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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Case No. 04-81694-SAF**
VARTEC TELECOM, INC., *ET AL*.,	§	**(Chapter 11)**
	§	
*DEBTOR*S.	§	**(Jointly Administered)**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' QUALIFIED OBJECTION TO DEBTORS' MOTION FOR AUTHORITY TO SELL ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, RIGHTS, INTERESTS, AND ENCUMBRANCES AND FOR RELATED RELIEF (SUBSTANTIALLY ALL OF THE DEBTORS' REMAINING ASSETS)
[Re: Docket #1399]

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") of the above-referenced debtors and debtors in possession (collectively, the "Debtors") files this Qualified Objection (the "Objection") to Debtors' Motion for Authority to Sell Assets Free and Clear of All Liens, Claims, Rights, Interests, and Encumbrances and for Related Relief (Substantially All of the Debtors' Remaining Assets) (the "Sale Motion"), and states as follows:

I. QUALIFICATION RELATING TO ALL OBJECTIONS

1. The Committee has not yet determined whether to support or oppose the Sale Motion; however, the approved procedures require that a preliminary objection be filed on or

before July 20, 2005 in order to be qualified to file a final objection prior to the hearing on the Sale Motion. Accordingly, this Qualified Objection is filed in order to reserve to right to object to the Sale Motion, in whole or in part, in connection with any such hearing.

2. Subject to the foregoing qualification, the Committee adopts by reference and asserts, for the present time, those unresolved objections previously set forth in its Partial Objection to Debtors' Expedited Motion for Order (A) Approving Sale Procedures and Bid Protections in Connection with Sale of Certain Assets; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale; (C) Approving Notice Relating to Sale; and (D) Granting Related Relief (Sale of Substantially All of the Debtors' Remaining Assets) (Docket No. 1401), filed on or about June 17, 2005.[1]

3. Additionally, the Committee has numerous outstanding concerns with the Sale Motion. Many of these concerns have been or will be shared with the Debtors prior to the hearing on the Sale Motion. However, some or all of these concerns, whether expressed herein as qualified preliminary objections or in private communications with the Debtors, may blossom into unqualified objections to the Sale Motion if unresolved.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. The Sale Motion and this Objection constitute core proceedings pursuant to 28 U.S.C. § 157(b).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] For clarity sake, it appears that the Debtors re-executed an amended Asset Purchase Agreement on or about June 28, 2005. The Committee has made its best effort to conform references to and quotes from the "APA" to the June 28 version; however, some errors may have been made in conforming comments from the various "editions" of the APA.

III. PROCEDURAL HISTORY

6. On November 1, 2004 (the "Petition Date"), the Debtors each filed a voluntary petition for relief (collectively, the "Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

7. On November 8, 2004, the Office of the United States Trustee appointed the Committee to represent the interests of unsecured creditors.

8. On December 8, 2004, the Office of the United States Trustee appointed the Official Committee of Excel Independent Representatives (the "IR Committee") with a sunset provision under which the IR Committee automatically dissolves.

9. RTFC filed proofs of claim against the estates (Claim Nos. 2877-2804, 2963, 2884-2998, and 3106, collectively the "RTFC Claim") on or about March 11, 2005 asserting substantial claims, together with liens extending to substantially all of the Debtors' assets.

10. On or about June 10, 2005, the Committee filed an Adversary Proceeding styled, "*Official Committee of Unsecured Creditors of VarTec Telecom, Inc., et al., on behalf of the Bankruptcy Estates of the Debtors v. Rural Telephone Finance Cooperative,*" bearing Adversary No. 05-03514-SAF (the "Adversary Proceeding"), *inter alia* contesting and objecting to a significant portion of the RTFC Claim and some or all of its liens, seeking avoidance and recovery of material pre-petition transfers, disgorgement of material post-petition transfers, equitable subordination of claims and liens, and recovery of damages.

11. On or about June 27 and 28, 2005, the Hon. Steven A. Felsenthal conducted hearings on the Sale Procedure Motion. An order approving such motion was entered on or about June 30, 2005.

