estates according to the relative benefit to each estate.
- d. **Service of Notice of Hearing on Fee Application.** All Fee Applications will be set for hearing. Prior to filing the Fee Application, the professional/applicant should call [courtroom deputy, phone number] to obtain a hearing date for the Fee Application. The Fee Application submitted for filing shall be accompanied by a “Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing,” which Notice shall contain the Following: (1) the contents of a “Notice of Hearing on Compensation” required by Bankruptcy Rule 2002(c)(2); (2) a statement that the Fee Application is available for inspection and copying at the office of the professional/applicant (or its designated copy service), giving the address and telephone number of the professional/applicant (or its designated copy service); and (3) the following language in bold type:
You are hereby notified that you have until _____, 1999 (specific date calculated as seven days prior to the hearing date) to file a written response or objection to the relief requested in the above-described Fee Application. If no response or objection is timely filed, the Court may grant the requested relief without further notice.
- e. **Reviewing Party in Interest.** The “Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing” shall be served upon the Master Service List at least 20 days prior to the date set for hearing, pursuant to Bankruptcy Rule 2002(a)(6).
- f. **Objections.** A Reviewing Entity or any other party in interest having unresolved objections must file a **written objection** to the Fee Application at least seven (7) days prior to the date of the hearing on the Fee Application, or the objection may not be heard. The objection must identify the charges in dispute with sufficient specificity to direct the Court to the relevant page(s) and line item(s) at issue, state the reason for the objection, and provide any relevant legal authority. **Objections to the Fee Application shall be served upon the professional/applicant, the Reviewing Entities and the Master Service List.**
- g. **Resolution of Objections.** In the event that an objection is resolved prior to the hearing, the professional/applicant shall immediately advise [courthouse deputy, phone number] and file a short supplement describing the modification to the Fee Application, if any, resulting from the resolution of the written objection. If the resolution results in no change to the Fee Application, the objecting party shall immediately file a pleading withdrawing its objection.

FEE GUIDELINES

These Fee Guidelines supplement the Bankruptcy Code and Rules, the relevant and binding case law interpreting the Bankruptcy Code and Rules, and the United States Trustee Guidelines, all of which apply in this case.

Criteria for Evaluating Fee Applications

The Court will consider the following criteria in evaluating Fee Applications filed in the case:

1. **Hourly Rates.** The primary criterion used to evaluate the reasonableness of the hourly rate charged will be the amount reasonably charged by a person possessing the skill, experience and expertise **required to perform the given task**. As stated in the Fee Application Procedures, **the rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it**. The Court will consider the human resources of the firm seeking compensation (and the resources of local counsel, if applicable), including the availability of para-professionals, in determining an hourly rate appropriate for a task. Professionals shall consider this rule when exercising billing judgment in preparation of the billing statement.
2. **Locality.** Professionals and para-professionals may charge hourly rates consistent with those charged by a practitioner in the professional's geographic area possessing education, experience, expertise, and skills commensurate with the professional and para-professional seeking compensation. Local prevailing rates must be demonstrated by competent evidence at the hearing on the Fee Application.
3. **Travel Time.** Travel time will be compensated at the professional's regular hourly rate unless the professional is performing services for and billing another client during the travel time, in which case the professional will not be compensated for the time billed to another client. In light of the availability of telephone conferences, e-mail, facsimile transmission and other sophisticated communications technology that substantially reduces the necessity of being present in the locality where business is being transacted, the Court will compensate only **one** professional for travel time unless a showing is made that more than one professional was required for the meeting, court appearance or other event for which travel time is sought. The restriction on compensation for travel time does not necessarily restrict compensation for more than one professional working on a task if the task requires more than one professional.
4. **Duplication of Services.** Compensation will not be allowed for duplication of services. For instance, only those professionals who materially participate in a hearing will be compensated for the hearing, unless a showing is made as to why a second professional was required. The availability of local counsel, local counsel's human resources, and local counsel's familiarity with the issue will be considered.

5. **Billing Judgment.** A professional shall exercise billing judgment in presenting its Fee Application. The Court cannot determine whether billing judgment was exercised unless all services and expenses are included in the Fee Application presented to the Court; therefore, a professional shall make the Court aware of its billing judgment by indicating in the Fee Application the services that were performed but for which no compensation is sought. Examples of “no charge” entries include services that were not productive, excessive or duplicative, and services which primarily benefited another party or the professional, rather than the estate (not including Fee Applications, however).
6. **Expenses.** Copying costs shall be limited to \$.20 per page if copying is performed in-house, or the actual cost if copying is performed by a service. Reimbursement of in-coming fax costs shall be limited to \$.20 per page; out-going faxes will be reimbursed at actual cost. Absent a showing of necessity, overnight or courier service delivery will not be a reimbursable expense.

SO ORDERED this 7th day of January, 1999

DANA L. RASURE, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT