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ATTORNEYS FOR THE VARTEC DEBTORS

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

IN RE:

**VARTEC TELCOM, INC., *et al.*,
DEBTORS.**

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CASE NO. 04-81694-SAF-11

(Chapter 11)

(Jointly Administered)

**Hearing Set for September 29, 2005 at
2:30 p.m.**

**MOTION TO APPROVE COMPROMISE
AND SETTLEMENT WITH TELEGLOBE ENTITIES**

**A 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, UNITED STATES BANKRUPTCY
JUDGE, 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 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 “VarTec Debtors”)¹ file this Motion to Approve Compromise and Settlement with Teleglobe Entities (the “Motion”) 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 Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

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 VarTec Debtors each filed a voluntary petition for relief (collectively, the “Cases”) pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

4. Since the Petition Date, the VarTec 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 under the Case styled *In re VarTec Telecom, Inc.*, et al.; Case No. 04-81694-SAF-11.

STATEMENT OF FACTS

Relationship with Teleglobe

6. Effective as of January 1, 2002, Teleglobe USA Inc. (“TUSA”) entered into a Master Telecommunications Services Agreement (the “MTSA”) with eMeritus Communications, Inc. n/k/a VarTec Solutions, Inc. (“VSI”). Under the MTSA, VSI, as

¹ The VarTec 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.

successor in interest to eMeritus Communications, Inc. agreed to provide the Teleglobe Debtors (as defined below) with certain domestic U.S. origination and termination telecommunications services.

7. On April 5, 2002, VTI, VarTec Telecom Holding Company (“VTHC” and together with VSI and VTI, the “VarTec Entities”), Teleglobe Telecom Corporation (“TTC”), Teleglobe Holdings (U.S.) Corporation (“THUSC” and together with TTC, the “Teleglobe U.S. Entities”), Teleglobe Inc. (“TI”), Excelcom, Inc., Telco Communications Group, Inc., and Excel Telecommunications (Canada) Inc. executed that certain Amended and Restated Stock Purchase Agreement and certain other related and ancillary agreements (collectively, the “SPA”). Under the SPA, TTC sold all of the outstanding shares of capital stock of Excelcom, Inc. and Telco Communications Group, Inc. to VTHC, and TI sold all of the outstanding shares of capital stock of Excel Telecommunications (Canada) Inc. to VTHC. In consideration, VTHC agreed to pay a total aggregate purchase price of \$227,500,000 to TTC and TI. The purchase price to be paid by VTHC was in the form of (i) a Purchase Price Note between VTHC and TTC, pursuant to which VTHC agreed to pay TTC \$217,500,000 plus interest (the “TTC Note”) and (ii) a Purchase Price Note between VTHC and TI, pursuant to which VTHC agreed to pay TI \$10,000,000 plus interest (the “TI Note,” and together with the TTC Note, the “Notes”). Both Notes were guaranteed by VTI.

Teleglobe’s Insolvency and the Related Proceedings

8. On May 15, 2002, TI, Teleglobe Canada Limited Partnership (“TCLP”), THUSC, Teleglobe USA Inc. (“TUSA”), and TTC, among others, commenced insolvency proceedings (the “Teleglobe Restructuring Process”) under the Canadian Companies’ Creditors Arrangement Act, R.S.C. 985, c. C-36, as amended. The Teleglobe

Restructuring Process is pending before the Ontario Superior Court of Justice (the “Canadian Court”) under Case File No. 02-CL-4528.

9. On May 28, 2002 (the “Teleglobe Petition Date”), Teleglobe Communications Corporation (“TCC” and together with the Teleglobe U.S. Entities, TUSA, and TI, the “Teleglobe Entities”) and certain of its affiliates, including the Teleglobe U.S. Entities, and TUSA (collectively the “Teleglobe Debtors”), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). The Teleglobe Debtors’ bankruptcy cases are pending before the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) and are jointly administered under the bankruptcy case styled *In re Teleglobe Communications Corporation, et al.*, Case No. 02-11518 (MFW) (the “Teleglobe Bankruptcy Cases”).²

10. On June 24, 2003, the Teleglobe Debtors and the VarTec Entities entered into a stipulation (the “VarTec Stipulation”) providing for the rejection of (i) the MTSA and (ii) certain telecommunications circuits between the Teleglobe Debtors and certain of the VarTec Entities (collectively, the “Circuits”). The VarTec Stipulation was approved by an order entered by the Delaware Bankruptcy Court on July 21, 2003 [Teleglobe Bankruptcy Case Docket No. 1643].

11. On October 28, 2002, VSI filed one proof of claim against TCC and TUSA’s chapter 11 estates (Claim No. 178) (the “First VSI Claim”) in the amount of \$22,906.96 with respect to prepetition amounts allegedly due under the MTSA and otherwise for the period from October 2000 through the Teleglobe Petition Date. On

² TI is the subject of a contemporaneously pending ancillary proceeding under section 304(a) of the Bankruptcy Code.

December 9, 2002, VSI filed a second proof of claim against TUSA's chapter 11 estate (Claim No. 522) (the "Second VSI Claim") in the amount of \$581,411.00 with respect to prepetition amounts allegedly due under the MTSA for the period from January 1, 2002 through the Teleglobe Petition Date. On August 21, 2003, VSI filed a third proof of claim against TUSA's chapter 11 estate (Claim No. 771) (the "Third VSI Claim") in the amount of \$38,258,244.00 with respect to alleged damages arising from the rejection of the MTSA and the Circuits pursuant to the VarTec Stipulation. On January 21, 2004, VSI filed a fourth proof of claim against TUSA's chapter 11 estate (Claim No. 790) (the "Fourth VSI Claim," and together with the First VSI Claim, the Second VSI Claim and the Third VSI Claim, the "VSI Claims"), which amended and superseded the Third VSI Claim and asserted a claim for rejection damages in the amount of \$39,145,548.18.

12. On December 9, 2002, VTI and VTHC each filed a separate proof of claim against TCC's and THUSC's chapter 11 estates (Claim Nos. 504, 512, 513, and 521) (as amended on December 22, 2003 by Claim Nos. 784 through 787, inclusive, the "U.S. Proofs of Claim"). In the U.S. Proofs of Claim, VTI and VTHC assert claims against TTC's and THUSC's estates in the aggregate amount of approximately \$244,459,340.28 on account of alleged breaches of the SPA. On January 21, 2004, the Teleglobe Debtors filed that certain Objection of the Debtors and Debtors in Possession to VarTec's Amended Proofs of Claim [Teleglobe Bankruptcy Cases Docket No. 2048], pursuant to which the Teleglobe Debtors objected to the U.S. Proofs of Claim on various grounds.

13. On December 9, 2002, VTI and VTHC each filed a separate proof of claim against TI in the Teleglobe Restructuring Process (as amended on December 22, 2003,

the “Canadian Proofs of Claim,” and together with the U.S. Proofs of Claim, the “VarTec Proofs of Claim”). In the Canadian Proofs of Claim, VTI and VTHC each assert claims against TI in the approximate amount of CDN \$381,356,570.84 on account of alleged breaches of the SPA.

The Arbitration Proceeding

14. On January 12, 2004, TTC and TI filed a *Demand for Arbitration and Statement of Claim* against VTI and VTHC, which commenced an arbitration proceeding (the “Arbitration Proceeding”) before the American Arbitration Association, International Centre for Dispute Resolution (Washington, D.C.). In the Arbitration Proceeding, TTC and TI sought, among other things, payment of interest due under the Notes and the recovery of certain tax refunds. The claims asserted in the VarTec Proofs of Claim also became a part of the Arbitration Proceeding. On October 26, 2004, the arbitration panel (the “Arbitrators”) in the Arbitration Proceeding transmitted their interim award (the “Award”), and the Arbitrators retained jurisdiction over the Arbitration Proceeding until at least October 4, 2005.

Teleglobe’s Proofs of Claim

15. On March 11, 2005, (i) THUSC filed separate proofs of claim against VTI’s and VTHC’s chapter 11 estates (Claim Nos. 2290 and 2291) each asserting a claim in an unliquidated amount with respect to tax refunds allegedly owed; (ii) TTC filed separate proofs of claim against VTI’s and VTHC’s chapter 11 estates (Claim Nos. 2292 and 2293) each asserting a claim in the amount of \$256,475,011.13 on account of obligations under the TTC Note, as well as claims in an unliquidated amount with respect to tax refunds allegedly owed; and (iii) TI filed separate proofs of claim against VTI’s and VTHC’s chapter 11 estates (Claim Nos. 2294 and 2295) each asserting a

claim in the amount of \$13,500,000 on account of obligations under the TI Note. Claim Nos. 2290 through 2295, inclusive, filed in the VarTec Bankruptcy Cases shall be referred to herein as the “Teleglobe Proofs of Claim.”

Execution of the Settlement Agreement

16. The VarTec Entities and the Teleglobe Entities intend to execute that certain Settlement Agreement (the “Settlement Agreement”)³ in which they seek to settle and resolve (i) all claims asserted or that could have been asserted by any or all of the Teleglobe Entities against any or all of the VarTec Entities in connection with, as a result of, relating to, or arising out of the SPA, including the Notes, the Teleglobe Proofs of Claim, and the Teleglobe Released Tax Claim (as defined below), other than the rights and claims granted and/or allowed pursuant to the Settlement Agreement (collectively, the “Teleglobe Claims”) and (ii) all claims asserted or that could have been asserted by any or all of the VarTec Entities against any or all of the Teleglobe Entities in connection with, as a result of, relating to, or arising out of the SPA, including, but not limited to, the outstanding, non-liquidated claims of any of the VarTec Entities over which the Arbitrators retained jurisdiction in the Arbitration Proceeding, the Notes, the VSI Claims, the VarTec Proofs of Claim and the VarTec Released Tax Claim (defined below), other than the rights and claims granted and/or allowed pursuant to the Settlement Agreement (collectively, the “VarTec Claims”). A copy of the form of the Settlement Agreement is attached hereto as **Exhibit A**.

17. Among the terms of the Settlement Agreement are the following:

³ Capitalized terms not defined herein shall have the meaning given to them in the Settlement Agreement. In the event that the terms set forth herein conflict with the terms set forth in the Settlement Agreement, the Settlement Agreement shall control.

a. Collectively, the Teleglobe U.S. Entities shall have two Allowed⁴ general unsecured claims in the VarTec Bankruptcy Cases, which claims shall not be subject to any right of setoff or recoupment, as follows: (i) one Allowed claim in the aggregate amount of \$175,000,000 against VTHC and its chapter 11 estate and (ii) one Allowed claim in the aggregate amount of \$175,000,000 against VTI and its chapter 11 estate (collectively, the “Teleglobe U.S. Allowed Claim”). TI shall have two Allowed general unsecured claims in the VarTec Bankruptcy Cases, which claims shall not be subject to any right of setoff or recoupment, as follows: (i) one Allowed claim in the amount of \$10,000,000 against VTHC and its chapter 11 estate and (ii) one Allowed claim in the amount of \$10,000,000 against VTI and its chapter 11 estate (collectively, the “TI Allowed Claim”). Neither the Teleglobe U.S. Entities nor TI shall be required to file a proof of claim in the VarTec Bankruptcy Cases with respect to the Teleglobe U.S. Allowed Claim or the TI Allowed Claim. The entry of an order approving the Settlement Agreement shall be sufficient evidence of the validity and amount of the Teleglobe Allowed U.S. Claim and the TI Allowed Claim.

b. The VarTec Entities shall be deemed to have withdrawn, with prejudice, the VSI Claims and the VarTec Proofs of Claim, and the Teleglobe U.S. Entities and TI shall be deemed to have withdrawn, with prejudice, the Teleglobe Proofs of Claim.

c. On the Effective Date of the Settlement Agreement, the VarTec Entities shall pay TTC, on behalf of and for the benefit of itself and THUSC, the sum of \$300,000.00 (the “Settlement Payment”) from the Teleglobe Account.

d. Other than with respect to the Settlement Payment, the Teleglobe U.S. Entities acknowledge and agree that they have no continuing claim, right, title, or interest in or to any and all refunds, credits, or offsets of Pre-Closing Taxes (as defined in the SPA) that the VarTec Entities currently possess or may in the future possess (the “Teleglobe Released Tax Claim”). Likewise, the VarTec Entities acknowledge and agree that they have no continuing claim, right, title, or interest in or to any and all refunds, credits, or offsets of Post-Closing Taxes (as defined in the SPA) that the Teleglobe Entities currently possess or may in the future possess (the “VarTec Released Tax Claim”).

e. As soon as practicable following the Effective Date of the Settlement Agreement, the Parties shall cooperate in taking all steps necessary to dismiss the Arbitration Proceeding with prejudice.

⁴ “Allowed” means not subject to adjustment or objection or challenge by any party in interest in the VarTec Bankruptcy Cases.

f. The Teleglobe Entities and the VarTec Entities agree to release certain claims.

RELIEF REQUESTED

18. The VarTec Debtors request approval of the Settlement Agreement pursuant to, among other provisions, Bankruptcy Code §§ 105, 363, 502 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

19. Bankruptcy Rule 9019(a) provides, in part, “On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. PROC. 9019(a).

20. The proponent of a compromise and settlement should set forth the legal and factual context of the compromise so that the Court may make an intelligent, objective and educated evaluation of the settlement. *Protective Comm. of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion, Inc.)*, 844 F.2d 1142, 1158-59 (5th Cir. 1988); *U.S. v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 299 (5th Cir. 1984).

21. In passing upon a proposed compromise and settlement, the Court must determine that the compromise and settlement is fair and equitable and in the best interest of the estate by considering, among other things, the following factors:

- a. the probability of success in the litigation;
- b. the difficulties to be encountered in the matter of collection, if any;
- c. the complexity of the litigation involved and the expenses, inconveniences, and delay necessarily attending it;
- d. the paramount interest of the creditors and their objections; and
- e. all other factors bearing on the wisdom of the settlement.

See *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980). See also *TMT Trailer Ferry*, 390 U.S. 414, 424 (1968).

22. Based on all applicable factors, the execution of the Settlement Agreement is in the best interest of the VarTec Debtors' estates and their creditors and the compromise and settlement provided in the Settlement Agreement is fair and equitable. The VarTec Entities and the Teleglobe Entities extensively have litigated the issues arising out of the SPA, and the VarTec Debtors have evaluated the possible risks and rewards of further litigation. The issues presented in the Arbitration Proceeding were sophisticated and required the Debtors' expenditure of significant time and money relating to litigation. The Arbitrators have considered the facts involved in the matters, and they have transmitted their Award. To further litigate these matters would require the VarTec Debtors to expend additional significant resources. By consummating the Settlement Agreement, the VarTec Debtors will avoid unnecessary expense, finally resolve disputed claims, provide the VarTec Debtors certainty, and allow the VarTec Debtors to dedicate valuable resources to other matters.

23. The Settlement Agreement was negotiated in good faith and at arm's length.

24. For these reasons, the Settlement Agreement and the compromise and settlement provided therein should be approved.

PRAYER

The VarTec Debtors request that the Court enter an Order approving the Settlement Agreement and the compromise and settlement provided therein and granting them such other and further relief to which they are justly entitled.

Dated: September 7, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Richard H. London
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ATTORNEYS FOR THE VARTEC DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on September 7, 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/ Richard H. London
One of Counsel

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