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**ATTORNEYS FOR THE DEBTORS**

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

<b>IN RE:</b>	§	
	§	
<b>VARTEC TELECOM, INC., et al.,</b>	§	<b>CASE NO. 04-81694-HDH-11</b>
	§	
<b>DEBTORS.</b>	§	<b>(Chapter 11)</b>
	§	<b>(Jointly Administered)</b>

**NINTH MOTION TO AUTHORIZE REJECTIONS OF  
ASSORTED EXECUTORY CONTRACTS AND  
PERSONAL PROPERTY LEASES AND BRIEF IN SUPPORT**

**TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 13, 2005, AT 1:30 P.M. IN THE COURTROOM OF THE HONORABLE HARLIN D. HALE, 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.**

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> file this Ninth Motion to Authorize Rejections of Assorted Executory Contracts and Personal Property Leases and Brief in Support (the “Motion”) and in support thereof the Debtors would 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).

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

6. On July 29, 2005, the Court entered its Order (A) Approving the Sale Free and Clear of All Liens, Claims, Rights, Interests and Encumbrances to Comtel Investments LLC and (B) Granting Related Relief (Substantially All of the Debtors’ Remaining Assets) [Docket No. 1663] in which it authorized the sale of substantially all

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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.

of the Debtors' remaining assets to Comtel Investments LLC ("Comtel") under the Asset Purchase Agreement dated July 25, 2005 by and among the Debtors and Comtel (the "APA").

## **STATEMENT OF FACTS**

### **Executory Contracts and Personal Property Leases**

7. The Debtors are in the process of evaluating their executory contracts and unexpired leases of personal property. Although this review is still underway, the Debtors have identified certain executory contracts and personal property leases that are not essential to the Debtors' reorganization or continued operations. Accordingly, the Debtors request authority to reject the executory contracts and unexpired leases listed on **Exhibit A** attached hereto (the "Contracts"). A copy of the Contracts themselves are not attached but will be provided to parties in interest upon the receipt of a written request sent to Vinson & Elkins L.L.P., Attn: Pam Lewis, Paralegal, Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201-2975.

## **RELIEF REQUESTED**

8. The Debtors have determined that they will not need the goods and services relating to each of the Contracts; and therefore, they have determined that the rejection of the Contracts will avoid unnecessary and burdensome administrative claims against their estates that could be asserted. Pursuant to Bankruptcy Code § 365, the Debtors have determined, in their business judgment, that it is in their best interest, and that of their estates, to immediately reject the Contracts.

9. By this Motion, the Debtors request entry of an order pursuant to Bankruptcy Code § 365 authorizing and approving the rejection of the Contracts as provided herein.

10. Bankruptcy Code § 365 provides that the Debtors, “subject to the Court’s approval, may assume or reject any executory contract and unexpired lease of the debtor.” 11 U.S.C. § 365(a). A debtor operating its business pursuant to Bankruptcy Code §§ 1107 and 1108 must use reasonable judgment in ordinary business matters in its determination of whether to reject executory contracts and unexpired leases.

11. Bankruptcy Code § 365 does not provide a standard for determining when a debtor’s rejection of an executory contract or unexpired lease is appropriate. *In re Monarch Tool & Manufacturing Co.*, 114 B.R. 134 (Bankr. S.D. Ohio 1990). However, most courts acknowledge that the business judgment standard should be applied to determine “whether to authorize the rejection of executory contracts and unexpired leases.” *In re Federated Department Stores, Inc.*, 131 B.R. 808, 811 (Bankr. S.D. Ohio 1991) (citing, *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) and *Group of Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523 (1943)).

As one court stated:

[A] bankruptcy court . . . need determine only . . . whether disaffirmance would be advantageous to the debtor. The burden or hardship which rejection would impose on other parties to such a contract *is not* a factor to be weighed by the bankruptcy court in ruling upon the debtor's application.

*Borman's, Inc. v. Allied Supermarkets, Inc.*, 706 F.2d 187, 189 (6th Cir.) (dicta), *cert. denied*, 464 U.S. 908 (1983) (emphasis added). Therefore, the Debtors may reject any executory contract or unexpired lease provided that they determine, in their business judgment, that rejection would be advantageous to them.

12. The Debtors have determined, in their business judgment, that the Contracts will no longer be necessary to their operations or to effect successful

reorganizations of their businesses. The failure to reject the Contracts could result in the incurrence of unnecessary expense.

13. As such, the Debtors request that the Court authorize the rejection of each of the Contracts as of the date of the filing of this Motion. The Contracts are no longer necessary for the continued operation of the Debtors' businesses and do not benefit any of the Debtors' estates.

