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PROPOSED ATTORNEYS FOR THE DEBTORS

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

IN RE:	§	
	§	
VARTEC TELECOM, INC., *et al.,*	§	**CASE NO. 04-81694-SAF-11**
	§	
DEBTORS.	§	**(Chapter 11)**
	§	**(Joint Administration Requested)**

MOTION TO ESTABLISH PROCEDURE FOR MONTHLY AND INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR CASE PROFESSIONALS

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUTPCY COURT AT EARL CABELL BUILDING, UNITED STATES COURTHOUSE, 1100 COMMERCE STREET, ROOM 1254, DALLAS, TEXAS 75242 BEFORE CLOSE OF BUSINESS ON NOVEMBER 24, 2004, WHICH IS TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the "Debtors")[1] file this Motion to Establish Procedure for Monthly and Interim Compensation and Reimbursement of Expenses for Case Professionals (the "Motion") and in support thereof the Debtors would show as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On November 1, 2004 (the "Petition Date"), the Debtors each filed a voluntary petition for relief (collectively, the "Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

4. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

5. Contemporaneously with the filing of this Motion, the Debtors filed their Expedited Motion for Joint Administration of Cases.

[1] The Debtors include VarTec Telecom, Inc., Excel Communications Marketing, Inc., Excel Management Service, Inc., Excel Products, Inc., Excel Telecommunications, Inc., Excel Telecommunications of Virginia, Inc., Excel Teleservices, Inc., Excelcom, Inc., Telco Communications Group, Inc., Telco Network Services, Inc., VarTec Business Trust, VarTec Properties, Inc., VarTec Resource Services, Inc., VarTec Solutions, Inc., VarTec Telecom Holding Company, VarTec Telecom International Holding Company, and VarTec Telecom of Virginia, Inc.

STATEMENT OF FACTS

VarTec and Its Business

6. VarTec Telecom, Inc., a Texas corporation, ("VarTec") along with its sixteen direct and indirect domestic subsidiaries, each of which is a Debtor, and eighteen non-debtor direct and indirect foreign subsidiaries (collectively, the "VarTec Entities"), is among the largest privately held companies providing telecommunications services in North America and Europe. The VarTec Entities, founded in DeSoto, Texas in February 1989, with current employees totaling over 1,300 worldwide (including approximately 1,000 in the Dallas metroplex), sell a full range of telecommunication products and services to customers. In 2003, the VarTec Entities had revenues of approximately $1,260,000,000, and anticipate 2004 revenue in the approximate amount of $900,000,000. VarTec's revenues have been derived primarily from three sale distribution channels: (a) Direct Marketing; (b) Commercial Services; and (c) Multi-Level Marketing.

7. The Direct Marketing channel, managed by VarTec and certain of its subsidiaries offers telecommunications services to small business and residential consumers, including local and long distance telephone services, wireless telephone services, and internet access. VarTec pioneered the "10-10 dial-around" long distance market by offering customers the opportunity to access VarTec's discounted long distance services on a call-by-call basis by dialing "10-10" then a three-digit unique carrier access code. Under the "dial-around" model, a customer's long distance usage is billed on her local phone service provider's invoice, the local phone service provider collects the billed amounts, and the local phone service provider remits those collected amounts to VarTec.

8. While experiencing tremendous success with the “dial-around” model, VarTec began to offer other telecommunication services, including local and traditional long distance telephone services, wireless telephone service, and internet access, directly to small business and residential customers. VarTec is licensed to provide local and long distance telephone services in all fifty states, and markets its products and services through, among other means, direct mail and magazine insert campaigns composed of several hundred million items to persons in a targeted market each year. VarTec also uses outbound telemarketing for targeted campaigns to attract new customers of existing products and to offer new and/or additional products to existing customers.

9. The Commercial Services channel, managed by VarTec Solutions, Inc. (formerly known as eMeritus Communications, Inc.) and certain of its subsidiaries (collectively, “VarTec Solutions”), provides customized voice, data, and internet services to commercial and wholesale carrier customers throughout the U.S. VarTec Solutions’ voice product offerings include switched and dedicated access, domestic and international toll-free service, calling cards, audio conferencing, and other specialized products. In addition, VarTec Solutions offers high-capacity data services that provide access to frame relay and IP networks. For carrier customers, VarTec Solutions offers the ability to co-locate their equipment inside carrier-class facilities, saving the cost and complications involved with building their own facilities.

