

COMTEL TELCOM ASSETS LP  
D/B/A VARTEC TELECOM  
2440 MARSH LANE • CARROLLTON, TEXAS • 75006

August 4, 2006

**VIA OVERNIGHT DELIVERY**

**Ms. Carole J. Washburn, Secretary**  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, S.W.  
Olympia, Washington 98504

Re: Docket No. UT-023000 (VarTec Telecom)  
Documentation to Support Name Change

05 AUG -7 AM 9:17  
REGISTRATION DIVISION

Dear Ms. Washburn:

Transmitted herewith on behalf of Comtel Telcom Assets LP d/b/a VarTec Telecom ("Comtel"), enclosed please find four copies of a Stipulation and Order issued by the United States Bankruptcy Court for the Northern District of Texas Dallas Division which assigns the agreements between Qwest Corporation and the VarTec Companies, including VarTec Telecom, Inc., to Comtel. By way of background, Comtel acquired substantially all of the assets of the VarTec Companies through a court-approved auction process which was consummated in June 2006. This acquisition caused the need for the attached Stipulation and Order.

This enclosed documentation is submitted pursuant to communication with Commission staff in order to clarify the record on the addition of the Comtel name to the Qwest interconnection agreement amendment filed in the above-noted docket. Comtel requests that the Commission specifically reference page 8, paragraph P at (x) and page 9, paragraphs 1 and 2, of the enclosure in order to review the details of the assignment.

Comtel sincerely appreciates your time and assistance involved in reviewing this filing. Please direct any inquiries to the undersigned directly at (972) 478-3309 or at [Becky.Gipson@excel.com](mailto:Becky.Gipson@excel.com). Acknowledgment and date of receipt of this filing are respectfully requested. Please date and file stamp the attached copy of this correspondence and return it in the enclosed pre-addressed, postage-prepaid envelope.

Respectfully submitted,



Becky Gipson  
Senior Director, Regulatory Affairs

Enclosures



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

United States Bankruptcy Judge

Signed June 6, 2006

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

IN RE:

VARTEC TELCOM, INC., *et al.*,

DEBTORS.

§  
§  
§  
§  
§  
§

CASE NO. 04-81694-HDH-11

(Chapter 11)  
(Jointly Administered)

**STIPULATION AND ORDER FOR (A) ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS, AND RELATED  
CURE, (B) EXECUTION OF NEW AGREEMENTS, AND  
(C) SETTLEMENT OF CERTAIN DISPUTES, AMONG THE DEBTORS,  
QWEST CORPORATION, COMTEL TELCOM ASSETS LP, AND  
THE RURAL TELEPHONE FINANCE COOPERATIVE**

The above-captioned debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> Qwest Corporation ("QC"), Comtel Investments LLC ("Comtel

<sup>1</sup> 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.

**STIPULATION AND ORDER FOR (A) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS,  
AND RELATED CURE, (B) EXECUTION OF NEW AGREEMENTS, AND (C) SETTLEMENT OF CERTAIN  
DISPUTES, AMONG THE DEBTORS, QWEST CORPORATION, COMTEL TELECOM ASSETS LP, AND  
THE RURAL TELEPHONE FINANCE COOPERATIVE**

Investments”), Comtel Telcom Assets LP (“Comtel”), as assignee of Comtel Investments, and as to paragraphs 22 through 25 herein, the Rural Telephone Finance Cooperative (the “RTFC”, and together with the Debtors, QC, Comtel Investments and Comtel, the “Parties”),<sup>2</sup> hereby stipulate and agree as follows:

### **RECITALS**<sup>3</sup>

#### **Procedural Background**

A. On November 1, 2004 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their assets as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

B. On December 3, 2005, the Bankruptcy Court entered its Stipulation and Consent Order by and among Certain Carriers and the Debtors Regarding Adequate Assurance/Adequate Protection of Future Payments [Docket No. 451] (the “Carriers Stipulation”).

#### **Relationship between the Debtors and QC**

C. QC provides various telecommunications services and facilities to the Debtors under contracts and tariffs. In particular, the Debtors use QC’s telecommunications system, including circuits, facilities and equipment, in a fourteen-

---

<sup>2</sup> For clarification, the term “Parties” shall include the RTFC, the Debtors, QC, Comtel Investments and Comtel as to paragraphs 22 through 25 herein, in the remainder of the Stipulation and Order, the term “Parties” shall include only the Debtors, QC, Comtel Investments and Comtel.

<sup>3</sup> All defined terms in this Stipulation and Order shall have the meaning ascribed to them in the APA (as defined hereinafter) unless otherwise defined herein.

state region where QC is the Regional Bell Operating Company ("RBOC") pursuant to interconnection agreements (the "ICAs") and/or applicable tariffs. The ICAs and/or applicable tariffs establish the terms, conditions and pricing under which QC provides the Debtors with access to QC's network and under which the Debtors may resell QC services for the benefit of the Debtors' end-user customers. All contractual relationships currently in place between the Debtors and QC, including, without limitation, the ICAs and applicable tariffs, and the B&C Agreement (defined below) are referred to herein as the "QC Agreements".

D. On September 1, 2002, QC and VarTec Telecom, Inc. ("VarTec") entered into an agreement entitled "Provision of Billing and Collection Services for Message Telephone Service (MTS) and 900 Billing" (together with related documents, the "B&C Agreement"). Beginning on November 1, 2002, Excel Telecommunications, Inc., ("Excel") and, at various times, other of VarTec's affiliates also received billing and collection services under the B&C Agreement. The B&C Agreement expired by its terms prior to the Petition Date.

E. After the Petition Date, the law with respect to the provision of UNE-P services was changed (the "Law Change"), which, in turn, affected the provision of services under the ICAs. The Federal Communications Commission ("FCC") imposed a deadline of March 10, 2006 for competitive local exchange carriers to transition from providing services on a UNE-P platform to providing services under one of several alternatives. In response to the Law Change, (i) VarTec, or Comtel if the Approval Date (as defined hereinafter) occurs after the Final Closing Date, and QC desire to enter into

that certain Qwest Platform Plus Master Services Agreement effective as of March 1, 2006 the "VarTec Commercial Agreement") and (ii) Excel, or Comtel if the Approval Date (as defined hereinafter) occurs after the Final Closing Date, and QC desire to enter into that certain Qwest Platform Plus Master Services Agreement effective as of March 1, 2006 (the "Excel Commercial Agreement", and together with the VarTec Commercial Agreement, the "Commercial Agreements"). A copy of the VarTec Commercial Agreement is attached hereto as **Attachment 1**, and a copy of the Excel Commercial Agreement is attached hereto as **Attachment 2**. The Commercial Agreements shall be deemed QC Agreements if the Commercial Agreements are executed prior to the Final Closing Date.<sup>4</sup>

F. In connection with the Law Change, the Debtors or Comtel if the Approval Date (as defined hereinafter) occurs after the Final Closing Date, and QC desire to enter into amendments to the ICAs (collectively, the "TRRO Amendments") as made necessary by the FCC's Triennial Review Remand Order, which amendments shall be effective as of March 1, 2006 upon the Approval Date (as defined hereinafter). A form of the TRRO Amendments (without rate schedules) is attached hereto as **Attachment 3**. The TRRO Amendments shall be deemed amendments to the ICAs and, therefore, QC Agreements.

#### **Claims Asserted by the Debtors and QC**

G. On March 11, 2005, QC filed proofs of claim nos. 2252 through 2268 in each of the Debtors' cases, in which QC asserts a claim against each of the Debtors'

---

<sup>4</sup> If the Commercial Agreements are executed after the Final Closing Date, then Comtel shall only be required to enter into one Commercial Agreement bearing Comtel's name.

bankruptcy estates in the amount of \$6,166,889.73 (the "QC Claims"). In the QC Claims, QC asserts that a portion of the QC Claims are secured in an unliquidated amount. The QC Claims are on account of, among other things, (i) telecommunications services and facilities and (ii) billing and collection services, each provided under the applicable QC Agreements.

H. As of the Petition Date, QC alleges that it holds the approximate amount of \$1,159,428.23, which sum claims to be the amount of funds remaining due to QC under the B&C Agreement and for which QC can assert rights of set-off, counterclaim, recoupment and/or similar defenses and theories. To the contrary, the Debtors allege that QC is liable to them under the B&C Agreement in the amount of \$1,379,577.55. (Any amounts allegedly owing by QC to the Debtors under the B&C Agreement are collectively referred to herein as the "QC PARs Payables".)

I. In Decision No. C05-1483, the Public Utilities Commission of the State of Colorado approved a settlement with QC with respect to a pending administrative proceeding. As a result of that settlement (the "Colorado PUC Settlement"), certain of the Debtors are entitled to credits from QC in the aggregate amount of \$178,073.00 (the "Colorado PUC Credit").

J. Separately, QC asserts that the Debtors are liable for damages arising from the Debtors' alleged inappropriate termination of access services in connection with information services the Debtors provide to their customers (the "Termination Claim"). QC has not, heretofore, filed a proof of claim or requested for allowance of an administrative expense claim on account of the Termination Claim. The Debtors

dispute the Termination Claim, including the merits of that claim and the alleged damages suffered by QC. The Termination Claim will be released as provided hereinafter. However, such release shall not waive any right of action against Comtel which QC may have following the Effective Date with respect to any alleged inappropriate termination of access services occurring following the Effective Date in connection with Comtel's provision of information services.

K. The Debtors have continuously disputed foregoing claims and deny liability thereunder. The Debtors assert that they owe less to QC than QC contends, and assert that QC owes more to the Debtors than QC contends. Likewise, QC has continuously disputed liability for and/or the amount of claims asserted by the Debtors, including asserting rights under the doctrines of set-off, recoupment, and similar defenses and theories.

#### **Sale of the Acquired Assets**

L. On July 29, 2005, the Court entered its Order (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) [Docket No.1663] (the "Sale Order") in which it approved that certain Asset Purchase Agreement dated July 25, 2005 (the "APA") by and among the Debtors and Comtel Investments. Under the APA, the Debtors agreed to sell the Acquired Assets to Comtel Investments or its assignee. Because of the need to obtain certain

regulatory approvals, the closing of the sale of the Acquired Assets must take place in several steps, which will culminate with the Final Closing.<sup>5</sup>

M. The Debtors and Comtel contend that under the APA, upon the occurrence of certain conditions precedent, Comtel has the right to acquire the QC PARs Payables and to dispose of them in any manner, including in settlement, compromise or other arrangement with QC. The Debtors and Comtel agree that the QC PARs Payables shall be deemed an Acquired Asset under the APA to be disposed of in accordance with the terms of this Stipulation and Order.

#### **Litigation between the Debtors and QC**

N. On November 16, 2005, QC and Qwest Communications Corporation (“QCC”) 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 “Motion to Compel”). On December 9, 2005, the Debtors and Comtel filed a joint objection and response [Docket No. 2153] to the Motion to Compel. While the Debtors, Comtel, QCC, and QC discussed settlement possibilities, the hearing on the Motion to Compel was adjourned from time to time. That hearing has been removed indefinitely from the Bankruptcy Court’s docket pending hearing on this Stipulation and Order.

---

<sup>5</sup> The actual date on which the Final Closing takes place is referenced in the APA as the “Final Closing Date.” The Debtors and Comtel contend, and QC does not contest, that the first two steps of the closing of the sale of the Acquired Assets – the Early Funding Date and the Closing Date – have occurred.



O. On December 8, 2005, VarTec and Excel filed their Complaint which initiated Adversary Proceeding No. 05-3821 (the "Adversary Proceeding") against QC. On January 11, 2006, the Court approved the intervention of the RTFC in the Adversary Proceeding. In the Adversary Proceeding, VarTec and Excel seek, among other things, an Order instructing QC to immediately turn over the QC PARs Payables and declaring that QC has no claims to, or right to setoff against, the QC PARs Payables. On February 7, 2006, QC filed its Motion to Dismiss All Counts of Debtors' Complaint for Turnover of Property of the Estate and Declaratory Judgment Regarding Qwest's Inability to Setoff (the "Motion to Dismiss"). On March 2, 2006, VarTec and Excel filed a response to the Motion to Dismiss. While the Debtors, Comtel, QCC, and QC discussed settlement possibilities, the hearing on the Motion to Dismiss was adjourned from time to time. The hearing has been removed indefinitely from the Bankruptcy Court's docket pending hearing on this Stipulation and Order.

#### **Agreement of the Parties**

P. Subject to (i) the terms and conditions contained herein, (ii) occurrence of the Final Closing Date under the APA, and (iii) the Court's approval of the Stipulation and Order for (A) Assumption and Assignment of Executory Contracts, and Related Cure; and (B) Settlement of Certain Disputes Among the Debtors, Qwest Communications Corporation, Comtel Telecom Assets LP, and the Rural Telephone Finance Cooperative (the "QCC Stipulation and Order"), the Debtors, Comtel, RTFC, and QC have agreed to (x) the assumption by the Debtors and assignment to Comtel of the QC Agreements under Bankruptcy Code § 365, (y) the dismissal with prejudice of

the Adversary Proceeding and the withdrawal of the Motion to Compel; and (z) the other terms more particularly described in this Stipulation and Order.

Q. The Debtors agree to (a) file this Stipulation and Order and the QCC Stipulation and Order with the Bankruptcy Court promptly upon the execution of both such stipulations, and (b) request that the Bankruptcy Court approve and enter simultaneously, both this Stipulation and Order and the QCC Stipulation and Order. The latest date on which the Bankruptcy Court enters this Stipulation and Order and the QCC Stipulation and Order shall be referred to as the "Approval Date".

**IT IS THEREFORE STIPULATED, CONSENTED, AND AGREED** by and among the Parties, and subject to the terms and conditions set forth herein, as follows:

1. Effective on the later of the Final Closing Date, the Approval Date, the execution of the Commercial Agreements, or the execution of the TRRO Amendments, (such later date being the "Effective Date"), each and all of the QC Agreements shall be deemed assumed by the Debtors and assigned to Comtel pursuant to Bankruptcy Code § 365.

2. QC agrees that, as of the Effective Date, all applicable requirements and conditions for the assumption and assignment of the QC Agreements shall be deemed satisfied. The Parties stipulate, however, that unless provided otherwise herein (a) Comtel shall be liable to satisfy all obligations under the QC Agreements, the Carriers Stipulation, and applicable law arising from and after the Petition Date through and including the Effective Date; and (b) following the Effective Date, QC shall be entitled to take any action permissible under the QC Agreements, the Carriers

Stipulation and applicable law if Comtel defaults or otherwise fails to satisfy its obligations thereunder.

3. In satisfaction of (a) any prepetition defaults under the QC Agreements, (b) the cure and compensation obligations to QC under Bankruptcy Code § 365(b)(1), and (c) any other obligations existing between and among the Parties (including, but not limited to, the obligations arising under the Colorado PUC Settlement), on the Effective Date, QC shall be entitled to retain the QC PARs Payables and no entity shall have any further claim against QC with respect to the QC PARs Payables; and Comtel shall pay QC as a cure payment the total sum of \$2,000,000 (the "Cash Cure") as hereinafter provided.

