

KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
Paul M. Rosenblatt (PR-6300)
John W. Mills, III

Hearing Date and Time: August 19, 2003, 10:00 a.m.
Objection Deadline: August 14, 2003, 5:00 p.m.

Attorneys for BellSouth Telecommunications, Inc.

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

-----	X	
In re	:	
	:	Chapter 11
ALLEGIANCE TELECOM, INC., <u>et al.</u> ,	:	Case No. 03-13057 (RDD)
	:	
	:	(Jointly Administered)
Debtors.	:	
-----	X	

**MOTION OF BELL SOUTH TELECOMMUNICATIONS, INC.,
FOR DETERMINATION OF ADEQUATE ASSURANCE OF FUTURE PAYMENT
PURSUANT TO SECTIONS 105(a) AND 366(b) OF THE BANKRUPTCY CODE**

Pursuant to 11 U.S.C. §§ 105(a) and 366(b) and this Court's Order Deeming Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Adequate Assurance Order"), BellSouth Telecommunications, Inc. ("BellSouth"), files this Motion for Determination of Adequate Assurance of Future Payment (the "Motion").

INTRODUCTION AND BACKGROUND

1. On May 14, 2003, Allegiance Telecom, Inc., and its subsidiaries and affiliates (collectively, "Allegiance" or the "Debtors"), filed voluntary petitions in bankruptcy under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors

continue to operate their businesses as debtors in possession pursuant to sections 1108 and 1109 of the Bankruptcy Code.

2. On May 15, 2003, this Court entered the Adequate Assurance Order, which provides, among other things, that utilities are deemed adequately assured of future payment by Allegiance under section 366(b) of the Bankruptcy Code by: (1) the administrative expense classification and priority of 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(1); and (2) the prompt payment by Allegiance of undisputed funds due for post-petition services provided by utilities.

3. The Adequate Assurance Order further provides, at page 3, that it is “... without prejudice to the rights of any Utility Company to request in writing within twenty-five (25) days of the date hereof additional assurances in the form of deposits or other security (the “Additional Assurances Request”)....” On May 20, 2003, five (5) days following entry of the Adequate Assurance Order, BellSouth timely delivered to Allegiance a letter making an adequate assurance request of a deposit of \$2,300,000.00, representing approximately two (2) months of service based upon Allegiance’s historical usage (the “BellSouth Request”). A copy of the BellSouth Request is attached hereto as **Exhibit A**.

4. Subsequently, BellSouth negotiated in good faith with Allegiance regarding the terms of an adequate assurance agreement alternative to the BellSouth Request. On or about June 5, 2003, BellSouth and Allegiance reached what BellSouth believed was an agreement resolving the BellSouth Request. On June 11, 2003, counsel for BellSouth transmitted a Stipulation and Order to Allegiance’s counsel documenting the terms of the agreement. The Stipulation and Order is necessary because the Adequate Assurance Order provides, at page 4, that “... each Utility Company that makes a timely Additional

Assurances Request, shall be deemed to have adequate assurance of payment pursuant to this Order unless or until this Court enters a final order to the contrary in connection with the Determination Hearing or otherwise with respect to that Utility Company's Additional Assurances Request...." Allegiance has, to date, failed to execute the Stipulation and Order, despite repeated requests.

5. It appears that Allegiance's purported agreement to resolve the BellSouth Request is simply a stall tactic to induce BellSouth not to pursue its rights under section 366(b) and the Adequate Assurance Order. Based upon Allegiance's apparent bad faith in failing to document its agreement with BellSouth, as well as other factors discussed below, primarily Allegiance's lack of unencumbered cash or other assets, BellSouth has concluded that its original request for a two (2) month deposit is necessary and prudent. Consequently, BellSouth has filed this Motion and seeks from Allegiance the deposit of \$2,300,000.00 originally requested in the BellSouth Request.

Relief Requested

6. The Adequate Assurance Order provides, at page 3:

... if a Utility Company makes a timely Additional Assurances Request that the Debtors believe is unreasonable, the Debtors shall file a motion for determination of adequate assurance of payment and set such motion for a hearing (the "Determination Hearing"); provided, however, in the event the Debtors do not file such a motion for a Determination Hearing within fifteen (15) business days from the date of receipt of a timely Additional Assurances Request by a Utility Company, and the Debtors have not agreed to provide such Utilities Company with additional adequate assurance above that which is provided by this order, then such Utility Company may file such a motion for a Determination Hearing....

A Determination Hearing is necessary based upon Allegiance's failure to execute the Stipulation and Order documenting the agreement reached between BellSouth and Allegiance on June 5, 2003, resolving the timely BellSouth Request.

7. By this Motion, BellSouth will seek at the Determination Hearing a deposit of \$2,300,000.00 as adequate assurance of future payment by Allegiance pursuant to 11 U.S.C. § 366(b).¹

ARGUMENT

A. The Adequate Assurance Order Fails To Provide Adequate Assurance Of Future Payment.

8. Section 366 of the Bankruptcy Code provides:

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366. Generally, and in the case here, "first day" adequate assurance orders circumvent the provisions of section 366(b) and shift the burden of demonstrating what assurance is adequate from the debtor to the utility. Under the provisions of section 366(b), a

¹ In addition, because BellSouth has been forced to bring this Motion due to Allegiance's apparent bad faith in failing to execute the Stipulation and Order memorializing the June 5, 2003, additional adequate assurances agreement between BellSouth and Allegiance, BellSouth will also seek reimbursement of its attorneys' fees and costs for the preparation and prosecution of this Motion.

utility requests adequate assurance from a debtor. The debtor then either complies with the utility's adequate assurance request or otherwise negotiates a resolution with the utility. If an agreement is not reached, it is the debtor who faces a decision. The debtor can (i) face the risk of having the utility alter, refuse or discontinue service after the first 20 days of the case, (ii) the debtor can supply the requested adequate assurance to the utility and seek a reasonable modification from the bankruptcy court of the utility's adequate assurance after notice and a hearing, or (iii) within the first 20 days of the case and after notice and a hearing, obtain a reasonable modification from the bankruptcy court of the utility's adequate assurance request and then supply that modified adequate assurance to the utility within the first 20 days of the case.

9. Here, contrary to section 366(b), Allegiance and not the utility, BellSouth, has initially selected what is adequate assurance. Under the Adequate Assurance Order BellSouth is prohibited from altering, refusing or discontinuing service based upon adequate assurance pending negotiation with Allegiance and, if no agreement is reached with Allegiance, a determination from the Court. That this provides an incentive for Allegiance to delay is demonstrated by the fact that this process has thus far taken two (2) months with respect to BellSouth. Indeed, section 366(b) has been turned around by placing a deadline on the utility to request adequate assurance, and negating the statutorily prescribed deadline on Allegiance to provide the adequate assurance as requested by the utility.

10. As an additional disincentive for Allegiance to timely resolve adequate assurance issues, the Adequate Assurance Order provides that:

... each Utility Company that makes a timely Additional Assurances Request, shall be deemed to have adequate assurance of payment pursuant to this Order unless or until this Court enters a final order to the contrary in connection with

the Determination Hearing or otherwise with respect to that Utility Company's Additional Assurances Request ... pending the outcome of any such Determination Hearing and any further order related thereto, the requesting Utility Company shall be prohibited from (a) altering, refusing or discontinuing service to, or discriminating against, the Debtors due to unpaid charges for prepetition services or (b) demanding adequate assurance....

Adequate Assurance Order, p. 4. Should Allegiance appeal an order from a Determination Hearing, it could be years before the utility is provided with the Court ordered adequate assurance.

11. Of even less comfort is that Allegiance has virtually no cash free and clear of liens, claims and encumbrances, and virtually no free and clear assets of any kind. This circumstance is plainly set out in the various iterations of the Cash Collateral Order and the documents filed in connection therewith. What is most disturbing is that Allegiance's professionals, who have substantial knowledge regarding Allegiance's finances, are not willing to accept the administrative expense priority of their approved fees and costs under 11 U.S.C. § 503(b) as adequate assurance of the future payment of such fees and costs. Allegiance's professionals negotiated a carve-out from the Cash Collateral Order of all accrued fees and costs, prior to a Termination Event (or the Expiration Date of the Order), plus \$2,000,000.00, that protects the professionals against non-payment of their approved fees and costs in the event of a default under the terms of the Cash Collateral Order and a termination of Allegiance's ability to use cash collateral. The Adequate Assurance Order provides no finding as to why a promise of prompt payment and a possible administrative claim in this case constitutes adequate assurance of future payment to BellSouth and other utilities when it is far from adequate assurance of the payment of the fees and costs of Allegiance's professionals. Moreover, there is no requirement in the Bankruptcy Code that Allegiance's professionals, who voluntarily chose

their client, are entitled to a “deposit [i.e., retainer] or other security [i.e., cash collateral carve-out],” whereas section 366(b) the Bankruptcy Code specifically provides that BellSouth, as a utility, is entitled to a “deposit or other security.”

12. Further, the Adequate Assurance Order fails to take into consideration that circumstances governing adequate assurance may change in the future and that a provision for modification may be prudent. The Adequate Assurance Order can be read to prohibit utilities from seeking to modify their adequate assurance at a later date should circumstances change, a procedure which, again, raises due process issues and is directly contrary to the language of section 366(b) (“... after notice and a hearing, the court may order reasonable modification ... [of the] adequate assurance....”) (emphasis added).

13. Under section 366, the burden of proof of adequate assurance lies squarely with the debtor. In re Adelphia Business Solutions, Inc., 280 B.R. 63, 87 (Bankr. S.D.N.Y. 2002); see also In re Stagecoach Enterprises, Inc., 1 B.R. 732, 736 (Bankr. M.D. Fla. 1979). Accordingly, Allegiance must demonstrate that a mere administrative priority expense claim will provide BellSouth with adequate assurance of future payments. Allegiance must carry its burden based on the facts and circumstances of this case. “Whether utilities have adequate assurance of future payment is determined by the individual circumstances of each case.” Adelphia, 280 B.R. at 80. However the Court has upended the provisions of section 366 by placing the burden on utilities to make requests of Allegiance and then, if necessary, move this Court for adequate assurance should Allegiance fail to agree, or, as is the case here, fail to document an agreement, regarding adequate assurance.

14. In sum, the Adequate Assurance Order fails to provide any adequate assurance to BellSouth or any other utility. The Order leaves BellSouth with no more than the mere promise

that Allegiance will pay to BellSouth the undisputed portion of its invoices now and in the future, in a case where Allegiance has virtually no unencumbered cash or other assets, and where Allegiance's own professionals will not even rely upon Allegiance's mere promise to pay.

B. Allegiance Should Provide A Deposit To BellSouth As Adequate Assurance.

15. There is no dispute that the controlling case on point for section 366 adequate assurance issues in this Court is In re Caldor, Inc., 199 B.R. 1 (S.D.N.Y. 1996), aff'd, 117 F.3d 646 (2d Cir. 1997). In sum, Caldor held “[t]hat ‘adequate assurance of payment’ might in certain, exceptional cases require nothing more than what the Code already requires, does not render unnecessary or superfluous § 366’s provision that there be ‘adequate assurance’ in all cases – a provision that may indeed require something more in other (if not most) circumstances.” Caldor, 117 F.3d at 652.

16. In essence, Caldor held that in certain exceptional cases, adequate assurance could be satisfied with the enforcement of the existing provisions of the Bankruptcy Code, and that other adequate assurance means, such as pre-payments, deposits, accelerated payments, enhanced financial reporting, etc., are not required. Id. The Caldor court made clear that in most circumstances, something more than what the Bankruptcy Code already provides is required to satisfy the adequate assurance requirements of section 366. Id.

17. The Caldor court did not unequivocally hold that an administrative expense priority claim is equal to adequate assurance. Rather, the Caldor court arrived at its conclusion after analyzing the specific facts in the case. Only after conducting an evidentiary hearing and finding that the Caldor debtors exhibited various qualities, did the Caldor court arrive at its conclusion. Accordingly, a bankruptcy court must make an independent review of relevant

factors in the present case. BellSouth believes that an analysis of the Caldor factors in light of the present case is instructive and provides for a starting point in making an adequate assurance determination.

18. In Caldor, there were six relevant factors which led the Caldor court to conclude that the adequate assurance provided in Caldor satisfied the requirements of section 366. The six Caldor factors are: “(1) [T]he Debtors have significant cash on hand and access to over \$500 million in financing; (2) the Debtors pose significantly less risk than other customers of the Utilities; (3) the Utilities have a greater ability to monitor the financial strength of the Debtors; (4) the Debtors are solvent and are operating out of the proceeds of their operations; (5) the Debtors have a solid prepetition payment history; and (6) the Utilities generally had not required deposits from the Debtors in the past.” Caldor, 199 B.R. at 2.

19. Caldor Factor One - The Caldor Debtors had “significant cash on hand and access to over \$500 million in financing.” Id., 199 B.R. at 2. In the present case, Allegiance has virtually no unencumbered cash or other assets and is operating pursuant to a Cash Collateral Order negotiated with its pre-petition lenders.

20. Caldor Factor Two - The Caldor debtors presented “significantly less risk than other customers of the Utilities.” Id. Indeed, in Caldor, the Caldor debtors were “probably the best risk customer available to the utilities.” Caldor, 177 F.3d at 648-49. However, in this case, Allegiance was not current in its pre-petition obligations to BellSouth, owing approximately \$2,000,000.00 to BellSouth on the petition date, and is operating, post-petition, under a Cash Collateral Order. Consequently, providing services to Allegiance exposes BellSouth to a significant risk of non-payment.

21. Caldor Factor Three – The third factor in determining that the utility companies had adequate assurance in Caldor was the utilities’ greater ability to monitor the financial strength of the Caldor debtors. Caldor, 199 B.R. at 2. In this case, Allegiance did not contend in its first day adequate assurance motion that BellSouth or any other utility has any greater ability than other creditors to monitor Allegiance’s financial strength. In fact, under the weekly and other financial reporting required by the Cash Collateral Order, Allegiance’s pre-petition lenders have a substantially greater ability to monitor Allegiance’s financial performance than BellSouth.

22. Caldor Factor Four - In Caldor, the bankruptcy court specifically determined that the Caldor debtors were solvent and were “operating out of the proceeds of their operations.” No such determination has been made, or can be made, in this case.

23. Caldor Factor Five - The Caldor debtors had a “solid prepetition payment history.” As set forth above, Allegiance was not current in the payment of its pre-petition bills to BellSouth. Other utilities, *e.g.* Verizon, also have reported that Allegiance was not current in the payment of its pre-petition obligations. Allegiance simply cannot demonstrate a “solid” pre-petition payment history.

24. Caldor Factor Six - In Caldor, the bankruptcy court found that the utilities generally had not required deposits from the Caldor debtors in the past. In this case, BellSouth required a pre-petition deposit of \$1,074,464.00, and is informed and believes that pre-petition deposits were required by other utilities.

25. Based upon the foregoing, it is clear that Allegiance cannot evidence facts to support a Caldor style adequate assurance approach. Consequently, as requested in the May 20, 2003 letter that is attached hereto as **Exhibit A**, BellSouth requests adequate assurance of

future payment by Allegiance in the form of a deposit or a letter of credit of \$2.3 million, which represents approximately two months of service. Alternatively, BellSouth requests a carve-out of \$2.3 million dollars from cash collateral.

