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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.*,  
  
DEBTORS.**

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**CASE NO. 04-81694-HDH-11**

**(Chapter 11)  
(Jointly Administered)**

**Interim Hearing Requested for  
October 11, 2005 at Such Time as the  
Court's Docket May Accommodate**

**MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO OBTAIN POST-PETITION FINANCING ON AN  
INTERIM AND FINAL BASIS SECURED BY SENIOR PRIMING  
LIENS, (II) SCHEDULING A FINAL HEARING AND ESTABLISHING  
NOTICE REQUIREMENTS, AND (III) GRANTING RELATED RELIEF  
(RURAL TELEPHONE FINANCE COOPERATIVE)**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

The above-referenced debtors and debtors in possession (collectively, the "Debtors")<sup>1</sup> file this Motion for Interim and Final Orders (i) Authorizing the Debtors to Obtain Post-Petition Financing on an Interim and Final Basis Secured by Senior Priming

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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 Resources Services, Inc., VarTec Solutions, Inc., VarTec Telecom Holding Company, VarTec Telecom International Holding Company, and VarTec Telecom of Virginia, Inc.

Liens, (ii) Scheduling a Final Hearing and Establishing Notice Requirements, and (iv) Granting Related Relief (Rural Telephone Finance Cooperative) (the "Motion"), and in support would respectfully show the Court as follows:

### **PROCEDURAL HISTORY**

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-HDH-11.

### **FACTUAL BACKGROUND**

#### **RTFC DIP Facility**

6. VarTec Telecom, Inc. ("VarTec") is a borrower and the other Debtors (except VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc.) are guarantors under that certain First Amended and Restated Credit Agreement dated October 7, 2004 ("FARCA") with the Rural Telephone Finance Cooperative (the "RTFC"), pursuant to which the existing secured indebtedness owing to the RTFC was restructured in the form of a secured term loan and a secured line of credit to VarTec.

7. On January 12, 2005, the Court entered its Final Order Authorizing Post-Petition Financing, Granting Senior Liens and Priority Administrative Expense Status, Authorizing Use of Cash Collateral and Modifying the Automatic Stay [Docket No. 789] (the “Final DIP Financing Order”) in which it approved a debtor in possession financing facility with the RTFC, which currently has a maximum availability of \$20,000,000 (the “DIP Financing”), under FARCA, as amended by (i) the DIP Financing Amendment dated November 1, 2004 by and among the Debtors (except VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc.) and the RTFC and (ii) the First Amendment to and Waiver of Default under DIP Financing Agreement dated January 12, 2005 by and among the Debtors (except VarTec Telecom of Virginia, Inc. and Excel Telecommunications of Virginia, Inc.) and the RTFC (as amended, modified, and supplemented, “DIPFA”).

#### **Sale of Acquired Assets to Comtel**

8. 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] (the “Sale Order”) in which it approved that certain Asset Purchase Agreement dated July 25, 2005 (the “Purchase Agreement”) by and among the Debtors and Comtel Investments LLC (“Comtel”). Under the Purchase Agreement, the Debtors agreed to sell the Acquired Assets (as defined in the Purchase Agreement) to Comtel. Because of the need to obtain certain regulatory approvals, the Debtors do not contemplate having a final closing of the sale of the Acquired Assets for several months.

## RTFC DIP Facility

9. Upon approval, the Debtors and the RTFC will execute a new debtor in possession financing facility in substantially the same form of the RTFC Administrative Debtor in Possession Credit Agreement attached hereto as **Exhibit A** (the “New RTFC DIP Financing Agreement”).<sup>2</sup> Under the New RTFC DIP Financing Agreement, the RTFC agrees to finance certain of the Debtors’ administrative expenses (the “New RTFC DIP Financing”) as set forth in the budget attached hereto as **Exhibit B** (the “Budget”).

10. The maximum availability under the New RTFC DIP Financing Agreement is \$9,181,370 (or such other amount to which the parties may agree) and the non-default interest rate is the prime rate plus 1.5 percent per annum. Subject to Bankruptcy Court approval, the obligations under the New DIP RTFC Financing Agreement are to be secured by security interests in and liens on certain collateral (subject to certain senior liens) to the extent that such property consists of Excluded Assets (collectively, the “Collateral”). *New RTFC DIP Financing Agreement*, § 6.1. In addition, the RTFC shall be granted a super priority administrative claim on account of the obligations subject to a carve out.

