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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF TEXAS  
NORTHERN DIVISION**

_____ )	
<b>In re:</b> )	
)	
<b>VARTEC TELECOM, INC., et al.,</b> )	<b>Chapter 11</b>
)	<b>Jointly Administered</b>
<b>DEBTOR</b> )	<b>Case No. 04-81694-HDH-11</b>
_____ )	

**RESPONSE BY COMMISSIONER OF MASSACHUSETTS DEPARTMENT OF  
REVENUE TO DEBTOR’S CLAIMS OBJECTION NUMBER 7 OBJECTION TO  
CERTAIN TAX CLAIMS (SUBSTANTIVE OBJECTIONS)**

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

NOW COMES Alan LeBovidge, as he is Commissioner of the Massachusetts Department of Revenue ("MDOR"), a creditor and party in interest in the above-captioned matter, and submits this response in opposition to the Debtors' *Claims Objection Number 7 Objection to Certain Tax Claims (Substantive Objections)* (hereinafter, the "Objection"). As its, MDOR states the following:

**I. INTRODUCTION**

1. The Debtors have objected to three proofs of claim filed by MDOR (Claims Nos. 1342, 1343 and 1352) on the grounds that "the amount asserted is either not supported by the Debtors' books and records and/or that there is insufficient documentation attached to the claim

to support it or its calculation.” Objection, ¶ 10.

## **II. RESPONSE TO OBJECTION TO CLAIM 1342**

2. On or about February 14, 2005, MDOR filed an amended proof of claim that has been identified as Claim No. 1342 in the priority unsecured amount of \$19,968.64 against the co-debtor, Telco Network Services, Inc. (Fed. Id. No. 54-1836204).

3. On or about November 16, 2005, MDOR withdrew Claim No. 1342 and no longer asserts that Telco Network Services, Inc. owes MDOR for any of the tax types and periods listed on Claim No. 1342.

4. With the withdrawal of Claim No. 1342, MDOR has voluntarily made the act sought by the Debtors. This court no longer has a justiciable controversy over Claim No. 1342 to adjudicate, and consequently the Objection as it concerns that claim should be dismissed as moot. *Arizona Public Service v. Environmental Protection Agency*, 211 F. 3d 1280, 1296 (D.C. Cir. 2000).

## **III. RESPONSE TO OBJECTION TO CLAIM NO. 1343**

5. According to the records of the Secretary of the Commonwealth of Massachusetts, the co-debtor Vartec Solutions, Inc. (hereinafter, “Vartec”), is a Delaware corporation and has been registered in Massachusetts as a foreign corporation since May 20, 1997<sup>1</sup>.

6. During the times relevant hereto, Vartec has been registered with MDOR for the filing and payment of the two taxes now in question, the sales tax on telecommunication services (M.G.L. c. 64H, § 1, *et seq.*) and the tax on the net income of a public utility corporation

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<sup>1</sup> This entity was named in its original registration as Telco Holdings, Inc. and was until May 4, 2000. At that time, its name was Teleglobe Business Solutions, Inc., which it was named as such until December 28, 2000, when it became Emeritus Communications, Inc. On May 5, 2004, the entity assumed its present name, Vartec Solutions, Inc.

operating as, *inter alia*, “a telephone and telegraph company” (M.G.L. c. 63, § 52A).

7. On or about February 14, 2005, MDOR filed an amended proof of claim that has been identified as Claim No. 1343 in the priority unsecured amount of \$3,584.33 and in the general unsecured amount of \$288.00 against Vartec (Fed. Id. No. 54-836197).

8. Claim No. 1343 represents MDOR’s best estimate at that time, based upon available information, as to Vartec’s tax liabilities for 1) sales taxes on telecommunications services for the monthly periods of April 2003 and December 2003 through October 2004, and 2) taxes on the net income of a public utility for the year ending December 31, 2004. These liabilities were estimates as at the time Vartec had not filed the tax returns for those periods.

9. Since Claim No. 1343 was filed, Vartec has filed the 2004 public utility tax return and as a result, MDOR filed on November 22, 2005 an amended proof of claim to supersede Claim No. 1343<sup>2</sup>.

10. This amended claim, Claim No. 3302, continues to present estimates for sales taxes on telecommunications services for the monthly periods of April 2003 and December 2003 through October 2004<sup>3</sup>.

11. The Debtors have not objected to Claim No. 3302.

12. With Claim No. 1343 superseded by Claim No. 3302, there is no longer a justiciable controversy over Claim No. 1343 for the court to adjudicate, and consequently the Objection as it concerns that claim should be dismissed as moot. *Arizona Public Service v. Environmental Protection Agency*, 211 F. 3d 1280, 1296 (D.C. Cir. 2000).

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<sup>2</sup> Based upon the markings, this may have been number by the claims agent as Claim No. 3302. At least in the interests of convenience, this amended claim shall be referred to as Claim No. 3302.

<sup>3</sup> If the Debtors may be contemplating an objection to Claim No. 3302 on the grounds that Vartec was not for those periods the reporting entity for the Debtors for the Massachusetts services tax, they should contact directly Mr. William F. Connor, Chapter 11 Supervisor, at telephone no. (617) 626-3238, who has the authority to amend or withdraw Claim No. 3302. That discussion could obviate any need for an objection to Claim No. 3302.

13. MDOR reserves the right and request the ability to amend or to supplement this response should the court decide that it shall adjudicate or determine the allowance or disallowance of MDOR's current proof of claim, Claim No. 3302, in the context of the Objection.

#### **IV. RESPONSE TO OBJECTION TO CLAIM NO. 1352**

14. On or about February 14, 2005, MDOR filed an amended proof of claim that has been identified as Claim No. 1352 in the priority unsecured amount of \$92,893.21 against the co-debtor, Excel Telecommunications, Inc. (Fed. Id. No. 75-2264299).

15. On November 22, 2005, MDOR filed an amended proof of claim to supersede Claim No. 1352<sup>4</sup>.

16. This amended claim, Claim No. 3303, presents additional sales taxes assessed by MDOR through an audit of Excel's and the Debtors' books and records for the monthly periods between October 2000 through November 2003, and additional sales taxes on services assed by MDOR through an audit of Excel's and the Debtors' books and records for the monthly periods between December 2003 through October 2004.

17. The Debtors have not objected to Claim No. 3303.

18. With Claim No. 1352 superseded by Claim No. 3303, there is no longer a justiciable controversy over Claim No. 1352 for the court to adjudicate, and consequently the Objection as it concerns that claim should be dismissed as moot. *Arizona Public Service v. Environmental Protection Agency*, 211 F. 3d 1280, 1296 (D.C. Cir. 2000).

19. MDOR reserves the right and request the ability to supplement this response should the court decide that it shall adjudicate or determine the allowance or disallowance of

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<sup>4</sup> Based upon the markings, this may have been number by the claims agent as Claim No. 3303. At least in the interests of convenience, this amended claim shall be referred to as Claim No. 3303.

MDOR's current proof of claim, Claim No. 3303, in the context of the Objection.

**WHEREFORE**, Alan LeBovidge, as he is Commissioner of the Massachusetts Department of Revenue, respectfully requests that this Honorable Court:

- a. Deny and overrule the Debtors' *Claims Objection Number 7 Objection to Certain Tax Claims (Substantive Objections)* as moot; and
- b. Enter an order for such other relief as the Court deems proper and just.

**Respectfully submitted,**

**Dated: December 9, 2005**

**ALAN LeBOVIDGE  
COMMISSIONER  
MASSACHUSETTS DEPARTMENT OF REVENUE**

**By his attorneys,**

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**SERVICE LIST**

**In re VARTEC TELECOM, INC., *et al.***  
**Chapter 11, Case No. 04-81694-HDH-11**

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