4. The Cash Cure shall be reduced by \$89,036.50, which represents a credit for one-half of the Colorado PUC Credit. The remainder of the Cash Cure, \$1,910,963.50, shall be paid by Comtel to QC in twenty-four (24) equal installments of \$79,623.48, commencing on or before the first day of the month immediately following the Effective Date and continuing monthly thereafter, with each payment due on or before the first day of each subsequent month for the next twenty-three (23) months (collectively, the "Cash Cure Payments"). All Cash Cure Payments shall be by check from Comtel made payable to QC and delivered to the person designated as QC's representative in paragraph 33, below, or as QC may otherwise direct in writing to Comtel. The Cash Cure Payments shall not be subject to set-off, recoupment, or reduction on any ground.

5. Failure by Comtel to timely pay the Cash Cure Payments as provided herein shall constitute an event of default under the QC Agreements, but only after Comtel has been given written notice of its failure to make timely Cash Cure Payments in accordance with paragraph 33 below and Comtel fails to cure such default within ten (10) Business Days of receipt of such default notice.

6. Neither the Debtors nor Comtel shall be obligated to pay any other charges or fees on account of the assumption and assignment of the QC Agreements and the QC Agreements shall be deemed assigned to Comtel notwithstanding the fact that postpetition amounts may be due and owing under the QC Agreements. If prior to the Effective Date, however, the Debtors fail to satisfy their postpetition obligations arising under the QC Agreements and/or the Carriers Stipulation, QC shall retain all of its rights under the Carriers Stipulation with respect to suspending, terminating, or taking other permissible action regarding the services provided under the QC Agreements.

7. Notwithstanding anything to the contrary contained herein, as of the Effective Date, the Debtors shall be and hereby are fully and finally released by QC from any and all claims, causes of action, and liability of any nature or sort, whether known or unknown, contingent or unliquidated, whether arising in the past, present, or future, except for claims, causes of action, or liabilities arising under the Debtors' breach, if any, of any provision of this Stipulation and Order. This release of the Debtors by QC is not contingent upon any other condition(s) or obligation(s) contained

in this Stipulation and Order including, but not limited to, Comtel's performance of its obligation to make the Cash Cure Payments.

8. As of the Effective Date, QC shall be entitled to retain the QC PARs Payables and one-half of the Colorado PUC Credit and to receive the Cash Cure Payments, which shall constitute full and final satisfaction of the Debtors' prepetition cure and compensation obligations to QC under Bankruptcy Code § 365(b)(1) with respect to the QC Agreements. QC shall have no further claim(s) against the Debtors, whether for cure payments or otherwise. All QC Claims shall be expunged from the Debtors' claim registers upon the Effective Date.

9. The (a) Commercial Agreements if executed by any of the Debtors and (b) TRRO Amendments if executed by VarTec and Excel, shall be deemed prepetition contracts which may be assumed and assigned, or rejected by the Debtors if the Effective Date does not occur. The Commercial Agreements and TRRO Amendments shall be signed on or before seven (7) Business Days after the Approval Date by (a) the respective Debtors if Final Closing has not occurred or (b) Comtel if Final Closing has occurred. Upon the Effective Date, the (a) Commercial Agreements and (b) TRRO Amendments shall be effective as of March 1, 2006. Further, the Debtors shall be authorized by the Bankruptcy Court to take all steps necessary to enter into and effectuate the implementation of the Commercial Agreements and the TRRO Amendments. The Debtors and Comtel shall not incur any costs or expenses on account of or as a result of the retroactive effectiveness of the Commercial Agreements, except that the Parties agree that all Local Services or equivalent services rendered to

the Debtors from March 1, 2006 onward shall be payable at the rates set forth in the Commercial Agreements. QC will promptly issue and deliver to Comtel an invoice for past-due charges, if any, arising under the Commercial Agreements for the period commencing March 1, 2006 up to and including the Effective Date which shall be payable no later than five (5) Business Days after the receipt of an invoice from QC for those charges (the "Invoice"). All disputes in the Invoice shall be governed by the provisions of the Carriers Stipulation. After the Effective Date, Comtel shall have the right to pursue disputes under the Invoice and QC shall have the right to defend the same.

10. Pending the Effective Date, the Debtors and their estates shall incur no liability under the QC Agreements for an administrative expense priority claim other than for services actually rendered.

11. QC expressly consents that the Debtors may disclose and produce the QC Agreements to the professionals of the RTFC and the Official Committee of Unsecured Creditors (the "Official Committee") pursuant to confidentiality agreements currently in place between the Debtors, on the one hand, and the RTFC and Official Committee, respectively, on the other hand. The Debtors shall provide written notice to QC's counsel identified in paragraph 33 within seven (7) Business Days of disclosing or producing any QC Agreement to a third-party, other than the RTFC and the Official Committee, and shall identify in such notice the identity of the recipient and the QC Agreements that were produced or disclosed.

12. Pending the Effective Date (a) all of the terms of the QC Agreements shall remain in full force and effect, subject to the terms and conditions of the Carriers Stipulation; (b) the Carriers Stipulation shall remain in full force and effect with regard to the QC Agreements; (c) QC shall retain all bankruptcy and non-bankruptcy rights to payment of postpetition obligations owed by the Debtors; and (d) provided that each Party hereto is in compliance with its obligations under this Stipulation and Order and the Carriers Stipulation (as modified below) and except as allowed below, the Debtors shall not file with the Court any motion seeking to reject any of the QC Agreements, or for similar relief.

