

US, Canadian judges approve Nortel bankruptcy sale

September 16 2009, By RANDALL CHASE , AP Business Writer

(AP) -- Nortel Networks Inc. won approval Wednesday from judges in Delaware and Ontario for the \$900 million sale of a Nortel unit that makes communications systems for businesses.

In a joint hearing involving a video link between courtrooms in Wilmington and Toronto, where [Nortel Networks](#) Corp. is based, U.S. Bankruptcy Judge Kevin Gross and Canadian Justice Geoffrey Morawetz approved the sale of Nortel Enterprise Solutions to New Jersey-based Avaya Inc. for \$900 million in cash and a \$15 million contribution to a Nortel employee retention program.

The hearing followed an auction that concluded early Monday and resulted in privately held Avaya agreeing to pay almost double the amount of its "stalking horse" bid of \$475 million for the Nortel unit, which supplies phone systems and other communications equipment to businesses and large organizations, including government agencies.

Derrick Tay, an attorney representing Nortel in Canada, said the auction bidding, which stretched over the weekend, amounted to an increase in the sale price of about \$8 million an hour, which he joked would just about cover the fees of the professionals involved.

"I think this is a good news story, not just for creditors," Tay said, adding that the deal will resolve uncertainty among Nortel employees, customers and potential customers.

The court actions cover the sale of Nortel's Enterprise Solutions business in North America, the Caribbean and Latin America and Asia. Nortel and Avaya have a separate agreement covering Europe, the Middle East and Africa. Avaya said the company still needs court approval in France and Israel, among other things.

Meanwhile, Canadian Industry Minister Tony Clement said Wednesday the government won't block the \$1.1 billion sale of Nortel Networks' wireless division to Sweden's Ericsson.

Nortel, a former [telecommunications equipment](#) giant that at one point accounted for one-third of the market value on the entire Toronto Stock Exchange, filed for [bankruptcy](#) protection in Canada and the U.S. in January, one day before it was due to make a debt payment of \$107 million.

Approval of the enterprise unit sale came after Gross rejected an objection filed by Verizon Communications Inc. New York-based Verizon, a major user of Nortel products and services, argued that Avaya's refusal to assume Verizon's contracts with Nortel could jeopardize the communications systems of Verizon business customers, including military and other government agencies.

"As a result, the public's safety, welfare and security will be placed at an immediate and considerable measure of risk that simply cannot be simply or quickly rectified," Verizon said in a court filing Monday.

But Gross overruled Verizon's objection, suggesting that it was premature because no contracts have yet been assumed or rejected. He also noted that Verizon had failed to demonstrate that Nortel and Avaya were the only companies able to service the contracts.

Gross agreed with attorneys for Nortel and Avaya that Verizon's

objection was largely based on economics, not public safety.

According to Verizon's filing, Avaya representatives told Verizon that they did not want to assume the contracts because they include contingent liabilities Nortel faces in a patent infringement lawsuit against Verizon that is pending in federal court in Texas, where Nortel has its U.S. headquarters.

Verizon attorney Darryl Laddin rejected Nortel's suggestion that Verizon was simply angling for better contract terms from Avaya.

"All that Verizon has ever asked for ... is the assumption of their existing contracts, and nothing more," Laddin said. "Not a single change in the terms."

But attorneys for Nortel and Avaya maintained that Verizon's real concerns were related to finances, not national security.

"It's all about money," said Mark Bane, an attorney for Avaya. "Avaya has no reason not to do business with Verizon."

During a break in the hearing, however, Bane refused to say whether Avaya was willing to assume the Verizon contracts.

"I can't talk to that," he said.

In addition to approving the sale, Gross granted Nortel's request for expedited discovery regarding a \$3 billion tax claim from the Internal Revenue Service. Nortel has filed an objection to the claim, saying the IRS has yet to explain the basis for it.

"They should be required to put proof on the table that we can analyze ... There's got to be a file somewhere that somebody has that adds up to

these numbers," said Nortel attorney James Bromley, adding that the IRS claim forced last-minute changes to the purchase agreement, with one provision requiring Nortel to satisfy the claim in a manner acceptable to Avaya.

A Justice Department attorney representing the IRS indicated Wednesday that the claim is based on "transfer pricing" involving internal, cross-border sales of goods and services among various Nortel business divisions, some of which are not included in Nortel's Chapter 11 case.

"I'm assuming they didn't pull information out of the air, but that there are documents upon which they relied," said Gross, who scheduled a hearing on the issue for Oct. 13 and gave the IRS until Sept. 30 to turn over the material.

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Citation: US, Canadian judges approve Nortel bankruptcy sale (2009, September 16) retrieved 3 May 2024 from <https://phys.org/news/2009-09-canadian-nortel-bankruptcy-sale.html>

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