IV. OBJECTIONS

The Committee's objections to date include the following without limitation:

12. *Braniff* Related Issues. A transaction occurring outside the normal Chapter 11 confirmation scheme that significantly restructures or dictates the restructuring of the rights of the creditors is an impermissible *sub rosa* plan of reorganization. *Pension Benefit Guaranty Corporation v. Braniff Airways, Inc.*, (*In re Braniff Airways, Inc.*), 700 F.3d 935, 939 (5th Cir. 1983) It is of major and imminent concern in these Cases that the Rural Telephone Finance Cooperative ("RTFC") may be manipulating the reorganization processes in this chapter 11 case to orchestrate a sale or, alternatively, a massive liquidation, to its own material advantage without any commitment to or provision for (a) the payment of administrative and priority claims or (b) the confirmation and implementation of a plan of reorganization. RTFC should not be permitted to benefit in a chapter 11 context from the significant upside incident to operation under the protections of chapter 11 and a sale (or liquidation) of substantially all assets, absent a meaningful commitment to the confirmation and implementation of a plan of reorganization, only to sweep the totality of such benefits into its own pockets while leaving the estates destined for conversion to administratively insolvent chapter 7 cases. Accordingly:

(a) In this case, it is incumbent upon the Debtors to provide clear evidence and convincing argument as to why the transaction contemplated in the Sale Motion cannot be feasibly implemented in a confirmed plan of reorganization and why the transaction is not or will not have an impermissible *sub rosa* effect.

(b) The Debtors and RTFC should, as of the time of any hearing on the Sale Motion, have agreed upon and committed themselves to a critical path and budget (*i.e.*, one otherwise acceptable to the Committee) for proceeding post-sale to a confirmed plan of reorganization.

(c) Any approval of the Sale Motion should be conditioned upon the imposition of other substantial safeguards materially protecting against any residual *sub rosa* impact.

13. RTFC Should be Committed to a Plan. A sale of the assets in question in the proposed auction format may principally benefit RTFC by creating a competitive environment for such sale; however, the sale of such assets by a § 363 motion (as opposed to the plan format) may at the same time substantially reduce or perhaps eliminate the estates' leverage to induce RTFC to fund, if necessary, the front-end costs for implementation of a plan of reorganization.[2]

14. Especially if and to the extent that RTFC is permitted to (and does) credit bid at any auction or is otherwise permitted to sweep the proceeds of any such sale under the DIP order and apply such proceeds to its pre-petition obligations (or even it post-petition advances), significant issues arise as to whether and to what extent RTFC will thereafter be committed to (a) fund the continued operations of the estates and administrative costs incurred prior to such auction, (b) fund performance by the Debtors of their ongoing obligations under the Asset Purchase Agreement and as contemplated in the Sale Motion, or (c) fund the cost of implementing any plan of reorganization. While a successful outcome in the Adversary Proceeding may in time free up sufficient resources to fund the front-end costs for implementing a plan of reorganization, any such final outcome may not occur within the time frame presently contemplated for a plan of reorganization. Accordingly, approval of the Sales Motion should be premised at least upon a clarification of the costs and sources of funding for these endeavors and corresponding commitments by RTFC for the availability of such funding.

[2] For example, such front-end costs include the payment on a plan's effective date of those numerous priority claims and administrative claims not assumed by the Buyer.

15. Debtors Should be Committed to a Plan. Likewise, approval of the Sales Procedures Motion should be premised upon a clarification of the Debtors' intent with respect to the formulation and filing of a plan of reorganization and the timing thereof, ***e.g.***, whether confirmation of a plan of reorganization is contemplated prior to the final sales date of the proposed staged transaction, etc.

