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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.*,

Debtors.

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Case No. 04-81694-HDH-11

Chapter 11

(Jointly Administered)

§ Hearing: September 29, 2005 at 2:30 p.m.

DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED BY AEROTEL, LTD.

A HEARING ON THIS MATTER IS SET FOR SEPTEMBER 29, 2005 AT 2:30 P.M. IN COURTROOM OF THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE, 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS. IF YOU SEEK TO RESPOND, YOU MUST RESPOND IN WRITING, UNLESS OTHERWISE DIRECTED BY THE COURT, AND FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BY SEPTEMBER 26, 2005 OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Objection to Proofs of Claim Filed by Aerotel, Ltd. (the “Objection”), 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 Objection concerns the administration of the estate and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)&(B).

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 petition for relief thereby commencing the above-captioned bankruptcy cases (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 as Case No. 04-81694-HDH-11.

OVERVIEW OF THE OBJECTION

6. On February 24, 2005, Aerotel, Ltd. (“Aerotel”) filed a proof of claim for prepetition amounts (each, a “Proof of Prepetition Claim”) in each of the Cases. The Proofs of Prepetition Claim are identical except for the listed Debtor and case number.

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.

In each, Aerotel asserts, without foundation, that the Debtors are jointly and severally liable to Aerotel for the unsubstantiated amount of \$141 million, plus “enhanced damages,” due to the Debtors’ alleged infringement of a patent owned by Aerotel. In addition to the Proofs of Prepetition Claim, on May 10, 2005, Aerotel filed a proof of claim for administrative expense in each of the Cases (each, a “Proof of Administrative Claim,” together with the Proofs of Prepetition Claim, the “Proofs of Claim”). Like the Proofs of Prepetition Claims, the Proofs of Administrative Claims are identical except for the listed Debtor and case number. In each Proof of Administrative Claim, Aerotel asserts, again without foundation, a claim for an undetermined amount, based on the alleged postpetition continuation of the patent infringement.

7. The Debtors object to the Proofs of Claim and the allowance of the amounts asserted therein for the reasons set forth below, pursuant to Bankruptcy Code §§ 102(1), 105(a), 501(a) and 502(b), the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) 3007, and any other applicable statute or case law.

FACTS RELATED TO THE AEROTEL CLAIMS

8. On information and belief, Aerotel is a privately held Israeli company located in Israel. Aerotel’s general director and president, Zvi Kamil, is allegedly an inventor listed on U.S. Patent No. 4,706,275 (the “Patent”). According to Aerotel, the Patent is for prepaid calling card technology of some sort. Aerotel asserts it owns the Patent. On information and belief, Aerotel’s U.S. operations are conducted through its wholly owned U.S. subsidiary, Aerotel USA, Inc. (“Aerotel USA”). On its website, Aerotel USA describes its function as “assisting players in securing license agreements from Aerotel, Ltd.” This appears to be marketing-speak for Aerotel USA’s actual business: suing or threatening to sue companies in the telecom industry on claims of

patent infringement in an effort to obtain a licensing arrangement—a less expensive option for many companies, when compared to the costs of litigating highly technical patent claims.² Aerotel USA produces nothing, markets nothing, and sells nothing (except licenses); its offices are located at the law office of its attorney. It appears that Aerotel's business is to contact telecom companies, allege patent infringement, threaten or actually file litigation to enforce the Patent, and thereby coerce settlements or sales of licenses.

9. In the years prior to the Petition Date, Aerotel intermittently contacted VarTec Telecom, Inc. ("VarTec Telecom") about licensing the Patent. The correspondence from Aerotel vaguely alleged that VarTec Telecom and/or certain of its related entities were infringing on the Patent, without pointing to any specifics or providing any foundation for its position. The correspondence often noted that Aerotel had sued or was in negotiations with other telecom companies, and was "anxious" to resolve the matter with VarTec Telecom and its companies.

10. After the Debtors filed for bankruptcy relief, Aerotel filed its Proofs of Claim, which focused primarily on detailing an absurd and speculative calculation of damages, based on nothing more than mathematical conjecture³ and legally

² Over the past approximately seven years, Aerotel has made a business of suing or threatening to sue telecom companies, inside and outside of bankruptcy, including: RSL Communications, Ltd., Sprint Corporation, IDT Corporation, Primus Telecommunications Group, Incorporated, WorldCom, Inc., NACT Telecommunications, Inc., and Verizon Communications.

