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*ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>Case No. 04-81694-SAF</b>
<b>VARTEC TELECOM, INC., et al.,</b>	§	<b>(Chapter 11)</b>
	§	
<i>Debtors.</i>	§	<b>(Jointly Administered)</b>

**CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.’S  
REQUEST FOR PAYMENT OF DISPUTED FEES PURSUANT  
TO THE AMENDED FEE PROCEDURE ORDER  
*[Re Docket #118]***

TO THE HONORABLE COURT:

Carrington, Coleman, Sloman & Blumenthal, L.L.P. (“CCSB”) counsel for the Official Committee of Unsecured Creditors (the “Committee”) of the above-referenced debtors and debtors in possession (collectively, the “Debtors”<sup>1</sup>) files this Request for Disputed Fees Pursuant to the Amended Fee Procedure Order and respectfully states as follows:

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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 of Virginia, Inc.

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core matter.
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The relief requested in this Application is authorized under 11 U.S.C. §§ 105 and 503(b)(3)(F).

## II. PROCEDURAL BACKGROUND

4. On November 1, 2004 (the “Petition Date”), VarTec Telecom Inc. (“VarTec”) and the above-referenced Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

5. Since the Petition Date, the Debtors have continued to operate their business and manage their assets, in these cases (collectively the “Case”), as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. On November 5, 2004, the Court entered the Amended Order Establishing Procedures for Monthly and Interim Compensation and Reimbursement of Expenses for Case Professionals (the “Fee Procedure Order”) [Docket No. 118]. The Fee Procedure Order established procedures for compensation of case professionals retained in this case.

7. The Fee Procedure Order provides that the case professionals submit monthly fee statements for various parties review. In the event that one of the parties has an objection to the compensation or reimbursement sought, the party must serve a notice of objection setting forth the precise nature of the objection and the disputed amount. The objecting party and the professional to whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. After fifteen days of receipt of such objection, the professional whose fee statement is objected to shall have the option of filing the objection, together with a

request for payment of the disputed amount with the Court, or foregoing payment of the disputed amount until the next interim fee application.

8. On November 8, 2004, the United States Trustee appointed the members of the Committee. On the same date, the Committee retained CCSB to act as its counsel. CCSB filed its application to be retained on November 17, 2004; the Court entered its interim order temporarily approving the employment of CCSB on November 23, 2004; and the Court entered its final order approving the employment of CCSB on December 20, 2004.

9. CCSB was expressly charged with the task of investigating potential claims against officers and directors, as the Debtors and its counsel, Vinson & Elkins L.L.P., determined that they were not in the best position to do so.

10. On August 15, 2005, Rural Telephone Finance Cooperative (“RTFC”) filed its Objection of the Rural Telephone Finance Cooperative to Carrington, Coleman, Sloman & Blumenthal, L.L.P.’s Second Interim Application for Compensation and Reimbursement of Expenses and Request for Payment of the Twenty Percent Holdback (“RTFC’s First Objection”), a copy of the objection is attached as **Exhibit A**. RTFC’s First Objection argued that CCSB was not entitled to fees related to the investigation of claims against the Debtors’ Directors and Officers, (the “D&O Investigation”) for fees totaling \$342,106.50, as the Committee had not showed a benefit to the estate. RTFC requested the Court allow such fees only upon a showing of benefit to the estate. Additionally, RTFC requested an overall holdback of 25% pending the actual obtainment of value. (RTFC’s other objections therein were resolved by agreement, and are not relevant to the instant dispute.)

11. On August 19, 2005, the Court held a hearing on RTFC's First Objection and heard arguments from CCSB and RTFC. After hearing arguments the Court ruled from the bench, finding that

“[a]t this stage of this case based on the record, certainly there has been some benefit to the estate by the work of Carrington Coleman in this area. The question which will come up at the end of the day will be how the amounts involved compare to the benefit to the estate.”

Additionally, the Court set a date (originally September 9, 2005, later reset upon motion of the Debtors to September 14, 2005) for the completion of the D&O Investigation and report to the Committee. The Court then allowed the subject fees on an interim basis. A portion of the official transcripts from the hearing is attached as **Exhibit B**.

### **III. FACTUAL BACKGROUND**

12. In accordance with the Court's August 19, 2005, rulings, CCSB completed its investigation of potential D&O claims and made a timely, oral report<sup>2</sup> to the Committee on September 14, 2005.

