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File a Motion:

02-20379-ash Telecarrier Services, Inc.

04 FEB 25 AM 8:37 FEB 25 AM 9:11

U.S. Bankruptcy Court

COMMISSION
CLERK

Southern District of New York

040000-PA

Notice of Electronic Filing

The following transaction was received from Stremba, Lee William entered on 2/20/2004 at 3:33 PM and filed on 2/20/2004

Case Name: Telecarrier Services, Inc.

Case Number: 02-20379-ash

Document Number: 78

Docket Text:

Motion to Approve *Stipulation Terminating Equipment Lease Between the Debtor and Wells Fargo Financial Leasing, Inc.* filed by Lee William Stremba on behalf of Telecarrier Services, Inc.. with hearing to be held on 3/11/2004 (check with court for location) Responses due by 3/8/2004, (Attachments: # (1) Notice of Motion# (2) Exhibit A# (3) Exhibit B# (4) Affidavit of Service) (Stremba, Lee)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: W:\Bankruptcy\Telecarrier\WF Motion.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=2/20/2004] [FileNumber=2870944-0]

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Document description: Notice of Motion

Original filename: W:\Bankruptcy\Telecarrier\WF Notice.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=2/20/2004] [FileNumber=2870944-1]

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Document description: Exhibit A

Original filename: W:\Bankruptcy\Telecarrier\WF Exhibit A.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=2/20/2004] [FileNumber=2870944-2]

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Document description: Exhibit B

Original filename: W:\Bankruptcy\Telecarrier\WF Exhibit B.pdf

Electronic document Stamp:

[STAMP NYSBStamp_ID=842906028 [Date=2/20/2004] [FileNumber=2870944-3]

DOCUMENT NUMBER DATE
02733 FEB 25 04
COMMISSION CLERK

Lee W. Stremba (LS- 0117)
Paul H. Deutch ([PHD-4959])
JENKENS & GILCHRIST
PARKER CHAPIN LLP
Attorneys for the Debtor
and Debtor in Possession
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 704-6000

Hearing Date and Time: March 11, 2004 at 9:30 a.m.
Objection Deadline: March 8, 2004 at 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: :
: :
TELECARRIER SERVICES, INC., : Chapter 11
: Case No. 02-20379 (ASH)
: :
Debtor. :
: :
----- X

NOTICE OF HEARING

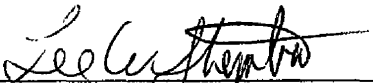
PLEASE TAKE NOTICE that a hearing (the "Hearing") to consider the Debtor's Motion to approve Stipulation Terminating Equipment Lease Between the Debtor and Wells Fargo Financial Leasing, Inc., will be held before the Honorable Adlai S. Hardin, Jr., United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, 300 Quaddropas Street, White Plains, New York 10601, on the 11th day of March, 2004, at 9:30 a.m. or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the entry of the proposed Order, must be in writing, must conform to the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Southern District of New York, and must be filed with the Clerk

of the Bankruptcy Court with a courtesy copy to Chambers, and served so that same are received by Jenkens & Gilchrist Parker Chapin LLP, attorneys for the Debtor, at The Chrysler Building, 405 Lexington Avenue, New York, New York 10174, Attention: Paul H. Deutch, Esq. and to the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Pamela J. Lustrin, at least 3 business days prior to the hearing on the Motion.

Dated: February 6, 2004
New York, New York

JENKENS & GILCHRIST PARKER CHAPIN LLP

By: 

Lee W. Stremba (LWS- 0117)
Paul H. Deutch (PHD-4859)

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 704-6000

Attorneys for the Debtor and Debtor in Possession

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 Attorneys for the Debtor and Debtor in Possession

Hearing Date: March 11, 2004 at 9:30 a.m.
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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

----- X
 :
 In re: :
 : Chapter 11
 TELECARRIER SERVICES, INC., : Case No. 02-20379 (ASH)
 :
 :
 Debtor. :
 :
 :
 ----- X

**MOTION TO APPROVE STIPULATION TERMINATING
 EQUIPMENT LEASE BETWEEN THE DEBTOR AND
 WELLS FARGO FINANCIAL LEASING, INC.**

TO: THE HONORABLE ADLAI S. HARDIN
 UNITED STATES BANKRUPTCY JUDGE

Telecarrier Services, Inc. ("TSI"), debtor and debtor-in-possession (the
 "Debtor"), respectfully represents:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this motion (the "Motion") pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U. S.C. §157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 105 of title 11 of the United States Code (the "Bankruptcy Code"), as complemented by Rule 9019 of the

Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

FACTS

A. Background

2. On July 29, 2002 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") with the Clerk of this Court. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property as a debtor-in-possession.

3. On October 28, 2002, pursuant to section 521 of the Bankruptcy Code and Rule 1007 of the Bankruptcy Rules, the Debtor filed its list of creditors, schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules").

4. No trustee, examiner or official committee has been appointed in this Chapter 11 Case.

5. On or about January 21, 2004, the Debtor filed with the Bankruptcy Court a proposed plan of reorganization (the "Plan") and accompanying disclosure statement.

B. The Lease

6. On July 10, 2001, the Debtor executed a lease agreement with Wells Fargo Financial Leasing, Inc. ("Wells Fargo") as lessor (the "Lease").¹ Pursuant to the Lease, the Debtor was to be provided with several water coolers (plus necessary service) for a period of sixty (60) months beginning July 26, 2001. Pursuant to the

¹ A copy of the Lease is annexed hereto as Exhibit "A".

Lease, rent was for the water coolers (and service) was \$169.00 per month.

7. Wells Fargo has not asserted any claims in this Chapter 11 Case.

C. The Stipulation

8. The Debtor and Wells Fargo (the “Parties”) have engaged in good faith negotiations with respect to the termination of the Lease and any and all claims relating thereto. As a result of such negotiations, the Parties have come to the agreement embodied in a stipulation of settlement (the “Stipulation”). The following summarizes certain salient provisions of the Stipulation:

- Termination. The Lease shall be terminated as of the date the Stipulation is approved by the Bankruptcy Court.
- Allowed Unsecured Claim. Wells Fargo is granted an allowed general unsecured claim in the amount of five thousand five hundred dollars (\$5,500) to be paid in accordance with the provisions of 1) the Plan, 2) any subsequent plan of reorganization which may be confirmed, or 3) if no plan is confirmed and declared effective, the applicable provisions of the Bankruptcy Code.
- Release. Wells Fargo releases the Debtor from any and all other claims it may have including, without limitation, any and all claims relating to the Lease and/or the Equipment

RELIEF REQUESTED

9. By this motion, pursuant to sections 105(a) of the Bankruptcy Code and Rule 9019(a) of the Bankruptcy Rules, the Debtor seeks entry of the Stipulation (the “Stipulation”), annexed hereto as Exhibit “B”, granting, inter alia, the following

relief: (a) termination of the Lease; (b) allowance of a general unsecured claim, in favor of Wells Fargo, in the amount of \$5,500; and (c) release of the Debtor by Wells Fargo from any further obligations or responsibilities under and pursuant to the Lease.

**THE STIPULATION IS AN
EXERCISE OF SOUND BUSINESS JUDGMENT,
IS FAIR AND EQUITABLE AND IS IN THE BEST
INTEREST OF THE DEBTOR'S ESTATE AND CREDITORS**

10. Settlements and compromises are favored in bankruptcy. See In re Lehigh Valley Professional Sports Clubs, Inc., 2000 Bankr. LEXIS 520 (Bankr. E.D. Pa., dated May 5, 2000). Indeed,

It is well accepted that compromises are favored in bankruptcy in order to minimize the cost of litigation to the estate and expedite its administration, and that the approval of a compromise is within the sound discretion of the bankruptcy judge who must assess and balance the value of the claim being compromised against the value to the estate of the acceptance of the compromise proposal.

Lehigh Valley, at *17-*18.

11. In connection therewith, it is within a bankruptcy court's discretion to determine the reasonableness of a proposed settlement. Lehigh Valley, at *17-*18; Ashford Hotels, 226 B.R. 797; Best Products, 168 B.R. 35. "[I]n applying its discretion, the court...must act with regard to what is right and equitable under the circumstances and the law, and dictated by the reason and conscience of the judge to a just result." Ashford Hotels, 226 B.R. at 802. The Stipulation is the product of arm's-length negotiations between the Debtor and Wells Fargo and is fair, equitable, and in the best interest of the Debtor's estate and creditors. Accordingly, the Debtor submits that the Stipulation should be approved.

12. The standard by which courts evaluate a proposed compromise and

settlement is well-established and realized in the Stipulation. In addition to the specific terms and conditions of a settlement, and the fairness thereof, courts consider the following four factors in assessing a settlement:

- (i) the probability of success in the litigation;
- (ii) the difficulty in collecting any judgment which may be obtained;
- (iii) the complexity of the litigation involved and expense, inconvenience, and delay necessarily attendant to it; and
- (iv) the interest of creditors and stockholders with a proper deference to their reasonable views of the settlement.

See e.g., Protective Comm. for Indep. Stockholders for TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); In re Marvel Entertainment, 222 B.R. 243, 249 (D.Del. 1998); In re Ashford Hotels, Ltd., 226 B.R. 797 (Bankr. S.D.N.Y. 1998); In re Best Products Co., Inc., 168 B.R. 35 (Bankr. S.D.N.Y. 1994); aff'd 68 F.3d 26 (2d Cir. 1995). In addition to the above-listed factors, courts "must also consider all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." Marvel, 222 B.R. at 249.

13. The quadripartite standard set forth above essentially balances the probability of litigation success and potential litigation costs against the costs and benefits of a proposed settlement. In applying this standard, a bankruptcy court need not conduct an independent investigation prior to determining the reasonableness of a settlement. See Lehigh Valley, at *18. ("The court's role is not to conduct a trial or mini-trial, or to decide the merits of individual issues. Rather it is to determine whether the settlement as a whole is fair and reasonable"). A bankruptcy court should canvass the issues before it and thereupon adjudge whether a proposed settlement falls

below the lowest point in the range of reasonableness. See Lehigh Valley, at *18 ("Only if the Court concludes that the settlement falls below the lowest point in the range of reasonableness should the compromise be rejected"). The Debtor submits, based upon the application of the above-discussed quadripartite standard to the facts underlying the instant motion, that the Stipulation should be approved.

14. Probability of Success in the Litigation. The Debtor submits that the probability of successfully litigating potential claims asserted by Wells Fargo has been duly accounted for in entering into the Stipulation. Had the Debtor and Wells Fargo not come to the agreement embodied in the Stipulation and chose instead to litigate Wells Fargo's potential claims, the outcome of such litigation would be uncertain.

15. Complexity, Expense and Inconvenience of the Litigation. Litigating Wells Fargo's potential claims would, at the very least, entail discovery. In a complex chapter 11 case such as this, a debtor's successful reorganization turns on its ability to remain focused on myriad impending reorganization issues. Inasmuch as litigating the claims asserted by Wells Fargo would require the Debtor to focus on litigation issues rather than on reorganizing, it would impede the Debtor's reorganizational progress and, therefore, be detrimental to its creditors.

16. Best Interests of Creditors. The Stipulation avoids costly litigation of potential claims asserted by Wells Fargo. Moreover, the Stipulation settles such claims for amounts substantially less than the amounts expected to be asserted by Wells Fargo. Accordingly, the Debtor submits, in light of the savings to its estate, that the Stipulation is in the best interests of its estates and should be approved.

17. The Debtor submits that the Stipulation is equitable, well reasoned and in the best interests of the Debtor and its creditors. Accordingly, the Debtor requests

that the Court approve the Stipulation. See In re Grant Broadcasting of Philadelphia, 71 B.R. 390 (Bankr. E.D. Pa. 1987).

WAIVER OF MEMORANDUM OF LAW

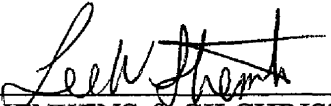
18. The Debtor submits that the relief requested herein does not present a novel question of law, and the relevant statutory and case authorities are set forth herein, and, as such, respectfully requests that this Court waive the requirement of filing a Memorandum of Law in accordance with Local Bankruptcy Rule 9013-1(b).

NOTICE

19. Notice of this Motion has been given to (i) Wells Fargo; (ii) the Office of the United States Trustee for the Southern District of New York; and (iii) all parties who have requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of the proposed Stipulation and Order, annexed hereto, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 2, 2004


JENKENS & GILCHRIST
PARKER CHAPIN LLP
Lee W. Stremba, Esq.
Paul H. Deutch, Esq.
The Chrysler Building
405 Lexington Avenue
New York, New York 10174

COUNSEL FOR DEBTOR AND
DEBTOR-IN-POSSESSION

EXHIBIT A

Rental Agreement



509 Commerce Street
Franklin Lakes, NJ 07417

Billing Inquiries: 1-800-223-1420
Service Inquiries: 1-888-995-7873

RENTAL AGREEMENT

Agreement #: 9200236-001

CUSTOMER: <u>Telecarrier Services Inc.</u>	
ADDRESS: <u>543 Main Street</u>	
CITY: <u>New Rochelle</u>	
STATE: <u>New York</u> ZIP: <u>10801</u>	COUNTY: <u>Westchester</u>
PHONE: <u>914-632-8005</u>	FAX:
BILLING ADDRESS (IF DIFFERENT):	STATE:
CITY:	ZIP:

QUANTITY	EQUIPMENT DESCRIPTION
<u>1</u>	<u>wf</u>
<u>3</u>	<u>chillers</u>

TERMS & PAYMENT SCHEDULE:

First Due July 26, 01

TERM: <u>60</u>	Payment Amount: <u>\$ 169/month</u>	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Annually	Security Deposit: <u>\$ - 0 -</u>	Other:
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Excludes all applicable taxes.

SPECIAL INSTRUCTIONS:

Includes service

PLEASE READ BEFORE SIGNING: THE CUSTOMER AGREES TO RENT FROM VENDOR THE EQUIPMENT LISTED ABOVE. THE CUSTOMER AGREES TO ALL TERMS AND CONDITIONS CONTAINED IN THIS RENTAL AGREEMENT. THE CUSTOMER AGREES THIS RENTAL AGREEMENT IS FOR THE RENTAL TERM INDICATED ABOVE AND CANNOT BE CANCELLED FOR ANY REASON.

Supplier: Quench
Cancelled July 26, 01

CUSTOMER: Telecarrier Services Inc.

Lessor: Wells Fargo Financial Leasing, Inc.

By: Paul Riss

By: John Van Horn

Name (Print): Paul Riss

Date: 7/10/01

Title: CEO

Date: July 10, 2001

Acceptance of Delivery:

I am authorized to sign this certificate on behalf of Customer. I certify that the equipment has been delivered and is fully installed and working properly. I hereby authorize the commencement of the Rental Agreement.

Signature: _____ Equipment Delivery Date: _____

Name and Title (Please Print): _____



This rental agreement has been written in clear, easy to understand language. Please take time to review the terms. If you have any questions, please ask us. When we use "you", or "your", we are referring to you, our customer. When we use "we", "us" and "our", we are referring to Wells Fargo Financial Leasing, Inc.

1. **Collection Charges:** If any part of your payment is 10 days late, there will be a late fee of \$20.00 or 6% of the late amount, whichever is more. You agree to pay a charge of \$25 for each check returned for non-sufficient funds or other reasons. We may charge you a partial payment to cover the time between delivery and the due date for the first regular payment.
2. **Automatic Renewal:** This Agreement will automatically renew for twelve (12) months unless you send us written notice that you do not want to renew at least thirty (30) days before the end of the current term.
3. **Ownership of Equipment:** We are the owner of the equipment and have title to the equipment.
4. **Warranties:** We are leasing the equipment to you "AS IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. We transfer to you for the term of this Rental all warranties, if any, made by manufacturer or supplier to us. We are not liable to you for any modification or rescission of supplier or manufacturer warranties. You agree to continue making payments to us under this Rental regardless of any claims you may have against the supplier or manufacturer.
5. **Maintenance and Installation:** You are responsible for protecting the equipment from damage except for ordinary wear and tear and from any other kind of loss while you have the equipment. You are responsible for all authorization or approvals to install the equipment on your premises. After the initial installation, if you require the systems to be relocated and reinstalled, a reinstallation charge will be incurred.
6. **Location of Equipment:** You will keep and use the equipment only at your address shown above. You agree that the equipment will not be removed from that address unless you get our written permission in advance to move it. At the end of the Agreement's term, you will return the equipment to us.
7. **Insurance:** You agree to keep the equipment fully insured against loss until Agreement is paid in full and to have us named a loss payee. You agree to provide us with certificates or other evidence of insurance upon our request. If you do not give us such proof, we may (but will not be obligated to) charge you a risk fee or obtain other insurance and charge you a fee for it.
8. **Liability:** We are not responsible for any losses or injuries caused by the installation or use of the equipment.
9. **Taxes and Fees:** You agree to pay when due all taxes, fines and penalties relating to this Agreement. You agree, and we have the right to (i) bill monthly, quarterly or annually the estimated applicable personal property taxes together with the fees described herein and (ii) bill any remaining estimated amount due upon assessment of such taxes. You agree to pay us a monthly fee to reimburse us for our costs of preparing, reviewing and filing any such returns.
10. **Assignment:** You have no right to sell, transfer, assign or sublease the equipment or this agreement. We may sell, assign, or transfer this Agreement. If we do choose to sell or transfer the agreement, all prior service guarantees and commitments will be honored by the new organization.
11. **Default:** If you do not pay rent when due or if you break any of your promises in this Agreement, you will be in default. This agreement may not be terminated early. If you do, you will be in default. If you default, we can require that you pay the remaining balance of this Agreement and return the equipment to us. We can also use any of the remedies available to us under the Uniform Commercial Code or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney fees and actual court costs, including our travel cost to any deposition or court proceeding. If we have to take possession of the equipment, you agree to pay the cost of repossession.
12. **Other Rights:** You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time.

EXHIBIT B

Stipulation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
TELECARRIER SERVICES, INC.,)	Case No. 02-20379 (ASH)
Debtor.)	

**STIPULATION AND ORDER TERMINATING EQUIPMENT LEASE
BETWEEN THE DEBTOR AND WELLS FARGO FINANCIAL LEASING, INC.**

WHEREAS, Telecarrier Services, Inc. ("TSI" or "Debtor") filed a case under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on July 29, 2002 (the "Petition Date"); and

WHEREAS, no trustee or examiner has been appointed in this case and the Debtor remains in possession of its assets and continues to conduct its business; and

WHEREAS, the Debtor has filed with the court a proposed plan of reorganization (the "Plan") and accompanying disclosure statement; and

WHEREAS, on or about July 10, 2001, TSI entered into a rental agreement (the "Lease") for office equipment (the "Equipment") with Wells Fargo Financial leasing, Inc. ("Wells Fargo"); and

WHEREAS, the Debtor has determined that it no longer needs the Equipment and desires to terminate the Lease; and

WHEREAS, the Debtor and Wells Fargo have conferred and desire to resolve all issues relating to the termination of the Lease;

NOW, therefore, in consideration of the mutual premises contained herein and for good and valuable consideration, the parties hereto agree as follows:

1. The Lease is terminated as of the date this Stipulation and Order is signed by the Bankruptcy Court.
2. Except as set forth herein, the Debtor shall have no further obligations under or pursuant to the Lease.
3. As a result of the termination of the Lease, Wells Fargo shall have an allowed general unsecured claim in the Debtor's chapter 11 case in the amount of five thousand five hundred dollars (\$5,500) to be paid in accordance with the provisions of 1) the Plan, 2) any subsequent plan of reorganization which may be confirmed, or 3) if no plan is confirmed and declared effective, the applicable provisions of the Bankruptcy Code.
4. Wells Fargo hereby releases the Debtor from any and all other claims it may have including, without limitation, any and all claims relating to the Lease and/or the Equipment.
5. This agreement will take effect upon entry of a final order of approval by the Bankruptcy Court.
6. The United States Bankruptcy Court for the Southern District of New York shall have continuing jurisdiction to hear and determine any disputes which may arise under or on account of this stipulation.
7. This stipulation may be executed via facsimile signatures and/or in

counterparts, all of which when taken together shall constitute an original.

Dated: New York, New York
February 6, 2004

JENKENS & GILCHRIST PARKER CHAPIN
LLP

By: 

Paul H. Deutch (PD- 4859)
Attorneys for Debtor
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
(212) 704-6323
Fax : (212) 704-6288

WELLS FARGO FINANCIAL LEASING, INC.

By: 

Paige Sellers
MAC F4030-070
800 Walnut Street
Des Moines, IA 50309-3636
(800) 247-0032

Dated: White Plains, New York
February 7, 2004

SO ORDERED:

HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE