

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Joint Application of)
)
COMTEL TELCOM ASSETS LP)
)
and) Case No. _____
)
VARTEC TELECOM, INC., EXCEL)
TELECOMMUNICATIONS, INC. AND)
VARTEC SOLUTIONS, INC.)
)
for Approval of a Transfer of Assets)

JOINT APPLICATION FOR CONSENT TO TRANSFER ASSETS

Pursuant to the rules and regulations of the Public Service Commission of the State of Missouri ("Commission"), Comtel Telcom Assets LP ("Comtel") and VarTec Telecom, Inc. ("VarTec"), Excel Telecommunications, Inc., ("Excel") and VarTec Solutions, Inc. ("VarTec Solutions") (together, the "VarTec Companies") (collectively with Comtel, the "Applicants") hereby notify and jointly petition the Commission for the approval to complete the acquisition by Comtel of certain assets of the VarTec Companies and to grant all relief requested herein to allow for the consummation of the transaction without undue delay. In support of this Application, the following is stated:

I. The Parties

A. Comtel

Comtel is a limited partnership organized under the laws of the State of Texas. A copy of the Certificate of Filing issued to Comtel by the Office of the Secretary of State in Texas is attached hereto as Exhibit A. The corporate contact information for Comtel is as follows:

c/o Paul Winters
500 Boylston Street, 17th Floor

Boston, Massachusetts 02116
Telephone: (617) 603-3508
Facsimile: (617) 603-3509

Questions concerning Comtel or this filing may be addressed to the following representative:

David M. Eisenberg
Baker Sterchi Cowden & Rice, L.L.C.
2400 Pershing Road, Suite 500
Kansas City, MO 64108-2533
Telephone: (816) 448-9343
Facsimile: (816) 472-0288
e-mail: eisenberg@bscr-law.com

Comtel's registered agent within Missouri is as follows: National Corporate Research, Ltd., 222 E. Dunklin, Suite 102, Jefferson, Missouri 65101.

A corporate organizational chart for Comtel is attached hereto as Exhibit B, and a list of its officers is attached as Exhibit C. Comtel is a newly formed limited partnership whose principal business will be telecommunications, and a copy of the Limited Partnership Agreement for Comtel is attached as Exhibit D. Exhibit D contains highly confidential and proprietary information and has been filed under seal pursuant to a Motion for Protective Order filed concurrently with this Application, pursuant to Section 2.085 of the Commission's Rules. Its general partner, Comtel Assets Inc. ("Comtel Inc."), is a Texas corporation and owns 1% of the equity of Comtel. Comtel's limited partner, Comtel Assets Corp. ("Comtel Corp."), is a Delaware corporation, which owns 99% of the equity of Comtel.¹ Comtel Inc. and Comtel Corp. are corporate holding companies located

¹ It is anticipated that certain members of Comtel's management team may have the opportunity to obtain non-controlling ownership interests in Comtel, which would reduce the interest held by Comtel Corp.

at c/o 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

Comtel Inc. and Comtel Corp. are both 100% owned by Sowood Commodity Partners Fund III LP (“Sowood Fund III”), an investment company organized in Delaware as a limited partnership. Sowood Commodity Partners GP III LP (“Sowood GP III LP”) is a Delaware limited partnership, and it is the sole general partner of Sowood Fund III with a 0.2% equity interest and operating control. The principal business of Sowood GP III LP is to serve as a corporate holding company, and it is located at 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

The remaining equity of Sowood Fund III is held by Harvard Private Capital Holdings (“HPCH”), a passive, institutional investor. HPCH’s principal business is serving as an investment company. It is owned and controlled by the President and Fellows of Harvard University, a tax-exempt educational and research institution based in Cambridge, Massachusetts.² The address of HPCH is c/o Harvard Management Company, 600 Atlantic Avenue, Boston, Massachusetts 02210.

Four individuals hold limited partnership interests in Sowood GP III LP, and those individuals own 99% of the equity in the limited partnership. The business address for these individuals is as follows: c/o 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

The general partner of Sowood GP III LP, with a 1% interest and operating control, is Sowood GP III LLC, a Delaware limited liability company. The principal business of Sowood GP III LCC is to serve as a management

² Harvard University is an educational and research institution with tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. According to the Harvard University Annual Financial Report for Fiscal Year 2004, income from the University’s endowment is Harvard’s largest source of operating income. Harvard Management Company (“HMC”) is responsible for investing the assets of the endowment to meet the University’s needs. HMC is a subsidiary of Harvard and is governed by a board of directors appointed by President and Fellows of Harvard University. According to the Annual Report, HMC oversees, among other investments, some 170 different private equity funds, managed by 60 different external management teams.

company. The address of Sowood GP III LLC is as follows: 500 Boylston Street, 17th Floor, Boston, Massachusetts 02116.

The sole managing member of Sowood GP III LLC is Jeff Larson. Sowood GP III LLC also has three non-managing members: Stu Porter, Rick Dowd and Megan Kelleher.

B. The VarTec Companies

VarTec and Excel are corporations organized under the laws of the State of Texas. VarTec Solutions, which formerly operated under the corporate names, eMeritus Communications, Inc., Teleglobe Business Solutions, Inc. and Telco Holdings, Inc. d/b/a Dial & Save, is a Delaware corporation. The principal office of the VarTec Companies is located at the following address:

2440 Marsh Lane
Carrollton, Texas 75006
Telephone: (972) 478-3000
Facsimile: (972) 478-3310

Questions concerning the VarTec Companies or this filing may be addressed to the undersigned counsel, or to the following representative:

Becky Gipson
Director, Regulatory Affairs
VarTec Telecom, Inc.
2440 Marsh Lane
Carrollton, Texas 75006
Telephone: (972) 478-3309
Facsimile: (972) 478-3310
e-mail: bgipson@vartec.net

The VarTec Companies are privately-held corporations. VarTec Telecom Holding Company (“VarTec Holding”), a wholly-owned subsidiary of VarTec, holds 100% of the stock of Excelcom, Inc. (“Excelcom”) and Telco Communications Group, Inc. (“Telco”). Excelcom is the direct and sole shareholder of Excel, and Telco is the direct and sole shareholder of VarTec Solutions. VarTec Holding and Excelcom are Delaware corporations, and Telco is organized in Virginia. Each is a holding company located at 2440 Marsh Lane, Carrollton, Texas 75006.

The Commission has authorized VarTec, Excel and VarTec Solutions to provide competitive local exchange and interexchange services in Missouri. VarTec was authorized by the Commission to provide basic local telecommunications services in Case No. TA-2001-363 and was granted authority to provide intrastate interexchange telecommunications services in Case No. TA-92-117, under its original corporate name, VarTec National, Inc. local exchange Excel and VarTec Solutions were granted the authority to provide local exchange services and basic local telecommunications services in Case Nos. TA-97-8 and TA-97-7, respectively, and intrastate interexchange telecommunications services in Case Nos. TA-90-117 and TA-95-298, respectively. The authority granted to VarTec Solutions was issued under its former name, Dial & Save. In conjunction with these authorizations, the VarTec Companies were granted status as competitive telecommunications companies.

Furthermore, VarTec and Excel are authorized to provide local exchange, interexchange, operator and wireless services within and throughout the United States, and VarTec Solutions is authorized to provide interexchange services within the contiguous United States. VarTec Solutions’ local exchange authority is limited to Missouri and certain other states, although it has not yet commenced providing local exchange services in any jurisdiction. In addition, the Commission has authorized VarTec to provide interexchange services to Missouri consumers under the trade name, Clear Choice Communications. Both VarTec,

including Clear Choice Communications, and Excel primarily provide telecommunications services to residential customers, while VarTec Solutions serves commercial customers.

The VarTec Companies voluntarily filed for Chapter 11 bankruptcy on November 1, 2004 in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (the "Court") consolidated under Case No. 04-81694-HDH-11. Notice of the bankruptcy filing was issued to the Commission on November 18, 2004. As part of the bankruptcy process, the VarTec Companies have entered into the below-described asset purchase agreement ("APA") with Comtel Investments LLC ("Comtel Investments"). Comtel Investments, which is wholly owned by the same parties who own and control Comtel, has assigned its rights and obligations under the APA to Comtel as of August 1, 2005. The APA was executed on July 25, 2005 and was approved by the Court on July 27, 2005.³ As required by Commission Rules, a copy of the APA is attached to this Application as Exhibit E.

II. The Transaction

As noted above, the VarTec Companies are operating under bankruptcy protection. Through the APA and the Court-approved auction process, Comtel will ultimately acquire substantially all of the assets of the VarTec Companies, including all telecommunications equipment, customer accounts and records, business records and licenses and permits. No employees, equipment, records or other property involved in this transaction is located within Missouri, and no negative material changes in the tax revenues are expected. The APA provides that the ultimate transfer of the acquired telecommunications and associated operating assets is subject to the necessary regulatory approvals, including the approval of this Application. In addition, Comtel may, as

³ See Case No. 04-81694-HDH-11, Order Granting Motion (A) Approving the Sale Free and Clear of All Liens, Claims, Rights, Interests and Encumbrances to Comtel Investments LLC and (B) Granting Related Relief (Substantially All of the Debtors' Remaining Assets) (entered July 29, 2005), available at http://docs.bmccorp.net/Vartec/docs/txnb_3-04-bk-81694_1663.pdf.

necessary, obtain up to approximately \$10 million in debt financing pending consummation of the proposed transaction to fund working capital and similar needs of the VarTec Companies. Upon consummation of the proposed transaction, Comtel currently intends to replace such debt financing with a term (3 to 5 year) debt instrument. Based on Comtel's present understanding of the business, it anticipates that the term debt will be approximately \$50 million. This financing will assist with the day-to-day operations of Comtel as Comtel consummates its acquisition of the former VarTec Companies' operations, newly emerged from bankruptcy.

Once the proposed transaction is completed, the VarTec Companies will no longer hold authorizations to provide telecommunications services as described in Section I (B) above. These authorizations will be held by or assigned collectively to Comtel in order that Comtel can step into the shoes of the VarTec Companies, and the residential and commercial customers previously served by the VarTec Companies will continue to receive services without interruption. According to Comtel's initial plans for the business, the services provided and geographic areas served by Comtel will mirror those currently provided by the VarTec Companies, and any enhancements to the service offerings will be within the existing authority transferred to Comtel from the VarTec Companies. In order to minimize confusion and concern for customers, Comtel aims to make this transition seamless by operating under trade names and limiting all direct impacts to existing customers (e.g., no service changes are contemplated as part of this Application).

The interconnection and other network agreements currently allowing the VarTec Companies to provide local exchange and/or interexchange services will be transferred to Comtel, as necessary, to continue the Applicants' efforts to make a smooth transition for customers. Comtel also initially plans to maintain the VarTec Companies' existing tariffs on file with the Commission. Once the transaction is prepared for closing and the Commission has granted its approval, Comtel will simply modify the corporate name on the tariffs. This further supports Comtel's desire to transition the VarTec Companies' assets without interruption or burden on the existing customer base.

III. Request for Approval to Transfer Assets; Qualifications of Comtel

Through this Application, Comtel requests that the Commission approve the transfer of assets as described in Section II above and simultaneously grant Comtel specific authority to operate as a competitive provider of basic local and intrastate interexchange telecommunications services within Missouri. Specifically, Comtel requests that the Commission-issued authorizations detailed in Section I(B) be transferred from the VarTec Companies to Comtel, including any waivers previously granted to the VarTec Companies (e.g., waivers of statutory provisions 392.210.2, 392.240.1, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330 and 392.340 as well as waivers of 4 CSR 240-10.020, 240-30.010(2)(C), 240-30-040, 240-32-030(4)(C), 240-33.030 and 240-35). Alternatively, in the event that the Commission requires new certifications for Comtel, Comtel requests that those be issued with the applicable waivers. In support of this request, Comtel has provided information, within this Application and its Exhibits, typically required of new applicants seeking authorization to provide telecommunications services.

In addition, Comtel requests the authority to provide any and all of these telecommunications services under the trade names VarTec Telecom, Clear Choice Communications, Excel Telecommunications and VarTec Solutions, in addition to the Comtel name. This will maximize Comtel's available options under which it may begin its operations in the state. Attached hereto as Exhibit F please find a copy of Comtel's authorization to conduct business in Missouri as issued by the Secretary of State. Comtel also intends to seek proper authorization from the Secretary of State to use the above-noted trade names, and said authorizations will be made available to the Commission once received.

Following the consummation of the asset transfer, Comtel will be led by a combination of its own management members and certain members of the existing management team of the VarTec Companies, who the Applicants currently expect will continue in management roles for Comtel after consummation of the transaction.

Descriptions of the backgrounds of the key management members, which demonstrate extensive experience and expertise, are attached hereto and incorporated herein by reference as Exhibit G. In the event that these Company representatives change, Comtel will pursue other highly experienced executives to assume their roles to ensure that its management team is balanced and technically qualified.

