



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed October 3, 2005

Hamlin DeWayne Hale
United States Bankruptcy Judge

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

IN RE:

**VARTEC TELECOM, INC., et al.,

Debtors.**

§
§
§
§
§

**Case No. 04-81694-HDH-11

(Jointly Administered)**

**STIPULATION AND ORDER REGARDING THE PROCEEDINGS
RELATED TO THE CLAIMS OF AEROTEL, LTD.**

VarTec Telecom, Inc. and each of its affiliated debtor entities (collectively, the “Debtors”)¹ and Aerotel, Ltd. (“Aerotel”, and together with the Debtors, the “Parties”), by and through their respective undersigned counsel, hereby agree and stipulate as follows:

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

RECITALS:

A. On November 1, 2004 ("Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court").

B. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. On February 24, 2005, Aerotel filed proofs of claim in the amount of \$141,000,000.00 (plus enhanced damages for willful infringement) against each of the Debtors based upon Aerotel's claims of damages resulting from the Debtors' alleged infringement of Aerotel's patent rights conferred by U.S. Patent No. 4,706,275 (the "'275 Patent") stemming from the Debtors' alleged sale, offer for sale and use of "Prepaid Calling Card" products and/or services, as defined in the '275 Patent (the "Prepetition Claims").

D. On May 10, 2005, Aerotel filed proofs of administrative claim against each of the Debtors in an undetermined amount based upon Aerotel's claims of damages resulting from the Debtors' alleged infringement of the '275 Patent on and after the Petition Date (the "Administrative Claim"), and together with the Prepetition Claims, the "Aerotel Claims").

E. On August 26, 2005, the Debtors filed their Objection to Proofs of Claim Filed by Aerotel, Ltd. (the "Claims Objection"). Pursuant to the Claims Objection, the Debtors contend,

among other things, that the Aerotel Claims should be expunged and the amounts sought therein disallowed.

F. On September 8, 2005, Aerotel filed its Motion for Order Withdrawing the Reference of its Patent Infringement Claims and Supporting Memorandum of Law (the “Reference Motion”). Pursuant to the Reference Motion, Aerotel seeks to have the United States District Court for the Northern District of Texas (the “District Court”) withdraw the reference of all proceedings in the Bankruptcy Court related to the Aerotel Claims, including the Claims Objection. On or about September 9, 2005, the Reference Motion was transmitted to the District Court, thereby creating Civil Case No. 3-05-CV-1812-M (the “District Court Proceeding”).

G. A status conference on the Reference Motion is set before the Bankruptcy Court on September 29, 2005.

H. On September 12, 2005, in connection with the Claims Objection, Aerotel served the Debtors with Aerotel’s First Set of Interrogatories (“Interrogatories”) and Aerotel’s First Request for Production of Documents (the “Document Requests”).

I. Presently, the Debtors and Aerotel are informally working together in an attempt to resolve, or at least narrow, issues related to the Aerotel Claims and the Claims Objection. As a result, and pursuant to an agreement between counsel, the Debtors have refrained from filing their intended response in opposition to the Reference Motion and from serving their own

discovery requests on Aerotel, and Aerotel has refrained from filing its response to the Claims Objection and from pursuing formal discovery.

STIPULATION:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS:

1. All proceedings related to the Aerotel Claims, including the Claim Objections, the Reference Motion and the objection/response deadlines thereto, shall be stayed until further order of the Bankruptcy Court and, if necessary, the District Court.

2. A status conference on the Reference Motion shall be set before the Bankruptcy Court on January 17, 2006 at 01:30 PM, to, among other things, apprise the Bankruptcy Court of the status of the Parties' negotiations.

3. **This Stipulation and Order does not withdraw the reference to the District Court.** Notwithstanding anything set forth herein, this Bankruptcy Court has not made any recommendation as whether withdrawal of the reference is or is not proper.

4. The date by which the Debtors must serve Aerotel with the Debtors' responses to Aerotel's Interrogatories and Aerotel's Document Request is extended until either a new response deadline is agreed to by the Parties or, if no such new response deadline is agreed to, then to a date set by Aerotel which shall provide the Debtors with at least thirty (30) days to respond to the Interrogatories and the Document Request from that date.

5. The Parties agree to cooperate and work together in good faith in an attempt to resolve or narrow issues related to the Aerotel Claims, including voluntarily producing relevant, non-privileged documents related to the Aerotel Claims.

6. A copy of this Stipulation and Order shall be docketed in the District Court Proceeding and included within or referenced to in any report or recommendation made by the Bankruptcy Court to the District Court pursuant to L.B.R. 5011.1.

7. The Parties agree that this Stipulation and Order may only be modified or amended in a writing signed by each of the Parties hereto or their counsel and approved by the Bankruptcy Court.

8. The Bankruptcy Court shall retain exclusive jurisdiction with respect to issues that may arise in connection with the Stipulation and Order.

9. This Stipulation and Order shall be binding on the Parties hereto and their respective successors and assignees, including any Chapter 7 or Chapter 11 Trustee.

10. The signatories to this Stipulation and Order represent that they have been duly authorized by their respective clients to execute this Stipulation and Order.

11. This Stipulation and Order may be executed in any number of counterparts and shall constitute one agreement, binding upon the Parties hereto as if all Parties signed the same document; all facsimile signatures shall be treated as originals for all purposes.

End of Order

Dated: September 28, 2005

AEROTEL, LTD., by and through its counsel,
MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Kevin M. Lippman
Kevin M. Lippman
Texas Bar No. 00784479
4000 Fountain Place
1445 Ross Avenue
Dallas, Texas 75202-2790
Telephone: (214) 855-7500
Telecopier: (214) 855-7584

ATTORNEYS FOR AEROTEL, LTD.

1019183_2.DOC

Dated: September 28, 2005

The DEBTORS, by and through their counsel,
VINSON & ELKINS L.L.P.

By: /s/ James J. Lee
Daniel C. Stewart
Texas Bar No. 19206500
James J. Lee
Texas Bar No. 12074550
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
Telephone: (214) 220-7700
Telecopier: (214) 220-7716

ATTORNEYS FOR DEBTORS

Enterprise Systems Incorporated
11487 Sunset Hills Road
Reston, Virginia 20190-5234

CERTIFICATE OF SERVICE

District/off: 0539-3
Case: 04-81694

User: kfloyd
Form ID: pdf012

Page 1 of 1
Total Served: 1

Date Rcvd: Oct 05, 2005

The following entities were served by first class mail on Oct 07, 2005.
aty +James Jay Lee, Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue,
Dallas, TX 75201-2998

The following entities were served by electronic transmission.
NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

First Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Oct 07, 2005

Signature:

