

YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE HONORABLE HARLIN D. HALE:

The above-referenced debtors and debtors in possession (collectively, the "Debtors")¹ file this Motion to Approve Settlement of Claims of Independent Representatives and Procedures Relating Thereto (the "Settlement Motion") and in support thereof would respectfully show the Court as follows:

INTRODUCTION

1. On November 1, 2004 (the "Petition Date"), the Debtors filed voluntary petitions for relief (collectively, the "Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On the Petition Date, the Debtors also filed their Motion to Authorize Rejection of Independent Representative Agreements and Brief in Support ("IR Rejection Motion"), seeking to reject their agreements with the independent representatives (collectively, the "IRs")² of Excel Telecommunications, Inc. and/or Excel Communications Marketing, Inc. (collectively, "Excel").

2. On December 8, 2004, the United States Trustee appointed the Official Committee of Excel Independent Representatives (the "IR Committee") in these Cases, and on December 9, 2004, the Court entered an order directing the IR Committee "to

¹ The Debtors include VarTec Telecom, Inc., Excel Communications Marketing, Inc., Excel Management Services, 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.

² IRs, in some instances, are corporations, partnerships, or other legal entities. All references to IRs herein, will be to the individual male gender, but intended to encompass all individual IRs, regardless of gender, and all IRs acting in an entity form.

address the issues related to Excel IRs and attempt to negotiate a global and comprehensive settlement of all Excel IR Claims.”

3. On March 1, 2005, the Court approved the IR Rejection Motion. Since then, the IR Committee, the Debtors, and other parties in interest have been actively negotiating a comprehensive compromise and settlement of the claims held by the IRs. The Debtors, the IR Committee, and the Debtors’ senior secured lender, the Rural Telephone Finance Cooperative (the “RTFC,” and together with the Debtors and the IR Committee, the “Settlement Parties”), have now reached an agreement (the “Global IR Settlement”) to compromise and settle all claims (the “IR Claims”) asserted or that could be asserted against the Released Parties (as hereinafter defined), including the Debtors’ bankruptcy estates and the RTFC, by the IR Committee and by those IRs who (i) were active as of the Petition Date according to the business records of the Debtors (collectively, the “Eligible IRs”), and (ii) participate in the Global IR Settlement (collectively, the “Settling IRs”).³ The Settlement Parties intend to enter into an agreement in a form substantially similar to that attached hereto as **Exhibit “A,”** to memorialize the Global IR Settlement (the “Settlement Agreement”), subject to approval by this Court.⁴

³ The Global IR Settlement neither compromises nor settles claims of any person or entity who is not an Eligible IR. Thus, the claims (if any) of (i) former IRs who were no longer active as of the Petition Date and (ii) independent representatives of non-U.S. Excel entities are not compromised or settled in the Global IR Settlement.

⁴ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement. To the extent that the discussion of the Settlement Agreement in this Settlement Motion conflicts with the terms of the Settlement Agreement itself, the terms of the Settlement Agreement shall control.

4. By this Settlement Motion, the Debtors request that the Court (i) enter an Order (the "Procedures Order") at a hearing to be held on November 22, 2005 at 1:30 p.m., prevailing Central time (the "Procedures Hearing") approving the following: (A) notice and service procedures relating to the Global IR Settlement (the "Notice Procedures"), including (i) an initial notice of the proposed Global IR Settlement and of the hearing on the Settlement Motion to be served on all Eligible IRs prior to the Settlement Hearing (as defined below) and (ii) a second notice advising of the approval, and the opportunity to opt out, of the Global IR Settlement, to be served on all Eligible IRs, but only if and after the Court approves the Global IR Settlement; (B) the setting of December 16, 2005 at 5 00 p.m., prevailing Central time, as the deadline for filing objections to the Settlement Motion (the "Objection Deadline"); (C) the setting of a hearing on December 19, 2005 at 1:30 p.m., prevailing Central time (the "Settlement Hearing") to consider the approval of the Settlement Motion and Settlement Agreement; (E) the setting of January 11, 2006 as the deadline by which the Debtors must receive written notice of any Eligible IR's intent to opt out of the Global IR Settlement, if approved by the Court, as discussed below (the "Opt-Out Deadline"); and (F) the setting of February 21, 2006 as the deadline for filing proofs of claim for all Eligible IRs who timely exercise their right to opt out of the Global IR Settlement, and all other IRs who are **not** identified on the IR Schedule (as hereinafter defined). At the Settlement Hearing, the Settlement Parties request that the Court enter an Order approving the Global IR Settlement (the "Settlement Order").

JURISDICTION AND PROCEDURAL BACKGROUND

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Settlement Motion concerns the administration of the estates; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. 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.

8. The Debtors' Cases have been jointly administered under Case No. 04-81964-HDH-11.

9. On January 31, 2005, the Court entered its Order Suspending the Bar Date for Excel Independent Representatives to File Proofs of Claim [Docket No. 872] by which it suspended indefinitely the proof of claim deadline for all IRs.

10. By its order entered on October 12, 2005, the Court extended the Debtors' exclusive period for filing a plan through and including November 22, 2005, and the Debtors' exclusive period to solicit acceptance of such plan through and including January 26, 2006, without prejudice to the Debtors' right to seek further extensions. (See Docket # 1977). No plan has been filed as of the filing of this Settlement Motion.

STATEMENT OF FACTS

Compromise and Settlement of the IR Claims

11. The Global IR Settlement provides among other things: (i) for the right of any Eligible IR to opt out of the Global IR Settlement and pursue his claim through the normal claims allowance process, which would require the filing of a proof of claim,

(ii) that on the later of (A) February 14, 2006 and (B) such other date as is agreed to in writing by the Settlement Parties, the Debtors shall distribute the settlement payments by mail to the Settling IRs (the “Distribution”) (the date of actual mailing being the “IR Payment Date”); (iii) that on the IR Payment Date, the Debtors shall acknowledge and allow the IR Claims as reflected in a to-be-filed IR Schedule (as hereinafter defined) without the need for the Settling IRs to file proofs of claim; (iv) that on the IR Payment Date, all existing and potential claims and causes of action, including the IR Claims, will be released by the Settling IRs and the IR Committee as against (A) the Debtors and their affiliates, and each of their officers, directors, employees, agents, and attorneys who served in such capacities on or after the Petition Date, including, but not limited to Michael G. Hoffman, Melissa A. Drennan, Timothy Biggio, Stan Springel, K.J. Alzamora, David Walsh, John D. Schissler, and Joseph D’Angelo, and (B) the RTFC, its affiliates, and each of their officers, directors, employees, agents, and attorneys who served in such capacity prior to or as of the IR Payment Date (collectively, the “Released Parties”); and (v) for a permanent injunction prohibiting and enjoining any act by a Settling IR or by the IR Committee to pursue or recover upon any IR Claim against any of the Released Parties.

12. The IR Claims to be compromised and settled are classified as follows:⁵

a. Class A Claims – 10-Day Rescission Period Claims: IR Claims on account of new enrollment or training fees, and/or sales associate deposits

⁵ It is possible, and in fact likely, that an Eligible IR may have claims in multiple classes. The information concerning the amounts of claims within each of the described classes are estimates only and are subject to final review and reconciliation of the Debtors’ books and records by Scouler Andrews on behalf of the IR Committee.

actually received by the Debtors between October 22, 2004 and October 31, 2004, inclusive (the "Class A Claims"). The Debtors estimate that approximately 999 Eligible IRs hold Class A Claims in the aggregate amount of approximately \$421,345.

b. Class B Claims – Pre-Petition Recruiting Commissions and Ambassador/ESD/SD Pool Claims: IR Claims on account of (i) earned, but unpaid, pre-petition recruiting commissions as of October 31, 2004; and/or (ii) participation in the Ambassador, Executive Senior Director, or Senior Director Pools with respect to Excel's revenues during August 2004 only, and for which a Settling IR "qualified" to participate during October 2004 (the "Class B Claims"). The Debtors estimate that approximately 1,345 Eligible IRs hold Class B Claims in the aggregate amount of approximately \$754,742.

