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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.,** § **CASE NO. 04-81694-HDH-11**  
§  
**DEBTORS.** § **(Chapter 11)**  
§ **(Jointly Administered)**  
§  
§ **Hearing Set for September 7, 2005 at**  
§ **2:30 p.m.**

**AMENDED 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**

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

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> file this Amended 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 (the

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<sup>1</sup> 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.

“Amended Motion”), and in support thereof would respectfully show the Court as follows:

### **JURISDICTION AND PROCEDURAL BACKGROUND**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Amended Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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”) 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 Debtors’ Cases are jointly administered under the Case styled *In re VarTec Telecom, Inc.*; Case No. 04-81694-HDH-11.

6. On August 15, 2005, the Debtors filed their 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 [Docket No. 1739] (the “Initial Motion”)<sup>2</sup> in which they sought authority to, among other things, (i) close the Reno Call Center; (ii) reject certain executory contracts and unexpired leases associated with the Reno Call Center; and (iii) sell by

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning given to them in the Initial Motion.

auction or otherwise dispose of surplus personal property currently located at the Reno Call Center (the "Property").

7. Prior to the Auction, OneContact, Inc. ("OneContact") offered to purchase the Property at a price substantially in excess of the proceeds expected to be generated from the Auction, and as a result, VarTec Telecom, Inc., on behalf of itself and the other Debtors (in such capacity, "VarTec") and OneContact have executed that certain Bill of Sale dated August 29, 2005 (the "Bill of Sale") under which VarTec agrees to sell the Property to OneContact for a purchase price of \$200,000.00.<sup>3</sup> A copy of the Bill of Sale is attached hereto as **Exhibit A**

### **RELIEF REQUESTED**

8. The Debtors seek to modify the section of the Initial Motion titled "Auction of Surplus Personal Property at the Reno Call Center" (paragraphs 18 through 28 of the Initial Motion) to permit them to sell the Property free and clear of all liens, claims, interests, and encumbrances to OneContact. Therefore, the Debtors seek to amend the Initial Motion by deleting paragraphs 18 through 28 thereof and replacing them with the following paragraphs 9 through 13:

### **Sale of Property at the Reno Call Center**

9. Pursuant to Bankruptcy Code §§ 105 and 363, the Debtors request authority to sell the Property, which includes furniture, equipment, and inventory to OneContact free and clear of all liens, claims, interests, and encumbrances.

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<sup>3</sup> The Debtors and OneContact have negotiated the terms of an unrelated service agreement for which they may seek Court approval by separate motion.

10. Bankruptcy Code § 363(b)(1) provides that “[t]he [debtor in possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

11. Bankruptcy Code § 363(f) authorizes a sale of property free and clear of all liens, interests, and encumbrances:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *Pelican Homestead v. Wooten (In re Gabel)* 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (stating that a trustee may sell property of the estate for purposes other than in the ordinary course of business free and clear of all existing liens and encumbrances provided that any one of the conditions of § 363(f) are met). Because Bankruptcy Code § 363(f) is drafted in the disjunctive, only one of the conditions set forth in that statute needs to be met for a sale free and clear of liens, claims, interests, and encumbrances to occur.

12. The Rural Telephone Finance Cooperative (the “RTFC”) is the only party which asserts a lien, claim, interest, or encumbrance relating to the Property, and the

Debtors will inquire whether it consents to the proposed disposition. Even absent consent from the RTFC, the Property could be sold free and clear of its interests (with such interests attaching to the sale proceeds) so long as the RTFC could be compelled to accept money satisfaction of its interests in the property. See 11 U.S.C. § 363(f)(5).<sup>4</sup>

13. OneContact has made an exceptional offer for the Property; its offer substantially exceeds the proceeds that were estimated to be generated from an auction of the Property. The Debtors do not have a use for the Property, and the continued storage and maintenance of the Property is and will be burdensome to the estates of the Debtors. To deny the relief requested herein would cause the Debtors to incur expenses without a corresponding benefit to their estates.

### **PRAYER**

The Debtors request that the Court enter an Order (i) approving (A) the closing of the Reno Call Center and the terminating of employees as set forth in the WARN Act Notices; (B) the rejection of the certain executory contracts and unexpired leases associated with the Reno Call Center; and (C) the sale of the Property to OneContact, and (ii) granting such other and further relief, both general and specific, to which the Debtors may be justly entitled.

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<sup>4</sup> Under the Asset Purchase Agreement dated July 25, 2005 by and among the Debtors and Comtel Investments L.L.C., the proceeds from the sale of the Property will remain in the estates pending the final closing of the sale.

Dated: September 2, 2005

Respectfully submitted,

**VINSON & ELKINS L.L.P.**

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**ATTORNEYS FOR THE DEBTORS**

**CERTIFICATE OF SERVICE**

This is to certify that on September 2, 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/ Holly J. Warrington  
One of Counsel

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