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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-HDH-11
(Chapter 11)**

**RESPONSE IN OPPOSITION OF THE RURAL TELEPHONE FINANCE
COOPERATIVE TO CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL,
L.L.P.'S REQUEST FOR PAYMENT OF DISPUTED FEES PURSUANT TO
THE AMENDED FEE PROCEDURE ORDER**

COMES NOW the Rural Telephone Finance Cooperative (the "RTFC") and files this, its Response in Opposition to Carrington, Coleman, Sloman & Blumenthal, L.L.P.'S Request for Payment of Disputed Fees Pursuant to the Amended Fee Procedure Order (the "Response"), and, in support and supplement thereof, would respectfully show the following:

**RESPONSE IN OPPOSITION OF THE RURAL TELEPHONE FINANCE COOPERATIVE TO
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.'S REQUEST FOR PAYMENT OF
DISPUTED FEES PURSUANT TO THE AMENDED FEE PROCEDURE ORDER**

INTRODUCTION

1. VarTec Telecom, Inc., *et al.* (collectively, the “Debtors”) filed for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on November 1, 2004 (the “Petition Date”).

2. On November 5, 2004, the Court entered the Amended Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses for Case Professionals (the “Fee Procedure Order”) [Docket No. 118]. The Fee Procedure Order established procedures for compensation of case professionals retained in this case.

3. On August 15, 2005, RTFC filed its 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 (the “Objection”), attached as Exhibit A.

4. In the Objection, RTFC stated, among other things, that Carrington, Coleman, Sloman & Blumenthal, L.L.P.’s (“CCSB”) fees incurred in the investigation of claims against the Debtors’ Directors and Officers (the “D&O Investigation”) should be subject to a 25% holdback because CCSB has not shown that the work performed provided a material benefit to the estate.

5. On August 19, 2005, the Court held a hearing on RTFC’s Objection and heard arguments from RTFC and CCSB. As reflected in an excerpt from the transcript attached as Exhibit B, the Court stated in its ruling that:

[t]he applicable case here in the Fifth Circuit is the Prosnacks case and it governs a ruling on fees. My reading of that case is that it requires a backwards look and a comparison of the amounts that are involved for fees and expenses against the benefit to the estate...The fees will be allowed on an interim basis. This ruling

makes no finding at this time that the Prosnacks test has been met. That determination must await a later date.

6. On November 3, 2005, pursuant to the Fee Procedure Order, RTFC served via facsimile its Notice of Objection of Rural Telephone Finance Cooperative to Carrington, Coleman, Sloman & Blumenthal, L.L.P.'s Statement for Fees and Expenses Incurred from September 1, 2005 through September 30, 2005 (the "Notice"), a copy of which is attached as Exhibit C.

7. Per the Notice, RTFC requests that the total amount requested by CCSB during September be reduced by \$84,974.50, (the "Disputed Amount"), leaving a remaining amount of \$66,235.00.

8. On November 16, 2005, CCSB filed Carrington, Coleman, Sloman & Blumenthal, L.L.P.'S Request for Payment of Disputed Fees Pursuant to the Amended Fee Procedure Order (the "Request") [Docket No. 2060].

ARGUMENT

CCSB Has Yet to Meet Its Burden, As Articulated In *Pro-Snax*, of Providing A Tangible, Material Benefit to the Estate.

9. CCSB is not entitled to payment for the Disputed Amount because they have failed to satisfy the standard articulated in *Matter of Pro-Snax Distributors*, 157 F.3d 414 (5th Cir. 1998). Specifically, CCSB has failed to illustrate that they have provided a tangible, material benefit to the estate through their investigative efforts.

10. CCSB maintains in its Request that a determination based on the standard articulated in *Pro-Snax* is premature.

11. In August the Court ruled that a determination of whether the *Pro-Snax* test has been met must await a later date. RTFC submits that now is the appropriate time to make the determination with regards to whether CCSB has satisfied the *Pro-Snax* burden.

12. As the Court ruled at the August 19, 2005 hearing, *Pro-Snax* is the binding authority in the Fifth Circuit and governs a ruling on fees. As articulated in *Pro-Snax*, “[a]ny work performed by legal counsel on behalf of the debtor must be of a material benefit to the estate for compensation under 11 U.S.C.S. § 330.” *Id.* at 39. In determining whether CCSB is entitled to the requested compensation, the prevailing inquiry is whether CCSB’s services have “resulted in an identifiable, tangible, and material benefit to the bankruptcy estate.” *Id.* at 38.

13. Three months and over \$190,000.00 after the Court’s ruling to allow for the payment of fees on an interim basis, CCSB has yet to file a lawsuit in connection with the D&O Investigation, and more importantly, have failed to satisfy their burden that, in their efforts to investigate the Direct and Officer claims, they have provided a tangible, material benefit to the estate.

14. In *Pro-Snax*, the court specifically reasoned that it was “disinclined to hold that any service performed at any time need only be reasonable to be compensable.” Indeed, in the present matter, while consistently asserting that their services performed in connection with the D&O Investigation have been reasonable, CCSB has failed to provide any tangible evidence that they have provided a material benefit to the estate. This is especially disconcerting given that CCSB has incurred over \$530,000.00 of the estate’s money in connection with the D&O Investigation. The fact that CCSB has incurred a large amount of fees and performed numerous services in connection with the D&O Investigation does not necessarily translate into providing a

material benefit to the estate to the extent that they deserve to be fully compensated for their efforts.

15. Accordingly, CCSB should not be compensated for the \$84,974.50 in fees and expenses that they incurred in September in connection with the D&O Investigation.

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

Dated: November 21, 2005.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Response was served by facsimile upon the parties listed on the attached Service List this the 21st day of November, 2005.

Michael G. Hoffman – 214-424-1400
George F. McElreath – 214-767-8971
John K. Cunningham – 305-358-5744/5766

Daniel C. Stewart – 214-999-7761
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/s/ Ryan E. Manns
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