10. Through the Multi-Level Marketing channel, which is managed by Excelcom, Inc. and certain of its subsidiaries (collectively, “Excel”), Excel offers telecommunications products and services to small business and residential consumers

similar to those offered by VarTec to its customers. Excel, which was acquired by VarTec in 2002, has an international network of over 130,000 independent representatives who market Excel's products and services to small business and residential consumers and recruit new independent representatives to market such products and services. Each independent representative receives commissions and bonuses based on, among other things, the success of the independent representatives recruited and a portion of the success of their recruits (referred to as a "downline"), the usage of Excel products and services by customers of the independent representative and a portion of their downline.

Secured Debt

11. VarTec is a borrower and the other Debtors (except VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc.) are guarantors under that certain First Amended and Restated Credit Agreement (the "Pre-Petition Loan Agreement") with the Rural Telephone Finance Cooperative (the "RTFC"), pursuant to which the existing secured indebtedness owing to the RTFC was restructured in the form of a secured term loan and a secured line of credit to the Debtor.[2] The secured line of credit is in the form of a revolving credit facility, for the working capital, credit, and liquidity needed by the Debtor to conduct general business operations. As of the Petition Date, the total outstanding obligation to the RTFC consist of (a) a term loan of approximately $154,000,000 and (b) a revolving line of credit with a total commitment of $70,000,000.

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[2] The capital stock of VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc. was pledged to the Rural Telephone Finance Cooperative under transactions completed in conjunction with the Credit Agreement.

The Industry

12. Prior to 1996, local telecommunications services were provided exclusively by traditional, monopoly providers, or incumbent local exchange carriers (the "ILECs"). Pursuant to the Telecommunications Act of 1996 (the "Telecommunications Act"), which was enacted to promote competition in the local telecommunications industry, ILECs were required to provide competitors, such as the Debtors, access to their networks to allow those competitive local exchange carriers (the "CLECs") to offer local telecommunications services. The terms, conditions, and prices charged by ILECs to CLECs are provided in agreements – referenced as interconnection agreements – governed by rules and regulations promulgated by the FCC and various state agencies or public utility commissions. As consideration for relinquishing their monopoly positions, the ILECs were authorized to offer long distance telecommunications services, both out-of-region and in-region (where they were an ILEC) provided certain terms and conditions were satisfied.

13. ILECs, CLECs, and long distance carriers utilize each other's networks to transmit the voice and data traffic of their customers. The framework and pricing of the exchange of voice and data traffic between ILECs and CLECs, on the one hand, and long distance carriers, on the other hand, is governed by multiple laws, regulations, tariffs, and interconnection agreements. For example, if an ILEC or a CLEC' s customer originates a call that is carried to its destination by one of the Debtors, the respective Debtor will bill the CLEC or ILEC on a minute of use basis; if a customer of one of the Debtors originates a call that is carried to its destination by an ILEC or a CLEC, the

ILEC or CLEC will bill the respective Debtor on a minute of use basis. This is known as reciprocated or intercarrier compensation.[3]

14. To effectuate the billing, collection, and maintenance of account information, the Debtors often entered into agreements with various ILEC and CLEC, under which such ILEC or CLEC bills customers for the services provided by the Debtors, collects the billed amount for the Debtors, and pays or remits to the Debtors the collected amounts periodically.

15. The deregulation of local and long distance telecommunication services pursuant to the Telecommunications Act resulted in increased competition and decreased local and long distance rates. Despite successfully competing in the telecommunications industry for almost fifteen years, (i) VarTec's lack of brand name recognition comparable to some of its competitors in the more intensively competitive telecommunications market, (ii) customer attrition exacerbated by aggressive customer win-back campaigns by the dominant telco providers, and (iii) the margin compromises caused by increasing wholesale rates while retail rates are suffering, have all made it difficult for VarTec to maintain its historical revenue and profitability levels.

Challenges

16. In the weeks preceding the Petition Date, several ILECs, CLECs, and long distance carriers with whom the Debtors have interconnection or access agreements have (i) threatened to terminate services provided to the Debtors, (ii) requested security deposits, and/or (iii) offset amounts owed to the Debtors. The

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[3] A long distance carrier can also be an ILEC or a CLEC.

actions of the ILECs, CLECs, and long distance carriers have impaired the Debtors' liquidity.

17. In addition to the matters discussed above, because of various disputes[4] with Teleglobe Inc. ("Teleglobe") regarding VarTec's acquisition of certain of the companies now associated with Excel and VarTec Solutions (the "Acquired Companies"), VarTec has had to spend millions of dollars in the past several years supporting the Excel companies (for which it had anticipated reimbursement), which has financially weakened the Debtors.

18. The combination of these economic and financial events has impaired the Debtors' liquidity and compelled the Debtors to commence these Cases in order to maximize the value of their assets for the benefit of their creditors and other constituencies under chapter 11 of the Bankruptcy Code.

