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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 TELCOM, INC., *et al.*,

DEBTORS.**

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CASE NO. 04-81694-SAF-11

**(Chapter 11)
(Jointly Administered)**

**Hearing Set for September 7, 2005 at
2:30 p.m.**

**MOTION TO APPROVE COMPROMISE AND
SETTLEMENT WITH LEPERCQ CORPORATE INCOME FUND, L.P.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
SEPTEMBER 7, 2005, AT 2:30 P.M. IN THE COURTROOM OF THE
UNITED STATES BANKRUPTCY JUDGE, 1100 COMMERCE STREET,
14TH FLOOR, DALLAS, TEXAS. IF YOU OBJECT TO THE RELIEF
REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY
ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS
OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR
RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT
WITHIN TWENTY (20) DAYS FROM THE DATE YOU WERE SERVED
WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR
RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE;
OTHERWISE, THE COURT MAY TREAT THE PLEADING AS
UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Motion to Approve Compromise and Settlement with Lepercq Corporate Income Fund, L.P. (the “Motion”) 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 therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

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”) pursuant to 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 under the Case styled *In re VarTec Telecom, Inc.*, et al.; Case No. 04-81694-SAF-11.

STATEMENT OF FACTS

Purchase of Viceroy Personal Property by Lepercq Corporate Income Fund, L.P.

6. On December 17, 2004, the Court entered its Order Authorizing Rejection of the Triple Net Lease (Corporate Headquarters at 1600 Viceroy Drive, Dallas, Texas)

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.

[Docket No. 587] in which it authorized the Debtors' rejection of the real property lease of its former headquarters located at 1600 Viceroy Drive, Dallas, Texas, 75235 (the "Former Headquarters"). On that same day, the Court entered its Order Approving Sale of Surplus Personal Property [Docket No. 588] (the "Sale Order") in which it authorized the Debtors to sell to Lepercq Corporate Income Fund, L.P. ("Lepercq") certain personal property located at the Former Headquarters (collectively, the "Surplus Property").

7. Pursuant to discussions with Lepercq, the Debtors agreed to promptly remove certain equipment from the Former Headquarters. In the process of removing such equipment, the Debtors did not remove motorized carts that they used to patrol the Former Headquarters (collectively, the "Carts"). The Debtors assert that these Carts were not purchased by Lepercq pursuant to the Sale Order. Lepercq disagrees and has not allowed the Debtors to take the Carts.

8. Also, during the removal of the equipment, the Debtors removed two Cisco 6500 switches (collectively, the "Switches"). Lepercq asserts that the Switches were sold to it pursuant to the Sale Order. The Debtors disagree and have refused to return the Switches to Lepercq.

The Proposed Settlement

9. The Debtors and Lepercq have negotiated a compromise and settlement of their dispute (the "Settlement"), which is more fully set forth in that certain Letter Agreement dated August 4, 2005 by and between Lepercq and VarTec Telecom, Inc. (the "Letter Agreement"). A copy of the Letter Agreement is attached hereto as **Exhibit A**.

RELIEF REQUESTED

10. The Debtors request approval of the Settlement pursuant to, among other provisions, Bankruptcy Code §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

11. 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).

12. 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).

13. 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).

14. Based on all applicable factors, the Settlement, which was negotiated in good faith and at arm's length, is in the best interest of the Debtors' estates and their creditors, and the Settlement is fair and equitable. In light of the amounts in dispute (the Debtors estimate the value of the Switches and Carts to be less than \$10,000 per pair) and the evidence that is probable to be presented by each side, the Settlement is a pragmatic means to resolve the claims discussed herein. The Debtors are not using the Switches, and the expense associated with litigating the issues presented herein likely would exceed the amount in dispute. By consummating the Settlement, the Debtors will avoid unnecessary expense, finally resolve disputed claims, and be able to focus their resources on other more important matters.

15. For these reasons, the Settlement should be approved.

PRAYER

The Debtors request that the Court enter an Order approving the Settlement and granting them such other and further relief to which they are justly entitled.

Dated: August 11, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Richard H. London
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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on August 11, 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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