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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.,	§	CASE NO. 04-81694-HDH-11
	§	
DEBTORS.	§	(Chapter 11)
	§	(Jointly Administered)
	§	
	§	Hearing Set for November 22, 2005 at
	§	1:30 p.m.

**MOTION TO APPROVE STIPULATION AND ORDER
REGARDING EXECUTORY CONTRACT WITH
McLEOD USA TELECOMMUNICATIONS SERVICES, 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”)¹ file this Motion to Approve Stipulation and Order Regarding Executory Contract with McLeod USA Telecommunications Services, 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).

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 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

6. VarTec Telecom, Inc. and McLeod USA Telecommunications Services, Inc. (“McLeod”) are parties to that certain Master Services Agreement (Carrier Accounts) dated September 14, 2004 (the “McLeod MSA”).

7. On October 10, 2005, McLeod, the Debtors, and Comtel Telcom Assets L.P. as assignee of Comtel Investments LLC (“Comtel”) executed their Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, among (i) the Debtor, (ii) McLeod USA Telecommunications Services, Inc., and (iii) Comtel Telecom Assets LP (the “Stipulation”).² A copy of the Stipulation is attached hereto as **Exhibit A**. The Stipulation addresses, among other things, the following, subject to the consummation of the Final Closing Date:

- assumption and assignment of the McLeod MSA and the payment of cure and providing of adequate assurance relating thereto;
- McLeod’s retention of certain prepetition amounts owed by it to VarTec Telecom, Inc.;
- the implementation of payment terms in favor of the Debtors; and
- rejection of certain circuits and the damages arising therefrom (such circuit rejections to be performed in connection with the “grooming” of the Debtors’ telecom network).

² Capitalized terms not defined herein shall have the meaning given to them in the Stipulation. To the extent that the discussion of the Stipulation contained in this Motion conflicts with the terms and conditions of the Stipulation, the Stipulation shall control.

RELIEF REQUESTED

8. Pursuant to Bankruptcy Code §§ 105, 363, and 365 and Rule 9019 of the Federal Rules of Bankruptcy Proceeding, the Debtors request that the Court enter an Order approving the Stipulation.

9. 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).

10. 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).

11. 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).

12. Based on all applicable factors, the Stipulation, 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 set forth in the Stipulation is fair and equitable. In the exercise of their business judgment, the Debtors have determined that the McLeod MSA should be assumed and assigned to Comtel. By executing the Stipulation, the Debtors obtain certainty with respect to (i) the assumption of the McLeod MSA and the assignment of the same to Comtel; (ii) the associated cure cost associated with such assumption and assignment; and (iii) their ability to reject individual circuit agreements and the nature of the damages resulting from the same. In addition, under the Stipulation, McLeod agrees to re-implement the payment terms under the McLeod MSA. The providing of payment terms will be beneficial to the Debtors and their liquidity. The structure of the Stipulation is consistent with the Debtors' need to obtain regulatory approvals.

13. For these reasons, the Stipulation should be approved.

PRAYER

The Debtors request that this Court enter an Order approving the Stipulation and grant them such other and further relief, both general and specific, to which they may be justly entitled.

Dated: October 25, 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 25, 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 upon McLeod at the following address:

McLeod USA Telecommunications Services, Inc.
Chris Munsch, Director of Credit and Collection
6400 C Street, SW
Cedar Rapids, IA 52406

/s/ Richard H. London
One of Counsel

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