

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re	:	X
	:	
Allegiance Telecom, Inc., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered

---

**ORDER (A) PURSUANT TO RULE 9019 OF THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE, APPROVING THAT CERTAIN  
SETTLEMENT AGREEMENT, DATED AS OF MARCH 16, 2004, WITH  
NORTEL NETWORKS, INC. AND (B) PURSUANT TO SECTION 365 OF THE  
BANKRUPTCY CODE, APPROVING AND AUTHORIZING THE ASSUMPTION OF  
AN EXECUTORY CONTRACT, AS AMENDED, WITH NORTEL NETWORKS, INC.**

Upon consideration of the motion (the "Motion"), dated March 26, 2004, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, including Shared Technologies Allegiance, Inc., as debtors and debtors in possession (collectively, the "Debtors"), seeking entry of an order (a) pursuant to Bankruptcy Rule 9019,<sup>1</sup> approving that certain Settlement Agreement, dated as of March 16, 2004, with Nortel Networks, Inc. (the "Settlement Agreement") and (b) pursuant to section 365 of the Bankruptcy Code, approving and authorizing the assumption of an executory contract, as amended, with Nortel Networks, Inc. ("Nortel"), as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion having been given; and there being no objections to the Motion; and the Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Settlement Agreement is fair, reasonable and in the best interests of the Debtors, their estates, creditors and

---

<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion.

other parties in interest; and it appearing based on the record of the hearing that the Settlement Agreement was entered in good faith and is a result of arms-length negotiations; and it appearing that the relief requested in the Motion with respect to the assumption of the Nortel Agreement, as amended by the Nortel Amendment, is based upon the Debtors' sound business judgment and is necessary and in the best interests of the Debtors, their estates, creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Settlement Agreement is approved pursuant to Bankruptcy Rule 9019; and it is further

ORDERED that Nortel is authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein; and it is further

ORDERED that the Debtors' assumption of the Nortel Agreement, as amended by the Nortel Amendment, pursuant to section 365(a) of the Bankruptcy Code, is approved and authorized; and it is further

ORDERED that, pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under the Nortel Agreement, as modified by the Nortel Amendment; and it is further

ORDERED that the Debtors are authorized to make the Cure Payment to Nortel in full satisfaction of the Pre-Petition Amounts; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
April 20, 2004

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE

KIRKLAND & ELLIS LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4675  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Matthew A. Cantor (MC-7727)  
Jonathan S. Henes (JH-1979)

Attorneys for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____	x	
In re:	:	
	:	
ALLEGIANCE TELECOM, INC., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
_____	x	

**MOTION OF THE DEBTORS FOR AN  
ORDER (A) PURSUANT TO RULE 9019 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE,  
APPROVING THAT CERTAIN SETTLEMENT AGREEMENT,  
DATED AS OF MARCH 16, 2004, WITH NORTEL NETWORKS, INC.  
AND (B) PURSUANT TO SECTION 365 OF THE BANKRUPTCY  
CODE, APPROVING AND AUTHORIZING THE ASSUMPTION OF AN  
EXECUTORY CONTRACT, AS AMENDED, WITH NORTEL NETWORKS, INC.**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Allegiance Telecom, Inc. ("ATI") and its direct and indirect subsidiaries,  
including Shared Technologies Allegiance, Inc. ("Shared Technologies"), as debtors and debtors  
in possession (collectively, the "Debtors"), respectfully represent:

**Introduction**

1. On May 14, 2003 (the "Commencement Date"), each of the Debtors  
commenced with this Court a voluntary case under chapter 11 of title 11 of the United States  
Code (the "Bankruptcy Code"). The Debtors are authorized to operate their businesses and

manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York the ("U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Creditors Committee") in these chapter 11 cases. Nortel Networks, Inc. ("Nortel") is one of the members of the Creditors Committee.

#### **Jurisdiction**

4. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **An Overview of Debtors' Business**

5. The Debtors are facilities-based national local exchange carriers that provide integrated telecommunications products and services to small and medium-sized business customers, large businesses (i.e., national customers with multiple locations), governmental entities, wholesale customers and other institutional users. The Debtors offer their customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and collocation services;

- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- services to other service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

6. As of December 31, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of December 31, 2003, Allegiance employed approximately 2,893 people, of which approximately 66 employees were covered by collective bargaining agreements.

7. As of December 31, 2003, the Debtors had approximately \$284.2 million of unrestricted cash on hand. As of December 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.136 billion and liabilities totaling approximately \$1.449 billion. For the twelve months ending December 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$776.9 million and net losses of approximately \$360.0 million.

8. As set forth above, Shared Technologies is one of the Debtors in these chapter 11 cases. On June 17, 2002, ATI acquired (the "Shared Technologies Acquisition") certain assets from WorldCom Inc. ("WorldCom") related to the customer premises equipment ("CPE") business of Shared Technologies Fairchild Telecom, Inc., a wholly-owned subsidiary of WorldCom. As a result of the Shared Technologies Acquisition, Shared Technologies was formed as one of ATI's indirect subsidiaries.

