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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 January 3, 2006
	§	at 1:30 p.m.

**SECOND MOTION TO APPROVE SALE OF AGED ACCOUNTS RECEIVABLE
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 3, 2006 AT 1:30 P.M. IN 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”)¹ file this Second Motion to Approve Sale of Aged Accounts Receivable Free and Clear of Liens, Claims, Interests, and Encumbrances (the “Motion”), and in support thereof would respectfully show the Court as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Amended 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 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

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.

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 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").

FACTUAL BACKGROUND

7. Excel Telecommunications, Inc. ("Excel") currently has approximately 163,554 accounts of long distance customers, which aggregate to approximately \$46,244,965, which first became due and payable more than 270 days ago (the "Aged A/R").

8. After marketing the Aged A/R for sale, the Debtors identified Genesis Financial Solutions, Inc. ("Genesis") as a potential purchaser of the Aged A/R. As a result of substantial negotiations, Excel executed an Account Purchase and Sale Agreement (the "Agreement") with Genesis in which Genesis agrees to purchase the Aged A/R for \$1,341,104 (subject to certain adjustments). A copy of the Agreement is attached hereto as **Exhibit A**.

RELIEF REQUESTED

9. Pursuant to Bankruptcy Code §§ 105 and 363, the Debtors request authority to sell the Aged A/R to Genesis free and clear of all liens, claims, interests, and encumbrances.

10. Bankruptcy Code § 363(b)(1) provides, "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The proposed use, sale or lease of property of

the estate may be approved under Bankruptcy Code § 363(b) if it is supported by sound business justification. See e.g. *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989); see also *In re Crutcher Resources Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale."); *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."). Further, in reviewing a proposed sale of assets, a bankruptcy court should give deference to the business judgment of a debtor in possession when it deems the sale to be appropriate. See *Esposito v. Title Ins. Co. (In re Fernwood Mkts.)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987).

11. The Debtors have determined in the exercise of their business judgment that they should sell the Aged A/R. The Debtors do not possess the skill, experience, or manpower necessary to collect the Aged A/R. After marketing the Aged A/R for sale to other potential purchasers, Genesis provided the best offer for the purchase of the Aged A/R. The Debtors believe that the terms of the Agreement are satisfactory and the consideration is higher than they expected. Absent the sale of the Aged A/R, the Debtors would be unable to liquidate the Aged A/R. Thus, the Debtors' sale of the Aged A/R enables them to maximize the value of these assets.

12. Bankruptcy Code § 363(f) authorizes a sale of property free and clear of all liens, interests, and encumbrances:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *Pelican Homestead v. Wooten (In re Gabel)* 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (stating that a trustee may sell property of the estate for purposes other than in the ordinary course of business free and clear of all existing liens and encumbrances provided that any one of the conditions of § 363(f) are met). Because Bankruptcy Code § 363(f) is drafted in the disjunctive, only one of the conditions set forth in that statute needs to be met for a sale free and clear of liens, claims, interests, and encumbrances to occur.

13. The Rural Telephone Finance Cooperative (the “RTFC”) asserts a lien, claim, interest, or encumbrance relating to the Aged A/R, and the Debtors will inquire whether it consents to the proposed disposition. Even absent consent from the RTFC, the Aged A/R could be sold free and clear of its interests (with such interests attaching

to the sale proceeds) so long as the RTFC could be compelled to accept money satisfaction of its interests in the property. See 11 U.S.C. § 363(f)(5).²

14. Bankruptcy Code § 363(m) states, in relevant part:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

15. The sale of the Aged A/R is the result of an arm's length, good faith negotiation among Excel and Genesis. The Debtors believe that Genesis is a good faith purchaser within the meaning of Bankruptcy Code § 363(m); and accordingly, the Debtors request that Genesis receive the protections of Bankruptcy Code § 363(m).

PRAYER

The Debtors request that the Court enter an Order approving the sale of the Aged A/R and granting such other and further relief, both general and specific, to which the Debtors may be justly entitled.

² Under the Asset Purchase Agreement dated July 25, 2005 by and among the Debtors and Comtel Investments LLC, the proceeds from the sale of the Aged A/R will remain in the estates pending the final closing of the sale.

Dated: December 9, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.

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By: /s/ Holly J. Warrington
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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 postage prepaid on Genesis at the address below.

Attn: Legal Department
Genesis Financial Solutions, Inc.
8405 SW Nimbus Avenue, Suite A
Beaverton, OR 97008-7185

/s/ Holly J. Warrington
One of Counsel

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