



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Hamlin DeWayne Hale
United States Bankruptcy Judge

Signed November 23, 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)

In re:)	Chapter 11
)	
VARTEC TELECOM, INC., <u>et al.</u> ,)	Case No. 04-81694-HDH11
)	
Debtors.)	Jointly Administered
)	

**STIPULATION AND ORDER FOR ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS, AND RELATED CURE,
AMONG (I) THE DEBTOR, (II) MCLEOD USA TELECOMMUNICATIONS
SERVICES, INC., AND (III) COMTEL TELECOM ASSETS LP**

McLeod USA Telecommunications Services, Inc. (such subsidiaries, collectively, “McLeod”), the above-captioned debtors (the “Debtors”), and Comtel Telcom Assets L.P. as assignee of Comtel Investments LLC (“Comtel” or the “Comtel Buyer”) (all of the aforementioned collectively, the “Parties,” and individually, a “Party”) hereby stipulate and agree as follows with respect to the assumption and assignment of the contracts between the Debtors and McLeod, and related cure.

RECITALS¹

A. On November 1, 2004 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. McLeod provides various telecommunications services to the Debtors pursuant to the Master Services Agreement (Carrier Accounts), dated as of September 14, 2004, between VarTec Telecom, Inc. and McLeod (the “McLeod MSA”). The McLeod MSA establishes the terms, conditions and pricing under which McLeod provides the Debtors with the telecommunications services described therein.

C. McLeod has asserted that, as of the Petition Date, the Debtors were indebted to McLeod for telecommunications services under the McLeod MSA in the amount of \$292,560. McLeod has further acknowledged that, as of the Petition Date, it was indebted to the Debtors under the various contractual arrangements in the amount of \$272,816 (any amounts owing by McLeod to the Debtors under such arrangements are referred to herein as the “McLeod Receivables”). The Debtors have disputed varying amounts of the foregoing sums, including asserting that the Debtors owe less to McLeod than McLeod contends and asserting that McLeod owes more to the Debtors than McLeod contends.

D. To provide McLeod with adequate assurance of payment for postpetition charges, the Bankruptcy Court entered that certain Stipulation and Consent Order By and Among Certain Carriers and the Debtors Regarding Adequate Assurance/Adequate Protection of Future Payments (the “Carriers Stipulation”).

¹ In the event that the Final Closing Date shall not be consummated as provided in the APA (as defined herein) nothing herein shall constitute a waiver, estoppel or be of any preclusive effect in any cause, matter or proceeding, and the parties respective rights shall be reserved in all respects. All defined terms in this stipulation shall have the meaning ascribed to the them in the APA unless otherwise defined herein.

E. On June 17, 2005, the Debtors filed their Motion For Authority To Sell Assets Free And Clear Of All Liens, Claims, Rights, Interests And Encumbrances And For Related Relief (the “Sale Motion”), seeking approval for the sale of substantially all of their assets to Leucadia National Corporation, or its authorized assignee, pursuant to the procedures approved by the Court in the Bid Procedures Order.²

F. At an auction held on July 25, 2005, Comtel prevailed as the winning bidder and has entered into an Asset Purchase Agreement with the Debtors with a Purchase Price of \$82,100,000 (the “APA”).³

G. The APA provides that, upon the Early Funding Date (which occurred on August 1, 2005), the Comtel Buyer is required to place into escrow the Purchase Price Escrow Amount (i.e. 50% of the Purchase Price). APA § 2.10.

H. The APA further provides that after the later of (i) the Early Funding Date and (ii) the expiration of the Hart-Scott-Rodino waiting period, the Sellers will transfer to the Comtel Buyer the Transferred Assets, but will not transfer at that time the Non-Transferred Assets. (APA § 2.14(a).

I. The date on which the Transferred Assets are to be transferred is referred to as the Closing Date.

J. The Date on which the Non-Transferred Assets are to be transferred is referred to as the Final Closing Date.

K. After receipt of the FCC Consents, the APA requires that the Sellers and the Comtel Buyer enter into a Management Services Agreement (the “MSA”).⁴ (APA § 5.1(b).)

² The term "Bid Procedures Order" refers to the Order (A) Approving Sale Procedures And Bid Protections In Connection With Sale of Certain Acquired Assets; (B) Scheduling An Auction And Hearing To Consider Approval Of The Sale; (C) Approving Notice Relating To Sale; and (D) Granting Related Relief (Sale Of Substantially All Of The Debtors' Remaining Assets) entered by the Bankruptcy Court on June 30, 2005.

³ All discussion herein of terms of the APA are descriptive only and the APA shall control in the event any description herein is in conflict with the APA.

L. The Final Closing Date will take place on the second Business Day after the satisfaction of the regulatory requirements as set forth in section 6.6 of the APA. Those conditions include receipt of the consents that are required to be received from the state or local public service or public utilities commissions with jurisdiction over the transaction, i.e., the State PUC Consents.

