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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 December 19, 2005 at
	§	1:30 p.m.

**MOTION TO APPROVE AMENDMENT NO. 1 TO STIPULATION AND
ORDER FOR ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS WITH VERIZON COMMUNICATIONS INC.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
DECEMBER 19, 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 Verizon Communications Inc. (the “Motion”) and in support show as follows:

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.

6. On December 3, 2004, the Court entered its Stipulation and Consent Order by and among Certain Carriers and the Debtors regarding Adequate Assurance / Adequate Protection of Future Payments [Docket No. 451] (“Carrier Stipulation”).

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.

7. On August 5, 2005, the Debtors filed their Expedited Motion to Approve Stipulations and Orders Regarding Executory Contracts, including Tariffs with BellSouth, the SBC Telcos, and Verizon [Docket No. 1700] (the “Motion to Approve Stipulation”) under which they sought approval of, among other things, a stipulation regarding the Debtors’ assumption of certain executory contracts with Verizon Communications Inc. (“Verizon”) and the subsequent assignment of such contracts to Comtel Telcom Assets LP (“Comtel”). On August 23, 2005, the Court entered the Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, among (I) the Debtor, (II) the Operating Telephone Company Subsidiaries of Verizon Communications Inc., and (III) Comtel Telecom Assets LP (the “Stipulation”) in which it granted the relief requested in the Motion to Approve Stipulation.

8. Paragraph 8 of the Stipulation provides, in relevant part,

As the release contained in this paragraph is a release of claims prior to the Petition Date, nothing contained in this paragraph (or elsewhere in this Stipulation and Order) shall be deemed to release claims of the Debtors (or, after the consummation of the Final Closing Date, the Comtel Buyer) against Verizon, or of Verizon against the Debtors (or, after the consummation of the Final Closing Date, the Comtel Buyer) relating to (i) postpetition amounts owing to the Debtors under the B&C Agreement and withheld pursuant to the terms of the Carriers Stipulation, or (ii) the claims of Verizon for unbillable, uncollectible or post-billing adjustment amounts, or unpaid billing and collection ancillary charges, under the B&C Agreement, as described in the Carriers Stipulation (the “Remaining PARS Dispute”). If the Parties are unable to resolve the Remaining PARS Dispute consensually, the Debtors (or, after the consummation of the Final Closing Date, the Comtel Buyer) or Verizon may file an appropriate pleading in the Bankruptcy Court asking the Bankruptcy Court to adjudicate the Remaining PARS Dispute.

RELIEF REQUESTED

9. The Debtors, Verizon, and Comtel have resolved their issues with respect to the Remaining PARS Dispute (as defined in the Stipulation), and they seek to amend the Stipulation to effectuate the settlement of the Remaining PARS Dispute. A copy of the form of Amendment No. 1 to Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, among (I) the Debtor, (II) the Operating Telephone Company Subsidiaries of Verizon Communications Inc., and (III) Comtel Telecom Assets LP (“Amendment No. 1”) is attached hereto as **Exhibit A.**²

10. Amendment No. 1 provides for, among other things, the following:

- Verizon’s withdrawal of all charges billed to the Debtors on July 15, 2005;
- Verizon’s withdrawal of the true-up charges of \$121,336.29 included in the May 1, 2005 through June 30, 2005 reconciliation process mandated by the Carrier Stipulation, and therefore the corresponding reduction of the August 17, 2005 payment under the Carrier Stipulation by \$121,336.29;
- The Debtors’ reduction of the August 17, 2005 payment under the Carrier Stipulation by an additional \$50,000.00;
- Verizon’s agreement to not charge the Debtors or seek to collect from the Debtors additional amounts for unbillable, uncollectible or post-billing adjustment amounts, or unpaid billing and collection

² Capitalized terms not defined herein shall have the meaning given to them in Amendment No. 1. To the extent of any discrepancy between the description of such document in this Motion and the terms of Amendment No. 1, the terms of Amendment No. 1 shall control.

ancillary charges under the B&C Agreement, for the post-petition purchased receivables; and

- The amendment of paragraph 8 of the Stipulation.

11. Pursuant to, among other provisions, 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 Amendment No. 1.

12. 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).

13. 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).

14. 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).

15. Based on all applicable factors, Amendment No. 1, 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 Amendment No. 1 is fair and equitable.

16. Paragraph 8 of Amendment No. 1 contemplates that the Debtors, Verizon, and Comtel would attempt to settle the Remaining PARS Dispute. After extensive negotiations, the parties have agreed to resolve the Remaining PARS Dispute (subject to Court approval). After considering the *Foster Mortgage* and *Jackson Brewing* factors, the Debtors believe that the proposed resolution as set forth in Amendment No. 1 is pragmatic and beneficial. The Remaining PARS Dispute presents complicated issues of law and fact and voluminous call records. The Debtors expended significant time to familiarize themselves with those legal and factual issues. The Debtors do not believe that further analysis of the facts and law is necessary and expect that the negotiation and litigation of the Remaining PARS Dispute will result in the incurrence of unnecessary expense.

17. Therefore, the Debtors request that the Court approve Amendment No. 1.

PRAYER

The Debtors request that this Court enter an Order approving Amendment No. 1 and grant them such other and further relief, both general and specific, to which they may be justly entitled.

Dated: November __, 2005.

Respectfully submitted,

VINSON & ELKINS L.L.P.

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on November __, 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.

One of Counsel

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