### **PRAYER**

The Debtors respectfully request that the Court enter an Order authorizing the rejection of the Contracts as of the date of the filing of this Motion with any costs of retrieval borne by the counterparties. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: November 17, 2005

Respectfully submitted,

#### **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

By: /s/ Holly J. Warrington  
Daniel C. Stewart, SBT #19206500  
William L. Wallander, SBT #20780750  
Holly J. Warrington, SBT #24037671

**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.

Further, this is to certify that on November 17, 2005, a copy of the foregoing document was served via first class mail on the counterparties to the Contracts at the addresses set forth on **Exhibit A**.

*/s/ Holly J. Warrington*

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One of Counsel

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## EXHIBIT A

<b>Counter-Party</b>	<b>Debtor</b>	<b>Notice Address</b>	<b>Contract Subject</b>
Auto Diesel Electric	Excel Management Service, Inc.	Auto Diesel Electric 700 Dermoooy Way Sparks, NV 89434	Reno - S10 - Misc. Auto Supplies
Beeco Plumbing Supply	Excel Management Service, Inc.	Beeco Plumbing Supply 13260 Josey Lane Farmers Branch, TX 75243	Plumbing Supplies
BNB Janitorial Supply	Excel Management Service, Inc.	BNB Janitorial Supply 2536 Sutro 4 Reno, NV 89512	Janitorial Supplies
Budget Box Co.	VarTec Telecom	Budget Box Co. P. O. Box 560086 Dallas, TX 75356	Boxes and Packing Supplies
Building Control Services	Excel Management Service, Inc.	Building Control Services 4050 S. McCarren, Suite B Reno, NV 89502	Building Maint. Services
Carrollton Tire & Auto Service	Excel Management Service, Inc.	Carrollton Tire & Auto Service 2539 Marsh Lane Carrollton, TX 75006	Auto Service
Cleannet USA	VarTec Telecom	Cleannet USA 55 Marietta St., Suite 500 Atlanta, GA 30303	Cleaning Services
Cyberdyne Systems	Excel Management Service, Inc.	Cyberdyne Systems 6000 Western Place, #601 Fort Worth, TX 76107	Services Agreement
Financial Asset Management Systems	VarTec Telecom	Financial Asset Management Systems 3740 DaVinci Ct., Suite 420 Norcross, GA 30092	Collection Service Agreement
IPI Security	VarTec Telecom	IPI Security 8120 Jetstar, Suite 150 Irving, TX 75062	Security Photo Service
Janusz Tyka	Excel Communications, Inc.	Janusz Tyka 4720 N. Kedzie # 3 Chicago, IL 60625	Cleaning Services
J. B. Hudco	Excel Management Service, Inc.	J.B. Hudco 2306 Apollo Circle Carrollton, TX 75006	Shredding Services
Kubra Data Transfer Ltd.	VarTec Telecom	Kubra Data Transfer Ltd. 5050 Tomken Road Mississauga, Ontario <b>CANADA</b> L4W 5B1	Electronic Bill Presentment
Lee Marketing	VarTec Telecom	Lee Marketing 8801 AutoBahn Drive Dallas, TX 75237	Various Marketing Print Requirements
LM Data	VarTec Telecom	LM Data 17250 Dallas Parkway Dallas, TX 75379	Billing Platform
N. J. Malin	Excel Management Service, Inc.	N.J. Malin 15870 Midway Road Addison, TX 75001	Forklift Maintenance
Otis Elevator	VarTec Telecom	Otis ELevator 1931 Market Center Blvd. Dallas, TX 75202	Services Agreement
Panavision - Dallas	Excel Management Service, Inc.	Panavision - Dallas 8000 Jetstar Dr. Irving, TX 75063	Audio/Visual Supplies
Risk Management Alternatives, Inc.	VarTec Telecom	Risk Management Alternatives, Inc. 2675 Breckinridge Blvd. Duluth, GA 30096	Collection Service Agreement
Space Plan	Excel Management Service, Inc.	Space Plan 2211 Commerce St. Dallas, TX 75201	Floor Planning
Tech. Plan	Excel Management Service, Inc.	Tech. Plan 717 Taylor Drive Plano, TX 75074	HVAC Repair
TelVista Company	VarTec Telecom	TelVista Company 19111 Dallas North Parkway Dallas, TX 75287	Customer Service

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<b>Counter-Party</b>	<b>Debtor</b>	<b>Notice Address</b>	<b>Contract Subject</b>
Trane Co.	Excel Management Service, Inc.	Trane Co. P.O. Box 845053 Dallas, TX 75284	HVAC Repair
Velatek Solutions, Inc.	VarTec Telecom	Velatek Solutions, Inc. 5805 Fawn Run Dr. Flower Mound, TX 75028	Consulting
Wausau Financial Systems, Inc.	Excel Communications, Inc.	Wausau Financial Systems, Inc. 857 Indianhead Sr. P.O. Box 37 Mosinee, WI 54455	Software
Zee Medical	VarTec Telecom	Zee Medical 2429 Walnut Ridge Dallas, TX 75229	Medical Supplies