M. Under the APA, upon the occurrence of certain conditions precedent, the Comtel Buyer has the right to acquire the McLeod Receivables and to dispose of them in any manner, including in settlement, compromise or other arrangement with McLeod, and the McLeod Receivables shall be deemed an Acquired Asset under the APA that are disposed of in accordance with the terms of this Stipulation and Order. (APA § 5.16.)

N. Subsequent to the Sale Motion and in connection with the Carriers Stipulation, McLeod, the Debtors and the Comtel Buyer have agreed, subject to the terms and conditions contained herein and the consummation of the Final Closing Date under the APA, to (i) the assumption by the Debtors and assignment to the Comtel Buyer of the McLeod MSA under section 365 of the Bankruptcy Code, and (ii) the other terms more particularly described in the operative paragraphs of this Stipulation and Order.

O. The Debtors agree to file this Stipulation and Order with the Bankruptcy Court promptly upon the execution hereof, and request that the Bankruptcy Court accept and “so order” this Stipulation and Order. The Date that the Bankruptcy Court “so orders” this Stipulation and Order shall be referred to as the “Approval Date”.

IT IS THEREFORE STIPULATED, CONSENTED, AND AGREED by and among the Debtors, Comtel and McLeod, and subject to the terms and conditions set forth herein, as follows:

⁴All discussion herein of terms of the MSA are descriptive only and the MSA shall control in the event any description herein is in conflict with the MSA.

1. Pursuant to section 365 of the Bankruptcy Code, effective as of the consummation of the Final Closing Date, the McLeod MSA shall be deemed assumed by the Debtors and assigned to Comtel.

2. McLeod agrees that, as of the consummation of the Final Closing Date, all applicable requirements for the assumption and assignment of the McLeod MSA will be deemed satisfied.

3. In full satisfaction of the prepetition cure and compensation obligations to McLeod under section 365(b)(1) of the Bankruptcy Code, effective as of the consummation of the Final Closing Date, McLeod shall be entitled to retain the McLeod Receivables, and no entity shall have any further claim against McLeod with respect to the McLeod Receivables.

4. Effective as of the consummation of the Final Closing Date, McLeod's entitlement to retain the McLeod Receivables, shall constitute full and final satisfaction of the Debtors' and the Comtel Buyer's prepetition cure and compensation obligations to McLeod under section 365(b)(1) of the Bankruptcy Code with respect to the McLeod MSA, and McLeod shall have no further prepetition claim against the Debtors.

5. Pending the consummation of the Final Closing Date (a) all of the terms of the McLeod MSA shall remain in full force and effect, subject to the terms and conditions of the Carriers Stipulation; (b) the Carriers Stipulation shall remain in full force and effect with regard to the McLeod MSA, except to the extent that the payment terms are modified as provided below; (c) McLeod shall retain all bankruptcy and non-bankruptcy rights to payment of postpetition obligations owed by the Debtors, including, without limitation, all rights to prepayment under the Carriers Stipulation through and including the date that the Debtors and Comtel enter into the MSA; (d) provided that each Party hereto is in compliance with its obligations under this Stipulation and Order and the Carriers Stipulation (as modified below) (i)

McLeod shall not file with the Court any motion seeking to compel the Debtors to assume or reject the McLeod MSA, or similar relief, nor shall it join in any request for such relief made by any other party; and (ii) except as allowed below, the Debtors shall not file with the Court any motion seeking to reject the McLeod MSA, or similar relief. From and after the consummation of the Final Closing Date, the Comtel Buyer shall be solely responsible for compliance with all terms of the McLeod MSA, including payment for all outstanding obligations arising after the Petition Date, the Carriers Stipulation shall no longer be in effect as to the Comtel Buyer with respect to McLeod, and all claims of McLeod against the Debtors shall be deemed satisfied in full.

6. The MSA was signed and is effective as of September 19, 2005 (the "MSA Date"). As a result, as of the MSA Date the normal payment terms set forth in the McLeod MSA shall govern the payment obligations of the Debtors to McLeod and upon the consummation of the Final Closing Date, the payment obligations of Comtel to McLeod.

7. Effective upon the consummation of the Final Closing Date, the Debtors and the Comtel Buyer, on the one hand, and McLeod on the other hand, shall be deemed to have fully and forever waived, released, extinguished and forever discharged each other from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy (including, without limitation, any avoidance actions under Chapter 5 of the Bankruptcy Code) or otherwise, known or unknown, present or future, fixed or contingent, which each Party may have or claim to have against the other from the beginning of time through the Petition Date relating to the Debtors.

