

Daniel C. Stewart, SBT # 19206500  
William L. Wallander, SBT # 20780750  
Richard H. London, SBT # 24032678  
**VINSON & ELKINS L.L.P.**  
Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
Tel: 214.661.7299  
Fax: 214.220.7716  
[VarTec@velaw.com](mailto:VarTec@velaw.com)

**ATTORNEYS FOR THE DEBTORS**

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

<b>IN RE:</b>	§	
	§	
<b>VARTEC TELCOM, 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 Set for November 22, 2005 at</b>
	§	<b>1:30 p.m.</b>

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH  
REPUBLIC TITLE OF TEXAS, INC. AND REGIONAL MANAGEMENT CO., INC.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 22, 2005, AT 1:30 P.M. IN THE COURTROOM OF THE UNITED STATES BANKRUPTCY JUDGE, 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 Approve Compromise and Settlement with Republic Title of Texas, Inc. and Regional Management Co., Inc. (the “Motion”) and in support 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”) pursuant to 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.*, et al.; Case No. 04-81694-HDH-11.

### **STATEMENT OF FACTS**

6. On February 28, 2005, the Court entered its Order Approving the Sale of Real Property in DeSoto, Texas, Free and Clear of All Liens, Claims, Interests, Encumbrances, and Taxes, and Waiving the Automatic Stay Imposed Under Federal

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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.

Rule of Bankruptcy Procedure 6004(g) [Docket No. 1019] (the "Sale Order"). By the Sale Order, the Court approved the sale of an undeveloped tract of land in DeSoto, Texas owned by VarTec Properties, Inc. ("VarTec") under a Contract for Sale dated October 22, 2004 and the First Amendment to the Contract for Sale dated January 20, 2005 (together, the "Contract"). The buyer under the Contract is Regional Management Co., Inc. (the "Regional") (d/b/a Regional Management, Inc.). Pursuant to the Contract, Regional agreed to place \$25,000.00 into an escrow account at Republic Title of Texas, Inc. ("Republic Title") as earnest money (the "Funds")

7. On March 7, 2005, Regional notified VarTec that it sought to terminate the Contract and would not close on the proposed sale. On March 8 and 9, 2005 VarTec made written demand upon Republic Title for the Funds pursuant to the Contract. On March 17, 2005, Regional made a demand upon Republic Title for the Funds. On March 31, 2005, despite the competing demands, Republic Title released the Funds to Regional without prior notification to VarTec.

8. On July 18, 2005, VarTec filed its Complaint, which commenced the adversary proceeding against Republic Title styled VarTec Properties, Inc. v. Republic Title of Texas; Adversary Proceeding No. 05-03567 (the "Adversary Proceeding") which is pending before the Bankruptcy Court. In the Complaint, VarTec asserts causes of action based on breach of contract and breach of fiduciary duty.

9. VarTec, Republic Title, and Regional have negotiated a compromise and settlement of their dispute (the "Settlement"), which is more fully set forth in the Settlement Agreement by and among VarTec, Republic Title, and Regional (the "Settlement Agreement"), a form of which is attached hereto as **Exhibit A**.

## RELIEF REQUESTED

10. The Debtors request approval of the Settlement pursuant to, among other provisions, Bankruptcy Code §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

11. Bankruptcy Rule 9019(a) provides, in part, “On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. PROC. 9019(a).

12. The proponent of a compromise and settlement should set forth the legal and factual context of the compromise so that the Court may make an intelligent, objective and educated evaluation of the settlement. *Protective Comm. of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion, Inc.)*, 844 F.2d 1142, 1158-59 (5th Cir. 1988); *U.S. v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 299 (5th Cir. 1984).

13. In passing upon a proposed compromise and settlement, the Court must determine that the compromise and settlement is fair and equitable and in the best interest of the estate by considering, among other things, the following factors:

- a. the probability of success in the litigation;
- b. the difficulties to be encountered in the matter of collection, if any;
- c. the complexity of the litigation involved and the expenses, inconveniences, and delay necessarily attending it;
- d. the paramount interest of the creditors and their objections; and
- e. all other factors bearing on the wisdom of the settlement.

See *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980). See also *TMT Trailer Ferry*, 390 U.S. 414, 424 (1968).

14. Based on all applicable factors, the Settlement, which was negotiated in good faith and at arm's length, is in the best interest of the Debtors' estates and their creditors, and the Settlement is fair and equitable. As a result of the Settlement, VarTec will receive \$15,000 from Republic Title. In light of the amounts in dispute and the evidence that is probable to be presented by each side, the Settlement is a pragmatic means to resolve the claims discussed herein. VarTec has evaluated the strengths and weaknesses of its claims, and it has determined that the Settlement should be effectuated. The expense associated with litigating the issues presented herein likely would exceed the amount in dispute. By consummating the Settlement, the Debtors will avoid unnecessary expense, finally resolve disputed claims, and be able to focus their resources on other more important matters.

15. For these reasons, the Settlement should be approved.

#### **PRAYER**

The Debtors request that the Court enter an Order approving the Settlement and granting them such other and further relief to which they are justly entitled.

Dated: October 24, 2005

Respectfully submitted,

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

Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201  
Tel: 214.661.7299  
Fax: 214.220.7716

By:           /s/ Richard H. London            
Daniel C. Stewart, SBT #19206500  
William L. Wallander, SBT #20780750  
Richard H. London, SBT #24032678

**ATTORNEYS FOR THE DEBTORS**

**CERTIFICATE OF SERVICE**

This is to certify that on October 24, 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 the following parties:

Peter Graf  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas, Texas 75204

Gordon Russell  
Kane, Russell, Coleman & Logan, P.C.  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

Mark McDowell  
Regional Management Co., Inc.  
82 Armstrong Drive  
Mustang, Oklahoma 73064

          /s/ Richard H. London            
One of Counsel

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