

KIRKLAND & ELLIS
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

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

**APPLICATION OF THE DEBTORS FOR ENTRY OF
AN ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
GREENHILL & CO., LLC AS FINANCIAL ADVISOR AND INVESTMENT BANKER**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, “Allegiance” or the “Debtors”), respectfully represent:

Introduction

1. On the date hereof (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11, 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 and 1108 of the Bankruptcy Code. Simultaneously with the filing of their petitions and this Application, the Debtors

requested an order for the joint administration of their chapter 11 cases pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Jurisdiction

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

An Overview of Allegiance’s Business

3. Allegiance is a facilities-based national local exchange carrier that provides 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. Allegiance offers its 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 colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

4. Allegiance serves more than 100,000 business customers in 36 markets.

Allegiance employs approximately 3,560 people, of which approximately 97 employees are covered by collective bargaining agreements.

5. As of the Commencement Date, the Debtors have approximately \$245 million of cash. As of December 31, 2002, the Debtors' consolidated books and records reflected assets totaling approximately \$1.441 billion and liabilities totaling approximately \$1.397 billion. For the three months ending December 31, 2002, the Debtors, on a consolidated basis, reported revenues of approximately \$204.91 million, EBITDA (i.e., earnings before interest, taxes, depreciation, amortization, non-cash deferred compensation expense and non-cash goodwill impairment charges) of approximately negative \$34 million and net losses of approximately \$120 million.

**Allegiance is Critical to Promoting Sustainable
Competition in the Local Telecommunication Marketplace**

The Telecommunications Act of 1996

6. In February of 1996, Congress enacted the Telecommunications Act of 1996 (the "Telecom Act"), with the stated purpose of:

promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

H.R. REP No. 104-204(I), 104th Cong. 1st Sess. 1995 (July 24, 1995), reprinted in 1996

U.S.C.C.A.N. 10, **10. In that regard, the Telecom Act required Incumbent Local Exchange Carriers, including the Regional Bell Operating Companies ("ILECs") – i.e., existing telecommunications monopolies – to allow newly created Competitive Local Exchange Carriers ("CLECs") to (a) interconnect with the ILECs, (b) access portions of the ILEC network and (c) collocate their equipment in ILEC facilities all at forward-looking cost based rates. In addition, CLECs were permitted to purchase ILEC services at wholesale prices and resell them to customers at retail prices.

7. The enactment of the Telecom Act spurred entrepreneurs to start hundreds of new businesses to compete in the local telecommunications marketplace. During the late 1990s, investors recognized the growth opportunity inherent in the opening of a competitive local telecommunications marketplace and invested billions of dollars in equity and debt capital into a multitude of telecommunications companies primed to provide competing services to American consumers.

8. Funded with significant amounts of investment capital, two types of CLECs emerged. The first type of CLECs were “resellers”. Specifically, “reseller” CLECs purchased telecommunications services from ILECs at a discount and resold the services to customers at a higher price. Thus, these CLECs simply offered consumers the same services supplied by ILECs - generally at lower prices. To be successful with this low margin business model, “reseller” CLECs invested their capital in sales and marketing efforts designed to acquire a substantial customer-base and attendant market-share in a relatively short period of time and ahead of their many competitors. However, because resellers were providing the identical services as the ILECs (with no differentiation) and were attempting to build a large market share in a highly competitive market, this business model was flawed and many in the telecommunications industry believe that the “resale” business will fail.

9. The second type of CLECs were “facilities-based” CLECs. These CLECs invested significant sums of money to build their own proprietary infrastructure and network in order to effectively compete with the ILECs. Specifically, facilities-based CLECs combined elements of an ILEC’s network with their own to provide consumers with true differentiated services. As Michael Powell stated in his partial dissent to the FCC’s 2003 Triennial Review:

Facilities -based competition means a competitor can offer real differentiated service to consumers Facilities-based competitors own

more of their own network and control more of their costs, thereby offering consumers real potential for lower prices. Facilities-based competitors offer greater rewards for the economy – buying more equipment from other suppliers . . . and creating more jobs. . . . And, facilities providers create vital redundant networks that can serve own nation if other facilities are damaged by those hostile to our way of life.

F.C.C., 2003 Triennial Review - Open Meeting, Separate Statement of Chairman Michael R.

Powell, dissenting in part (February 20, 2003) (transcript available at

www.fcc.gov/wcb/cpd/triennial_review/). Allegiance is such a facilities-based CLEC with a nationwide network and a facility-based business strategy.

The Allegiance Nationwide Network – Servicing 36 Metropolitan Areas

10. In 1997, a management team of industry veterans launched Allegiance and focused on building a reliable nationwide network based on proven technologies, a nationwide direct sales force primarily focused on the small to medium sized business enterprise and information processing systems to support its operations. Allegiance was one of the first major local exchange carriers to open markets utilizing the “smart build” strategy. This strategy allowed a more rapid ramp-up in operations than the traditional competitive local exchange model in which extensive networks were built, including fiber networks, prior to the generation of significant revenues. In contrast, Allegiance’s initial network build-out simply required (a) deploying digital switching platforms with local and long distance capability and (b) leasing transport facilities from the incumbent local exchange carriers and other competitive local exchange carriers to connect its switches with its transmission equipment colocated in the incumbent local exchange carrier’s central offices. Once traffic volume justified further “success-based” investment, Allegiance leased dark fiber or built specific network segments. This strategy offered two major economic benefits. First, it enabled Allegiance to enter new markets with alacrity and reduce up-front capital requirements for entering individual markets

prior to revenue generation. Second, in contrast to the traditional competitive local exchange carriers that generally built their networks in highly concentrated downtown areas due to the high cost of constructing fiber networks, Allegiance's business model enabled it to provide services to customers in downtown areas as well as the more geographically dispersed, less competitive areas of its targeted markets.

11. Allegiance's initial business plan proposed entering into 24 of the largest metropolitan areas in the United States. Subsequently, management expanded its business plan to (a) increase the total number of target markets to 36, (b) increase its service area, i.e., its colocation "footprint" in its original 24 markets, and (c) acquire long-term rights to use dark fiber rings to replace network elements leased by the Debtors from the incumbent local exchange carriers.

12. In addition to internal growth, Allegiance's business plan included growth through strategic acquisitions. For example, in December 2001, Allegiance acquired certain assets of Intermedia Business Internet (the "Intermedia Acquisition"). The Intermedia Acquisition enabled Allegiance to (a) become a Tier 1 Internet access provider, (b) provide large quantities of data transmitted at high-speeds over the Internet to and from a customer's premises, (c) efficiently exchange traffic with other Internet backbone providers giving Allegiance greater control over its Internet access, and (d) leverage its local service presence to provide additional services to its target market. In June 2003, Allegiance acquired certain assets of Shared Technologies (the "Shared Technologies Acquisition"). The Shared Technologies Acquisition (a) added customer premises equipment sales, installation and maintenance to Allegiance's portfolio of integrated products and services, (b) strategically enhanced Allegiance's target market of small to medium size business enterprises, and (c) allowed Allegiance to provide a complete communications solution to business customers.

13. As of the date hereof, Allegiance provides its telecommunications services in major metropolitan areas across the United States, including the following 36 markets: Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Fort Lauderdale, Fort Worth, Houston, Long Island, Los Angeles, Miami, Minneapolis/St. Paul, New York City, Northern New Jersey, Oakland, Ontario/Riverside, CA, Orange County, Philadelphia, Phoenix, Pittsburgh, Portland, Sacramento, St. Louis, San Antonio, San Diego, San Francisco, San Jose, Seattle, Tampa, Washington, D.C., West Palm Beach/Boca Raton and White Plains. Allegiance is collocated in 849 central offices and has a Tier 1 Internet backbone.

The FCC Recognizes the Importance of Allegiance

14. Federal policy recognizes the importance of facilities-based CLECs and Allegiance is the model. In that regard, the Federal Communications Commission (the “FCC”) recently published its latest rules for local competition in the *FCC Triennial Review*. In reviewing these rules, a Kaufman Bros. Equity Research Report, dated March 4, 2003, stated that “*Allegiance is the blueprint for local competition proposed by the FCC.*” In addition, Kevin J. Martin, Commissioner of the FCC has noted:

Allegiance has focused on building a business that adheres to the letter of the Telecom Act while leveraging the entrepreneurial spirit of the law, as well. Today, Allegiance stands as a model of what Congress intended in 1996, and what we hope to achieve in the years ahead – new entrants that have the opportunity to continue to invest in infrastructure, bring innovation and offer new service offerings to consumers in local markets that are open to fair and robust competition.

Kevin J. Martin, Commissioner, F.C.C., Address to the Telecommunications Law Conference and the Texas Chapter of the Federal Communications Bar Association (March 7, 2002) (transcript available at www.fcc.gov/Speeches/Martin/2002/spkjm203.html).

15. Thus, it is clear that Allegiance, by focusing on an intelligent – well thought out business model – building its own network and offering its consumers innovative services, is an integral player in the telecommunications marketplace and a model for the nation’s policy of promoting sustainable facilities-based competition in the local telecommunications arena. With an appropriate capital structure and a reduction in unnecessary costs, Allegiance believes it will be one of the most successful telecommunications companies in the United States.

Capital Structure of the Debtors

Capital Stock

16. Allegiance Telecom, Inc. has two classes of authorized stock: (a) 750,000,000 shares of common stock, with par value of \$0.01 per share and (b) 1,000,000 shares of preferred stock, with par value of \$0.01 per share. As of December 31, 2002, Allegiance Telecom, Inc. had (i) 124,830,110 shares of common stock issued and outstanding, with 295 registered holders and at least 20,000 beneficial owners, and (ii) no shares of preferred stock outstanding. Allegiance Telecom, Inc.’s common stock is publicly traded on the Nasdaq National Market under the symbol “ALGX.”

17. Allegiance Telecom, Inc. owns 100% of the capital stock of Allegiance Telecom Company Worldwide (“ATCW”), and ATCW directly or indirectly owns 100% of the capital stock of each of the other Debtors.

Prepetition Notes

18. In 1998, Allegiance Telecom, Inc. issued two series of notes: (i) 11 3/4% Senior Discount Notes with a face value of \$445 million, due on February 15, 2008 (the “Senior Discount Notes”) and (ii) 12 7/8% Senior Notes with a face value of \$205 million, due on May

15, 2008 (the “Senior Notes”). The Senior Discount Notes were issued under that certain Indenture, dated as of February 3, 1998, between Allegiance Telecom, Inc. and The Bank of New York, as Indenture Trustee. The Senior Notes were issued under that certain Indenture, dated as of July 7, 1998, between Allegiance Telecom, Inc. and The Bank of New York, as Indenture Trustee. Neither the Senior Discount Notes nor the Senior Notes are secured by any assets of the Debtors or guaranteed by any of the Debtors.

Prepetition Credit Agreement

19. Prior to the Commencement Date, ATCW entered into that certain Credit and Guaranty Agreement, dated as of February 15, 2000, as amended as of November 27, 2002 (the “Prepetition Credit Agreement”), among ATCW, as borrower; all of the other Debtors, as guarantors; Goldman Sachs Credit Partners L.P. (“Goldman Sachs”), as syndication agent and sole lead arranger; General Electric Capital Corporation (“GECC”) (as successor to Toronto Dominion (Texas), Inc.), as administrative agent, BankBoston, N.A. (“BankBoston”) and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-documentation agents; Goldman Sachs, GECC, BankBoston, Morgan Stanley, certain managing agents, and lenders party thereto from time to time (collectively, the “Prepetition Lenders”). As of the Commencement Date, the amount outstanding under the Prepetition Credit Agreement was approximately \$465.3 million. The Debtors have pledged substantially all of their assets as collateral under the Prepetition Credit Agreement, including (a) the capital stock of ATCW and (b) substantially all of the assets of ATCW and its direct and indirect subsidiaries, including the capital stock owned by ATCW in each of its Debtor subsidiaries. As of the Commencement Date, there were 27 Prepetition Lenders under the Prepetition Credit Agreement.

Events Leading to Chapter 11 Filing

20. The distressed economic environment in the United States that followed the economic boom of the late 1990s has had a global and adverse impact on the telecommunications industry. In the late 1990s, in an effort to finance operations and build their networks, telecommunications companies borrowed significant amounts of money from lenders and the public through the issuance of debt. The resulting significant indebtedness incurred by telecommunications companies, combined with poor economic conditions required many companies, including the Debtors, to focus on reducing their debt either through out of court restructurings or the chapter 11 process.

21. Many of Debtors' existing and potential customers have experienced their own financial difficulties, thereby decreasing customer demand for existing and new services. The financial difficulties of the Debtors' customers has led to non-payment, partial payment, or slow payment of bills for services provided by the Debtors. The financial instability of other companies in the telecommunications industry has adversely affected the willingness of potential customers to move their telecommunications services to the Debtors. In addition, certain of the Debtors' suppliers have requested deposits, letters of credit, or other types of security. Moreover, telecommunications carriers that owe reciprocal and/or intercarrier compensation to the Debtors have either refused to pay or failed to pay in a timely manner for the services provided by the Debtors.

