

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

In re:	)	Chapter 11
	)	
SP Wind Down Inc., f/k/a/ SPHERIS INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-10352 (KG)
	)	
Debtors.	)	Jointly Administered
	)	<b>Re: Docket No. 557</b>

**ORDER PURSUANT TO 11 U.S.C. §§ 327, 330 AND 1103, FED. R. BANKR. P. 2014 AND 5002, AND LOCAL RULE 2014-1, AUTHORIZING RETENTION AND EMPLOYMENT OF COMETRICS PARTNERS LLC AS FINANCIAL ADVISOR TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS DURING THE LIQUIDATION TRANSITION PERIOD, *NUNC PRO TUNC*, TO JUNE 28, 2010**

Upon consideration of the application (the “Application”)<sup>2</sup> of the Official Committee of Unsecured Creditors (the “Committee”) for entry of an order pursuant to sections 327, 330 and 1103(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the employment and retention of CoMetrics Partners LLC (“CoMetrics”) as the Committee’s financial advisor during the Liquidation Transition Period consistent with the terms of the Engagement Letter; and the Court having considered the Application and the Affidavit of Walter A. Jones dated July 6, 2010 in support of the Application; and the Court finding that (A) CoMetrics (i) does not hold or represent an interest adverse to the interest of the estates with respect to the matters on which

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parenthesis: (i) SP Wind Down Inc. (f/k/a Spheris Inc. (5254)); (ii) SP Wind Down Holding II Inc. (f/k/a Spheris Holding II, Inc. (7969)); (iii) SP Wind Down Canada Inc. (f/k/a Spheris Canada Inc. (9757)); (iv) SP Wind Down Leasing LLC (f/k/a Spheris Leasing LLC (4780)); (v) SP Wind Down Operations LLC (f/k/a Spheris Operations LLC (1371)) and (vi) VN Wind Down Communications (f/k/a Vianeta Communications (1121)). The Debtors’ executive headquarters are located at 9009 Carothers Parkway, Suite C-3, Franklin, TN 37067

<sup>2</sup> Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Application.

CoMetrics will be employed and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (B) the Application and the Jones Affidavit are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; (C) the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and (D) notice of the Application was due and proper under the circumstances; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is granted to the extent set forth herein.
2. The retention and employment of CoMetrics as financial advisor to the Committee during the Liquidation Transition Period pursuant to sections 327, 330 and 1103 of the Bankruptcy Code, Bankruptcy Rules 2014 and 5002, and Local Rule 2014-1, *nunc pro tunc*, to June 28, 2010, on the terms and conditions set forth in the Engagement Letter and the Application, is approved as modified by the terms of this order. The Debtors are authorized to compensate and reimburse CoMetrics pursuant to the terms of the Engagement Letter and the Application.
3. Notwithstanding anything to the contrary in the Application or the Engagement Letter, during the Liquidation Transition Period CoMetrics shall not be entitled to (i) any incentive fee or success fee and shall only be compensated on an hourly basis consistent with the hourly rates set forth in the Engagement Letter and Application or (ii) a retainer; provided, however, that nothing in this Order shall prejudice CoMetrics or Walter Jones from seeking an incentive fee, success fee or retainer in their capacity as Liquidation Trustee (as defined in the Plan).

4. CoMetrics and Walter A. Jones shall not be precluded from serving as the Liquidation Trustee, or from being retained by the Liquidation Trustee, on account of their retention pursuant to this Order. For the avoidance of doubt, nothing in this Order shall be construed to authorize any future appointment of a Liquidation Trustee in these chapter 11 cases, or to limit the terms and conditions, including compensation, of any such future appointment, and all parties' rights with respect to any such future appointment are reserved.

5. The indemnification provisions of the Engagement Letter are approved and modified, as necessary, as follows:


- (a) subject to the provisions of subparagraph (c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, CoMetrics in accordance with the Engagement Letter for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter, but not for any claim arising from, related to, or in connection with CoMetrics's postpetition performance of any other services unless such postpetition services and indemnification therefore are approved by the Bankruptcy Court;
- (b) notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify CoMetrics or provide contribution or reimbursement to CoMetrics (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from CoMetrics's bad faith, self dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of CoMetrics's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would not be prohibited by In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which CoMetrics should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by this Order;

- (c) 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, CoMetrics 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, including without limitation the advancement of defense costs, CoMetrics must file an application therefore in this court, and the Debtors may not pay any such amounts to CoMetrics before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request for indemnification, contribution or reimbursement by CoMetrics and not a provision limiting the duration of the Debtors' obligation to indemnify CoMetrics; and
- (d) any limitation on the amount of liability pursuant to the terms of the Engagement Letter shall be eliminated.

6. CoMetrics shall be compensated in accordance with the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court.

7. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

Dated: July 13, 2010  
Wilmington, Delaware

  
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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE