

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re : Chapter 11
GLOBAL TELESYSTEMS, INC. and :
GLOBAL TELESYSTEMS EUROPE, B.V., :
Debtors. : Case Number 01-11280 (RB)

Objection Deadline: September 5, 2002 @ 4:00 P.M.

Hearing Date: September 10, 2002 @ 9:30 A.M.

**MOTION OF THE ACTING UNITED STATES TRUSTEE
TO CONVERT CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY
CODE OR, ALTERNATIVELY, TO DISMISS CASES**

In support of his motion to convert cases to cases under chapter 7 of the Bankruptcy Code or, alternatively, to dismiss cases, Donald F. Walton, Acting United States Trustee for Region 3 (“UST”), by and through his counsel, based upon information and belief, avers:

INTRODUCTION

1. Pursuant to 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and determine this motion.
2. Pursuant to 28 U.S.C. § 586(a)(3)(G), the UST is charged with monitoring the progress of cases under Bankruptcy Code “and taking such actions as the United States trustee deems appropriate to prevent undue delay in such progress.”
3. Pursuant to 11 U.S.C. § 307, the UST has standing to be heard with regard to this motion.

GROUNDNS FOR RELIEF

Background

4. On November 14, 2001, (“the Petition Date”), the Debtors filed the petitions which initiated the above-captioned cases.

5. Also on the Petition Date, Global Telesystems Europe, B.V. (“Europe, B.V.”) commenced a proceeding under the Netherlands Bankruptcy Act.

6. GTS and its subsidiaries collectively provided data, Internet and broadband services across Europe, servicing businesses and carriers. GTS’s broadband fiber-optic network was the largest operational network of its type in Europe, connecting 56 cities in 20 countries. This network and its Tier-1 IP backbone (“Ebone”) carried approximately 25% of all European Internet traffic. Europe B.V., an indirect subsidiary of GTS, directly controlled the Ebone operating entities.

7. In or about August, 2001, Global Telesystems, Inc. (“GTS”) entered into preliminary discussions with KPNQwest, N.V. (“KPNQwest”) regarding a potential combination of KPNQwest’s broadband businesses with Ebone.

8. After concluding that a stand-alone plan was not feasible and that other alternatives were less desirable, the *ad hoc* committee of holders of Europe B.V.’s various notes, the *ad hoc* committee of GTS’s various bonds and notes, and the Debtors opted to negotiate a transaction with KPNQwest.

9. Negotiations culminated in the execution of a Stock Purchase Agreement (“SPA”) by GTS and KPNQwest and related forbearance agreements by the *ad hoc* committees in which they agreed to support the restructuring and the amendment/restatement of GTS’s financing facility to provide sufficient operating capital for completion of the restructuring.

10. The SPA was the centerpiece of the Debtors' proposed Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket Entry # 71). Pursuant to the SPA, KPNQwest agreed to issue at least €200 million in face amount of convertible bonds and agreed to assume € 590 million of net bank debt and capital lease obligations. The bonds were distributed to the Debtors' bondholders.

Plan Process

11. On December 17, 2001, the Debtors filed their Disclosure Statement in support of their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code ("Plan") (Docket Entry # 72). The Debtors later filed an Amended Joint Plan (Docket Entry #115) and Amended Disclosure Statement (Docket Entry # 119).

12. A number of exhibits were attached to the Amended Disclosure Statement. Among those exhibits were the following items: KPNQwest Annual Report on Form 20-F for the fiscal year ended December 31, 2000 (Exhibit G); KPNQwest Form 6-K filed on July 26, 2001, including its quarterly financial information (Exhibit H); and KPN Form 6-K filed on October 29, 2001, including its quarterly financial information (Exhibit I).

13. Under the Amended Plan, allowed general unsecured claims and allowed administrative claims were scheduled to be paid in full.

14. This Court confirmed the Amended Plan by order dated February 21, 2002 (Docket Entry # 194).

KPNQwest Files for Bankruptcy Protection; The Aftermath

15. On May 23, 2002, the day on which this Court approved the final fee applications of various professionals involved in these cases, KPNQwest filed for bankruptcy protection in the

Netherlands.

