ORIGINAL

U S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 23 2004
TAWANA C MARSHALL, CLERK
By_____
Deputy

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

IN RE:	)	
	)	
VARTEC TELECOM, INC.	)	**CASE NO. 04-81694-SAF-11**
	)	
	)	(Chapter 11)
DEBTORS	)	
	)	
	)	

CLASS-WIDE PROOF OF CLAIM

Comes now Independent Representative Marvin Stewart, on behalf of himself and all independent representatives similarly situated ("the Class"), and hereby files this Class-wide Proof of Claim as to monthly commissions and weekly bonuses owed by the Debtors under the *Independent Representative Agreements* in question for services rendered prior to the filing of these proceedings Rep Stewart and the Class estimate the monthly obligation owed for commissions to be $25 million dollar a month (130,000 reps x $250 per month average commission) but do know the specific amount to be paid without the records being furnished by the Debtors – and seek leave to amend the Proof of Claim upon receiving accurate records from the Debtors as to the amounts paid monthly in commissions for th phone bills of customers that the Class obtained for the benefit of Excel and in leadership bonuses for new reps sponsored to engage in the customer-gathering effort

REC'D DEC 13 2004
Vartec Telecom Inc
00534

Introduction

1 Rep Stewart and the 130,000 member class entered into a business relationship with *Excel Telecommunications, Inc* to market certain products and services of Excel or its related entities A copy of the *Independent Representative Application and Agreement* between Excel Telecommunications, Inc and rep Stewart and the Class is attached hereto as Exhibit A Additional terms as to compensation are set forth in a policy manual distributed to each representative)

2 Under the *Independent Representative Agreement* in question, Excel Telecommunications, Inc agreed, *inter alia*, to pay Rep Stewart and the Class a percentage of the bills for telecommunications services (i e, local and long distance, wireless and internet) of each customer that Stewart and the Class brought directly to Excel and of each customer of any representative that said Stewart and the Class sponsored into the company

3 In specific, Excel Telecommunications, Inc agreed to pay a percentage of the telecommunications bills in question to Stewart and the Class <u>as long as the customer remained on Excel's service</u> pursuant to the following table

For Customers Directly Sponsored by the Rep	2%-10%
For Customers in the Downline of a Rep	
1st Level	1/4%
2nd Level	1/4%
3rd Level	1/4%
4th Level	1/4%

5th Level	1/4%
6th Level	1%
7th Level	5%

4 Stated differently, based upon past services rendered by rep Stewart and the Class , Excel Telecommunications, Inc owes between 2%-10% of the total monthly revenues which are currently being received by Excel Telecommunications, Inc and the Debtors off the telecommunications bills of customers which rep Stewart and the Class persuaded to use the telecommunications services of the Excel family

5 Rep Stewart and the Class have filed a Class-wide Objection to the Request of Excel and Vartec to be relieved of the obligation to pay the monthly commissions Excel agreed to pay pursuant to the *Independent Representative Agreements* in question

6 The *Class-Wide Objection of* Stewart to the *Motion to Authorize Rejection of Independent Representative Agreements* is incorporated by reference

Weekly Bonuses

7 The *Independent Representative Agreement* is also non-executory as to weekly leadership bonuses that Excel did not pay on account of the Chapter 11 proceedings

8 Under the *Independent Representative Agreement*, Excel agreed to pay a weekly leadership bonus to Rep Stewart and the Class for any new rep they brought into the company once that rep was successful in gathering two (2) customers

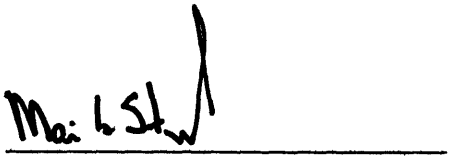
9. Excel owes leadership bonuses to Rep Stewart and the Class for new reps sponsored prior to the filing of the Chapter 11 proceedings

10 The leadership bonuses owed by Rep Stewart and the Class for new reps sponsored prior to the filing of the Chapter 11 proceedings is for past services rendered and represents a non-executory portion of the contract which the Debtors seek to be relieved from paying

Conclusion

11 Excel and the Debtors should not be allowed to retain the monthly commissions and weekly leadership bonuses which were earned by Rep Stewart and the Class prior to the filing of these proceedings

12 The court should allow this Class-wide proof of Claim as a more efficient way of dealing with the claims of 130,000 class members, as contemplated by the Bankruptcy counterpart of Rule 23 of the Federal Rules of Civil Procedure



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CERTIFICATE OF SERVICE

The undersigned hereby informs the court that a copy of the foregoing has been served by Facsimile and First Class Mail, postage prepaid, at the following address

Daniel C Stewart
William L Wallander
Richard H London
VINSON & ELKINS L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201-2975
Phone 214-661-7299
Facsimile 214-220-7717
Email VarTec@velaw com

This the _20th___ day of November, 2004

Pro Se

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Company VARTEC USBC NDTX

Address 330 E FRANKLIN AVE Dept./Floor/Suite/Room

City EL SEGUNDO State ZIP CA 90245

2 Your Internal Billing Reference VARTEC TELECOM

3 To

Recipient's Name ALISON KEENY Phone 10 3 1-5691

Company BMC CORP (VARTEC)

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