C. Bell South Is Entitled To A Cash Deposit Or Similar Security As Adequate Assurance.

26. A “contextual reading of section 366 evinces that a debtor must provide its utility providers with more than administrative priority.” In re Best Products, 203 B.R. 51, 53 (Bankr. E.D.Va. 1996). BellSouth would be entitled to a priority administrative expense claim under sections 503(b) and 507(a) of the Bankruptcy Code even without section 366 Id. In Best Products, the court examined the issue of whether a debtor’s mere promise to pay utilities as an administrative expense constitutes adequate assurance of future payment in the form of a “deposit or other security.” The Best Products court, relying upon both the legislative history and the plain language of section 366 of the Bankruptcy Code, determined that a debtor’s mere promise to pay did not constitute “a deposit or other security” for section 366 purposes. Id. at 53. The court noted:

... in the absence of a statutory definition, this court must construe the term “other security” in accordance with its ordinary and natural meaning. In the Utility context, courts appear to have implicitly construed the term “other security” to mean prepayment of bills, shortened payment deadlines, a letter of credit, a surety bond, or some similar financial device.

Id. at 54 (citations omitted).

27. Under section 366(b), as interpreted by the Caldor decisions, it is clear that Congress intended that utility companies be afforded additional protections in the bankruptcy context, but for those few exceptional cases, as compared to what was afforded by the debtor to the utility under their pre-petition practices. See In re Security Investment Properties, Inc., 559

F.2d 1321, 1326 (5th Cir. 1997) (“While a public utility has a duty to serve, neither its history of past service nor its franchise to serve in the future may fix upon it a duty to provide unsecured future service to a Chapter XI debtor.”).

28. Under existing case law, it is common for such an adequate assurance deposit to be equal to two months’ usage. See In re Spencer, 218 B.R. 290, 293 (Bankr. W.D.N.Y. 1998) (deposit of two highest monthly usages was required); In re Norsal Indus., 147 B.R. 85 (Bankr. E.D.N.Y. 1992) (stating that section 366 permits the utility to receive adequate assurance in the form of a deposit or other security); Lloyd v. Campaign Tel. Co., 52 B.R. 653, 656 (Bankr. S.D. Ohio 1985) (deposit of 2.3 times average usage); In re Sun-Tel Comm., Inc., 39 B.R. 10, 11-12 (Bankr. S.D. Fla. 1984) (deposit of approximately two months usage); In re Santa Clara Circuits West, Inc., 27 B.R. 680, 686 (Bankr. D. Utah 1982) (deposit of one billing period plus time period between end of billing period and due date for payment); In re Stagecoach Enter, Inc., 1 B.R. 732, 736 (Bankr. M.D. Fla. 1979) (deposit of two billing periods).

29. Critical in this case is the time it will take BellSouth to effect a termination of services to Allegiance. Because of the complexity of the services provided by BellSouth to Allegiance, and governance by public service commissions, it may take BellSouth over two months to complete a termination of the services provided to Allegiance. Even with a two month deposit, BellSouth could still suffer exposure. See In re Robmac, Inc., 8 B.R. 1 (Bankr. N.D. Ga. 1979) (the court granted a deposit of two months to a utility in order to protect the utility against a loss, given that the utility must supply its service a month prior to the time at which it renders the bill).

D. Administrative Claims Are An Insufficient Source Of Adequate Assurance.

30. Further, analysis of Caldor demonstrates that the “adequate assurance” provided by this Court’s Adequate Assurance Order is even less than what was awarded in Caldor. Under the Adequate Assurance Order, Allegiance is to provide adequate assurance to BellSouth in the form of its promise to promptly pay for services rendered post-petition, and that such services will be administrative expenses. This proposal is nothing more than what is provided for in the Bankruptcy Code, and is less than what was provided in Caldor. Although Allegiance proposes, through the Adequate Assurance Order, to allow BellSouth to seek additional adequate assurance, as set forth above, such a proposal does not provide any adequate assurance to BellSouth, and rewrites the provisions of section 366.

31. Even in Caldor, utilities were provided with the following adequate assurance: (i) an administrative expense priority; (ii) an expedited procedure for relief in the event of a payment default by Caldor; and (iii) an order requiring Caldor to convey its monthly operating reports directly to the utilities. Caldor 199 B.R. 1. Although BellSouth believes that the adequate assurance provided for in the Caldor case would be insufficient with respect to Allegiance, it nevertheless amounted to more than what is provided for under the Bankruptcy Code and more than what Allegiance is providing here.

32. Here, as discussed above, Allegiance has not demonstrated, as was done in Caldor, that it has a history of timely pre-petition payment to utility companies. In addition, Allegiance has virtually no cash or other assets that are free of liens, claims and encumbrances. Indeed, Allegiance’s professionals have so little faith in Allegiance’s finances that the Cash Collateral Order provides a carve-out for the payment of their approved fees and expenses. In addition to the fact that the facts of Caldor are distinguishable here, there are two more

factors as to why the Caldor holding should not be followed in this case. First, Congress is on the verge of specifically overruling Caldor. Second, recent telecommunications cases in the Southern District of New York have awarded adequate assurance far beyond what was provided for in Caldor.

33. Congress has recently proposed legislation which will clarify that an administrative claim does not constitute adequate assurance. Senate 420 of the Bankruptcy Reform Act of 2001, which was passed by the Senate on March 15, 2001, and House of Representatives 333 of the Bankruptcy Reform Act of 2001, which was passed by the House on March 1, 2001, are in agreement on amending Section 366 to provide as follows:

(c)(1)(A) For purposes of this subsection, the term “assurance of payment” means –

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

(c)(1)(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

S. 420, 107th Cong. § 417 (2001); H.R. 333, 107th Cong. § 417 (2001).

34. Furthermore, the proposed legislation provides:

(3)(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider-

- (i) the absence of a security before the date of filing of the petition;
- (ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or
- (iii) the availability of an administrative expense priority.

Id.

35. Even in telecommunications cases in this circuit, where Caldor is controlling law, substantially more adequate assurance has been awarded than what is provided in the Adequate Assurance Order in this case. For example, in In re WorldCom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y.), BellSouth has been awarded adequate assurance that includes a junior super-priority administrative claim, a weekly report of WorldCom's unrestricted cash, expedited payment default procedures, ability to terminate services under applicable tariffs absent further order of the court, notice of financing defaults, and the ability to seek reconsideration of adequate assurance order, among other things. See Exhibit B attached hereto.

36. Similar but not identical adequate assurance has been awarded in Global Crossing and Adelphia,² with the most important factors including: (i) weekly flash reports of available cash and loan availability; (ii) negotiation of global offset rights; (iii) expedited fax notice and order to show cause procedures for payment defaults; and, in the case of Global Crossing, (iv) accelerated 14 day payment terms.³

37. In addition, Allegiance's financial position is not yet clear. BellSouth is unable to forecast Allegiance's financial future, and has not received any indication that Allegiance will be able to consistently make payments to BellSouth in a relatively timely manner. Without adequate assurance in the form of a cash deposit or some other security, BellSouth will be forced to rely on nothing more than past payments as assurance of future performance, in a case

² In re Global Crossing, Case No. 02-40188 (Bankr. S.D.N.Y), Order dated March 15, 2002, a copy of which is attached hereto as **Exhibit C**; and Adelphia, 280 B.R. 63.

³ Pursuant to the Global Crossing Court's direction, 14-day payment terms were awarded to BellSouth upon agreement with Global Crossing pursuant to a Stipulation dated May 31, 2002, a copy of which is attached hereto as **Exhibit D**.

where Allegiance has virtually no unencumbered assets. In the event that Allegiance loses the right to use cash collateral, Allegiance will likely have no ability to pay BellSouth for its post-petition services. That is not the purpose of section 366(b), and it should not be allowed by this Court.