16. Further RTFC Related Issues. The Sale Motion, the companion Sale Procedure Motion[3], related agreements, and, to some extent, the Order (A) Approving Sale Procedures and Bid Protections in Connection With Sale of Certain Assets; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale, (C) Approving Notice Relating to Sale and (D) Granting Related Relief (Sale of Substantially All of the Debtors' Remaining Assets) (Docket 1446, the "Sales Procedure Order") entered on or about June 30, 2005 purport to: (a) assure the RTFC the right to credit bid in any auction, when the alleged liens and claims of RTFC are materially contested and, in any event, are not allowed liens or claims, (b) grant RTFC an extraordinary right to "veto" any sale (see n4 herein), and (c) enable RTFC to shift to the estates a proposed $2 million "Termination Fee" incident with RTFC's exercise of its purported "veto." At the hearing on the Sale Procedure Motion, the Committee's objections to the foregoing were essentially carried to the hearing on the Sale Motion. The Committee reasserts these same objections if and to the extent that RTFC has either attempted to credit bid at any auction, exercise any purported veto right, unduly influence the Debtors to "terminate" the sale or

[3] Debtors' Expedited Motion for Order (A) Approving Sale Procedures and Bid Protections in Connection With Sale of Certain Assets; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale, (C) Approving Notice Relating to Sale and (D) Granting Related Relief (Sale of Substantially All of the Debtors' Remaining Assets" (the "Sale Procedures Motion," Docket #1401).

withdraw the Sale Motion, to shift the burden of any termination fee to the estate on account of an RTFC-induced termination, or any combination of the foregoing.

17. RTFC Has No Statutory Right to Credit Bid. RTFC should not be allowed to credit bid because it does not hold an allowed claim. Section 363(k) of the Bankruptcy Code provides that "[a]t a sale under subsection (b) of this section of property that is subject to a lien that secures an *allowed claim*, unless the court for cause orders otherwise the holder of such claim may bid at such sale…" (emphasis added) 11 U.S.C. § 363(k). Because the Committee objected to the RTFC Claim in the Adversary Proceeding, the RTFC has no allowed claim. *See* 11 U.S.C. § 502(a). The RTFC is thus not entitled to credit bid under the plain language of section 363(k). *In re McMullan*, 196 B.R. 818, 835 (Bankr. W.D. Ark. 1996) (creditor shall not be entitled to credit bid any claimed liens or security interests under 11 U.S.C. § 363(k) where the validity of said liens and security interests are unresolved).

18. RTFC Must Show Financial Ability Before it is Allowed to Credit Bid. In addition, the RTFC should not be allowed to credit bid unless it provides evidence of its ability to pay the estates the amount of any such credit bid in the event its liens are avoided, as well as the approximate amount of $35 million in sale proceeds provisionally applied to the RTFC's debt from previous asset sales that the Committee seeks to recover as part of its lien avoidance action in the Adversary Proceeding. *In re Miami General Hospital, Inc.*, 81 B.R. 682, 687 (S.D. Fla. 1988) (allowing a credit bid only upon demonstration that creditor is able to repay the estate in the event that the creditor's claim is disallowed); *In re Octagon Roofing*, 123 B.R. 583, 592 (Bankr. N.D. Ill. 1991) (requiring the creditor which sought to credit bid to protect the Trustee by posting a sufficient irrevocable letter of credit drawn on another bank in the event the creditor's

claim was disallowed); *Bank of Nova Scotia v. St. Croix Hotel Corp*. (*In re St. Croix Hotel Corp.*), 44 B.R. 277, 279 (Bankr. D. V.I. 1984) (allowing the creditor to credit bid because it was "one of the largest financial institutions in the world, with resources quickly available to meet any obligation involved herein").

(a) A demonstration of RTFC's creditworthiness is especially important in this case given the amount of recovery sought by the Committee against the RTFC in the Adversary Proceeding. In addition to its lien avoidance actions (which if successful may *inter alia* require disgorgement of many of the proceeds already applied by RTFC during the course of these Cases), the Committee seeks to recover in excess of $141 million in preferential transfers made to the RTFC within ninety days of the Petition Date, and also seeks the avoidance and recovery of other preferential transfers and damages on account of other claims.

(b) Accordingly, any credit bid temporarily allowed to RTFC should be conditioned upon the posting of a third-party letter of credit or other persuasive proof of ability to perform in a sum equal to its corresponding potential disgorgement obligation, as determined by this Court. Unless RTFC's parent is now prepared to guarantee RTFC's disgorgement obligations, proof of the parent's solvency or net worth is of no avail.

