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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 requested for 7/25/05 at
	§	1:30 p.m.

**APPLICATION TO EMPLOY ROSEN SYSTEMS, INC. AS AUCTIONEER FOR
SALE OF REAL PROPERTY LOCATED IN DESOTO, TEXAS**

TO THE HONORABLE STEVEN A. FELSENTHAL, CHIEF JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Application to Employ Rosen Systems, Inc. as Auctioneer for Sale of Real Property Located in DeSoto, Texas (the “Application”) and in support thereof the Debtors would show as follows:

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.

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).

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. The Debtors' Cases are jointly administered as case styled *In re VarTec Telecom, Inc.* (Case No. 04-81694-SAF-11).

STATEMENT OF FACTS

6. VarTec Properties, Inc. ("VarTec Properties" or the "Seller") is a Debtor in the Cases and owns a tract of undeveloped land in DeSoto, Texas (the "Property"). On February 28, 2005, the Court entered an Order Approving the Sale of Real Property in DeSoto, Texas, Free and Clear of All Liens, Claims, Interests, Encumbrances, and Taxes, and Waiving the Automatic Stay Imposed Under Federal Rule of Bankruptcy Procedure 6004(g) [Docket No. 1019], in which the Court approved the proposed sale of the Property to Regional Management Properties, Inc. ("Regional") for \$455,000.00. However, on March 7, 2005, Regional notified VarTec Properties that it was terminating its contract

for sale with VarTec Properties and would not close on the proposed sale. The Property remains an asset of VarTec Properties.

7. The Debtors believe that the sale of the Property would be in the best interest of the estates and their creditors. Contemporaneously with the filing of this Application, the Debtors filed a 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 "Sale Motion").

8. The Debtors seek to retain Rosen Systems, Inc. ("Rosen") under the terms of the Exclusive Right to Conduct Real Property Auction Agreement (the "Agreement"), a form of which is attached hereto as **Exhibit A**. Pursuant to the Auctioneer, Rosen is to be retained by the Debtors as their exclusive agent to publicize and sell the Property. The Debtors previously have retained Rosen to serve as auctioneer of the sale of their personal property located at their former corporate headquarters at 1600 Viceroy Drive in Dallas and as auctioneer for the sale of personal property at the corporate location in Addison, Texas.

9. In the Agreement, the Debtors agree to compensate Rosen for services rendered, reimburse Rosen for certain expenses, and indemnify Rosen in certain circumstances. Rosen will receive \$4,500.00 for advertising expenses and a commission equal to 3% of the gross sales price from the sale of the Property at the Auction. Additionally, the Debtors agree to pay a commission equal to 3% of the gross sales price of the Property in cash at closing to a licensed real estate broker that procures the buyer the successful bidder.

10. For the purposes of this Application and any further notices, the name, mailing address, and telephone number of the professional primarily responsible for the services rendered by Rosen is:

Kyle Rosen
Rosen Systems, Inc.
17744 Preston Road, Suite 100
Dallas, Texas 75252-5736
Tel: 972-248-2266 x. 12
Fax: 972-248-6887

Other professionals from Rosen will provide services to the Debtors as necessary.

RELIEF REQUESTED

11. Bankruptcy Code § 327(a) provides,

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accounts, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

12. Bankruptcy Code § 328(a) further provides,

The trustee . . . with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.

11 U.S.C. § 328(a).

13. Pursuant to Bankruptcy Code §§ 327(a) and 328(a), and Federal Rule of Bankruptcy Procedure 2014, the Debtors seek to engage Rosen as exclusive agent to publicize the Auction and sell the Property as further set forth in the Agreement. The Debtors seek to retain Rosen as auctioneer because of

its expertise and extensive knowledge in chapter 11 cases. Rosen Systems is on the list of approved auctioneers maintained by the United States Trustee, and it subscribes to the blanket bond program arranged by the United States Trustee. Further, Rosen is familiar with the U.S. Trustee's Guidelines for Conduct of Auction Sales. The Debtors have been advised that Rosen maintains casualty and liability insurance sufficient to cover all the property entrusted to it for sale.

14. The Debtors submit that the retention of Rosen is in the best interest of the Debtors' estates. The Property will be a source of cash to the Debtors and its sale will not effect business operations, as the Property is currently unused and undeveloped. Rosen has indicated a willingness to act on the Debtors' behalves in the capacities provided herein.

15. The Debtors request approval of the terms of the retention of Rosen Systems subject to the standard of review provided in Bankruptcy Code § 328(a). The Debtors submit that the fee and expense structure and the indemnification provisions set forth in the Agreement are reasonable terms and conditions of retention and that they should be approved under Bankruptcy Code § 328(a), without the need for Rosen to file an interim or final fee application. The fee and expense structure and indemnification provisions comport with the nature of the services to be provided by Rosen and the fee and expense structures and indemnification provisions typically utilized by Rosen and other leading asset disposition firms. The Debtors believe that the fee structure they have negotiated with Rosen is designed to maximize the value of the Debtors' estates.

16. Because Rosen's compensation is based on results achieved through the sales of the property, without regard for hours worked or services performed, the Debtors believe that applications pursuant to Bankruptcy Code § 330 should not be required and that the Debtors should be authorized to pay Rosen's fees directly out of the proceeds from the sale of the property in accordance with the Agreement.

17. To the best of the Debtors' knowledge, and based upon the representations in the Affidavit of Kyle Rosen in Support of Expedited Application to Employ Rosen Systems, Inc. as Auctioneer, which is attached as **Exhibit B** hereto (the "Rosen Affidavit"), the employees of Rosen are "disinterested persons" under Bankruptcy Code §§ 101(14) and 1107(b), who do not hold or represent an interest adverse to the Debtors or their estates.

18. To the best of the Debtors' knowledge and based upon the Rosen Affidavit, (a) Rosen's connection with the creditors, and other parties in interest, or their respective attorneys, are fully disclosed in the Rosen Affidavit; and (b) the Rosen professionals working on this matter are not relatives of the U.S. Trustee of the Northern District of Texas or of any known employee in the office thereof, or any U.S. Bankruptcy Judge of the Northern District of Texas.

19. Rosen has not provided, and will not provide, professional services to any of the creditors, other parties in interest, or their attorneys with regard to any matter relating to these Cases.

PRAYER

The Debtors respectfully request that the Court enter an Order authorizing the employment of Rosen Systems as auctioneer on the terms and conditions set

forth in the Agreement and this Application and granting them such other and further relief to which they may be justly entitled.

Dated this 13th day of July, 2005.

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Abigail B. Willie
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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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