9. Shared Technologies is one of the nation's largest providers of telecommunications CPE, including installation and maintenance services for CPE, with more than 5,000 business customers nationwide comprising of medium to large commercial

businesses, national equipment accounts, governmental agencies and hospitals. Shared Technologies sells, installs and maintains CPE, including key telephone systems and other telephone and data equipment.

10. On February 20, 2004, this Court entered an Order approving the sale to XO Communications, Inc. ("XO") of (a) substantially all of the assets of ATI and Allegiance Telecom Company Worldwide ("ATCW"), a direct subsidiary of ATI and one of the Debtors in these chapter 11 cases, and (b) the stock of the reorganized subsidiaries of ATCW, *other than Shared Technologies*. On March 18, 2004, the Debtors filed the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, which provides for the emergence of Shared Technologies as a reorganized stand-alone entity.

**Distributorship Agreement with Nortel Networks, Inc.**

11. Prior to the Commencement Date, Shared Technologies Fairchild Telecom, Inc. and Nortel (f/k/a Northern Telecom Inc.) entered into a certain Distributorship Agreement, dated January 6, 1997 (as amended, the "Nortel Agreement"), pursuant to which Shared Technologies Fairchild Telecom, Inc. resold certain Nortel products to customers located in the United States.

12. In connection with the Shared Technologies Acquisition, the Nortel Agreement was assigned to Shared Technologies pursuant to that certain Assignment and Delegation Agreement, by and between Nortel, WorldCom Purchasing, L.L.C./Shared Technologies Fairchild Telecom and Shared Technologies (f/n/a Allegiance CPE, Inc.), dated September 12, 2002.

13. Prior to the filing of this Motion, the Debtors and Nortel entered into negotiations regarding the terms of the Nortel Agreement and the resolution of certain disputes regarding pre-petition amounts due to Nortel under the Nortel Agreement. As a result of these

negotiations, a settlement was reached and the parties agreed to (a) amend the Nortel Agreement and (b) settle all claims and disputes among Nortel and the Debtors related to the Nortel Agreement. In that regard, the Debtors have agreed, subject to Court approval of the Settlement Agreement (as defined below), to assume the Nortel Agreement, as modified by the Nortel Amendment (as defined below).

### **Settlement Agreement and the Nortel Amendment**

#### **Settlement Agreement**

14. The Debtors and Nortel, subject to Court approval, have entered into that certain Settlement Agreement, dated as of March 16, 2004 (the "Settlement Agreement").<sup>1</sup> The Settlement Agreement provides that, subject to Court approval, the Settlement Agreement shall become effective retroactive as of January 1, 2004.

15. Under the Settlement Agreement,<sup>2</sup> Nortel has made certain concessions relating to, among other things, the renewal term of the Nortel Agreement and certain promotion funds and customer demonstration facilities to be provided by Nortel. Specifically, in connection with the Nortel Agreement, the Debtors participate in the Nortel Networks 2003 U.S.

---

<sup>1</sup> On March 26, 2004, this Court entered that certain Order, Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, Authorizing (A) the Debtors to File Under Seal Certain Agreements with Nortel Networks, Inc. and (B) the Court to Conduct an In Camera Hearing on Motion of the Debtors for an Order (I) Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, Approving that Certain Settlement Agreement, Dated as of March 16, 2004, with Nortel Networks, Inc. and (II) Pursuant to Section 365 of the Bankruptcy Code, Approving and Authorizing the Assumption of an Executory Contract, as Amended, with Nortel Networks, Inc. (the "Under Seal Order"). Pursuant to the Under Seal Order, the Debtors are authorized to file (and have filed) with this Court a complete copies of the Settlement Agreement, the Nortel Agreement and the Nortel Amendment (the "Sealed Agreements"). Contemporaneously with the filing of this Motion, copies of the Sealed Agreements have been provided to Nortel, the U.S. Trustee, attorneys for the Creditors Committee, attorneys for XO and attorneys for the Debtors' prepetition lenders (the "Prepetition Lenders"), subject to strict confidentiality requirements. The Seal Agreements are filed under seal as Exhibit "A" to this Motion.

<sup>2</sup> In the event of any inconsistency between the meaning of the terms used in the Settlement Agreement and the terms used in this Motion, the meaning of the terms used in the Settlement Agreement shall control.

Incentive Discount Plan, dated February 7, 2003 (the “Volume Incentive Discount Plan”). Under the Volume Discount Plan, the Debtors, subject to meeting a certain threshold for the aggregate amount of equipment purchases in the preceding calendar year, receive a 10% (ten percent) discount for purchases of equipment under the Nortel Agreement in each calendar year. As of the Commencement Date, the Debtors owed certain pre-petition amounts (the “Pre-Petition Amounts”) to Nortel under the Nortel Agreement. The aggregate amount of the Pre-Petition Amounts is \$1,433,254.84, as set forth on Exhibit “B” to the Settlement Agreement. As part of the settlement, Nortel has agreed to (a) allow the Debtors to apply the Pre-Petition Amounts to the Debtors’ achievement level under the Volume Incentive Discount Plan in 2003 and (b) acknowledge that the necessary threshold, which entitles the Debtors to receive a discount under the Nortel Agreement in 2004, has been met.<sup>3</sup> In exchange for Nortel’s concessions related to, among other things, (c) the Debtors’ achievement level under the Nortel Agreement, (d) the renewal term of the Nortel Agreement and (e) promotion funds and customer demonstration facilities to be provided by Nortel, the Debtors have agreed to pay \$1,320,254.84 to Nortel in full satisfaction of the Pre-Petition Amounts.

16. In addition, under the Settlement Agreement, Nortel and the Debtors have agreed to waive, release and forever discharge each other, each other’s respective affiliates and each others’ and respective affiliates’ officers, directors, employees and agents from and against any claims, liabilities and damages that each party may have against such released parties, as applicable, arising out of the Nortel Agreement prior to December 31, 2003, except for any claims, liabilities and damages relating to the payment of the Pre-Petition Amounts.

---

<sup>3</sup> As a result of receiving this discount, Shared Technologies anticipates to receive savings of approximately \$250,000 in 2004.

### **Nortel Amendment**

17. The Debtors and Nortel have negotiated and, subject to Court approval, have entered into that certain Amendment No. 7 to the Distributorship Agreement 4.01 (the “Nortel Amendment”), which modifies the terms of the Nortel Agreement. In that regard, the Debtors have agreed to assume the Nortel Agreement, as amended by the Nortel Amendment, contingent upon this Court’s approval of the Settlement Agreement. The Settlement Agreement provides that, subject to Court approval, the Nortel Agreement (as amended by the Nortel Amendment) shall be effective as of the date which is ten (10) calendar days after the entry of the Court order approving this Motion. The Nortel Amendment modifies the Nortel Agreement to provide for, among other things, (a) the renewal of the Nortel Agreement, (b) the return to the payment terms that existed prior to the Commencement Date and (c) the right of Shared Technologies to assign the Nortel Agreement to a third party under certain conditions.

### **Relief Requested<sup>4</sup>**

18. By this Motion, the Debtors seek entry of an order (a) pursuant to Bankruptcy Rule 9019(a), approving the terms of the Settlement Agreement and (b) pursuant to section 365 of the Bankruptcy Code, authorizing and approving the assumption of the Nortel Agreement, as amended by the Nortel Amendment.

### **Basis for Relief Requested**

#### **Bankruptcy Rule 9019**

19. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by [a debtor in possession] and after notice and a hearing, the court may approve a compromise and

---

<sup>4</sup> Pursuant to the Under Seal Order, the hearing on this Motion will be conducted in camera and attended solely by (a) representatives from the Debtors, Nortel, the U.S. Trustee and XO and (b) attorneys for (i) the Debtors, (ii) Nortel, (iii) XO, (iv) the Creditors Committee and (v) the Prepetition Lenders.

settlement.” Compromises and settlements are “a normal part of the process of reorganization.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citing Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)).

20. To approve a compromise and settlement under Bankruptcy Rule 9019, a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable and in the best interests of the debtor’s estate. See, e.g., In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), aff’d, 17 F.3d 600 (2d Cir. 1994) (citations omitted); In re Enron Corp., Case No. 02 Civ. 8489, 2003 WL 230838, \*2 (S.D.N.Y. Jan. 31, 2003). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. Nellis v. Shugrue, 165 B.R. 115, 122-123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. Id. at 122. The court may consider the opinions of the debtor in possession and its counsel that the settlement is fair and reasonable. Id.; see In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court “in light of the general public policy favoring settlements.” In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); Shugrue, 165 B.R. at 123 (“the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above”).

21. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983); see also Purofied Down Prods., 150 B.R. at 522 (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute]”).

22. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors:

- a. the probability of success in the litigation;
- b. the difficulties associated with collection;
- c. the complexity of the litigation, and the attendant expense, inconvenience and delay; and
- d. the paramount interests of creditors.

See Purofied Down Prods., 150 B.R. at 122 (citing Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1989)); Six West Retail Acquisition, Inc. v. Loews Cineplex Entm’t Corp., 286 B.R. 236, 248 n.13 (S.D.N.Y. 2002), see also In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992).

23. “The ‘reasonableness’ of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not of fraud or collusion.” Ionosphere Clubs, 156 B.R. at 428.

#### **Assumption of Nortel Agreement**

24. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may . . . assume any executory contract . . . of the debtor.” 11 U.S.C. § 365(a).

25. Section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an executory contract of a debtor. This subsection provides:

- (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee —

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract of lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

26. The standard to be applied by a court in determining whether an executory contract should be assumed is the “business judgment” test, which is premised on the debtor’s business judgment that the assumption would be beneficial to its estate. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996).

27. “More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartiality.” Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985) (citations omitted).