(c) At the very least, any ability granted to RTFC to credit bid should be significantly curtailed as to the permitted amount of such credit bid, ***e.g.***, the secured portion of its already undersecured claims, further reduced by all or some combination of: (i) its cumulative potential disgorgement exposure incurred in these Cases post-petition prior to any auction, (ii) the value of collateral granted to RTFC within one-year prior to the Petition Date by subsidiary Debtors not previously liable on RTFC's claims, and (iii) the sum of the preferences sought to be recovered in the Adversary Proceeding. By such formulation, the amount of any temporarily allowed credit bid by the RTFC could conceivably be less than the amount of the proposed stalking horse bid already described in the Sale Procedures Motion and Sale Motion.

(d) Furthermore, even when a credit-worthy creditor with the proven ability to pay to credit bid is allowed to credit bid, the opportunity to credit bid should be conditioned on a stipulation or order requiring the creditor to reimburse the estate if its lien proves invalid. *In re Miami General Hospital, Inc.*, 81 B.R. at 687; *In re Octagon Roofing*, 123 B.R. at 592. Although the Committee would entertain such a stipulation upon the

proper showing of credit-worthiness, no such stipulation or agreed motion for such an order has been entered.

19. RTFC's "Veto Right" Should Be Stricken. On another front, the Sale Procedures Motion, companion Sale Motion, accompanying agreements and proposed orders contemplate that RTFC will have an absolute veto over any sale.[4]

(a) These provisions should be stricken. If and to the extent that RTFC is aggrieved in any respect as to the Sale Procedures Motion, the Sale Motion, or the accompanying agreements and orders, it should file its objections to be heard on their relative merits like any other creditor.

(b) If and to the extent RTFC is nonetheless permitted to retain an absolute veto right over any sale, RTFC should then be required, upon the exercise of any such veto, to fund the proposed $2 million "Termination Fee" without recourse to the estates. The absurd scenario in which the Debtors, the Buyer, the Committee, other parties in interest and the Court stand prepared to approve and proceed with a § 363 sale but for a veto by RTFC is one in which only the RTFC benefits from and in which it alone should pay for the cost of such a veto.

20. RTFC's Continued Obligation to Provide DIP Financing. In the unlikely event that RTFC is permitted to terminate the sale process or is the successful bidder by means of credit bidding, RTFC or some other lender must be committed to provide continued DIP financing at a sufficient level to allow the Debtors to continue in business or to effect their orderly liquidation. None of the papers or motions before the Court provide for any such financing.

[4] This "veto" is accomplished indirectly. Under the APA, it is the parent Debtor which has the veto right. However, the Debtors' ability to enter into the APA and even to present the Sale Motion for hearing is (but for the Court's rulings on June 28, 2005) conditioned on prior consent from RTFC to do so, with a threat that DIP funding will not continue if the Debtors pursue a sale not approved by RTFC. In the Court's rulings on June 28, 2005, the Debtors were advised to bring before the Court any situation in which the RTFC was attempting to "veto" a sale transaction which the Debtors, in the exercise of their business judgment and fiduciary duties, nonetheless felt was in the best interest of the estates. Accordingly, the Debtors have neither been stripped nor relieved of their obligation to act in this regard as fiduciaries to creditors.

21. Deal Related Issues. Without limitation, approval of the Sale Motion should be conditioned upon the establishment of procedures and a timetable for the designation of those executory contracts and unexpired leases to be assumed and assigned to the Buyer (including any successful competing bidder), the assertion and resolution of proposed cure costs, the identification of the anticipated sources of such cure payments, and the formal assumption, assignment and, as appropriate, rejection of pertinent contracts and leases. Without prejudice to motions by specific contract or lease parties to compel assumption or rejection by an earlier date or by other more customized procedures, the Committee suggests that general deadlines and procedures (*i.e.*, applicable to those contract and lease parties who have not pursued specific relief) also be established that will at the same time best preserve the rights and interests of such contract and lease parties, enable any Buyer and the estates to implement any Court approved sale, preserve the interests of general unsecured creditors, and ensure the confirmation and implementation of a plan of reorganization.

22. Allocation of Proceeds and Right to be Heard. The Debtors should be required to determine the proposed allocation of sales proceeds on an asset-by asset, entity-by-entity, and estate-by-estate basis prior to the hearing on the Sales Motion in order to enable the Committee and other parties in interest to properly assess the Sales Motion and any competing bids.

