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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.** §

**OBJECTION OF THE RURAL TELEPHONE FINANCE COOPERATIVE  
TO SECOND INTERIM APPLICATION OF SCOULER ANDREWS FOR  
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES AS CLAIMS CONSULTANT TO THE OFFICIAL  
COMMITTEE OF EXCEL INDEPENDENT REPRESENTATIVES 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 of Scouler Andrews, LLC For Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Claims Consultant to the Official Committee of Excel Independent Representatives for the Period March 1, 2005 Through June 30, 2005 [Docket No. 1756] (the "Fee App"), which was filed by White & Case,

L.L.P. (“W&C”), 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 (5<sup>th</sup> 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 (5<sup>th</sup> Cir. 1974); *see also Lawler v. Teofan*, 807 F.2d 1207, 1210 (5<sup>th</sup> 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 Scouler Andrews in the Fee App should be reduced. The amount of fees incurred do not comport with the results obtained, and the Fee App does not justify the allowance of fees in excess of the \$100,000.00 flat rate that Scouler Andrews agreed to and the court authorized. Accordingly, the fees requested by Scouler Andrews in the Fee App should be reduced because they have exceeded the \$100,000.00 allotted amount and there is no justification for increasing the fees allowed.

### **ARGUMENT**

4. 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...

5. 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

("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.<sup>1</sup>

6. 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. In the Fee App, Scouler Andrews is requesting an additional \$57,800.00 in fees for services rendered for the period March 1, 2005 through June 30, 2005. In total, Scouler Andrews has requested \$123,875.00 in fees. No fees in excess of the \$100,000.00 modified amount should be paid out of RTFC collateral.

7. Based on the foregoing, RTFC submits that the total amount of \$123,875.00 in fees requested in the Fee App should be reduced by at least \$23,875.00, allowing only a remaining amount of \$100,000.00 in fees.

8. RTFC reserves the right to file an objection to the final fee application and to object to the allowance of any and all fees and expenses that Scouler Andrews receives.

### **CONCLUSION**

9. The Court should reduce the fees Scouler Andrews has incurred in excess of \$100,000. No fees incurred in excess of the \$100,000.00 amount should be paid out of RTFC collateral or

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<sup>1</sup> 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.

loan proceeds.

WHEREFORE, PREMISES CONSIDERED, the RTFC respectfully requests that this Court grant its objection and allow the fees requested by Scouler Andrews only after making the reduction sought herein and, for such other and 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 6<sup>th</sup> 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