28. Some courts used the following factors in determining whether the “business judgment” standard in the context of an assumption of an executory contract is satisfied: (a) whether the contract or lease is profitable or advantageous to the debtor; and (b) whether the estate will be able to perform its contractual obligations under the contract. See In re National Sugar Refining Co., 26 B.R. 765, 767 (Bankr. S.D.N.Y. 1983); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

29. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection of an executory contract is in the best interests of the debtors, its creditors and all parties in interest, the court should approve such assumption or rejection under section 365(a) of the Bankruptcy Code. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Bradlees Stores, Inc., 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

**The Settlement Agreement Should be Approved  
Because it Falls Within the Range of Reasonableness**

30. In the instant case, the Settlement Agreement is fair and equitable, falls well within the range of reasonableness and enables the parties to avoid the costs of additional negotiations and potential litigation. Absent authorization to enter into the Settlement Agreement, the Debtors and Nortel may require judicial intervention to resolve their disputes arising under the Nortel Agreement. Those disputes include, but are not limited to, (a) the term of renewal of the Nortel Agreement, (b) the cure amount under the Nortel Agreement, (c) the treatment of certain promotion funds under the Nortel Agreement and (d) the Debtors' achievement under the Volume Incentive Discount Plan in 2003. The undertaking of uncertain litigation would be an unnecessary drain on the resources of the Debtors' estates and would divert the attention of their management and legal personnel from their restructuring efforts, including the confirmation and consummation of the Debtors' chapter 11 plan of reorganization.

31. The value accruing from the Settlement Agreement, including (a) the elimination of potential negotiation and litigation costs and (b) the Debtors receiving, among other things, a discount under the Nortel Agreement for 2004, as well as benefits related to certain promotion funds and demonstration facilities, represents a substantial benefit to the

Debtors' estates. In addition, the Settlement Agreement resolves all outstanding claims and issues between the Debtors and Nortel with respect to the Nortel Agreement, including the resolution of Nortel's pre-petition claims and determination of the cure amounts under the Nortel Agreement, without the need for any litigation. For the foregoing reasons, the Settlement Agreement should be approved pursuant Bankruptcy Rule 9019.

**Assumption of the Nortel Agreement is Supported by the  
Debtors' Business Judgment and Should be Approved by the Court**

32. The assumption of the Nortel Agreement is in the best interests of the Debtors' estates. As set forth above, the Nortel Agreement, as amended by the Nortel Amendment, contains numerous business terms, which are favorable for the Debtors. As a result, the Nortel Agreement, as amended by the Nortel Amendment, is beneficial to the Debtors' estates. Notably, if the Nortel Agreement were not assumed, as amended, then the Debtors would reject the Nortel Agreement. The rejection of the Nortel Agreement would result in significant rejection damage claims against the Debtors' estates. Based on the foregoing, the assumption of the Nortel Agreement, as amended, is the product of the Debtors' sound business judgment and should be approved.

**Cure of Defaults Under the Nortel  
Agreement, as Amended by the Nortel Amendment**

33. Prior to the assumption of an executory contract, a debtor must cure outstanding defaults under such contract. In that regard and as set forth above, the Debtors and Nortel have agreed that the Debtors will pay Nortel an amount of \$1,320,254.84 (the "Cure Payment") in full satisfaction of the Pre-Petition Amounts. The Settlement Agreement provides that the Debtors will make the Cure Payment within ten (10) calendar days after entry of the Court order approving the assumption of the Nortel Agreement, as amended by the Nortel Amendment.

34. Upon the receipt of the Cure Payment, Nortel has agreed not to (a) file any proofs of claims in the Debtors' chapter 11 cases with respect to the Pre-Petition Amounts and withdraw with prejudice any proofs of claims filed on account of such Pre-Petition Amounts, (b) vote in connection with any plan of reorganization in these chapter 11 cases as to the Pre-Petition Amounts, (c) object to any plan of reorganization filed in the Debtors' chapter 11 cases and (d) receive any distribution in the Debtors' chapter 11 cases on account of such Pre-Petition Amounts. Nortel has also agreed to resign from membership on the Creditors Committee.

35. Further, Nortel and the Debtors have agreed that as of the date of this Motion, except for the payment of the Pre-Petition Amounts, there are no defaults that need to be cured under the Nortel Agreement.

36. For the reasons stated above and in the exercise of their sound business judgment, the Debtors believe that the assumption of the Nortel Agreement, as amended by the Nortel Amendment, is in the best interests of the Debtors, their estates, creditors and other parties in interest.

#### **Waiver of Memorandum of Law**

37. This Motion includes citations to the applicable authorities and does not raise any novel issues of law. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

#### **Notice**

38. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) attorneys for the Prepetition Lenders; (c) attorneys for the Creditors Committee; (d) attorneys for Nortel; (e) attorneys for XO and (f) all parties on the Master Service List established and maintained pursuant to that certain order establishing notice procedures in these chapter 11 cases,

dated May 15, 2003. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

39. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court enter an order (a) pursuant to Bankruptcy Rule 9019(a), approving the terms of the Settlement Agreement, (b) pursuant to section 365 of the Bankruptcy Code, authorizing and approving the assumption of the Nortel Agreement, as amended by the Nortel Amendment and (c) granting the Debtors such other and further relief as it deems just and proper.

Dated: New York, New York  
March 26, 2004

Respectfully submitted,

/s/ Jonathan S. Henes

Matthew A. Cantor (MC-7727)

Jonathan S. Henes (JH-1979)

KIRKLAND & ELLIS LLP

Citigroup Center

153 East 53rd Street

New York, New York 10022-4675

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Attorneys for Debtors and Debtors in Possession

**EXHIBIT A (FILED UNDER SEAL)**

**THE SEALED AGREEMENTS**



**SCHEDULE A TO PROOF OF  
CLAIM OF NORTEL NETWORKS INC**

**1 BASIS FOR CLAIM**

Nortel Networks Inc ("Claimant") is a creditor of Shared Technologies Allegiance, Inc ("Debtor") Claimant is entitled to payment for obligations incurred by Debtor arising under certain agreements between Claimant and Debtor, including but not limited to the Distributorship Agreement dated January 6, 1997, between Shared Technologies Fairchild Telecom, Inc (as predecessor in interest to the Debtor) and Northern Telecom Inc (now known as Nortel Networks Inc ) (the "Distributorship Agreement"), the Assignment and Delegation Agreement among Claimant, Debtor and WorldCom Purchasing, L L C /Shared Technologies Fairchild Telecom, dated September 12, 2002, and all schedules, exhibits, purchase orders and other documents referenced in or made a part of the foregoing (collectively, the "Agreement")

**2 DATE DEBT WAS INCURRED**

The Debtor's obligations as set forth in this claim were incurred on the date the Agreement was executed and on a going-forward basis then and thereafter

**3 TOTAL AMOUNT OF CLAIM**

This claim is a general unsecured claim for the amount of \$1,714,920 33 plus such taxes, interest, attorney's fees and other costs and charges that Claimant may be entitled to recover pursuant to the Agreement, including, without limitation, pursuant to sections 2 1 8(e)(11), 3 7, 4 2 2(a), 4 2 3, 4 2 4, 4 3(e) and 8 2 of the Distributorship Agreement, at law or in equity

**4 CREDITS AND SETOFFS**

This claim is not subject to any setoff or counterclaim

**5 RESERVATION OF RIGHTS**

A The filing of this claim is not and shall not be deemed or construed as (a) an election of remedies, (b) a waiver of any past, present or future event of default, or (c) a waiver or limitation of any rights of the Claimant Claimant does not waive any right or rights of action that Claimant has or may have against Debtor and/or any of Debtor's affiliates,

subsidiaries and/or entities having direct or indirect control of Debtor by virtue of owning Debtor's shares, or any other person or entity whether related or unrelated to Debtor

B Claimant reserves the right to amend or supplement this claim in any respect Claimant reserves all rights regarding the nature of the Agreement, including but not limited to whether the Agreement is an executory contract under 11 U S C § 365, and whether the Agreement may be assumed or assigned

C By filing this claim, Claimant does not submit itself to the jurisdiction of this Court for any purpose other than with respect to this claim

D Neither this proof of claim nor any subsequent amendment or supplement hereto is intended to waive (a) the right of Claimant to have final orders in non-core matters entered only after *de novo* review by a District Court judgment, (b) the right of Claimant to a trial by jury in any proceeding so triable herein or in any case, controversy or proceeding related hereto, (c) the right of Claimant to have the reference withdrawn by the District Court in any matter subject to mandatory or discretionary withdrawal, or (d) any other rights, claims, actions, defenses, setoffs or recoupments to which the Claimant is or may be entitled under agreements, at law or in equity, all of which rights, claims, actions, defenses, setoffs and recoupments the Claimant expressly reserves Claimant expressly reserves the right to assert that all or part of its claim is an administrative claim entitled to priority, pursuant to 11 U S C §§ 503 and 507(a)(1)

## 6 SUPPORTING DOCUMENTS

The Agreement is voluminous in size and is confidential and proprietary A copy of the Agreement is not attached hereto, but will be made available to parties in interest upon request subject to an appropriate confidentiality agreement Claimant has previously furnished Debtor with invoices generated in connection with the Agreement during the ordinary course of business

7 ALL NOTICES WITH RESPECT TO THIS CLAIM SHOULD BE SENT TO

Nortel Networks Inc  
c/o Lovells  
900 Third Avenue, 16th Floor  
New York, NY 10022  
Attn Karen Ostad, Esq  
Dina Gielchinsky, Esq

with a copy to

Nortel Networks Inc  
4010 E Chapel Hill Nelson Hwy  
Research Triangle Park, NC 27709  
Attn Cynthia C Hemme, Esq

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
X989640	4/20/2002	\$7,942 17	81357
11730422	5/21/2002	\$2,178 66	81018
SC00064522	6/4/2002	\$861 64	81951
SC00064624	6/5/2002	\$971 81	75815
25015992	6/18/2002	\$19,002 50	81773
SC00064801	6/21/2002	\$494 55	75011
B1241550	6/27/2002	\$947 81	75165
25016375	7/2/2002	\$887 22	75165
X000802	7/9/2002	\$9,242 87	82880
X001753	7/16/2002	\$5,894 46	83198
11757851	7/22/2002	\$36,171 60	84268
11760865	7/30/2002	\$1,970 68	84606
X007012	8/14/2002	\$2,162 00	84524
11772070	8/22/2002	\$8,769 65	81722
X004269	8/29/2002	\$1,266 84	83373
SC00065087	9/5/2002	\$32,957 27	84290
SC00065088	9/5/2002	\$4,119 66	84290
5000629172	9/9/2002	\$1,567 75	84576
SC00065115	9/17/2002	\$7,300 48	82321
5000631051	9/20/2002	\$604 97	86344
11790379	9/30/2002	\$14,056 03	85815
5000633175	9/30/2002	\$1,834 54	49746-Periphonics
11793072	10/3/2002	\$2,870 30	85815
X015657	10/3/2002	\$536 42	86693
SC00065354	10/7/2002	\$637 80	85799
11796018	10/9/2002	\$124 45	87073
X017199	10/12/2002	\$318 40	86815
11801801	10/22/2002	\$57,742 80	86834
11801807	10/22/2002	\$157 93	87244
11802052	10/22/2002	\$2,833 56	86926
11802132	10/22/2002	\$776 84	87420
11802143	10/22/2002	\$6,688 04	87430
11802153	10/22/2002	\$328 21	87015
11802302	10/22/2002	\$125 16	87523
SC00065381	10/24/2002	\$889 66	86734
11804926	10/28/2002	\$4,740 92	82631
11804937	10/28/2002	\$3,555 55	82631
5000636414	10/31/2002	\$80 62	86182
SC00065507	11/8/2002	\$631 40	87758
11811282	11/11/02	\$2,178 36	110802B

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11811485	11/11/02	\$4,121 02	110802A
5000638122	11/11/2002	\$287 08	86182
5000640873	12/4/2002	\$224 81	86344
11823065	12/10/2002	\$1,557 29	88306
11823066	12/10/2002	\$1,489 58	88305
11826962	12/18/2002	\$238 44	88860
X025366	12/20/2002	\$328 21	87805
SC00065675	12/24/2002	\$622 20	88164
11831394	12/30/2002	\$2,178 66	89194
11836474	1/13/2003	\$162 15	89408
11836730	1/13/2003	\$1,008 34	89386
11836740	1/13/2003	\$8,021 66	89280
11836779	1/13/2003	\$8,622 54	89340
11836786	1/13/2003	\$31,422 56	88925
11836800	1/13/2003	\$14 65	88874
11836801	1/13/2003	\$14 65	88876
11836804	1/13/2003	\$6 49	89487
11836951	1/14/2003	\$18,684 88	88925
11836955	1/14/2003	\$20,195 96	89212
11836963	1/14/2003	\$2,317 59	89477
11836964	1/14/2003	\$8,950 71	89479
11837106	1/14/2003	\$97 09	89494
11837162	1/14/2003	\$3,564 18	89479
11837215	1/14/2003	\$1,242 59	89377
11837242	1/14/2003	\$601 88	89455
11837295	1/14/2003	\$1,686 68	89478
11837318	1/14/2003	\$4,547 88	89505
11837321	1/14/2003	\$403 76	89521
X027653	1/14/2003	\$98 88	88746
X027659	1/14/2003	\$197 76	88804
11837608	1/15/2003	\$1,600 37	89527
11837705	1/15/2003	\$33 95	88925
11837712	1/15/2003	\$2,869 53	89431
11837713	1/15/2003	\$1,557 85	89428
11837717	1/15/2003	\$585 71	89450
11837718	1/15/2003	\$835 93	89459
11837753	1/15/2003	\$390 89	89437
11837755	1/15/2003	\$278 89	89486
11837775	1/15/2003	\$1,552 09	89302
11837784	1/15/2003	\$5,389 13	89458

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11837899	1/15/2003	\$41,226 65	88828
11837914	1/15/2003	\$701 40	89458
11837932	1/15/2003	\$1,757 39	87272
11837933	1/15/2003	\$6,595 25	89468
11837966	1/15/2003	\$1,176 88	89478
X027726	1/15/2003	\$766 07	89313
X027789	1/15/2003	\$510 71	89132
11837989	1/16/2003	\$3,446 38	89409
11838026	1/16/2003	\$489 71	89554
11838116	1/16/2003	\$636 87	89361
11838131	1/16/2003	\$281 23	89329
11838148	1/16/2003	\$1,091 69	89550
11838218	1/16/2003	\$599 01	89480
11838227	1/16/2003	\$5,817 18	89395
11838396	1/16/2003	\$4,703 65	89460
X027903	1/16/2003	\$1,770 45	89132
11840244	1/21/2003	\$32 05	89386
11840397	1/21/2003	\$32 05	89377
X028086	1/21/2003	\$18,370 68	88674
X028286	1/22/2003	\$3,555 55	89275
11841198	1/23/2003	\$58 54	89699
5000646532	1/23/2003	\$80 38	84062
SC00065742	1/23/2003	\$1,540 50	88794
X028365	1/23/2003	\$85 24	89275
X028400	1/23/2003	\$924 30	89472
X028491	1/23/2003	\$743 55	89275
25021040	1/29/2003	\$11,043 35	77880
X029521	1/30/2003	\$508 23	89472
X029559	1/30/2003	\$307 40	89472
X029643	1/31/2003	\$471 19	89472
X029689	1/31/2003	\$2,745 21	89472
11847238	2/7/2003	\$0 31	89581
11849707	2/12/2003	\$3,498 89	85789
11850901	2/14/2003	\$55 24	90228
11855567	2/26/2003	\$5,687 32	90341
11856348	2/27/2003	\$1 02	90531
11857484	3/3/2003	\$226 18	90495
11858445	3/4/2003	\$115 57	90701
11859707	3/6/2003	\$6 30	89634
25022310	3/6/2003	\$891 44	89725

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11860117	3/7/2003	\$3 04	90772
11860943	3/10/2003	\$25 03	90855
5000652031	3/10/2003	\$35,282 38	90324
X034257	3/11/2003	\$2,869 53	90734
X034616	3/13/2003	\$265 30	90734
11864214	3/18/2003	\$434 07	91028
42210470	3/19/2003	\$24,928 62	88843
42210471	3/19/2003	\$18,269 24	88843
42210472	3/19/2003	\$18,269 24	88843
42210473	3/19/2003	\$1,596 67	88843

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
5000653498	3/21/2003	\$1,356 32	90314
SC00065941	3/21/2003	\$1,360 80	90175
X035616	3/22/2003	\$810 16	90734
X035666	3/22/2003	\$999 61	90915
X035748	3/22/2003	\$249 90	90734
X035903	3/25/2003	\$805 33	90915
11867931	3/26/2003	\$149 26	91163
FG00059962	3/26/2003	\$119,552 40	89096
X036042	3/26/2003	\$161 01	90915
11868531	3/27/2003	\$2,950 66	91163
X036327	3/28/2003	\$506 86	91032
11869834	3/30/2003	\$1,145 74	91163
11869846	3/30/2003	\$77,093 82	91313
11869847	3/30/2003	\$46,854 23	91313
11870244	3/31/2003	\$67 36	91315
11870314	3/31/2003	\$1,530 14	89100
11870346	3/31/2003	\$3,424 35	82775
11870700	4/1/2003	\$102 49	91313
5000655704	4/1/2003	\$78 61	84062
11871419	4/2/2003	\$6,694 25	91313
X036663	4/2/2003	\$416 66	90906
X036672	4/2/2003	\$1,667 64	91032
X036743	4/2/2003	\$1,060 22	91194
11871675	4/3/2003	\$28,911 98	91309
11871684	4/3/2003	\$72,216 37	91309
X036911	4/3/2003	\$1,264 62	91032
X036930	4/3/2003	\$497 82	91194
11872207	4/4/2003	\$90,152 91	91313
11872446	4/4/2003	\$920 47	91313
25023362	4/4/2003	\$401 33	89725
SC00065993	4/4/2003	\$1,655 50	89548
11872624	4/7/2003	\$24,328 80	91309
11872768	4/7/2003	\$1,374 68	91309
11873502	4/8/2003	\$1,224 87	91558
X037444	4/8/2003	\$1,162 32	91484
11873610	4/9/2003	\$0 85	91424
11873756	4/9/2003	\$218 33	91367
11873912	4/9/2003	\$262 67	91367
11874076	4/9/2003	\$20,121 99	91313
X037589	4/9/2003	\$572 95	91484

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11874575	4/11/2003	\$656 89	91567
11874756	4/11/2003	\$29 69	91367
X037777	4/11/2003	\$600 60	91194
X037888	4/11/2003	\$994 99	91484
X037892	4/11/2003	\$180 18	91194
X037985	4/12/2003	\$186 08	90669
X038149	4/15/2003	\$912 00	91562
11876683	4/16/2003	\$1,508 05	91313
X038287	4/16/2003	\$320 00	91484
11877694	4/18/2003	\$696 57	91313
11877728	4/18/2003	\$17 26	91802
11878257	4/21/2003	\$1,083 99	91313
11878994	4/22/2003	\$389 49	91313
X038624	4/22/2003	\$160 00	91484
X038675	4/22/2003	\$280 00	91484
X038756	4/23/2003	\$180 00	91562
11879913	4/24/2003	\$2,804 92	91776
40212713	4/25/2003	\$6,029 00	88843
40212714	4/25/2003	\$4,121 00	88843
40212715	4/25/2003	\$4,121 00	88843
X038880	4/25/2003	\$2,247 00	91562
X038911	4/25/2003	\$1,280 00	91673
X038920	4/25/2003	\$1,284 00	91562
11881271	4/28/2003	\$17,875 32	91313
11881272	4/28/2003	\$1,380 00	91476
11881282	4/28/2003	\$121 24	91972
11881966	4/30/2003	\$764 40	92031
25023922	4/30/2003	\$320 00	89725
25023923	4/30/2003	\$1,441 60	032603010
11882630	5/1/2003	\$3,345 60	92066
25023999	5/2/2003	\$84 80	3040403009
5000658965	5/2/2003	\$9,239 50	88843
X039844	5/2/2003	\$28 42	91892
11883669	5/3/2003	\$19,108 94	91944
X039962	5/3/2003	\$996 00	91673
11884071	5/5/2003	\$101,532 01	91944
11884437	5/6/2003	\$2,488 46	92122
11884443	5/6/2003	\$312 98	92170
X040134	5/6/2003	\$496 00	91562
11884702	5/7/2003	\$12,586 46	92175

