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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**VARTEC TELECOM, INC., *et al.*,**

**Debtors.**

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§

**Case No. 04-81694-SAF-11  
Chapter 11  
(Jointly Administered)**

**OBJECTION AND CROSS-MOTION OF THE SBC TELCOS,  
VERIZON, QWEST AND BELL SOUTH TO DEBTORS' EXPEDITED  
MOTION TO CONTINUE HEARINGS ON THE MOTIONS TO COMPEL  
ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS**

**OBJECTION AND CROSS-MOTION OF THE SBC TELCOS,  
VERIZON, QWEST AND BELL SOUTH TO DEBTORS' EXPEDITED  
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Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company, The Southern New England Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., Nevada Bell Telephone Company, and The Woodbury Telephone Company (collectively, the “SBC Telcos”), the operating telephone company subsidiaries of Verizon Communications Inc. (collectively, “Verizon”), Qwest Communications Corporation and Qwest Corporation (collectively, “Qwest”), and BellSouth Telecommunications, Inc. (“BellSouth”) (all of the aforementioned entities collectively, the “Carriers”), file this Objection to (a) the Debtors’ Expedited Motion to Continue Hearing on Carriers’ Motions to Compel Assumption or Rejection of Executory Contracts (Docket # 1502) and (b) the Debtors’ Expedited Motion to Continue Hearing on the Motion to Shorten Time Period for the Debtors to Assume or Reject the SBC Telcos’ Executory Contracts (Docket # 1504) (collectively, the “Motion for Continuance”), and would show the Court as follows:

### **Preliminary Statement**

1. Each of the Carriers filed Motions to Compel (Docket # 1452, 1254, 1456 and 1459) the Debtors to assume or reject their respective executory contracts

with the Debtors. The Motions to Compel were properly calendared and timely noticed for hearing on July 25, 2005 pursuant to the Court's self-calendaring procedures. The Court previously specially set a sale approval hearing for July 27, 2005 (the "Sale Approval Hearing") on the Debtors' motion to sell substantially all of their assets (the "Sale Motion"). The Carriers were unable to initially set their Motions to Compel for July 27 because July 27 was not a regularly calendared hearing date. For the reasons set forth herein, and in the Carriers' response opposed to the proposed sale of substantially all of the Debtors' assets (the "Carriers' Sale Objection", Docket # 1560, a copy of which without exhibits is attached hereto as **Exhibit A**), the Motion for Continuance should be denied and the Motions to Compel should be heard in conjunction with the Sale Approval Hearing.

2. The Motion for Continuance should be denied because: (i) the Court has already ruled that executory contract issues will be addressed at the Sale Approval Hearing; (ii) the issues raised by the Motions to Compel are the same issues that will be raised at the Sale Approval Hearing; (iii) executory contract issues are an integral component of the proposed sale and granting the Motion for Continuance would equate to a ruling on the merits in favor of the Debtors on the Sale Motion itself regarding executory contract issues; (iv) the Carriers' executory

contracts are essential to the business being sold, making executory contract issues directly relevant to the Sale Approval Hearing; (v) the Debtors are accelerating the Carriers' setoff litigation over the Carriers' objection but selectively opposing executory contract litigation; and (vi) the nine (9) months these bankruptcy cases have been pending and the sale process itself have provided sufficient time to make assumption and rejection decisions on the Carriers' executory contracts.

3. By way of cross-motion, the Carriers are moving for their Motions to Compel to be heard in conjunction with the Sale Approval Hearing on July 27.

### **Argument**

#### **A. The Court Specifically Carried Over Executory Contract Issues to the Sale Approval Hearing**

4. On June 27 and 28, 2005, the Court previously conducted a hearing to establish bidding procedures (the "Bidding Procedures Hearing") on the Sale Motion. At the Bidding Procedures Hearing, the Carriers argued, among other things, that the Carrier's executory contracts should be assumed or rejected as part of the sale of the Debtors' assets. The Court specifically delayed ruling on executory contract issues, and in so ruling held that the issues of "assumption, assignment, and rejection of executory contracts and unexpired leases ... are reserved to the Sale Hearing." Order Approving Bidding Procedures at p. 3, ¶ 3

(emphasis added). The Debtors have failed to properly or timely move to alter or amend the Bidding Procedures Order, nor would they have grounds to do so.

**B. The Issues Raised by the Motions to Compel are the Same Issues that will be Raised at the Sale Approval Hearing**

5. As explained in the Carriers' Sale Objection, the issues relating to executory contracts, and their assumption or rejection, are substantially similar or identical to the issues that will be raised in response to the Debtors' Sale Motion. Witnesses are substantially similar or identical. Exhibits are substantially similar or identical. Arguments are substantially similar or identical. Judicial economy would be served by having one hearing on the issues, rather than two hearings with the same or similar witnesses, testimony and argument.