c. Class C Claims – Pre-Petition Usage Commissions: IR Claims on account of earned, but unpaid, pre-petition usage commissions as of October 31, 2004 (the "Class C Claims"). The Debtors estimate that approximately 68,729 Eligible IRs hold Class C Claims in the aggregate amount of approximately \$1,508,508.

d. Class D Claims – Post-Petition Usage Commissions: IR Claims on account of anticipated, post-petition usage commissions (the "Class D Claims"). In light of the terms of the Global IR Settlement (which provides for no Distribution on account of Class D Claims), the number of Eligible IRs holding Class D Claims and the aggregate amount of Class D Claims has not been calculated by the Settlement Parties.

e. Class E Claims – Unused Fee Claims for Twelve Months prior to the Petition Date: IR Claims on account of unused enrollment, training, or renewal fees for those Settling IRs whose enrollment date or annual renewal date was between November 1, 2003 and October 31, 2004, inclusive, and who do **not** hold a Class A Claim (the “Class E Claims”). The Debtors estimate that approximately 61,588 Eligible IRs hold Class E Claims in the aggregate amount of approximately \$10,984,500.43.

f. Class F Claims – Post-Petition Payments Received by Debtors (Any Fees, Deposits, etc.): IR Claims on account of post-petition payments of enrollment fees, training fees, renewal fees, or other fees or deposits. Both the number and aggregate amount of claims in this class are believed to be zero.

g. Class G Claims – Miscellaneous Claims against the Released Parties (Expense Reimbursement, Tort Claims, Breach of Contract Claims, and Any Other IR Claim Not Included in Classes A through E): All other IR Claims and claims of the IR Committee, its members, and each and every Settling IR, against the Released Parties, of whatever kind or character, whether known or unknown, whether sounding in contract or in tort, at law or in equity, whether joint or several, including, for purposes of further illustration but not limitation, any claims or challenges against the RTFC or with respect to any claims or liens of the RTFC asserted in the Cases (“Class G Claims”). Both the number and aggregate amount of claims in this class are unknown.

13. The treatment of each Class of IR Claims under the Global IR Settlement is summarized below:

a. Class A Claims: Class A Claims will be paid in full by a check (a "Settlement Check") drawn on a specially established bank account of the Debtors (the "Distribution Account," as hereinafter defined) and mailed to the Settling IR on the IR Payment Date.

b. Class B Claims: Class B Claims will be allowed as priority claims pursuant to section 507(a)(3) of the Bankruptcy Code up to the statutory maximum of \$4,925 per Settling IR for the combined amount of such Settling IR's Class B Claim and Class C Claim (the "Combined Priority Amount"). Such priority claims will be paid by Settlement Check mailed to the Settling IR on the IR Payment Date. That portion of a Settling IR's Class B Claim in excess of the Combined Priority Amount, if any, will be allowed in full, upon the occurrence of the IR Payment Date, as a pre-petition general unsecured claim and treated under any plan of reorganization or liquidation confirmed and consummated in these Cases ("Plan") as an allowed general unsecured claim in accordance with the Settlement Agreement (the "Class B Allowed Unsecured Claims").

c. Class C Claims: Class C Claims will be allowed as priority claims pursuant to section 507(a)(3) of the Bankruptcy Code up to the Combined Priority Amount upon the occurrence of the IR Payment Date. Such priority claims will be paid by Settlement Check mailed to the Settling IR on the IR Payment Date. That portion of a Settling IR's Class C Claim in excess of the Combined Priority Amount, if any, will be allowed in full, upon the occurrence of the IR Payment Date, as a pre-petition general unsecured claim and treated under any Plan as an allowed general unsecured claim in accordance with the Settlement

