

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X
In re

Allegiance Telecom, Inc , et al.,

Debtors

Chapter 11 Case No
03-13057 (RDD)

Jointly Administered

_____ X

**STIPULATION AND AGREED UPON ORDER RESOLVING
(I) THE DEBTORS' MOTION PURSUANT TO SECTION 365
OF THE BANKRUPTCY CODE FOR APPROVAL OF THE REJECTION OF
THE PHILADELPHIA LEASE WITH COMMERCE SQUARE PARTNERS -
PHILADELPHIA PLAZA, L P AND (II) THE MOTION OF COMMERCE SQUARE
PARTNERS - PHILADELPHIA PLAZA, L P FOR AN ORDER REQUIRING
THE IMMEDIATE ASSUMPTION OR REJECTION OF THE PHILADELPHIA
LEASE AND REQUEST FOR IMMEDIATE PAYMENT OF ADMINISTRATIVE
EXPENSES PURSUANT TO SECTION 503(a) OF THE BANKRUPTCY CODE**

Shared Technologies Allegiance, Inc ("ST"), as debtor and debtor in possession,
and Commerce Square Partners - Philadelphia Plaza, L P ("Philadelphia Plaza"), by and through
their respective undersigned attorneys, hereby stipulate and agree, subject to Court approval, as
follows

WHEREAS, on May 14, 2003 (the "Commencement Date"), ST commenced with
this Court a voluntary case under chapter 11 of title 11 of the United States Code (the
"Bankruptcy Code"),

WHEREAS, ST continues to operate its business and manage its properties as a
debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code,

WHEREAS, on or about June 17, 2002, ST acquired certain unexpired leases of
nonresidential real property from RealCom Communications Corporation ("RealCom"), an
affiliate of WorldCom, Inc , pursuant to that certain Asset Purchase Agreement, dated as of June
17, 2002, including that certain lease, dated July 1, 1987, as amended, between Philadelphia

Plaza, as landlord, and RealCom, as tenant, which governs certain premises (the “Philadelphia Premises”) located at 2005 Market Street, Philadelphia, Pennsylvania 19103 (the “Philadelphia Lease”), and

WHEREAS, on June 19, 2003, ST, together with other affiliated debtors-in-possession, filed a motion for an order pursuant to section 365(d)(4) of the Bankruptcy Code to extend the time within which to assume or reject, *inter alia*, the Philadelphia Lease,

WHEREAS, on August 4, 2003, Philadelphia Plaza filed a motion pursuant to section 365 of the Bankruptcy Code for an order requiring ST to immediately assume or reject the Philadelphia Lease, together with a request for immediate payment of administrative expense pursuant to section 503(a) of the Bankruptcy Code (the “Philadelphia Plaza Motion”), and

WHEREAS, on August 6, 2003, ST and other affiliated debtors filed a motion for an order pursuant to section 365(a) of the Bankruptcy Code authorizing debtors to reject certain unexpired leases of nonresidential real property, which included a request that ST be authorized to reject the Philadelphia Lease, to be effective as of the Commencement Date (the “Rejection Motion”),

WHEREAS, Philadelphia Plaza and ST dispute the amount of rent owed to Philadelphia Plaza and the validity of the Philadelphia Lease, and the parties desire to compromise, resolve and settle fully all disputes or differences that may exist between them, both asserted and not asserted, arising out of, in connection with, or relating to the Philadelphia Lease,

WHEREAS, on or about November 25, 2003, Philadelphia Plaza filed a proof of claim in the amount of \$134,148.28 (the “Philadelphia Plaza Proof of Claim”), and

NOW, THEREFORE, for good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows

1 The Philadelphia Lease shall be deemed rejected, pursuant to section 365 of the Bankruptcy Code, effective as of August 6, 2003

2 Within ten (10) business days of the Court entering an order approving this Stipulation, ST shall pay to Philadelphia Plaza the sum of twenty thousand dollars (\$20,000) in full and final satisfaction of any and all of Philadelphia Plaza's postpetition claims (the "Settlement Payment")

3 ST, on its own behalf and on behalf of its past, present, and future shareholders, agents, directors, officers, employees, attorneys, general partners, limited partners, members, successors, and assigns (the "ST Releasers") does hereby release and forever discharge all claims arising from or relating to the Philadelphia Lease, including but not limited to, all claims and defenses that were asserted or that could have been asserted in the Rejection Motion or in opposition to the Philadelphia Plaza Motion, that the ST Releasers have or may have against Philadelphia Plaza, its past, present, and future agents, directors, officers, employees, attorneys, general partners, limited partners, members, successors, and assigns

