

Daniel C. Stewart, SBT #19206500
William L. Wallander, SBT #20780750
Abigail B. Willie, SBT #24028226
VINSON & ELKINS L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201-2975
Tel: 214-661-7299
Fax: 214-220-7716
VarTec@velaw.com

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)
	§	(Jointly Administered)
	§	
	§	Hearing set for September 7, 2005
	§	at 2:30 p.m.

**SECOND MOTION FOR APPROVAL OF THE SALE OF REAL PROPERTY IN
DESOTO, TEXAS, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS,
ENCUMBRANCES, AND TAXES, AND WAIVING THE AUTOMATIC STAY IMPOSED
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004(g)**

**HEARING DATE ON THIS MOTION IS SET FOR SEPTEMBER 7, 2005
AT 2:30 P.M. NO OBJECTION TO SUCH SALE WILL BE
CONSIDERED UNLESS A WRITTEN RESPONSE IS FILED WITH THE
CLERK OF THE UNITED STATES BANKRUPTCY COURT AT LEAST
FORTY-EIGHT (48) HOURS IN ADVANCE OF SUCH HEARING DATE.
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 THE MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED
SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY
ENTER AN ORDER GRANTING THE RELIEF SOUGHT.**

**SECOND MOTION FOR APPROVAL OF THE SALE OF REAL PROPERTY IN
DESOTO, TEXAS, FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS,
ENCUMBRANCES, AND TAXES, AND WAIVING THE AUTOMATIC STAY IMPOSED
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004(g)**

TO THE HONORABLE STEVEN A. FELSENTAL, CHIEF BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Second Motion for Approval of the Sale of Real Property in DeSoto, Texas, Free and Clear of Liens, Claims, Interests, Encumbrances, and Taxes, and Waiving the Automatic Stay Imposed Under Federal Rule of Bankruptcy Procedures 6004(g) (the “Motion”) and show as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. On November 1, 2004 (the “Petition Date”), the Debtors each filed a voluntary petition for relief (collectively, the “Petitions”), thereby commencing the above-captioned bankruptcy cases (collectively, the “Cases”) pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

3. 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.

4. The Cases are jointly administered under the Case styled *In re VarTec Telecom, Inc., et al.*, Case No. 04-81694-SAF-11.

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

General Background

5. 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 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 obligations to the RTFC consisted 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. The RTFC has contractual liens and security interests in the Property to secure both the Debtors' pre- and postpetition indebtedness to the RTFC.

Facts Related to the Property in DeSoto, Texas

6. For months prior to the filing of the Petitions herein, and throughout the spring and summer of 2004, VarTec actively marketed a 4.1686-acre tract of vacant land located at 1006 East Pleasant Run Road in DeSoto, Texas (the "Property"), which was acquired by the Debtors in the mid-1990s, when the Debtors also purchased a strip mall shopping center on the adjacent property. Although the shopping center was later

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.

sold by the Debtors, the Property was not, and the Debtors began seeking a purchaser for this land in the months preceding the Petition Date.

7. Prior to the Petition Date, on October 22, 2004, Regional Management, Inc. ("Regional") and VarTec Properties, Inc. ("VarTec Properties") executed a Contract of Sale (the "Original Agreement") under which Regional agreed to purchase the Property from VarTec Properties. On January 20, 2005, Regional and VarTec Properties executed that certain First Amendment to Contract of Sale (the "Amendment" and together with the Original Agreement, the "Agreement").

8. On February 4, 2005, the Debtors filed its first motion to sell the Property (Docket No. 894], attaching a copy of the Agreement. On February 28, 2005, the Court granted authority to sell to the highest and best offer (pursuant to an auction if additional bids were received). Because no parties other than Regional made an offer for the Property, no auction was held and the Debtors proceeded to close the sale of the Property to Regional. However, because Regional decided not to close on the sale, the Property now remains part of the estates.

RELIEF REQUESTED

9. Pursuant to Bankruptcy Code §§ 105 and 363, the Debtors seek (a) authority to sell the Property free and clear of liens, claims, encumbrances, taxes and interests and (b) a waiver of the automatic stay imposed under Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 6004(g).

APPLICABLE AUTHORITY

A. *Sale of the Property is Appropriate and May Be Authorized Under Bankruptcy Code §§ 363 and 105.*

10. Bankruptcy Code § 363 provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). Such sale or disposition is based upon the sound business judgment of the debtor. *See, e.g., In re Performance Nutrition, Inc.*, 239 B.R. 93, 111-112 (Bankr. N.D. Tex. 1999).

11. Bankruptcy Code § 105 provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code].” 11 U.S.C. 105(a). Pursuant to this section, the Court has liberal powers to fashion relief that is in the interest of preserving or protecting the estate’s assets, provided that such relief is not contrary to the statutory provisions of the Bankruptcy Code.

