

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: VARTEC TELECOM, INC. et al ) Chapter 11  
 )  
 )  
 ) CASE NO. 04-81694-SAF-11  
 Debtors. )

DEBTOR(S)

CITY OF IRVING'S NOTICE OF ENFORCEMENT OF LIEN CLAIM AND  
PROHIBITION OF USE OF CASH COLLATERAL

TO THE COURT:

NOW COMES, City of Irving, Texas, and files this Notice of Enforcement of Lien Claim and Prohibition of Use of Cash Collateral and respectfully represents the following:

1. The City of Irving, Texas is a duly organized political subdivision in the State of Texas authorized to levy and collect ad valorem property taxes on taxable property within it's boundaries.

2. The City of Irving, Texas, has filed a pre-petition secured proof of claim herein for ad valorem property taxes assessed against the Debtor's personal property. City of Irving, Texas filed a claim for the year 2003 taxes in the aggregate amount of \$2734.96.

3. These taxes are secured by a first priority lien pursuant to Texas Property Tax Code §§32.01 and 32.05. In pertinent party, §32.01 provides:

- (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties and interest ultimately imposed for the year...
- (b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, or other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
- (c) The lien under this section is perfected on attachment and...perfection requires no further action by the taxing unit.

4. The tax lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code §32.05(b); See also, Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W.2d 264 (Tex.App. 1995)(Bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien.) The tax lien arises on January 1 of each tax year and "floats" to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W.2d 264(Tex.App.-Dallas 1994). The tax lien is a lien in solido and is a lien on all personal property of the Debtor. See In re Universal Seismic, 288 F.3d 205 (5th Cir.2002). The tax lien is also unavoidable. In re Winns, 177 R.R. 253 (Bankr. W.D. Texas 1995).

5. The City of Irving, Texas holds a secured claim against the Property under §506 of the Bankruptcy Code with the lien priority assigned thereto in §32.05 of the Texas Property Tax Code.

6. The City of Irving, Texas is entitled to adequate protection of its lien interests in the

