

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

PROOF OF CLAIM



In re
ALLEGIANCE Telecom, INC et al

Case Number
03-13057

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

FILED
SOUTHERN DISTRICT OF NEW YORK
ALLEGIANCE TELECOM, INC
03-13057 (RRD)
2494

Name of Creditor and Address

03805890012847
HOROSHAK JOHN E
880 WINDJAMMER LN
ORONO MN 55364

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if this address differs from the address on the envelope sent to you by the court.

If you have already properly filed a proof of claim with the Bankruptcy Court, you do not need to file again.

Creditor Telephone Number **652 472-4350**

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here replaces or amends a previously filed claim dated _____

1 BASIS FOR CLAIM

Goods sold Personal injury/wrongful death Retiree benefits as defined in 11 U.S.C. § 1114(a)

Services performed Taxes Wages, salaries, and compensation (Fill out below)

Money loaned Other (describe briefly below)

Your social security number 475-64-6903
Unpaid compensation for services performed from 12/2001 to 12/2002
(date) (date)

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED \$ 53,449.69 (unsecured) \$ _____ (secured) \$ _____ (unsecured prony) \$ _____ (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5 SECURED CLAIM

Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral

Real Estate
 Motor Vehicle
 Other _____

Value of collateral \$ _____

Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____

6 UNSECURED PRIORITY CLAIM

Check this box if you have an unsecured priority claim.

Specify the priority of the claim

Wages, salaries, or commissions (up to \$4,650) earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3)

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4)

Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal family or household use. 11 U.S.C. § 507(a)(6)

Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7)

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8)

Other. Specify applicable paragraph of 11 U.S.C. § 507(a) _____

Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

RECD
DEC 03 2003
BMC

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8 SUPPORTING DOCUMENTS Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 5:00 p.m., November 26, 2003, Prevailing Eastern Time.

BY MAIL TO: United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
Bowling Green Station, P.O. Box 95
New York, NY 10274-0095

BY HAND OR OVERNIGHT DELIVERY TO: United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
One Bowling Green, Room 534
New York, NY 10004-1408

THIS SPACE FOR COURT USE ONLY

NOV 26

CLERK'S OFFICE

DATE SIGNED 11/21/2003

SIGN and print the name and title of any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

John E. Horoshak

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions



DRAFT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

John Horoshak,

Plaintiff

v

**COMPLAINT AND JURY
DEMAND**

Civil File No _____

Allegiance Telecom, Inc f/k/a WorldCom, Inc
f/k/a Intermedia Communications, Inc
d/b/a Shared Technologies Fairchild, Inc),

Defendant

Now comes Plaintiff, John Horoshak, as and for his claim for relief against Defendant above named, states and alleges as follows

- 1 Plaintiff is a resident of Orono Minnesota, and worked for Defendant most recently as a Sales Executive Plaintiff worked for Defendant from March 30 1998 until October 17, 2002 Plaintiff's most recent employment was at Allegiance Telecom, Inc 1270 Northland Drive, Suite 125 Mendota Heights, MN 55120
- 2 Defendant is a foreign corporation with a principle place of business in Minnesota. Defendant is licensed and in good standing with the Minnesota Office of the Secretary of State

3 That on or about January 2001 WorldCom, Inc purchased Intermedia
Communications, Inc d/b/a Shared Technologies Fairchild, Inc

4 That on or about June 2002, Allegiance Telecom, Inc purchased WorldCom, Inc

5 That this cause of action is brought under Minn Stat §181 14 and common law
claims

6 That on or about March 1998, Defendant offered Plaintiff employment as a Sales
Executive As part of Defendant's employment offer, Defendant promised to pay
Plaintiff commissions on sales of recurring maintenance contracts at a rate of 7%

7 That on or about March 1998, in reliance on Defendant's promises, Plaintiff
accepted Defendant's offer of employment and began working for Defendant

8 That throughout Plaintiff's employment, Defendant promised to pay commissions
on sales of recurring maintenance contracts at a rate of 7%

9 That on or about June 18, 2002, upon purchasing WorldCom, Inc , Defendant
promised, in a document titled, "STFI (Legacy WorldCom) Employee Payroll and
Benefits Transition Summary " that "commission payments would be paid
according to the normal commission payment schedule "

10 That during December 2001, Plaintiff sold a maintenance contract with a value of
\$1,164,000 Defendant never paid Plaintiff commission on this maintenance
contract As a result, Defendant owes Plaintiff approximately \$32,592

