

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

IN RE:)
) BK. NO: 04-81694-SAF-11
VARTEC TELECOM, INC.)
D E B T O R)

* * * * *

TRANSCRIPT OF PROCEEDINGS

* * * * *

BE IT REMEMBERED, that on the 15th day of August,
2005, before the HONORABLE HARLIN D. HALE, United States
Bankruptcy Judge at Dallas, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:

NATIONAL COURT REPORTERS (214) 651-8393

1 A P P E A R A N C E S

2 VINSON & ELKINS, L.L.P.
2001 Ross Avenue, Suite 3700
3 Dallas, Texas 75201
BY: Mr. Dan Stewart
4 Mr. William Wallander
Mr. Richard London

5
ON BEHALF OF THE DEBTORS

6
FULBRIGHT & JAWORSKI
7 2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
8 BY: Mr. John Schwartz

9 APPEARING ON BEHALF OF RURAL TELEPHONE
FINANCE COOPERATIVE

10

11 THOMPSON & KNIGHT
1700 Pacific Avenue, Suite 3300
12 Dallas, Texas 75201
BY: Mr. John Brannon
13 Mr. David Bennett
Ms. Suzanne Lesley

14

APPEARING ON BEHALF OF SBC COMMUNICATIONS,
15 INC.

16 KANE, RUSSELL, COLEMAN & LOGAN
1601 Elm Street, Suite 3700
17 Dallas, Texas 75201
BY: Mr. Joseph Coleman

18

APPEARING ON BEHALF OF VARTEC TELECOM,
19 INC.

20 ARNALL, GOLDEN, GREGORY, LLP
171 17th Street, Suite 2100
21 Atlanta, Georgia 30363
BY: Mr. Darryl Laddin

22

APPEARING ON BEHALF OF VERIZON OPERATING
23 TELEPHONE COMPANIES

24

25

1 LATHAM & WATKINS
2 633 West Fifth Street, Suite 4000
3 Los Angeles, California 90071
4 BY: Mr. Peter Gilhuly

5 APPEARING ON BEHALF OF COMTEL TELECOM
6 ASSETS L.P.

7 BROWN MCCARROLL
8 111 Congress Avenue, Suite 1400
9 Austin, Texas 78701
10 BY: Ms. Patricia Tomasco

11 APPEARING ON BEHALF OF POINTONE
12 TELECOMMUNICATIONS, INC.

13 WHITE & CASE, LLP
14 200 S. Biscayne, Suite 4900
15 Miami, Florida 33132
16 BY: Mr. John Cunningham

17 APPEARING ON BEHALF OF OFFICIAL COMMITTEE
18 OF EXCEL INDEPENDENT REPRESENTATIVES

19 WEIL, GOTSHAL & MANGES
20 200 Crescent Court, Suite 300
21 Dalas, Texas 75201
22 BY: Mr. James Menker

23 APPEARING ON BEHALF OF BELL SOUTH

24 KILPATRICK STOCKTON
25 1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
BY: Ms. Allison Richards

APPEARING ON BEHALF OF BELL SOUTH
TELECOMMUNICATIONS, INC.

1 P R O C E E D I N G S

2 THE COURT: VarTec. Mr. Wallander, I think
3 we've got a handful of phone people. We'll just get them all
4 on at once.

5 Calling the VarTec case. I'll just go ahead and take
6 appearances of folks that are appearing by telephone.

7 MR. LADDIN: Good afternoon, Your Honor. This
8 is Darryl Laddin on behalf of Verizon.

9 THE COURT: Hello.

10 MS. RICHARDS: Hello. This is Allison Richards
11 on behalf of BellSouth.

12 THE COURT: Welcome.

13 MS. RICHARDS: Thank you.

14 MR. CUNNINGHAM: Good afternoon, Your Honor.
15 John Cunningham of White & Case on behalf of the IR
16 Committee.

17 THE COURT: Welcome.

18 Anyone else on the phone?

19 I'll take appearances of folks participating in the
20 courtroom now.

21 MR. WALLANDER: Your Honor, Bill Wallander, Dan
22 Stewart, and Richard London on behalf of the VarTec debtors.

23 MR. GILHULY: Good afternoon, Your Honor.
24 Peter Gilhuly of Latham & Watkins on behalf of the successful
25 bidder, Comtel.

1 THE COURT: I didn't know you were going to be
2 here. I got a message you were appearing by phone.

3 MR. GILHULY: I switched from phone to being
4 here. And as Mr. Wallander predicted, it probably wasn't
5 necessary. Besides, I had other business to do.

6 MS. TOMASCO: Your Honor, Patty Tomasco on
7 behalf of Unipoint Holdings, Inc.

8 THE COURT: Welcome.

9 MR. COLEMAN: Good afternoon, Your Honor.
10 Joseph Coleman on behalf of the debtors as it relates to the
11 SBC matters.

12 MR. ELLERBE: Good afternoon, Your Honor.
13 David Ellerbe on behalf of the Committee with respect to the
14 Verizon matter. Mr. Sutherland is here, also, for the
15 Committee more --

16 THE COURT: Good. Welcome.

17 MR. GREENDYKE: Good afternoon. Bill Greendyke
18 and John Schwartz on behalf of the RTFC.

19 THE COURT: Hi.

20 MR. BRANNON: Good afternoon, Your Honor. John
21 Brannon, David Bennett, Suzanne Lesley on behalf of the SBC
22 Telcos.

23 THE COURT: Welcome.

24 MR. GREEN: Good afternoon, Your Honor.
25 Reginald Green on behalf of BellSouth.

1 MR. MENKER: Good afternoon, Your Honor. James
2 Menker of Weil Gotshal on behalf of MCI.

3 THE COURT: Welcome.

4 Let's see, Mr. Wallander, or, Mr. Coleman, I'm not sure
5 how you want to handle this one.

6 MR. WALLANDER: Your Honor, Bill Wallander on
7 behalf of the VarTec debtors. As regards to the expedited
8 motion for approval of stipulations, I've handled the
9 BellSouth and the Verizon stipulation.

10 THE COURT: Okay.

11 MR. WALLANDER: And Mr. Coleman, who is
12 conflicts counsel as regards to SBC will handle that.

13 Your Honor, the good news is that we have been able to
14 achieve consensus among the parties. We've resolved the
15 single objection that was actually filed as to SBC.
16 Mr. Coleman will deal with that in more detail.

17 We did have discussions with other parties, as well, to
18 resolve a couple of what I believe were mid issues, but
19 important issues to their constituencies.

20 And if I may, Your Honor, I'd like to approach with a
21 notebook that contains the exhibits for today's hearing.

22 THE COURT: Okay. Thank you.

23 MR. WALLANDER: Judge, for the Court's
24 convenience we have under Tabs 3 and 4, in each of those
25 slots there are two stipulations. On the front is the clean

1 version. And behind the clean version is the revised
2 version.

3 And I would state for the Court, as to Verizon and
4 BellSouth there is only one change to those stipulations in
5 the last paragraph which is an integration clause which says
6 that, This stipulation will be the final agreement as to the
7 matters addressed herein and no parole or extrinsic evidence
8 will be admissible to vary the terms of the agreement. And
9 the purpose of that is to make certain that the parties
10 understand that there was concern that there might be side
11 deals. We never shared that concern, but we were happy to
12 put the language in. And all parties understand that these
13 were -- these agreements work in coordination with the
14 existing adequate assurance, adequate protection carrier
15 stipulation, as well as the APA.

16 From an evidentiary perspective, Your Honor, I'd like to
17 do two things. One would be, if there are no objections, to
18 go ahead and submit the exhibits for admission, which consist
19 of the asset purchase agreement and the order approving that,
20 both of which the Court can take judicial notice of, the
21 forms of stipulation of Verizon, BellSouth, and the SBC
22 Telcos. And I think that's what needed from a document
23 perspective today.

24 THE COURT: Will it be 1 through 5; is that
25 right?

1 MR. WALLANDER: Yes, Your Honor.

2 THE COURT: Any objections to 1 through 5?
3 1 through 5 will be admitted.

4 MR. WALLANDER: The second part of the
5 evidentiary presentation, if no party will object to, would
6 be the last two, the Verizon and the BellSouth stipulations.
7 I'd like to proffer the testimony of Mr. Michael G. Hoffman
8 to the Court.

9 THE COURT: Okay. We'll swear him in. And if
10 folks have cross-examination of him, they can do it at the
11 end of your proffer.

12 MR. WALLANDER: Thank you, Your Honor.

13 Mr. Hoffman, if called to the stand, would testify as
14 follows.

15 His full name is Michael G. Hoffman. He graduated from
16 Jacobson College in Pennsylvania with a Bachelor of Arts. He
17 received his JD from American University in Washington, D.C.
18 After about two years with the law firm of Arden & Hadden, he
19 became corporate counsel and director of regulatory affairs
20 with VarTec. He has spent 15 years in the telecom business.

21 His current position with VarTec is that of CEO,
22 president, and sole board member. He also is continuing as
23 the chief legal officer. He oversees the business generally
24 and he coordinates the restructuring process of the VarTec
25 debtors both in terms of overseeing from a broad view of the

1 operations of the business, as well as estate matters.

2 As regards to information in connection with VarTec's
3 relationship and litigation with BellSouth and Verizon he
4 would testify as follows.

5 VarTec has contracts for access, which includes
6 interconnect agreements and tariffs with both BellSouth and
7 Verizon. VarTec also has a billing and collection agreement
8 with BellSouth under which BellSouth collects on behalf of
9 VarTec -- receivables from VarTec's customers. VarTec
10 previously had a billing and collection agreement with
11 Verizon which terminated by its own terms on or about the end
12 of 2004.

13 Mr. Hoffman would also testify regarding litigation.
14 That VarTec is currently in setoff litigation with both
15 BellSouth and Verizon which is pending before the United
16 States Bankruptcy Court for the Northern District of Texas.
17 In this litigation VarTec is seeking affirmative recovery
18 from both BellSouth and Verizon.

19 In addition to that litigation, both BellSouth and
20 Verizon have filed motions to compel VarTec to affirm or
21 reject their executory contracts with VarTec. That motion
22 remains pending before the United States Bankruptcy Court for
23 the Northern District of Texas.

24 In addition to that, BellSouth and Verizon have filed
25 objection to VarTec's motion to sell substantially all of its

1 assets, which motion has been put into evidence and which
2 this Court approved. The objection to the sale of
3 substantially all of the assets was withdrawn in anticipation
4 of the stipulations that are being brought to Your Honor
5 today.

6 Mr. Hoffman would testify that VarTec continues to
7 operate under the carrier stipulation with both BellSouth and
8 Verizon. He would testify that it's his understanding that
9 VarTec has complied in all respects with the carrier
10 stipulation throughout these cases.

11 When asked to describe the stipulations, Mr. Hoffman
12 would testify as follows.

13 The stipulations provide for assumption and assignment
14 of executory contracts with both Verizon and BellSouth. Upon
15 the consummation of the final closing date, the assumption
16 and assignment of the contracts to Verizon and BellSouth
17 would each have occurred and all cures in connection with
18 such executory contracts will deemed to have been fulfilled.
19 The stipulations will also resolve the motions to compel.
20 The motions to compel will be withdrawn upon the stipulations
21 being entered and effective by the United States Bankruptcy
22 Court. The stipulations will also resolve the setoff
23 litigation.

24 Upon the consummation of the final closing, the setoff
25 litigation will be dismissed with prejudice as between

1 Verizon, BellSouth, and the debtors. The stipulations will
2 also provide potential for better credit terms with these
3 bankruptcy estates. Upon the meeting of certain conditions,
4 including the entry into new billing and collection
5 agreements and/or letters of credit satisfactory to the
6 incumbent local exchange carriers, the VarTec estates will be
7 given credit terms that either approach or meet industry
8 standards.

9 The stipulations will also resolve pre-petition claims.
10 Upon the consummation of the final closing date, all
11 pre-petition claims of Verizon and BellSouth against the
12 debtors will be deemed satisfied. The stipulations will
13 provide for releases to be exchanged. Upon the final closing
14 date, releases will be exchanged to release all pre-petition
15 claims running between VarTec, Verizon, and BellSouth. There
16 will be certain post-petition amounts which will remain, but
17 those will be assumed by the Comtel buyer as part of the
18 contract and assumption process contemplated under the
19 stipulations.

20 The stipulations will also provide for what was
21 described in the sale hearing as the optimizing and grooming
22 of the network. It will provide for circuit disconnections
23 on an ongoing basis. And it will deal with the claims
24 arising from those circuit disconnections as per the estate
25 to the unsecured claims. VarTec will be required in

1 connection with those circuit disconnections to follow
2 certain processes under the contracts so that it coordinates
3 with the (indecipherable two words) local exchange carriers
4 in those circuit disconnections.

5 Mr. Hoffman would testify that if there is no final
6 closing, that the assumption and assignment process will not
7 occur as contemplated in the stipulations. The setoff
8 litigation will not be dismissed. The motion to compel
9 litigation will likely be recommenced. The releases will not
10 be exchanged. And the benefits of the stipulations will
11 largely be lost.

12 In terms of materiality of the litigation between the
13 parties, VarTec and BellSouth (unknown amount of words
14 missing due to change of tape by ECRO) what they owe each
15 other, anywhere from 8 to \$10 million. There's a dispute as
16 to whether these amounts would be offset. This is litigation
17 pending in the United States Bankruptcy Court.

18 Similar fact patterns exist as per Verizon and VarTec,
19 where they both assert that they owe each other in the
20 neighborhood of 8 to \$10 million. Again, there is a dispute
21 as to whether those amounts would be offsetable. That
22 litigation is rational to be settled through these
23 stipulations because even if those amounts are not
24 offsetable, those amounts will be asserted as necessary cure
25 obligations by BellSouth and Verizon. And because the cure

1 obligation is met as part of the overall stipulation upon the
2 final closing, it merits the settlement of that litigation in
3 conjunction with them. Again, that only occurs if there's a
4 final closing. And I'll get to that in more detail later.

5 In addition to the general setoff litigation, there is a
6 specific issue that will be resolved between VarTec and
7 BellSouth. BellSouth made post-petition payments to VarTec
8 of approximately \$3.6 million which currently sits in an
9 escrow account -- let me restate that, in an account agreed
10 to by the parties at United Missouri Bank. There's a dispute
11 as to the nature of those payments and as to the entitlement
12 of those funds. Those funds upon this stipulation becoming
13 effective will be divvied up with \$1.875 million of those
14 funds going to the RTFC, and the balance of those funds going
15 to BellSouth. That will not occur at the final closing, but
16 will occur upon effectiveness of the stipulation.

17 Upon the final closing there are some other issues
18 resolved in connection with VarTec, the buyer, and the
19 estates with BellSouth keeping approximately one-half a
20 million dollars from a collection reserve account that's
21 established for true up on customer collections, as well as
22 the buyer will get a credit from BellSouth I think in the
23 amount of \$300,000.

24 In terms of better credit terms for the estates.
25 BellSouth under its stipulation will permit the buyer to

1 obtain better credit terms upon entry into the management
2 services agreement which is contemplated to be entered into
3 upon obtaining FCC approval. The initial credit terms would
4 be 15 days. And then upon the buyer entering into a billing
5 and collection agreement -- excuse me. Upon the debtors
6 entering into a billing and collection agreement, a new
7 billing and collection agreement acceptable to the debtors
8 and BellSouth, those credit terms would be increased 30 days.

9 Recall, Your Honor, under the carrier stipulation
10 currently, the debtors pay twice a month, once on the first
11 Wednesday and once on the third Wednesday of every month.
12 And the way those numbers work, the carriers were always even
13 full pay, or ahead by a week or two just depending on how
14 those dates fell relative to the normal billing cycle. So
15 the better credit terms would be something that would have to
16 create additional liquidity for the operation of the
17 business.

18 The stipulations are also clear that upon the
19 consummation of the final closing date, all of the
20 pre-petition claims of the ILECs, Verizon, and BellSouth
21 against the estate would be deemed to be satisfied. And
22 there would be releases exchanged to mirror that. There are
23 also releases between the RTFC and BellSouth and the RTFC and
24 Verizon. The RTFC has asserted superior claims to both what
25 are called the PARs, and those are account receivable owing

1 to the estate, as well as to the funds at UNB. So it was
2 important to both the RTFC and to the ILECs that that
3 particular piece of this be resolved, as well. Again, upon
4 the final closing is when that resolution occurs.

5 I think it is important to keep in mind, also, that
6 looking at this stipulation from a broad view, that if the
7 final closing does not occur, then some things will have
8 changed at that time. That is to say, there may be the
9 better credit terms that have occurred getting to the final
10 closing. There may have been network optimization that will
11 have occurred. But a number of the other things that are all
12 tied at the final closing will not take place. The
13 assumptions won't take place. The releases won't take place.
14 The pre-petition claims won't take place. I don't want to
15 say they'll be returned to exactly the status quo today, but
16 almost all of the issues that exist today will be there at
17 that time, because the litigation will be abated waiting for
18 that final closing to occur. So this will keep everybody
19 focused on trying to get to the final closing and trying to
20 get the deal consummated.

21 In terms of the approval standards per the stipulation.
22 Mr. Hoffman would testify that he believes the stipulation
23 are key to support the approved sale which in his judgment is
24 the most rational way to maximize value for the bankruptcy
25 estates under the circumstances of these cases.

1 He would testify that the benefits to the estates run in
2 terms of providing certainty going forward as to these ILECs
3 to reduce cost of litigation, including pending litigation
4 and other claims that could be brought by the ILECs against
5 the estates. To provide an opportunity for better credit
6 terms and better liquidity to the estates for operating
7 purposes. And to facilitate keeping everybody focused on
8 getting to the final closing, which is a very important
9 factor in this.

10 Mr. Hoffman would testify that the litigation between
11 BellSouth and Verizon is not only material, but that the
12 litigation is quite complex. That the discovery that would
13 need to be conducted would be time consuming, voluminous, and
14 quite expensive.

15 Mr. Hoffman would testify that the expense of the
16 litigation in his view would be quite material, perhaps in
17 excess of a million dollars.

18 Mr. Hoffman would testify that as to such litigation
19 there is no certainty as to outcome as we sit here today.
20 That while the debtors believe in the theories that have been
21 pled, it can't be predicted with certainty today what the
22 outcome of that litigation would be.

23 Mr. Hoffman would testify that no objections have been
24 made to the stipulations with BellSouth and Verizon. He
25 would further testify that he cannot see that the

1 stipulations put any burdens on other parties in interest in
2 the case. That it provides benefit to the estate that should
3 inure to the benefit of all parties in interest in the
4 case. And it will be a big help to reducing ongoing
5 litigation costs and expenses to the estates.

6 He would testify finally that he supports the approval
7 of the stipulation. And that will end the testimony of
8 Mr. Hoffman and would end the evidentiary presentation of the
9 debtors for approval of the stipulations as to Verizon and
10 BellSouth.

11 THE COURT: Mr. Hoffman, would you just stand
12 where you are and raise your right hand?

13 (The witness was sworn by the Court.)

14 MICHAEL HOFFMAN

15 the witness, having been duly sworn to tell the truth,
16 testified on his oath as follows:

17 THE COURT: Did you hear the proffer of your
18 testimony by Mr. Wallander?

19 THE WITNESS: I did.

20 THE COURT: And do you adopt it as if you would
21 have testified by question and answer?

22 THE WITNESS: Yes, I do.

23 THE COURT: Is there anything else that you'd
24 like to tell the Court?

25 THE WITNESS: There was one clarification, I

1 think, on that 300,000. It's Comtel as opposed to BellSouth.
2 I think when you testified you mentioned it was BellSouth. I
3 thought it was Comtel, though.

4 MR. WALLANDER: I may have had one piece -- let
5 me correct that very quickly, Your Honor.

6 I will turn to Exhibit 4. In Exhibit 4 on page 7,
7 paragraph 3 it does state that BellSouth will credit the
8 debtors' Comtel account in the amount of \$300,000 of the
9 post-petition reserve amount. And that BellSouth will retain
10 the 500,000. If I stated that differently in the testimony,
11 I --

12 THE WITNESS: You've clarified it consistent
13 with my understanding.

14 THE COURT: Does any party in interest have any
15 questions of Mr. Hoffman?

16 You may be seated, sir. Thank you.

17 MR. WALLANDER: Your Honor, that would conclude
18 our evidence.

19 THE COURT: Thank you, Mr. Wallander.
20 Mr. Coleman.

21 MR. COLEMAN: Good afternoon, Your Honor.

22 Your Honor, if you could turn to Tab 5. There is a red
23 line and a clean copy of the final stipulation. The motion,
24 Your Honor, anticipated there may be some non-material
25 changes. I'd like to walk the Court through those, if I may.

1 THE COURT: Okay.

2 Is the red line in the back?

3 MR. COLEMAN: I'm sorry, the red line, I
4 believe, is the second one.

5 THE COURT: Okay. Thanks.

6 MR. COLEMAN: And I'll start on page 10, which
7 is paragraph number 9, beginning with the bold word pending.

8 THE COURT: Okay.

9 MR. COLEMAN: Paragraph 9 was just changed to
10 conform it to the APA removal and necessity of an order if
11 there's not a final closing.

12 Paragraph 9(e) was simply added to make clear that the
13 carrier stipulation, which is modified in this stipulation
14 because open account terms are provided, it was just included
15 to -- so there wouldn't be any ambiguity about that.

16 Page 11, paragraph number 10, 10(a) from and after the
17 final closing date, it just makes clear notwithstanding
18 anything to the contrary herein and it continues, as was
19 filed, the Comtel buyer shall be solely responsible for
20 compliance with all of the terms of the SBC Telcos network
21 agreements and B&C agreements, billing and collection
22 agreements, Your Honor, and shall be solely responsible for
23 payment of all outstanding bill charges arising after the
24 petition date. I don't think that changes the meaning,
25 certainly not materially. But it gave comfort to some of the

1 parties.

2 The next one is page 12 -- paragraph 12, Your Honor.
3 This concerns the mutual release between SBC and the Comtel
4 buyers. It was extended from the date entered in -- in which
5 the management services agreement was entered into to a date
6 certain, March 31, 2006.

7 And finally, Your Honor, page 20, paragraphs 35 and 36.
8 These are two changes, Your Honor, that were made directly in
9 resolution of Unipoint's objection. They have been approved
10 by Ms. Tomasco, Unipoint's counsel.

11 Paragraph 35 states a statement by the SBC Telcos that
12 they have no agreements, oral or written, with any of the
13 other parties -- parties are defined as the four parties to
14 the stipulation -- hereto relating to the debtors' or Comtel
15 buyer's choice and use of vendors.

16 And paragraph 36, Your Honor, is a statement stating
17 what is the case any way, and that's very clearly that
18 nothing in this stipulation order, or by virtue of Unipoint's
19 consent hereto shall affect or impair any claims, causes of
20 action rates that Unipoint, or the debtors, or the debtors'
21 successors or assigns have against each other with respect to
22 the Missouri litigation, or arising in, arising under, or
23 related to these debtors' bankruptcy cases including
24 specifically Unipoint or the debtors' respective rights as to
25 Unipoint's (i) asserted claims for indemnification

1 reimbursement for contribution against the debtors, and (ii)
2 defenses in the Missouri litigation. We don't consider any
3 of those to be material. They're more in the way of
4 clarification, and to give some comfort to Unipoint.

5 And with that, Your Honor, I will via proffer, also, if
6 no parties object Michael Hoffman, the debtors' CEO.

7 I first of all would incorporate some of the -- or
8 incorporate the testimony already proffered by Mr. Wallander
9 and state that if called to testify in support of the SBC
10 stipulation, Mr. Hoffman would explain to the Court that the
11 agreements between SBC and the debtors include tariff
12 agreements, interconnection agreements, circuit agreements,
13 billing and collection agreements. The pre-petition claims
14 by and between the debtor and SBC include PARs payable by SBC
15 to the debtor. These are accounts collected by customers by
16 SBC and forwarded to the debtor. The debtor owes amounts
17 under the tariffs and interconnection agreements. There is a
18 dispute as to how much is owed by SBC to VarTec and VarTec to
19 SBC. The dispute is in excess of \$5 million.

20 Mr. Hoffman would testify that there are a number of
21 matters at the time of the sale hearing when the stipulation
22 was announced into the record, Your Honor, that were pending
23 between SBC and the debtors. Number one was a motion to
24 shorten the time by which the debtors had to assume or reject
25 contracts. Number two was SBC's objection to the Comtel

1 sale. Number three was setoff litigation. Number four is
2 the Missouri litigation that was pending pre-petition.
3 Number five is a FCC action which concerns the same issues
4 from the Missouri litigation, but it was pending at the FCC.
5 And further, SBC's proof of claims and VarTec's expected
6 objection thereto.

7 Mr. Hoffman would summarize the stipulation, the key
8 terms of the stipulation, Your Honor, by first saying that
9 effective upon closing there are essentially three main
10 categories of agreements. Number one, the first category
11 includes SBC's pre-petition claims and the resolution of the
12 PARs payable. The next category concerns assumption and
13 assignment of certain contracts. The third category is
14 resolution of pending litigation and releases.

15 With regards to the SBC pre-petition claims and PARs
16 payable, under the stipulation, Your Honor, SBC would keep
17 the PARs payable in full satisfaction of their pre-petition
18 claims. The stipulation would resolve all billing disputes
19 that were pre-petition and the setoff litigation. Again,
20 this is all upon final closing, Your Honor. The setoff
21 litigation would be dismissed with prejudice.

22 With regard to the assumption and assignment of
23 executory contracts, VarTec would assume and assign to Comtel
24 the SBC network agreements as defined in the stipulation and
25 the B&C agreement. SBC will retain the PARs payable which

1 shall constitute the total cure for the assumption. And then
2 the stipulation provides, Your Honor, for the continued
3 disconnection of circuit agreements. And those
4 disconnections would constitute rejection claims. And those
5 rejection claims will not be released. Those rejection
6 claims would exist. They'd be pre-petition claims that SBC
7 hangs on to, so it would be a carve out from the release.
8 But SBC is assigning those rejection claims to the RTFC in
9 exchange for the RTFC's release of SBC.

10 With regard to the third category, resolution of pending
11 litigation and releases. And, again, this is pending final
12 closing. The Missouri litigation will be dismissed with
13 prejudice. The FCC action would be withdrawn. The setoff
14 litigation would be dismissed with prejudice. SBC's
15 objection to Comtel's sale is withdrawn. The motion to
16 compel assumption and assignment is withdrawn. There's a
17 mutual release of pre-petition claims between the debtor and
18 SBC. SBC and Comtel have released claims mutually through
19 March 31, 2006. And there's a mutual release between SBC and
20 RTFC.

21 Now, Your Honor, pending final closing, there are some
22 interim items. Number one, the litigation is abated pending
23 final closing. Number two, there was a previously noticed
24 SBC price increase that remains effective. Number three, the
25 carrier stipulation would remain in effect. However, open

1 account credit terms would be provided to the debtor pending
2 final closing. And the debtor would continue the circuit
3 disconnection process which would result in those rejection
4 claims.

5 After final closing, Your Honor, Mr. Hoffman would
6 testify that Comtel becomes responsible for all compliance
7 and all obligations under the SBC contracts. Mr. Hoffman
8 would further testify, Your Honor, with regard to the
9 standards under the 5th Circuit approving a 9019 motion with
10 regard to the comparison of terms for settlement and likely
11 result of litigation, Mr. Hoffman would testify that the
12 Missouri litigation is very complex litigation, even though
13 it is stayed. It would be applicable in the form of a claim
14 and a claim objection. The litigation seeks between 19 and
15 \$35 million in damages. This would enable significant
16 savings and legal fees, significant complex litigation, and
17 the potential for significant unsecured claims.

18 The next item resolved is the setoff litigation. And
19 while the debtor feels confident about about its setoff
20 litigation, SBC does have a contractual setoff provision in
21 its agreement that would have to be overcome.

22 One of the benefits of the settlement with regard to
23 setoff litigation is, Your Honor, the APA was set up in
24 paragraph 5.16 to provide the successful bidder with use of
25 the PARs for purposes of reaching resolution with the various

1 carriers. That was one of the assets purchased by Comtel and
2 they did exactly what the APA enabled them to do and really
3 called for them to do which, again, enabled a deal to be
4 struck, enabled a withdraw of SBC's objection to sale.

5 And Mr. Hoffman would further testify that his
6 deposition was taken. SBC along with other carriers filed an
7 objection to the sale. And by reaching this agreement, a
8 significant potential roadblock was alleviated. And that the
9 sale to Comtel results in the estate receiving 82.1 million
10 minus working capital, plus assumption and liabilities, plus
11 cures.

12 With regard to the motion to compel assumption or
13 rejection of contracts. Mr. Hoffman would testify, Your
14 Honor, that if forced to assume or reject contracts prior to
15 the date set forth in the stipulation, the debtor would not
16 have the funds to pay for the assumption because the PARs are
17 the subject of setoff litigation. And if the debtor had to
18 choose to reject the contracts, it couldn't run its business.

19 Finally, Your Honor, this would avoid the objection to
20 SBC claims. Volumes and numerous proofs of claim were filed,
21 including Missouri litigation attached. They would be
22 expensive and complex and that would all be avoided.

23 And Mr. Hoffman would further testify that he believes
24 the SBC stipulation is fair and equitable and is in the best
25 interest of the estate for the following reasons.

