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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)**

**Hearing Requested for November 22,
2005 at 1:30 pm.**

**MOTION TO FURTHER EXTEND FOR FORTY-FIVE DAYS THE
EXCLUSIVE PERIODS DURING WHICH DEBTORS
MAY FILE, AND SOLICIT ACCEPTANCES OF, A PLAN AND
REPORT PURSUANT TO LOCAL BANKRUPTCY RULE 3016.1**

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 Further Extend for Forty-Five Days the Exclusive Periods During Which Debtors May File, and Solicit Acceptances of, a Plan and Report Pursuant to Local Bankruptcy Rule 3016.1 (the “Motion”) and show as follows:

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.

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 estates; 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") pursuant to 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 the Case styled *In re VarTec Telecom, Inc., et al.*, Case No. 04-81694-HDH-11.

FACTUAL BACKGROUND AND REPORT PURSUANT TO LOCAL BANKRUPTCY RULE 3016.1

Previous Extension Requests

6. On September 29, 2005 (the "Extension Request Date"), the Debtors filed their Motion to Further Extend for Forty-Five Days the Exclusive Periods During Which Debtors May File, and Solicit Acceptances of, a Plan and Report Pursuant to Local Bankruptcy Rule 3016.1[Docket No. 1918] (the "Extension Motion") in which they requested authority to extend the exclusive periods for the Debtors to file a plan through and including the hearing currently scheduled for November 22, 2005 (the "Exclusive Plan Period") and for the Debtors to solicit acceptances of such plan through and

including January 26, 2006 (the “Exclusive Solicitation Period” and together with the Exclusive Plan Period, the “Exclusive Periods”).

7. The requested extensions of the Exclusive Periods was supported by the Official Committee of Unsecured Creditors (the “Official Committee”) and the Rural Telephone Finance Cooperative (the “RTFC”), and on October 12, 2005, the Court entered its Seventh Order Granting Extension of Exclusive Periods during which Debtors May File and Solicit Acceptances of Plan [Docket No. 1977] in which it extended the Exclusive Plan Period through and including the hearing currently scheduled for November 22, 2005 and the Exclusive Solicitation Period through and including January 26, 2006.²

8. Since the Extension Request Date, the Debtors have focused on, among other things, (i) finalizing debtor in possession financing for estate expenses; (ii) negotiating and finalizing a settlement with certain Teleglobe entities; (iii) negotiating and finalizing a comprehensive compromise and settlement of claims held by the Debtors’ independent representatives; and (iv) discussing the proposed plan with the Official Committee.³

Debtor in Possession Financing

9. After a Court-approved auction of substantially all of the Debtors’ operating assets (the “Acquired Assets”) was held on July 25, 2005, the Debtors identified Comtel Investments, L.L.C. (together with its assigns, “Comtel”), with a bid of \$82,100,000, as the successful bidder, and after a contested hearing on July 27 and 28,

² The Court previously extended the Exclusive Periods by various Orders [Docket No. 988, 1366, 1415, 1625, and 1857].

³ For a discussion of tasks on which the Debtors focused between the Petition Date and the Extension Request Date, reference is made to the motions at Docket Nos. 900, 1300, 1471, 1849, and 1918.

2005, the Court entered its Order [Docket No. 1663] (the “Sale Order”) in which it approved the sale of the Acquired Assets to Comtel under that certain Asset Purchase Agreement dated July 25, 2005 by and among the Debtors and Comtel.

10. Under the Comtel APA, until the final closing or termination of the Comtel APA, the cash generated by the Acquired Assets must be placed into a funding account, and the funds in that account may be used only to pay business expenses; and therefore, those funds are not available to pay non-business expenses, including the costs associated with the administration of the Cases.

11. After several weeks of negotiations, the Debtors and the RTFC finalized an Administrative Debtor in Possession Credit Agreement (the “Estate DIP Agreement”) in which the RTFC agreed to fund certain non-business expenses in consideration for, among other things, first priority security interests in the Debtors’ assets which are not Acquired Assets (the “Excluded Assets”). The Excluded Assets include certain causes of action.

12. On September 29, 2005, the Debtors filed their Motion for Interim and Final Orders (i) Authorizing the Debtors to Obtain Post-Petition Financing on an Interim and Final Basis Secured by Senior Priority Liens, (ii) Scheduling a Final Hearing and Establishing Notice Requirements, and (iii) Granting Related Relief (Rural Telephone Finance Cooperative) [Docket No. 1919] in which the Debtors requested approval of the Estate DIP Agreement. After the Debtors and the RTFC incorporated the comments of the Official Committee, the Bankruptcy Court approved the Estate DIP Agreement and entered its interim Order [Docket No. 2003] approving the proposed debtor in possession financing.

13. The funding to be provided under the Estate DIP Agreement is important to the consummation of the final closing of the Comtel APA, formulation of a feasible plan, and ultimately, the success of the Cases.

Teleglobe Settlement

14. In April of 2002, VarTec Telecom, Inc. and VarTec Telecom Holding Company acquired from Teleglobe Telecom Corporation, Teleglobe Holdings (U.S.) Corporation, and Teleglobe Inc. (collectively, the “Teleglobe Entities”) certain entities that, as of the Petition Date, were associated with the Debtors’ Excel line of business.⁴ That transaction gave rise to a number of disputes in various venues including the Bankruptcy Court for the District of Delaware, the International Centre for Dispute Resolution, the Ontario Superior Court of Justice, and this Bankruptcy Court. In those disputes, the parties asserted a number of claims and causes of action. Among other things, the Teleglobe Entities asserted claims on account of (i) principal and interest in the amount of more than \$270,000,000 that allegedly was due and owing to them under promissory notes and (ii) funds held in a “Tax Refund Account.” Certain of the Debtors asserted claims against the Teleglobe Entities are in excess of \$185,000,000.

15. After years of negotiation, the Debtors and the Teleglobe Entities finalized a settlement agreement under which the parties resolved and settled their claims against one another. Under that settlement agreement, the Debtors agreed to allow the Teleglobe Entities’ general unsecured claims in the aggregate amount of \$185,000,000 and to pay the Teleglobe Entities \$300,000 from the Tax Refund Account. The

⁴ The Teleglobe Entities subsequently commenced insolvency proceedings in Canada and/or Delaware.

Teleglobe Entities agreed to relinquish any claim to the remaining funds in the Tax Refund Account (in the approximate amount of \$6,600,000).

16. After a hearing on September 29, 2005, this Bankruptcy Court entered its Order Approving Compromise and Settlement with Teleglobe Entities [Docket No. 1929].⁵ The settlement agreement with the Teleglobe Entities represents the culmination of years of litigation and resolves the claims of the Debtors' largest general unsecured creditor on favorable terms. Further, the settlement with Teleglobe removes a significant drain on the Debtors' human and financial resources.

Global IR Settlement

17. The Debtors continue to focus on finalizing a comprehensive compromise and settlement (the "Global IR Settlement") of claims asserted against the Debtors' estates held by their former independent representatives who were active as of the Petition Date according to the Debtors' books and records (the "IRs"). For several months, the Debtors have negotiated the Global IR Settlement with the Official Committee of Excel Independent Representatives (the "IR Committee"). The Global IR Settlement, which could affect more than 124,000 IRs, implicates several complex issues relating to the calculation of claims, existence of claims under contracts, and the priority of those claims. On November 17, 2005, the Debtors filed their Motion to Approve Settlement of Claims of Excel's Independent Representatives and Procedures Relating Thereto [Docket No. 2070] in which they seek approval of the Global IR Settlement.

⁵ The Delaware Bankruptcy Court also approved the settlement (such approval was not necessary with respect to the Canadian insolvency proceeding).

Plan Process

18. Several months ago, the Debtors provided a draft of a plan to counsel for the Official Committee. Since that time, the Debtors have had a number of discussions with counsel for the Official Committee concerning its views with respect to a proposed plan. The Official Committee has indicated that it agrees that additional time to contemplate portions of the plan would be helpful. The Debtors and the Official Committee continue to analyze the sources of funds to satisfy the obligations under a prospective plan, the strengths of the estates' claims and causes of action, and the amount and validity of administrative expense claims and unsecured priority claims. The Debtors will continue to work with the Official Committee to formulate a hopefully consensual plan.