Agreement (the "Class C Allowed Unsecured Claims," and collectively with the Class B Allowed Unsecured Claims, the "Allowed Unsecured Claims").

d. Class D Claims: Class D Claims will be waived, released, and forever discharged on the IR Payment Date. No Distribution will be made on account of Class D Claims.

e. Class E Claims: Each holder of a Class E Claim shall be entitled to a claim in an amount to be determined by the following formula: $A = B \times (C \div D)$, where **A** = the amount of the Settling IR's Class E Claim; **B** = the total amount of enrollment, training, or renewal fees paid by such Settling IR during the 365 days prior to the Petition Date; **C** = 365 minus the number of days from the date of actual enrollment or renewal by the Settling IR through the Petition Date; and **D** = 365. Each Settling IR holding a Class E Claim shall receive in full satisfaction of such Class E Claim a pro rata share of \$600,000 (the "Class E Settlement Amount") which shall be determined by the following formula: $X = (Y \div Z) \times \$600,000$, where **X** = the Settling IR's Class E Settlement Amount; **Y** = the amount of the Settling IR's Class E Claim (computed as "A" in the manner set forth above); and **Z** = the aggregate amount of all Settling IRs' Class E Claims. The Distribution on account of the Class E Claims shall be paid by Settlement Check mailed to the Settling IR on the IR Payment Date.

f. Class F Claims: Each holder of a Class F Claim, if any, will be paid his Class F Claim in full by Settlement Check mailed on the IR Payment Date.

g. Class G Claims: Class G Claims will be waived, released and forever discharged on the IR Payment Date. No Distribution will be made on account of Class G Claims.

14. Except for any Allowed Unsecured Claims held by a Settling IR pursuant to the Settlement Agreement, (i) the Distribution shall be in full satisfaction of any and all IR Claims against the Released Parties, and (ii) upon the occurrence of the IR Payment Date, all IR Claims against the Released Parties shall be waived, released, and forever barred.

15. The Settlement Agreement contains other provisions, including, but not limited to, the following:

- Except as expressly permitted under the terms of the Settlement Agreement, Settling IRs and the IR Committee will be permanently enjoined from taking any action to assert or recover upon the IR Claims against the Released Parties. Further, each Settling IR covenants and agrees not to sue or to take any action to assert or recover upon any IR Claim against any Released Party.
- The Distribution and Allowed Unsecured Claims shall be subject to the Debtors' rights of setoff.⁶ To the extent the Debtors' setoff rights exceed both a Settling IR's share of the Distribution and his Allowed Unsecured Claim, if any, the Debtors shall be allowed to seek recovery of the unpaid balance from said Settling IR in accordance with applicable law. In addition, the Debtors shall be authorized, but not obligated, to withhold from any Distribution amounts due any third party under any garnishment or levy, to the extent applicable.
- All pre-petition claims held by the Debtors against any Settling IR as of the entry of the Settlement Order and all causes of action of the Debtors arising

⁶ Under the terms of the Settlement Agreement, the Debtors' rights of setoff against the Distribution and Allowed Unsecured Claims will be limited to claims of the Debtors on account of (a) credit card chargebacks, payment reversals, credits, or other refunds in favor of any Settling IR in respect of any payments previously made by such Settling IR to the Debtors and later reversed or voided, and (b) any loan of such Settling IR owing to the Debtors that remains unsatisfied as of the IR Payment.

under chapter 5 of the Bankruptcy Code against any Settling IR will be waived, released, and forever discharged on the IR Payment Date.

- Thirty (30) days after the IR Payment Date, the appointment of the IR Committee shall sunset automatically without further order of the Court.

