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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)

**THIRD MOTION TO AUTHORIZE AND RATIFY
REJECTIONS OF VARIOUS CIRCUIT AGREEMENTS**

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

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 23, 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.

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").

7. On August 23, 2005, the Court entered its *Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, Among (I) the Debtor, (II) BellSouth Telecommunications, Inc. and (III) Comtel Telecom Assets LP, and Settlement of Adversary Proceeding No. 05-3233* [Docket No. 1785] (the "BellSouth Stipulation Order").

8. On August 23, 2005, the Court entered its *Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, Among (i) the Debtor, (ii) the Operating Telephone Company Subsidiaries of Verizon Communications Inc., and (iii) Comtel Telecom Assets LP* [Docket No. 1786] (the "Verizon Stipulation Order").

STATEMENT OF FACTS

Circuit Agreements

9. Under various agreements, certain telecommunication service providers (collectively, the "Providers") lease or provide the Debtors access to a number of telecommunication circuits that are used to transmit voice and data (collectively, the "Circuits"). The Debtors have identified 17 Circuits (collectively, the "Designated Circuits") that are not necessary to the Debtors' reorganization or continued operation; and accordingly, they request authority to reject the executory contracts under which the

Designated Circuits are provided (collectively, the "Agreements").² The Agreements providing for the Designated Circuits are identified on the list attached hereto as **Exhibit A**. Certain Agreements were created through one of the Debtors opting into tariffs that were filed by certain ILECs with various state public utilities commissions (the "ILEC Agreements"). Accordingly, the ILECs' tariffs that created the ILEC Agreements are of public record as filed in each respective state. The remaining Agreements are subject to master leases with other CLECs (the "CLEC Agreements").³ The CLEC Agreements consist of severable schedules. All of the Designated Circuits have already been disconnected through the procedure provided for under the applicable Agreements and as reflected in the Disconnection Dates listed on **Exhibit A**.

10. In addition, the Debtors have disconnected a number of circuits with each of BellSouth and Verizon. The agreements providing for the disconnected BellSouth and Verizon circuits (the "BellSouth and Verizon Circuits") are identified on the list attached hereto as **Exhibit B**. Pursuant to the BellSouth Stipulation Order, the Debtors are permitted, prior to December 15, 2005, to disconnect circuits with damages, if any, arising from the disconnection being deemed (a) a prepetition unsecured claim if the Final Closing (as defined therein) is not accomplished, and (b) as prepetition unsecured claims except for ordinary course disconnection charges (which do not include any early termination charges) if Final Closing is accomplished. Pursuant to the Verizon Stipulation Order, the Debtors are permitted to disconnect the circuits with damages, if

² [Illegible text]

³ [Illegible text]

any, arising from the disconnection being deemed a prepetition unsecured claim. The Debtors followed the procedure under both the BellSouth Stipulation Order and the Verizon Stipulation Order to disconnect the circuits. The BellSouth and Verizon Circuits are no longer necessary for the administration of the Debtors' estates. The inclusion of the BellSouth and Verizon Circuits herein is **not** a request to alter the BellSouth Stipulation Order or the Verizon Stipulation Order. Rather, the inclusion of the BellSouth and Verizon Circuits herein is to obtain ratification of the Debtors' actions which the Debtors submit are consistent with the Court's BellSouth Stipulation Order or the Verizon Stipulation Order.

RELIEF REQUESTED

11. Pursuant to Bankruptcy Code § 365, the Debtors seek authority to reject the Agreements as of the date on which they discontinued their use of the respective Designated Circuits (the "Disconnection Date"), which date is identified on **Exhibit A**. Although certain of the Agreements are schedules to a master agreement, those schedules are severable agreements and the Debtors do not seek authority to assume or reject the schedules, other than the Agreements, at this time. See *Stewart Title Guaranty Co. v. Old Republic Nat'l Title Insur. Co.*, 83 F.3d 735, 741 (5th Cir. 1996).

12. Further, the Debtors seek approval of the disconnection of the BellSouth and Verizon Circuits pursuant to the BellSouth Stipulation Order and the Verizon Stipulation Order, respectively, as of the Disconnection Date listed on **Exhibit B** attached hereto. The approval requested will give the Debtors certainty as to the treatment of the damages, if any, resulting from the disconnection of the BellSouth and Verizon Circuits.

13. 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.

14. 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.

15. The Debtors have determined, in their business judgment, that the Agreements will no longer be necessary to their operations or to effect successful

reorganizations of their businesses, and the failure to reject the Agreements could result in the incurrence of unnecessary expense.

16. As such, the Debtors request that the Court authorize the rejection of each of the Agreements as of the Disconnection Date as set forth on **Exhibit A**. The Agreements are no longer necessary for the continued operation of the Debtors' businesses and do not benefit any of the Debtors' estates. Further, the Debtors request approval of the disconnection of the BellSouth and Verizon Circuits pursuant to the BellSouth Stipulation Order or the Verizon Stipulation Order.