22. As a consequence of the foregoing, the Debtors' business operations were adversely impacted and, due to revenue trends and continuing negative EBITDA, the Debtors determined that their current level of indebtedness needed to be significantly reduced. Thus, in order to maximize the long-term wealth generating capacity of their business operations, the

Debtors, among other things, (a) established a special restructuring committee of the Board of Directors of Allegiance Telecom, Inc., (b) retained restructuring advisors, and (c) commenced extensive negotiations with their senior lenders and bondholders, as detailed below.

Negotiations with the Prepetition Lenders and the Ad Hoc Committee of Bondholders

23. The Debtors, in the exercise of their sound business judgment - and in recognition of the distressed economic environment and the need for the Debtors' businesses to focus on profitability instead of high revenue growth - determined that a meaningful de-leveraging of their capital structure was crucial for the preservation and maximization of the value of their businesses. In that regard, the Debtors, in conjunction with their financial advisors and the Board of Directors of Allegiance Telecom, Inc., commenced the process of determining the appropriate capital structure for their business operations. After determining the appropriate capital structure, the Debtors commenced negotiations with the Prepetition Lenders and the Ad Hoc Committee (as defined below) to effectuate a restructuring transaction.

24. In October of 2002, Allegiance began negotiations with its Prepetition Lenders regarding a potential restructuring of its long-term debt. On November 27, 2003, Allegiance and its Prepetition Lenders entered into that certain First Amendment to the Prepetition Credit Agreement (the "Amendment"). Pursuant to the Amendment, the Debtors obtained a moratorium on their financial covenants through April 30, 2003. In exchange for the Amendment, Allegiance agreed, among other things, (a) that an event of default would occur on April 30, 2003 unless it reduced its long term debt to a level not to exceed \$645 million, and (b) to repay \$15 million to the Prepetition Lenders on account of debt owed under the Prepetition Credit Agreement. During the latter part of 2002 and to meet covenants under the Amendment, the Debtors significantly lowered their capital expenditures, reduced headcount, substantially

decreased growth, eliminated less profitable products and services, and continued to optimize their existing network assets.

25. After entering into the Amendment, the Debtors commenced negotiations with the Prepetition Lenders to consummate a permanent restructuring. In connection with the negotiations regarding the permanent restructuring, the Debtors commenced negotiations with an *ad hoc* committee of noteholders, which is comprised of certain holders of the Senior Notes and the Senior Discount Notes (the “Ad Hoc Committee”).

26. The Debtors, the Prepetition Lenders and the Ad Hoc Committee were not able to reach an agreement concerning the permanent restructuring prior to the April 30 deadline. On April 29, 2003, in order to avoid the occurrence of certain events of default under the Prepetition Credit Agreement, the Debtors and the Prepetition Lenders entered into a forbearance agreement (the “Forbearance Agreement”), which expires on May 15, 2003. The Forbearance Agreement provided for, among other things, a pay down of \$5 Million of principal owed under the Prepetition Credit Agreement.

27. After entering into the Forbearance Agreement, the Debtors continued their negotiations with the Prepetition Lenders and the Ad Hoc Committee. However, the parties were unable to reach an agreement prior to the expiration of the term of the Forbearance Agreement. Consequently, the Debtors, in the exercise of their prudent business judgment, determined that it was in the best interests of all of their stakeholders and for the maximization of the value of their businesses to commence these chapter 11 cases and consummate a restructuring of their indebtedness under the auspices of this Court.

Relief Requested

28. By this Application, the Debtors seek to employ and retain Greenhill & Co., LLC (“Greenhill”), pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, as their financial advisor and investment banker in connection with these chapter 11 cases. The facts and circumstances supporting this Application are set forth in the Affidavit of Michael A. Kramer, a Managing Director of Greenhill, dated May 14, 2003 (the “Kramer Affidavit”), filed concurrently herewith. A copy of the Kramer Affidavit is annexed hereto as Exhibit “A.” The terms and conditions of Greenhill’s retention by the Debtors are set forth in that certain retention agreement, dated October 20, 2002, as amended on May 8, 2003 (the “Retention Agreement”). A copy of the Retention Agreement is annexed hereto as Exhibit “B.”

29. As set forth below, the services of Greenhill are necessary to enable the Debtors to maximize the value of their estates and to reorganize successfully.

A. Greenhill’s Qualifications

30. Greenhill is an independent financial advisory and investment banking firm, offering an array of strategic advisory, financial restructuring, and mergers and acquisitions (“M&A”) advice to clients worldwide. In the past several years, the professionals at Greenhill have advised their clients in connection with over 140 restructuring and M&A transactions.

31. The Debtors have selected Greenhill as their financial advisor and investment banker because of Greenhill’s extensive and diverse experience, knowledge and reputation in the restructuring field and its understanding of the issues involved in these chapter 11 cases. Greenhill’s recent restructuring clients include AMRESKO, Inc., Bethlehem Steel Corporation, Regal Cinemas, Inc., United Artists Theatre Circuit, Inc., Sterling Chemicals, Inc.,

AmeriServe Food Distribution, Inc., US Office Products, Inc., UPC NV, Marconi plc, Weblink Wireless, Inc., AT&T Canada and AT&T Latin America.

32. The Debtors believe that Greenhill is eminently qualified to serve them in these chapter 11 cases in a cost effective and efficient manner. In addition, the Debtors believe that as a result of Greenhill's services, they will be able to maximize the value of their estates. Accordingly, the employment of Greenhill by the Debtors is in the best interest of the Debtors, their estates and creditors.

33. Greenhill has indicated its willingness to act as financial advisor and investment banker on behalf of the Debtors and to subject itself to the jurisdiction of this Court for the purposes of any suit, action or other proceeding arising out of the Retention Agreement.

B. The Retention Agreement

34. Prior to the Commencement Date, Greenhill and the Debtors entered into the Retention Agreement, pursuant to which Greenhill agreed to provide financial advisory services to the Debtors in connection with their restructuring efforts. The financial advisory services (the "Services") may include, but are not limited to, the following:¹

- a. General Financial Advisory Services. Upon the Debtors' request, Greenhill shall:
 - (i) review and analyze the business, operations, properties, financial condition and prospects of the Debtors;
 - (ii) evaluate the Debtors' debt capacity in light of their projected cash flows;
 - (iii) assist in the determination of an appropriate capital structure for the Debtors;

¹ To the extent there are any inconsistencies between the summary description of the Retention Agreement contained herein and the terms and conditions of the Retention Agreement, the terms of the Retention Agreement shall control.

- (iv) determine a range of values for the Debtors on a going concern basis and on a liquidation basis; and
 - (v) advise and attend meetings of the Debtors' Boards of Directors and their Committees.
- b. Recapitalization Services. If the Debtors pursue a Recapitalization (as defined in the Retention Agreement), Greenhill shall, in each case if requested by the Debtors:
- (i) provide financial advice and assistance to the Debtors in developing and seeking approval of a chapter 11 plan (as the same may be modified from time to time, the "Plan");
 - (ii) provide financial advice and assistance to the Debtors in structuring any new securities, other consideration or other inducements to be offered and/or issued under the Plan;
 - (iii) assist the Debtors and/or participate in negotiations with entities or groups affected by the Plan; and
 - (iv) assist the Debtors in preparing documentation within Greenhill's area of expertise required in connection with the Plan.

35. The Debtors believe that the Services will not duplicate the services that other professionals will be providing to the Debtors in these chapter 11 cases. Greenhill has agreed to use reasonable efforts to avoid duplicating services provided by other professionals advising the Debtors.

36. The Debtors require financial advisory services in these chapter 11 cases. As noted above, Greenhill has substantial expertise in providing financial advisory services to debtors in chapter 11 cases. Moreover, Greenhill has already advised the Debtors and, as a result, has obtained valuable institutional knowledge of the Debtors' businesses and financial affairs. Accordingly, Greenhill is well qualified to perform the Services and assist the Debtors in these chapter 11 cases.

