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ATTORNEY FOR THE TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS

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.,	§	(Jointly Administered)
	§	
Debtors	§	Chapter 11

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS' RESPONSE TO CLAIMS
OBJECTION NUMBER 7 OBJECTION TO CERTAIN TAX CLAIMS
(SUBSTANTIVE OBJECTIONS)

The Texas Comptroller of Public Accounts (“Comptroller”), appearing through the Office of the Attorney General of Texas, responds as follows to Claims Objection Number 7 Objection to Certain Tax Claims (Substantive Objections)(the “Objection”):

1. The Debtors have objected to Claim Number 2116, which was filed by the Comptroller as a priority claim in the amount of \$13,937.73. The Comptroller agrees to the reclassification of Claim Number 2116 from a priority claim to a general, unsecured claim as requested in the Objection.

2. The Debtors have also objected to Claim Number 2953, which is the Comptroller’s priority claim for pre-petition sales and use tax in the amount of \$7,317,102.82. The Comptroller claim is based on two audited periods. The first audit covered the period from April 1, 1996 through October 31, 2000. This audit was originally assessed on September 8, 2003. The Debtors requested

a redetermination of the audit through the Comptroller's administrative hearings process. The redetermination process has been on hold since the Debtors' petition date. The second audit covers the period from January 1, 2001 through August 31, 2004. The audit for this period has not been completed. The Comptroller estimated the audit liability for this period so that a proof of claim could be filed before the bar date.

3. The Debtors assert Claim Number 2953 is either not supported by the Debtors' books and records and/or there is insufficient documentation attached to support its calculation. Neither assertion states a valid basis for disallowance of Claim Number 2953.

4. The Comptroller's claim is *prima facie* valid under the Federal Rules of Bankruptcy Procedure and a mere statement that a debtor does not owe the amount of a tax authority's claim is insufficient to rebut the *prima facie* validity of a filed proof of claim. In re White, 169 B.R. 825, 829 (Bankr. D. Conn. 1994); In re Pan, 209 B.R. 152 (D.Mass. 1997). Under substantive state law, the Comptroller's claim is afforded a presumption of correctness which may be overcome only by conclusive evidence. Baker v. Bullock, 529 S.W. 2d 279 (Tex. Civ. App.- Austin 1975, *writ ref'd n.r.e.*); Hylton v. State, 665 S.W. 2d 517 (Tex. App.- Austin, 1984, *no writ*). In Raleigh v. Ill. Dept of Revenue, 120 S. Ct.1951 (2000), the United States Supreme Court directly and unambiguously held that "the burden of proof on a tax claim in bankruptcy remains where the substantive tax law puts it." Raleigh, at 1958 . The Debtors' assertion that the Comptroller's claim amount is "not supported by the Debtor's books and records" is irrelevant. The real issue is whether the Debtors, as the objecting parties, have sufficient records or evidence to prove that the Debtors are not liable for the amounts asserted in the Comptroller's claim. Both the burden of going forward with competent evidence to rebut the presumed correctness of the Comptroller's claim and the ultimate

burden of proving the absence of liability is on the Debtors.

5. The Debtors' assertion that there is insufficient documentation attached to the Comptroller's claim is likewise without merit. The Comptroller's claim does not include any documentation because neither the Bankruptcy Code nor the Bankruptcy Rules require any such attachment. Moreover, case law has consistently and unanimously held that no documentation is required.

6. The Comptroller's tax claim is based on a statutorily imposed obligation. Federal Rule of Bankruptcy Procedure 3001(c) requires documentation only for claims based on a "writing". Therefore, additional documentation to support the Comptroller's claim is not required. *In re Los Angeles Int'l Airport Hotel Assocs*, 106 F.3d 1479 (9th Cir. 1997) (no documents need to be attached to a tax proof of claim); *Spiers v. Ohio Department of Natural Resources, (In re Jenny Lynn Mining Co.)*, 780 F.2d 585, 587 (6th Cir. 1986) ("Attaching a copy of the statute would have added nothing to the proof of claim") *cert. denied*, 477 U.S. 905, 105 S.Ct. 3276, 91 L.Ed. 566 (1986); *In re Carlisle*, 320 B.R. 796, 799 (M.D. Pa. 2004) (IRS claim based on statute, not a writing so no documentation required); *United States v. Braunstein (In re Pan)*, 209 B.R. 152, 156 (D. Mass. 1997) ("the government had no obligation under the rules to provide additional documentation in support of its proof of claim"); *In re Vines*, 200 B.R. 940, 949 (M.D. Fla. 1996) ("The IRS was not required to attach any documentation to its Poof of Claim because the claims and lien are based not on a writing, but on federal statutes."); *Bozich v. I.R.S. (In re Bozich)*, 212 B.R. 354, 360 (Bankr. D. Ariz. 1997) ("Courts across the country have held that tax claims are based on statute, not on a writing, and that, therefore, such claims do not need to be supported by the documentation required by Rule 3001(c)")

7. In order to prevail in an objection to the Comptroller's claim, the Debtors must first allege one of the statutory grounds for disallowance in 11 U.S.C. § 502(b). In re Shaffner, 320 B.R.870, 876 (Bankr. W.D. Mich. 2005). The Debtors must then prove their allegation with conclusive evidence. The Debtors have missed the first step of the process by failing to allege a statutory basis for disallowance. The Debtors' objection to Claim Number 2953 is without substance and should be overruled.

Accordingly, the Comptroller requests that the Objection be overruled as to Claim Number 2953.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the Debtors' counsel by electronic transmission from the Electronic Case Filing System and by first class mail to the address listed below on December 14, 2005.

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