- 11 That during the months of January February, and March 2002, Plaintiff sold recurring maintenance contracts
- 12 That Plaintiff earned commissions from sales of recurring maintenance contracts, during the months of January, February, and March 2002, in the amount of \$27,676 28
- 13 That for the months of January February, and March 2002 Defendant did not pay Plaintiff at a rate of 7%, as promised, for his earned commissions from the sales of recurring maintenance contracts Instead during the months of January, February, and March 2002, Defendant paid Plaintiff his earned commissions at a mixed rate not above 4% As a result, Defendant owes Plaintiff \$13,804 81
- 14 That Plaintiff earned commissions from recurring maintenance contracts, during the months of April - October 2002
- 15 That for the months of April - October 2002 Defendant did not pay Plaintiff at a rate of 7%, as promised, for his earned commissions from recurring maintenance contracts Instead during the months of April - October 2002, Defendant paid Plaintiff his earned commissions at a rate of 4% As a result, Defendant owes Plaintiff \$7,052 88
- 16 That on or about March 26, 2002, Plaintiff submitted a written request, via email, to Defendant to be paid his owed commissions Prior to March 26, 2002, Plaintiff regularly requested that Defendant pay Plaintiff his owed commissions

11 12 13 14 15

17 That Defendant did not pay Plaintiff his owed commissions, despite Plaintiff's request for payment of his owed commissions

18 That as a result of Defendants refusal to pay Plaintiff his earned commissions, Plaintiff has incurred significant damages

COUNT I
(Unjust Enrichment)

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 18 set forth above

19 Defendant breached its contractual obligation to Plaintiff by not paying Plaintiff his earned commissions at a rate of 7%

20 Defendant remains in possession of Plaintiff's unpaid commissions

21 Defendant has been unjustly enriched at Plaintiff's expense

22 As a result of Defendant's unjust enrichment, Plaintiff has been measurably damaged at an amount equal to the contractual obligations of Defendant

WHEREFORE, Plaintiff prays for judgment against Defendant as follows

- a That the court assume jurisdiction over this cause of action,
- b That the court grant Plaintiff a jury trial,

- c That the court order Defendant to pay Plaintiff its contractual obligations with interest at the highest legal rate,
- d That the court order Defendant to pay the costs and expenses of this action, and
- e That the court grant Plaintiff such relief as appears appropriate and just under the circumstances

COUNT II
(Violation of Minn. Stat. § 181.14)

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 22 set forth above

- 23 Defendant failed to pay Plaintiff his unpaid commissions and upon his resignation and demand in violation of Minn Stat § 181 14
- 24 As a result of Defendant's failure to pay commissions, Plaintiff suffered damages, including but not limited to, monetary damages

WHEREFORE, Plaintiff prays for judgment against Defendant as follows

- a That the court assume jurisdiction over this cause of action,
- b That the court order Defendant to pay Plaintiff wages and penalties with interest at the highest legal rate in accordance with Minn Stat § 181,
- c That the court order Defendant to pay the costs and expenses of this action, and
- d That the court grant Plaintiff such relief as appears appropriate and just under the circumstances

7 7 7 7 7

COUNT III

(Breach of Contract)

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 24 set forth above

25 Defendant offered to pay Plaintiff commissions on sales of recurring maintenance contracts at a rate of 7%

26 Plaintiff accepted Defendant's offer and in consideration of the offer, worked for Defendant

27 In January, February and March 2002, Plaintiff sold recurring maintenance contracts

28 Defendant breached its contract with Plaintiff by failing to pay 7% commission on the maintenance contracts Plaintiff sold in January February, and March 2002

29 In April - October 2002, Plaintiff earned commissions on recurring maintenance contracts

30 Defendant breached its contract with Plaintiff by failing to pay 7% commission on the recurring maintenance contracts during the months of April - October 2002

31 As a result of Defendant's breach, Plaintiff has suffered damages, including, but not limited to, monetary damages

WHEREFORE, Plaintiff prays for judgment against Defendant as follows

- a That the court assume jurisdiction over this cause of action,
- b That the court grant Plaintiff a jury trial,
- c That the court order Defendant to pay its contractual obligations with interest at the highest legal rate,
- d That the court order Defendant to pay the costs and expenses of this action, and
- e That the court grant Plaintiff such relief as appears appropriate and just under the circumstances

Dated _____

Beth E Bertelson (#186806)
Andrea R Gesellchen (#320006)
BERTELSON LAW OFFICES, P A
Attorneys for Plaintiff
333 Washington Avenue North
Union Plaza, Suite 101
Minneapolis, MN 55401
(612) 278-9832

