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ATTORNEYS FOR THE RURAL
TELEPHONE FINANCE COOPERATIVE

**UNITED STATES BANKRUPTCY COURT
FOR THE 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)**

**OBJECTION OF THE RURAL TELEPHONE FINANCE COOPERATIVE
TO CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.'S
SECOND INTERIM APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES AND REQUEST FOR
PAYMENT OF THE TWENTY PERCENT HOLDBACK**

COMES NOW the Rural Telephone Finance Cooperative (the "RTFC") and hereby files this objection to Carrington, Coleman, Sloman & Blumenthal, L.L.P.'s Second Interim Application for Compensation and Reimbursement of Expenses and Request for Payment of the Twenty Percent Holdback (the "Fee App"), which was filed by Carrington, Coleman, Sloman, & Blumenthal ("CCSB"), and, in support thereof, would respectfully show the following:

PRELIMINARY STATEMENT

1. The fees requested by CCSB in the Fee App should be reduced because a portion of the fees included in the Fee App were incurred: while investigating potential claims against RTFC; taking actions “to preserve the Committee’s claims against the RTFC;” or otherwise, as a result of managing the unsecured creditor committee’s (the “UCC”) litigation against RTFC in the pending adversary proceeding between the UCC and RTFC. In the Fee App, CCSB admits it has exceeded the stipulated amount of fees allowed for the investigation of claims against RTFC per the Joint Stipulation of Carrington, Coleman, Sloman & Blumenthal L.L.P. and White and Case LLP (the “Joint Stipulation”). By including fees incurred in connection with the RTFC litigation or “Lender Claims” in the Fee App rather than segregating such fees under a different billing number from that of the main bankruptcy case,¹ CCSB has failed to comply with the Final Order Pursuant to Sections 328(a) and 1103(a) of the Bankruptcy Code Approving the Supplemental Application for Approval of the Employment of Carrington, Coleman, Sloman, and Blumenthal, L.L.P., as Special Counsel for the Official Committee of Unsecured Creditors to Prosecute the Estates’ Claims Against Rural Telephone Finance Cooperative (the “Contingency Fee Order”). These fees should be disallowed for purposes of this application, segregated with the other fees attributable to the claims investigation or prosecution against RTFC, and held in abeyance pending further order.

2. Second, a significant portion of the fees requested in the Fee App are attributable to work done investigating and preparing for claims and perhaps suits against the former directors and officers of VarTec and its affiliates. Almost one third of the total fees requested, over \$340,000.00, fall within this task or group of tasks. Inasmuch as the committee has not yet

¹ CCSB has agreed to record its time and expenses under a different billing number for all work performed in connection with the RTFC litigation. See Fee App at p.28.

initiated suit against these parties nor reported to the Court or to the major case constituents about the merits of any causes of action or the collectability of any judgment thereon, the Court and creditors have no real sense of the value to the estate of such services and therefore, the request for fees is at best premature and at worst, unreasonable and excessive. Prior to allowance the Court should require evidence of the benefit to the estate of such services and, if such showing is made, the Court should order or maintain an appropriate holdback pending realization of value to the estate.

ARGUMENT

3. CCSB has exceeded the cap on investigating potential claims against RTFC. Per the Joint Stipulation, the UCC and the IR committee are only entitled to incur \$50,000.00 in fees and expenses investigating claims and liens of the RTFC. All fees in excess of the \$50,000.00 allowance should be excluded from the Fee App. As disclosed in the Fee App, CCSB has already sought and received its proportion of the \$50,000.00 RTFC investigation cap. *See* Fee App p. 28.

4. Allowance of the objectionable fees violates the terms of the Contingency Fee Order. The Contingency Fee Order provides for compensation of fees relative to “Lender Claims” only under its terms, and not under the Original Application and Retention Order. In apparent violation of the terms of the Contingency Fee Order, the Fee App describes dozens of daily task entries that articulate work performed in connection with the RTFC litigation or “Lender Claims” subsequent to April 15, 2005. As depicted in Exhibit A attached hereto, CCSB has included in the Fee App in excess of \$23,000.00 in fees that can be attributed to CCSB attorneys performing work on matters related to the RTFC litigation.

