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

**RESPONSE IN OPPOSITION TO THE SECOND MOTION OF THE OFFICIAL
COMMITTEE OF EXCEL INDEPENDENT REPRESENTATIVES TO MODIFY
TERMS OF RETENTION OF SCOULER ANDREWS LLC**

COMES NOW the Rural Telephone Finance Cooperative (the "RTFC") and hereby files this response in opposition to the Second Motion of the Official Committee of Excel Independent Representatives to Modify Terms of Retention of Scouler Andrews L.L.C. [Docket No. 1749] (the "Motion"), which was filed by White & Case, L.L.P. ("W&C") on August 15, 2005, and, in support thereof, would respectfully show the following:

PRELIMINARY STATEMENT

1. RTFC objects to the proposed modification of the terms articulated by Scouler Andrews in the Motion. Scouler Andrews has already exceeded the \$100,000.00 cap amount and has failed to justify the need to further increase the agreed upon allotment. In the alternative, Scouler Andrews should be directed to specify or budget the cost to the estate of services to be rendered in connection with the anticipated IR Settlement and, subject to further objection and court approval, compelled to perform within such budget.

ARGUMENT

2. In the Court's Order (I) Pursuant to 11 U.S.C. § 105(a) Modifying the Court's December 9, 2004 Order and (II) Pursuant to 11 U.S.C. § 1103 and Fed. R. Bankr. 2014 Authorizing Retention of Scouler Andrews LLC as Claims Consultant for the Official Committee of Excel Independent Representatives Nunc Pro Tunc to January 31, 2005, the Court expressly stated that:

Scouler Andrews shall be compensated for services rendered in connection with (i) assisting the IR Committee with an assessment and calculation of the Independent Representative claims and (ii) assisting the IR committee and its counsel with negotiations for the potential resolution of the IR claims; provided, however, that such compensation shall not exceed \$75,000.00 in the aggregate, exclusive of providing testimony if necessary, as requested by the IR Committee...

3. In the Court's May 11, 2005 Order Granting the Motion of the Official Committee of Excel Independent Representatives to Modify Terms of Retention of Scouler Andrews LLC (the "Modified Order") the court increased the existing \$75,000.00 cap an

additional \$25,000.00 to reflect a total cap amount of \$100,000.00.¹

4. Scouler Andrews has exceeded the \$100,000.00 cap established in the Modified Order. Scouler Andrews is only entitled to incur \$100,000.00 in fees in connection with their work assisting the IR Committee with the assessment and calculation of the IR claims along with assisting the IR Committee counsel with negotiations for the potential resolution of the IR claims. Scouler Andrews was compensated \$66,075.00 in fees in response to its First Interim Application. To date, Scouler Andrews has incurred approximately \$125,000.00 in fees in this matter. *See* Motion at p.4. No fees in excess of the \$100,000.00 modified amount should be paid out of RTFC collateral.

5. In each instance above, Scouler Andrews has agreed before the Court to a certain fee cap. But then, following each such order, Scouler Andrews has come back to the parties and the Court and has sought to “raise the bar,” just as if the prior orders were meaningless. The first modification increased the cap amount \$25,000.00. Through the motion at bar, there is yet another requested increase of \$50,000.00, for a total allowable fee of \$150,000.00. However, there is no allegation either of what Scouler Andrews has done to date or the reasonableness, necessity or cost of what is to be done by the firm in the future in aid of the pending settlement. The motion should therefore be denied.

6. In the alternative, RTFC says in light of the manner in which the above-described applications and retention motions have been presented to the Court during the course of this case, a reasonable approach would be to require Scouler Andrews to propose a budget for completion of any necessary work in connection with the IR Settlement. Subject to an opportunity to object and subsequent Court approval of such a budgeted amount, Scouler

¹ On August 15, 2005, White and Case L.L.P. filed, on Scouler Andrews’ behalf, the Second Motion of the Official Committee of Excel Independent Representatives to Modify Terms of Retention of Scouler Andrews. RTFC objects to the modification of the order on the basis that there is no justification to increase the cap amount.

Andrews should then be required to perform in accordance with the budget. Otherwise, Scouler Andrews would have the ability, based on its experience to date with this case, to spend or incur whatever fees and expenses it wanted to, knowing that the prior fee cap orders were (and that this current requested fee increase would be) practically meaningless.

7. RTFC reserves the right to file an objection to the final fee application and to object to the final allowance of any and all fees and expenses that Scouler Andrews has previously received.

CONCLUSION

8. Based on the foregoing, RTFC submits that the terms of the Modified Order should not be altered and the existing cap of \$100,000.00 in fees should remain in place. In the alternative, RTFC requests the Court to require Scouler Andrews to prepare a budget for the work yet to be done in this case, gain the Court's approval of the budget, and then comply with it for the duration of the case.

WHEREFORE, PREMISES CONSIDERED, the RTFC respectfully requests that this Court deny the Motion and grant RTFC any further relief as is just and equitable.

Dated: September 6, 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 6th day of September, 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