8. Notwithstanding the terms of paragraph 5(d)(ii) hereof, because the Debtors and the Comtel Buyer will be working together to implement actions to optimize, or "groom," the Debtors' network, prior to the consummation of the Final Closing Date, the Debtors may reject

any circuits associated with the McLeod MSA by submission of standard disconnect paperwork to McLeod, and any termination penalties or other claims arising from such rejection shall be deemed prepetition claims of McLeod against the Debtors and subject to the release provision by McLeod set forth in this Stipulation and Order.

9. In the event of any inconsistency between any provision of the Sale Order and this Stipulation and Order, the terms of this Stipulation and Order shall control.

10. Unless a Party has violated the terms of this Stipulation and Order, no other Party shall seek from any court or regulatory body the entry of any order, or the granting of any relief, that is inconsistent with the terms of this Stipulation and Order.

11. The Debtors and/or the Comtel Buyer shall provide notice to McLeod of the Final Closing Date after its occurrence. In the event of a termination of the APA, the Debtors and/or the Comtel Buyer shall provide notice to McLeod of such termination.

12. All notices under this Stipulation and Order shall be delivered by (i) overnight delivery service or (ii) e-mail and facsimile. A notice shall be deemed to have been delivered on the date that it was sent. All notices to McLeod under this Stipulation and Order shall be sent to:

Chris Munsch
Director of Credit and Collection
6400 C Street, SW
Cedar Rapids, IA 52406
Fax: 319.790.6151
E-mail: cmunsch@mcleodusa.com

All notices to the Debtors and/or the Comtel Buyer under this Stipulation and Order shall be sent to:

Peter M. Gilhuly
Latham & Watkins, LLP
633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Phone: 213.485.1234
Fax: 213.891.8763
E-mail: peter.gilhuly@lw.com

William L. Wallander
Vinson & Elkins L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Phone: 214.220.7700
Fax: 214.999.7905
Email: bwallander@velaw.com

13. Each of the Parties represents that, subject to the Bankruptcy Court's approval and entry of this Stipulation and Order in the bankruptcy cases of the Debtors, it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Stipulation and Order and to fully perform its duties and obligations hereunder.

14. No modification, amendment or waiver of any of the terms or provisions of this Stipulation and Order shall bind any Party unless such modification, amendment or waiver is in writing, has been approved by the Bankruptcy Court, and has been executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced.

15. No delay or omission by any Party in exercising any right or power occurring upon any noncompliance or default by any other Party with respect to any of the terms and provisions of this Stipulation and Order will impair any such right or power or be construed to be a waiver thereof. A waiver by any of the Parties of any of the covenants, conditions or agreements to be performed by any other Party will not be construed to be a waiver of any

succeeding breach thereof or of any other covenant, condition or agreement contained in this Stipulation and Order.

16. This Stipulation and Order may be executed in one or more counterparts, each of which, when so executed and delivered, shall be an original and all of which together shall constitute one and the same instrument.

17. The Parties acknowledge that this Stipulation and Order is the joint work product of all of the Parties, and that, accordingly, in the event of ambiguities in this Stipulation and Order, no inferences shall be drawn against any Party on the basis of authorship of this Agreement.

18. Nothing in this Stipulation and Order shall constitute, or be considered as, an admission of liability or wrongdoing by any of the Parties, or any agreement by any of the Parties as to the validity of any of the positions advanced by any of the other Parties.

19. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation and Order.

20. This Stipulation and Order shall be binding upon any successors or assigns of the parties hereto, including, without limitation, any Chapter 7 trustee who may be appointed for the estates of the Debtors

21. This Stipulation and Order shall constitute the entire agreement by and among the Parties hereto regarding the matters addressed herein. No extrinsic or parol evidence may be used to vary any of the terms herein.

STIPULATED AND AGREED THIS 10th DAY OF OCTOBER, 2005.

MCLEOD

By: /s/ Chris Munsch

Name: Chris Munsch

Title: Director of Credit and Collection

-AND-

 /s/ Richard S. Lipman

x Assistant General Counsel

x

x

ATTORNEYS FOR MCLEOD

DEBTORS

By: /s/ Michael G. Hoffman
Name: Michael G. Hoffman
Title: President and CEO

-AND-

/s/ William L. Wallander
VINSON & ELKINS L.L.P.
Daniel C. Stewart, SBT #19206500
William L. Wallander, SBT #20780750
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201
(214) 661-7299

ATTORNEYS FOR DEBTORS

COMTEL TELECOM ASSETS L.P.

By: /s/ William Zartler

Name: William Zartler

Title: President

-AND-

/s/ Peter M. Gilhuly

LATHAM & WATKINS, LLP

Peter M. Gilhuly

633 West Fifth Street, Suite 4000

Los Angeles, California 90071-2007

(213) 485-1234

ATTORNEYS FOR COMTEL

SO ORDERED.