13. Pending the Effective Date, and except as otherwise set forth herein, the Carriers Stipulation shall apply to the QC Agreements, including, without limitation, those terms and provisions relating to adequate assurance of payment and security. From and after the Effective Date, as between Comtel and the Debtors, Comtel shall be solely responsible for compliance with all terms of the QC Agreements, including payment of all outstanding postpetition obligations in accordance with the QC Agreements and the Carriers Stipulation. As of the Effective Date, (a) the Carriers Stipulation shall no longer be in effect as to Comtel with respect to QC, except as to any and all charges arising from services rendered under the QC Agreements subsequent to the Petition Date and prior to the Effective Date, and (b) all claims of QC against the Debtors shall be deemed satisfied in full.

14. As of the Effective Date, the normal payment terms set forth in the QC Agreements shall govern the payment obligations of Comtel to QC. QC and Comtel will

participate in a process to true-up payments starting within five (5) Business Days from the Effective Date in order to credit Comtel for overpayments or prepayments paid to QC by the Debtors and/or Comtel pursuant to the Carriers Stipulation because such prepayments will no longer be payable under the terms of the QC Agreements.

15. The Parties agree that as of the Effective Date all Disputes (as that term is defined in the Carriers Stipulation) that have been resolved by QC on or before June 1, 2006, or which have not been timely and properly submitted by the Debtors pursuant to and in accordance with the 30-day notice period provided under the Carriers Stipulation, shall be released.<sup>6</sup> The Parties Agree that all Disputes that have been timely and properly submitted by the Debtors pursuant to and in accordance with the 30-day notice period provided under the Carriers Stipulation, and that have not been previously denied or rejected by QC or that have not otherwise been resolved by QC as of June 1, 2006 shall be unaffected by the terms of this Stipulation and Order (the "Open Disputes"). Comtel shall have the right to pursue the Open Disputes after the Final Closing Date and QC shall have the right to defend the same pursuant to the Carriers Stipulation and the QC Agreements.

16. The Parties agree that Disputes under the QC Agreements for invoices dated on or after May 1, 2006, through the Effective Date shall be brought in strict accordance with the Carriers Stipulation (the "Interim Disputes"). Further, Comtel shall have the right to pursue the Interim Disputes after the Final Closing Date and QC shall have the right to defend the same. Any disputes under the QC Agreements for invoices

---

<sup>6</sup> Nothing herein, shall in any way bind the Debtors vis-à-vis any party other than QC as to the terms and provision of the Carriers Stipulation.



dated after the Effective Date (except for the Invoice) shall be governed solely by such respective QC Agreement and shall be unaffected by this Stipulation and Order.

17. If, prior to the Effective Date, the Debtors default on the payment terms set forth in the Carriers Stipulation and/or the QC Agreements and fail to cure such default after two (2) Business Days notice and opportunity to cure, in addition to any other rights that QC may have, QC may seek an order from the Bankruptcy Court compelling the immediate payment of the past due sums. Regardless of any action taken by QC, this provision shall not in any way limit Comtel's obligations or QC's rights under this Stipulation and Order, the Carriers Stipulation, the QC Agreements or applicable law.

18. To the fullest extent permitted by law, as of the Effective Date, but with the exception of the obligations contained in and provided for in this Stipulation and Order, each of the Debtors, for themselves and each of their respective predecessors, successors, assigns, legal representatives, officers, directors, agents, attorneys, employees, heirs, and insurers (collectively, the "Debtor Releasing Parties") shall be deemed to have fully and forever waived, released, extinguished and discharged QC and its subsidiaries and affiliates and each of their respective predecessors, successors, assigns, past and present legal representatives, officers, directors, agents, attorneys, and employees (collectively, the "QC Released Parties") from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy, whether sounding in contract or tort, including, without limitation, (a) any avoidance actions under Chapter 5 of the Bankruptcy Code; (b) any claims arising out of or in connection

with the QC Agreements and the Colorado PUC Settlement; (c) any claims arising out of any body of federal statutory or regulatory law, including, without limitation, claims for violations of the Federal Communications Act or the Sherman Antitrust Act; and (d) any claims for (i) fraud or misrepresentation; (ii) breach of fiduciary duty; (iii) deceptive trade practices; (iv) tortious interference; (v) negligence; and (vi) breach of any duty of good faith and fair dealing or otherwise, whether known or unknown, present or future, fixed or contingent (except as expressly limited below), and which any of the Debtor Releasing Parties has, had or may have or claim to have against any of the QC Released Parties, from the beginning of time through the Effective Date.

19. To the fullest extent permitted by law, as of the Effective Date, but with the exception of the obligations contained in and provided for in this Stipulation and Order, QC for itself, its respective predecessors, successors, assigns, legal representatives, officers, directors, agents, attorneys, employees, heirs, and insurers (collectively, the "QC Releasing Parties") shall be deemed to have fully and forever waived, released, extinguished and discharged each and every one of the Debtors, and all of their respective predecessors, successors, assigns, past and present legal representatives, officers, directors, agents, attorneys, and employees (collectively, the "Debtor Released Parties") from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy, whether sounding in contract or tort, including, without limitation, (a) any claims arising out of or in connection with the QC Agreements or the Termination Claim; (b) any claims arising out of any body of federal statutory or regulatory law, including,

without limitation, claims for violations of the Federal Communications Act or the Sherman Antitrust Act; and (c) any claims for (i) fraud or misrepresentation; (ii) breach of fiduciary duty; (iii) deceptive trade practices; (iv) tortious interference; (v) negligence; and (vi) breach of any duty of good faith and fair dealing or otherwise, whether known or unknown, present or future, fixed or contingent, and which any of the QC Releasing Parties has, had or may have or claim to have against any of the Debtor Released Parties, from the beginning of time through the Effective Date.

20. To the fullest extent permitted by law, as of the Effective Date, but with the exception of the obligations contained in and provided for in this Stipulation and Order, each of Comtel and Comtel Investments, for themselves and each of their respective predecessors, successors, assigns, legal representatives, officers, directors, agents, attorneys, employees, heirs, and insurers (collectively, the "Comtel Releasing Parties") shall be deemed to have fully and forever waived, released, extinguished and discharged the QC Released Parties from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy, whether sounding in contract or tort, including, without limitation, (a) any avoidance actions under Chapter 5 of the Bankruptcy Code; (b) any claims arising out of or in connection with the QC Agreements; (c) any claims arising out of any body of federal statutory or regulatory law, including, without limitation, claims for violations of the Federal Communications Act or the Sherman Antitrust Act; and (d) any claims for (i) fraud or misrepresentation; (ii) breach of fiduciary duty; (iii) deceptive trade practices; (iv) tortious interference; (v) negligence; and (vi)

breach of any duty of good faith and fair dealing or otherwise, whether known or unknown, present or future, fixed or contingent, and which any of the Comtel Releasing Parties has, had or may have or claim to have against any of the QC Released Parties, from the beginning of time through the Effective Date; provided, however, the Comtel Releasing Parties shall not release the QC Released Parties from any claims, actions, complaints, causes of action, debts, costs and expenses, demands or suits, at law or in equity or in bankruptcy, which are on account of or relate to the Invoice, Open Disputes and Interim Disputes. For the purposes of clarity only, the foregoing provisions of this paragraph shall not release (i) any claims, actions, complaints, causes of action, debts, costs and expenses arising under any agreement(s) or amendment(s) executed pursuant to this Stipulation and Order, and (ii) any payment obligations under this Stipulation and Order.

21. To the fullest extent permitted by law, as of the Effective Date, but with the exception of the obligations contained in and provided for in this Stipulation and Order, the QC Releasing Parties shall be deemed to have fully and forever waived, released, extinguished and discharged Comtel and Comtel Investments and each of their respective predecessors, successors, assigns, past and present legal representatives, officers, directors, agents, attorneys, and employees (collectively, the "Comtel Released Parties") from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy, whether sounding in contract or tort, including, without limitation, (a) any claims arising out of or in connection with the QC Agreements; (b) any claims arising

out of any body of federal statutory or regulatory law, including, without limitation, claims for violations of the Federal Communications Act or the Sherman Antitrust Act; and (c) any claims for (i) fraud or misrepresentation; (ii) breach of fiduciary duty; (iii) deceptive trade practices; (iv) tortious interference; (v) negligence; and (vi) breach of any duty of good faith and fair dealing or otherwise, whether known or unknown, present or future, fixed or contingent, and which any of the QC Releasing Parties has, had or may have or claim to have against any of the Comtel Released Parties, from the beginning of time through the Effective Date; provided, however, the QC Releasing Parties shall not release the Comtel Released Parties from any claims, actions, complaints, causes of action, debts, costs and expenses, demands or suits, at law or in equity or in bankruptcy, which are on account of or relate to the Invoice, Open Disputes and Interim Disputes. For the purposes of clarity only, the foregoing provisions of this paragraph shall not release (i) any claims, actions, complaints, causes of action, debts, costs and expenses arising under any agreement(s) or amendment(s) executed pursuant to this Stipulation and Order, and (ii) any payment obligations under this Stipulation and Order.

22. To the fullest extent permitted by law, upon the Effective Date, but with the exception of the obligations contained in and provided for in this Stipulation and Order, the RTFC and QC shall be deemed to have fully and forever waived, released, extinguished and discharged each other from any and all claims, actions, complaints, causes of action, debts, costs and expenses (including attorneys' fees), demands or suits, at law or in equity or in bankruptcy, whether sounding in contract or tort, including, without limitation, (a) any avoidance actions under Chapter 5 of the Bankruptcy Code;

(b) any claims arising out of or in connection with the QC Agreements; (c) any claims arising out of any body of federal statutory or regulatory law, including, without limitation, claims for violations of the Federal Communications Act or the Sherman Antitrust Act; and (d) any claims for (i) fraud or misrepresentation; (ii) breach of fiduciary duty; (iii) deceptive trade practices; (iv) tortious interference; (v) negligence; and (vi) breach of any duty of good faith and fair dealing or otherwise, whether known or unknown, present or future, fixed or contingent, and which either of the RTFC or QC has, had or may have or claim to have against each other from the beginning of time through the Final Closing Date relating to the business transactions and other dealings involving the Debtors and QC, including but not limited to the QC PARs Payables.

