

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re)	Chapter 11
)	
ALLEGIANCE TELECOM, INC , et al ,)	Case No 02-13057 (RDD)
)	Jointly Administered
Debtors)	

**NOTICE OF SECURED LIEN OF FAIRFAX COUNTY, VIRGINIA
AND RESPONSE TO DEBTORS' MOTION FOR AN ORDER IN CONNECTION WITH
THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

COMES NOW, Fairfax County, Virginia, by and through its Department of Tax Administration and by Counsel (hereinafter "the County"), and files this its Notice Of Secured Lien And Response To Debtors' Motion For An Order In Connection with The Sale Of Substantially All of the Assets of the Debtors and in support thereof it states as follows

1 The Debtors filed their Chapter 11 bankruptcy case on May 14, 2003

2 At the time of the commencement of the bankruptcy case the Debtors were liable to the County for 2003 Public Service Corporation (PSC) property taxes (hereinafter "PSC taxes") under Va Code Ann §58 1-2600 *et seq* (Michie 2000), as specifically assessed against tangible personal and/or real property owned by the Debtors and located within the County as of January 1, 2003 The 2003 PSC taxes total \$18,854 56 See Exhibit A attached hereto and incorporated by reference

3 In addition, under Va Code Ann §58 1-2600 *et seq* (Michie 2000), PSC taxes are an ad valorem tax assessed against the owner of the assets as of January 1 of each tax year Furthermore, PSC taxes are not subject to pro-ration if the taxed assets are sold during the tax year

4 The 2003 PSC taxes were specifically assessed against assets that are, upon information and belief, those same assets that are proposed to be sold by the Debtors

5 Under Virginia law, the County (i) has a lien interest in the property proposed to be sold by



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the Debtors, (ii) that interest is superior to the interest of any other party, and (iii) the Debtors have failed to satisfy any of the five criteria of § 363(f) of the Bankruptcy Code with respect to the County's interest

6 Va Code Ann §58 1-2612 (Michie 2000) provides that "All the taxes and levies provided for in this chapter shall, until paid, be a lien upon the property within the Commonwealth of the corporation owning the same and take precedence over all the other liens and encumbrances"

7 Therefore, the 2003 PSC taxes as assessed against the Debtors' property which is, upon information and belief, those same assets proposed to be sold, must be paid as a first priority from the proceeds of the sale, as provided by Virginia law

WHEREFORE, Fairfax County prays as follows

1 That the County hereby consents to the sale of the Assets so long as the first priority lien interests of the County, as provided by Virginia law, shall be satisfied from the proceeds of the sale in the amount of **\$18,854 56**, or in the alternative

2 for such other and further relief as may be deemed appropriate

Respectfully Submitted,

DAVID P BOBZIEN
FAIRFAX COUNTY ATTORNEY

BY s/Nancy F Loftus
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Notice of Secured Lien and Response to Debtor's Motion For An Order In Connection with The Sale Of Substantially All of the Assets Of the Debtors was delivered via overnight mail on this 7th day of December, 2003, to the following

Clerk of the Bankruptcy Court
U S Bankruptcy Court for the Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004-1408

Chambers of Judge Robert D Dram

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