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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>Case No. 04-81694-SAF</b>
<b>VARTEC TELECOM, INC., et al.,</b>	§	<b>(Chapter 11)</b>
	§	
<i>Debtors.</i>	§	<b>(Jointly Administered)</b>

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS'  
CONDITIONAL OBJECTION TO MOTION OF THE OFFICIAL  
COMMITTEE OF EXCEL INDEPENDENT REPRESENTATIVES  
TO EXTEND SUNSET PROVISIONS ON IR COMMITTEE  
APPOINTMENT FOR AN ADDITIONAL 90 DAYS  
(In Response to Docket #1715)**

TO THE HONORABLE COURT:

The Official Committee of Unsecured Creditors (the "Committee") of the above-referenced debtors and debtors in possession (collectively, the "Debtors") files this Conditional Objection to the Motion of the Official Committee of Excel Independent Representatives (the "IR Committee") to Extend Sunset Provisions on IR Committee Appointment for an Additional 90 Days (the "Motion"), and respectfully states as follows:

## I. BACKGROUND

1. 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”).

2. On November 9, 2004, the United States Trustee appointed the Committee [Docket # 150].

3. On December 8, 2004 [Docket # 484], the United States Trustee appointed the IR Committee primarily for the purpose of promptly negotiating a settlement of the claims of Excel Independent Representatives (the “IRs”). The appointment of the IR Committee was originally set to expire ninety (90) days from the date the IR Committee was created.

4. The appointment of the IR Committee has already been extended six (6) times.

5. The current stipulation regarding the sunset provision to the appointment of the IR Committee, signed by the Court on July 11, 2005 [Docket # 1490], requires the IR Committee, the Debtors, the UCC and the Rural Telephone Finance Cooperative (“RTFC”) to negotiate the global settlement of the IR claims with deliberate speed. The IR Committee shall automatically dissolve without further order of the Court at 11:59 P.M. on August 18, 2005, unless the Court orders otherwise or a global settlement is reached by the parties, without prejudice to the right of any party seeking to terminate such appointment on an earlier date.

6. Good faith efforts have been made to pursue, negotiate, and finalize an IR settlement. Indeed, the parties were, at one recent juncture, close to arriving at the parameters of such a settlement.

7. However, RTFC has very recently balked at funding such a settlement. For the last several weeks, RTFC has advised the parties that it would not fund or support such a settlement.

8. Now, on information and belief, RTFC has advised parties other than the Committee that it will provide “DIP financing” for such a settlement after all. However, substantially all of Debtors’ remaining assets have been sold or provisionally sold to Comtel. These factors mean that the Debtor cannot rely upon operational revenues to repay any further DIP financing for chapter 11 reorganization expenses.

9. The Debtors’ inability to borrow money on the premise of repaying any such DIP from operations shifts the inquiry of how any IR settlement will be funded from one of the immediate source of financing to one of repayment, *i.e.*, how the contemplated funding or possible “new DIP” will be repaid.

10. On information and belief, and in all likelihood, RTFC now conceives that the proposed IR settlement will be funded by the liquidation of heretofore unpledged assets, rather than by the use of proceeds from the sale to Comtel. Accordingly, the ultimate source of funding for any IR settlement has now been interjected as a new and major issue for debate.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Objection is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O).

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **III. ARGUMENTS AND AUTHORITIES**

13. Absent a prompt and consensual resolution for the ultimate funding of both (a) all administrative and priority claims required under 11 U.S.C. §1129(a)(9) for plan confirmation

and (b) the proposed IR settlement (which includes approximately \$2.2 million of alleged priority claims and an additional, significant amount to satisfy alleged general unsecured claims of the IRs), the sunset provisions pertaining to the IR Committee should not be extended at this time. Instead, at the sunset date, the IR Committee should then be dissolved (or suspended) unless and until such time as the aforementioned funding becomes available.

14. In approving the extension of the IR Committee's sunset provisions or, indeed, considering approval of any proposed IR settlement, it is essential that the Court consider when, whether and how the estates will fund those administrative and priority claims which must be satisfied as a pre-condition of confirmation of and plan of reorganization. 11 U.S.C. §1129(a)(9) and *see United States v. Aweco, Inc. (In re Aweco, Inc.)*, 725 F.2d 293 (5th Cir.), *cert. denied*, 469 U.S.880 (1984)(settlement proposing to compromise and pay unsecured claims must be accompanied by evidence that senior administrative and priority claims have been or will be paid).

15. While the Debtors are generally paying administrative claims, provision has not been made for at least the following:

- (a) The amount of administrative claims which may be outstanding in the event of any sudden shutdown (outside of the confines of an implemented plan of reorganization) are unknown at this time. However, the Debtors' administrative expense budget for July 2005 (per one recent report) was approximately \$7.2 million. This may or may not be representative of a typical monthly amount that might be outstanding upon a sudden cessation of the chapter 11 status of the Cases.

- (b) Approximately \$4.9 million of accrued restructuring costs remain unpaid, and, on information, this includes at least \$444,335.26 of unpaid administrative claims.<sup>1</sup>
- (c) Finally, although priority tax claims are junior to any priority wage claims allowed to the IRs, such priority tax claims nonetheless are senior to any unsecured claim component of the IR settlement, and Debtors estimates of such taxes have recently ranged from \$12 million down to an amount less than or equal to \$6 million (per testimony at the July 27, 2005 hearing).

16. If and when a consensual source of funding of all of the items specified above becomes available at this time, then the IR Committee's sunset should be revived and/or extended for an appropriate period of time required to implement any agreed upon IR settlement.

**WHEREFORE**, the Committee respectfully requests that, except upon the conditions specified above, the Motion be denied.

Dated: August 16, 2005.

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<sup>1</sup> This includes, without limitation: (a) holdbacks (calculated at 20% of fees pursuant to a fee procedures order) owed to numerous professionals and totaling \$187,648.19, (b) \$135,835.57 (or \$122,825.50 plus an agreed \$13,010.07 credit based on an allocation to White & Case) owing to CCSB's fees for investigating claims against RTFC which was approved for payment by order dated on or about April 25, 2005 but which remains unpaid as a result of the cash collateral cap set forth in the most current DIP Order, and (c) \$ 120,851.50 of CCSB's fees for the same subject matter pending approval in that Second Interim Fee Application filed on or about July 26, 2005.

Respectfully submitted,

/s/ Stephen A. Goodwin  
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*Attorneys for the Official Committee of  
Unsecured Creditors*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on August 16, 2005, a true and correct copy of the foregoing has been served via ECF-electronic mail on the parties receiving electronic notice in these cases.

/s/ David G. Gamble  
David G. Gamble