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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
	§	(Chapter 11)
DEBTORS.	§	(Jointly Administered)
	§	

**EXPEDITED MOTION TO CONTINUE HEARING ON CARRIERS'
MOTIONS TO COMPEL ASSUMPTION OR REJECTION OF
EXECUTORY CONTRACTS AND BRIEF IN SUPPORT**

TO THE HONORABLE HARLAN D. HALE, BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”) file this Expedited Motion to Continue Hearing on Carriers’ Motions to Compel Assumption or Rejection of Executory Contracts and Brief in Support and in support thereof the Debtors would show as follows:

I. RELEVANT BACKGROUND

1. Prior to November 1, 2004 (the “Petition Date”), the Debtors¹ entered into various service agreements, interconnection agreements, circuit agreements, and/or billing collection agreements (the “Agreements”) with BellSouth Telecommunications, Inc. (“BellSouth”), Qwest Communications Corporation and/or its affiliates (“Qwest”), and the operating subsidiaries of Verizon Communications Inc. (“Verizon” and collectively with BellSouth and Qwest, the “Carriers”).

2. Since the Petition Date, the Debtors have not sought to assume any of the Agreements. The Debtors do have a motion pending to reject specific circuit agreements with the Carriers. The Debtors have no other pending motions to assume or reject the Agreements.

3. On December 2, 2004, the Court entered its Stipulation and Consent Order by and Among Certain Carriers and the Debtors regarding Adequate Assurance/Adequate Protection of Future Payments [Docket No. 451] (the “Carrier Stipulation”). Under the Carrier Stipulation the Debtors pay, generally in advance, set amounts semi-monthly to the Carriers on a postpetition basis. Such payments are more favorable to the Carriers than what is required under the Agreements. A copy of the Carrier Stipulation is attached hereto as **Exhibit A**.

4. On July 1, 2005, eight months after the Petition Date, the Carriers each filed a motion to compel assumption or rejection of their respective Agreements [Docket Nos. 1452 (BellSouth); 1456 (Verizon); and 1459 (Qwest)] (collectively, the “Motions”).

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.

The Carriers ask for various forms of relief related to compelling the Debtors to assume or reject all of the Agreements, which number in the thousands. The Carriers have set the Motions for hearing on July 25, 2005 at 1:30 p.m., the same date and time as the auction of substantially all of the Debtors' assets (see below).

II. THE SALE MOTION AND SALE PROCEDURES ORDER

5. After an extensive marketing effort and negotiations with numerous potential stalking horse bidders, on June 17, 2005, the Debtors filed their Motion for Authority to Sell Assets Free and Clear of All Liens, Claims, Rights, Interests, and Encumbrances and for Related Relief (Substantially All of Debtors' Remaining Assets) [Docket No. 1399] (the "Sale Motion") and their Expedited Motion for Order (A) Approving Sale Procedures and Bid Protections in Connection with Sale of Certain Assets; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale; (C) Approving Notice Relating to Sale; and (D) Granting Related Relief (Sale of Substantially All of the Debtors' Remaining Assets) [Docket No. 1401] (the "Sale Procedures Motion"). On June 30, 2005, the Court entered its order approving the Sale Procedures Motion [Docket No. 1446] (the "Procedures Order"). In the Sale Motion, the Debtors requested, among other things, approval of the sale of significant assets to Leucadia National Corporation ("Leucadia"), or another successful bidder (the ultimate successful bidder being hereinafter the "Buyer"), under that certain Asset Purchase Agreement dated June 17, 2005 (the "APA"), or a similar agreement executed by the Buyer. Under the Procedures Order, the auction will occur on July 25, 2005 (the "Auction Date") and the hearing to approve the sale of the assets will occur on July 27, 2005 at 9:00 a.m. (the "Sale Hearing").

6. Under the APA, the “Final Closing Date” is the date, *inter alia*, when critical regulatory approvals have been obtained for the transaction contemplated by the APA and the Debtors receive the final purchase price payment. Essentially, the Final Closing Date is the last step to consummating the sale of the Debtors’ assets to the Buyer.