16. KPNQwest's implosion has been followed by an explosion of allegations which citizen-investors of our country have unfortunately become accustomed to as of late – allegations related to the accuracy of financial information.

17. In connection with its acquisition of GTS, KPNQwest negotiated a €525 million credit facility with a consortium of banks. The facility was finalized on March 18.

18. On February 12, 2002, KPNQwest reported a preliminary 2001 net loss of €266 million. *See KPNQwest Annual Report Shows Wider Loss Than Reported*, 7/8/02 DJINS 9:50:00.

19. News reports indicate that, subsequent to KPNQwest's bankruptcy filing (and, presumably, the creation of the €525 million credit facility), a document which was purported to be a draft of KPNQwest's annual report surfaced. That draft report, which KPNQwest's auditors had apparently not signed off on, placed the company's net loss for 2001 at approximately €380 million. *See id.* The lending consortium which provided the credit facility to fund the GTS acquisition is reportedly seeking an investigation of transactions between KPNQwest and its founders, KPN of the Netherlands and Qwest Communications. *See Bankers to Seek Accounting Probe of KPNQwest*, 6/24/02 NATLPOST FP16, 2002 WL 22467120.

20. Entities voting on the Debtors' Amended Plan were led to believe that, for the nine months ended September 30, 2001, KPNQwest had an unaudited net loss of €132.8; the figure is listed on page 130 of the Amended Disclosure Statement, entitled "KPNQwest N.V. Condensed Consolidated Statement of Operations – Nine Months Ended September 30, 2001 (Unaudited)."

BASIS FOR RELIEF

Material Default with Respect to Confirmed Plan

21. Pursuant to 11 U.S.C. § 1112(b), this Court may, on request of the UST and after notice and a hearing, convert the above-captioned case to a case under chapter 7 of the Bankruptcy Code or may dismiss the above-captioned case, “whichever is in the best interest of creditors and the estate, for cause”

22. 11 U.S.C. § 1112(b)(2) provides that a “[m]aterial default by the debtor with respect to a confirmed plan” constitutes “cause” sufficient to justify conversion or dismissal.

23. 11 U.S.C. § 105(a) authorizes this Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

24. 11 U.S.C. § 1129(a)(9)(A) provides that, in order for this Court to confirm a plan, the plan must provide for payment of the allowed amount of the claim in cash on the effective date of the plan unless the holder of an administrative claim has agreed to different treatment of such claim.

25. The Debtors have substantial unpaid, allowed administrative claims which have not been paid pursuant to the terms of the confirmed Amended Plan.

26. The Debtors’ failure to pay the allowed administrative claims constitutes a “material default with respect to a confirmed plan” under 11 U.S.C. § 1112(b)(2).

27. The Debtors may have unpaid, allowed general unsecured claims. The Debtors’ failure to pay such claims may constitute “a material default with respect to a confirmed plan” under 11 U.S.C. § 1112(b)(2).

Other Cause (Allegations of Improprieties, Uncertainty Regarding Plan Distributions)

28. While a number of items constituting “cause” sufficient for conversion or dismissal

are enumerated in 11 U.S.C. § 1112(b), the list is not exclusive.

29. The recent allegations regarding the accuracy of KPNQwest's financial statements raise serious questions regarding the reliability of information which was made available to entities voting on the Amended Plan.

30. The nature of these allegations may militate in favor of appointing a chapter 7 trustee for purposes of investigating the veracity of the allegations and the possibility of bringing causes of action on behalf of the estates related to such allegations.

31. Furthermore, the recent status report issued by J.C. van Apeldoorn (the KPNQwest trustee) was of limited assistance in sorting out what money, if any, will be left for the Debtors' unpaid creditors. Appointment of a chapter 7 trustee may assist in bringing some certainty (and an appropriate end) to these cases.

WHEREFORE the UST requests that this Court issue an order (1) converting these cases to cases under chapter 7 of the Bankruptcy Code or (2) dismissing these cases.

Respectfully submitted,

DONALD F. WALTON
ACTING UNITED STATES TRUSTEE

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