

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

IN RE:	§	
	§	
VARTEC TELECOM, INC., <i>et al.</i>	§	Case No. 04-81694-SAF-11
	§	
Debtors.	§	Chapter 11
	§	Jointly Administered
	§	

**BROADWING COMMUNICATIONS, LLC JOINDER IN OBJECTIONS TO THE DEBTORS' MOTION TO AUTHORIZE REJECTIONS OF CIRCUIT AGREEMENTS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Broadwing Communications, LLC (“Broadwing”), a creditor in the above-referenced matter, and files this Joinder in Objections to the Debtors’ Motion to Authorize Rejections of Circuit Agreements (“Joinder”) and avers as follows:

1. Broadwing is a telecommunications carrier which, among other things, provides telecommunication services including voice, data, and long-haul transmission, collocation facilities, and private line services.

2. Broadwing provides telecommunications services to the Debtors pursuant to master services, and products and services agreements (“Service Agreements”). Broadwing continues to provide services to the Debtors on a post-petition basis pursuant to the Service Agreements.

3. On or about June 16, 2005, the Debtors filed their Motion to Authorize Rejections of Circuit Agreements (“Motion to Reject”). In their Motion to Reject, the Debtors seek authority to reject certain circuits identified as “Designated Circuits”. Among the Designated Circuits are eight (8) circuits attributed to Broadwing (“Broadwing Circuits”).

4. As stated by the Debtors in their Motion to Reject, the Broadwing Circuits have already been disconnected. One circuit in particular, according to the Motion to Reject, was disconnected pre-petition.

5. Accordingly, the issue of whether the Designated Circuits or the Broadwing Circuits are “severable contracts” under the relevant agreements, and the Service Agreements, is not properly before the Court.

6. A debtor may not assume or reject an agreement which, by its own terms, is not executory because it has already expired or been terminated. *In re Office Products of America, Inc.* 136 B.R. 675, 685 (Bankr. W.D. Tex. 1992)(“There being no executory contract, the trustee could not have assumed it, even if he had wished to.”). This issue has been briefed by MCI Network Services, Inc. in its MCI’s Objection to Debtors’ Motion to Authorize Rejections of Circuit Agreements (“MCI Objection”) and by Bellsouth Telecommunications, Inc. in its Bellsouth Telecommunications, Inc. Objection to Motion to Authorize Rejections of Circuit Agreements (“Bellsouth Objection”).

7. Broadwing joins in the portions of the MCI Objection and the BellSouth Objection pertaining to the propriety of the Debtors’ attempt to “reject” circuits which have expired or have otherwise been terminated in accordance with the terms of governing agreements.

8. In the event that the Debtors attempt to assume the Service Agreements, Broadwing reserves all rights to demand cure of all amounts arising under the Service Agreements, whether or not individual circuits have otherwise terminated or been disconnected, in accordance with § 365 of the Bankruptcy Code.

WHEREFORE Broadwing respectfully requests that this Court enter an order denying the Debtors' Motion to Reject, and that this Court grant Broadwing such other and further relief to which it may show itself to be justly entitled.

Dated: July 18, 2005.

Respectfully submitted,

JACKSON WALKER L.L.P.

By:           /s/ Marvin E. Sprouse III          

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ATTORNEYS FOR BROADWING  
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**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of **July, 2005** a true and correct copy of the foregoing instrument was served United States Mail, postage prepaid upon the following:

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*/s/ Marvin E. Sprouse III*

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