

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>COMTEL TELCOM ASSETS LP, VARTEC TELECOM, INC., EXCEL TELECOMMUNICATIONS, INC., AND VARTEC SOLUTIONS, INC.</p>	<p>DOCKET NO. SPU-05-23</p>
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ORDER DOCKETING FOR FURTHER INVESTIGATION

(Issued December 14, 2005)

On November 23, 2005, VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc. (together, the VarTec Companies), along with Comtel Telcom Assets, L.P. (Comtel), filed with the Utilities Board (Board) a joint application for consent to transfer assets. The filing was identified as Docket No. SPU-05-23.

Comtel simultaneously filed an application for a certificate of public convenience and necessity to provide local exchange services, an initial tariff, and a request for waiver of certain Board rules. Those filings have been identified as Docket Nos. TCU-05-17, TF-05-311, and WRU-05-49-3825, respectively, and will be addressed in a separate order.

The joint application for consent to transfer assets explains that Comtel is a newly formed limited partnership organized under the laws of the state of Texas whose principal business will be telecommunications. The filing indicates that the VarTec Companies voluntarily filed for Chapter 11 bankruptcy on November 1, 2004. As part of the bankruptcy process, the VarTec Companies entered into an asset

purchase agreement (APA) with Comtel Investments, LLC (Comtel Investments). Comtel Investments assigned its rights and obligations under the APA to Comtel. Through the APA and the bankruptcy court auction process, Comtel will acquire substantially all of the assets of the VarTec Companies, including telecommunications equipment, customer accounts and records, business records, licenses, and permits. The acquisition will result in the discontinuance of service in Iowa by the VarTec Companies and continuance of service by Comtel, once Comtel has been certificated to provide local exchange service in Iowa and satisfies other Board requirements.

The Board will consider the parties' joint application for consent to transfer assets as a joint application for discontinuance of service. Iowa Code § 476.20(1) states that a utility shall not discontinue service to a community unless permission is obtained from the Board. The Board's rules at 199 IAC 7.12¹ address the discontinuance of service incident to utility property transfer. Within 30 days, the Board must either approve the application for discontinuance of service or docket it for further investigation; otherwise, it will be deemed approved. The Board may grant an application if the Board finds the transferee is ready, willing, and able to provide comparable utility service. In this case, Comtel is not yet ready and able to provide comparable utility service to customers of the VarTec Companies because it has not yet acquired a certificate to provide local exchange service from the Board. Further,

¹ The parties are advised that the Board's new procedural rules will go into effect on December 14, 2005, at which time the rule governing discontinuance of service incident to property transfer will be found at 199 IAC 7.1(6).

Comtel has not yet provided the Board with the date on which the transfer will be complete. Until Comtel informs the Board of the date on which the transfer will be effective, the Board cannot determine whether Comtel will be ready and able to provide comparable service on that date.

The joint applicants also request a waiver of 199 IAC 22.23(2), to the extent one is necessary. Board rule 22.23 requires telecommunications service providers to obtain customer authorization prior to making a change in service. The Board recently amended this rule so that the sale or transfer of a utility's customer base will not be considered an unauthorized change in service as long as the utility complies with the notice requirements of 199 IAC 22.23(2)"e." As the acquiring carrier, no later than 30 days before the planned transfer of the affected customers, Comtel must file with the Board a letter notifying the Board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, Comtel must also certify compliance with the requirement to provide advance customer notice and shall attach a copy of the notice sent to affected customers. Notice to customers must include, in part, the date on which the acquiring carrier will become the customer's new provider of telecommunications service.

The Board has reviewed the parties' joint application and finds it should be docketed and suspended. It is unclear from the application when the VarTec Companies will discontinue service and Comtel will begin service. Without that

information, the Board is unable to determine whether Comtel will meet the requirements of Iowa Code § 476.20(1) of being ready, willing, and able to provide comparable service as of that date. Docketing this matter will allow Comtel to complete the certification process, will give the parties time in which to determine and apprise the Board of the effective date of the asset transfer, and will allow Comtel time to prepare, send, and file notices required by 199 IAC 22.23(2)"e."

IT IS THEREFORE ORDERED:

The joint application for consent to transfer assets filed by on November 23, 2005, and identified as Docket No. SPU-05-23, is docketed for further investigation as described in this order. The parties shall submit supplemental filings addressing the issues raised in this order as the information becomes available.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 14th day of December, 2005.