16. The Debtors will file, on or before two (2) business days prior to the Settlement Hearing, a schedule that identifies (i) each Eligible IR who holds one or more IR Claims, (ii) the amount of each of the IR Claims in each Class, if known, and (iii) the amount of any setoff to be asserted by the Debtors against the Distribution to, and Allowed Unsecured Claims, if any, of such Eligible IR if such Eligible IR becomes a Settling IR (the “IR Schedule”).⁷ If an Eligible IR disputes any aspect of his scheduled IR Claims, including the amount thereof, or of the Debtors’ proposed setoff, he must opt out of the Global IR Settlement or be deemed to have accepted as accurate the IR Claims and other amounts set forth in the IR Schedule. Any IR without a scheduled claim shall **not** be eligible to participate in the Global IR Settlement.⁸

17. Any Eligible IR listed on the IR Schedule **may** opt out of the Global IR Settlement for any reason. If an Eligible IR desires to opt out of the Global IR Settlement, he must do so in the manner set forth herein and before the Opt-Out Deadline or be deemed bound by the terms of the Settlement Agreement, including the releases contained therein.

⁷ Regardless of whether an Eligible IR has filed a proof of claim prior to the IR Payment Date, he would be deemed to have IR Claims in the amount identified on the IR Schedule **unless** he opts out of the Global IR Settlement.

⁸ At the request of the IR Committee, the Debtors will provide a special notice to those IRs who were terminated (for cause, or as a result of a resignation by such IR) within the 90 days prior to the Petition Date, notifying them that they are not considered an Eligible IR according to the books and records of the Debtors as a result of such termination and, therefore, will not be able to participate in the Global IR Settlement. The notice will include notice of the IR Bar Date (as hereinafter defined).

18. The Settlement Parties request that the Court establish February 21, 2006 (the "IR Bar Date") as the date by which any Eligible IR who opts out of the Global IR Settlement and any IR who is not identified in the IR Schedule must file a proof of claim or have his claims against the Debtors and their bankruptcy estates forever barred. The Debtors will provide notice of the IR Bar Date to those IRs not otherwise noticed in connection with the Global IR Settlement by publication in the national edition of the USA Today no later than 60 days before the IR Bar Date.

19. The Debtors will make the Distribution on the IR Payment Date. Prior to the IR Payment Date, the Debtors shall establish a segregated settlement funding account (the "Funding Account") and a "zero balance" disbursement account (the "Distribution Account") to be maintained at a federally-insured financial institution (the "Payor Bank"). The Distribution will be made from the Distribution Account, which will be funded by the Debtors from the Funding Account on a daily basis, in an amount equal to at least the aggregate amount of Settlement Checks presented for payment to the Payor Bank prior to the close of business on the immediately preceding business day. The Funding Account shall be funded by advances to the Debtors from the RTFC under the RTFC Administrative Debtor in Possession Credit Agreement dated October 19, 2005 ("New RTFC DIP Financing"), approved by the Court by final order entered on November 7, 2005. Settlement Checks shall be valid and payable for 120 days from and after the IR Payment Date. Any Settlement Check not presented to the Payor Bank for payment within 120 days after the IR Payment Date shall become null and void for purposes of presentment, funding by the Debtors and the RTFC, or receipt of any Distribution under the Settlement Agreement. Failure of any Settling IR to timely

present any Settlement Check shall not, however, alter or diminish in any way the compromises, waivers, releases, and settlements otherwise called for or embodied in the Settlement Agreement. Under the terms of the Settlement Agreement, the IR Committee and the Settling IRs shall waive all rights, claims, and/or entitlements to any unclaimed, unpaid, or stale Distribution or Settlement Checks.

RELIEF REQUESTED

Notice Procedures

20. Pursuant to the Supreme Court's decision in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 2d 865 (1950), the Debtors must provide the Eligible IRs notice that is "reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314, 70 S.Ct. at 657. The Supreme Court further stated, "[T]he reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Id.* at 315, 70 S.Ct. at 65.

21. To satisfy the standard set forth by the Supreme Court in *Mullane*, the Debtors shall serve the Settlement Motion on the parties listed on the Debtors' master service list via the Court's electronic noticing system, facsimile, or overnight delivery, as appropriate.

22. The Debtors hereby request that the Court enter the Procedures Order, approving the following notices and related procedures: Within three (3) business days after the Court's entry of the Procedures Order, the Debtors shall (i) serve a notice

substantially the same as that attached hereto as **Exhibit “B”** (the “Notice of Proposed Settlement”), on all Eligible IRs by mail.⁹

23. The Notice of Proposed Settlement shall provide at least the following information: (i) a disclosure that the Settlement Parties have agreed upon a settlement of the IR Claims and that the Eligible IRs may have IR Claims against the Debtors’ bankruptcy estates and/or the RTFC that may be affected by the Global IR Settlement; (ii) a summary of certain key terms of the Global IR Settlement (“Settlement Summary”), including, among other things, (A) a description of the Classes of IR Claims and the proposed treatment of each such class; (B) a recitation that all IR Claims are to be released and the identity of the Released Parties; and (C) a statement that the Eligible IRs shall have the right to opt out of the Global IR Settlement; (iii) a statement that an Eligible IR may object to the Global IR Settlement and setting forth the Objection Deadline; and (iv) the identification of an internet website (the “Website”), a mailing address, and a facsimile number at which additional information concerning the Global IR Settlement can be obtained or requested.

24. If the Global IR Settlement is approved, then within three (3) business days after the Court’s entry of the Settlement Order, the Debtors will serve by mail on all Eligible IRs a notice substantially the same as that attached hereto as **Exhibit “C”** (the “Settlement Approval Notice”).

25. The Settlement Approval Notice shall provide at least the following information: (a) that the Court has approved the Global IR Settlement; (b) the

⁹ The service of the Notice of Proposed Settlement or a Settlement Approval Notice (as hereinafter defined) on an Eligible IR shall not be deemed to be an admission that such Eligible IR has an IR Claim.

Settlement Summary; (c) instructions on how an Eligible IR may exercise the right to opt out of the Global IR Settlement; (d) a statement that a failure to opt out of the Global IR Settlement will result in that Eligible IR becoming a Settling IR and being bound by the terms of the Global IR Settlement, including the releases therein; (e) the Opt-Out Deadline; (f) the IR Bar Date; and (g) identification of the Website,¹⁰ mailing address, and a facsimile number at which an Eligible IR may obtain or request (i) certain documents relating to the Global IR Settlement, including a complete copy of the Settlement Agreement, (ii) the form that he must complete and mail so as to be received by the Debtors on or before the Opt-Out Deadline if he wishes to opt out of the Global IR Settlement (“Opt-Out Election Form”) in substantially the form of **Exhibit “D”** attached hereto, and (iii) a proof of claim form if he chooses to opt out of the Global IR Settlement and assert a claim against the Debtors.

26. The Debtors and the IR Committee also propose sending all Eligible IRs a letter from the IR Committee supporting the Global IR Settlement (the “IR Committee Letter”), in substantially the form of **Exhibit “E”** attached hereto. The IR Committee Letter will be served with the Settlement Approval Notice.

27. Any Eligible IR who seeks to opt out of the Global IR Settlement must complete the Opt-Out Election Form and return it to the Debtors at the mailing address set forth in the Settlement Approval Notice and on the Opt-Out Election Form. Only Opt-Out Election Forms that have been (i) properly completed and signed by the person

¹⁰ The Website will provide links to, among other things, this Settlement Motion, the Settlement Order, the Settlement Agreement, the IR Committee Letter (as hereinafter defined), the Procedures Order, the Opt-Out Election Form (as hereinafter defined), the IR Schedule (immediately after it is filed with the Court), a proof of claim form, a page containing answers to frequently asked questions, and a mailing address at which further information concerning the Global IR Settlement can be obtained.

authorized to act on behalf of an Eligible IR and (ii) received by the Debtors on or before the Opt-Out Deadline shall be honored. Opt-Out Election Forms sent by facsimile will not be accepted or honored. Any claim of an Eligible IR who properly elects to opt out of the Global IR Settlement shall automatically be deemed unscheduled and disputed. Any Eligible IR who opts out of the Global IR Settlement shall have until the IR Bar Date to file a proof of claim. Should an Eligible IR who timely submitted an Opt-Out Election Form fail to file a proof of claim, his claims shall be forever barred as against the Debtors and their bankruptcy estates.