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minnesota Statute § 549 211 to the party against whom the allegations in this pleading are asserted

Dated _____

Beth E Bertelson (#186806)
Andrea R Geselchen (#320006)
BERTELSON LAW OFFICES, P A
Attorneys for Plaintiff
333 Washington Avenue North
Union Plaza, Suite 101
Minneapolis, MN 55401
(612) 278-9832

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

**In re Allegiance Telecom, Inc , et al
Case No 03-13057-(RDD)-11**

DOCUMENTS APPENDED TO CLAIM

On August 1, 2005, document(s) were appended to Claim Number **2604** for the following reason(s)

- Stipulation/Order
- New Supporting Documents
- Change of Address
- Stipulation and Order
- Other Docket Number 2258 EOD 729/05

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X
In re

Allegiance Telecom, Inc , et al., Chapter 11 Case No
03-13057 (RDD)
Debtors Jointly Administered
_____ X

**STIPULATION AND AGREED ORDER RESOLVING CLAIMS OF
JOHN E HOROSHAK**

This STIPULATION AND AGREED ORDER is by and between the Allegiance Telecom Liquidating Trust (the “ATLT”), as successor to the Debtors (as defined below), and John E Horoshak (“Claimant”) The parties hereby stipulate and agree as follows

WHEREAS, on May 14, 2003, Allegiance Telecom, Inc and its direct and indirect subsidiaries (collectively, the “Debtors”) commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Southern District of New York, Case No 03-13057 (RDD) (the “Bankruptcy Court”), and

WHEREAS, the Chapter 11 Cases were consolidated for procedural purposes only and were jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, and

WHEREAS, on or about November 21, 2003, Claimant filed a proof of claim numbered 2604 (the “Proof of Claim”) for unsecured, non-priority Claims (as defined in the Plan) against Allegiance Telecom, Inc in the amount of \$53,449.63 (the “Horoshak Claim”), and

WHEREAS, the Debtors filed their Third Amended Joint Plan of Reorganization dated June 8, 2004 (the “Plan”) with the Bankruptcy Court and the Court entered its Findings of Fact,

Conclusions of Law, and Order Confirming Debtors' Third Amended Joint Plan of Reorganization on June 10, 2004 (the "Confirmation Order"), and

WHEREAS, in accordance with the terms of the Plan, on the Initial Effective Date, the ATLT was created, and

WHEREAS, pursuant to the Plan, Eugene I Davis was appointed as the plan administrator (the "Plan Administrator") for the ATLT, and

WHEREAS, among other things, the purpose of the ATLT is to (i) wind-down the Debtors' affairs, including making distributions as contemplated in the Plan, (ii) investigate, enforce and prosecute avoidance and other causes of action, (iii) object to, settle, compromise, dispute and/or prosecute disputed claims, and (iv) administer the Plan and take such actions as are necessary to effectuate the terms of the Plan, and

WHEREAS, the ATLT, as the successor to the rights of the Debtors, and the Plan Administrator has the authority to, *inter alia*, perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, and

WHEREAS, the ATLT disputes the amounts sought by Claimant in the Proof of Claim, and

WHEREAS, on or about October 26, 2004, the ATLT filed its Motion for Order, Pursuant to Section 502(c) of the Bankruptcy Code, Estimating Certain Claims and Establishing the Maximum Allowable Amount of Such Claims at Zero (the "Estimation Motion"), seeking to estimate the Horoshak Claim at \$0 and effectively expunge the Proof of Claim, and

WHEREAS, on or about November 22, 2004, Claimant filed his Objection to the

Estimation Motion, and

WHEREAS, Claimant has not filed any proofs of claim in the Chapter 11 Cases other than the Proof of Claim, and

WHEREAS, the ATLT and Claimant have negotiated in good faith at arm's length and have reached a consensual resolution, as set forth below, with respect to the Proof of Claim, the Horoshak Claim and the Estimation Motion to avoid incurring significant additional litigation expenses that would necessarily be incurred in litigating this matter to an uncertain conclusion

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS

1 For the purposes of this Stipulation and Agreed Order, the term "Final Order" shall mean an order approving this Stipulation and Agreed Order that has not been stayed, reversed or amended and the time, as computed under the Bankruptcy Rules, to appeal or seek review or rehearing of such order (or any revision, modification or amendment thereof) has expired and no appeal or petition for review or rehearing of such order was filed, or if filed, remains pending

2 Upon entry of a Final Order, the ATLT shall grant Claimant an allowed Priority Non-Tax Claim (as defined in the Plan) of \$1,000 00 in full and complete satisfaction of all Claims held by Claimant with respect to the Debtors, the Debtors' estates and/or the ATLT

3 Upon entry of a Final Order, Claimant hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges the ATLT, Debtors, and the Debtors' estates, and their respective parent firms and affiliates, and their officers, directors, employees, attorneys, professionals, and agents from and against any and all past, present and future actions, causes of action, Claims, liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether

matured or unmatured, at law or in equity, known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which Claimant has, had, or may have in the future against the ATLT, the Debtors, and the Debtors' estates, including, but not limited to, the Horoshak Claim

4 Claimant agrees not to file any proofs of claim or requests for the payment of administrative expenses against the ATLT, the Debtors, or the Debtors' estates, whether in the Chapter 11 Cases or otherwise

5 This Stipulation and Agreed Order shall be governed by New York law, excluding its conflicts of laws principles, and this Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation and Agreed Order

6 The undersigned on behalf of the ATLT and Claimant each represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Agreed Order on behalf of such party Claimant represents and warrants to the ATLT that, as of the date hereof, he is the sole holder of all Claims against the Debtors, the Debtors' estates and the ATLT related to the Horoshak Claim and Claimant has not assigned, sold, or otherwise transferred any Claims against the Debtors, the Debtors' estates or the ATLT Claimant represents and warrants that he has had an opportunity to consult with his own attorney and fully understands the meaning of the provisions in this Stipulation and Agreed Order, including, but not limited to, the releases included herein

7 This Stipulation and Agreed Order is subject to approval by the Bankruptcy Court and the entry of a Final Order by the Bankruptcy Court, provided, however, that the parties shall

support such Bankruptcy Court approval and comply with this Stipulation and Agreed Order pending the Bankruptcy Court's entry of a Final Order approving or disapproving this Stipulation and Agreed Order

8 Nothing in this Stipulation and Agreed Order or any negotiations or proceedings in connection herewith shall constitute or be deemed to be evidence of an admission by any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party Neither this Stipulation and Agreed Order nor any negotiations or proceedings in connection herewith may be used in any proceeding against any party for any purpose whatsoever except with respect to effectuation and enforcement of this Stipulation and Agreed Order

9 This Stipulation and Agreed Order contains the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous oral or written agreements The parties acknowledge that no promise, inducement, or agreement not stated herein has been made to them in connection with this Stipulation and Agreed Order The parties understand and agree that this Stipulation and Agreed Order may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by both parties The parties agree and acknowledge that they will make no claim at any time or place that this Stipulation and Agreed Order has been orally altered or modified or otherwise changed by oral communication of any kind or character Each party agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Stipulation and Agreed Order

10 This Stipulation and Agreed Order may be executed simultaneously or in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. A facsimile copy of a signature page is the equivalent of an original signature page.

11 This Stipulation and Agreed Order shall be binding upon (i) the ATLT, as successor to the Debtors, (ii) Claimant and (iii) their respective predecessors, successors, heirs, subsidiaries, affiliates, assignees, agents, directors, officers, employees, the Plan Administrator, and any trustee appointed under Chapter 7 of the Bankruptcy Code.

Dated New York, New York
July 20, 2005

**ALLEGIANCE TELECOM LIQUIDATING
TRUST**

By /s/ Christine Kornegay
Christine Kornegay
Allegiance Telecom Liquidating Trust
1405 S Beltline Road, Suite 100
Coppell, Texas 75019

and

**AKIN GUMP STRAUSS HAUER & FELD
LLP**

By /s/ Jeffrey M Anapolsky
Ira S Dizengoff, Esq (ID-9980)
Phil C Dublin, Esq (PD-4919)
Kenneth A Davis, Esq (KD-9070)
Jeffrey M Anapolsky, Esq (JA-8867)
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New York, New York 10022
Telephone (212) 872-1000

Counsel to the Allegiance Telecom
Liquidating Trust

JOHN E HOROSHAK

/s/ John E Horoshak
John E Horoshak
880 Windjammer Lane
Orono, Minnesota 55364

and

HENSON & EFRON, P A

By /s/ Joel D Nessel
Joel D Nessel, Esq
220 South Sixth Street, Suite 1800
Minneapolis, Minnesota 55402
Telephone (612) 339-2500

Counsel to John E Horoshak

SO ORDERED, this 29th day of July 2005

/s/Robert D Dram
UNITED STATES BANKRUPTCY JUDGE