19. The Debtors anticipate filing applications to employ various professionals, including bankruptcy counsel, special counsel, and accountants (collectively the "Debtor Professionals"). The Debtors may seek to retain other case professionals as needed. In addition, in the event an official committee of unsecured creditors (the "Committee") is formed, the Committee could retain counsel and financial advisors (together with the Debtor Professionals, the "Professionals").

RELIEF REQUESTED

20. Pursuant to Bankruptcy Code § 331, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days "or more often if the Court permits." 11 U.S.C. § 331.

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[4] Such disputes have spawned considerable litigation, including an arbitration between VarTec and Teleglobe's bankruptcy estate.

21. The Debtors hereby request that the Court enter an Order establishing a procedure for compensating and reimbursing Professionals on a monthly basis. This procedure will provide: (a) the Court and all other parties an effective means to monitor the fees incurred; (b) the Professionals, whose time commitment is expected to be significant, a means to receive interim payment on account; and (c) the Debtors a means to avoid irregular payments that would result in large depletions of their cash flow.

22. In summary, the requested monthly compensation procedure would require all Professionals retained in the Debtors' Cases to present to the Debtors and the Committee a detailed statement of services rendered and expenses incurred for the prior month (unless otherwise provided in an Order of this Court approving the employment of a Professional). If no timely objection is filed, the Debtors would promptly pay eighty percent of the amount of fees incurred for the month, with a twenty percent holdback, and one hundred percent of out-of-pocket expenses for the month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process approximately every 120 days.

23. The Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

(a) On or before the twentieth day of each month following the month for which compensation is sought, each Professional will serve a detailed statement of services rendered and expenses incurred during the prior month upon the Debtors, the Debtors' counsel, counsel to the Committee, if any, counsel to the RTFC, and the United States Trustee (collectively, the “Parties”). Each entity receiving a statement will have fifteen days after the date of receipt to review and raise written objections, if any, to each statement. At the expiration of the fifteen day objection period, the Debtors shall promptly pay eighty percent of the fees and one hundred percent of the out-of-pocket expenses identified in each monthly statement, except such fees or expenses to which an objection has been served by one of the Parties.

(b) In the event that one of the Parties has an objection to the compensation or reimbursement sought in a particular monthly statement, such Party shall, within such fifteen days after the receipt of the statement, serve upon the Parties a written “Notice of Objection to Fee Statement,” with a statement setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting Party and the Professional to whose statement an objection has been served shall attempt to reach an agreement regarding the correct payment to be made. If the Parties are unable to reach an agreement on the objection within fifteen days after receipt of such objection, the Professional whose fee statement is subject to an objection shall have the option of (i) filing the objection, together with a request for payment of the disputed amount, with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested. However, the Debtors will be required to pay promptly that percentage set forth above of any portion of the fees and disbursements requested that are not the subject of a Notice of Objection to Fee Statement.

(c) The first statement shall be submitted by each of the Professionals by December 20, 2004, and shall cover the period from the Petition Date through November 30, 2004.

(d) Approximately every four months, each of the Professionals shall file with the Court and serve on the parties identified in subparagraph (a) above, on or before the thirtieth day following the last day of the compensation period for which compensation is sought, an application for interim Court approval and allowance, pursuant to Bankruptcy Code § 331, of compensation and reimbursement of expenses incurred during the prior four months. The first such interim fee application shall be filed by each Professional on or before March 30, 2004, and shall cover the period from the Petition Date through February 28, 2004. Any Professional who fails to file an application when due as directed by this subparagraph shall be ineligible to receive further monthly or interim payments of fees or expenses as provided herein until such time as the application is submitted.

(e) The pendency of an objection or a Court order stating that payment of compensation or reimbursement of expenses was improper as to a particular monthly or interim statement shall not disqualify a Professional from the future payment of monthly and interim compensation or reimbursement of expenses as set forth above, except as otherwise directed by an Order of this Court.

(f) Neither the payment of, nor the failure to pay, in whole or in part, monthly or interim compensation and reimbursement as provided herein shall bind any party-in-interest or the Court with respect to the allowance of applications for compensation and reimbursement of Professionals.

24. The procedure suggested herein will enable all parties to closely monitor costs of administration and the Debtors to implement efficient cash management.

25. No prior motion for the relief requested herein has been made to this or any other Court.

PRAYER

The Debtors respectfully request that the Court enter an Order (i) authorizing the Professionals to receive monthly and interim compensation and reimbursement of expenses in accordance with the procedures described herein; and (ii) granting such other and further relief to which they may be justly entitled.

Respectfully submitted,

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