

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**STIPULATION AND AGREED ORDER RESOLVING (I) MOTION FOR RELIEF FROM
AUTOMATIC STAY TO EXERCISE RIGHTS AGAINST SECURITY DEPOSIT FILED BY
BP COMMERCE, LLC AND (II) CLAIMS ASSERTED
BY BP COMMERCE, LLC AGAINST DEBTORS**

STIPULATION AND AGREED ORDER by and between the Allegiance Telecom Liquidating Trust (the “ATLT”) and BP Commerce, LLC (“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 under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York, Case No. 03-13057 (RDD) (the “Court”); and

WHEREAS, the Debtors’ 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 February 20, 2004, the Court entered an order (the “Sale Order”) pursuant to which, among other things, the Court: (i) approved the sale to XO Communications, Inc. (“XO”) or its designee (together with XO, the “Buyer”), pursuant to and in accordance with a certain

Asset Purchase Agreement dated as of February 18, 2004 by and among certain of the Debtors and Buyer (the “Purchase Agreement”) of substantially all of the assets of Allegiance Telecom, Inc. and Allegiance Telecom Company Worldwide (“ATCW”) and all of the stock of the direct and indirect reorganized subsidiaries of ATCW, excluding the stock of Shared Technologies Inc., to be effectuated through a plan of reorganization; free and clear of all liens, claims, encumbrances and interests, and certain taxes; (ii) authorized the assumption and/or assignment to the Buyer of certain executory contracts and unexpired leases; and (iii) granted certain related relief; and

WHEREAS, on June 8, 2004, the Debtors filed their Third Amended Joint Plan of Reorganization (the “Plan”); and

WHEREAS, on June 10, 2004, 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, on June 23, 2004, the Plan went effective for certain Debtors (the “Initial Effective Date”)

WHEREAS, the Debtors, as part of the Plan, rejected the lease by and among BP Commerce, LLC, as successor in interest to CC II Realty, Inc. and ALGX Business Internet, Inc., as assignee of Intermedia Communications, Inc., one of the Debtors, for property located at 7615 Ora Glen Drive, Greenbelt Maryland (the “Lease”) effective as of the Initial Effective Date (the “Rejection Date”); 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, the purpose of the ATLT is to, among other things, (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, on or about August 10, 2004, BP Commerce filed its Motion for Relief From Automatic Stay to Exercise Rights Against Security Deposit (the “Motion”); and

WHEREAS, on or about September 2, 2004, ATLT filed its Eleventh Omnibus Objection to Certain Lease Rejection Damages Claims (the “Claim Objection”) by which ATLT objected to the amount and validity of Claimant’s rejection damages claim with respect to the Lease; 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 Motion, the Claim Objection, and all claims asserted against the Debtors by Claimant.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Claimant will be granted, in partial satisfaction of the damages incurred by Claimant as a result of the rejection of the Lease, an Allowed Secured Claim¹ in the amount of \$541,999.90, which Allowed Secured Claim shall be deemed satisfied in full through Claimant's retention of and deemed setoff against the security deposit held by Claimant in the amount of \$541,999.90, which setoff is hereby consented to by ATLT.

2. Claimant also will be deemed to have an Allowed ATCW Unsecured Claim in the amount of \$350,000, in respect of the remainder of any and all damages Claimant has incurred as a result of the rejection of the Lease (the "Rejection Damage Claim"), and ATLT shall provide Claimant with the initial distribution on account of its Rejection Damages Claim by January 31, 2005.

3. Claimant will be deemed to have elected the "Cash Recovery" (as defined in the Plan) in respect of the full amount of the Rejection Damage Claim.

4. The Motion shall be deemed denied with prejudice.

5. In consideration for the Allowed Secured Claim and the Rejection Damage Claim, except for the relief granted herein, Claimant, on behalf of itself and its affiliates, hereby irrevocably, unconditionally and without reservation of any kind waives, releases and forever discharges the ATLT, the Debtors, and the Debtors' estates, and their respective parent firms and affiliates, and their officers, directors, employees, attorneys, professionals, and agents (collectively, the "Estate Parties") from and against any and all past, present and future actions, causes of action, Claims (as defined in the Plan), liabilities, suits, debts, judgments, and damages, of any kind whatsoever, whether

¹ Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

matured or unmatured, whether at law or in equity, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, discoverable or undiscoverable, contingent or non-contingent, which Claimant or its affiliates have, had, or may have in the future against the Estate Parties. This release provision does not impact or impair Claimant's asserted claims against the bankruptcy estates of WorldCom, Inc., et al., case number 02-13533.

6. As of the date hereof, Claimant agrees not to file any proofs of claim, motions or requests for the payment of administrative expenses against the ATLT, the Debtors, or the Debtors' estates, whether in these chapter 11 cases or otherwise.

7. 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.

8. This Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation and Agreed Order.

9. 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, it is the sole holder of all Claims against the Debtors, the Debtors' estates and the ATLT related to the 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 it has

had an opportunity to consult with its 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.

10. 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.

11. 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.

12. 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.

13. This Stipulation and Agreed Order shall be binding upon ATLT, as successor to the Debtors and Claimant and their respective predecessors, successors, subsidiaries, affiliates, assignees, agents, directors, officers, employees and the Plan Administrator.

Dated: New York, New York
October 11, 2004

**AKIN GUMP STRAUSS HAUER & FELD
LLP**

By: /s/ Philip C. Dublin
Ira S. Dizengoff, Esq. (ID-9980)
Philip C. Dublin, Esq. (PD-4919)
590 Madison Avenue
New York, New York 10022
Telephone: (212) 872-1000

Counsel to the Allegiance Telecom
Liquidating Trust

WHITEFORD, TAYLOR & PRESTON LLP

By: /s/ Brent Strickland
Brent Strickland, Esq. (ID-7811)
7 Saint Paul Street, Suite 1400
Baltimore, MD 21202
Telephone: (410) 347-9460

Counsel to BP Commerce, LLC

SO ORDERED, this 12th day of October 2004

/s/Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE