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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.,

DEBTORS.**

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**CASE NO. 04-81694-HDH-11

(Chapter 11)
(Jointly Administered)**

**Hearing Requested for January 3,
2006 at 1:30 pm.**

**MOTION TO FURTHER EXTEND FOR NINETY DAYS THE
EXCLUSIVE PERIODS DURING WHICH DEBTORS
MAY FILE, AND SOLICIT ACCEPTANCES OF, A PLAN AND
REPORT PURSUANT TO LOCAL BANKRUPTCY RULE 3016.1**

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

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)¹ file this Motion to Further Extend for Ninety Days the Exclusive Periods during which Debtors May File, and Solicit Acceptances of, a Plan and Report pursuant to Local Bankruptcy Rule 3016.1 (the “Motion”) and show as follows:

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.

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 estates; 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") pursuant to 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 Cases are jointly administered under the Case styled *In re VarTec Telecom, Inc., et al.*, Case No. 04-81694-HDH-11.

FACTUAL BACKGROUND AND REPORT PURSUANT TO LOCAL BANKRUPTCY RULE 3016.1

Previous Extension Requests

6. On November 21, 2005 (the "Extension Request Date"), the Debtors filed their Motion to Further Extend for Forty-Five Days the Exclusive Periods during which Debtors May File, and Solicit Acceptances of, a Plan and Report pursuant to Local Bankruptcy Rule 3016.1 [Docket No. 2103] (the "Extension Motion") in which they requested authority to extend the exclusive periods for the Debtors to file a plan through and including the hearing currently scheduled for January 3, 2006 (the "Exclusive Plan Period") and for the Debtors to solicit acceptances of such plan through and including

March 3, 2006 (the “Exclusive Solicitation Period” and together with the Exclusive Plan Period, the “Exclusive Periods”).

7. The requested extensions of the Exclusive Periods was supported by the Official Committee of Unsecured Creditors (the “Official Committee”) and the Rural Telephone Finance Cooperative (the “RTFC”), and on November 23, 2005, the Court entered its Eighth Order Granting Extension of Exclusive Periods during which Debtors May File and Solicit Acceptances of Plan [Docket No. 2109] in which it extended the Exclusive Plan Period through and including the hearing currently scheduled for January 3, 2006 and the Exclusive Solicitation Period through and including March 3, 2006.²

8. Since the Extension Request Date, the Debtors have focused on, among other things, (i) addressing carrier-specific issues and discussing the possible assumption and assignment of executory contracts with certain carriers; (ii) pursuing Court approval of a comprehensive compromise and settlement (the “Global IR Settlement”) of claims held by the Debtors’ independent representatives (collectively, the “IRs”); (iii) defending a motion to compel assumption or rejection of executory contracts or, alternatively, for relief from the automatic stay filed by Qwest Communications Corporation and Qwest Corporation (collectively, “Qwest”) and pursuing certain causes of action against Qwest; (iv) having discussions with the Official Committee and the RTFC concerning the framework for a plan, which may include a settlement of claims asserted by the Official Committee against the RTFC; and

² The Court previously extended the Exclusive Periods by various Orders [Docket No. 988, 1366, 1415, 1625, 1855, 1928, and 1977].

(v) addressing the retention of counsel and conflicts regarding the same with respect to potential litigation against former officers and directors of the Debtors.³

Carrier Issues

9. The preservation of the Debtors' relationship with their carriers is important to the success of the Cases. Since the Court approved the sale of substantially all of the Debtors' operating assets (the "Acquired Assets") to Comtel Investments, L.L.C. (together with its assignee Comtel Telcom Assets, L.P., "Comtel"), the Debtors and Comtel have focused extensively on improving those relationships and identifying and resolving issues with the carriers.

10. On August 23, 2005, the Court entered the 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 (the "Verizon Stipulation") in which it approved a stipulation regarding the Debtors' assumption of certain executory contracts with Verizon Communications Inc. ("Verizon") and the subsequent assignment of such contracts to Comtel (as of the final closing of the sale of Acquired Assets). The Verizon Stipulation left open an issue with respect to certain Remaining PARs Disputes (as defined in the Verizon Stipulation), and the parties contemplated that those disputes would be resolved subsequently.

11. After numerous discussions, the Debtors, Verizon, and Comtel resolved their issues with respect to the Remaining PARS Dispute, and on November 21, 2005,

³ For a discussion of tasks on which the Debtors focused between the Petition Date and the Extension Request Date, reference is made to the motions at Docket Nos. 900, 1300, 1471, 1849, 1918, and 2103.

the Debtors filed a motion to approve an amendment to that stipulation. After a hearing on December 19, 2005, the Court approved that amendment.

