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ATTORNEY FOR THE TEXAS  
COMPTROLLER OF PUBLIC ACCOUNTS

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

In Re:	§	
	§	CASE NO. 04-31962-SAF-11
VAR TEC TELECOM, INC., et al.,	§	
	§	Chapter 11
Debtors	§	

**LIMITED OBJECTION OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
TO DEBTORS' MOTION FOR AUTHORITY TO SELL ASSETS FREE AND CLEAR  
OF ALL LIENS, CLAIMS, RIGHTS INTERESTS, AND ENCUMBRANCES AND FOR  
RELATED RELIEF**

The Texas Comptroller of Public Accounts ("Comptroller"), appearing through the Office of the Attorney General of Texas, objects as follows to entry of the proposed order granting Debtors' Motion for Authority to Sell Assets Free and Clear of All Liens, Claims, Rights, Interests, and Encumbrances and For Related Relief (the "Sale Motion"):

1. The Comptroller does not object to the Court granting the relief specifically requested in the Sale Motion. The Comptroller, however, does object to entry of the proposed order attached to the Sale Motion. The proposed order recites that the sale will be not be subject to certain taxes as provided in 11 U.S.C. § 1146(c). However, the Debtors did not request such relief in the Sale Motion. Federal Rule of Bankruptcy Procedure 9013 provides that a request for an order shall be by motion and "(t)he motion shall state with particularity the grounds therefor." There is no mention of § 1146(c) in the Sale Motion.

2. Moreover, both the 3rd and 4th Circuit Courts of Appeals have held that Section 1146(c) is not applicable to transfers made prior to plan confirmation. In re Hechinger Investment Co. of Delaware, Inc., 335 F. 3d 243 (3rd Cir. 2003); In re NVR, Ltd., 189 F.3d 442 (4th Cir. 1999). Any reference to § 1146(c) in the order should be deleted unless the sale occurs under a confirmed plan.

3. The Comptroller has attempted to resolve this matter informally by contacting Debtors' attorney. However, Debtors attorney has been unable to advise the Comptroller if the buyer is opposed removal of the § 1146(c) language. The Comptroller has also not seen a copy of the final form of the proposed order.

Wherefore, the Comptroller requests that any Order granting the Sale Motion not provide for any tax exemption under 11 U.S.C. § 1146(c), unless such sales occur under a confirmed plan, or that the Court grant such other relief as is appropriate.

Respectfully submitted,

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/s/ John Mark Stern (7/26/05)  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served on the parties listed below either by electronic transmission from the Electronic Case Filing System on this 26th day of July, 2005.

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