13. Subsequent oral reports have also been given to RTFC and the Debtors (but excluding Michael Hoffman), respectively, pursuant to joint interest, confidentiality agreements.

14. Following such oral report, RTFC demanded and obtained a DIP lien in and to any and all D&O claims, *inter alia*, as collateral for its post-sale DIP financing to the Debtors.

15. On November 3, 2005, RTFC served via facsimile, the Notice of Objection of the Rural Telephone Finance Cooperative to Carrington, Coleman, Sloman & Blumenthal L.L.P.'s Statement for Fees and Expenses Incurred From September 1, 2005 Through September 20, 2005 (“RTFC's Second Objection”), which is attached as **Exhibit C**.

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<sup>2</sup> In each case, the oral report format has been utilized in order to best preserve available privileges.

16. In RTFC'S Second Objection, RTFC objects to fees and expenses totaling \$84,974.50 relating to the D&O Investigation (the "Disputed Amount") on the basis that the Committee has not yet initiated a suit against the parties, and the Court and creditors have no real sense of the value to the estate of the services.

17. RTFC requests that the total amount requested by CCSB during September be reduced by \$84,974.50, leaving a remaining \$66,235.00 which may be paid immediately by the Debtors.

#### IV. ARGUMENT

18. CCSB is entitled to payment for the Disputed Amount.

19. RTFC merely restates the argument from its first objection which the Court has already addressed, *i.e.*, that the fees requested for the D&O Investigation are not payable as the Committee has not brought a claim against the directors and officers and it is too early to see a benefit from the D&O Investigation.

20. When addressing this same objection at the August 19, 2005, hearing, the Court generally overruled it, finding that some measure of value has already been provided. However, the Court further ruled that any retrospective testing that later may be required by *Matter of Pro-Snax Distributors*, 157 F.3d 414 (5th Cir. 1998) (which CCSB continues to contend is distinguishable on its facts and holding) is premature.

21. As it contended at the prior hearing, CCSB has provided the estates with actual value by virtue of the D&O Investigation: (a) the investigation of claims by CCSB replicates the same product the Debtors were otherwise required to provide but for their potential conflicts, without duplication; (b) the Committee itself is statutorily charged with the duty to investigate assets of the estate, and CCSB has assisted the Committee in discharging that duty; (c) claims against the \$50 million D&O insurance policies have been preserved by conducting the

investigation and by preparing required claim and notice letters; (d) CCSB has gathered and organized approximately 92,000 pages of documents necessary to the pursuit of the D&O claims; (e) CCSB has informed the Committee and the estates as to the general results of its investigation; and (f) either CCSB or, if conflicts require,<sup>3</sup> another suitable firm, is positioned to commence D&O litigation upon the foundation of the investigation.

22. To the extent that any retrospective examination of benefit is determined to be required by *Pro-Snax*, such examination remains premature.

23. The repeated objections by RTFC are not necessary to preserve any complaint based on *Pro-Snax*, but instead, whether or not intended, interpose an atmosphere of confrontation and harassment in the cases. The Court should fashion relief that dispenses with the imposition of this same objection upon the submission of each and every fee request and fee application, particularly since the D&O investigation is now concluded.

**WHEREFORE**, CCSB requests that the Court allow payment of the Disputed Amount to the extent currently payable in the Amended Fee Procedure Order and that RTFC's objections be overruled.

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<sup>3</sup> CCSB is examining whether the recent, direct lien granted to RTFC in and to the D&O claims (to secure repayment of approximately \$10mm of DIP financing) poses an irreconcilable conflict, inasmuch as CCSB is currently pursuing contingency fee litigation against RTFC for the Committee as estate representative. As of the time of this pleading, no final determination has been made with respect to such conflicts. If the use of another firm is required by applicable ethical rules, CCSB will of course be ready, willing, and able to sufficiently transfer the fruits of its investigation to such other firm.

Dated: November 16, 2005.

Respectfully submitted,

/s/ Stephen A. Goodwin

Stephen A. Goodwin

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*Attorneys for the Official Committee of  
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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on November 16, 2005, a true and correct copy of the foregoing has been served, via ECF electronic mail and/or by regular United States Mail, postage-prepaid, on the parties listed on the Master Service List (*as of September 8, 2005*).

/s/ Rachel P. Ragni

Rachel P. Ragni