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

In re:	:
	: Case No. 04-81694-HDH-11
VARTEC TELECOM, INC.,	:
et al.,	: Chapter 11
	: (Jointly Administered)
DEBTORS	:
	:
PENNSYLVANIA DEPARTMENT	:
OF REVENUE,	: Hearing Date: December 19, 2005
	: Hearing Time: 1:30 p.m.
	: Response Deadline: December 16, 2005
	: Deadline Time: 5:00 p.m.
RESPONDENT	:

ANSWER TO CLAIMS OBJECTION NUMBER 7 OBJECTION TO CERTAIN TAX
CLAIMS (FILED BY THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF REVENUE)

AND NOW comes the Commonwealth of Pennsylvania, Department of Revenue, ("Department") by and through its Attorney, Christos A. Katsaounis, Assistant Counsel, and submits the following Answer to the Objection to the Proofs of Claim filed by the Commonwealth of Pennsylvania, Department of Revenue as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. Admitted.

2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

STATEMENT OF FACTS

6. Admitted to the extent that bar dates were established for the filing of proofs of claim by the various creditors. Denied to the extent that this averment implies that the Debtors are correct in averring that the Department's Proofs of Claim are incorrect or should be adjusted in any way.

7. Admitted to the extent that notice of bar dates and proof of claim forms were provided to the creditors. Denied to the extent that this averment implies that the Debtors are correct in averring that the Department's Proofs of Claim are incorrect or should be adjusted in any way.

8. Admitted to the extent that a number of proofs of claim were filed and the Debtors have previously filed objections to some of those proofs of claim. Denied to the extent that this averment implies that the Debtors are correct in averring that the Department's Proofs of Claim are incorrect or should be adjusted in any way.

9. Denied to the extent that this averment implies that the Debtors are correct in averring that the Department's Proofs of Claim are incorrect or should be adjusted in any way. Further, the Debtor has not provided and evidence in support of its averment to reduce the Department's Proof of Claim.

The following sets forth the pertinent law in determining the validity of a proof of claim.

Where a proof of claim is filed under 11 U.S.C. § 501, the claim is deemed allowed. 11 U.S.C. § 501(a). Bankruptcy Rule 3001(f) provides that a proof of claim filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and the amount of the claim. Fed R. Bankr. 3001(f). A correctly filed proof of claim, therefore, is presumed valid as to both liability and amount. Garner v. Shier, 246 B.R. 617, 620 (BAP 9th Cir. 2000). If an objection is filed, the objecting party has the burden of going forward and introducing evidence to rebut the claim. In re Busch, 213 B.R. 390, 392 (Bankr. M.D.Fla. 1997). "The interposition of an objection does not deprive the proof of claim presumptive validity unless the objection is supported by *substantive evidence*." In re Hemingway Trans. Inc., 993 F.2d 915, 925 (1st Cir. 1993) (citing Norton Bankruptcy Law and Practice, Bankruptcy Rules at 191 (1992); and Wright v. Holm, 931 F.2d 620, 623 (9th Cir. 1991).

As noted, the Debtors' assertion is that the Department's Proofs of Claim should not be allowed as it is not supported by the Debtors' books and records and/or insufficient documentation. The Debtors' mere assertions are wholly insufficient to destroy the prima facie validity of the Department's properly filed proof of claim. In re Frederes, 98 B.R. 165, 167 (Bankr. W.D.N.Y. 1989).

RELIEF REQUESTED

10. Denied. The Department incorporates herein paragraph 9 above as if set forth in its entirety. The Department will respond to the objection to each Proof of Claim:

a. VarTec Resource Services, Inc. (EIN 810557974 and PA ID No. 2695321) - The Department's Proof of Claim No. 1496 (\$637.00) (Exhibit 1) consists of an Unsecured Priority Claim (\$607.00) for Corporation Taxes ("CT") for the 2003 and 2004 tax years. Unsecured Nonpriority Claim (\$30.00) for CT for the 2003 tax year.

The amounts set forth were estimated as at the time the Department filed its Proof of Claim the CT reports were either not filed or were being settled.¹ The Department has statutory

¹ After a CT report is filed, the Department is required by law to settle the tax. The term "settlement" is similar but not identical to an "assessment". When the Department makes a settlement, it can accept, increase, or decrease the reported tax while an assessment can only increase the reported tax. The Department has eighteen months to settle a CT report. 72 P.S. § 7407.

authority, 72 P.S. § 7407(d), to issue estimated CT settlements when a taxpayer does not file CT reports. The estimates were used to protect the Department's interests.