Due to the nationwide nature of the VarTec Companies' current operations, Comtel is engaged in state regulatory processes across the country in connection with the proposed transaction. The Federal Communications Commission ("FCC") has issued its approval for this transaction. Copies of the FCC's approval notices are attached hereto as Exhibit H.

Furthermore, Comtel has the requisite financial ability to acquire the VarTec Companies' assets and become a strong competitor in the Alabama telecommunications marketplace, and Comtel has never had a judgment or decision issued against it from any state or federal agency or court.

IV. Public Interest Considerations

Grant of this Application would serve the public interest, convenience and necessity by enabling the seamless continuation of telecommunications services to the VarTec Companies' existing Missouri customers. By allowing Comtel to assume control of the VarTec Companies' assets and to obtain the necessary authorizations to provide telecommunications services in Missouri, existing customers will have access to the services they enjoy today as well as the potential for expanded service offerings going forward. Due to financial restrictions, the VarTec Companies have performed extremely limited marketing, product research and other customer retention and acquisition efforts during 2004 and 2005. Such restrictions have minimized the competitive offerings introduced to the public and limited the VarTec Companies ability to invest in additional consumer service offerings. Consummation of the transaction will greatly increase the financial viability of the VarTec Companies' products and services. Furthermore, no

negative changes to the tax revenue base are anticipated in association with this transaction.

Moreover, approval of the proposed transaction can be expected to serve the public interest by stimulating increased competition in the telecommunications market. As a new entrant into these markets, Comtel intends to compete efficiently and effectively using the well-established resources obtained through the APA. More effective competition has the net economic impact of lower consumer prices, combined with the introduction and availability of more consumer products and services.

V. Compliance with Section 33.150 of Commission Rules

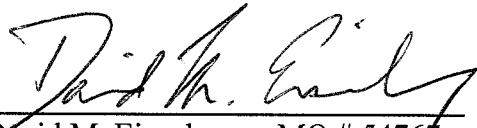
In further support of serving the public interest in association with this Application and in compliance with Section 33.150(4) of the Commission's Rules, the Applicants intend to provide the required customer notice of the transfer of assets to Comtel within the appropriate notice period prescribed by the Commission. Such notice would take into account all relevant state and federal notification and consent requirements applicable to this transaction and as allowed by Commission Rules, would not require express customer authorization to make the transfer. The notice will be provided to the Commission once finalized.

VI. Conclusion

The Applicants submit that the information provided herein demonstrates that the public interest, convenience and necessity would be served by the grant of this Application. Therefore, the Applicants respectfully request that the Commission approve the Joint Application and grant all other relief as necessary and appropriate to authorize the completion of the sale of assets from the VarTec Companies to Comtel.

Respectfully submitted,

BAKER STERCHI COWDEN & RICE, L.L.C.

By: 
David M. Eisenberg - MO # 54767

Baker Sterchi Cowden & Rice, L.L.C.

2400 Pershing Road, Suite 500

Kansas City, MO 64108-2533

Telephone: (816) 448-9343

Facsimile: (816) 472-0288

e-mail: eisenberg@bscr-law.com

10/31/05

Date

Attorneys for Comtel Telecom Assets LP, VarTec
Telecom, Inc., Excel Telecommunications, Inc. and
VarTec Solutions, Inc.

VERIFICATION OF VARTEC TELECOM, INC.,
EXCEL TELECOMMUNICATIONS, INC. AND VARTEC SOLUTIONS, INC.

STATE OF TEXAS

§
§
§

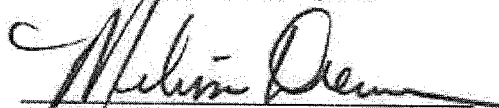
COUNTY OF DALLAS

On behalf of VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc., I verify under oath that the information contained in the foregoing Application are true to the best of my knowledge, except as to matters which are stated herein on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

VARTEC TELECOM, INC.,
EXCEL TELECOMMUNICATIONS, INC.
AND VARTEC SOLUTIONS, INC.

By:



Melissa A. Drennan, Esq.
Assistant Secretary
VarTec Telecom, Inc.,
Excel Telecommunications, Inc. and
VarTec Solutions, Inc.
2440 Marsh Lane
Carrollton, Texas 75006
Telephone: (972) 478-3305
Facsimile: (972) 478-3310
e-mail: mdrennan@vartec.net

Date

10/28/05

SWORN TO AND SUBSCRIBED before me on this 28th day of October, 2005



Notary Public In and For the State of Texas

My commission expires:

