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ATTORNEYS FOR THE OFFICIAL COMMITTEE OF EXCEL INDEPENDENT
REPRESENTATIVES

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

In re)	Chapter 11 Case
)	
VARTEC TELECOM, INC., <u>et al.</u> ,)	Case No. 04-81694-SAF-11
)	
Debtors.)	Jointly Administered
)	
)	Hearing Date and Time:
)	[To Be Determined]

**MOTION OF THE OFFICIAL COMMITTEE OF EXCEL INDEPENDENT
REPRESENTATIVES TO EXTEND SUNSET PROVISION ON IR COMMITTEE
APPOINTMENT FOR ADDITIONAL 90 DAYS**

TO: THE HONORABLE BANKRUPTCY JUDGE:

The Official Committee of Excel Independent Representatives (the “IR Committee”) appointed in the above captioned jointly administered chapter 11 cases (the “Cases”) of VarTec Telecom, Inc. and its affiliated debtors (collectively, the “Debtors”) files this Motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 1102(a)(2) of title 11 of the United States Code (the “Bankruptcy Code”) modifying the Court’s order dated December 9, 2004 [Docket No. 500] (the “IR Committee Order”) appointing the IR Committee and extending the previously modified sunset date of September 9, 2005 with respect to such appointment (the

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“Sunset Date”) for an additional ninety (90) days, and in support of this Motion, respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is sections 105(a) and 1102(a) of the Bankruptcy Code.

PROCEDURAL BACKGROUND

2. On or about November 1, 2004 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court, thereby commencing their respective Cases.

3. Also on the Petition Date, the Debtors filed a motion [Docket No. 21] (the “IR Rejection Motion”) to reject approximately 130,000 agreements (the “IR Agreements”) with independent representatives (the “IRs”) of Debtor Excel Communications and its affiliated Debtors (collectively, “Excel”). The IRs comprised Excel’s vast nationwide multi-level-marketing network with respect to the sale of Excel’s telecommunications products and services to customers (the “Excel Network”). Indeed, to this day, the Debtors continue to generate substantial revenues from customers procured by the IRs through the Excel Network.

4. By order dated November 2, 2004, the Cases are being jointly administered. The Debtors are in possession of their property and operating their businesses as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On November 8, 2004, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) pursuant to section 1102 of the Bankruptcy Code.

6. After evidentiary hearings, the Court entered the IR Committee Order on December 9, 2004 directing the appointment of the IR Committee to adequately represent the interests of over 100,00 IRs in these Cases pursuant to section 1102(a) of the Bankruptcy Code.

7. On December 8, 2004, the U.S. Trustee appointed the IR Committee.

8. Paragraph 2 of the IR Committee Order initially contained a Sunset Date of 90 days from appointment of the IR Committee. In addition, paragraph 3 of the IR Committee Order directed the IR Committee to address a global resolution of the IR Claims (defined below).

9. On December 8, 2004, the IR Committee retained White & Case LLP as lead counsel and Bickel & Brewer as Dallas counsel in these Cases. The Court subsequently approved such retentions.

10. On January 26, 2005, both the IR Committee and the Creditors' Committee entered into that certain Joint Stipulation of the Official Committee of Unsecured Creditors and the Official Committee of Excel Independent Representatives Regarding Case Management Procedures (the "Inter-Committee Stipulation"). Significantly, the Inter-Committee Stipulation provides that the IR Committee is primarily responsible for (i) the negotiation of a global and comprehensive settlement of all IR Claims, (ii) development of a claims procedure for the IRs, and (iii) the analysis and calculation of all IR claims. A copy of the Inter-Committee Stipulation is attached as Exhibit B to the Motion of the Official Committee of Excel Independent Representatives to Extend Sunset Provision on IR Committee Appointment for Additional 90 Days dated August 9, 2005 [Docket No. 1715] (the "Prior IR Motion").

11. On February 1, 2005, the IR Committee filed its application for entry of an order authorizing the employment of Scouler Andrews LLC ("Scouler Andrews") as claims consultant to the IR Committee, which application was approved by the Court.

12. On February 11, 2005, the Debtors and the IR Committee submitted to the Court a Joint Statement of Debtors and IR Committee Regarding Status of IR Claims Settlement (the “Joint Statement”). A copy of the Joint Statement is attached as Exhibit C to the Prior IR Motion.

13. After evidentiary hearings, the Court granted the IR Rejection Motion by order dated February 28, 2005 [Docket No. 1026] (the “IR Rejection Order”). As a result of the IR Rejection Order, the IRs have claims against the Debtors, collectively, in excess of approximately \$30 million (the “IR Claims”). Such IR Claims include (i) secured setoff claims under section 553 of the Bankruptcy Code, (ii) priority claims for unpaid commissions earned within the 90 days prior to the Petition Date under section 507(a)(3) of the Bankruptcy Code, (iii) post-petition rejection damage claims under the IR Agreements, (iv) refund claims for the unused portion of annual enrollment and renewal fees paid to the Debtors by IRs to join the Excel Network, and (v) other claims.

14. At the conclusion of the February 15, 2005 hearing on the IR Rejection Motion (the “2/15/05 Hearing”), the Court announced its ruling on the record and addressed the IR Claims, as follows:

The public interest here is for the Court to make sure that there is a fair claims process, and the Court is doing that. We have [an IR Committee] that is negotiating these claims at the present time, and if the negotiations are not successful, the Court will set up a claims allowance system that will allow these to be fairly addressed.

2/15/05 Transcript at 229-230 (attached as Exhibit E to the Prior IR Motion).

15. At a hearing held on March 23, 2005 (the “3/23/05 Hearing”), counsel for the Debtors advised the Court that - except for “extremely non-material” matters – the Debtors, the IR Committee, the Creditors’ Committee and Rural Telephone Finance Cooperative (“RTFC”)

(collectively, the “Settlement Parties”) had “agreed upon a global resolution of the claims of the IRs.” 3/23/05 Hearing Transcript at 20-26 (attached as Exhibit F to the Prior IR Motion).

16. At a hearing held on April 13, 2005 (the “4/13/05 Hearing”), counsel for the Debtors advised the Court, among other things:

Let me report to the Court, we continue to negotiate. We have had a number of meetings. And we’re making very good progress. We’re not quite there yet. We’re trying to – As we proceeded to review the procedural requirements, it forced all of us to work in a couple of different directions, additional directions to make sure we can present something to Your Honor that we think works on a comprehensive a settlement basis as possible. ...

4/13/05 Hearing Transcript at 7 (attached as Exhibit G to the Prior IR Motion).

17. At a hearing held on May 25, 2005 (the “5/25/05 Hearing”), counsel for the IR Committee advised the Court, among other things:

I would only say that, Your Honor, as we’ve stated to the Court before in talking about the IR settlement, I believe we have an agreement in principle with the debtors and with the RTFC on a settlement. The last of remaining hold out is – has been the Unsecured Creditors’ Committee. ...

5/25/05 Hearing Transcript at 17 (attached as Exhibit H to the Prior IR Motion).

18. On June 10, 2005, the Creditors’ Committee filed a complaint against RTFC in these Cases challenging, among other things, the validity, priority and extent of RTFC’s claims and liens (the “Committee Complaint”).

19. At a hearing held on June 17, 2005 (the “6/17/05 Hearing”), counsel for the IR Committee advised the Court, among other things:

Your Honor, with respect to the IR Settlement, I can advise the Court as I did at the last hearing, that we had pretty much had an agreement in principle with the debtors [and] the RTFC. We were continuing to work on concerns raised by the Creditors’ Committee. We met this morning, the debtors, the Creditors’ Committee, and the RTFC.

We believe we made substantial progress, and we are, in terms of scheduling, we're trying to get quickly to a term sheet on a settlement that hopefully will be done within the next week, and we're also looking at July the 7th as a possible date to have a procedures hearing to tee up [an] IR settlement. ...

6/17/05 Transcript at 49-50 (attached as Exhibit I to the Prior IR Motion).

20. At a hearing held on July 7, 2005 (the "7/7/05 Hearing"), counsel for the Debtors advised the Court, among other things:

And, Your Honor, finally as Mr. Stewart indicated, I did want to up date the Court with respect to the IR settlement. I know it's been a long and arduous progress, but we are making progress. We had a meeting today amongst counsel. I think that we actually have a settlement agreement. Drafts of which have been marked up, and we're negotiating final terms on it.

I do think that we're very close with respect to that. We also have drafts of a procedural motion. It's – it's becoming more complicated as we think through the issues of notice and other things involving the 68,000 roughly people and dealing with potentially 106,000 in the universe of [IR] claims. ...

7/7/05 Hearing Transcript at 31-32 (attached as Exhibit J to the Prior IR Motion).

21. By order dated July 29, 2005 (the "Sale Order"), the Court approved the sale of substantially all of the Debtors' assets to Comtel Investments LLC (the "Comtel Sale") for approximately \$81.5 million, subject to adjustments (the "Sale Proceeds").

22. At a hearing on the Prior IR Motion on August 18, 2005 (the "August 18 Hearing"), the Court granted such motion and extended the Sunset Date under the IR Committee Order through and including September 9, 2005.

RELIEF REQUESTED

23. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent the abuse of process.

11 U.S.C. § 105(a). As stated by the United States Supreme Court in United States v. Energy Resources Co., 495 U.S. 549 (1990):

“[The] statutory directive [behind Section 105(a) of the Bankruptcy Code] is consistent with the traditional undertaking that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships.”

Id. at 545; see also Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 760 (5th Cir. 1995).

24. Pursuant to the IR Committee Order and section 1102(a)(2) of the Bankruptcy Code, the Court found that the appointment of the IR Committee was necessary to assure adequate representation of over 100,000 IRs in these Cases.

25. By this Motion, the IR Committee respectfully requests that the Court extend the current Sunset Date on the IR Committee’s appointment from September 9, 2005 by an additional ninety (90) days.

26. As reported to the Court at several recent hearings and status conferences in these Cases outlined above, the Settlement Parties have engaged in extensive negotiations concerning a proposed global and comprehensive resolution of the IR Claims (the “IR Settlement”). As announced at the August 18 Hearing on the Prior IR Motion, the IR Committee, the Debtors and RTFC have reached an agreement in principle on substantially all of the terms of the proposed IR Settlement, to be reflected in a definitive settlement agreement to be filed with the Court on or before August 31, 2005.

27. In short, the Settlement Parties continue to work towards implementing an IR Settlement that is both fair and appears fair in the context of these Cases. Accordingly, the IR Committee, its counsel and Scouler Andrews remain committed to negotiating with the Settlement Parties in good faith and with deliberate speed. The IR Committee respectfully requests an extension of the Sunset Date by an additional ninety (90) days.

WHEREFORE, the IR Committee respectfully requests that the Court enter an order (i) modifying the IR Committee Order and extending the existing Sunset Date of September 9, 2005 on the appointment of the IR Committee by an additional ninety (90) days and (ii) granting such other and further relief as is just and proper.

Dated: August 22, 2005
Dallas, Texas

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of August 2005, he caused a true and correct copy of the foregoing document to be served on the parties and in the manner set forth in the Certificate of Service filed contemporaneously herewith.

/s/ Craig H. Averch _____
Craig H. Averch