38. Even in cases where the debtor's past payment history with a utility has been free of default, which is not a finding made in this Court's Adequate Assurance Order, courts have required cash deposits as adequate assurance. See, e.g., In re Best Products Co., 203 B.R. 51, 54 (Bankr. E.D. Va. 1996) (requiring one-half month security deposit although Debtor had no defaults, no arrearages, no history of late payments, \$150 million from recent sale of asset and \$250 million DIP facility); In re Smith, Richardson & Conroy, Inc., 50 B.R. 5 (Bankr. S.D. Fla. 1985) (the Debtor was not in default pre-petition but the court ordered payment of a three (3) month deposit.); In re 499 W. Warren Street Assocs. Ltd. Partnership, 138 B.R. 363 (Bankr. N.D.N.Y. 1991) (court held that Debtor that had been current on its payments, pre-petition, was, nevertheless, required to pay the one (1) month deposit requested by Utility because § 366(b) requires adequate assurance, regardless of payment history.); In re Santa Clara Circuits West, Inc., 27 B.R. 680 (Bankr. D. Utah 1982) (debtors claimed they should not have been charged a deposit since their pre-petition default against the Utility was negligible; court required amount of one average billing month plus amount to cover lagged billing time.) As such, adequate assurance is required regardless of a debtor's past payment history.

E. Allegiance's Professionals Have Security.

39. As discussed above, the provisions of the Cash Collateral Order demonstrate that Allegiance's professionals do not believe that a mere promise to pay an administrative expense

claim is adequate assurance of future payment in this case. Indeed, the professionals negotiated with Allegiance's lenders for a substantial carve-out from cash collateral (accrued fees and expenses as of a "Termination Event" plus \$2,000,000.00) to ensure payment of their aggregate allowed unpaid monthly fees and expenses incurred in the event of a termination of Allegiance's ability to use cash collateral. This carve-out is specifically designed to protect Allegiance's professionals upon the occurrence of a default under the Cash Collateral Order.

40. Unlike the adequate assurance provisions of section 366, there is no requirement in the Bankruptcy Code that a debtor's professionals be provided with adequate assurance, let alone a deposit or other security. The post-petition services of BellSouth are just as necessary to Allegiance's operations, and perhaps are even more valuable, as the services provided by Allegiance's professionals. BellSouth poses the following question: Why should administrative priority status constitute adequate assurance for utilities, who are afforded explicit security provisions under the Bankruptcy Code, when Allegiance's professionals, who are not afforded such security provisions under the Bankruptcy Code and are much more familiar with Allegiance's finances, are not satisfied with such assurances?

CONCLUSION

41. For the foregoing reasons, BellSouth requests this Court to, at a minimum, require Allegiance to provide BellSouth with a deposit or other security in the amount of \$2.3 million, which represents a two month deposit for services to be rendered to Allegiance by BellSouth post-petition. In addition, because BellSouth has been forced to bring this Motion due to Allegiance's apparent bad faith in failing to execute the Stipulation and Order memorializing the June 5, 2003, adequate assurance agreement between BellSouth and Allegiance, this Court should award to BellSouth reimbursement of its attorneys' fees and

costs for the preparation and prosecution of this Motion as additional adequate assurance. Further, the Adequate Assurance Order should be modified to address the due process and procedural issues raised herein by BellSouth.

Dated: July 14, 2003

Respectfully submitted,

/s/ Paul M. Rosenblatt
Paul M. Rosenblatt
KILPATRICK STOCKTON LLP

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Motion of Bellsouth Telecommunications, Inc., for Determination of Adequate Assurance of Future Payment Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code was served by U. S. Mail on the parties listed on the attached Exhibit on July 14, 2003 July 29, 2003.

Dated: July 14, 2003

Respectfully submitted,

/s/ Paul M. Rosenblatt
Paul M. Rosenblatt
KILPATRICK STOCKTON LLP

COUNSEL FOR BELLSOUTH
TELECOMMUNICATONS, INC

EXHIBIT

Office of the United States Trustee
Attn: Carolyn S. Schwartz, Esq.
33 Whitehall Street, 21th Floor
New York, NY 10004

United States Attorney
100 Church Street, 19th Floor
New York, NY 10007

Allegiance Telecom, Inc.
Attn: Mark B. Tresnowski, Esq.
700 E. Butterfield Rd., Suite 400
Lombard, IL 60148

Internal Revenue Service
Attn: District Director
290 Broadway
New York, NY 10007

Allegiance Telecom, Inc.
Attn: Mark Stachiw
9201 N. Central Expressway
Dallas, TX 75231

New York City Department
of Finance Bankruptcy Unit
345 Adams Street, 10th Floor
Brooklyn, NY 11201

Kirkland & Ellis
Attn: Matthew Cantor, Esq. Jonathan Henes, Esq.
Citigroup Center
153 East 53rd Street
New York, NY 10022

New York State Department of
Taxation and Finance Bankruptcy Unit
P.O. Box 5300
Albany, NY 12205-0300

Paul Hastings Janofsky & Walker LLP
Attn: Jesse H. Austin, III, Esq.
24th Floor, 600 Peachtree Street, N.E.
Atlanta, GA 30308-2222

Securities and Exchange Commission
Attn: Wayne M. Carlin, Regional Director
233 Broadway
New York, NY 10279

The Bank of New York
Attn: Corporate Trust Administration,
Stuart Kratter
101 Barclay Street Floor 21 West
New York, NY 10286

Pacific Bell
SBC Contract Administration
Attn: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

Southwestern Bell
SBC Contract Administration
Attn: Notices Manager
311 S. Akard, 9th Floor/Four Bell Plaza
Dallas, TX 75202-5398

Broadwing Communication Services Inc.
Attn: Ernest Williams
1122 Capital of Texas Hwy South
Austin, TX 78746

Ameritech - LEC Services Billing – CABS
SBC Contract Administration
Attn: Notices Manager
311 S. Akard, 9th Floor/Four Bell Plaza
Dallas, TX 75202-5398

KMC Telecom XI LLC
KMC Telecom Holdings, Inc.
Attn: General Counsel
Attn: National Markets, Project Planning
1545 Route 206, Suite 300
Bedminster, NJ 07921

Qwest Communications
General Counsel - Interconnection Qwest
Law Department
1801 California St., Suite 4900
Denver, CO 80202

Intermedia Communications Inc.
c/o MCI WorldCom Communications
Attn: Contracts Administration
500 Clinton Center Drive, Building 4
Clinton, MS 39056

MFS Telecom Inc - CABS
c/o MCI WorldCom Communications
Attn: Contracts Administration
500 Clinton Center Drive, Building 4
Clinton, MS 39056

Bell South Florida
ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

MCI WorldCom Communications
Attn: Contracts Administration
500 Clinton Center Drive, Building 4
Clinton, MS 39056

Bell South Georgia
General Attorney – COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

WorldCom OnNet DSL
c/o MCI WorldCom Communications
Attn: Contracts Administration
500 Clinton Center Drive, Building 4
Clinton, MS 39056

Stornet Inc.
7388 South Revere Parkway
Suite 1003
Centennial, CO 80112

XO Communications
Attn: Craig Fricke & David Silverman
11111 Sunset Hills
Reston, VA 20190

Focal Communications Corporation of PA
(CABS)
Attn: General Counsel
200 North LaSalle Street/Suite 1100
Chicago, IL 60601

Southern California Edison
Carrier Solutions Fin & Admin
Attn: Marilyn Wasserman
2244 Walnut Grove GO 1 Quad 2B
Rosemead, CA 91770

Level 3 Communications LLC – CABS
Attn: General Counsel
1025 Eldorado Blvd.
Broomfield, CO 80021

NCX Office Development, LP
c/o Stream Realty Partners, L.P.
511 East John Carpenter Hwy., Suite 400
Irving, TX 75062

Lucent Technologies Inc.
2601 Lucent Lane
Lisle, IL 60532

TEK Trademark Telecom
Attn: Isabel Miro
2211 Norfolk, Suite 800
Houston, TX 77098