³ Aerotel inexplicably claims damages for alleged infringement over the past six years and "estimates," based on unspecified "certain public information" (Proof of Claim Exhibit A at 2), that during this time the Debtors had gross sales receipts of \$3 billion (without making any attempt to determine what percentage of this amount was attributable to the alleged infringement). Then, without any legal or equitable grounds, Aerotel asserts that it is entitled to 4.7% of the gross sales receipts.

unsupported assertions of royalty rates.⁴ Each Proof of Claim includes as an exhibit a copy of the Patent documents. However, markedly absent from the Proofs of Claim is any evidence that the Debtors infringed upon the Patent. Aerotel simply refers to the Debtors' alleged "sale or use of Prepaid Calling Card products and/or services," without pointing to a single example of such a product or service and how such a product or service constitutes an infringement of the Patent.

RELIEF REQUESTED

A. The Proofs of Claims should be expunged and the amounts sought therein disallowed.

(i) Certain of the Proofs of Claims are meritless as a matter of undisputed fact because the Debtors identified on those Proofs of Claim never provided any prepaid calling cards or services.

11. Aerotel indiscriminately filed Proofs of Claim against each of the Debtors, without attempting any good faith determination as to whether, based on Aerotel's own fact scenario, that Debtor had any business activities that could even remotely constitute the "sales and use" activities claimed by Aerotel. The following nonexclusive list of entities (several of which are simply holding companies), as a matter of undisputed fact, have never participated in any sales or use of prepaid calling cards:

- (a) VarTec Business Trust;
- (b) VarTec Properties, Inc.;
- (c) VarTec Resource Services, Inc.;
- (d) VarTec Telecom Holding Company;
- (e) VarTec Telecom International Holding Company;
- (f) Excel Communications Marketing, Inc.;

⁴ For example, Aerotel calculated its damages based on a 4.7% royalty rate because such a rate merely is "consistent with a recent damages claims Aerotel *has made in litigation* commenced by Aerotel for infringement of the...Patent." (Proof of Claim Exhibit A at 1) (emphasis added).

- (g) Excel Management Service, Inc.;
- (h) Excel Teleservices, Inc.;
- (i) Excelcom, Inc.; and
- (j) Telco Network Services, Inc.

Further, the Debtors do not admit that any Debtor not on this list sold or used, or currently sells or uses, any prepaid calling card technology in infringement of the Patent.

12. Aerotel has not made any specific allegation nor offered any evidence that these entities had any connection to the use or sale of prepaid calling cards. Moreover, Aerotel admits that it filed claims against each Debtor, “regardless of which Debtor may have received income from the sale or use of services...” (Proof of Claim Exhibit A at 1). However, these are not substantively consolidated estates; so the validity of a claim against any particular Debtor must stand on its own. Because Aerotel is unable to minimally show that the above-referenced Debtors’ businesses or revenues were involved in the sales or use of prepaid calling cards, one of many necessary predicates to establishing the infringement Aerotel alleges, these Proofs of Claim against the Debtors should be expunged as meritless and the amounts sought therein disallowed.

(ii) All the Proofs of Claims are without basis in fact, lack evidentiary support and, as such, are meritless; each should be expunged and the amounts sought therein disallowed.

13. Regardless of whether any of the Debtors’ businesses included prepaid calling cards, the Proofs of Claim fail to show that any action on the part of any Debtor constituted an infringement of the Patent. Aerotel fails to identify any product, service, or action that infringed the Patent, or to describe how such infringement occurred. Rather, Aerotel simply makes the unsupported allegation that the Debtors’ businesses involved an unspecified prepaid calling card technology, and argues that, thus, the

Debtors violated the Patent. This baseless assumption and the utter dearth of specifics demonstrate that the Proofs of Claim are nothing more than an attempt to exploit the estates and jeopardize the return to legitimate creditors with the threat of protracted nuisance litigation.

14. Accordingly, the Debtors request that the Court expunge each of the Proofs of Claims and disallow the amounts sought therein.

B. Aerotel's attempt to "reserve its right" to contest the Court's jurisdiction is of no legal consequence.

15. In each Proof of Claim, Aerotel states that by filing the claim, Aerotel does not consent to, or waive its right to contest, the Bankruptcy Court's jurisdiction to determine the validity, enforceability, or infringement of the Patent. This attempt to "reserve" its right to contest the Bankruptcy Court's well-established jurisdiction is without legal foundation. The law is clear: upon the filing of a proof of claim, the filing party submits to the jurisdiction of the bankruptcy court. *See, e.g., Langenkamp v. Culp*, 498 U.S. 42, 44 (1990). Accordingly, the Debtors request that the Court find that it properly has personal and subject-matter jurisdiction over Aerotel and the Proofs of Claims.

PRAYER

The Debtors respectfully request that the Court enter an order consistent with the relief requested herein, and grant such other or further relief as to which the Debtors may be entitled.

Dated this 26th of August, 2005.

Respectfully submitted,

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on August 26, 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 email service. Further, this is to certify that on August 26, 2005, a copy of the foregoing document was served via First Class U.S. Mail, postage prepaid on counsels of record for Aerotel at the addresses below:

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