12. The Debtors have negotiated a supplemental agreement with Teleglobe America, Inc. (“Teleglobe”) under which Teleglobe agrees to offer credit terms to the Debtors. As a result of the extension of credit terms to the Debtors, they will be able to increase the volume of telecommunications traffic carried by Teleglobe. The Debtors expect that the consequence of the execution of the supplemental agreement will be an increase in liquidity and a reduction in expenses by approximately \$960,000 annually (on account of favorable rates offered by Teleglobe). On December 9, 2005, the Debtors filed a motion [Docket No. 2149] to approve that agreement, which is set for hearing on January 3, 2006 at 1:30 p.m.

13. As part of their continuing effort to identify executory contracts and unexpired leases to be assumed and assigned or rejected, the Debtors and Comtel have (i) negotiated a stipulation with McLeod USA Telecommunications Services, Inc. (“McLeod”) under which certain agreements with McLeod will be assumed and assigned to Comtel effective as of the final closing date and (ii) reached advanced stages of negotiations concerning the assumption and assignment of certain agreements with a number of large carriers. On November 23, 2005, the Court entered a Stipulation and Order [Docket No. 2118] approving the arrangement with McLeod. The Debtors expect to finalize stipulations with other carriers in the next few weeks and to seek Court approval of such stipulations promptly thereafter.

Global IR Settlement

14. After the rejection of their agreements with their former independent representatives, the Debtors expended considerable time and effort to negotiate a global settlement of all claims asserted by IRs. Those settlement negotiations have involved the participation of the Debtors, the Official Committee of Excel Independent Representatives (the “IR Committee”), the RTFC, and the Official Committee. The negotiations, which have taken place over several months, have raised a number of complex legal and business issues. Through the diligence of the various parties, a settlement agreement by and among the Debtors, the IR Committee, and the RTFC, which will resolve the claims asserted by over 124,000 IRs (collectively, “Eligible IRs”), has been finalized, and on November 17, 2005, the Debtors filed their Motion to Approve Settlement of Claims of Excel’s Independent Representatives and Procedures relating Thereto [Docket No. 2070] (the “Settlement Motion”).

15. On November 23, 2005, the Court entered its Order Approving Procedures and Notices relating to Settlement of Claims Held by Excel’s Independent Representatives [Docket No. 2111] (the “IR Settlement Procedures Order”) in which it approved certain notice and service procedures relating to the Settlement Motion. In the IR Settlement Procedures Order, the Court set December 19, 2005 at 1:30 p.m. as the date of the hearing on the Settlement Motion.

16. The Debtors expended significant efforts complying with the IR Settlement Procedures Order, including serving the notice of proposed settlement on all Eligible IRs and creating a website containing information relevant to the Global IR Settlement, finalizing the schedule of claims to be resolved under the Global IR Settlement, and

preparing for the substantive hearing on the Settlement Motion. On December 19, 2005, the Court entered its Order Approving Settlement of Claims Held by Excel Independent Representatives [Docket No. 2206] approving the Global IR Settlement.

Qwest Litigation

17. On November 16, 2005, Qwest filed their Motion for Order Compelling Immediate Assumption or Rejection of the Debtors' Executory Contracts with Qwest Communications Corporation and Qwest Corporation or, in the Alternative, Granting Relief from the Automatic Stay to Allow Termination of Services [Docket No. 2058] (the "Qwest Motion") in which they seek (i) to compel the Debtors' immediate assumption or rejection of agreements with Qwest, or (ii) in the alternative, relief from the automatic stay to allow the termination of services under those agreements. On December 9, 2005, the Debtors and Comtel filed their Joint Objection and Response to Motion to Compel Immediate Assumption or Rejection of the Debtors' Executory Contracts or, in the Alternative, Motion to Grant Relief from the Automatic Stay (Qwest Communications Corporation and Qwest Corporation) [Docket No. 2153] in which they object to the Qwest Motion.

18. In connection with the Qwest Motion, the Debtors have expended significant time relating to discovery matters. Specifically, the Debtors have produced documents responsive to Qwest's request for production, prepared and served objections and responses to that request, and participated in four depositions.

19. On December 13, 2005, the Court held a status conference on the Qwest Motion in which the Debtors, Comtel, and Qwest participated. The hearing on the

Qwest Motion had been set for January 3, 2005 at 10:00 a.m., but it has been continued to a date to be determined.

20. Certain of the Debtors have commenced litigation against Qwest concerning Qwest's retention of accounts receivable. On December 8, 2005, VarTec Telecom, Inc. and Excel Telecommunications, Inc. filed their Complaint for Turnover of Property of the Estate and Declaratory Judgment regarding Qwest's Inability to Setoff (the "Complaint") with this Court, which commenced Adversary Proceeding No. 05-03821-HDH-11. In that adversary proceeding, the Debtor-plaintiffs seek (i) the recovery of \$1,379,577.55 of pre-petition purchased accounts receivable that were wrongfully withheld by Qwest and (ii) a declaration that Qwest has no setoff rights with respect to those withheld funds.

21. Qwest has not filed an answer to the Complaint, and the Court has not entered a scheduling order in the Adversary Proceeding.

Plan Process

22. Although focusing on the issues identified in this Motion, the Debtors have discussed the prospective plan with the Official Committee and the RTFC, respectively. Counsel for the Official Committee has reviewed a draft of the plan and has discussed the plan with counsel for the Debtors. The Debtors believe that further negotiations between the Official Committee and RTFC concerning causes of action asserted by the Official Committee against the RTFC should take place prior to the filing of a plan. In addition, the Debtors and the Official Committee continue to analyze the sources of funds to satisfy the obligations under a prospective plan, the strengths of the estates' claims and causes of action, and the amount and validity of administrative expense

claims and unsecured priority claims. The Debtors will continue to work with the Official Committee to formulate a hopefully consensual plan.

RELIEF REQUESTED

Basis for Relief

23. The Debtors request extensions of the expirations of the Exclusive Plan Period through and including April 4, 2006, and of the Exclusive Solicitation Period through and including June 5, 2006 (collectively, the “Extensions”), without prejudice to their rights to seek further extensions.

24. Bankruptcy Code § 1121(b) states, “Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.” 11 U.S.C. § 1121(b). Pursuant to Bankruptcy Code § 1121(c)(3), upon the expiration of the 120-day exclusive period, a debtor is granted the exclusive right to solicit acceptances of such plan for an additional 60 days.

25. Pursuant to Bankruptcy Code § 1121(d), the Court previously increased the Debtors’ exclusive periods as set forth above. See 11 U.S.C. § 1121(d) (“On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.”).

26. The requested Extensions are necessary to promote the objectives of the Bankruptcy Code. The exclusive periods represent Congress’s recognition that the debtor in possession is in the best position to understand and address the interests of all parties involved in a chapter 11 case and that a successful reorganization is most likely when the debtor is given the initial opportunity to balance the interests of creditors

and equity holders. See *In re Aspen Limousine Serv., Inc.*, 187 B.R. 989, 993 (Bankr. D. Colo. 1995), *aff'd*, 193 B.R. 325 (D. Colo. 1996) (“[A]n honest and diligent debtor should be given a first opportunity to get a plan confirmed . . .”). To achieve this objective and to prepare a balanced and successful plan, a debtor should be given a reasonable opportunity to analyze its assets and liabilities and to formulate and negotiate a feasible plan. Extending a debtor’s exclusive periods so that it may negotiate an effective plan with its creditors and allow such creditors input into the process should be beneficial to that debtor’s estate.

27. The legislative history indicates that the term “cause” in Bankruptcy Code § 1121(d) “is to be viewed flexibly “in order to allow the debtor to reach an agreement.” *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 231, *reprinted* in 1978 U.S.C.C.A.N. 5963, 6190); see also *In re Public Service Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (stating that chapter 11 was drafted to “afford maximum flexibility to the parties in structuring a plan of reorganization”).

28. In determining whether to extend a debtor’s exclusive periods under Bankruptcy Code § 1121(d), courts should be guided by the following nine factors: (i) the size of the case; (ii) the necessity for sufficient time to permit the debtor to negotiate the plan and prepare adequate information; (iii) good faith progress towards reorganization; (iv) whether the debtor is paying its bills on time; (v) whether the debtor has demonstrated reasonable prospects for filing a feasible plan; (vi) whether progress has been made in the negotiations between the debtor and its creditors; (vii) the time that has elapsed in the case; (viii) whether an extension of exclusivity is sought to

pressure creditors to submit to the debtor's demands; and (ix) whether there are unresolved contingencies. See *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Dow Corning Corporation*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

29. Taken as a whole, the above-listed factors overwhelmingly favor granting the further Extensions; and therefore, the Debtors have demonstrated cause to do so.

Factor 1. Size and Complexity

30. The most common basis for granting extensions of the expirations of the exclusive periods under Bankruptcy Code § 1121(d) is the size and complexity of the chapter 11 case. See *Express One*, 194 B.R. at 100; *McClean*, 87 B.R. at 833-35; *In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). The *Pine Run* court stated, "The traditional ground for cause [is] the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization." *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986).

31. The size and complexity of the Cases support the request for the Extensions. As of the Petition Date, the Debtors' schedules identified assets in excess of \$800,000,000, liabilities in excess of \$590,000,000, and 14,000 creditors (excluding over 124,000 IRs). As previously discussed, the Debtors have addressed and/or are addressing several complicated tasks since the Extension Request Date.

32. Due to the size of the Debtors and the difficult issues which require their attention, the Debtors need additional time to file a plan. On that basis, the Debtors respectfully submit that this factor, in and of itself, provides a sufficient basis for the requested Extensions.

**Factors 2 and 3. Sufficient Time to Negotiate a Plan and
Good Faith Progress Toward Reorganization**

33. A debtor's good faith progress towards reorganization within the "exclusivity" period furnishes objective evidence that the request for extensions is not motivated by ulterior motives, but rather, by a desire to pursue to fruition efforts which may have been initiated and diligently pursued since the commencement of the case. The requisite showing of good faith progress may involve efforts to restructure the business or to engage in negotiations. *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996).

34. Since the commencement of their Cases, the Debtors have been working diligently with the RTFC, the Official Committee, the IR Committee, their carriers, and other parties in interest to achieve various tasks necessary to maximize the value of the Debtors' estates.

35. Over the past few months, the Debtors have had a number of discussions with the Official Committee concerning the prospective plan, and they have provided a draft of the plan to counsel for the Official Committee. The Debtors have solicited the input of the Official Committee and intend to work closely with it during the Exclusive Periods. As the Debtors' hope that the structure and provisions of the plan will reflect the Official Committee's input, the extensions requested herein would be beneficial to the Official Committee and its constituency.

36. In light of the good faith efforts made to date, the Debtors respectfully submit that factors two and three favor granting the Extensions so that the Debtors' efforts to negotiate a successful plan may continue.

Factor 4. Whether the Debtor Is Paying Its Bills on Time

37. The Debtors are satisfying obligations to their employees, carriers, vendors, landlords, and utility providers in the ordinary course of business as those obligations become due. The Debtors have demonstrated that they can operate as debtors in possession, and the Extensions will not unjustifiably burden the Debtors' creditors.

Factor 7. The Amount of Time Elapsed in the Cases

38. Since the Petition Date, the Debtors have made great strides in maximizing the value of their estates by reducing overhead costs, rejecting executory contracts and unexpired leases, disposing of non-core assets, and obtaining Court approval of the sale of the Acquired Assets. Given the tasks that the Debtors have necessarily accomplished, and the complexity of those tasks, the timing of the filing of a plan as proposed herein is reasonable. Further, the Extensions would not cause unnecessary or undue delay or prejudice any party in interest.

Factor 8. Whether the Extension Is Requested to Pressure Creditors

39. The Debtors' request for the Extensions is not intended to pressure creditors to submit to the Debtors' demands and such Extensions would not prejudice creditors' respective interests. To the contrary, the purpose of the requested Extensions is to allow the Official Committee input into the plan process. As discussed herein, the Debtors simply have not had adequate time or opportunity to work with the primary parties in interest to develop a thoughtful and effective plan; the Debtors believe the Extensions would allow them to do just that. Thus, an analysis of this factor favors

the grant of such Extensions. *In re Southwest Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 453 (Bankr. W.D. Tex. 1987).

Other Factors

40. The other three factors set forth in the *Dow Corning* case, *i.e.*, whether there are reasonable prospects for filing a feasible plan, the progress to date in negotiations with creditors and the existence of contingencies, are each discussed in connection with the other factors above. The Debtors respectfully submit that these factors weigh in favor of granting the requested Extensions. The Debtors have achieved a number of objectives since the Petition Date, and it is in the best interest of all parties in interest to permit them to continue their efforts with the exclusive right to file a plan and disclosure statement.

Conclusion

41. Given, among other things, the magnitude of the Debtors' Cases, the complex issues presented, and the progress made to date, ample cause exists for granting the Extensions of the expirations of the Exclusive Periods. The Debtors should be afforded an opportunity to negotiate, propose and confirm a plan in these Cases. The Debtors hope to use the requested Extensions to, among other things, continue to confer with the Official Committee concerning the formulation of the plan.

Previous Request

42. As discussed above, the Court previously entered Orders extending the Exclusive Periods.

PRAYER

The Debtors respectfully request that this Court enter an order (a) extending the expirations of the periods within which the Debtors may file a plan through and including

April 4, 2006 and solicit acceptances thereof through and including June 5, 2006; and
(b) granting such other and further relief as may be just and proper.

Dated: December 30, 2005

Respectfully submitted,

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By: /s/ Richard H. London

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

This is to certify that on December 30, 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.

 /s/ Richard H. London

One of Counsel

CERTIFICATE OF CONFERENCE

The Debtors have had telephone conferences with counsel for the Official Committee and counsel for the RTFC concerning the relief requested herein, and counsel for each party indicated that they support an extension of the Exclusive Periods. Counsel for the Official Committee indicated that the Official Committee reserves its right with respect to the length of such extensions.

/s/ Richard H. London

One of Counsel

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