Avaya - CABS
Attn: Chris De La Cruz
3410 Midcourt, Suite 115
Carrollton, TX 75006-5066

Pegasus Logistics Group
Corporate Headquarters
Attn: Alan Grayson
612 E. Dallas Rd., Suite 100
Grapevine, TX 76099-0370

Looking Glass Networks Inc.
Attn: Jodi J. Caro, General Counsel
1111 West 22nd Street, Suite 600
Oak Brook, IL 60523

GE Capital Fleet Services
Attn: Kenneth Johns
300 RiverHills Business Park
Birmingham, AL 35242

FPL Fibernet LLC - Line Cost
FPL Fibernet LLC
Attn: General Counsel
Juno Beach, FL 33408

UUNET
c/o MCI WorldCom Communications
Attn: Contracts Administration
500 Clinton Center Drive, Building 4
Clinton, MS 39056

DST Output
Attn: Jim Laramy, VP Legal
5220 Robert J. Matthews Parkway
El Dorado Hills, CA 95762

Enterprise Fleet Services
Attn: David Guthaim
1550 Route 23 North
Wayne, NJ 07470

Acterna
Attn: Rick Goshorn, General Counsel
12410 Milestone Center Drive
Germantown, MD 20876

Juniper Network
Attn: Lisa C. Berry, General Counsel
1194 North Mathilda Avenue
Sunnyvale, CA 94089

AT&T
Attn: Dave Casillas
Regional Vice President
Southwest Region Wholesale Markets
5501 LBJ Freeway/Suite 740
Dallas, TX 75240

Akin Gump Strauss Hauer Feld LLP
Attn: Ira S. Dizengoff, Esq.
590 Madison Avenue
New York, New York 10022

Arnall Golden Gregory LLP
Attn: J. Hayden Kepner, Jr., Heath J. Vice
Darryl S. Laddin
2800 One Atlantic Center
1201 W. Peachtree Street
Atlanta, Georgia 30309-3450

Kilpatrick Stockton LLP
Attn: Paul M. Rosenblatt, Esq.
Suite 2800
1100 Peachtree Street, N.E.
Atlanta, Georgia 30309-4530

Jaspan Schlesinger Hoffman LLP
Attn: Lisa M. Golden, Esq.
300 Garden City Plaza
Garden City, NY 11530

Shaw Pittman LLP
Attn: Patrick J. Potter, Esq.
2300 "N" Street, N.W.
Washington, D.C. 20037

Brett K. Jaffe
4 Jennifer Circle
Billerica, MA 01821

Jeffrey F. Jacobs
Rt 1 Box 51
Hardesty, OK 73944

Sills Cummis Radin Tischman Epstein & A
Attn: Andrew H. Sherman, Esq.
One Riverfront Plaza
The Legal Center
Newark, NJ 07102

Vinson & Elkins L.L.P.
Attn: Steven M. Abramowitz
and Jonathan S. Krueger
666 Fifth Avenue, 27th Floor
New York, New York 10 103

Sidley Austin Brown & Wood LLP
Attn: Dana P. Kane, Esq.
and Thomas E. Pitts, Jr., Esq.
787 Seventh Avenue
New York, New York 10019

KMC Telecom Holdings, Inc.
Attn: Constance Loosemore and
Mikhael Vitenson, Esq.
1545 US Highway 206
Bedminster, New Jersey 07921

Lowenstein Sandler PC
Attn: Vincent D'Agostino, Esq. And
Lance Eisenberg, Esq.
65 Livingston Avenue
Roseland, New Jersey 07068

Wilmer, Cutler & Pickering
Attn: Andrew N. Goldman Esq.
and Jeffrey R. Gleit Esq.
399 Park Avenue
New York, NY 10022

Neil Berger
Gerry DiConza
Togut, Segal & Segal LLP
One Penn Plaza
New York, NY 10 119

Douglas Johnson
1402 Old Dallas Hwy
Dallas, NC 28034

Lillian C. Powell
2717 Second Loop Rd.
Florence, SC 29501

Kelly Imsland
921 N. 85th St,
Seattle, WA 98103

Paragon Investment Management, Inc.
Attn: Christopher R. Helton
1420 5th Ave., Suite 3020
Seattle, WA 98101

Perkins Coie LLP
Attn: John S. Kaplan
1201 Third Avenue, 40th Floor
Seattle, WA 98101-3099

Baker & McKenzie
Attn: Joseph Samet, Esq.
and Ira A. Reid, Esq.
805 Third Avenue
New York, NY 10022

W5 Brannan, LP
Attn: Mr. Walter Wang
651 Brannan Street, Suite 100
San Francisco, CA 94107

Gardere Wynne Sewell, L.L.P.
Attn: Richard M. Roberson,
Merrill L. Kaliser and Michael P. Cooley
3000 Thanksgiving Tower 1601 Elm Street
Dallas, Texas 75201

Quadrangle Group LLC
Attn: TJ Vigliotta
375 Park Avenue, 14th Fl
New York, NY 10152

Shartsis, Frieze & Ginsburg LLP
Attn: Steven O. Gasser, Esq.
One Maritime Plaza, 18th Floor
San Francisco, CA 94111

Missouri Department of Revenue,
Bankruptcy Unit
Attn: Chad A. Kelsch
P.O. Box 475
Jefferson City, MO 65105-0475.

Trainer Robertson
Attn: Nancy Hotchkiss
701 University Avenue, Suite 200
Sacramento, California 95825

Goulston & Storrs, P.C.
Attn: Douglas B. Rosner, Esq.
and Christian J. Urbano, Esq.
400 Atlantic Avenue
Boston, MA 02110

Chanler M. Sparler, Esq.
P.O. Box 14338
San Francisco, CA 94114-0338

Jackson Walker L.L.P.
Attn: C. Wade Cooper and Marvin E. Sprouse III
100 Congress Avenue, Suite 1100
Austin, Texas 78701

Ingram Yuzek Gainen Carroll
& Bertolotti, LLP
Attorneys for 90 Broad, LLC
Attn: Cory L. Weiss, Esq.
250 Park Avenue
New York, NY 10177

McCarter & English, LLP
Attn: William F. Taylor, Jr.
and Katharine L. Mayer
919 North Market Street, Suite 1800
Post Office Box 111
Wilmington, Delaware 19899

Akin Gump Strauss Hauer & Feld LLP
Attn: Ira S. Dizengoff, Esq.
and Philip C. Dublin, Esq.
590 Madison Avenue
New York, NY 10022

Lovells
Attn: Jennifer M. Driscoll, Esq.
900 Third Avenue, 16th Floor
New York, New York 10022

Sills Cummis Radin Tischman Epstein & Gross, P.A.
Attn: Andrew H. Sherman, Esq.
712 5th Avenue, 20th Floor
New York, NY 10119

Edmond P. O'Brien, Esq.
Stempel Bennett Claman & Hochberg, P.C.
655 Third Avenue, 22nd Floor
New York, NY 10017

Charles N. Panzer, Esq.
Richard P. Norton, Esq.
Reed Smith LLP
599 Lexington Ave, 29th Floor
New York, 10022

Belkin Burden Wenig & Goldman, LLP
Attorneys for Orange County Business Ce
Attn: Daniel T. Altman, Esq
270 Madison Avenue
New York, New York 10016

El Paso Networks, L.L.C.
Attn: James V. Cantrell
1001 Louisiana
Houston, Texas 77002

Lovells
Attn: Kren Ostad, Esq.
900 Third Avenue, 16th Floor
New York, New York 10022

Nortel Networks Inc.
Attn: Trevor Jones
8200 Dixie Road Suite 100
Brampton. ON L6T 5P6 Canada

J. Alex Kress, Esq.
Dennis J. O'Grady, Esq.
Riker, Danzig, Scherer, Hyland & Perretti
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981