RELIEF REQUESTED

Basis for Relief

19. The Debtors request extensions of the expirations of the Exclusive Plan Period through and including the hearing currently scheduled for January 3, 2006, and of the Exclusive Solicitation Period through and including March 3, 2006 (collectively, the "Extensions"), without prejudice to their rights to seek further extensions.

20. Bankruptcy Code § 1121(b) states, "Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." 11 U.S.C. § 1121(b). Pursuant to Bankruptcy Code § 1121(c)(3), upon the expiration of the 120-day exclusive period, a debtor is granted the exclusive right to solicit acceptances of such plan for an additional 60 days.

21. Pursuant to Bankruptcy Code § 1121(d), the Court previously increased the Debtors' exclusive periods as set forth above. See 11 U.S.C. § 1121(d) ("On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.").

22. The requested Extensions are necessary to promote the objectives of the Bankruptcy Code. The exclusive periods represent Congress's recognition that the debtor in possession is in the best position to understand and address the interests of all parties involved in a chapter 11 case and that a successful reorganization is most likely when the debtor is given the initial opportunity to balance the interests of creditors and equity holders. See *In re Aspen Limousine Serv., Inc.*, 187 B.R. 989, 993 (Bankr. D. Colo. 1995), *aff'd*, 193 B.R. 325 (D. Colo. 1996) ("[A]n honest and diligent debtor should be given a first opportunity to get a plan confirmed"). To achieve this objective and to prepare a balanced and successful plan, a debtor should be given a reasonable opportunity to analyze its assets and liabilities and to formulate and negotiate a feasible plan. Extending a debtor's exclusive periods so that it may negotiate an effective plan with its creditors and allow such creditors input into the process should be beneficial to that debtor's estate.

23. The legislative history indicates that the term "cause" in Bankruptcy Code § 1121(d) "is to be viewed flexibly 'in order to allow the debtor to reach an agreement.'" *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 231, *reprinted* in 1978 U.S.C.C.A.N. 5963, 6190); see also *In re Public Service Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988)

(stating that chapter 11 was drafted to “afford maximum flexibility to the parties in structuring a plan of reorganization”).

24. In determining whether to extend a debtor’s exclusive periods under Bankruptcy Code § 1121(d), courts should be guided by the following nine factors: (i) the size of the case; (ii) the necessity for sufficient time to permit the debtor to negotiate the plan and prepare adequate information; (iii) good faith progress towards reorganization; (iv) whether the debtor is paying its bills on time; (v) whether the debtor has demonstrated reasonable prospects for filing a feasible plan; (vi) whether progress has been made in the negotiations between the debtor and its creditors; (vii) the time that has elapsed in the case; (viii) whether an extension of exclusivity is sought to pressure creditors to submit to the debtor’s demands; and (ix) whether there are unresolved contingencies. See *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Dow Corning Corporation*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

25. Taken as a whole, the above-listed factors overwhelmingly favor granting the further Extensions; and therefore, the Debtors have demonstrated cause to do so.

Factor 1. Size and Complexity

26. The most common basis for granting extensions of the expirations of the exclusive periods under Bankruptcy Code § 1121(d) is the size and complexity of the chapter 11 case. See *Express One*, 194 B.R. at 100; *McClean*, 87 B.R. at 833-35; *In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). The *Pine Run* court stated, “The traditional ground for cause [is] the large size of the debtor and the concomitant

difficulty in formulating a plan of reorganization.” *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986).

27. The size and complexity of the Cases support the request for the Extensions. As of the Petition Date, the Debtors’ schedules identified assets in excess of \$800,000,000, liabilities in excess of \$590,000,000, and 14,000 creditors (excluding over 100,000 IRs). Among the complicated tasks that the Debtors have addressed and/or are addressing since the Extension Request Date include issues relating to the (i) financing of non-business expenses and negotiation of a related debtor in possession financing agreement, (ii) settlement agreement with the Teleglobe Entities, (ii) proposed Global IR Settlement, and (iv) formulation of a plan with the input of the Official Committee.

28. Due to the size of the Debtors and the difficult issues which require their attention, the Debtors need additional time to file a plan. On that basis, the Debtors respectfully submit that this factor, in and of itself, provides a sufficient basis for the requested Extensions.

Factors 2 and 3. Sufficient Time to Negotiate a Plan and Good Faith Progress Toward Reorganization

29. A debtor’s good faith progress towards reorganization within the “exclusivity” period furnishes objective evidence that the request for extensions is not motivated by ulterior motives, but rather, by a desire to pursue to fruition efforts which may have been initiated and diligently pursued since the commencement of the case. The requisite showing of good faith progress may involve efforts to restructure the business or to engage in negotiations. *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996).

30. Since the commencement of their Cases, the Debtors have been working diligently with the RTFC, the Official Committee, the IR Committee, their carriers, and other parties in interest to achieve various tasks necessary to maximize the value of the Debtors' estates.

31. Recently, the Debtors have had a number of discussions with the Official Committee concerning the prospective plan, and they have provided a draft of the plan to counsel for the Official Committee. The Debtors have solicited the input of the Official Committee and intend to work closely with it during the Exclusive Periods. As the Debtors' hope that the structure and provisions of the plan will reflect the Official Committee's input, the extensions requested herein would be beneficial to the Official Committee and its constituency.

32. In light of the good faith efforts made to date, the Debtors respectfully submit that factors two and three favor granting the Extensions so that the Debtors' efforts to negotiate a successful plan may continue.

Factor 4. Whether the Debtor Is Paying Its Bills on Time

33. The Debtors are satisfying obligations to their employees, carriers, vendors, landlords, and utility providers in the ordinary course of business as those obligations become due. The Debtors have demonstrated that they can operate as debtors in possession, and the Extensions will not unjustifiably burden the Debtors' creditors.

Factor 7. The Amount of Time Elapsed in the Cases

34. Since the Petition Date, the Debtors have made great strides in maximizing the value of their estates by reducing overhead costs, rejecting executory

contracts and unexpired leases, disposing of non-core assets, and obtaining Court approval of the sale of the Acquired Assets. Given the tasks that the Debtors have necessarily accomplished, and the complexity of those tasks, the timing of the filing of a plan as proposed herein is reasonable. Further, the Extensions would not cause unnecessary or undue delay or prejudice any party in interest.

Factor 8. Whether the Extension Is Requested to Pressure Creditors

35. The Debtors' request for the Extensions is not intended to pressure creditors to submit to the Debtors' demands and such Extensions would not prejudice creditors' respective interests. To the contrary, the purpose of the requested Extensions is to allow the Official Committee input into the plan process. As discussed herein, the Debtors simply have not had adequate time or opportunity to work with the primary parties in interest to develop a thoughtful and effective plan; the Debtors believe the Extensions would allow them to do just that. Thus, an analysis of this factor favors the grant of such Extensions. *In re Southwest Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 453 (Bankr. W.D. Tex. 1987).

Other Factors

36. The other three factors set forth in the *Dow Corning* case, *i.e.*, whether there are reasonable prospects for filing a feasible plan, the progress to date in negotiations with creditors and the existence of contingencies, are each discussed in connection with the other factors above. The Debtors respectfully submit that these factors weigh in favor of granting the requested Extensions. The Debtors have achieved a number of objectives since the Petition Date, and it is in the best interest of

all parties in interest to permit them to continue their efforts with the exclusive right to file a plan and disclosure statement.

Conclusion

37. Given, among other things, the magnitude of the Debtors' Cases, the complex issues presented, and the progress made to date, ample cause exists for granting the Extensions of the expirations of the Exclusive Periods. The Debtors should be afforded an opportunity to negotiate, propose and confirm a plan in these Cases. The Debtors hope to use the requested Extensions to, among other things, continue to confer with the Official Committee concerning the formulation of the plan.

Previous Request

38. As discussed above, the Court previously entered Orders extending the Exclusive Periods.

PRAYER

The Debtors respectfully request that this Court enter an order (a) extending the expirations of the periods within which the Debtors may file a plan through and including the hearing currently scheduled for January 3, 2006 and solicit acceptances thereof through and including March 3, 2006; and (b) granting such other and further relief as may be just and proper.

Dated: November 21, 2005

Respectfully submitted,

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on November 21, 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.

Richard H. London
One of Counsel

CERTIFICATE OF CONFERENCE

The Debtors have had telephone conferences with counsel for the Official Committee concerning the relief requested herein, and counsel indicated that the Official Committee supports the requested extensions of the Exclusive Periods.

/s/ Richard H. London

One of Counsel

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