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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re)	
)	Case No. 04-81694-SAF-11
VARTEC TELECOM, INC., <i>et al.</i>)	
)	
Debtors.)	(Chapter 11)
)	(Jointly Administered)
)	

**BILLING CONCEPTS INC.'S LIMITED OBJECTION TO MOTION FOR INTERIM AND
FINAL ORDERS (1) AUTHORIZING DEBTORS TO USE CASH COLLATERAL,
(2) AUTHORIZING THE DEBTORS TO INCUR POST-PETITION FINANCING ON AN
INTERIM AND FINAL BASIS WITH SUPERPRIORITY OVER ADMINISTRATIVE
EXPENSES AND SECURED BY SENIOR PRIMING LIENS (3) SCHEDULING A
FINAL HEARING AND ESTABLISHING NOTICE REQUIREMENTS, AND (4)
GRANTING RELATED RELIEF**

Billing Concepts, Inc., dba USBI and dba Zero Plus Dialing ("Billing Concepts"), objects to the Motion For Interim And Final Orders (1) Authorizing Debtors To Use Cash Collateral, (2) Authorizing The Debtors To Incur Post-Petition Financing On An Interim And Final Basis With Superpriority Over Administrative Expenses And Secured By Senior Priming Liens (3) Scheduling a Final Hearing And Establishing Notice

Requirements, And (4) Granting Related Relief (the “Financing Motion”) and in support thereof states as follows:

I. BACKGROUND

1. The Debtors are in the business of providing certain telecommunication services (the “Telecommunications Services”) to end user customers (the “Customers”).

2. On November 2, 2004, the Court entered an Order Directing Joint Administration of Cases.

3. On September 1, 2004, VarTec Telecommunications, Inc. (“VarTec”) and Billing Concepts entered into a Call Record Processing and Information Management Services Agreement and an Umbrella Agreement (collectively, the “VarTec Billing Agreement”). A copy of the VarTec Billing Agreement is attached hereto as Composite Exhibit 1.

4. On September 1, 2004, Excel Telecom, Inc. (“Excel”) and Billing Concepts entered into a Call Record Processing and Information Management Services Agreement, a Billing and Information Management Services Agreement, and an Umbrella Agreement (collectively, the “Excel Billing Agreement”). A copy of the Excel Billing Agreement is attached hereto as Composite Exhibit 2. The VarTec Billing Agreement and the Excel Billing Agreement are collectively, the “Billing Agreements.”

5. Pursuant to the Billing Agreements, Billing Concepts provides certain billing, collection, and management services which permit VarTec and Excel to have charges for Telecommunications Services billed directly to Customers through the applicable local exchange company (the “LEC”).

6. Under the Billing Agreements, VarTec and Excel regularly transfer to Billing Concepts billing records that evidence the amounts due from Customers using Telecommunications Services (the “Billing Records”). Billing Concepts processes the Billing Records and transfers them to the appropriate LEC, each of which then invoices the charges to the Customers. Thereafter, each LEC pays Billing Concepts the amount

due to it in accordance with each LEC's billing and collection agreement with Billing Concepts. After Billing Concepts has been paid by the LECs, Billing Concepts deducts Billing Concepts' billing service fees, charges, claims, chargebacks, assessments, reserves, and other amounts set forth in Sections 4, 6, 7, 8, 9, 12, 13, 14, and elsewhere in the Billing Agreements from amounts otherwise payable by Billing Concepts under the Billing Agreements. (All of the foregoing fees, reserves, charges, deductions, adjustments, and the like are, collectively, the "Billing Concepts Deductions"). After deducting and applying the Billing Concepts Deductions, Billing Concepts pays the net balance amount due in accordance with the Billing Agreements to the depository designed in writing by VarTec or Excel.

7. VarTec and Excel no longer have direct billing and collection agreements with several of the LECs. As a result, VarTec and Excel must use an outside company to process its Billing Records through the LECs. Billing Concepts is one of only a few companies that provide this service. Without the specialized billing services that Billing Concepts provides, the costs to VarTec and Excel to collect the revenues arising from Customers' use of Telecommunication Services would render alternatives to Billing Concepts impractical.

8. VarTec and Excel want Billing Concepts to continue to provide services under the Billing Agreements. Billing Concepts must be able to continue in the ordinary course of business in order to provide services under the Billing Agreements and the parties' prior practices. To that end, Billing Concepts must be able to continue, without interruption, to deduct, retain, and apply the Billing Concepts Deductions to amounts that may otherwise be payable under the Billing Agreements, and for the parties to otherwise operate in the ordinary course of business under the Billing Agreements during the pendency of this Chapter 11 and any subsequent Chapter 7 case.