Charles N. Panzer, Esq.
Richard P. Norton, Esq.
Reed Smith LLP
One Riverfront Plaza, 1st Floor
Newark, NJ 07102

Robert J. Rosenberg, Esq.
Shari Siegel, Esq.
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022

Andrew Kress, Esq.
Nicholas J. Cremona, Esq.
Kaye Scholer
425 Park Avenue
New York, NY 10022-3598

Edward J. LoBello, Esq.
Blank Rome LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10 174

Michael B. Schaedle, Esq.
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103

Jay W. Hurst, Esq.
Assistant Attorney General
Office of the Texas Attorney General
Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548

Brian D. Spector, Esq.
Spector & Ehrenworth, P.C.
30 Columbia Turnpike
Florham Park, NJ 07102

May 20, 2003

Ms. Mary C. Albert
Allegiance Telecom, Inc.
1919 M Street N.W.
Suite 420
Washington, DC 20036

Dear Ms. Albert

BellSouth Telecommunications, Inc. ("BellSouth") has been notified of your company's Chapter 11 bankruptcy filing. To continue providing service to your company, BellSouth requires a deposit of \$2,300,000.00 or equivalent Irrevocable Letter of Credit. The requested assurance of payment is in accordance with Section 366 of the United States Bankruptcy Code and will cover post-petition services only.

This deposit can be submitted either in cash or in the form of an Irrevocable Letter of Credit (see our attached approved form) to:

BellSouth, Inc.
Sandra Cetti / 9D24
1025 Lenox Lake Blvd
Atlanta, Georgia 30319

If we do not receive your deposit and you do not contact BellSouth by June 5, 2003, your BellSouth service may be disconnected without further notice. Any questions regarding the contents of this letter please contact me as soon as possible.

Sincerely yours,

Sandra Cetti
Senior Credit Manager
404-986-1905

cc Clay Meyers

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
WORLDCOM, INC., et al.,	:	Case No. 02-13533 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	

AMENDED ORDER PURSUANT TO SECTIONS 105(A)
AND 366(B) OF THE BANKRUPTCY CODE AUTHORIZING
WORLDCOM TO PROVIDE ADEQUATE ASSURANCE TO UTILITY COMPANIES

Upon the motion, dated July 21, 2002 (the "Motion"), of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "WorldCom" or the "Debtors"), for an order pursuant to sections 105(a) and 366(b) of title 11, United States Code (the "Bankruptcy Code") establishing procedures for determining that all utility companies and telecommunications vendors (collectively, the "Utility Companies" and individually, "Utility Company") that provide electricity, telephone, telecommunications, or similar services (the "Utility Services") to the Debtors have been provided with adequate assurance of payment, all as more fully set forth in the Motion; and upon consideration of the supporting Affidavit of Susan Mayer Pursuant to Local Bankruptcy Rule 1007-2, sworn to on the 21st day of July, 2002; and upon the objections filed in connection with the Motion, and the record of the hearings held before the Court concerning the Motion ("the Hearings"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a

core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at the Hearings; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearings establish just cause for the relief granted herein; and upon the entry of the Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies dated August 14, 2002 (the "Utility Order"); and upon the motion dated August 26, 2002 by Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order, seeking amendment and/or clarification of the Court's Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies (the "Motion to Clarify"); the Objection dated September 19, 2002 of the Official Committee of Unsecured Creditors to the Motion of Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order (the "Objection"); the Debtor's Response dated September 20, 2002 to the Motion of Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order (the "Response" and collectively with the "Motion to Clarify" and the "Objection" the "Additional Submissions"); upon review of the entire record of this case; and based upon the Additional Submissions; and the Court finding that a clarification to the order is appropriate, it is

ORDERED that the Utility Order is clarified as set forth herein; and it is further

ORDERED that pursuant to section 503(b)(1)(A) of the Bankruptcy Code, any and all unpaid charges for postpetition services provided by the Utility Companies to the Debtors constitute actual and necessary expenses of preserving WorldCom's estates; in addition, with respect to those claims for the amounts incurred after August 14, 2002, each Utility Company is hereby granted an administrative expense priority claim and such claim shall constitute a junior superpriority administrative claim in each of the WorldCom estates and such claim shall be "pari passu" with one another and shall be junior only (i) to the claims of the DIP Lenders (defined consistently with this Court's Interim order authorizing WorldCom's postpetition financing) as a result of the Interim or any final order, and (ii) to any intercompany junior liens and claims of each of the WorldCom Debtors, and shall be senior to any other administrative claim unless otherwise ordered by the Court; and it is further

ORDERED that the Debtors shall pay on a timely basis, in accordance with applicable contracts and tariffs, all undisputed invoices with respect to postpetition Utility Services rendered by the Utility Companies; and it is further

ORDERED that WorldCom and the Utility Companies shall negotiate in good faith to establish an expedited dispute resolution procedure that includes an arbitrator, mediator, or similar trier of fact with respect to disputes involving postpetition invoices in an amount not to exceed a sum to be determined upon a recommendation from the Debtors within fifteen (15) days after the entry of this order ("Debtors' Recommendation") with an opportunity by the Utility Companies to object five (5) days thereafter ("Utilities' Recommendations" and together with the Debtors' Recommendation, the "Recommendations"); *provided, however*, that unless the Court orders otherwise, upon receiving the

Recommendations the Court shall issue an order without further hearing resolving any dispute concerning the Recommendations; and it is further

ORDERED that, in the event of a payment default for postpetition Utility Services, a Utility Company may (i) take appropriate action under any applicable tariff or regulation, *provided, however*, that such action is without prejudice to the Debtors' right to seek injunctive relief from this Court, or (ii) send notice by facsimile to WorldCom, with a copy to counsel for WorldCom and the Creditors' Committee, and if payment of the undisputed portion is not made by wire transfer or similar good federal funds within three (3) business days thereafter, such Utility Company may seek, by order to show cause, an order requiring immediate payment or such other relief as is appropriate, with objection returnable not less than two (2) business days thereafter; and it is further

ORDERED that, immediately upon the receipt by WorldCom of an Enforcement Notice (as defined in this Court's interim order authorizing WorldCom's postpetition financing (the "DIP")), WorldCom shall provide a copy of such notice to the Utility Companies by e-mail within two (2) business days following receipt of an Enforcement Notice; and it is further

ORDERED that WorldCom shall provide to each Utility Company that has executed an appropriate confidentiality agreement, a weekly report setting forth (i) WorldCom's unrestricted cash and (ii) the availability under the DIP; and it is further

ORDERED that WorldCom and any requesting Utility Company shall exchange contact information of employees with sufficient authority to deal with disputes, if any, regarding postpetition payments; and it is further

ORDERED that, in addition to any rights under section 366 of the Bankruptcy Code, the Utility Companies shall have the right to petition for reconsideration of this Order upon a material and adverse change with respect to, including but not limited to, WorldCom's "administrative solvency," liquidity or other financial condition, or with respect to the volume and/or types of service a Utility Company is providing to the Debtors, and to seek an order requiring WorldCom, among other things, to provide deposits or letters of credit, or prepay for future Utility Services; and it is further

ORDERED that WorldCom and the Utility Companies that are both creditors to, and debtors of, WorldCom, shall negotiate in good faith to establish procedures for the mutual setoff of payments for prepetition services (the "Prepetition Procedures") and for the mutual setoff of payments for postpetition services (the "Postpetition Procedures"); *provided, however*, that nothing herein shall be deemed to grant any Utility Company the right to setoff postpetition amounts owing to WorldCom against prepetition amounts such Utility Company is owed by WorldCom or to eliminate the requirement of mutuality in order to assert a right of setoff; *provided further, however*, that, to the extent WorldCom and a Utility Company are unable to agree upon either a Prepetition Procedures or a Postpetition Procedures, WorldCom or such Utility Company may seek relief from this Court; and it is further

ORDERED that, to the extent termination of services to WorldCom's customers in necessary, WorldCom shall comply with all applicable regulatory requirements, including, but not limited to, timely service of notices to customers consistent with 47 U.S.C. § 214; and it is further

ORDERED that WorldCom shall serve notice of this Order on the Utility Companies identified on Exhibit A annexed to the Motion by first-class mail within five (5) business days of its entry; and it is further

ORDERED that nothing herein shall prejudice WorldCom's or any Utility Company's right to assert that such Utility Company is or is not a utility as contemplated in section 366 of the Bankruptcy Code; and it is further

ORDERED that the relief granted herein shall not constitute an approval or assumption of any agreement pursuant to section 365 of the Bankruptcy Code and, to the extent WorldCom seeks to assume or assign any executory contract or unexpired lease that may exist between WorldCom and a Utility Company, WorldCom shall comply with the applicable provisions of the Bankruptcy Code; provided, however, that nothing herein shall be deemed to establish that any contract is or is not subject to section 365 of the Bankruptcy Code.

Dated: New York, New York
October 2, 2002

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
WORLDCOM, INC., et al.,	:	Case No. 02-13533 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	
	:	

AMENDED ORDER PURSUANT TO SECTIONS 105(A)
AND 366(B) OF THE BANKRUPTCY CODE AUTHORIZING
WORLDCOM TO PROVIDE ADEQUATE ASSURANCE TO UTILITY COMPANIES

Upon the motion, dated July 21, 2002 (the "Motion"), of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "WorldCom" or the "Debtors"), for an order pursuant to sections 105(a) and 366(b) of title 11, United States Code (the "Bankruptcy Code") establishing procedures for determining that all utility companies and telecommunications vendors (collectively, the "Utility Companies" and individually, "Utility Company") that provide electricity, telephone, telecommunications, or similar services (the "Utility Services") to the Debtors have been provided with adequate assurance of payment, all as more fully set forth in the Motion; and upon consideration of the supporting Affidavit of Susan Mayer Pursuant to Local Bankruptcy Rule 1007-2, sworn to on the 21st day of July, 2002; and upon the objections filed in connection with the Motion, and the record of the hearings held before the Court concerning the Motion ("the Hearings"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a

core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at the Hearings; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearings establish just cause for the relief granted herein; and upon the entry of the Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies dated August 14, 2002 (the "Utility Order"); and upon the motion dated August 26, 2002 by Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order, seeking amendment and/or clarification of the Court's Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing WorldCom to Provide Adequate Assurance to Utility Companies (the "Motion to Clarify"); the Objection dated September 19, 2002 of the Official Committee of Unsecured Creditors to the Motion of Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order (the "Objection"); the Debtor's Response dated September 20, 2002 to the Motion of Pacific Gas & Electric to Amend and/or Clarify Court's Utilities Order (the "Response" and collectively with the "Motion to Clarify" and the "Objection" the "Additional Submissions"); upon review of the entire record of this case; and based upon the Additional Submissions; and the Court finding that a clarification to the order is appropriate, it is

ORDERED that the Utility Order is clarified as set forth herein; and it is further

ORDERED that pursuant to section 503(b)(1)(A) of the Bankruptcy Code, any and all unpaid charges for postpetition services provided by the Utility Companies to the Debtors constitute actual and necessary expenses of preserving WorldCom's estates; in addition, with respect to those claims for the amounts incurred after August 14, 2002, each Utility Company is hereby granted an administrative expense priority claim and such claim shall constitute a junior superpriority administrative claim in each of the WorldCom estates and such claim shall be "pari passu" with one another and shall be junior only (i) to the claims of the DIP Lenders (defined consistently with this Court's Interim order authorizing WorldCom's postpetition financing) as a result of the Interim or any final order, and (ii) to any intercompany junior liens and claims of each of the WorldCom Debtors, and shall be senior to any other administrative claim unless otherwise ordered by the Court; and it is further

ORDERED that the Debtors shall pay on a timely basis, in accordance with applicable contracts and tariffs, all undisputed invoices with respect to postpetition Utility Services rendered by the Utility Companies; and it is further

ORDERED that WorldCom and the Utility Companies shall negotiate in good faith to establish an expedited dispute resolution procedure that includes an arbitrator, mediator, or similar trier of fact with respect to disputes involving postpetition invoices in an amount not to exceed a sum to be determined upon a recommendation from the Debtors within fifteen (15) days after the entry of this order ("Debtors' Recommendation") with an opportunity by the Utility Companies to object five (5) days thereafter ("Utilities' Recommendations" and together with the Debtors' Recommendation, the "Recommendations"); *provided, however*, that unless the Court orders otherwise, upon receiving the

Recommendations the Court shall issue an order without further hearing resolving any dispute concerning the Recommendations; and it is further

ORDERED that, in the event of a payment default for postpetition Utility Services, a Utility Company may (i) take appropriate action under any applicable tariff or regulation, *provided, however*, that such action is without prejudice to the Debtors' right to seek injunctive relief from this Court, or (ii) send notice by facsimile to WorldCom, with a copy to counsel for WorldCom and the Creditors' Committee, and if payment of the undisputed portion is not made by wire transfer or similar good federal funds within three (3) business days thereafter, such Utility Company may seek, by order to show cause, an order requiring immediate payment or such other relief as is appropriate, with objection returnable not less than two (2) business days thereafter; and it is further

ORDERED that, immediately upon the receipt by WorldCom of an Enforcement Notice (as defined in this Court's interim order authorizing WorldCom's postpetition financing (the "DIP")), WorldCom shall provide a copy of such notice to the Utility Companies by e-mail within two (2) business days following receipt of an Enforcement Notice; and it is further

ORDERED that WorldCom shall provide to each Utility Company that has executed an appropriate confidentiality agreement, a weekly report setting forth (i) WorldCom's unrestricted cash and (ii) the availability under the DIP; and it is further

ORDERED that WorldCom and any requesting Utility Company shall exchange contact information of employees with sufficient authority to deal with disputes, if any, regarding postpetition payments; and it is further

ORDERED that, in addition to any rights under section 366 of the Bankruptcy Code, the Utility Companies shall have the right to petition for reconsideration of this Order upon a material and adverse change with respect to, including but not limited to, WorldCom's "administrative solvency," liquidity or other financial condition, or with respect to the volume and/or types of service a Utility Company is providing to the Debtors, and to seek an order requiring WorldCom, among other things, to provide deposits or letters of credit, or prepay for future Utility Services; and it is further

ORDERED that WorldCom and the Utility Companies that are both creditors to, and debtors of, WorldCom, shall negotiate in good faith to establish procedures for the mutual setoff of payments for prepetition services (the "Prepetition Procedures") and for the mutual setoff of payments for postpetition services (the "Postpetition Procedures"); *provided, however*, that nothing herein shall be deemed to grant any Utility Company the right to setoff postpetition amounts owing to WorldCom against prepetition amounts such Utility Company is owed by WorldCom or to eliminate the requirement of mutuality in order to assert a right of setoff; *provided further, however*, that, to the extent WorldCom and a Utility Company are unable to agree upon either a Prepetition Procedures or a Postpetition Procedures, WorldCom or such Utility Company may seek relief from this Court; and it is further

ORDERED that, to the extent termination of services to WorldCom's customers in necessary, WorldCom shall comply with all applicable regulatory requirements, including, but not limited to, timely service of notices to customers consistent with 47 U.S.C. § 214; and it is further

ORDERED that WorldCom shall serve notice of this Order on the Utility Companies identified on Exhibit A annexed to the Motion by first-class mail within five (5) business days of its entry; and it is further

ORDERED that nothing herein shall prejudice WorldCom's or any Utility Company's right to assert that such Utility Company is or is not a utility as contemplated in section 366 of the Bankruptcy Code; and it is further

ORDERED that the relief granted herein shall not constitute an approval or assumption of any agreement pursuant to section 365 of the Bankruptcy Code and, to the extent WorldCom seeks to assume or assign any executory contract or unexpired lease that may exist between WorldCom and a Utility Company, WorldCom shall comply with the applicable provisions of the Bankruptcy Code; provided, however, that nothing herein shall be deemed to establish that any contract is or is not subject to section 365 of the Bankruptcy Code.