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11884705	5/7/2003	\$3,834 18	92184
11884792	5/7/2003	\$52,211 62	92071
11884940	5/7/2003	\$9,509 70	92134
11884993	5/7/2003	\$4,585 11	92197
11885001	5/7/2003	\$39,998 13	92029
11885010	5/7/2003	\$5,743 36	92202
11885019	5/7/2003	\$6,850 48	92031
11885085	5/7/2003	\$261 53	92292
11885265	5/8/2003	\$24,941 37	92071
11885320	5/8/2003	\$380 54	92197
11885339	5/8/2003	\$7 15	92252
11885343	5/8/2003	\$380 54	92191
11885467	5/8/2003	\$8,513 74	92029
11885599	5/8/2003	\$54 69	92202
11885646	5/8/2003	\$29,924 84	92154
11885648	5/8/2003	\$8,109 60	92029
11885837	5/9/2003	\$3,829 57	92206
11885840	5/9/2003	\$1,500 68	92236
11885872	5/9/2003	\$681 79	92295
11885905	5/9/2003	\$219 37	92175
11885911	5/9/2003	\$380 54	92202
11885912	5/9/2003	\$380 54	92242
11885914	5/9/2003	\$352 11	92236
11885916	5/9/2003	\$381 69	92200
11886028	5/9/2003	\$4,589 48	92242
11886087	5/9/2003	\$3,812 51	92134
11886129	5/9/2003	\$1,201 03	92382
11886202	5/9/2003	\$11,898 16	92122
11886258	5/9/2003	\$4,603 17	92200
11886272	5/9/2003	\$33 61	92122
11886276	5/9/2003	\$33 61	92206
11886278	5/9/2003	\$33 61	92242
11886280	5/9/2003	\$33 61	92236
11886292	5/9/2003	\$1,350 16	91942
11886296	5/9/2003	\$265 04	92029
X040531	5/9/2003	\$280 00	92019
X040595	5/9/2003	\$1,308 00	92019
11886493	5/10/2003	\$229 39	92345
X040698	5/10/2003	\$2,096 00	92096
11886536	5/12/2003	\$3,237 87	92268

**Shared Technologies - List of Open Invoices** Telecom Equipment  
**as of Petition Date** 5/14/2003

Invoice number	Invoice Date	Total Claim	PO #
11886537	5/12/2003	\$3,778 41	92279
11886566	5/12/2003	\$2,365 36	92154
11886574	5/12/2003	\$54 76	92354
11886575	5/12/2003	\$1,596 66	92358
11886669	5/12/2003	\$117 98	88305
11886690	5/12/2003	\$2,680 86	92031
11886696	5/12/2003	\$1,350 16	92276
11886787	5/12/2003	\$1,976 78	92361
11886854	5/12/2003	\$1,331 79	92129
11886856	5/12/2003	\$7,375 49	92345
11886880	5/12/2003	\$19,559 03	91502
11886887	5/12/2003	\$1,094 67	92319
11886888	5/12/2003	\$3,012 95	92323
11886889	5/12/2003	\$371 56	92325
11886899	5/12/2003	\$6,770 70	92267
11886900	5/12/2003	\$1,523 28	92324
11886907	5/12/2003	\$58,767 00	91995
11887003	5/12/2003	\$667 24	92418
11887004	5/12/2003	\$703 69	92410
11887097	5/13/2003	\$13,251 36	92220
11887109	5/13/2003	\$14,415 42	92129
11887116	5/13/2003	\$699 95	92323
11887117	5/13/2003	\$316 18	92336
11887118	5/13/2003	\$309 58	92333
11887119	5/13/2003	\$1,610 07	92345
11887120	5/13/2003	\$290 48	92372
11887121	5/13/2003	\$297 47	92368
11887122	5/13/2003	\$580 48	92357
11887125	5/13/2003	\$811 17	92406
11887129	5/13/2003	\$102 08	92420
11887130	5/13/2003	\$602 94	92401
11887259	5/13/2003	\$399 89	92318
11887418	5/13/2003	\$1,346 23	91502
X040822	5/13/2003	\$10 88	92273
X038682	5/14/2003	\$193 70	90250
X039019	5/14/2003	\$778 79	91624
X039338	5/14/2003	\$276 15	90845
May 14 owing	5/14/2003	\$40 00	No PO #
		<b>\$1,714,920 33</b>	