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**COUNSEL FOR CORPORATE PROPERTY  
ASSOCIATES 4**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE:	§	
	§	Case No. 04-81694-HDH-11
VARTEC TELECOM, INC., <i>et. al</i> ,	§	
	§	(Chapter 11)
	§	(Jointly Administered)
Debtors.	§	
	§	<b>Hearing Date: September 7, 2005 at 2:30 p.m.</b>

**LIMITED OBJECTION OF CORPORATE PROPERTY ASSOCIATES 4 TO  
DEBTORS' MOTION TO APPROVE: (I) CLOSING OF RENO CALL CENTER; (II)  
REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III)  
SALE OF SURPLUS PERSONAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS  
INTERESTS AND ENCUMBRANCES**

1. Corporate Property Associates 4 (the "Landlord"), by and through its attorneys, in support of this limited objection (the "Limited Objection") to the above-captioned Debtors' (the "Debtors") Motion to Approve: (i) Closing of Reno Call Center; (ii) Rejection of Executory Contracts and Unexpired Leases; and (iii) Sale of Surplus Personal Property Free and Clear of Liens, Claims Interests and Encumbrances, dated August 15, 2005 (the "Motion"), respectfully represents as follows:

## **BACKGROUND**

2. Landlord is the owner and landlord of certain nonresidential real property and improvements located at 5205 Mill Street, Reno, Nevada (the "Premises"). Pursuant to a lease agreement, dated as of August 28, 1996 (the "Lease"), one of the Debtors, Excel Teleservices, Inc., leased the Premises from Corporate Property Associates 2 and Corporate Property Associates 3 (the "Original Lessors"). Landlord is successor in interest to all rights of the Original Lessors under the Lease.

3. In the Motion, the Debtors seek this Court's authorization to reject the Lease effective as of September 30, 2005 (the "Proposed Effective Date") and to auction and/or abandon certain personal property located at the Premises. No proposed form of order is annexed to the Motion.

4. The Landlord does not object to rejection of the Lease. Rather, this Limited Objection seeks to protect the rights of the Landlord with respect to the Proposed Effective Date of the rejection and the Debtors' departure from the Leased Premises.

## **OBJECTIONS**

### **Proposed Order**

5. The Debtors failed to file a proposed form of order granting the relief requested in the Motion. The Debtors should be required to circulate a proposed form of order to the Landlord (and provide Landlord with an opportunity to object to that form) prior to the submission of any such order to the Court.

### **Rejection Date**

6. The Debtors seek to reject the Lease effective as of September 30, 2005. Rejection, however, should be effective only when the Premises have been fully vacated and

surrendered to the Landlord. Otherwise, the Landlord potentially could be forced to suffer a holdover tenancy at the Premises. A holdover tenancy, coupled with an order of the Court approving rejection of the Lease, would permit the Debtor to remain in possession of the Premises, while at the same time alleviating the Debtor of its obligations under section 365(d)(3) of the title 11 of the United States Code (the “Bankruptcy Code”) to remain current on rent and other obligations set forth in the Lease.

7. Accordingly, the Landlord respectfully requests that any order approving rejection of the Lease set the effective date of the rejection as the later of: (i) the Proposed Effective Date; or (ii) the date by which the Debtor has fully vacated and surrendered possession of the Premises to the Landlord (the “Court-Ordered Effective Date”).

8. To the extent the Court-Ordered Effective Date occurs after the Proposed Effective Date, pursuant to section 365(d)(3), the Debtors should be required to pay all rent due under the Lease until the Premises have been vacated and surrendered, and the Landlord should have an administrative claim for any such rent.

#### Claims Bar Date

9. Paragraph 17 of the Motion requests that the Court enter an order setting October 31, 2005 (the “Proposed Claims Bar Date”) as the last day by which the Landlord may file a proof of claim alleging damages arising out of rejection of the Lease. In light of the above, any order approving rejection of the Lease should set the last day by which the Landlord may file its rejection damages claim as the later of October 31, 2005, and thirty (30) days after the Court-Ordered Effective Date (the “Court-Ordered Claims Bar Date”).

#### Auction or Abandonment of Personal Property

10. The Debtors request authority to “abandon or discard [certain] property by any means as the Debtors may elect.” Motion ¶ 22. The Debtors should be required to collect any property at the Premises in accordance with the terms of the Lease and should be permitted to do so only until the Court-Ordered Effective Date. All property to be abandoned by the Debtors should be removed from the Premises prior to the Court-Ordered Effective Date.

11. Alternatively, the Debtors seek authority to auction surplus personal property at the Premises. See Motion ¶ 18. The Debtors should be required to use their best efforts to hold such auction in a manner that minimizes damage to the Premises and/or interference with the Premises.

12. In addition, the Debtors should be required to use their best efforts to remove or collect any property at the Premises in a manner that minimizes damage to the Premises and/or interference with the Premises.

13. To the extent there is any damage to the Premises due to the abandonment, collection or auction of property at the Premises, Landlord should be entitled to an allowed administrative expense claim against the Debtors for the costs to repair such damage, or replace such items, as applicable.<sup>1</sup>

#### Property of the Landlord

14. During the term of the Lease, the Debtors installed an additional generator at the Premises. Pursuant to paragraph 13(b) of the Lease, such addition to the Premises is property of the Landlord and subject to the Lease. Accordingly, the Landlord respectfully requests that the order approving rejection of the Lease require the Debtors to surrender

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<sup>1</sup> The Motion provides that the proposed auction is to be held electronically, and will not require any use of the Premises. Nonetheless, the Landlord seeks to protect the Premises from any damage that may occur in connection with the proposed auction.

possession of the generator as part of their surrender of the Premises on the Court-Ordered Effective Date.

**CONCLUSION**

WHEREFORE, Landlord respectfully requests that the Motion be denied or granted consistent with Landlord's objections and that Landlord be granted such other and further relief as is just and proper.

Dated: September 1, 2005

Respectfully submitted,

**BAKER & MCKENZIE LLP**

By: /s/ Laurie D. Babich

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**ATTORNEYS FOR CORPORATE PROPERTY  
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**Certificate of Service**

This is to certify that on September 1, 2005, a copy of the foregoing document was (1) served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas; and (2) was faxed and e-mailed to Debtors' counsel at the number and address listed below:

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Counsel will file a separate certificate of service attesting to other parties-in-interest who do not receive electronic notice under the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Laurie D. Babich \_\_\_\_\_  
Laurie D. Babich