A review of the Department's records show that the 2003 CT report has been filed and settled at no liability (Exhibit 2) The 2004 CT report was filed on October 14, 2005, for on the settlement of the 2004 CT report. The Settlement should be completed within the next few weeks. When the settlement is completed, the Department will amend its proof of claim as necessary.

Accordingly, Proof of Claim No. 1496 should be amended by removing the liability for the 2003 tax year. Proof of Claim No. 1496 should be an Unsecured Priority Claim of \$300.00.

b. Excel Telecommunications, Inc. (EIN 752264299 and PA ID No. 6809349) - The Department's Proof of Claim No. 1497 (\$40,233.00) (Exhibit 3) consists of a Secured Claim (\$30,981.00) for CT for the 1995, 1996, 1998, and 1999 tax years. Unsecured Priority Claim (\$8,927.00) for CT for the 2002, 2003, and 2004 tax years. Unsecured Nonpriority Claim (\$325.00) for CT for the 2002 and 2003 tax years.

The amount set forth for the 2004 tax year was estimated as at the time the Department filed its Proof of Claim the 2004 CT report was not filed. The Department has statutory authority,

72 P.S. § 7407(d), to issue estimated CT settlements when a taxpayer does not file CT reports. The estimate was used to protect the Department's interests.

A review of the Department's records shows the following:

a. Secured Claim - No CT liability for the 1995 and 1996 tax years. (Exhibit 4, pages 2 and 3 for 1995 tax year and pages 4 and 5 for 1996 tax year)

b. Secured Claim - A liability for the 1998 tax year for interest (\$12,927.00) due on the late payment of a Federal Report of Change liability.² (Exhibit 4, pages 6 and 7) This verifies the amount set forth on the Proof of Claim.

c. Secured Claim - A liability (\$9,981.00) for the 1999 tax year for interest due on the late payment of a Federal Report of Change liability.³ (Exhibit 4, page 8) Also, the Proof of Claim treated all the liability as interest. Only \$8,835.00 is interest and the remaining liability of \$1,146.00 should be treated as tax due. (Exhibit 4, page 8) There is additional interest due of \$400.00 on the \$1,146.00 tax liability. (Exhibit 4a)

d. Unsecured Priority and Nonpriority Claims - The liability for the 2002 tax year should be adjusted as follows:

² Federal reports of change returns are to be filed and all taxes due on those returns are to be paid within thirty (30) days of the receipt of the final correction or change from the federal government. See 72 P.S. § 7406(a). Here, the tax return was filed on June 2, 2004, and the payment was made on October 14, 2004. (Exhibit 4, page 6)

³ Here, the tax return was filed on June 2, 2004 and the payment was made on October 14, 2004. (Exhibit 4, page 8)

Tax-\$4,748.00, Interest-\$342.00, and Penalty-\$128.00. (Exhibit 4, pages 10 and 11; and Exhibits 4b and 4c for the interest calculations)

e. Unsecured Priority and Nonpriority Claims - The liability for the 2003 tax year should be adjusted as follows: Penalty-\$150.00. (Exhibit 4, page 12)

f. Unsecured Priority Claim - No CT liability for the 2004 tax year. (Exhibit 4, page 13)

Accordingly, Proof of Claim No. 1497 should be amended by removing the liabilities for the 1995, 1996, and 2004 tax years and adjusting the liabilities for the 1998, 1999, 2002, and 2003 tax years. Proof of Claim No. 1497 should be a Secured Claim of \$23,308.00, an Unsecured Priority Claim of \$5,090.00, and an Unsecured Nonpriority Claim of \$278.00.

[A review of the Department's records shows that the Debtor filed a Utilities Gross Receipts (for telecommunications) Tax ("GRT") report for the 2004 tax year. (Exhibit 4, pages 13-15) As a consequence of this filing, the Department, on June 6, 2005, issued estimated gross receipts tax liabilities for the 1990 through 2003 tax years as the Department did not know whether the Debtor actually had GRT obligations until the filing of the 2004 GRT report. (Exhibit 4, pages 1-9, 11) If the Department had known the Debtor was subject to the GRT, it would

have included estimated liabilities for these delinquent GRT tax years in its Proof of Claim. The Department believes these liabilities should be included in its Proof of Claim and the Debtor should be required to file the GRT returns for the 1990 through 2003 tax years.]

c. VarTec Telecom, Inc. (EIN 752280200 and PA ID Nos. 6569439 for CT and 99597921 for ST) - The Department's Proof of Claim No. 1498 (\$129,275.56) (Exhibit 5) consists of an Unsecured Priority Claim (\$119,792.15) for CT (\$112,416.00) for the 2003 and 2004 tax years and Sales Tax ("ST") (\$7,376.15) for the 02Q96 tax period. Unsecured Nonpriority Claim (\$262.41) for ST for the 03Q99 tax period.

