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**ATTORNEYS FOR THE DEBTORS**

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

<i>In re</i>	§	Case No. 04-81694-SAF-11
	§	
	§	(Chapter 11)
	§	
VARTEC TELECOM, INC., <i>et al.</i> ,	§	(Jointly administered)
	§	
	§	Hearing Date: 8/18/05 at 2:30 p.m.
	§	
Debtors.	§	Response Deadline: 8 /15/05 at 5:00 p.m.

**FIRST OMNIBUS OBJECTION TO CLAIMS UNDER 11 U.S.C. §§ 102(1), 105(a), 501(a), AND 502(b) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3007**

**A HEARING ON THIS MATTER IS SET FOR AUGUST 18, 2005, AT 2:30 P.M. IN COURTROOM OF THE HONORABLE STEVEN A. FELSENTHAL, 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS. IF YOU SEEK TO RESPOND, YOU MUST RESPOND IN WRITING, UNLESS OTHERWISE DIRECTED BY THE COURT, AND FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BY AUGUST 15, 2005, AT 5:00 P.M. (PREVAILING CENTRAL TIME). YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PARTIES AND IN THE MANNER INDICATED IN PARAGRAPH 28 OF THE OBJECTION; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**TO THE HONORABLE STEVEN A. FELSENTHAL, CHIEF BANKRUPTCY JUDGE:**

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> file this First Omnibus Objection to Claims Under 11 U.S.C. §§ 102(1), 105(a), 501(a), and 502(b) and Federal Rule of Bankruptcy Procedure 3007 (the “Objection”), and in support 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 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 petition for relief thereby commencing the above-captioned bankruptcy cases (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 Cases are jointly administered under Case No. 04-81694-SAF-11.

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<sup>1</sup> 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**

6. 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.<sup>2</sup> 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.

7. On November 2, 2004, the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, and Deadlines [Docket No. 53] (the "Bar Date Notice") was filed and promptly served. Among other things, the Bar Date Notice established March 14, 2005 (the "General Bar Date") as the last day by which any person or entity (excluding any Excel Independent Representative<sup>3</sup> or any governmental unit<sup>4</sup>) holding or asserting a claim<sup>5</sup> (a "General Claimant") must have filed a proof of claim for such claim to have been timely filed. Further, the Bar Date Notice established May 2, 2005 (the

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<sup>2</sup> The capital stock of VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc. was pledged to the RTFC under transactions completed in conjunction with the Credit Agreement.

<sup>3</sup> On January 31, 2004, the Court entered an Order Suspending the Bar Date for Excel Independent Representatives to File Proofs of Claim [Docket No. 872], pursuant to which the General Bar Date was suspended as to the Excel Independent Representatives.

<sup>4</sup> Pursuant to § 502(b)(9).

<sup>5</sup> As "claim(s)" is defined in 11 U.S.C. § 101(5).

“Governmental Unit Bar Date,” together with the General Bar Date, the “Bar Dates”) as the last day by which any governmental unit holding or asserting a claim (a “Governmental Claimant,” and the General Claimant and Governmental Claimant, together, the “Claimants” and each a “Claimant”) must have filed a proof of claim for such claim to have been timely filed.

8. The Debtors’ claims and noticing agent, The BMC Group, Inc. (“BMC”), provided notice of the Bar Dates and a proof of claim form to the persons and entities set forth in the Certificate of Service filed by BMC on or about November 8, 2004 [Docket No. 136], by the methods described therein. Proof of claim forms and Bar Date information also was provided by the Debtors to persons and entities upon request.

9. Over three thousand proofs of claim (the “Proofs of Claim”) were filed in the Cases, asserting amounts owed in excess of \$7.4 billion. Since the passing of the Bar Dates, the Debtors have undertaken a review of the Proofs of Claim to reconcile the Debtors’ books and records with the number and amount of the claims. The Debtors have determined, for the reasons set forth below, that certain Proofs of Claim are inaccurate or otherwise set forth claim amounts that should not be allowed. In this Objection, the Debtors object for the reasons described to these Proofs of Claim (the “Inaccurate Proofs of Claim”) and to the allowance of the amounts set forth therein, pursuant to Bankruptcy Code §§ 102(1), 105(a), 501(a) and 502(b), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Rules”), and any other applicable statute or case law.