23. With the exception of the transfer of the Acquired Assets from the Debtors to Comtel and the liens and encumbrances held by the RTFC, each Party hereby represents and warrants that it has not assigned, encumbered, hypothecated, or transferred the claims, causes of action, or other matters that are the subject of the releases set forth above.

24. On written request by a Party, any other Party shall cooperate in executing any documents or other papers requested in connection with the releases granted or other claims resolutions effectuated under this Stipulation and Order, on the condition that any document and other paper subject to this provision is in a form that is accurate and otherwise reasonable. The Debtors agree to sign the release attached hereto as **Attachment 4** within five (5) Business Days of the Effective Date regarding the release of QC under the Colorado PUC Settlement.

25. Pending the Effective Date, none of the Parties shall take any action with respect to the Adversary Proceeding and the Motion to Compel, and, should the Approval Date precede the Effective Date, within five (5) Business Days after the Approval Date, the Parties shall file with the Court a joint stipulation in which they agree to defer prosecution of the Adversary Proceeding and the Motion to Compel pending the Effective Date. As of the Effective Date, the Adversary Proceeding shall be dismissed with prejudice and the Proofs of Claim shall be expunged from the claims register maintained in the Debtors' bankruptcy cases. Within five (5) Business Days after the Effective Date, (i) the Debtors, QC, and the RTFC shall file a Stipulation of Dismissal with Prejudice in the Adversary Proceeding; and (ii) QC shall file a motion to withdraw with prejudice the Motion to Compel.

26. In the event that the APA is terminated prior to the Effective Date or the Effective Date does not otherwise occur by or before 60 days after the Approval Date, QC shall be deemed to have reserved all of its rights to seek to compel the assumption or rejection of the QC Agreements.

27. To the extent that (i) QC has access to and keeps records relating to the usage of the Debtors' circuits and those records have not been provided previously to the Debtors or Comtel in the form of bills or otherwise and (ii) QC customarily provides similar records to other carriers, QC shall, in good faith, use its reasonable and customary efforts to provide such information to the Debtors and/or Comtel as appropriate. If those records have been archived and cannot be retrieved after reasonable efforts, QC shall not be required to provide those records to Comtel. Except

for the information contained in billing records, QC does not maintain information reflecting the Debtors' usage of QC circuits.

28. Prior to and including the ninetieth (90th) day after the Effective Date, Comtel may terminate circuits in accordance with applicable tariffs, and neither the Debtors nor Comtel shall incur any termination penalties or other charges on account of, or relating to such terminations. Comtel shall comply with QC's uniformly applicable procedures and all tariff provisions for moving circuits between entities, and QC agrees that Comtel shall not incur any additional cure charges on account of or relating to such moves. However, Comtel shall be required to pay all applicable charges including, but not limited to, nonrecurring charges ("NRCs"), but excluding any termination penalties or other charges on account of or related to such terminations, associated with moving circuits between entities. QC shall honor requests by Comtel for services and service orders in the ordinary course of QC's business and according to QC's procedures and applicable tariff provisions applied to companies in good standing with QC.

29. Comtel, at its option, may seek to transition off of certain tandem circuits to end office trunks. QC will agree to a one time waiver of NRCs associated with the move of circuits off of the tandem, provided that the move occurs within and including sixty (60) days after the Effective Date. If Comtel exercises such option, the applicable tariffs or QC Agreements shall control any charges resulting from changes in the usage of tandem circuits. To the extent that Comtel retains any of the current tandem circuits, it shall pay QC for tandem switching services at the applicable tariff rate.



30. In the event of any inconsistency between any provision of the Sale Order and this Stipulation and Order, the terms of this Stipulation and Order shall control with respect to the Parties.

31. Unless a Party has violated the terms of this Stipulation and Order, no other Party shall seek from any court or regulatory body the entry of any order, or the granting of any relief, that is inconsistent with the terms of this Stipulation and Order.

32. The Debtors and Comtel shall provide notice to QC of the Final Closing Date within five (5) Business Days after its occurrence. In the event of a termination of the APA or a material modification thereof, the Debtors and Comtel shall provide notice to QC of such termination of the APA within five (5) Business Days after such termination of the APA.

33. All notices under this Stipulation and Order shall be delivered by (i) overnight delivery service or (ii) e-mail and facsimile. A notice shall be deemed to have been delivered on the date that it was sent.

All notices to the Debtors under this Stipulation and Order shall be sent to:

William L. Wallander  
Vinson & Elkins L.L.P.  
Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
Tel: 214.220.7700  
Fax: 214.999.7905  
Email: [bwallander@velaw.com](mailto:bwallander@velaw.com)

All notices to Comtel under this Stipulation and Order shall be sent to:

Judith W. Ross  
Baker Botts LLP  
2001 Ross Avenue  
Dallas, Texas 75201  
Tel: 214.953.6605  
Fax: 214.661.4605  
E-mail: [judith.ross@bakerbotts.com](mailto:judith.ross@bakerbotts.com)

All notices to QC under this Stipulation and Order shall be sent to:

Mark H. Ralston  
Munsch Hardt Kopf & Harr, P.C.  
3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Tel: 214.855.7513  
Fax: 214.978.4376  
Email: [mrалston@munsch.com](mailto:mrалston@munsch.com)

34. Each of the Parties represents that, subject to the Bankruptcy Court's approval and entry of this Stipulation and Order in the bankruptcy cases of the Debtors, it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Stipulation and Order and to fully perform its duties and obligations hereunder.

35. The Parties agree and the Court hereby orders upon the Approval Date that the ten day stay, if any, imposed under Federal Rule of Bankruptcy Procedure 6006(d) shall be waived as to this Stipulation and Order.

36. No modification, amendment or waiver of any of the terms or provisions of this Stipulation and Order shall bind any Party unless such modification, amendment or waiver is in writing, has been approved by the Bankruptcy Court, and has been

executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced.

37. No delay or omission by any Party in exercising any right or power occurring upon any noncompliance or default by any other Party with respect to any of the terms and provisions of this Stipulation and Order will impair any such right or power or be construed to be a waiver thereof. A waiver by any of the Parties of any of the covenants, conditions or agreements to be performed by any other Party will not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement contained in this Stipulation and Order.

38. This Stipulation and Order may be executed in one or more counterparts, each of which, when so executed and delivered, shall be an original and all of which together shall constitute one and the same instrument.

39. The Parties acknowledge that this Stipulation and Order is the joint work product of all of the Parties, and that, accordingly, in the event of ambiguities in this Stipulation and Order, no inferences shall be drawn against any Party on the basis of authorship of this Stipulation and Order.

40. Nothing in this Stipulation and Order shall constitute, or be considered as, an admission of liability or wrongdoing by any of the Parties, or any agreement by any of the Parties as to the validity of any of the positions advanced by any of the other Parties.

41. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation and Order.

42. This Stipulation and Order shall be binding upon any successors or assigns of the parties hereto, including, without limitation, any Chapter 7 trustee who may be appointed for the estates of the Debtors.

43. This Stipulation and Order shall constitute the entire agreement by and among the Parties hereto regarding the matters addressed herein. No extrinsic or parol evidence may be used to vary any of the terms herein.

44. In the event that the Effective Date shall not occur, nothing herein shall constitute a waiver, estoppel or be of any preclusive effect in any cause, matter or proceeding, and the Parties respective rights shall be reserved in all respects. The Parties agree and acknowledge that this Stipulation and Order is entered into for the sole purpose of resolving contested claims and disputes as well as avoiding the substantial costs, expenses, and uncertainties associated with such disputes. It is also expressly agreed and acknowledged that all Parties have acted in good faith and that neither this Stipulation and Order, its execution, the performance of any of its terms nor any of its contents shall constitute admission of any liability.

**### END OF ORDER ###**

STIPULATED AND AGREED AS OF JUNE 5, 2006

**DEBTORS**

By: /s/ Michael G. Hoffman  
Name: Michael G. Hoffman  
Title: President and Chief Executive Officer

-AND-

/s/ Holly J. Warrington  
Daniel C. Stewart, SBT #19206500  
William L. Wallander, SBT #20780750  
Holly J. Warrington, SBT #24037671  
**VINSON & ELKINS L.L.P.**  
Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
Tel: 214.220.7700  
Fax: 214.220.7716  
Email: [bwallander@velaw.com](mailto:bwallander@velaw.com)

**ATTORNEYS FOR DEBTORS**

**COMTEL TELCOM ASSETS LP  
AND COMTEL INVESTMENTS LLC**

**By: COMTEL ASSETS INC.  
Its: General Partner**

By: /s/ John Jenkins  
Name: John Jenkins  
Title: Chief Administrative Officer

-AND-

/s/ Judith W. Ross  
Judith W. Ross  
**BAKER BOTTS LLP**  
2001 Ross Avenue  
Dallas, Texas 75201  
Tel: 214.953.6605  
Fax: 214.661.4605  
E-mail: [judith.ross@bakerbotts.com](mailto:judith.ross@bakerbotts.com)

**ATTORNEYS FOR COMTEL  
AND COMTEL INVESTMENTS**

**QWEST CORPORATION**

By: /s/ Steven Hansen

Name: Steven Hansen

Title: Director of Carrier Relations – Wholesale Markets

-AND-

/s/ Mark H. Ralston

Mark H. Ralston, SBT #16489460

**MUNSCH HARDT KOPF & HARR, P.C.**

3800 Lincoln Plaza

500 N. Akard Street

Dallas, Texas 75201-6659

Tel: 214.855.7513

Fax: 214.978.4376

Email: [mrals@munsh.com](mailto:mrals@munsh.com)

**ATTORNEYS FOR QC**

**RTFC\***

By: /s/ Lawrence Zawalick  
Name: Lawrence Zawalick  
Title: Senior Vice President

-AND-

/s/ Toby L. Gerber  
Toby L. Gerber, SBT #07813700  
**FULBRIGHT & JAWORSKI L.L.P.**  
200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
Tel: 214.855.7171  
Fax: 214.855.8200  
Email: [tgerber@fulbright.com](mailto:tgerber@fulbright.com)

**ATTORNEYS FOR RTFC**

\* Signature by RTFC is solely as to paragraphs 22 through 25 hereof.

1096790\_15.DOC