12. The Debtors have determined, in the sound exercise of their business judgment, that selling the Property is beneficial to the estates and creditors. By selling the Property, the Debtors will avoid the incurrence of expenses relating to, among other things, maintenance, insurance, and taxes.

13. Contemporaneously with the filing of this Motion, the Debtors filed the Application to Employ Rosen Systems, Inc. as Auctioneer for Sale of Real Property Located in DeSoto, Texas (the “Application”), in which the Debtors requested authority to employ Rosen Systems, Inc. (“Rosen”) to serve as auctioneer of the auction of the DeSoto Property (the “Auction”).

14. The winning bid of the Auction (the “Winning Bid”) will be negotiated at arm's length and in good faith after exposure of the Property to the market, and represent fair market value for the Property. Accordingly, the Court should approve the sale of the Property to the party submitting the Winning Bid, subject to higher and better offers.

B. *The Sale of the Real Property Should Be Free of All Liens, Claims, Taxes, and Encumbrances and Other Interests*

15. Pursuant to Bankruptcy Code § 363(f), a debtor may sell property free and clear of all liens, claims and encumbrances if (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest; (2) the lienholder or claimholder consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is a bona fide dispute; or (5) the lienholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. See 11 U.S.C. §363(f). These five conditions are written in the disjunctive, permitting the sale of estate assets upon the satisfaction of any one of the five conditions, including consent of the lienholders. See *In re Taxi Holders, Inc.*, 307 B.R. 525, 528-529 (Bankr. E.D. Va. 2004). The RTFC, which holds a lien in the Property, has indicated that it provisionally consents to the proposed disposition, reserving its rights subject to final review. Even absent consent, the Property may be sold free and clear of its interests (with such interests attaching to the sale proceeds), provided that the RTFC could be compelled to accept money satisfaction of its interests in the property. See 11 U.S.C. § 363(f)(5). The RTFC is adequately protected under Bankruptcy Code § 363(e) through the DIP

Financing Order and, to the extent of its liens, through attachment of the liens to the sale proceeds realized from the proposed sale.

16. The Property therefore should be sold pursuant the terms of the Winning Bid or to the offer of any party submitting a higher and better offer, free of all liens, claims, interests, and encumbrances, with any holder's lien, claim, interest, or encumbrance to attach to the proceeds of the sale, with the same nature, validity and priority that such interest encumbered the Property prior to the proposed sale.

C. *The Party with the Winning Bid Will Be a Good Faith Purchaser and Entitled to the Protections of Bankruptcy Code § 363(m).*

17. Pursuant to Bankruptcy Code § 363(m), a good faith purchaser is one who purchases assets for value, in good faith and without notice of adverse claims. *See In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993).

18. As stated above, Debtors will engage in marketing efforts and negotiations with prospective purchasers prior to the Auction. Throughout the sale process, the Debtors will deal in good faith with all prospective purchasers. The Debtors submit that the Agreement will be negotiated in good faith, that the negotiations were free of collusion between Debtors, its counsel and prospective bidders, and that the procedures employed by the Debtors were fair and reasonable and produced the highest and best arm's length offer for the purchase of the Property. Accordingly, Debtors represent that the party with the Winning Bid is a good faith purchaser within the meaning of Bankruptcy Code § 363(m) and is fully entitled to the protections thereof.

D. *The Automatic Stay Imposed Under Bankruptcy Rule 6004(g) Should Be Waived*

19. Bankruptcy Rule 6004(g) provides that an “order authorizing the use, sale, or lease of property ... is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(g). The parties to the sale of the Property wish to consummate the sale as soon as possible. The Debtors, therefore, request that any order entered by this Court approving the Agreement and the transaction contemplated therein be effective immediately and provide that the ten-day stay imposed pursuant to Bankruptcy Rule 6004(g) is inapplicable.

WHEREFORE, the Debtors respectfully request that the Court enter an order authorizing and approving the sale of the Property as provided herein and that such Order waive the automatic stay imposed under Bankruptcy Rule 6004(g) and grant any further relief as is just and proper.

Dated this 13th day of July, 2005.

Respectfully submitted,

VINSON & ELKINS L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Tel: 214-661-7299
Fax: 214-220-7716

By: /s/ Abigail B. Willie
Daniel C. Stewart, SBT #19206500
William L. Wallander, SBT #20780750
Abigail B. Willie, SBT #24028226

ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on July 13th, 2005, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas. A separate certificate of service shall be filed with respect to those parties on the Clerk's list who do not receive electronic e-mail service.

/s/ Abigail B. Willie
One of Counsel

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