**C. Executory Contract Issues are an Integral Component of the Proposed Sale**

6. The executory contract issues are an essential and integral part of the Debtors' Sale Motion. To postpone ruling on executory contract issues for 6 to 12 months or more would effectively abridge the Carriers' rights with respect to their executory contracts, and deny the Carriers the right and ability to adequately respond to the Sale Motion. Indeed, granting the Motion for Continuance would be tantamount to a ruling on the merits in favor of the Debtors regarding the executory contract issues implicated by the Sale Motion. Further, granting the

Motion for Continuance would be the equivalent of permitting the Debtors an unfettered amount of additional time to file a plan because of the relationship between confirmation and the requirement to assume or reject the Carriers' contracts.

**D. The Carriers' Executory Contracts are Essential to the Business Being Sold**

7. As the Debtors' sales agent (Mr. Adam Dunayer) testified at the Bidding Procedures Hearing, the Carriers' executory contracts are irreplaceable for the operation of the Debtors' business. The Debtors' business, as it currently stands, cannot be operated without the Carriers' agreements, making assumption and rejection of executory contract issues directly relevant to the Sale Approval Hearing. Moreover, the following text was inserted into Exhibit B of the Order approving the bidding procedures reflecting the importance and materiality of the Carriers' executory contracts:

**Treatment of Carrier Contracts**

Verizon, MCI, BellSouth, SBC, and Qwest have raised objections to the Agreement on the basis that it does not identify the Debtors' carrier contracts that will be assumed and assigned, or rejected, in connection with the sale. The Bankruptcy Court has carried those objections to be heard at the Sale Hearing. Potential Purchasers may want to identify the carrier contracts that will be assumed and assigned, or rejected, in any bid they submit for the Acquired Assets. The inclusion of this information in a bid for the Acquired Assets could be a factor in the Debtors' determination of Qualified Bids.

(Order Approving Bidding Procedures, Ex. B at 3.)

**E. The Debtors are Accelerating the Carriers' Setoff Litigation While Seeking to Delay Executory Contract Litigation**

8. It is puzzling why the Debtors have strenuously pushed for the immediate litigation of the Carriers' setoff issues over the Carriers' objections, given the potential expense of the setoff litigation, when the assumption of the Carriers' executory contracts will largely moot the setoff litigation. One can surmise from the Debtors' actions that it is their intention to eventually reject all of the Carriers' executory contracts; otherwise, the setoff litigation would constitute waste of the estate's resources in needless litigation. Even more puzzling then is why the Debtors are so strenuously seeking to postpone for 6 to 12 months the litigation of the very issue that could moot the setoff litigation – assumption or rejection of the Carriers' executory contracts. The only cogent explanation for all of the Debtors' behavior is that the Debtors intend to continue using the Carriers' executory contracts for as long as possible without being forced to “cure” the Debtors' defaults under such contracts.

**F. The Debtors Have Had More Than Enough Time to Make Assumption and Rejection Decisions on the Carriers' Contracts**

9. The sale process has been ongoing for months, a sufficient time to make assumption and rejection decisions for the Carriers' agreements.

Notwithstanding the Debtors' protestations that the estate has 15,000 executory contracts, there are only a handful of parties that filed Motions to Compel, comprising a relatively small number of executory contracts (many of them containing identical language). It is hard to believe that the resources that have been put into the sale process to date by the Debtors, their numerous advisors, and the stalking horse party have been inadequate to address the executory contract issues of the Carriers. By the time the Sale Approval Hearing takes place, the Debtors and the stalking horse buyer will have had more than a month of formal notice that the Carriers were objecting to the inadequate executory contract provisions contained in the Sale Motion, providing more than sufficient time to correct the inadequate provisions and make assumption or rejection decisions by the time of the Sale Approval Hearing.



### **Conclusion**

10. For the foregoing reasons, and the reasons set forth in the Carriers' Sale Objection, the Motion for Continuance should be denied and the Motions to Compel should be heard in conjunction with the Sale Hearing on July 27, 2005. July 21, 2005.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 21<sup>st</sup> day of July, a true and correct copy of the foregoing document was served as follows: (i) electronically on the parties which receive electronic notification in these proceedings, (ii) via regular mail to the parties listed below, and (iii) via electronic mail to the parties listed below.

/s/ Paul M. Rosenblatt

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