C. Fee Structure

37. Pursuant to the terms of the Retention Agreement, the Debtors have agreed to pay the following fees to Greenhill in exchange for Greenhill's essential services in these chapter 11 cases:

- a. Monthly Advisory Fee. A monthly financial advisory fee of \$175,000 (the "Monthly Advisory Fee"), which became due and paid by the Debtors upon the execution of the Retention Agreement and thereafter on each monthly anniversary thereof during the term of Greenhill's engagement. Fifty percent (50%) of the amount of the Monthly Advisory Fee paid to Greenhill after the payment of the March 20, 2003 Monthly Advisory Fee and prior to the payment of the October 20, 2003 Monthly Advisory Fee will be credited against any Recapitalization Transaction Fee (as defined below). One hundred percent (100%) of the amount of the Monthly Advisory Fee paid to Greenhill after the payment of the twelfth Monthly Advisory Fee from the date of execution of the Retention Agreement will be credited against any Recapitalization Transaction Fee.
- b. Recapitalization Transaction Fee. If during the term of this engagement or within the twelve full months following the termination of this engagement (including the term of this engagement, the "Fee Period"), a Recapitalization is consummated, Greenhill shall be entitled to receive a transaction fee (the "Recapitalization Transaction Fee"), contingent upon the consummation of such a Recapitalization and payable at the closing thereof, equal to \$6.5 million.
- c. Out-of-Pocket Expenses. The Debtors will reimburse Greenhill on a monthly basis for its travel and other reasonable out-of-pocket expenses incurred in connection with, or arising out of Greenhill's activities under or contemplated by the Retention Agreement.
- d. Sales, Use or Similar Taxes. The Debtors will reimburse Greenhill for any sales, use or similar taxes (including additions to such taxes, if any), but in no event income taxes, arising in connection with any matter referred to or contemplated under this engagement.

38. In addition, the Debtors have agreed, subject to the approval of this Court, to indemnify Greenhill and certain related persons in accordance with the indemnification provisions (the "Indemnification Provisions") of the Retention Agreement from and against any actions or claims brought by any party in connection with Greenhill's engagement by the

Debtors, other than claims resulting from gross negligence or willful misconduct of Greenhill. The Debtors submit that such indemnification is standard in the specialized financial advisory and investment banking industry and that the provision of such indemnification by the Debtors is fair and reasonable considering Greenhill's qualifications and the expectations of other financial advisors and investment bankers in connection with engagements of this scope and size. Accordingly, as part of this Application, the Debtors request that the Court approve the Indemnification Provisions.

39. Prior to the Commencement Date, the Debtors paid to Greenhill approximately \$1,225,000 for prepetition services and approximately \$63,247 for out-of-pocket expenses.

40. As stated in the Retention Agreement, Greenhill has acknowledged that the Court must approve its fees in order to be compensated. In that regard, Greenhill intends to file applications with the Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules") and guidelines establishing the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee").

D. Greenhill's Disinterestedness

41. To the best of the Debtors' knowledge, and except as disclosed in the Kramer Affidavit, neither Greenhill nor any of Greenhill's principals and professionals have any connection with the Debtors, their creditors or any other parties in interest, or their respective attorneys and accountants, nor with the U.S. Trustee or any person employed in the office of the U.S. Trustee.

42. To the best of Greenhill's knowledge and except as disclosed in the Kramer Affidavit, the principals and professionals of Greenhill (a) do not hold or represent an interest adverse to the Debtors' estates and (b) are "disinterested persons" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

43. Moreover, as of the Commencement Date, Greenhill does not hold a prepetition claim against the Debtors for services rendered.

44. As set forth in the Kramer Affidavit, Greenhill has not shared or agreed to share any of its compensation from the Debtors with any other person, other than a principal, partner or associate of Greenhill, as permitted by section 504(b) of the Bankruptcy Code.

45. The Debtors seek approval of the Application on an interim basis in order to provide parties an opportunity to object to the relief requested herein. If the Court approves the Application, and no objections are timely filed, the Debtors request that the Application be deemed granted on a final basis without further notice or hearing.

Waiver of Memorandum of Law

46. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Application pursuant to Local Bankruptcy Rules 9013-(b).

Notice

47. Notice of this Application has been provided to: (a) the U.S. Trustee; (b) attorneys for the Prepetition Lenders; and (c) attorneys for the Ad Hoc Committee. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

48. No prior Application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, (i) authorizing the employment and retention of Greenhill as financial advisor and investment banker to the Debtors, pursuant to the terms of the Retention Agreement, as of the Commencement Date, and (ii) granting the Debtors such further relief as is just and proper.

Dated: New York, New York
May 14, 2003

BY: /s/ Mark B. Tresnowski
Name: Mark B. Tresnowski
Title: Executive Vice President,
General Counsel and Secretary