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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

APPLICATION OF THE DEBTORS PURSUANT TO 11 U.S.C. § 327(a) AND 328(a) FOR ORDER AUTHORIZING THE EMPLOYMENT OF LATHAM & WATKINS LLP AS SPECIAL COUNSEL NUNC PRO TUNC TO THE COMMENCEMENT DATE

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

Introduction

1. On May 14, 2003 (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. 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").

2. No trustee or examiner has been appointed in these Chapter 11 cases. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, an Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed for the Debtors' Chapter 11 cases on May 28, 2003 by United States Trustee for the Southern District of New York.

Jurisdiction

3. 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.

Background

An Overview of Allegiance's Business

4. 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.

5. 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.

6. 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, EBIDTA (i.e., earnings before interest, depreciation, taxes, amortization, non-cash deferred compensation expense and non-cash goodwill impairment charges) of approximately negative $16 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

7. 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.

8. 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.

9. 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.

10. 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 strong business strategy.

The Allegiance Nationwide Network – Servicing 36 Metropolitan Areas

11. In 1997, a management team of industry veterans launched Allegiance and focused on building a reliable nationwide network based on proven technologies, a strong nationwide direct sales force primarily focused on the small to medium sized business enterprise and efficient 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.

12. 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.

13. 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.

14. 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 colocated in 849 central offices and has a Tier 1 Internet backbone.

The FCC Recognizes the Importance of Allegiance

15. 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).

16. 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

17. 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."

18. 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

19. 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

20. 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

21. 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.

22. 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.

23. As a consequence of the foregoing, the Debtors' business operations were adversely affected and, due to revenue trends and continuing negative EBITDA, the Debtors determined that their current level of indebtedness needed to be significantly reduced. Thus, 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

24. 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.

25. In October 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, 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.

26. 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").

27. 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, 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 expired 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.

28. After entering into the Forbearance Agreement, the Debtors continued their negotiations with the Prepetition Lenders and the Ad Hoc Committee. Nevertheless, 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

29. In pursuing a financial restructuring, the Board of Directors (the "Board") of Allegiance Telecom, Inc. determined that many individual directors are either officers of the Debtors and/or are major shareholders and therefore might have conflicting issues in considering certain possible restructuring alternatives. Therefore, in January 2003, the Board formed a special committee comprised of independent directors (the "Special Committee") who were authorized to assist in connection with the financial restructuring of the Debtors, including but not limited to amendment or replacement of the Prepetition Credit Agreement, Amendment, replacement or restructuring of the Debtors' public debt and additional equity investments in the Debtors, and to make recommendations to the Board regarding the effectuation or rejection of such any such offers or proposals (the "Special Committee Matters").

30. The Special Committee was also authorized and directed to retain independent investment, legal and other advisors they may deem necessary or prudent, to advise and assist the Special Committee in the performance of its functions. The Special Committee retained of the law firm of Latham & Watkins LLP ("Latham") as its counsel for these purposes.

31. By this Application (the "Application"), the Debtors request entry of an order authorizing the employment of the law firm of Latham as their counsel with respect to advising the Special Committee in connection with the Special Committee Matters pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016 *nun pro tunc* to the Commencement Date. The facts and circumstances supporting this Application are set forth in the Declaration Of Robert J. Rosenberg In Support Of Application For Order Authorizing The Debtors And Debtors In Possession To Employ And Retain Latham & Watkins LLP As Counsel

Pursuant To 11 U.S.C. § 327(a) And Disclosure of Compensation Pursuant To 11 U.S.C. § 329 (the "Rosenberg Declaration"), filed concurrently herewith.

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

Latham's Qualifications

33. The Debtors respectfully request authorization to employ and retain Latham as their special counsel in connection with these chapter 11 cases pursuant to section 327(a) of the Bankruptcy Code. Specifically, the Debtors anticipate that Latham will provide the legal support required by the Special Committee throughout these chapter 11 cases.

