

Toby L. Gerber
State Bar No. 07813700
John N. Schwartz
State Bar No. 00797397
Ryan E. Manns
State Bar No. 24041391
Fulbright & Jaworski L.L.P
2200 Ross Ave., Ste. 2800
Dallas, Texas 75201
Telephone: (214) 855-8000
Facsimile: (214) 855-8200

William R. Greendyke
State Bar No. 08390450
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246

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.

§
§
§
§
§

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

**OBJECTION OF THE RURAL TELEPHONE FINANCE COOPERATIVE
TO SECOND INTERIM APPLICATION FOR ALLOWANCE OF FEES AND
REIMBURSEMENT OF EXPENSES OF XROADS SOLUTIONS GROUP, LLC
FINANCIAL ADVISORS FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR THE PERIOD MARCH 1, 2005 THROUGH JUNE 30, 2005**

COMES NOW the Rural Telephone Finance Cooperative (the "RTFC") and hereby files this objection to the Second Interim Application for Allowance of Fees and Reimbursement of Expenses of XRoads Solutions Group, LLC Financial Advisors for the Official Committee of Unsecured Creditors for the Period March 1, 2005 through June 30, 2005 [Docket No. 1689] (the "Fee App"), which was filed by XRoads Solutions Group, LLC ("XRoads"), and, in support

thereof, would respectfully show the following:

LEGAL STANDARD

1. Bankruptcy Code §330(a)(1) provides that:

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, [or] a professional person employed under section 327 or 1103 –

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. §330(a)(1).

2. In the Fifth Circuit, the determination of a reasonable professional's fee award involves a two-step process. The court must first determine the "lodestar" by multiplying the reasonable number of hours expended and the reasonable hourly rate for each participating attorney. *See Rutherford v. Harris County*, 197 F.3d 173, 192 (5th Cir. 1999). The second step involves the application of the well-established twelve-factor standard set out in *Johnson v. Georgia Highway Express, Inc.* 488 F.2d 714 (5th Cir. 1974); *see also Lawler v. Teofan*, 807 F.2d 1207, 1210 (5th Cir. 1987). The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amounts involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*,

488 F.2d at 717. Once the lodestar is computed by multiplying the reasonable number of hours by a reasonable hourly rate, the court may adjust the lodestar upward or downward depending on its analysis of the twelve factors. *See Dodge v. Hunt Petroleum Corp.*, 174 F.Supp.2d 505, 508 (N.D. Tex. 2001).

PRELIMINARY STATEMENT

3. The fees requested by XRoads in the Fee App should be reduced for three reasons. First, the amount of fees incurred do not comport with the results obtained, and certainly the Fee App does not justify fees in excess of the flat monthly rate authorized by the Court's order allowing employment. It is unclear from the Fee App what benefit to the estate or value has resulted from this incurrence of professional fees. At this point in the proceeding, the fees and expenses that XRoads has incurred in connection with this case appear excessive and unreasonable. Accordingly, XRoads' fees and expenses should be significantly reduced or made the subject of substantial holdback because there has been no showing under 11 U.S.C. §330 of benefit to the estate. Second, several aspects of the application appear particularly unreasonable in amount, such as travel time and expenses and, fees devoted to fee application matters. Finally, XRoads should be limited, in connection with fees incurred investigating the RTFC, to the same \$50,000.00 cap as the other Committee professionals.

ARGUMENT

4. XRoads was engaged at a flat rate of \$100,000.00 per month. The Committee has apparently authorized XRoads to seek compensation in excess of \$125,000.00 per month. The amount of fees incurred do not comport with the results obtained at the \$100,000.00 per month level, much less at a level over \$125,000.00 per month. One factor that must be considered in

determining the reasonableness of fees is to consider the results obtained. XRoads, in paragraph 70(h) of the Fee App, states:

The single most important factor this Court should consider when determining XRoads allowance in these proceedings is the value of XRoads services as measured by the results obtained. XRoads would show that the work it performed in these bankruptcy cases was beneficial to the Debtors.

5. XRoads has failed to plead or demonstrate the results obtained (value) or the benefit to “Debtors” [the estate] as a result of its services. In consideration of all of the relevant factors, the amount of compensation sought does not constitute reasonable compensation for actual, necessary services rendered by XRoads.

6. Pursuant to the Court’s Order Granting the Amended First Interim Application for Allowance of Fees and Expenses of XRoads Solutions Group, LLC Financial Advisors for the Official Committee of Unsecured Creditors for the Period November 9, 2004 through February 28, 2005 [Docket No. 1231], XRoads was compensated \$681,458.00 in fees and \$99,909.52 in expenses. In connection with the Fee App, XRoads is requesting an additional \$534,936.00 in fees and \$93,346.04 in expenses. The total requested fees alone through June 30 is \$1,216,394.00.

7. Travel time and expenses are excessive and unreasonable. RTFC objects to the fact that XRoads has employed on this matter a number of employees who appear to be based in locations outside of Texas — particularly, New Jersey, Florida, New York and Pennsylvania. As a result, significant travel time and expenses have been charged to the estate. Over \$90,000.00 of the approximately \$93,000.00 in expenses described in the Fee App are directly attributable to

the travel expenses of the XRoads consultants.¹ Given that XRoads has Dallas and Houston offices, they have not justified the need in having a number of employees from other offices traveling great distances at significant expense, to the detriment of the estate, for the duration of this case. Over 300 hours in the Fee App were solely dedicated to the travel time of the XRoads consultants. The fees generated from travel time alone exceeded \$47,000.00.

8. The amount of fees requested for fee applications is excessive and unreasonable. XRoads dedicated approximately 83.9 hours to work in compliance with the Fee Procedures Order. The amount of fees charged to Fee App related tasks amounts to \$24,445.00. A reasonable fee for such services is approximately 3% of the amount of the allowable fees. Therefore, a reasonable fee for preparation of the Fee App, based on the reasonable standard of 3% of the total allowable fees, is approximately \$16,000.00.

9. XRoads is bound by the \$50,000 cap on investigating or pursuing claims against RTFC. According to the Fee App, XRoads has dedicated 36.9 hours to the review and analysis of various financial information related to potential causes of action. In this context, XRoads spent time reviewing the billing and connection agreements for the various VarTec legal entities and their setoff/withholding issues.² 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. *See* Final Order Authorizing Post-Petition Financing, Granting Senior Liens and Priority Administrative Expense Status, Authorizing Use of Cash Collateral and Modifying

¹ In the Fee App, XRoads has incurred in excess of \$35,000 in airfare expenses, in excess of \$11,000.00 in ground transportation expenses, in excess of \$30,000.00 in lodging expenses, and in excess of \$11,000 in meal expenses. All of these expenses are directly attributable to the travel expenses of the XRoads consultants.

² In reviewing the exhibits to the Fee App, specifically the sections that address the billable time that XRoads has dedicated to potential causes of action, it is difficult to determine precisely how much time was spent on setoff/withholding issues because of the significant redactions made in the work descriptions.

the Automatic Stay (the “Final DIP Order”, dkt. No. 789). 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 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 “CCSB Fee App”), Carrington, Coleman, Sloman, & Blumenthal, L.L.P. has already sought and received its proportion of the \$50,000.00 RTFC investigation cap. *See* CCSB Fee App p. 28. In other words, the “cap” amount has been previously consumed.

10. Finally, while XRoads has not completed its engagement, they have yet to demonstrate that the services rendered provided significant value to justify the tremendous amount of fees and expenses that they have incurred. Until such time as XRoads can show the Court and the parties that the fees and expenses they have incurred have provided significant benefit and value to the estates, the fees should be reduced significantly, or, alternatively, be made subject to a 30% holdback pending final order.

CONCLUSION

11. The Court should reduce the fees and expenses sought for travel, fee matters, and for investigating or prosecuting claims against RTFC. Further, the Court should reduce the award of fees significantly in the absence of a showing of benefit and value to the estate. Alternatively, the Court should order an appropriate holdback with respect to the fees and expenses incurred by XRoads with respect to the Fee App 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 XRoads only after making the reduction sought herein and, for such other and further relief as is just and equitable.

Dated: August 17, 2005.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: /s/ Ryan E. Manns

Toby L. Gerber

State Bar No. 07813700

John N. Schwartz

State Bar No. 00797397

Ryan E. Manns

State Bar No. 24041391

2200 Ross Ave., Ste. 2800

Dallas, Texas 75201

Telephone: (214) 855-8000

Facsimile: (214) 855-8200

William R. Greendyke

State Bar No. 08390450

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

Telephone: (713) 651-5151

Facsimile: (713) 651-5246

ATTORNEYS FOR THE RURAL
TELEPHONE FINANCE COOPERATIVE

CERTIFICATE OF SERVICE

I certify that, on the 17th 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
George McElreath – 214-767-8971

/s/ Ryan E. Manns

Ryan E. Manns