4 Philadelphia Plaza, on its own behalf and on behalf of its past, present, and future agents, directors, officers, employees, attorneys, general partners, limited partners, members, successors, and assigns (the "Philadelphia Plaza Releasers") does hereby release and forever discharge all claims arising from or relating to the Philadelphia Lease, other than the Philadelphia Plaza Proof of Claim, arising from or relating to the Philadelphia Lease, including but not limited to, all claims and defenses that were asserted or that could have been asserted in

the Philadelphia Plaza Motion or in opposition to the Rejection Motion, that the Philadelphia Plaza Releasors have or may have against ST, its past, present, and future agents, directors, officers, employees, attorneys, general partners, limited partners, members, successors, and assigns

5 The Philadelphia Plaza Proof of Claim is deemed an allowed general unsecured claim in the amount of \$75,000

6 This Court shall retain jurisdiction to resolve any disputes between ST and Philadelphia Plaza arising with respect to this Stipulation and Agreed Upon Order

7 Any motion or application brought before this Court to resolve any dispute arising under or related to this Stipulation and Agreed Upon Order shall be brought on proper notice in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of this Court

8 The undersigned, on behalf of ST and Philadelphia Plaza, each warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Agreed Upon Order on behalf of such party

9 This Stipulation and Agreed Upon Order constitutes the complete and exclusive statement of the terms and conditions between ST and Philadelphia Plaza with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter hereof

10 This Stipulation and Agreed Upon Order shall have no force or effect and shall not be binding upon either ST or Philadelphia Plaza until it is approved by the Court

Dated December 15, 2003

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By /s/ Jonathan S Henes
Jonathan S Henes (JH-1979)

By Robert L Ebby
Robert L Ebby

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

ATTORNEYS FOR PHILADELPHIA
PLAZA

SO ORDERED, this 23rd day of December, 2003

/s/Robert D Dram
UNITED STATES BANKRUPTCY JUDGE

Objection Deadline August 15, 2003
Hearing Date August 19, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re

Chapter 11

ALLEGIANCE TELECOM, INC , et al.,

Case No 03-13057 (RDD)

Debtors

Jointly Administered

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(A) MOTION OF COMMERCE SQUARE PARTNERS ~ PHILADELPHIA PLAZA, L P , PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE FOR AN ORDER REQUIRING IMMEDIATE ASSUMPTION OR REJECTION OF LEASE AND (B) REQUEST FOR IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO SECTION 503(a) OF THE BANKRUPTCY CODE

Commerce Square Partners~Philadelphia Plaza, L P , (“Commerce”) (formerly known as “Maguire/Thomas Partners~Philadelphia Plaza Associates”), a creditor and landlord of one of the above-captioned debtors and debtors-in-possession, Shared Technologies Allegiance, Inc (the “Debtor”), by and through its undersigned counsel hereby requests that this Court enter an order directing the Debtor to immediately (a) assume or reject that certain lease of non-residential real property between Commerce and the Debtor (the “Lease”) and (b) pay, as an administrative expense of the Debtor’s estate, all post-petition amounts owed to Commerce under the Lease, and in support hereof, respectfully represents as follows

Background

1 On May 14, 2003, (the “Petition Date”) the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”)

2 Since the Petition Date, the Debtor has continued to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code

FILED

AUG 04 2003



3 This Court has jurisdiction over this Motion pursuant to 28 U S C § 1334 and
157 This is a core proceeding pursuant to 28 U S C § 157(a) and (b)

4 On July 1, 1987, Commerce and Realcom Communications Corporation
("Realcom") entered into a lease agreement as amended of certain property located at One
Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103 (the "Premises") The
lease agreement was subsequently amended three (3) times A true and correct copy of the lease
and the subsequent amendments (collectively the "Lease") is attached hereto as Exhibit "A"¹

5 On July 16, 2002, pursuant to an Assumption and Assignment of the Lease
("Assignment"), Realcom assigned the Lease to the Debtor A true and correct copy of the
Assignment is attached hereto as Exhibit "B"²

6 Pursuant to the Lease, the Debtor has the obligation to, inter alia, pay base rent
and additional rent (collectively referred to as "Rent") for the Premises The Debtor is obligated
to pay Rent on the first day of each calendar month during the term of the Lease

