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ATTORNEYS FOR THE DEBTORS

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

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| IN RE: | § | |
| | § | |
| VARTEC TELECOM, INC., et al., | § | CASE NO. 04-81694-HDH-11 |
| | § | |
| DEBTORS. | § | (Chapter 11) |
| | § | (Jointly Administered) |
| | § | |
| | § | Hearing Set for November 1, 2005 at |
| | § | 1:30 p.m. |

**MOTION TO AUTHORIZE REJECTION OF NONRESIDENTIAL
REAL PROPERTY LEASE AND BRIEF IN SUPPORT
(60 HUDSON STREET, NEW YORK, NEW YORK)**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 1, 2005 AT 1:30 P.M. IN 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.

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

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Motion to Authorize Rejection of Nonresidential Real Property Lease and Brief in Support (60 Hudson Street, New York, New York) (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 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 Case No. 04-81694-HDH-11.

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.

FACTUAL BACKGROUND

60 Hudson Street Lease Agreement

6. On March 24, 1998, Hudson Telegraph Associates (the “Landlord”) and VarTec Telecom, Inc. (“VarTec”) executed that certain Agreement of Lease (the “Initial Agreement”) under which the Landlord agreed to lease to VarTec certain lease premises located at 60 Hudson Street, New York, New York (the “Lease Premises”). The Initial Agreement was amended by that certain Amendment and Restatement of Lease dated May 13, 1998 (the “First Amendment”) and that certain Amendment of Lease dated August 11, 1998 (together with the Initial Agreement and the First Amendment, the “Agreement”). Under the Agreement, the Landlord leased approximately 4,400 square feet for a term expiring on June 30, 2008. Basic rent under the Agreement is approximately \$8,920 per month. A copy of the Agreement is not attached hereto but will be provided to parties in interest upon the receipt of written request delivered to Vinson & Elkins L.L.P., Attn: Pam Lewis, Paralegal, Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201-2975.

RELIEF REQUESTED

7. In the exercise of its business judgment, VarTec has determined that it should reject the Agreement effective as of October 31, 2005; and therefore, the Debtors request entry of an order pursuant to Bankruptcy Code § 365 authorizing and approving the rejection of the Agreement effective as of October 31, 2005.

8. Bankruptcy Code §365 provides that the Debtors, “subject to the Court’s approval, may assume or reject any . . . 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 unexpired leases.

9. Bankruptcy Code § 365 does not provide a standard for determining when a debtor's rejection of an 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, 104 S.Ct. 1188, 1194-95, 79 L.Ed.2d 482 (1984), and *Group of Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523, 63 S.Ct. 727, 87 L.Ed. 959 (1943)). As the Sixth Circuit observed, "[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, 104 S.Ct. 263, 78 L.Ed.2d 247 (1983) (emphasis added). Therefore, VarTec may reject any unexpired lease provided that it determines in its business judgment that rejection would be advantageous to it.

10. VarTec does not have a use for the Lease Premises. Because Bankruptcy Code § 365(d)(3) requires that a debtor timely perform all of its obligations, arising from and after the petition date under any unexpired lease of nonresidential real property until such lease is assumed or rejected, the Debtors request that this Court

approve the rejection of the Agreement as of October 31, 2005. By doing so, VarTec will avoid the possible incurrence of unnecessary administrative expenses. The Debtors also request authority to abandon any personal property remaining at the Lease Premises because that property is burdensome and of inconsequential value and benefit to VarTec's estate.

PRAYER

The Debtors respectfully request that the Court enter an Order authorizing the rejection of the Agreement effective as of October 31, 2005 and the abandonment of any personal property remaining at the Lease Premises. The Debtors requests such other and further relief to which they may be justly entitled.

Dated: October 3, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Richard H. London
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CERTIFICATE OF SERVICE

This is to certify that on October 3, 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. and with respect to the Landlord at the following address:

Hudson Telegraph Associates
c/o Williams Real Estate Co. Inc.
380 Madison Avenue
New York, New York 10017-2513

/s/ Richard H. London

One of Counsel

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