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

IN RE:

VARTEC TELECOM, INC., *et al.*,

DEBTORS.

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CASE NO. 04-81694-HDH-11

**(Chapter 11)
(Jointly Administered)**

**DEBTORS' FIFTH MOTION TO AUTHORIZE REJECTION OF CERTAIN
CIRCUIT AGREEMENTS WITH SBC TELEPHONE COMPANIES**

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

Notice Under Rules for Complex Chapter 11 Cases

A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 13, 2005 AT 1:30 P.M. IN JUDGE HALE'S COURTROOM, UNITED STATES BANKRUPTCY COURT, 1100 COMMERCE STREET, 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")¹ file Debtors' Fifth Motion to Authorize Rejection of Certain Circuit Agreements with SBC Telephone Companies (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 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.*, Case No. 04-81694-HDH-11.

STATEMENT OF FACTS

VarTec and Its Businesses

6. VarTec Telecom, Inc., a Texas corporation, ("VarTec") along with its sixteen direct and indirect domestic subsidiaries, each of which is a Debtor, and two remaining non-

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.

debtor direct and indirect foreign subsidiaries (collectively, the "VarTec Entities"), is among the largest privately held companies providing telecommunications services in North America. As of the Petition Date, VarTec's revenues had been derived primarily from three sale-distribution channels: (a) Direct Marketing; (b) Commercial Services; and (c) Multi-Level Marketing.

Circuit Agreements

7. Under various agreements, certain telecommunication service providers (collectively, the "Providers") lease or provide the Debtors access to a number of telecommunication circuits that are used to transmit voice and data (collectively, the "Circuits"). The Debtors have identified 24 Circuits (collectively, the "Designated Circuits") that are not necessary to the Debtors' reorganization or continued operations; and accordingly, the Debtors request authority to reject the executory contracts under which the Designated Circuits are provided (collectively, the "Agreements").² The Designated Circuits are identified on the list attached hereto as Exhibit A. The majority of the Agreements were created through one of the Debtors opting into tariffs that were filed with the respective state public utilities commission by certain ILECs (the "ILEC Agreements"). Accordingly, the ILECs' tariffs that created the ILEC Agreements are of public record as filed in each respective state. All of the Designated Circuits have been disconnected through the procedure provided for under the applicable Agreements.

RELIEF REQUESTED

8. Pursuant to Bankruptcy Code § 365, the Debtors seek authority to reject the Agreements as of the date on which the Debtors discontinued their use of the respective

² Rejection is restricted to Agreements for the Designated Circuits. The Debtors are not rejecting agreements for any Circuits other than Designated Circuits.

Designated Circuits (the "Disconnection Date"), which date is identified in Exhibits A.³

9. 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.

10. 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.

³ The Providers notified the Debtors of the Disconnection Dates listed in Exhibits A, or the Debtors have otherwise verified the Disconnection Dates listed. The dates were those on which the respective Designated Circuits were or were to have been disconnected according to the Providers.

11. The Debtors have determined, in their business judgment, that the Agreements will no longer be necessary to their operations or to effect successful reorganization of their businesses, and the failure to reject the Agreements could result in the incurrence of unnecessary expense. The Agreements do not benefit any of the Debtors' estates.

12. As such, the Debtors request that the Court authorize the rejection of each of the Agreements as of their respective Disconnection Dates set forth in Exhibit A.

PRAYER

The Debtors respectfully request that the Court enter an order authorizing the rejection of the Agreements as of their respective Disconnection Dates with any costs of retrieval of equipment borne by the counterparties to the Agreements. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: November 18, 2005.

Respectfully submitted,

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By: /s/ Michael L. Scanlon
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SPECIAL COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on November 18, 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 will be filed with respect to those parties on the Master Service List who do not receive electronic e-mail service.

Further, this is to certify that on November 18, 2005, a copy of the foregoing document was served via First Class United States Mail, postage prepaid, on the following individuals at the addresses listed below:

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