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

IN RE:

VARTEC TELECOM, INC., *et al.*,

DEBTORS.

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CASE NO. 04-81694-HDH-11

**(Chapter 11)
(Jointly Administered)**

**DEBTORS' EIGHTH MOTION TO AUTHORIZE REJECTION OF CERTAIN
CIRCUIT AGREEMENTS WITH SBC TELEPHONE COMPANIES**

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

Notice Under Rules for Complex Chapter 11 Cases

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 23,
2006 AT 1:30 P.M. IN JUDGE HALE'S COURTROOM, UNITED STATES
BANKRUPTCY COURT, 1100 COMMERCE STREET, 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.**

The above-referenced debtors and debtors in possession (collectively, the "Debtors")¹ file Debtors' Eighth Motion to Authorize Rejection of Certain Circuit Agreements with SBC Telephone Companies (the "Motion"), and in support thereof the Debtors would show as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

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.

STATEMENT OF FACTS

VarTec and Its Businesses

6. VarTec Telecom, Inc., a Texas corporation, ("VarTec") along with its sixteen direct and indirect domestic subsidiaries, each of which is a Debtor, and two remaining non-

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.

debtor direct and indirect foreign subsidiaries, is among the largest privately held companies providing telecommunications services in North America. As of the Petition Date, VarTec's revenues had been derived primarily from three sale-distribution channels: (a) Direct Marketing; (b) Commercial Services; and (c) Multi-Level Marketing.

Circuit Agreements

7. Under various agreements, certain telecommunication service 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 majority of such agreements were created through one of the Debtors opting into tariffs that were filed with the respective state public utilities commission by certain ILECs. Accordingly, the ILECs' tariffs that created the ILEC agreements are of public record as filed in each respective state. The Debtors have identified 13 Circuits (collectively, the "Designated Circuits") in Exhibit A attached to this Motion. The Designated Circuits listed in Exhibit A fall into two categories: i) Designated Circuits with disconnection dates ("Disconnection Dates") that are specified;² and ii) Designated Circuits with Disconnection Dates that are to be determined.

8. The Designated Circuits with Disconnection Dates that are specified in Exhibit A are not necessary to the Debtors' reorganization or continued operations. Accordingly, the Debtors request authority to reject the executory contracts under which these particular Designated Circuits are provided (collectively, the "Agreements") effective as of the Disconnection Dates listed in Exhibit A.

² The Providers notified the Debtors of the Disconnection Dates listed in Exhibits A, or the Debtors have otherwise verified the Disconnection Dates listed. The dates were those on which the respective Designated Circuits were or were to have been disconnected according to the Providers.

9. As for the Designated Circuits with Disconnection Dates that are to be determined, one or more of the Debtors need to use these Designated Circuits to complete a project that is underway. It is estimated that the project will be completed in April, 2006, and it is contemplated that these Designated Circuits will be disconnected when the project is completed.

10. Debtors are including these Designated Circuits in this Motion because of language in the Stipulation and Order for Assumption and Assignment of Executory Contracts, and Related Cure, Among (I) the Debtors, (II) the SBC Telcos, (III) Comtel Telecom Assets, LP, and iv) the RTFC (entered on August 23, 2005) (the "Stipulation"). The Stipulation imposes a December 31, 2005 deadline by which "the Debtors and Comtel may file appropriate motions designating for rejection any appropriate access circuit(s) or related items." Stipulation at 8. Accordingly, as to the Designated Circuits with Disconnection Dates that are to be determined, the Debtors are filing this Motion to designate these Circuits for rejection in accordance with the Stipulation; however, the Debtors request that the Court order that the date of rejection for each of these Designated Circuits be the actual date of disconnection for each of the respective Circuits as determined after Debtors have submitted appropriate documentation to SBC to cause such disconnections to occur. Debtors confirm that they will continue to pay for these Designated Circuits until they are disconnected.

11. Once they are disconnected, these Designated Circuits will not be necessary to the Debtors' reorganization or continued operations. The Debtors request authority to reject the executory contracts under which these Designated Circuits are provided effective as of their respective Disconnection Dates when such dates are determined.

RELIEF REQUESTED

12. Pursuant to Bankruptcy Code § 365, the Debtors seek authority to reject the

Agreements as of the dates described above.³ 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.

13. 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.

³ Rejection is restricted to Agreements for the Designated Circuits, all in accordance with the particular requirements specified in this Motion. The Debtors are not rejecting Agreements for any Circuits other than Designated Circuits.

14. The Debtors have determined, in their business judgment, that the Agreements for Designated Circuits are already, or soon will be, unnecessary to their operations or to effect successful reorganization of their businesses, and the failure to reject the Agreements in the manner described in this Motion could result in unnecessary expense to the estates.

PRAYER

The Debtors respectfully request that the Court enter an order authorizing the rejection of the Agreements as of their respective Disconnection Dates as more particularly described in this Motion, with any costs of retrieval of any SBC equipment to be borne by SBC. The Debtors also request such other and further relief to which they may be justly entitled.

Dated: December 23, 2005.

Respectfully submitted,

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By: /s/ Michael L. Scanlon
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SPECIAL COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on December 23, 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 will be filed with respect to those parties on the Master Service List who do not receive electronic e-mail service.

Further, this is to certify that on December 23, 2005, a copy of the foregoing document was served via First Class United States Mail, postage prepaid, on the following individuals at the addresses listed below:

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