23. Timing Bust No. 1 -- Payment of Purchase Price and Management. In an apparent effort to better coordinate the various closing stages under the APA with certain required HSR, FCC, and various state PUC approval processes, the latest version of the Sale Motion and related papers provides for a deferral of the execution and implementation of the Management Services Agreement until after receipt of FCC consent and the "first closing" under

the APA until receipt of actual or de facto HSR approval. While these changes may be prudent for some purposes, the Debtors may have inadvertently created one or more timing mismatches.

(a) Under the revised form of the Sale Motion, APA and related agreements, it is possible at least in theory that FCC consents and some significant PUC approvals may be obtained prior to the first closing (*i.e.*, prior to actual or de facto HSR approval). However, at the first closing, the Buyer is only paying half (roughly $30 million, subject to adjustments) of the total purchase price. This first-half of the purchase price was essentially for those assets which could be transferred without any regulatory approval. Payment of the second-half of the purchase price was to occur upon final closing. Final closing might occur (if ever) as late as one-year less one- day after the "Early Funding Date," or roughly in August or September 2006. One of Buyer's conditions to there being a final closing prior to such date is that all regulatory approvals or consents (*i.e.*, "Non-Transferred Assets" or assets requiring such approvals or consents in order to be transferred) have been received from the FCC and any applicable state PUC. However, if less than all regulatory approvals and consents are received, the Debtors can compel a "final closing" on the "one-year less on-day" date if 90% of such approvals and consents (*i.e.*, PUC approvals from states accounting for 90% of the total revenues of the Debtors for the year ending 2004 and all FCC consents) have by then been received. FCC consent to the transfer of some or all of the Non-Transferred Assets could occur at or before the first closing. Additionally, state PUC approvals of a significant portion (but less than all or even the referenced 90%) of the Non-Transferred Assets might also occur at or before the first closing. However, in the fortuitous event of early regulatory approvals or consents, and by nuances of the definitions, the APA does not appear to give the Debtors latitude to either defer the transfer of the erstwhile Non-Transferred Assets[5] to the final closing or, alternatively, to require an acceleration of a ratable portion of the second-half of the purchase price. Therefore, assets to be transferred at the first closing could be disproportionate to the amount of the purchase price paid. This concern could be alleviated by a clarification (of the definitions or by inclusion of an express provision) to the effect that none of those assets requiring FCC and state PUC consents may be transferred until the final closing regardless of whether such consents are obtained, absent one or more subsequent agreements for ratable payments.

[5] This refers to those assets that would have been "Non-Transferred Assets" but for the receipt of early regulatory approvals.

(b) Similarly, under the prior version of the APA, the Management Services Agreement was to be executed and implemented upon or soon after entry of the order approving the Sale Motion (*i.e.*, upon the "Early Funding Date"). Now (via the June 28 version of the APA), the effectiveness of that agreement is deferred until after FCC consent. In other words, the Debtors may retain ownership, possession and, presumably, management and operation of significant assets sold if the first closing occurs before the Management Services Agreement becomes effective. However, if this occurs, there will be no arrangement in place governing how the Debtor will be compensated for such management and operations. If the Debtors are to retain ownership, possession, or management of assets otherwise conveyed to the Buyer, some arrangement should be made by which the Debtors are compensated for such management, operational costs, and risk, so that the estates will at least break even as compared to the effect of an earlier closing.

24. Timing Bust No. 2 -- Confirmation vs. Assumption. The Sale Procedures Motion and Sale Motion seem to contemplate an extended period of time in which the Buyer may decide which executory contracts and unexpired leases it will accept by way of assignment and, hence, for which it will fund cure costs. This may either commit the Cases to an extension of the time to assume or reject that goes well beyond a projected confirmation date (which the Debtors have denied in their Omnibus Response to Objections to Debtors' Expedited Motion for Order (A) Approving Order (A) Approving Sale Procedures and Bid Protections in Connection With Sale of Certain Assets; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale, (C) Approving Notice Relating to Sale and (D) Granting Related Relief (Sale of Substantially All of the Debtors' Remaining Assets) (Docket No. 1435)), require an extension of the timetable for confirming a plan, or unreasonably endanger confirmation of a plan or the final closing of the transaction.

