



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed March 21, 2005.


United States Bankruptcy Judge

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

In re:	§ Chapter 11
	§
VarTec Telecom, Inc., et al.,	§ Case No. 04-81694-SAF-11
	§
Debtors.	§ Jointly Administered

**ORDER APPROVING DEBTORS' MOTION FOR APPROVAL OF THE SALE OF
REAL AND PERSONAL PROPERTY IN ADDISON, TEXAS (ADDISON I AND
ADDISON II PROPERTIES), FREE AND CLEAR OF LIENS, INTERESTS,
ENCUMBRANCES, AND TAXES, AND WAIVING THE STAY IMPOSED UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004(g)**

The Court has considered the Motion for Approval of the Sale of Real and Personal Property in Addison, Texas (Addison I and Addison II Properties), Free and Clear of Liens, Interests, Encumbrances, and Taxes, and Waiving the Stay Imposed Under Federal Rule of Bankruptcy Procedures 6004(g) (the "Sale Motion") [Docket No. 976] filed by the above-captioned debtors and debtors in possession

**ORDER APPROVING DEBTORS' MOTION FOR APPROVAL OF THE SALE OF
REAL AND PERSONAL PROPERTY IN ADDISON, TEXAS (ADDISON I AND
ADDISON II PROPERTIES), FREE AND CLEAR OF LIENS, INTERESTS,
ENCUMBRANCES, AND TAXES, AND WAIVING THE STAY IMPOSED UNDER
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(collectively, the "Debtors") with respect to the sale of the Property.¹ After reviewing the Sale Motion, the evidence presented, and the statements of counsel at the hearing, the Court **FINDS** that (i) the Court has jurisdiction over the matters raised in the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that (iii) the Excelcom, Inc. has good and indefeasible title to the Property; (iv) the sale is a legal, valid, and effective transfer of the Property free and clear of any liens, claims, or encumbrances, notwithstanding any requirement for approval or consent by any person; (v) SPI IH II, L.P. ("SPI") is a good faith purchaser within the meaning of Bankruptcy Code § 363(m) and Bankruptcy Code § 363(n) has not been violated; (vi) SPI is not a successor to the Debtors or otherwise liable for any liabilities or assets of the Debtors, except as provided in the Amended and Restated Purchase and Sale Agreement and Escrow Instructions, between the Debtors and SPI, dated March 18, 2005 (the "Amended PSA"); (vii) the consideration to be paid by SPI is fair and reasonable; (viii) the relief requested in the Sale Motion is in the best interest of the Debtors, their estates, their creditors, and their security holders; (ix) proper and adequate notice of the Sale Motion and the hearing thereon has been given and no other or further notice is necessary; (x) exigent business reasons for the sale of the Property exist, and the sale is a sound exercise of the Debtors' business judgment; (xi) cause exists to waive the ten-day stay provided by Rule 6004(g) of the Federal Rules of Bankruptcy Procedure; (xii) none of the Property being sold pursuant to the

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Sale Motion and Amended PSA.

Amended PSA is manufactured or licensed by Nortel Networks, Inc. (xiii) the leaseback transaction by the Seller with SPI is in the best interests of the estate.

The Court hereby **ORDERS**:

1. Pursuant to 11 U.S.C. § 363, the Sale Motion and the transactions contemplated by the Amended PSA are hereby approved.

2. The Property shall be sold to SPI for the following consideration: (a) the sum of \$18,300,000.00 to the Debtors; and (b) \$8,000.00, for the Debtors' immediate payment to the auctioneer, who, but for the sale of the Property pursuant to the Amended PSA, would have auctioned certain of the Personal Property at an auction to be conducted prior to the Closing Date. Further, the Property shall be sold to SPI free and clear of all liens, claims, interests, encumbrances and taxes; however, to the extent SPI is responsible for paying the current year taxes on the Property pursuant to the Amended PSA, the Property shall be conveyed to SPI subject to such liens.

3. The proceeds of the sale of the Property shall be provisionally applied to the debt of the RTFC, pursuant to the court-authorized debtor in possession credit agreement and the related financing and cash collateral order. Upon closing, any holder's lien, claim, interest, or encumbrance shall attach to the proceeds of the sale of the Property with the same nature, validity, and priority that such interest encumbered the Property prior to the sale.

4. This Order shall be without prejudice to the right of any party in interest to request the disgorgement of such proceeds if, and at such time, the Court were to

determine that any entity receiving such proceeds did not have a properly perfected interest in the Property or such interest is avoided or transferred to the Debtors' estates.

5. The Seller and SPI are hereby authorized and directed to take all actions necessary to effectuate and consummate the sale of the Property and the related leaseback and other transactions contemplated under the PSA.

6. Seller is authorized to reject and/or terminate the commercial warehouse lease of Seller with SPI per the leaseback contemplated under the PSA (the "Lease"). After entering into and taking possession thereunder, Seller may reject the Lease, *provided* that such rejection occurs prior or pursuant to confirmation of a plan of reorganization or liquidation herein. No such rejection and/or termination may be made by the Seller after such confirmation or in a converted chapter 7 case. In the event of such rejection and/or termination as permitted herein, any claim for damages or otherwise arising therefrom shall constitute an administrative expense claim entitled to priority under Section 507(a)(1) of the Bankruptcy Code only to the extent arising for the period of Seller's actual occupancy of the leased premises, with any claim for damages or otherwise being treated as a general unsecured claim of the lessor.

7. The Court shall retain exclusive jurisdiction to address any and all matters related to the sale of the Property, the related leaseback and other transactions contemplated under the PSA, and the provisions of this Order.

8. The ten-day stay provided by Rule 6004(g) of the Federal Rules of Bankruptcy Procedure shall not apply to the sale of the Property, the related leaseback

and other transactions contemplated under the PSA, and this Order shall be effective immediately upon entry.

End of Order # #

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