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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)
	§	
	§	Interim Hearing Requested for
	§	September 7, 2005 at 2:30 p.m.
	§	
	§	Final Hearing Set for September 29,
	§	2005 at 2:30 p.m.

**MOTION TO APPROVE RETENTION OF CXO, L.L.C.
AS OPERATIONAL CONSULTANTS FOR THE DEBTORS**

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

A FINAL HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 29, 2005, AT 2:30 P.M. IN THE COURTROOM OF THE HONORABLE HARLIN D. HALE, 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY (20) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UPOPOSED AND GRANT THE RELIEF REQUESTED.

The above-referenced debtors and debtors in possession (collectively, the "Debtors")¹ file this Motion to Approve Retention of CXO, L.L.C. as Operational Consultants for the Debtors (the "Application") and in support show:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This 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-SAF-11.

FACTUAL BACKGROUND

6. Until recently, Joe D'Angelo of Alvarez & Marsal, LLC served as the Debtors' chief restructuring officer and chief operating officer. On July 31, 2005, Mr. D'Angelo resigned to pursue other opportunities, and as a result, the Debtors have a void in their operations leadership, which must be filled. After interviewing a number of

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.

possible replacements, the Debtors determined that they should retain CXO, L.L.C. (“CXO”) to provide operational and managerial services, including services relating to many of the duties performed by Mr. D’Angelo.

7. CXO and VarTec Telecom, Inc. (“VarTec”) executed an engagement agreement (the “Agreement”) to be effective as of August 22, 2005 in which CXO agrees to provide personnel to serve as VarTec’s Interim Chief Operating Officer and Interim Assistant Chief Operating Officer. A copy of the Agreement is attached hereto as **Exhibit A**. CXO personnel will assist the Debtors’ efforts “to manage the businesses of [VarTec], in fulfilling conditions to pending asset sale transactions, and in managing related transition issues (the ‘Services’).” *Agreement* at 1. Under the Agreement, the scope of the Services may be modified by VarTec’s chief executive officer. Michael E. Katzenstein, a Principal at CXO, has been identified to serve as the Interim Chief Operating Officer and Andy Jent, a Senior Director at CXO, has been identified to serve as the Interim Assistant Chief Operating Officer. In addition, CXO agrees to make available other personnel as necessary to perform the Services.

8. CXO will be compensated at the following rates:

CXO Personnel	Monthly Fee
Principal	\$550 per hour
Senior Director	\$400 per hour
Director	\$300 per hour
Associate	\$225 per hour

Under the Agreement, CXO will be reimbursed for certain other reasonable costs and expenses, and VarTec agrees to indemnify it in certain situations. Under the Agreement, CXO is to receive a retainer in the amount of \$50,000, however, as of the date of this Application, no retainer has been paid to CXO.

RELIEF REQUESTED

9. Pursuant to Bankruptcy Code § 363, the Debtors request authority to retain CXO to provide the Services on the terms set forth in the Agreement. 11 U.S.C. § 363.

10. Bankruptcy Code § 363(c) authorizes the Debtors to use, sell, or lease property of the estate in the ordinary course of business without Court approval. 11 U.S.C. § 363(c). Although the Debtors believe that the retention of CXO and the CXO personnel is an ordinary course transaction, Bankruptcy Code § 363(b) provides the statutory predicate for the retention of CXO and the CXO personnel if such transaction is deemed to occur outside the ordinary course of business.

11. Bankruptcy Code § 363(b)(1) provides, "The trustee, 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). The proposed use, sale or lease of property of the estate may be approved under Bankruptcy Code § 363(b) if it is supported by sound business justification. See e.g. *In re Crutcher Resources Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale") (Bankr. W.D. Tex. 1989); *The Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business").

12. In the exercise of their business judgment, the Debtors have determined that the retention of CXO and the CXO personnel will benefit their bankruptcy estates. CXO has extensive experience providing operational and managerial expertise in the telecom field, in and out of bankruptcy court, and it has an excellent reputation within its industry. Each of the CXO personnel expected to render Services to VarTec have extensive operational and managerial experience in the telecom field.

13. The Services are necessary in light of the departures of Mr. D'Angelo and other of the Debtors' management. If the Debtors do not retain CXO and the CXO personnel, VarTec will be compelled to search for officers to fill the positions to be filled by CXO, which would result in delay to the detriment of the Debtors and their bankruptcy estates.

14. The compensation under the Agreement is consistent with, and typical of, compensation received by other outside interim officers rendering similar services to clients, including those rendering services in bankruptcy cases in this and other districts. Because CXO is not to be employed as a professional pursuant to Bankruptcy Code § 327, it does not intend to submit quarterly or final fee applications pursuant to Bankruptcy Code §§ 330 and 331.

15. This Bankruptcy Court has authorized the Debtors' retention of personnel from Alvarez & Marsal, LLC to serve as officers pursuant to Bankruptcy Code § 363, and Bankruptcy Courts in other cases have authorized a debtor's retention of officers pursuant to Bankruptcy Code § 363. See *In re Avado Brands, Inc.*, Case No. 04-31555, Docket No. 64 (Bankr. N.D. Tex. 2004); *In re Mirant Corp.*, Case No. 03-46590, Docket No. 194 (Bankr. N.D. Tex. 2003); *In re Fleming Co., Inc.*, Case No. 03-10945, Docket

No. 1698 (Bankr. D. Del. 2003); *In re LJM2 Co-Investment, L.P.*, Case No. 02-38335, Docket No. 20 (Bankr. N.D. Tex. 2002); *In re Kmart Corp.*, Case No. 02-02474, Docket No1441 (Bankr. N.D. Ill. 2002).

16. The retention of CXO and the CXO personnel, as discussed herein, is supported by the Affidavit of Michael E. Katzenstein in Support of Motion to Authorize Retention of CXO, L.L.C. as Operational Consultants of the Debtors (the "Affidavit"). A copy of the Affidavit is attached hereto as **Exhibit B**.

17. In the exercise of their business judgment, the Debtors have determined that the retention of CXO as operational consultants is in their best interests and those of their creditors.

PRAYER

The Debtors respectfully request that this Court enter an order authorizing the Debtors to retain CXO and the CXO personnel and granting them other relief to which they may justly be entitled.

Dated: September 6, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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