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**ATTORNEYS FOR UNIPOINT HOLDINGS, INC.**

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

<b>IN RE:</b>	§	<b>CHAPTER 11</b>
	§	
<b>VARTEC TELECOM, INC., ET AL</b>	§	<b>CASE NO. 04-81694-SAF-11</b>
<b>DEBTOR</b>	§	<b>(JOINTLY ADMINISTERED)</b>

**UNIPOINT HOLDINGS, INC.'S OBJECTION TO DEBTORS'  
EXPEDITED MOTION TO APPROVE STIPULATIONS AND ORDERS  
REGARDING EXECUTORY CONTRACTS, INCLUDING TARIFFS  
WITH BELLSOUTH, THE SBC TELCOS AND VERIZON**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Unipoint Holdings, Inc. ("Unipoint") and files this its Objection To Debtors' Expedited Motion (the "Motion") to Approve Stipulations and Orders Regarding Executory Contracts, Including Tariffs with BellSouth, the SBC Telcos and Verizon, and would respectfully show the Court as follows:

1. Unipoint objects to the Debtors' entry into the SBC Telcos Stipulation (unless defined differently herein, capitalized terms used herein shall have the same meaning as in the Motion). Unipoint has requested that the following additional language be included in the proposed SBC Telcos Stipulation:

Each of the Parties represents that, other than this Stipulation, there are not other agreements, whether written or oral, between or among the SBC Telcos, the Debtors or the Comtel Buyer or any of their officers directors, employees or representatives with respect to Debtors' or the Comtel Buyers' rights or freedom to contract, to assume any executory contracts or to otherwise do

business with any other party, or with respect to the subject matter of the Missouri Litigation.

The language is necessary to assure that the Debtors comply with the disclosure and Bankruptcy Court approval requirements of Rule 9019, and also to ensure that Unipoint, which provides the Debtors access to its enhanced services platform and is a co-defendant with the Debtors in certain litigation which is to be resolved pursuant to the proposed stipulation, will not be prejudiced or otherwise harmed by an undisclosed agreement regarding either the use of Unipoint enhanced services platform or the subject matter of the Missouri Litigation<sup>1</sup> between the Debtors and the SBC Telcos. As with any other matter in a chapter 11 case, disclosure is paramount.

2. Without assurances that there are no secret side agreements that limit the Debtors or the purchasers<sup>2</sup> rights and ability to run their businesses, the Court cannot be assured that the Stipulation is based on legal and justifiable compromises. Among the possible and eminently imaginable side agreements are those that amount to collusion in the Missouri Litigation or agreements that the Debtors and/or Purchaser are prohibited from using certain vendors or types of services that are competitive with SBC.

3. In addition, Unipoint notes that in the Motion, the Debtors have plead only generic and summary conclusions regarding the factors necessary to obtain approval of the proposed compromise under Rule 9019 and its progeny. The Court's consideration of the compromise is guided by the standards set forth by the Supreme Court in *Protective Committee for Independent*

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<sup>1</sup> Since before the Petition Date, the Debtor and Unipoint have been defendants in litigation commenced by certain SBC Telcos as plaintiffs pending in the federal district court for the Eastern District of Missouri, Case No. 4:04CV1303CEJ (E.D. Mo.) (the "Missouri Litigation"). In the Missouri Litigation, the SBC Telcos have sued to recover certain access charges they claim are owed by the Debtors and Unipoint.

<sup>2</sup> At an auction held on July 25, 2005, Comtel Investments, LLC ("Comtel") was the winning bidder of substantially all of the Debtors' assets. Comtel Telecom Assets, L.P. ("Comtel Telecom") is the assignee of Comtel. Comtel Telecom has entered into an Asset Purchase Agreement (the "APA") with the Debtors.

*Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). Those factors, as adopted by the Fifth Circuit, are: (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. See *United States v. AWECO, INC. (In re AWECO, Inc.)*, 725 F.2d 293 (5th. Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599 (5th. Cir. 1980). The Fifth Circuit more recently defined “other factors” as being “the paramount interests of creditors with proper deference to their views.” See *Connecticut General Life Ins. Co. v. United Companies Financial Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914 (5th Cir. 1995).

4. “[T]he purpose of Rule 9019 is to protect the interest of others who are not parties to the agreement and whose rights may be affected.” *In re Nelson Co.*, 117 B.R. 813, 820 n.19 (Bankr.E.D.Pa. 1990), *aff’d* 959 F.2d 1260 (3d Cir. 1992). Thus, the dissemination of the full terms of a settlement agreement is required as a matter of law under Bankruptcy Rule 2002(a)(3). Full disclosure is required because the Court is required to review the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion. *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp.(In re Foster Mortgage Corp.)*, 68 F.3d 914 (5th Cir. 1995), *citing In re Present Co.*, 141 B.R. 18, 21 (Bkrcty.W.D.N.Y.1992). Because of competitive and litigation factors pervading this case, the Court must be assured that it has all of the terms of any agreement and that there are no secret side deals that have not been disclosed.

5. The Debtors have not pled, and based upon such pleading, may be unable to show, the required elements necessary to obtain approval of the proposed Stipulations under the Fifth Circuit requirements. As such, the Stipulation should not be approved absent appropriate pleading and evidence. Unipoint objects to the approval of the Stipulation and

reserves the right to cross-examine and offer rebuttal evidence at any hearing regarding approval of the proposed Stipulations.

WHEREFORE, PREMISES CONSIDERED, Unipoint Holdings, Inc. respectfully the Motion be denied, and for any such other and further relief to which it may be justly entitled.

Respectfully submitted,

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By: /s/ Kell C. Mercer

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ATTORNEYS FOR UNIPOINT  
HOLDINGS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent, via email and/or United States first-class mail, to all parties listed on the attached Service List, on this 11<sup>th</sup> day of August, 2005.

/s/ Kell C. Mercer

Kell C. Mercer