## **RELIEF REQUESTED**

### **A. Duplicate Proofs of Claim**

10. The Debtors object to each Proof of Claim identified on **Exhibit A** (each, a “Duplicate Proof of Claim”). The Debtors have reviewed these and determined that each is a duplicate of another Proof of Claim, in which the Claimant asserts the identical claim amount against the same Debtor. **Exhibit A** identifies each Duplicate Proof of Claim and the corresponding Proof of Claim that it duplicates (each, a “Remaining Proof of Claim”).

11. The Debtors request that the Court expunge each Duplicate Proof of Claim and disallow the claims asserted therein. Such relief is necessary and proper to prevent the persons and entities that filed the Duplicate Proofs of Claim from potentially receiving multiple recoveries. Further, elimination of redundant Proofs of Claim will enable the Debtors to maintain a claims register that more accurately reflects the true amount of claims asserted.

12. The Debtors also request that, at this time, the Remaining Proofs of Claim remain on the claims register in the amounts indicated. This is not a request that the amounts asserted in the Remaining Proofs of Claim be deemed allowed for purposes of Bankruptcy Code § 502. The Debtors reserve all rights to object to the Remaining Proofs of Claims at a later date on any appropriate ground.

### **B. Amended or Replaced Proofs of Claim**

13. The Debtors object to each Proof of Claim identified on **Exhibit B** (each, an “Amended or Replaced Proof of Claim”). The Debtors have reviewed these and determined that each is a Proof of Claim that has been amended or replaced by a subsequently filed Proof of Claim. **Exhibit B** identifies each Amended or Replaced

Proof of Claim and the corresponding Proof of Claim superseding it (each, a “Superseding Proof of Claim”).

14. The Debtors request that the Court expunge each Amended or Replaced Proof of Claim and disallow the claims asserted therein. Such relief is necessary and proper to prevent the persons and entities that filed the Amended or Replaced Proofs of Claim from potentially receiving multiple recoveries. Further, elimination of redundant Proofs of Claim will enable the Debtors to maintain a claims register that more accurately reflects the true amount of claims asserted.

15. The Debtors also request that, at this time, the Superseding Proofs of Claim remain on the claims register in the amounts indicated. This is not a request that the amounts asserted in the Superseding Proofs of Claim be deemed allowed for purposes of Bankruptcy Code § 502. The Debtors reserve all rights to object to the Superseding Proofs of Claims at a later date on any other ground.

**C. Late Filed Proofs of Claim**

16. The Debtors object to each Proof of Claim identified on **Exhibit C** (each, a “Late Filed Proof of Claim”). The Debtors have reviewed these and determined that each is a Proof of Claim that was filed after the expiration of the applicable Bar Date. The Court set the Bar Dates pursuant to Rule 3003(c)(3) and, as provided in the Statement of Facts above, BMC mailed the Bar Date Notice to all persons and entities to whom notice was required. Further, notice of the Bar Dates was available publicly on the BMC website and was provided to persons and entities that requested a Proof of Claim form. The Debtors submit that the Claimants that filed the Late Filed Proofs of Claim were provided with adequate notice of the Bar Dates.

17. The Debtors request that the Court expunge each Late Filed Proof of Claim and disallow the claims asserted therein.

**D. Shareholder Proofs of Claim**

18. The Debtors object to each Proof of Claim identified on **Exhibit D** (each, a “Shareholder Proof of Claim”). The Debtors have reviewed these and determined that each is based solely on the Claimant’s purported status as an owner of shares of stock of the Debtors. Any such ownership constitutes an equity interest in the Debtors but does not constitute a claim against the Debtors’ estates as the term “claim” is defined by the Bankruptcy Code. See 11 U.S.C. § 101(5); *In re Hedged-Invs. Assocs.*, 84 F.3d 1267, 1272 (10th Cir. 1996); *In re Pine Lake Village Apartments Co.*, 21 B.R. 478, 480 (Bankr. S.D.N.Y. 1982).

