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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 August 15,
	§	2005 at 1:30 p.m.

**EXPEDITED MOTION TO APPROVE STIPULATIONS AND
ORDERS REGARDING EXECUTORY CONTRACTS, INCLUDING TARIFFS, WITH
BELLSOUTH, THE SBC TELCOS, AND VERIZON**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors” or “Debtors”)¹ file this Expedited Motion to Approve Stipulations and Orders Regarding Executory Contracts, including Tariffs with BellSouth, the SBC Telcos, and Verizon (the “Motion”) and in support 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 Cases are jointly administered under Case No. 04-81694-SAF-11.

FACTUAL BACKGROUND

6. The Debtors are parties to executory contracts, including tariffs, with, among others, (i) BellSouth Telecommunications, Inc. ("BellSouth"); (ii) Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company, The Southern New England Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., Nevada Bell Telephone Company, and/or The Woodbury Telephone Company (collectively, the "SBC Telcos"); and (iii) the operating telephone company subsidiaries of Verizon Communications Inc. (such subsidiaries

collectively, “Verizon”)². These executory contracts, including tariffs, shall be referred to individually as the “BellSouth Agreements,” “SBC Telcos Agreements,” and “Verizon Agreements,” and collectively, as the “Agreements.” BellSouth, Verizon and the SBC Telcos are referred to herein as the “Telcos.”

7. As more particularly set forth in the stipulations attached hereto³ as **Exhibit A** (the “BellSouth Stipulation”), **Exhibit B** (the “SBC Telcos Stipulation”), and **Exhibit C** (the “Verizon Stipulation” and together with the BellSouth Stipulation and SBC Telcos Stipulation, the “Stipulations”), BellSouth, the SBC Telcos, and Verizon are involved in a number of proceedings pending in these Cases, including, but not limited to, the following (collectively, the “Proceedings”):

- a. Adversary Proceeding No. 05-3233 (with respect to BellSouth) (the “BellSouth Adversary Proceeding”);
- b. Adversary Proceeding No. 05-3548 (with respect to Verizon) (the “Verizon Adversary Proceeding”);
- c. Debtors’ Motion to Determine SBC Telco’s Ability to Effectuate Setoff, And to Compel Return of Funds Not Subject to Setoff [Docket No. 1387] (“SBC Telcos Setoff Motion”);
- d. Debtors’ Motion to Authorize Rejection of Circuit Agreements [Docket No. 1395] (with respect to BellSouth and Verizon) (the “Circuit Rejection Motion”)
- e. Debtors’ Motion for Authority to Sell Assets Free and Clear of All Liens, Claims, Rights, Interests, and Encumbrances and for

² The operating telephone company subsidiaries of Verizon Communications Inc. are Verizon North Inc., Contel of the South, Inc., Verizon South Inc., Verizon Northwest Inc., GTE Midwest Incorporated d/b/a Verizon Midwest, GTE Southwest Inc. d/b/a Verizon Southwest, Verizon California Inc., Verizon Delaware Inc., Verizon Florida Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Virginia Inc., and Verizon West Coast Inc.

³ The parties reserve the right to modify the Stipulations provided that all parties to the Stipulations agree to such modifications and the form of each ultimately submitted is substantially the same as the Stipulations attached hereto.

Related Relief (Substantially All of the Debtors' Remaining Assets) [Docket No. 1399] (the "Motion to Sell");

- f. BellSouth's Motion to Compel the Debtors to Assume or Reject Executory Contracts [Docket No. 1452] (the "BellSouth Motion to Compel");
- g. SBC Telcos' Motion To Shorten The Time Period For The Debtors To Assume Or Reject The SBC Telcos' Executory Contracts [Docket No. 1454] (the "SBC Telcos Motion to Compel"); and
- h. Verizon's Motion to Compel Assumption or Rejection of Executory Contracts [Docket No. 1456] (together with the BellSouth Motion to Compel and the SBC Telcos Motion to Compel, the "Motions to Compel").

8. Subject to final closing of the sale to Comtel Telecom Assets L.P. ("Comtel") as assignee of Comtel Investments LLC, the Stipulations resolve, among other things, (a) the Proceedings, (b) assumption, assignment and cure issues as to the Agreements, (c) claims issues related to anticipated circuit rejections vis a vis the Telcos and "grooming" of the Debtors' telecom network, (d) resolution of claims by and among the Telcos and the Debtors and (e) resolution of claims by and among the Telcos and the RTFC.⁴

RELIEF REQUESTED

9. Pursuant to, among other provisions, Bankruptcy Code §§ 105, 363, and 365 and Rule 9019 of the Federal Rules of Bankruptcy Proceeding, the Debtors request that the Court enter an Order approving the Stipulations.

10. Bankruptcy Rule 9019(a) provides, in part, "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. PROC. 9019(a).

⁴ To the extent that the terms of the Stipulations differ from the description of the Stipulations contained herein, the terms of the Stipulations shall control.

11. The proponent of a compromise and settlement should set forth the legal and factual context of the compromise so that the Court may make an intelligent, objective and educated evaluation of the settlement. *Protective Comm. of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion, Inc.)*, 844 F.2d 1142, 1158-59 (5th Cir. 1988); *U.S. v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 299 (5th Cir. 1984).

12. In passing upon a proposed compromise and settlement, the Court must determine that the compromise and settlement is fair and equitable and in the best interest of the estate by considering, among other things, the following factors:

- a. the probability of success in the litigation;
- b. the difficulties to be encountered in the matter of collection, if any;
- c. the complexity of the litigation involved and the expenses, inconveniences, and delay necessarily attending it;
- d. the paramount interest of the creditors and their objections; and
- e. all other factors bearing on the wisdom of the settlement.

See *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980). See also *TMT Trailer Ferry*, 390 U.S. 414, 424 (1968).

13. Based on all applicable factors, the Stipulations, which were negotiated in good faith and at arm's length, are in the best interest of the Debtors' estates and their creditors, and the settlements set forth in those Stipulations are fair and equitable. The Stipulations provide the Debtors certainty that they will be able to assume the Agreements and assign them to Comtel, and they resolve a number of issues relating to the proposed cure costs associated with those assumptions and assignments.

14. Although the Debtors might prevail in each of the Proceedings, the probability of success in litigation must be evaluated in light of all of the various contested matters that will be resolved. The Proceedings raise a number of complex issues, the litigation of which would be contested vigorously, at significant time and expense to the Debtors and their estates. By entering the Stipulations, the Debtors procure certainty in the face of risk.

15. The Stipulations serve the interests of Debtors' creditors. The Stipulations resulted in withdrawal of BellSouth's, the SBC Telcos', and Verizon's objections to the Sale Motion and their Motions to Compel. Withdrawal of those pleadings permitted the Debtors to proceed with a sale of assets, without focusing on those matters; the sale, which was approved by the Court, will maximize the value of the Debtors' assets.

16. The Stipulations will resolve a host of disputes among the Debtors, on the one hand, and BellSouth, the SBC Telcos, and Verizon, on the other hand, which disputes have required the attention of this Court and other judicial and administrative forums.

17. There is no burden or detriment to any party in interest on account of the Stipulations given how the Stipulations are structured.

18. There is no public policy which would or should preclude approval of the Stipulations. Furthermore, the Stipulations have been structured to take into account the regulatory approvals necessary from the FCC and State PUCs.

19. For these reasons, the Stipulations should be approved.

PRAYER

The Debtors request that this Court enter an Order approving the Stipulations and grant them such other and further relief, both general and specific, to which they may be justly entitled.

Dated: August 5, 2005.

Respectfully submitted,

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on August 5, 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/ Richard H. London

One of Counsel

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