5. Furthermore, in the Fee App itself, CCSB identifies several instances in which it performed services (for which it seeks compensation) for the express purpose of “preserv[ing] the Committee’s ability to challenge the liens alleged by RTFC.” Specifically, in paragraph #20 of the Fee App, referring to the Debtors’ motions to sell its assets in Mexico, Canada, Addison, Texas, and the larger, more recent July, 2005 auction, CCSB states that it “filed limited objections to the sale motions in order to preserve the Committee’s ability to challenge the liens alleged by RTFC.” Further, in paragraph #72 of the Fee App, in connection with the “Carriers” task descriptions, CCSB states that it

“specifically reviewed and analyzed RTFC’s motion to intervene in the adversary proceeding brought against BellSouth. CCSB contacted and negotiated a stipulation with RTFC’s counsel, in order to preserve the Committee’s claims against RTFC.”

6. RTFC asserts that the time, services and fees associated with these tasks fall within the scope and description of the \$50,000.00 cap on fees made applicable to the Committee for the investigation and prosecution of claims or causes of action against the RTFC. CCSB in its Fee App has admitted the character of the services and the fact that they directly relate to preserving the Committee’s ability to prosecute claims against the RTFC. The Court should require CCSB to quantify such fees, subject to review and approval by the RTFC, and order such fees to be disallowed on an interim basis and held in abeyance pending further order.

7. No showing of benefit to the estate from fees requested for investigation of claims against Directors and Officers. In the Fee App, CCSB seeks allowance of \$342,106.50 attributable to investigation of the actions of and potential liabilities of the Debtors’ directors and officers. The Committee has been authorized, but not directed, to file any necessary actions on behalf of the estate. But there has been no showing under 11 U.S.C. §330 of benefit to the estate. RTFC respectfully requests the Court to allow such fees only upon a showing of benefit to the

estate and, if such showing is indeed made, that the Court nevertheless maintain an overall holdback of 25% pending the actual obtainment of value in the form of recovery in excess of such fees.

8. Subject to the foregoing specific objections, RTFC has no objection to the allowance and payment by the estate of the balance of the fees requested by CCSB.

CONCLUSION

9. As shown in Exhibit A, which has been derived from the fee statements filed by CCSB in support of its Fee App, over \$23,000.00 of the fees requested in the Fee App have been inappropriately included in the Fee App, in derogation of prior orders of the Court. These fees should be disallowed on an interim basis, ordered segregated and held in abeyance subject to allowance in accordance with the terms of the Contingency Fee Order. Further, the Court should require CCSB to quantify fees incurred by it “preserv[ing] the Committee’s claims against the RTFC” with regard to the asset sales, the Carrier matters and any other aspects of the case so that such fees may be disallowed on an interim basis, subject to further order. Finally, the Court should order an appropriate holdback with respect to the fees incurred by CCSB with respect to the directors and officers claims/litigation until such time as a showing of benefit to the estate can be made, as well as a finding of economic value.

WHEREFORE, PREMISES CONSIDERED, the RTFC respectfully requests that this Court grant its objection and allow the fees requested by CCSB only after making the reductions and holdbacks sought herein and, for such other and further relief as is just and equitable.

Dated: August 15, 2005.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By /s/ Ryan E. Manns
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CERTIFICATE OF SERVICE

I certify that, on the 15th day of August, 2005, a true and correct copy of the foregoing was served, via facsimile, to the following individuals:

John Cunningham – 305-358-5744
Craig Averch – 213-687-0758
Dan Stewart – 214-220-7716
Bill Wallander – 214-220-7716
Stephen Goodwin – 214-855-1333
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/s/ Ryan E. Manns
Ryan E. Manns