

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No: 04-2411

IN RE: INTEGRATED TELECOM EXPRESS, INC.
a/k/a INTEGRATED TECHNOLOGY EXPRESS, INC.
a/k/a DELAWARE INTEGRATED TELECOM EXPRESS, INC.,

Debtor

NMSBPCSLDHB, L.P.,

Appellant

v.

INTEGRATED TELECOM EXPRESS, INC.;
and THE OFFICIAL COMMITTEE OF EQUITY HOLDERS, et al.

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD,
ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO,
FUENTES, SMITH, CHERTOFF, FISHER, VAN ANTWERPEN,
BECKER and GREENBERG, Circuit Judges*

The petitions for rehearing filed by appellees in the above-entitled case having

*The votes of the Honorable Edward R. Becker and the Honorable Morton I. Greenberg, Senior United States Circuit Judges for the Third Circuit, are limited to panel rehearing.

been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petitions for rehearing by the panel and the Court en banc, are denied. Judge Rendell and Judge Ambro would grant the petitions for rehearing.

BY THE COURT,

/s/ D. Brooks Smith
Circuit Judge

Dated: November 23, 2004

CMD/cc: Craig Goldblatt, Esq.

Christopher J. Meade, Esq.

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Ali M. Mojdehi, Esq.

AMBRO, Circuit Judge, Dissenting to the Denial of Rehearing En Banc, joined by

Judge Rendell:

We voted for rehearing *en banc* not because we believe that the panel has necessarily reached the wrong result. The core effect, as we perceive it, of the panel's holding – that equity holders of a debtor may not file a chapter 11 bankruptcy petition solely “to reap [for themselves] a substantial gain through bankruptcy... at the expense of

the [debtor's] sole creditor," Op. n.4 – may pass muster with the unique facts this case presents. Our problem is this: counsel in other cases may argue the panel's opinion to go further in requiring good faith than anyone on the panel intended. We thus voted for rehearing *en banc* to allow the full Court to dispel this argument, for we believe the panel's opinion is limited to its snow in August facts.