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**ATTORNEYS FOR THE DEBTORS**

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

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

**MOTION TO ENTER INTO BILLING AND COLLECTIONS  
AGREEMENTS WITH BELL SOUTH TELECOMMUNICATIONS, INC.**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 1, 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.

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

The above-referenced debtors and debtors in possession (collectively, the

“Debtors”)<sup>1</sup> file this Motion to Enter Into Billing and Collections Agreements with BellSouth Telecommunications, Inc. (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) 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 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.

### **STATEMENT OF FACTS**

#### **Relationship with BellSouth Telecommunications, Inc.**

6. Prior to the Petition Date, BellSouth Telecommunications, Inc. (“BellSouth”) and certain of the Debtors entered into Bill Processing Service

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

Clearinghouse Operating Agreements (collectively, the "Current BellSouth B&C Agreements"). The Current BellSouth B&C Agreements expire by their own terms on September 30, 2005.

7. In light of the expiration of the Current BellSouth B&C Agreements, BellSouth and the Debtors have negotiated new billing and collection agreements to be effective as of October 1, 2005 (collectively, the "New BellSouth B&C Agreements"). There are four such agreements and an Umbrella Agreement of same date for the purpose of volume pricing aggregation. The effective date of the New BellSouth B&C Agreements are contingent upon approval by this Court, but once Court approval is obtained the effective date will be *nunc pro tunc* to October 1, 2005.

8. The purpose of the Current BellSouth B&C Agreements and the New BellSouth B&C Agreements are to allow BellSouth to bill its customers for residential long distance services provided to the same persons by the Debtors as their customers and submit such funds to the Debtors after deducting a processing fee. Such long distance service provided by the Debtors includes dial around numbers (the 1010 numbers) and the residential customers of the Debtors (who have chosen the Debtors as their sole long distance carrier).

#### **New BellSouth B&C Agreements**

9. The terms of the Current BellSouth B&C Agreements are very similar to the New BellSouth B&C Agreements. The New BellSouth B&C Agreements have a two (2) year term starting on October 1, 2005 and expiring on September 30, 2007.

10. Under the New BellSouth B&C Agreement, the Debtors submit data of services provided to their customers for BellSouth to bill (each a "Message"). There is a

two tiered pricing structure on the fees charged by BellSouth. The top tier is a lower price structure which requires the Debtors to submit 25 million Messages annually to BellSouth. As a predictor of meeting this annual threshold, the New BellSouth B&C Agreement has a two (2) million Message minimum per month for the Debtors to continue receiving the lower rate structure. If the Debtors fail to meet the two (2) million Message amount for three (3) consecutive months, then the Debtors will drop to the lower tier with less favorable pricing. There are no true-ups for the pricing tiers under the New BellSouth B&C Agreements, thus, if the Debtors have one month that drops below two (2) million Messages followed by a month again meeting such threshold, then the Debtors will enjoy the top tier pricing (assuming they have not previously dropped to the lower tier of pricing).

11. There is a 35% price increase from the Current BellSouth B&C Agreements to the New BellSouth B&C Agreements. The Debtors submit that this price increase is the current industry standard for billing and collection agreements. Such increase has nothing to do with the Debtors' personal situation as a debtor in possession.

12. BellSouth is the only cost effective provider to bill the Debtors' residential long distance customers who also are BellSouth customers. Other third-party providers are generally on the same tier of pricing as the Debtors. Thus, there would be no savings, but rather increased pricing due to the additional processing fee charged by the third-party in addition to the pricing tier fees.

13. BellSouth has agreed to generally permit the Debtors to assign the New BellSouth B&C Agreements to any party who acquires substantially all of the Debtors'

assets (including Comtel Telcom Assets LP). Further, BellSouth has agreed that no administrative claims will arise from the New BellSouth B&C Agreements.

### **RELIEF REQUESTED**

14. By this Motion, the Debtors seek approval to enter into the New BellSouth B&C Agreements pursuant to Bankruptcy Code §§ 105 and 363.

15. 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).

16. 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); *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) (“for 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”).

17. In the exercise of their business judgment, the Debtors have determined that entering into the New BellSouth B&C Agreements will benefit their bankruptcy estates. Without the New BellSouth B&C Agreements the Debtors will not be able to cost effectively bill their residential long distance customers who also are BellSouth customers. The inability to cost effectively bill residential long distance end-user customers will be severely detrimental for the Debtors’ estates and would affect the Debtors’ ability to reorganize.

**PRAYER**

The Debtors respectfully request that the Court enter an order authorizing the Debtors to enter into the New BellSouth B&C Agreements and such other and further relief to which they may be justly entitled.

Dated: October 6, 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 October 6, 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/ Holly J. Warrington

One of Counsel

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