7 During the Chapter 11 case, the Debtor has failed to pay Commerce the Rent as
required under the Lease Commerce has not received post-petition Rent from the Debtor for
June, July and August 2003 As of the date of this Motion, post-petition obligations totaling
\$29,252 31 plus interest have been incurred by the Debtor The arrearage is comprised of
\$16,747 50 of base rent and \$12,504 81 of additional rents, including certain operating expenses

¹ A copy of the Lease is attached only to the copies filed with the Court and served
on Kirkland & Ellis, the United States Trustee and Counsel for the Official Committee of
Unsecured Creditors A copy of the Lease will be provided to parties in interest upon request

² A copy of the Assignment is attached only to the copies filed with the Court and
served on Kirkland & Ellis, the United States Trustee and Counsel for the Official Committee of
Unsecured Creditors A copy of the Assignment will be provided to parties in interest upon
request

and real estate taxes Moreover, with each day that passes, the Debtor's overall financial obligations to Commerce increase

8 On June 19, 2003, the Debtors filed a motion for an order pursuant to Section 365(d)(4) of the Bankruptcy Code extending the time within which to assume or reject unexpired leases of non-residential property The Lease was one of the unexpired leases for which the Debtors requested an extension

9 On July 2, 2003, the Court granted the Debtors' motion extending the time in which the Debtors may assume or reject the unexpired leases to January 14, 2004 However, the Order provides that it is entered without prejudice to any lessor of an unexpired lease to move the Court for an earlier date by which the Debtors must assume or reject an unexpired lease in accordance with 365 (d)(4) of the Bankruptcy Code

Relief Requested

10 By the Motion, Commerce seeks entry of an order directing the Debtor to immediately (a) assume or reject the Lease and (b) pay, as an administrative expense of the Debtor's estate, all post-petition amounts owed to Commerce under the Lease

Assumption or Rejection of Lease

11 Pursuant to Section 365(d)(4) of the Bankruptcy Code, a trustee or debtor may assume or reject an unexpired lease of non-residential real property at any time within sixty (60) days after the filing of a petition (the "365(d)(4) Period") 11 U S C § 365(d)(4) If a trustee or debtor does not assume or reject the unexpired lease, or move for cause within such sixty (60) days, for an extension of the 365(d)(4) Period any such unexpired lease of non-residential real property will be deemed rejected Id

12 Upon the request of any party to a lease of non-residential real property the Court may order a trustee or debtor to determine within a specified period of time whether to assume or reject any unexpired lease

13 Once a party in interest to a contract or lease moves to compel assumption or rejection of a lease, the time within which the debtor has to decide whether to assume or reject the contract or lease is left to the discretion of the Court E.g. In re Teligent, Inc., 268 B R 723, 738 (Bankr S D N Y 2001), In re Monroe Well Services, Inc., 83 B R 317, 323 (Bankr E D Pa 1988), In re Dunne's Casino Hotel, 63 B R 939, 949 (D N J 1986)

14 Commerce submits the Debtor should be required to assume or reject the Lease at this time

Payment of Post-Petition Obligations

15 Section 365(d)(3) of the Bankruptcy Code provides in relevant part

The trustee shall timely perform all the obligations of the debtor, except those specified in 365(b)(2), arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding Section 503(b)(1) of this title

11 U S C §365(a)(3)

16 Section 365(d)(3) gives a landlord the right to make a claim for post-petition rent without meeting the requirements of Section 503(b)(1) of the Bankruptcy Code “Thus, unlike other administrative expense claims, these claims are allowed in the full amount of rent or other charges due under the lease without a showing by the landlord that amounts owed are reasonable or of a benefit to the estate” In re Microvideo Learning Sys Inc., 227 B R 602, 604 (Bankr S D N Y 2000) Accordingly, Section 365(d)(3) requires that a debtor in possession or trustee timely perform all obligations under a lease, including, without limitation rent accruing between the petition date and the lease rejection date on a timely basis 11 U S C 365(d)(3)

17 A landlord's administrative expense claim is to be measured at the reasonable value of the leased premises, which is presumed to be the amount, stipulated in the lease. See, e.g., In re Dant and Russell Inc (Burlington Northern R&R Co v Dant and Russell Inc), 853 F 2d 700-707 (9th Cir 1988), Farber v Wards Co., 825 F 2d 684, 689-690 (2d Cir 1987)

18 As set forth herein the Debtor has not performed the Debtor's obligations under the Lease post-petition. As of the date of this Motion, the Debtor owed \$29,252.31 post-petition plus interest to Commerce.