Objection Deadline and Date of Settlement Hearing

28. The Debtors request that the Court set December 16, 2005, at 5:00 p.m., prevailing Central time, as the Objection Deadline. Objections must be in writing, specifying with particularity the grounds therefore or other statements of position, and must be filed with the Court and served on all of the following by the Objection Deadline: (i) the Debtors at VarTec Telecom, Inc., Attn: IR Settlement Objection, 2440 Marsh Lane, Carrollton, Texas, 75006; (ii) the Debtors' counsel at Vinson & Elkins L.L.P., Attn: James J. Lee, 2001 Ross Avenue, Suite 3700, Dallas, Texas, 75201; (iii) the IR Committee's counsel at White & Case LLP, Attn: John K. Cunningham, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida, 33131; (iv) the RTFC's counsel at Fulbright & Jaworski L.L.P., Attn: Toby L. Gerber, 2200 Ross Avenue, Suite 2800, Dallas, Texas, 75201; (v) the Official Committee of Unsecured Creditors' counsel at Carrington, Coleman, Sloman & Blumenthal, L.L.P., Attn: Stephen A. Goodwin, 200 Crescent Court, Suite 1500, Dallas, Texas, 75201; and (vi) the United

States Trustee, Attn: George McElreath at 1100 Commerce Street, Room 9-C-60, Dallas, Texas, 75242.

29. The Debtors request that the Court set the Settlement Hearing for December 19, 2005, at 1 30 p.m., prevailing Central time.

Approval of the Settlement

30. Pursuant to Bankruptcy Code §§ 105, 363, 502, and 503 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors request entry of the Settlement Order, approving the Global IR Settlement, including the payments to be made, claims to be allowed, and releases to be granted thereunder. The IR Committee and the RTFC support approval of the Global IR Settlement and implementation of the procedures set forth in this Settlement Motion

31. Bankruptcy Code § 105(a) authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). 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). The approval of the Global IR Settlement would result in a use, other than in the ordinary course of business, of property of the Debtors' estates.

32. Bankruptcy Rule 9019 provides, in part,

(a) **Compromise.** On motion by the trustee after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANK. P. 9019(a).

33. Because the IR Claims derive from a common set of facts and circumstances and each IR Claim within each Class is treated similarly under the Global IR Settlement, the Debtors request that the Court authorize the compromise and settlement of such IR Claims as contemplated by the Settlement Agreement, this Settlement Motion, and the Notice Procedures. Given the number of Eligible IRs (in excess of 124,000) and the relatively small amount of each IR Claim, the filing of a separate motion to authorize the compromise and settlement of each IR Claim would be impracticable and financially burdensome on the estates.

34. 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:

- i. the probability of success in the litigation;
- ii. the difficulties to be encountered in the matter of collection, if any;
- iii. the complexity of the litigation involved and the expenses, inconveniences, and delay necessarily attending it;
- iv. the paramount interest of the creditors and their objections;
and
- v. 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 Protective Comm. of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Based on all

applicable factors, the Global IR Settlement is in the best interest of the Debtors' estates and their creditors, and the Global IR Settlement is fair and equitable.

35. After several months of negotiations and contemplation, the Debtors determined that they should effectuate the Global IR Settlement, which will resolve claims of up to approximately 124,000 IRs. Absent approval of the Global IR Settlement, the litigation relating to the resolution of such claims (through claim objections and other traditional avenues) would result in the incurrence of significant expenses to the estates.

36. Proceeding with the traditional claims objection process would drain the scarce resources of the Debtors and make the plan process problematic. If the Global IR Settlement is not approved, each of the more than 124,000 IRs could file proofs of claim. The Debtors would be required to analyze each of those claims and to prosecute objections to those proofs of claim, where warranted. The claims analysis process with respect to 124,000 proofs of claim, which would require the Debtors to conduct discovery and internal fact finding investigations, would be prohibitively costly to the estates.