11. The cash generated by the Debtors’ operations is unavailable to pay the administrative expenses, and no other independent working capital resources and financing are available in a sufficient amount to enable the Debtors to carry on the administration of the Cases and to pay the costs associated with the settlement of certain claims against the Debtors.

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<sup>2</sup> Upon the approval of the New RTFC DIP Financing Agreement, the Debtors and the RTFC will terminate DIPFA. Capitalized terms not defined herein shall have the meaning given to them in the New RTFC DIP Financing Agreement.

12. The RTFC is willing to make loans and other financial accommodations to the Debtors, but only in accordance with and on the substantially the same terms and conditions set forth in the New RTFC DIP Financing Agreement and the proposed Interim Order attached hereto as **Exhibit C** (the “Interim Order”).

### **RELIEF REQUESTED**

13. Pursuant to Bankruptcy Code § 364, the Debtors request authority to incur post-petition financing secured by security interests in and liens on the Collateral under the terms set forth in the New RTFC DIP Financing Agreement.

14. Bankruptcy Code § 364(c) provides:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In satisfying the standards of Bankruptcy Code § 364(c), a debtor need not seek credit from every available source, but should make a reasonable effort to seek other sources of credit available of the type set forth in Bankruptcy Code §§ 364(a) and (b). See e.g. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Department Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

15. Bankruptcy Code § 364(d)(1) provides:

(d) (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise;  
and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

16. Subject to the sale approved with the Sale Order, substantially all assets of the Debtors are pledged to the RTFC under FARCA, DPFA, and the Final DIP Financing Order. As the Debtors' available cash will be insufficient to pay estate expenses, the Debtors need an immediate and reliable source of financing. Except as otherwise provided in this Motion, independent working capital resources and financing are not available to enable the Debtors to carry on the administration of the Cases or to make payments under the settlement of certain claims against the Debtors.

17. Absent the financing proposed in this Motion, the Debtors will be unable to administer their Cases and settle certain claims, and the Debtors have an urgent need to obtain authority from this Court to accomplish those tasks.

18. After extensive arm's length and good faith negotiations with the RTFC and the lack of more favorable alternatives, the Debtors have determined to enter into a debtor in possession financing facility with the RTFC, subject to Court approval, on the terms and conditions set forth in this Motion. The financing offered by the RTFC best suits the Debtors' needs by providing them with working capital necessary to pay the items in the Budget.

19. The Debtors have been unable to obtain post-petition financing on an unsecured basis. Similarly, the Debtors have sought, but have been unable to obtain, post-petition financing under Bankruptcy Code § 364(c) in amounts sufficient to provide

the Debtors the necessary liquidity to pay the items in the Budget, other than secured by liens pursuant to Bankruptcy Code § 364 such as those set forth in the New RTFC DIP Financing Agreement and with super priority status.

20. The terms and conditions of the financing proposed in this Motion are fair and reasonable under the circumstances of these Cases and were negotiated in good faith and at arm's length by the Debtors.

21. The Debtors request that the Court schedule a preliminary hearing to authorize the Debtors to obtain the New RTFC DIP Financing in accordance with Bankruptcy Rule 4001(c)(2). Pursuant to Bankruptcy Rule 4001(c)(2), a minimum of fifteen days' notice is required before a final hearing may commence on the relief requested in this Motion. FED. RULE BANKR. P. 4001(c)(2). However, Bankruptcy Rule 4001(c)(2) provides that the Court "may conduct a hearing before such 15-day period expires, but may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." FED. RULE BANKR. P. 4001(c)(2). As discussed herein, the Debtors satisfy the conditions of Bankruptcy Rule 4001(c)(2).

22. The Debtors request that the Court also set a final hearing for the approval of the proposed New RTFC DIP Financing at the earliest possible date.

### **PRAYER**

The Debtors respectfully request that this Court enter an Order (i) authorizing the New RTFC DIP Financing; (ii) setting a preliminary hearing as soon as possible to consider the temporary, interim approval of the New RTFC DIP Financing; (iii) setting a time and date for a final hearing on the approval of the New RTFC DIP Financing; and

(iv) granting such other and further relief, at law and in equity, as may be just and proper.

Dated: September 29, 2005.

Respectfully submitted,

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

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