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

<b>IN RE:</b>	§	
	§	
<b>VARTEC TELECOM, INC.,</b>	§	<b>CASE NO. 04-81694-SAF-11</b>
<i>et al.,</i>	§	
	§	
<b>Debtors</b>	§	

**MOTION OF LEVEL 3 COMMUNICATIONS LLC FOR LEAVE TO  
 FILE LATE PROOF OF CLAIM AND RESPONSE TO FIRST OMNIBUS  
 OBJECTION TO CLAIMS UNDER 11 U.S.C. §§ 102(1), 105(a), 501(a),  
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3007**

Level 3 Communications, LLC (“Level 3”), a creditor of the above-captioned Debtors (the “Debtors”), by and through its undersigned counsel, hereby moves for entry of an order, pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for leave to file late proofs of claim and denying the relief sought as to Level 3 in the Debtors’ First Omnibus Objection to Claims Under 11 U.S.C. §§ 102(1), 105(a), 501(a), and 502(b) and Federal Rule of Bankruptcy Procedure 3007 (the “Motion”). In support hereof, Level 3 respectfully shows the Court as follows:

**I. JURISDICTION**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

## **II. FACTUAL BACKGROUND**

2. On the Petition Date, the Debtors filed a consolidated list of 50 largest unsecured creditors. On the 50 largest unsecured creditors list, Level 3 was listed as having a claim of \$340,843.00. It was not listed as a contingent, unliquidated or disputed obligation of the Debtors. Subsequently, the Debtors filed their consolidated Schedule F for creditors holding unsecured nonpriority claims (line cost items). On that schedule, Level 3 is listed as having a claim of \$349,789.06. However, the claim was listed as contingent, unliquidated and disputed.

3. On March 14, 2005 (the “Bar Date”), Level 3 placed in an overnight courier service its Proofs of Claims which are attached hereto as **Exhibit A**. They were received by the claims and noticing agent for the Debtors on March 15, 2005, one day after the Bar Date. Accordingly, the Debtors filed an objection to such claim as being untimely.

4. Level 3 believed it had an allowed claim based upon the Debtors’ consolidated list of 50 largest unsecured creditors in the amount of \$340,843 because the claim was not listed as contingent, liquidated, or disputed. Moreover, Level 3 did not receive a notice of amendment to that list of 50 largest unsecured creditors pursuant to Rule 1009(a). Accordingly, the Proofs of Claim were filed merely for the purpose of clarifying the amount due to Level 3 for purposes of, not only their claim, but also to establish proper cure amount should the Debtors seek to assume and/or assign their contract with Level 3. Level 3 has provided services to the Debtors since the Petition Date pursuant to an executory contract.

5. The Debtors will have suffered no prejudice on account of the claim being filed late. It was placed in overnight courier outside of the control of Level 3 on or before the Bar Date. It is Level 3’s belief that no reliance was placed on the amount of claims filed as early as one day after the Bar Date.

### **III. RELIEF REQUESTED**

#### **A. Level 3's Proofs of Claim Should be Permitted**

6. Level 3 respectfully requests that it be allowed to file late-filed claims under Rule 9006 of the Bankruptcy Rules and the United States Supreme Court precedent cited below.

7. Bankruptcy Rule 9006(b)(1) authorizes a bankruptcy court to accept late filing where the failure to act is a result of “excusable neglect,” and contemplates that courts are permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond a party’s control. Fed.Rules Bankr. Proc.Rule 9006(b)(1), 11 U.S.C.A.

8. The leading case addressing the “excusable neglect” standard is *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380; 113 S. Ct. 1489 (1993). “Excusable neglect” is an elastic concept and includes inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party’s control. *Pioneer*, 507 U.S. at 388, 391. A determination of “excusable neglect” is an equitable proceeding where the Court must take into account all relevant circumstances including (i) the danger of prejudice to the debtor; (ii) the length of the delay and its potential impact on judicial proceedings; (iii) the reason for the delay, including whether it was within the reasonable control of the movant; and (iv) whether the movant acted in good faith. *Id.* at 395.

#### **B. Prejudice to the Debtors**

9. In this case, allowing the late-filed claims will not prejudice the Debtors. The Claims were sent via overnight delivery on the Bar Date and recorded only one day later. Additionally, allowing the Claims will not prejudice the Debtor because the Debtor’s own list of 50 largest unsecured creditors established that Level 3 had a valid unsecured claim that was not contingent, liquidated, or disputed.

**C. Length of Delay**

10. The length of the delay, as measured by the Bar Date was less than 24 hours.

**D. Reason for Delay**

11. The reason for the delay by Level 3 was the reliance by Level 3 on the Debtors' consolidated list of 50 largest unsecured creditors filed with their Chapter 11 petitions. Moreover, it will be the Debtors' burden to establish that all amounts due under executory contracts are cured, if and when, an assumption or assignment of such contracts is scheduled to occur.

**E. Good Faith**

12. Level 3 has acted in good faith in bringing this Motion to the Court upon receipt of the Debtors' First Omnibus Objection to Claims Under 11 U.S.C. §§ 102(1), 105(a), 501(a), and 502(b) and Federal Rule of Bankruptcy Procedure 3007.

13. Accordingly, Level 3 respectfully submits that it satisfies the "excusable neglect" standard, as set forth in *Pioneer*, and should be granted relief to late file its proofs of claim against the Debtors.

14. Level 3 respectfully requests the Court (i) grant leave for Level 3 to file late proofs of claim, overrule the Debtors First Omnibus Objection to Claims Under 11 U.S.C. §§ 102(1), 105(a), 501(a), and 502(b) and Federal Rule of Bankruptcy Procedure 3007, and grant Level 3 such other relief as this Court deems just, proper, and equitable.

Dated: August 15, 2005

AKIN GUMP STRAUSS HAUER & FELD LLP

By:           /s/Keith Miles Aurzada            
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ATTORNEYS FOR LEVEL 3 COMMUNICATIONS,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copy of the foregoing was provided to all persons set forth below via facsimile and via email on the 15th day of August, 2005.

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