PRAYER

17. The Debtors respectfully request that the Court enter an Order authorizing the rejection of the Agreements as of their respective Disconnection Dates with any costs of retrieval borne by the counterparties. Further, the Debtors request approval of the disconnection of the BellSouth and Verizon Circuits pursuant to the BellSouth Stipulation Order or the Verizon Stipulation Order. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: December 22, 2005

Respectfully submitted,

VINSON & ELKINS L.L.P.
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
Tel: 214-220-7700
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By: /s/ Holly J. Warrington
Daniel C. Stewart, SBT #19206500
William L. Wallander, SBT #20780750
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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on December 22, 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 22, 2005, a copy of the foregoing document was served via first class mail on the counterparties affected by this Motion at the addresses set forth on **Exhibit C**.

/s/ Holly J. Warrington
One of Counsel

1050093_1.DOC

EXHIBIT A
LIST OF DESIGNATED CIRCUITS UNDER MOTION OF DECEMBER 22, 2005

	Billing Account Number (if Known)	Provider	Provider Circuit Information	Disconnection Date
1.	2623366	ALLEGIANCE TELECOM	BL/HCGS/279404/8/AFYT	11/15/05
2.	80010879445	AT & T	DNES 999828	12/7/05
3.	97870811S3811	CENTURYTEL OF MISSOURI, LLC (SOUTHWEST) - 9787	84/HCGS/026679//SW	11/2/05
4.	97870811S3811	CENTURYTEL OF MISSOURI, LLC (SOUTHWEST) - 9787	84/HCGS/026680//SW	11/2/05
5.		COMMONWEALTH TELEPHONE COMPANY - 0161	155/T1F/HRBGAHAW99/LWBYPAXLDS1	9/08/05
6.	0203150833VRT	GLOBAL CROSSING	FRO2000295456PL1	11/21/05
7.		ICG TELECOM GROUP – CO – 7801	TDL065632	12/30/05
8.	1097847-6	IFN	1001-T3/ARLTVACFEXL/RKMTNCCFEXL	11/10/05
9.	180025	LOOKING GLASS NETWORKS, INC. – 1737	LG/DS3X/CHCGIL24/CHCGILWU/0007	12/1/05
10.	180025	LOOKING GLASS NETWORKS, INC. – 1737	LG/DS3X/CHCGIL24/CHCGILWU/0008	12/1/05
11.	1000179	NTS	T1AN/20146357	11/21/05
12.		QWEST CORPORATION – 9600	/HCGS/8666013//LB	12/9/05
13.	602R080036036	QWEST CORPORATION – 9636	14/HCGS/259287/MS	11/4/05
14.	16799	TIME WARNER COMMUNICATIONS OF HOUSTON, L.P. - 7074	19/HFGS/007209/TWCS	1/5/06
15.	V22SP00752EXL	VALOR TELECOMMUNICATIONS OF TEXAS, LP#2 - 1181	35/HCGS/608265//SW	11/15/05
16.	V22SP00752EXL	VALOR TELECOMMUNICATIONS OF TEXAS, LP#2 - 1181	35/HCGS/608266//SW	11/15/05
17.	V22SP00752EXL	VALOR TELECOMMUNICATIONS OF TEXAS, LP#2 - 1181	35/HCGS/608278//SW	11/15/05