II. FINANCING MOTION

9. The Financing Motion proposes to grant to Rural Telephone Finance Cooperative (the “DIP Lender”), as security for the DIP financing described in the Financing Motion, at least the following:

(a) A lien and security interest in all of the Obligors’¹ Pre-Petition Collateral² “subject only to any existing, valid, enforceable, and unavoidable offset rights and liens prior to the Lender on the Pre-Petition Collateral” (Financing Motion, ¶ 21(d)); and

(b) A lien and security interest in all of the Obligors’ Collateral³ (Financing Motion, ¶ 21(d)).

10. The Financing Motion also provides that the priority of the liens and security interests proposed to be granted under the Financing Order will be:

(a) Under Bankruptcy Code § 364(c)(2), a first priority lien in assets not otherwise encumbered by a valid perfected lien (Financing Order, ¶ 21(d)(i));

(b) Under Bankruptcy Code § 364(d)(1), a “first priority, senior, perfected priming lien upon all of the Obligors’ right, title, and interest in, to, and under the Pre-Petition Collateral...” (Financing Motion, ¶ 21 (d)(ii)); and

(c) Under Bankruptcy Code § 364(c)(3), a second priority junior lien upon all of the Obligors’ right, title, and interest under all Collateral “(Financing Motion, ¶ 21(d)(iii)).

¹ “Obligor’s” is defined in paragraph 11 of the Financing Motion as all of the Debtor’s, except VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc.

² “Pre-Petition Collateral” is defined in paragraph 28 of the Financing Motion as “substantially all assets of the Debtors...”

³ “Collateral” is defined in paragraph 21(d) of the Financing Motion as “all present and after acquired property of the Obligors of any nature whatsoever, whether real, personal, or mixed, taxable or intangible, including, without limitation, all cash contained in any account maintained by the Obligors and all causes of action (other than causes of action arising under Chapter 5 of the Bankruptcy Code)(collectively with all proceeds and products of any or all of the foregoing, the “Collateral”), including, without limitation, the following:...”

III. RELIEF REQUESTED

11. The effect of the foregoing provisions could directly and adversely affect Billing Concepts' rights under the Billing Agreements. Although the Financing Motion appears to provide an exception for the exercise of 'offset' rights as to Pre-Petition Collateral, no similar provision exists as to any other Collateral (compare Financing Motion, ¶¶ 21(d)(i) and 22). The absence of an exception for offset (and similar rights exercisable by Billing Concepts under the Billing Agreements) with respect to all Collateral directly impacts Billing Concepts' rights under the Billing Agreements, particularly with respect to Billing Concepts' ability to provide postpetition services to VarTec and Excel.

12. To the extent, if any, the liens and other protections proposed to be granted to the DIP Lender in the Financing Motion would be senior to Billing Concepts' rights under the Billing Agreements, Billing Concepts would not be adequately protected. Specifically, if any of the liens and other protections proposed to be granted to the DIP Lender in the Financing Motion would have the effect of compromising, subordinating, modifying, or adversely affecting any of Billing Concepts' rights under the Billing Agreements (including Billing Concepts' rights to deduct, retain, and apply the amounts due to Billing Concepts from amounts that might otherwise be payable by Billing Concepts, or to exercise setoff and recoupment rights), it would be contrary to Tex. & Comm. Code § 9-404. Moreover, it would violate 11 USC § 364(d)(1)(B) because, among other things, Billing Concepts' rights would not be adequately protected and the nothing in the Financing Motion proposes to provide Billing Concepts with any form of adequate protection.

13. Based upon the foregoing, Billing Concepts objects to entry of a Final Order unless a provision protecting Billing Concepts, such as the following, is added to the Final Order:

Notwithstanding anything to the contrary in the Interim Order or this Final Order, Billing Concepts' rights under applicable law and under its agreements with the Debtors, including, without limitation, its rights to deduct, retain, and apply amounts due and to become due, and its setoff and recoupment rights, shall not be affected hereby and shall at all times be and remain superior to any liens and rights granted to the DIP Lender hereunder.

Wherefore, for the reasons set forth above, Billing Concepts objects to the relief sought in the Financing Motion and request that the relief be denied.

Respectfully submitted,

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Of Attorneys for Billing Concepts, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection has been served upon all parties listed on the attached service list via United States mail, first class, postage prepaid on this 17th day of November, 2004.

/s/Michelle E. Shriro