19 The Debtor should be ordered to pay Commerce the post-petition amounts currently owed under the Lease, including, but not limited to rent, electricity, late charges and attorneys fees as administrative expense of a Debtor's bankruptcy estate immediately and going forward on a current basis. As one court has noted, "[t]o hold otherwise would be to permit the entity to victimize those who attempt to fulfill the purpose of rehabilitation by doing business with the Chapter 11 Debtor." Fonderehe v Flint Hills Foods, Inc (In re Isis Food, Inc), 27 B R 156, 158 (W D Mo 1982), see also In re Photopromotions Associates Inc., 881 F 2d 6, 9 (2d Cir 1989)

20 The Debtor should also be required to perform all of its obligations under the Lease until such time as this Court enters an Order approving the Debtor's rejection, assumption, or assumption and assignment of the Lease.

Waiver of Memorandum of Law

21 Because there are no novel issues of law presented herein, Commerce respectfully requests that the Court waive the requirement that Commerce file a memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b).

Prior Request

22 No prior motion for the relief requested herein has been made to this or any other Court

Notice

23 A complete copy of this Motion and proposed Order has been served by hand delivery, facsimile, or overnight mail on (a) counsel to the Debtor, (b) the United States Trustee, and (c) counsel to the Creditors' Committee Commerce submits that no other or further notice is required

WHEREFORE, Commerce respectfully requests that this Court enter an order (a) compelling the Debtor to assume or reject the Lease immediately, (b) ordering the Debtor to pay \$29,252 31, plus all post-petition interest accrued on such rents immediately, (c) ordering the Debtor to timely pay all other post-petition rental obligations as they come due (d) ordering the Debtors to pay all attorneys fees incurred in connection with this Motion, and (e) granting such further and other relief as is just

Dated August 4, 2003

/s/ Perry K. DeLay
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Objection Deadline August 15, 2003
Hearing Date August 19, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

ALLEGIANCE TELECOM, INC , et al.,

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Debtors

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NOTICE OF MOTION, RESPONSE DEADLINE AND HEARING DATE

Commerce Square Partners~Philadelphia Plaza, L P has filed a Motion Pursuant to Section 365 of the Bankruptcy Code for an Order Requiring Immediate Assumption or Rejection of Lease and Request for Immediate Payment of Administrative Expense Pursuant to Section 503(a) of the Bankruptcy Code (the "Motion")

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case (If you do not have an attorney, you may wish to consult an attorney)

1 If you do not want the court to grant the relief sought in the Motion, or if you want the court to consider your views on the Motion, then on or before August 15, 2003, you or your attorney must do all of the following

- (a) file an answer explaining your position at

Clerk of the Court
U S Bankruptcy Court
for the Southern District of New York
One Bowling Green
New York, NY 10004

If you mail your answer to the bankruptcy clerk's office for filing, you must mail it early enough so that it will be received on or before the date stated above, and

- (b) mail a copy to the movant's attorney

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One Logan Square, 27th Floor
Philadelphia, PA 19103

Phone 215-568-6200
Fax 215-568-0300

2 If you or your attorney do not take the steps described in paragraphs 1(a) and 1(b) above, the Court may enter an order granting the relief requested in the Motion

3 A hearing on the Motion is currently scheduled for August 19, 2003 at 10 00 a m

Date August 4, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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ORDER

AND NOW, this ____ day of _____, 2003, upon consideration of (A) Motion of Commerce Square Partners~Philadelphia Plaza, L P , Pursuant to Section 365 – of the Bankruptcy Code for An Order Requiring Immediate Assumption or Rejection of Lease and (B) Request for Immediate Payment of Administrative Expense Pursuant to Section 503(a) of the Bankruptcy Code (the “Motion”), it is hereby

ORDERED that the relief requested in the Motion is granted, and it is further

ORDERED that the debtor Shared Technologies Allegiance, Inc (the “Debtor”) has ten (10) days from the date of entry of this Order to assume or reject the Lease (as defined in the Motion), and it is further

ORDERED that the Debtor shall immediately pay \$29,252.31 plus interest at the contract rate to Commerce Square Partners~Philadelphia Plaza, L P , and it is further

ORDERED that the Debtor shall timely pay all other post-petition rental obligations as they become due , and it is further

ORDERED that the Debtor shall immediately pay the movant’s attorneys fees incurred in connection with the Motion

Robert D Drain
United States Bankruptcy Judge