The amount set forth for the 2004 tax year was estimated as at the time the Department filed its Proof of Claim the 2004 CT report was not filed. The Department has statutory authority, 72 P.S. § 7407(d), to issue estimated CT settlements when a taxpayer does not file CT reports. The estimate was used to protect the Department's interests.

A review of the Department's records show that the 2003 CT report has been filed and settled at no liability (Exhibit 6, page 5) The 2004 CT report was filed on October 13, 2005 and to date has not been settled. (Exhibit 6, page 5) An expedite was requested for the settlement of the 2004 CT report.

The Settlement should be completed within the next few weeks. When the settlement is completed, the Department will amend its proof of claim as necessary.

A review of the Department's records verifies the ST liabilities for the 02Q96 and 03Q99 tax periods. (Exhibit 7)

Accordingly, Proof of Claim No. 1498 should be amended by removing the CT liability for the 2003 tax year. Proof of Claim No. 1498 should be an Unsecured Priority Claim of \$63,376.15 and an Unsecured Nonpriority Claim of \$262.41.

d. VarTec Solutions, Inc. (EIN 752280200 and PA ID Nos. 6569439 for CT) - The Department's Proof of Claim No. 1499 (\$350.00) (Exhibit 8) consists of an Unsecured Priority Claim (\$350.00) for CT for the 2003 and 2004 tax years.

The amounts set forth for the 2003 and 2004 tax year were estimated as at the time the Department filed its Proof of Claim the 2003 and 2004 CT reports were not filed. The Department has statutory authority, 72 P.S. § 7407(d), to issue estimated CT settlements when a taxpayer does not file CT reports. The estimates were used to protect the Department's interests.

A review of the Department's records⁴ show that the 2003 CT report has been filed and settled at no liability (Exhibit 9,

⁴ The Debtor filed federal reports of change for the 1998 and 1999 tax years reporting \$0.00 tax liabilities. These filings are being mentioned as any additional liabilities will directly affect the amount of the Department's Proof of Claim. The Department is in the process of reviewing these filings for possible change in the tax liabilities for each tax year.

page 5) The 2004 CT report was filed on October 14, 2005 and to date has not been settled. (Exhibit 9, page 6) An expedite was requested for the settlement of the 2004 CT report. The Settlement should be completed within the next few weeks. When the settlement is completed, the Department will amend its proof of claim as necessary.

Accordingly, Proof of Claim No. 1499 should be amended by removing the CT liability for the 2003 tax year. Proof of Claim No. 1499 should be an Unsecured Priority Claim of \$300.00.

11. Denied. The Department incorporates herein paragraphs 9 and 10 above as if set forth in its entirety.

RESERVATION OF RIGHTS

12. Denied to the extent that the Debtors imply that the Department's Proofs of Claim are subject to any additional objection. The averment is also denied as the Debtors are required to address all their objections to the Department's Proofs of Claim in this Objection. Barbier v. United States, 84 B.R. 190, 191 (Bankr. D.Nev. 1988).

13. The Department incorporates herein paragraph 12 above as if set forth in their entirety.

14. The Department incorporates paragraphs 1, 9, 10, and 11 above as if set forth in their entirety.

15. The Department incorporates paragraphs 1, 9, 10, 11 and 14 above as if set forth in their entirety.

PROCEDURES FOR FILING RESPONSES TO OBJECTIONS

A. Filing and Service of Responses

16. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

B. Content of Responses

17.a. -17.b. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

C. Timely Response Required

18. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

19. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

20. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

D. Service Address

21. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

E. Separate Contested Matters

22. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

F. Replies to Responses

23. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

G. Requests for Additional Information

24. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

NOTICE

25. No Answer is necessary as this averment is not pertinent to the disposition of the Department's claims.

PRAYER

WHEREFORE, the Department respectfully requests that the Debtors' Second Omnibus Objection be allowed consistent with the Department's averments.

[The Department will not be able to send a representative to the scheduled hearing on this matter. It is therefore requested that this Court either make its determination based on the facts set forth in this pleading or a hearing be held by telephone.]

Date: December 13, 2005

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