25. D&O Litigation Should be an Excluded Asset. Without limitation, any order approving the Sale Motion should expressly provide that all causes of actions for officers &

directors liability, related claims against upstream owners of the Debtors (TEC and CGI), and corresponding claims against D&O insurance policies covering same are "Excluded Assets," *i.e.*, remaining as non-transferred assets of the estates. The Debtor asserts that this is the already the case, but its definition is too vague to give adequate comfort on this score. Despite claims by the Debtors that the D&O litigation is somehow included in the definition of excluded "Avoidance Actions," this does not appear to be the case.

26. Treatment of Tariffs. The Sale Procedures Motion and Sale Motion do not illuminate whether tariffs are to be treated as executory contracts or as something else. If tariffs are to be treated as something other than as executory contracts, the Debtors should specify how they will be treated. The Debtors should disclose the costs, financial impact, litigation costs, etc., that may result under either scenario, and the Court should consider and determine whether such costs may be feasibly borne under the circumstances.

27. Cost and Management of PARs Litigation. To the extent that the Sales Motion and Asset Purchase Agreement purport to require the Debtors to undertake and continue litigation over the PARs, the Debtors should disclose and the Court should consider and approve or disapprove how funding for this continued litigation will be obtained, how much such continued litigation is projected to cost, and what degree of control, if any, the estates will retain with respect to the continuation, settlement or other disposition of such continued litigation.

28. The Funding of Ongoing Costs. The projected costs and means for the Debtors' performance of their ongoing obligations under that Asset Purchase Agreement and Sale Motion through "final closing" of the contemplated transaction should be thoroughly disclosed, considered, and approved or disapproved by the Court prior to approval of the Sale Motion.

Among other things, there should be a finding that the Debtors' ongoing operations can be conducted in a feasible manner in light of case dynamics.

29. One concern, among many others, is whether and to what extent DIP financing remains in place both until the final closing and thereafter. The Management Services Agreement provides that Buyer will be managing the business and paid $250,000 per month out of receivables for doing so. The Debtors is to remain in ultimate control but cannot direct the Buyer since it is given independent contractor status. Accordingly, the Debtors should show (i) how this arrangement will affect the total costs of operating the business, (ii) whether receipts up to the final closing will be adequate to cover those costs, (iii) whether it will be necessary to draw upon any DIP financing, (iv) whether proceeds of any final closing will be applied to pay any outstanding DIP financing and other administrative or priority claims or be swept to pay RTFC's pre-petition claims.

30. Liquidation/Class Recovery Analysis. Since the contemplated transaction involves substantially all of the Debtors' remaining assets, the Debtors should offer into evidence at the hearing on the Sale Motion the same sort of liquidation analysis and class-by-class recovery analysis that might otherwise be found in a disclosure statement.

31. Disclosure of Key Management Personnel. Since the Buyer (whether the stalking horse bidder or successful competing bidder) will manage a significant portion of the Debtors' assets during various phases of the contemplated multi-staged transaction, the Court is entitled to consider and approve the management personnel to be designated by the successful Buyer, the extent to which Buyer will hire Debtors' personnel, and whether and how Debtors will retain sufficient personnel to performs their continuing obligations prior to and after final closing.

32. Reservation of Rights to Assert Other and Further Objections. The Committee reserves the right to assert additional objections or to amplify or modify the foregoing prior to any hearing on the Sale Motion.

WHEREFORE, the Committee respectfully requests that the Court (a) condition any approval of the Sale Motion upon implementation of the relief sought above, or, (b) alternatively, deny approval of the Sale Motion, and, (c) in any event, grant such other and further relief as is just.

Dated: July 20, 2005.

Respectfully submitted,

/s/ Stephen A. Goodwin

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on July 20, 2005, a true and correct copy of the foregoing has been served, via ECF electronic mail and/or by regular United States Mail, postage-prepaid, on the parties listed on the Master Service List (*as of May 11, 2005*).

/s/ *J. Michael Sutherland*
J. Michael Sutherland