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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>
	§	
	§	<b>Hearing Set for January 3, 2006</b>
	§	<b>at 1:30 p.m.</b>

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

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 3, 2006, 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.**

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

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> file this Tenth 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’

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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.

Remaining Assets) [Docket No. 1663] in which it authorized the sale of substantially all 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 (i) 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 and (ii) the counterparties to the Contracts have 30 days from the date an Order is entered granting the requested relief to file any claims arising from the rejection of the Contracts. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: December 9, 2005

Respectfully submitted,

**VINSON & ELKINS L.L.P.**

Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
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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 December 9, 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 December 9, 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  
One of Counsel

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## EXHIBIT A

<b>Counter-Party</b>	<b>Debtor</b>	<b>Notice Address</b>	<b>Contract Subject</b>
Accurate Pest Control	Excel Telecommunications, Inc.	Accurate Pest Control 300 So. State Rd. 7 Plantation, FL 33317	Pest Control Services
American Express Travel Services	Excel Management Services, Inc.	American Express Travel Services 3110 Skyway Circle South Irving, TX 75038	Travel Services
American Security Systems, Inc.	VarTec Telecom, Inc.	American Security Systems, Inc. 18 West 23rd. St. New York, NY 10010-5208	Security Monitoring Services
Aspect Telecommunications Corp	Excel Telecommunications, Inc.	Aspect Telecommunications Corp. 1730 Fox Dr. San Jose, CA 95131	Equipment, Software, Maintenance and Support Agreements
BMI Business Machines International	Excel Management Service, Inc.	BMI Business Machines International 826 Office Park Circle, Suite 107 Lewisville, TX 75057	Computer Hardware Maintenance Agreement
D&B Receivables Management Services	VarTec Telecom, Inc.	D&B Receivables Management Services 899 Eaton Rd. Bethlehem, PA 18025	Receivable Collections
Distillata Co.	VarTec Telecom, Inc.	Distillata Co. 1608 E. 24 Cleveland, OH 44114	Water Services
Eboz (iBoost)	Excel Management Services, Inc.	Eboz (iBoost) 5200 Lankershim Blvd., Suite 300 N. Hollywood, CA 91601	Private Label Promotion Package Agreement
First Data Solutions	Excel Management Services, Inc.	First Data Solutions P.O. Box 8334 Omaha, NE 68108	Information Search Tool Services
Freshwater Software	VarTec Telecom, Inc.	Freshwater Software P.O. Box 17280 Boulder, CO 80308-0280	Software License Agreement
Hal-Tec Construction	VarTec Telecom, Inc.	Hal-Tec Construction 405 North Rea St., Suite 240 Tampa, FL 33069	Inside Wiring Services
Hire Dynamics	VarTec Telecom, Inc.	Hire Dynamics 3479 Lawrence Suwanee Rd., Suite A Suwanee, GA 30042	Contract Labor Services
IBM	Excel Management Services, Inc.	IBM 400 Riverpark Dr. North Reading, MA 01864	Lotus Passport Maintenance Agreement
Intell-A-Check	Excel Management Services, Inc.	Intell-A-Check 500 Cortland St. Belleville, NJ 07109	Software License and Support Agreement
Lexis Nexis	VarTec Telecom, Inc.	Lexis Nexis P.O. Box 2314 Carolstream, IL 60132	Software License and Services
OSC	VarTec Telecom, Inc.	OSC 5302 Ave. Q, Suite 6 Lubbock, TX 79412	Print Services
Output Services, Inc.	VarTec Telecom, Inc.	Output Services, Inc. 6410 Odell Place Boulder, CO 80301	Printing and Mailing Services
Palm Coast Build. Maint., Inc.	VarTec Telecom, Inc.	Palm Coast Build. Maint., Inc. 7040 W. Palmetto Park Rd. #4 PMB55 Boca Raton, FL 33433	Janitorial Services
Prairie Systems, Inc.	Excel Management Services, Inc.	Prairie Systems, Inc. LB366, P.O. Box 2140 Omaha, NE 68103	Independent Verification Service

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<b>Counter-Party</b>	<b>Debtor</b>	<b>Notice Address</b>	<b>Contract Subject</b>
RecruitMax Software	VarTec Telecom, Inc.	RecruitMax Software 213 6th Ave. North Jacksonville Beach, FL 32250	Software and License Agreement
Regulus Integrated Solutions LLC (f/k/a Quantum Information Corporation)	VarTec Telecom, Inc.	Regulus Integrated Solutions LLC 860 Latour Court Napa, CA 94558	Printing and Mailing Service Agreement
Soltrus, Inc.	VarTec Telecom, Inc.	Soltrus, Inc. 625 Church St., Suite 400 Toronto, Ontario M4Y 2G1 <b>CANADA</b>	Software Support Agreement
Talx Corp.	VarTec Telecom, Inc.	Talx Corp. P. O. Box 790051 1850 Borman Ct. St. Louis, MO 63146	Employment Verification Services
Trugreen Chemlawn	Excel Telecommunications, Inc.	Trugreen Chemlawn 3093 B. Volunteer Drive Chattanooga, TN 37416	Lawn Services
WebCreators Internet Services, Inc.	VarTec Telecom, Inc.	WebCreators Internet Services, Inc. 3002 Dow Ave., Suite 414 Tustin, CA 92780	Services Agreement
Witness Systems	VarTec Telecom, Inc.	Witness Systems 300 Colonial Center Parkway Rosewell, GA 30076	Software License and Support Agreement