37. Given the sheer number of claims potentially held by Eligible IRs and the relatively small amount of each claim, the Debtors determined that, in and of itself, the time and money that would be required to resolve such claims through the traditional claims allowance process justified the settlement of such claims in the Global IR Settlement. In addition to saving time and expenses that would be associated with the claims allowance process, the Debtors, by virtue of the Global IR Settlement would be

relieved of the costly burden of serving and soliciting nearly 124,000 IRs in connection with the prosecution of any Plan in these Cases.

38. The Global IR Settlement also will enable the Debtors to eliminate the expenses incurred by the IR Committee. To represent the interests of IRs, the Court ordered the United States Trustee to appoint the IR Committee. The IR Committee employed counsel and a claims expert to advise it in these Cases, and it has participated actively in these Cases. The reasonable and necessary costs of the IR Committee and its professionals have been and will be borne by the Debtors' estates. Under the Global IR Settlement, the IR Committee will be disbanded and cease to exist 30 days after the IR Payment Date.

39. For these reasons, the Global IR Settlement should be approved.

Opt-Out Deadline

40. The Debtors request that the Court set January 11, 2006 as the Opt-Out Deadline. An Eligible IR may opt out of the Global IR Settlement by following the instructions set forth in the Settlement Approval Notice.

41. The Debtors request that the Court set February 21, 2006 as the IR Bar Date. Proofs of claim must be sent to the Debtors' claims agent at the following address: (i) if via first class United States mail, VarTec Telecom, Inc. c/o BMC Group, P.O. Box 1011, El Segundo, California, 90245-1011, and (ii) if, via hand delivery or overnight courier, VarTec Telecom, Inc. c/o BMC Group, 1330 E. Franklin Avenue, El Segundo, California, 90245.

Amendment of the Debtors' Schedules

42. Bankruptcy Rule 1009(a) provides,

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

FED. R. BANKR. P. 1009(a).

43. In conjunction with the Global IR Settlement, the Debtors will stipulate to the amount of the IR Claims of any Settling IR and the fact that such claims are allowed, liquidated, non-contingent, and undisputed. As a result, the Debtors request that upon the occurrence of the IR Payment Date, and without further notice, the schedules of liabilities of the bankruptcy estate(s) of the Debtors in which such IR Claims arise be amended so that the IR Claims of Settling IRs shall be deemed to be listed on the schedules of liabilities in the amounts set forth in the IR Schedule. The IR Claims reflected in such amendments shall be deemed unsecured and disputed with respect to any Eligible IR who opts out of the Global IR Settlement and does not become a Settling IR.

44. Further, the Debtors request that any proof of claim that was or is filed by any Settling IR be expunged from the Debtors' claim register as of the IR Payment Date.

PRAYER

The Debtors respectfully request that the Court:

(i) enter an Order approving the following at the Procedures Hearing: (A) the Notice Procedures, including the form and manner of the Notice of Proposed Settlement, the Settlement Approval Notice, the Opt-Out Election Form, and the IR

Committee Letter, attached hereto as Exhibits B, C, D, and E, respectively; (B) the setting of the Objection Deadline, (C) the setting of the Settlement Hearing to consider the approval of the Global IR Settlement and the Settlement Agreement, (D) the setting of the Opt-Out Deadline, (E) the setting of the IR Bar Date;

(ii) approve the Global IR Settlement and the Settlement Agreement and enter the Settlement Order at the Settlement Hearing; and

(iii) grant all and other relief requested in the Settlement Motion and such other and further relief to which they may be justly entitled.

Dated: November 17, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ James J. Lee
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James J. Lee, SBT # 12074550
Courtney S. Lauer, SBT # 24043771

ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on November 17, 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.

James J. Lee
One of Counsel

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