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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)

**EIGHTH MOTION TO AUTHORIZE REJECTIONS OF
ASSORTED EXECUTORY CONTRACTS AND
PERSONAL PROPERTY LEASES AND BRIEF IN SUPPORT**

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

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 18, 2005, AT 1:30 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 UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Eighth Motion to Authorize Rejections of Assorted Executory Contracts and Personal Property Leases and Brief in Support (the “Motion”) and in support thereof the Debtors would 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).

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 Dates, 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 July 29, 2005, the Court entered its Order (A) Approving the Sale Free and Clear of All Liens, Claims, Rights, Interests and Encumbrances to Comtel Investments LLC and (B) Granting Related Relief (Substantially All of the Debtors’ Remaining Assets) [Docket No. 1663] in which it authorized the sale of substantially all

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.

of the Debtors' remaining assets to Comtel Investments LLC ("Comtel") under the Asset Purchase Agreement dated July 25, 2005 by and among the Debtors and Comtel (the "APA").

STATEMENT OF FACTS

Executory Contracts and Personal Property Leases

7. The Debtors are in the process of evaluating their executory contracts and unexpired leases of personal property. Although this review is still underway, the Debtors have identified certain executory contracts and personal property leases that are not essential to the Debtors' reorganization or continued operations. Accordingly, the Debtors request authority to reject the executory contracts and unexpired leases listed on **Exhibit A** attached hereto (the "Contracts"). A copy of the Contracts themselves are not attached but will be provided to parties in interest upon the receipt of a written request sent to Vinson & Elkins L.L.P., Attn: Pam Lewis, Paralegal, Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201-2975.

RELIEF REQUESTED

8. The Debtors have determined that they will not need the goods and services relating to each of the Contracts; and therefore, they have determined that the rejection of the Contracts will avoid unnecessary and burdensome administrative claims against their estates that could be asserted. Pursuant to Bankruptcy Code § 365, the Debtors have determined, in their business judgment, that it is in their best interest, and that of their estates, to immediately reject the Contracts.

9. By this Motion, the Debtors request entry of an order pursuant to Bankruptcy Code § 365 authorizing and approving the rejection of the Contracts as provided herein.

10. Bankruptcy Code § 365 provides that the Debtors, “subject to the Court’s approval, may assume or reject any executory contract and unexpired lease of the debtor.” 11 U.S.C. § 365(a). A debtor operating its business pursuant to Bankruptcy Code §§ 1107 and 1108 must use reasonable judgment in ordinary business matters in its determination of whether to reject executory contracts and unexpired leases.

11. Bankruptcy Code § 365 does not provide a standard for determining when a debtor’s rejection of an executory contract or unexpired lease is appropriate. *In re Monarch Tool & Manufacturing Co.*, 114 B.R. 134 (Bankr. S.D. Ohio 1990). However, most courts acknowledge that the business judgment standard should be applied to determine “whether to authorize the rejection of executory contracts and unexpired leases.” *In re Federated Department Stores, Inc.*, 131 B.R. 808, 811 (Bankr. S.D. Ohio 1991) (citing, *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) and *Group of Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523 (1943)).

As one court stated:

[A] bankruptcy court . . . need determine only . . . whether disaffirmance would be advantageous to the debtor. The burden or hardship which rejection would impose on other parties to such a contract *is not* a factor to be weighed by the bankruptcy court in ruling upon the debtor's application.

Borman's, Inc. v. Allied Supermarkets, Inc., 706 F.2d 187, 189 (6th Cir.) (dicta), *cert. denied*, 464 U.S. 908 (1983) (emphasis added). Therefore, the Debtors may reject any executory contract or unexpired lease provided that they determine, in their business judgment, that rejection would be advantageous to them.

12. The Debtors have determined, in their business judgment, that the Contracts will no longer be necessary to their operations or to effect successful

reorganizations of their businesses. The failure to reject the Contracts could result in the incurrence of unnecessary expense.

13. As such, the Debtors request that the Court authorize the rejection of each of the Contracts as of the date of the filing of this Motion. The Contracts are no longer necessary for the continued operation of the Debtors' businesses and do not benefit any of the Debtors' estates.

PRAYER

The Debtors respectfully request that the Court enter an Order authorizing the rejection of the Contracts as of the date of the filing of this Motion with any costs of retrieval borne by the counterparties. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: September 19, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Holly J. Warrington
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CERTIFICATE OF SERVICE

This is to certify that on September 19, 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.

Further, this is to certify that on September 19, 2005, a copy of the foregoing document was served via first class mail on the counterparties to the Contracts at the addresses set forth on **Exhibit A**.

/s/ Holly J. Warrington

One of Counsel

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Exhibit A

Debtor	Counter-Party	Notice Address	Contract Subject
VarTec Telecom Inc.	NeuStar, Inc.	NeuStar, Inc. 46000 Center Oak Plaza Sterling, VA 20166	Operations Support Systems Master Services Agreement
VarTec Telecom, Inc.	CallManage, Inc.	CallManage, Inc. 460 Summer Street, 3rd Floor Stamford, CT 06901-1301 CallManage, Inc. P.O. Box 346 Shelton, CT 06484	Independent Agent Agreement