19. The Debtors request that each Shareholder Proof of Claim be expunged and the claims asserted therein be disallowed.<sup>6</sup>

**E. Insufficiently Documented Proofs of Claim**

20. The Debtors object to each Proof of Claim identified on **Exhibit E** (each, an “Insufficiently Documented Proof of Claim”). The Debtors have reviewed these and determined that each fails to comport with the Debtors’ books and records. Further, none provide sufficient information or attach documentation the claim asserted therein.

21. Therefore, the Debtors request that each Insufficiently Documented Proof of Claim be expunged and the claims asserted therein be disallowed.

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<sup>6</sup> To the extent that any person or entity that has filed a Shareholder Proof of Claim holds a valid equity interest in the Debtors as of the plan distribution record date, the Debtors do not intend that requested disallowance of the amounts asserted in the Shareholder Proofs of Claim impair a distribution, if any, to which such person or entity may be entitled under any plan of reorganization confirmed in the Cases on account of such equity interest.

**F. Withdrawn Proofs of Claim**

22. The Debtors object to each Proof of Claim identified on **Exhibit F** (each, a “Withdrawn Proof of Claim”). The Debtors have reviewed these and determined that each is a Proof of Claim that has been withdrawn by the asserting Claimant. The method and documentation of withdrawal is provided for each Withdrawn Proof of Claim.

23. The Debtors request that each Withdrawn Proof of Claim be expunged and the claims asserted therein be disallowed.

**RESERVATION OF RIGHTS**

24. The Debtors reserve all rights, in the event that any of the objections to the Inaccurate Proofs of Claim and the claims asserted therein are not sustained, or in the event that any of the Inaccurate Proofs of Claim are not otherwise expunged or the claims therein are not otherwise disallowed, to object to these Inaccurate Proofs of Claim and the claims asserted therein on other grounds at a later date.

25. The Debtors reserve all rights to amend, modify, or supplement this Objection and to file additional objections to any Proof of Claim that has been or may be filed or otherwise asserted against the Debtors. The Debtors also reserve all rights to amend, modify, or supplement any claim or claim amount scheduled by the Debtors.

26. The Debtors reserve all rights to seek further reductions of any claim to the extent that such claim has been paid or otherwise satisfied.

27. The Debtors reserve all rights to raise further objections under, among other authorities, Bankruptcy Code § 502(d). The filing of this Objection is without prejudice to the rights of the Debtors to prosecute avoidance actions against each creditor listed in this Objection and on the attached exhibits.



## **PROCEDURES FOR FILING RESPONSES TO OBJECTIONS**

### **G. Filing and Service of Responses**

28. To contest this Objection, a Claimant must file a written response (a "Response") with the U.S. Bankruptcy Court for the Northern District of Texas, U.S. Courthouse, 1100 Commerce Street, Dallas, Texas 75242, and serve such Response upon the following, so as to be received by 5:00 p.m. (Prevailing Central Time) on August 15, 2005 (the "Response Deadline"):

(a) counsel for the Debtors at:

Vinson & Elkins L.L.P.  
Attention: Daniel C. Stewart and Abigail B. Willie  
2001 Ross Avenue  
Suite 3700  
Dallas, Texas 75201-2975

(b) counsel for the RTFC at:

Fulbright & Jaworski L.L.P.  
Attention: Toby L. Gerber  
2200 Ross Avenue  
Suite 2800  
Dallas, Texas 75201

(c) counsel for the Official Committee of Unsecured Creditors at:

Carrington, Coleman, Sloman & Blumenthal, L.L.P.  
Attention: Stephen A. Goodwin  
200 Crescent Court  
Suite 1500  
Dallas, Texas 75201

and

(d) the U.S. Trustee at:

The Office of the U.S. Trustee  
Attention: George F. McElreath  
U.S. Courthouse  
1100 Commerce Street  
Room 9-C-60  
Dallas, Texas 75242