EXHIBIT B
LIST OF BELLSOUTH AND VERIZON CIRCUITS UNDER MOTION OF DECEMBER 22, 2005

	Billing Account Number (If Known)	Provider	Provider Circuit Information	Disconnection Date
1.		BELLSOUTH	801 T3Z JCSNTNKQWAD JCSNTNMAK41	10/05/07
2.		BELLSOUTH TELECOMMUNICATIONS, INC. – FL – 7533	58/HFGS/702272//SB	12/12/05
3.	C11SQ11046105	VERIZON CALIFORNIA INC.-CA (GTE) – 2319	81/HCGS/741034//GTEW/	11/14/05
4.	C11SQ11046105	VERIZON CALIFORNIA INC.-CA (GTE) – 2319	81/HCGS/741759//GTEW/	11/18/05
5.	401M021361059	VERIZON COMMUNICATION – 9200	8567/T1/PRVDRIGRW44/PRVDRIWADC0	11/21/05
6.	603Y890003	VERIZON COMMUNICATIONS – 9100	8003/T1ZF/1-24/MNCHNHCOW2L/WEARNHXADS0	11/22/05
7.	802M880669765	VERIZON COMMUNICATIONS – 9100	8001/T1ZF/SBTNV TETW01/SPFDV TXA01T	11/21/05
8.	802M020038213	VERIZON COMMUNICATIONS – 9100	8002/T1ZF/SBTNV TETW01/WRJVTGADC0	11/22/05
9.	802M020038213	VERIZON COMMUNICATIONS – 9100	8003/T1ZF/SBTNV TETW01/WRJVTGADC0	11/22/05
10.	802M880669765	VERIZON COMMUNICATIONS – 9100	8001/T1ZF/RCMDVTXA/SBTNV TETW01	11/21/05
11.	802M020038213	VERIZON COMMUNICATIONS – 9100	8001/T1ZF/SBTNV TETW01/WRJVTGADC0	11/22/05
12.		VERIZON FLORIDA INC. – 0328	69.HCGS.307452.GTES	12/7/05
13.		VERIZON FLORIDA INC. – 0328	69.HCGS.307453.GTES	12/7/05
14.	413Y550168	VERIZON NEW ENGLAND INC. - 9102	8001/T1ZF/1-24/SPFDMAMAW24/SPFDMAWODC0	11/14/05
15.	413Y550168	VERIZON NEW ENGLAND INC. - 9102	8002/T1ZF/1-24/SPFDMAMAW24/SPFDMAWODC0	11/14/05
16.	413Y550168	VERIZON NEW ENGLAND INC. - 9102	8003/T1ZF/1-24/SPFDMAMAW24/SPFDMAWODC0	11/14/05
17.	413Y550168	VERIZON NEW ENGLAND INC. - 9102	8004/T1ZF/1-24/SPFDMAMAW24/SPFDMAWODC0	11/14/05
18.	603Y558810	VERIZON NEW ENGLAND INC. - 9102	8017/T1ZF/1-24/DOVRNHTHDC0/MNCHNHCOW2L	11/28/05
19.	401M021361059	VERIZON NEW ENGLAND INC. - 9102	8384/T1ZF/PRVDRIGRW44/PRVDRIWADC0	11/21/05
20.	401M021361059	VERIZON NEW ENGLAND INC. - 9102	8385/T1ZF/PRVDRIGRW44/PRVDRIWADC0	11/21/05
21.	401M021361059	VERIZON NEW ENGLAND INC. - 9102	8386/T1ZF/PRVDRIGRW44/PRVDRIWADC0	11/21/05
22.	401M021361059	VERIZON NEW ENGLAND INC. - 9102	8387/T1ZF/PRVDRIGRW44/PRVDRIWADC0	11/21/05
23.	617M020079209	VERIZON NEW ENGLAND INC. - 9102	8001/T1ZF/BSTPMALLW01/WRCSMACEDC1	11/23/05
24.	617M020079209	VERIZON NEW ENGLAND INC. - 9102	8002/T1ZF/BSTPMALLW01/WRCSMACEDC1	11/23/05
25.	617M020079209	VERIZON NEW ENGLAND INC. - 9102	8012/T1ZF/BSTPMALLW01/WRCSMACEDC1	11/23/05
26.	617M010594185	VERIZON NEW ENGLAND INC. - 9102	95/HCGS/015107//NE	11/16/05

EXHIBIT B
LIST OF BELL SOUTH AND VERIZON CIRCUITS UNDER MOTION OF DECEMBER 22, 2005

27.	617M010594185	VERIZON NEW ENGLAND INC. - 9102	95/HCGS/015108//NE	11/30/05
28.	617M010594185	VERIZON NEW ENGLAND INC. - 9102	95/HCGS/015109//NE	11/30/05

EXHIBIT C
NOTICE ADDRESSES FOR COUNTERPARTIES UNDER MOTION OF DECEMBER 22, 2005

ALLEGIANCE TELECOM
 111 E. Wacker, Suite 120
 Chicago, IL 60601

AT&T
 5501 LBJ Freeway
 Dallas, TX 75240

CENTURYTEL OF MISSOURI LLC -
 (SOUTHWEST) – 9787
 100 CenturyTel Dr.
 Monroe, LA 71203

COMMONWEALTH TELEPHONE
 COMPANY - 0161
 100 Cte Drive
 Dallas, PA 18612

ICG TELECOM GROUP
 161 Inverness Drive West
 Englewood, CO 80112

IFN
 1791 O.G. Skinner
 West Point, GA 31833

GLOBAL CROSSING
 1120 Pittsford Victor Road
 3rd Floor
 Pittsford, NY 14534

LOOKING GLASS NETWORKS, INC. -
 1737
 P.O. Box 910776
 Dallas, TX 75391

NTS
 5307 W. Loop 289
 Lubbock, TX 79414

QWEST CORPORATION - 9600
 1801 California St.
 Denver, CO 80202

QWEST CORPORATION - 9636
 1801 California St.
 Denver, CO 80202

TIME WARNER COMMUNICATIONS
 OF HOUSTON, L.P. - 7074
 15303 Dallas Parkway
 Suite 610
 Addison, TX 75001

VALOR TELECOMMUNICATIONS OF
 TEXAS, LP#2 - 1181
 Las Colinas Tower I,
 201 E. Carpenter Freeway, Suite 200
 Irving, TX 75062

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