1 Again, reaching the stipulation enabled the sale to go
2 through. And Mr. Hoffman believes that the sale is extremely
3 beneficial to the debtors' estate. It resolves very
4 significant litigation. As mentioned, the Missouri
5 litigation, the setoff litigation, the objection to sell,
6 motion to compel assumption or rejection, objection to
7 claims, Mr. Hoffman testified that the estate would save
8 millions of dollars in legal fees, countless hours of VarTec
9 personnel in attempting to deal with the discovery,
10 strategizing, the testimony the depositions concerning all of
11 this litigation.

12 Furthermore, Mr. Hoffman would testify that the
13 stipulation enables the debtor to receive open account
14 creditors, which it has not had from the carriers during this
15 bankruptcy. And that's a very material benefit. If the
16 final closing does not occur, Mr. Hoffman would testify that
17 VarTec has reserved its litigation rights and retains \$40
18 million. And believes it will be -- it would be in a very
19 positive state as previously testified during the sale
20 hearing.

21 Mr. Hoffman would also testify he believes this
22 stipulation is in a paramount -- or takes into account the
23 paramount interest of creditors. Virtually hundreds of
24 creditors receive notice of the stipulation and only one very
25 narrow objection was lodged. That narrow objection from

1 Unipoint has been resolved. Significantly, the Committee
2 does not oppose a stipulation. And hundreds of other
3 creditors do not oppose it.

4 With regard to Mr. Hoffman's testimony concerning the
5 arm's length, full disclosure, and noninclusive nature of the
6 stipulation negotiation, Your Honor. Mr. Hoffman would
7 testify that the four parties to the stipulation are all
8 sophisticated, are all represented by counsel, all spent
9 countless hours.

10 Furthermore, paragraph 34 of the SBC stipulation, Your
11 Honor, as originally filed before any changes include an
12 integration clause.

13 Furthermore, with regard to full disclosure and arm's
14 length negotiation. That was in part, Your Honor, Unipoint's
15 objection. And that has been resolved.

16 Finally, Your Honor, Mr. Hoffman would say as CEO that
17 he was personally involved in the negotiation of the SBC
18 stipulation. And he believes the stipulation is, in fact, in
19 the best interest of the estate.

20 And that would conclude Mr. Hoffman's proffer.

21 THE COURT: Thank you, Mr. Coleman.

22 Mr. Hoffman, would you just stand where you are?

23 Do you affirm the proffered testimony that Mr. Coleman
24 made of you?

25 THE WITNESS: I do.

1 THE COURT: Do you have anything that you'd
2 like to add?

3 THE WITNESS: No.

4 THE COURT: Any other party in interest have
5 any questions of this witness?

6 You may be seated, Mr. Hoffman. Thank you.

7 MR. COLEMAN: That concludes my presentation,
8 Your Honor.

9 THE COURT: Okay. Ms. Tomasco, did you see the
10 proposed changes to the stipulation? And do they address
11 your objection? I think they do, but I want to make sure.

12 MS. TOMASCO: Yes, Your Honor. They resolve
13 our objections.

14 THE COURT: Okay. Thank you very much.

15 Does anyone else wish to be heard on these two motions?

16 Nice job, Mr. Wallander, Mr. Coleman, and parties for
17 the various carriers. It will be approved. Just upload an
18 order approving both -- three stipulations, excuse me, and
19 I'll sign them upon receipt.

20 Thank you.

21 MR. WALLANDER: Thank you, Your Honor. We'll
22 round up all of the signatures and get them to you.

23 THE COURT: Anything further in VarTec?

24 MR. STEWART: Your Honor, just one thing.

25 We do have a hearing scheduled Thursday afternoon.

1 There are about 15 items on the docket.

2 Do you know where we're supposed to be?

3 THE COURT: Good question. I think I know
4 where you're not supposed to be, Mr. Stewart. You're back in
5 front of Judge Felsenthal, we think. So you'll be over way
6 side.

7 MR. STEWART: Thank you, Your Honor.

8 THE COURT: Someone from our office will let
9 you-all know if there's something different on that.

10 Okay?

11 MR. STEWART: Thank you.

12 THE COURT: You're a case without a home,
13 Mr. Stewart. We just pass you around.

14 Thank you.

15 (End of Proceedings.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting by me.

CINDY SUMNER, CSR #5832
Certified Transcriber
Expires 12-31-05
NATIONAL COURT REPORTERS
500 S. Ervay, Suite 120-A
Dallas, Texas 75201
214-651-8393