## H. Content of Responses

29. Every Response must contain, at a minimum, the following:
- a. a caption setting forth the name of the Court, the names of the Debtors, the case number and the title of the Objection to which the Response is directed;
  - b. the name of the Claimant and a description of the basis for the amount of the claim asserted;
  - c. a concise statement setting forth the reasons why the Proof of Claim should not be expunged and the claim asserted therein not be disallowed or modified for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the Claimant will rely in opposing the Objection;
  - d. all documentation or other evidence, to the extent not included with the Proof of Claim previously filed with the Court, upon which the Claimant will rely in opposing the Objection;
  - e. the address(es) to which the Debtors must return any reply to the Response, if different from that presented on the Proof of Claim;
  - f. the name, address, and telephone number of the person (which may be the Claimant or the Claimant's legal representative) possessing ultimate authority to reconcile, settle, or otherwise resolve matters related to the Proof of Claim on behalf of the Claimant; and

g. if the Claimant intends to introduce evidence or witnesses in support of the Response, an identification with reasonable particularity and appropriate notice of any proposed evidence and witnesses.

**I. Timely Response Required**

30. If a Response is properly and timely filed and served in accordance with the above-described procedures, the Debtors will endeavor to reach a consensual resolution with the Claimant. If no consensual resolution is reached, the Debtors may request the Court to conduct a hearing with respect to the Objection and the Response.

31. Only those Responses made in writing and timely filed and received will be considered by the Bankruptcy Court at any hearing on the Objection. The Debtors reserve the right to adjourn a hearing with respect to a specific objection set forth herein and any Response hereto.

32. If a Creditor who is served with the Objection fails to timely file and serve a Response in compliance with the foregoing procedures, the Debtors will present to the Court an appropriate order reflecting relief consistent with this Objection without further notice to the Creditor.

**J. Service Address**

33. If a Response contains an address for the Claimant that is different than the address listed for that Claimant on the Proof of Claim, the address in the Response shall constitute the service address for future service of papers upon that Claimant until the Debtors receive written notice from the Claimant of a changed service address.

**K. Separate Contested Matters**

34. To the extent that a Response is filed with respect to any claim listed in this Objection and the Debtors are unable to resolve the Response, each such claim

and the Objection by the Debtors to each such claim asserted in this Objection shall constitute a separate contested matter as contemplated by Rule 9014. Any order entered by the Court with respect to an objection asserted in this Objection shall be deemed a separate order with respect to each such claim.

**L. Replies to Responses**

35. The Debtors may, at their option, file and serve a reply to a Response, so that it is received by the Claimant no later than two days prior to any hearing on the Objection.

**M. Requests for Additional Information**

36. Questions about the Objection or requests for additional information about the proposed disposition of Claims thereunder should be directed to the Debtors' counsel, in writing, at the following: Vinson & Elkins, L.L.P., Pamela Lewis, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201. **CLAIMANTS SHOULD NOT CONTACT THE CLERK OF THE COURT TO DISCUSS THE MERITS OF A CLAIM.**

**NOTICE**

37. The Debtors will serve copies of this Objection by first class, U.S. Mail, postage prepaid upon each of the Claimants identified in **Exhibits A – F**, at the addresses listed in the Proofs of Claim or Schedules and Statements of Financial Affairs. Copies of this Objection also shall be served upon the U.S. Trustee and counsel for the Official Committee of Unsecured Creditors.

**PRAYER**

The Debtors respectfully request that the Court enter an order substantially in the form of the Order submitted herewith, granting the relief requested herein, and such other or further relief as to which the Debtors may be entitled.

Dated this 14th of July, 2005.

Respectfully submitted,

**VINSON & ELKINS L.L.P.**

Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
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 14, 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. On July 15, 2005 a copy of the foregoing document was served by certified, first-class, U.S. Mail, postage prepaid, upon (i) each of the Claimants identified in **Exhibits A – F**, at the addresses listed in the Proofs of Claim or Schedules and Statements of Financial Affairs; (ii) the U.S. Trustee; and (iii) counsel for the Official Committee of Unsecured Creditors.

By: /s/ Abigail B. Willie  
One of Counsel

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