III. RELIEF REQUESTED

7. The Debtors request the hearing on the Motions be continued until after the Final Closing Date, i.e., after necessary regulatory approvals of the transfer of the Debtors’ assets to the Buyer as required by various state and federal governmental agencies. As certain Carriers recognize in their Motions, the Debtors’ cases have been pending for at least eight (8) months, yet the Carriers felt no urgency to compel the assumption or rejection of the Agreements until now. The Carriers do not make clear why they suddenly are asking the Court to prematurely compel the assumption or rejection of the Agreements on the eve of the Sale Hearing. However, it seems no accident that the Carriers all filed their Motions on July 1, 2005, the last day to file a motion (on a non-expedited basis) to be heard on the Auction Date. Regardless, given the state of these cases and the pending sales process, it is premature to consider the Motions now.

8. The Carriers are attempting to (a) gain leverage against the Debtors in the sale process by forcing the decision to assume or reject prior to the granting of the voluminous regulatory approvals required in advance of the Debtors being able to assign the Agreements to the Buyer, (b) muddy the issues before the Court related to the sale and create unnecessary concern and potential risk for the “stalking horse” Leucadia, in an effort to compel Leucadia to immediately negotiate acceptable cure and

assumption terms with the Carriers, and (c) chill the bidding process by chasing off other potential bidders who would be faced with having to make their decision, and potentially pay substantial cure costs, without knowing if regulatory approval will ultimately be received. Further, the Motions are inappropriately being crammed into the same week as the Sale Hearing and on the same day as the Auction Date when no emergency exists for addressing this issue as demonstrated by the Carriers' inaction the first eight months of the cases. The Carriers should not be permitted to manipulate the process to detrimentally impact the sale of the Debtors' assets, a major turning point in these cases.

9. The Carriers are not and will not be harmed if the Motions are heard after the Final Closing Date. The Carriers' Motions conveniently fail to mention that each Carrier is receiving postpetition payments on terms superior to their prepetition arrangements with the Debtors under the Agreements. Under the Carrier Stipulation, the Carriers are receiving postpetition adequate protection payments in exchange for agreeing to provide postpetition services. The sale of the Debtors' assets will not affect the Carrier Stipulation or the adequate protection payments, thus there is no harm – economic or otherwise – to the Carriers if the Motions are continued until after the Final Closing Date.

10. Moreover, the Sale Procedures do not require the Buyer to elect which unexpired executory contracts or leases such Buyer will seek in the future to have the Debtors assign. Thus, any relief sought by the Carriers cannot be forced upon the Buyer through the sale process. Further, the Carriers are well aware that the Debtors currently lack the necessary funding to cure and assume the Agreement, making the

timing of their Motions all the more suspect. One must wonder whether the Carriers are acting as creditors or competitors in urging the Motions at this time.

11. This Court has the discretion to grant a motion to continue. See *Resolution Trust Corp. v. Chisholm Federal Savings and Loan Ass'n*, 951 F.2d 657, 663 (5th Cir. 1992) (noting the appellate court reviews the lower court's decision on a continuance for abuse of discretion); *In re Industrial Commercial Electric, Inc.*, 319 B.R. 35, 46 (D. Mass. 2005) (holding the proper standard of review for the district court to use when reviewing the bankruptcy court's decision regarding a continuance was abuse of discretion). Here, the Court has ample reasons within its discretion to continue the hearings on the Motions until the Final Closing Date.

12. The Debtors will avoid going into the lack of merit of the Motions at this time. Suffice it to say, that the Carriers fall desperately short of meeting their burden to compel the Debtors to assume or reject the Agreements. The Debtors will elaborate on these issues in their forthcoming objection to the Motions.

IV. PRAYER

13. The Debtors respectfully request the Court continue the hearing on the Motions until the Final Closing Date as defined in the APA. The Debtors request other such relief in which they are justly entitled.

Dated: July 13, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Holly J. Warrington
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ATTORNEYS FOR THE DEBTORS

AFFIDAVIT AND CONSENT

Pursuant to L.R. 40.1, I, Michael G. Hoffman, do verify and support the continuance requested above. I further certify that I believe the facts in support of the continuance set forth herein are true and correct to the best of my knowledge.

/s/ Michael G. Hoffman

Michael G. Hoffman
CEO of the Debtors

CERTIFICATE OF CONFERENCE

I certify that I corresponded with counsel for the Carriers on July 13, 2005 and all the Carriers opposed the relief requested herein.

/s/ Holly J. Warrington

One of Counsel

CERTIFICATE OF SERVICE

This is to certify that on July 13, 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/ Holly J. Warrington

One of Counsel

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