34. Through their representation of the Special Committee, the members of Latham have become uniquely and thoroughly familiar with the Debtors and their business affairs. The members, counsel and associates of Latham who will represent the Special Committee have extensive knowledge and expertise in all aspects of financial restructuring work and the complex issues that may arise in the context of a chapter 11 bankruptcy case. The Debtors believe that Latham's continued representation of the Special Committee is essential to the Debtors' effectuating a successful chapter 11 process and will provide a substantial benefit to the Debtors and their estates. Thus, the Debtors believe that Latham is well qualified to represent the Special Committee as their counsel.

35. The Debtors have chosen Kirkland & Ellis ("Kirkland") as their general bankruptcy counsel. The Debtors are submitting, concurrently on the Commencement Date, a separate application for retention of Kirkland pursuant to Section 327(a) of the Bankruptcy Code. Kirkland and Latham have advised the Debtors that they will make every effort to avoid any

duplication of their work, with Kirkland being chiefly responsible for general bankruptcy and corporate advice to the Debtors and Latham focusing on Special Committee Matters.

36. Subject to the Court's approval, Latham will charge the Debtors for legal services on an hourly basis in accordance with its ordinary and customary rates for matters of this type in effect on the date such services are rendered, and for reimbursement of all costs and expenses incurred in connection with these cases as set forth in the Rosenberg Declaration filed concurrently herewith. Latham's billing rates currently range from $285 to $775 per hour for attorneys and from $130 to $255 per hour for paraprofessionals. These hourly rates are subject to periodic increases in the normal course of Latham's business.

37. In addition to the hourly rates set forth above, Latham customarily charges its clients for all costs and expenses incurred, including telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, transcription costs, charges and fees of outside vendors, consultants and service providers, and witness fees and other fees related to trials and hearings, as well as non ordinary overhead expenses such as secretarial overtime.

38. Latham was retained to represent the Special Committee in January 2003. Latham received a retainer in the amount of $150,000 (the "Retainer") in connection with Latham's representation of the Special Committee relating to Special Committee Matters, the unapplied portion of which shall constitute a retainer in respect to future services to be rendered and future disbursements and charges to be incurred in connection with the Debtor's chapter 11

cases. Prior to the commencement of these cases, Latham applied $66,598.51 of the Retainer to the current amount of fees and expenses outstanding.

39. Latham has advised the Debtors that it intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of charges and costs and expenses incurred in these chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and orders of this Court.

40. To the best of Latham's knowledge, and except as disclosed in the accompanying Rosenberg Declaration, Latham, its members, counsel and associates do not represent or hold any material adverse interest to the Debtors or their estates with respect to the matters upon which Latham is to be employed and do not have any material connections with the Debtors, their officers, affiliates, creditors or any other party in interest or their respective attorneys and accountants or the United States Trustee.

41. Latham will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered, Latham will supplement its Application in a disclosure to the Court.

42. Other than as may be set forth above and in the accompanying Rosenberg Declaration, there are no actual or proposed understandings or agreements among the Debtors or their officers and Latham concerning compensation to be paid to Latham in these cases.

43. Subject to this Court's approval, Latham has indicated its willingness to serve as the Debtors' counsel in advising the Special Committee.

44. The Debtors believe that it is necessary and in the best interest of their estates and creditors to employ and retain Latham as their counsel to render professional services to the Special Committee of the Board on the matters referenced above.

RELEVANT STATUTORY AUTHORITY

45. Section 327(a) of the Bankruptcy Code provides, in relevant part, as follows:

> The trustee, with the court's approval, may employ, one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

Waiver of Memorandum of Law

46. 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

47. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) attorneys for the Prepetition Lenders; (c) attorneys for the Creditors' Committee; and (d)) those parties who have requested notice pursuant to Bankruptcy Rule 2002 of the Bankruptcy Rules. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

48. 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, substantially in the form annexed hereto, (i) authorizing the employment and retention of Latham as special counsel to the Debtors, as of the Commencement Date, and (ii) granting the Debtors such further relief as is just and proper.

Dated: New York, New York
May 30, 2003

Respectfully submitted,

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