Dated: New York, New York
October 2, 2002

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>		
In re	:	
	:	Chapter 11 Case Nos.
	:	
GLOBAL CROSSING LTD., <u>et al.</u> ,	:	02- 40187 (REG) through
	:	02- 40241 (REG)
	:	
Debtors.	:	(Jointly Administered)
	:	
<hr/>		

**ORDER PURSUANT TO SECTIONS 105(a) AND 366(b)
OF THE BANKRUPTCY CODE DEEMING UTILITY
COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE**

Upon the Motion dated January 28, 2002 (the "Motion") of Global Crossing Ltd. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 105(a) and 366(b) of title 11 of the United States Code (the "Bankruptcy Code"), deeming utility companies adequately assured of future performance, as more fully set forth in the Motion; and upon the objections and requests for adequate assurance filed by various utilities and telecommunications companies in response to the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § § 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. § § 1408 and 1409; and the relief granted herein being in the best interests of the Debtors and their estates and creditors; and the Court

having reviewed the Motion and the objections/responses thereto and having heard the statements and proffers in support of and in opposition to the relief requested at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and the Objections/Responses thereto and at the Hearing establish just cause for the relief granted herein; and upon the Court's findings of fact and conclusions of law set forth in the Court's ruling on February 21, 2002 (the "Findings of Fact and Conclusions of Law"), all incorporated herein by reference; and the Court having directed the Debtors to settle this order upon ten (10) business days notice and to confer upon the provisions of this Order with certain of the objecting parties; and the Debtors having so conferred; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted, subject to the express terms and conditions contained herein and in the Findings of Fact and Conclusions of Law; and it is further

ORDERED that the parties that received notice of or otherwise participated in the February 20, 2002 hearing to consider the Motion (the "Utility and Telecommunications Companies") are hereby deemed adequately assured of payment for postpetition utility services under section 366 of the Bankruptcy Code (the "Utility Services") without the payment of any deposits or further security, the requirement of prepayments or advances, or the granting of any liens; provided, however, that any Utility and Telecommunications Company may request additional assurances upon making a showing that there has been a material adverse change in the liquidity of the Debtors or

other material change in the Debtors' circumstances that could affect the Debtors' ability to pay for future Utility Services; and it is further

ORDERED that, pursuant to section 366(a) of the Bankruptcy Code, absent any further order of this Court, the Utility and Telecommunications Companies are prohibited from altering, refusing or discontinuing Utility Services to any of the Debtors, discriminating against any of the Debtors, or requiring the payment of a deposit or other security, prepayment or advance or the granting of any liens, on the basis of the commencement of the Debtors' chapter 11 cases or that a debt owed by the Debtors to such Utility and Telecommunications Companies rendered before the commencement of the Debtors' chapter 11 cases was not paid when due; and it is further

ORDERED that all Utility and Telecommunications Companies shall be granted an administrative expense priority under sections 503(b) and 507(a)(1) of the Bankruptcy Code for unpaid postpetition charges for Utility Services that are either not disputed by the Debtors or otherwise allowed by this Court; and it is further

ORDERED that the Debtors shall pay on a timely basis, in accordance with prepetition practices, the undisputed portion of any invoices with respect to postpetition Utility Services rendered by the Utility and Telecommunications Companies, excluding Verizon, BellSouth, SBC Affiliates¹, Qwest, AT&T, MCI Worldcom, Sprint (but including, CallNet Enterprises, Sprint Canada), and Citizens/Frontier (collectively,

¹ The SBC Affiliates include Southwestern Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company And Ameritech (Composed Of Illinois Bell Telephone Company D/B/A Ameritech Illinois, Indiana Bell Telephone Company D/B/A Ameritech Indiana, Michigan Bell Telephone Company D/B/A Ameritech Michigan, The Ohio Bell Telephone Company D/B/A Ameritech Ohio and Wisconsin Bell, Inc. D/B/A Ameritech Wisconsin)

the "Designated Companies"), within the lesser of fourteen (14) calendar days after receipt of any utility invoice (notwithstanding any longer time provided for in a tariff) or the time contractually agreed to by the Debtors and such Utility and Telecommunications Company (the "Payment Date"); provided however that if the Payment Date falls on a weekend or holiday, the Debtors shall make such payments on the business day preceding the Payment Date; and it is further

ORDERED that the Debtors and the Designated Companies are each authorized and directed to negotiate similar shortened postpetition payment terms with respect to the undisputed portion of the invoiced amounts; provided, however, that, unless otherwise agreed to by the Debtors after consultation with the Creditors' Committee, the Debtors shall not be required to provide a Designated Company with deposits or other security, advances, prepayments or a lien securing postpetition obligations; and it is further

ORDERED that, in connection with the negotiations to be conducted in accordance with the preceding paragraph, the Debtors and the Designated Companies shall seek to negotiate the offset of amounts owed by the Debtors for postpetition Utility Services and amounts owed by the Designated Companies to the Debtors for postpetition services with the effect that the Debtors pay on shortened payments terms to the Designated Companies the "net" amount owing to such Designated Company; and it is further

ORDERED that each of the Debtors and the Designated Companies, and any other Utility and Telecommunications ~~Company~~ Companies that wishes to avail itself of any of the terms of this Order ~~so provide~~, is directed to designate individuals to

deal with late payments, missed payments and failures to appropriately credit past payments in these chapter 11 cases; and it is further

ORDERED that, any agreement between the Debtors and a Designated Company shall be submitted to the Court for approval by notice of presentment, on six business days notice to counsel to the Creditors' Committee, counsel to the Debtors' prepetition lenders, counsel to the joint provisional liquidators and the United States Trustee, provided that nothing herein will prevent the Debtors and the Designated Companies from performing pursuant to the terms of the agreement pending Court approval; and it is further

ORDERED that, unless agreements shall have been reached with the Designated Companies, a hearing shall be scheduled before the Court on March 25, 2002 at 9:45 a.m., or on such later date as acceptable to the Court and the parties, to consider the status of outstanding negotiations between the Debtors and the Designated Companies or grant appropriate relief if such negotiations have failed to produce an agreement; and it is further

ORDERED that, in the event the Debtors fail to timely pay any undisputed postpetition charges for Utility Services (the "Payment Defaults"), a Utility and Telecommunications Company which provided such services is authorized to send, via facsimile, to the Debtors, as designated by the Debtors in writing in conjunction with this Order, and Debtors' counsel, a notice of default (the "Notice of Default") which shall include, inter alia, the amount outstanding, the billing date and the Debtors' account number and the Debtors shall have three business days from receipt of the Notice of Default to cure any such default by wire transfer or similar good federal funds, provided,

however, that nothing herein shall prohibit a Utility or Telecommunications Company from pursuing those remedies available to it under the terms of its contract with the Debtors, so long as the terms of such contract afford the Debtors a longer period of time to cure the default; and it is further

ORDERED that in the event the Debtors do not cure Payment Defaults within three business days of receipt of the Notice of Default, the Utility and Telecommunications Company may petition this Court, through an Order to Show Cause, for immediate payment of such outstanding invoices and that the Debtors' objections shall be returnable within such time as required by the Court, including on as little as two business days thereafter; and it is further

ORDERED that the Debtors are authorized and directed to provide any Utility or Telecommunications Company, upon written request, the Debtors' monthly operating reports within two (2) business days of such report being either provided to the United States Trustee or filed with the Court, whichever is earlier; and it is further

ORDERED that the Debtors are authorized and directed to provide to the Flash Report Entities, as defined below, upon the written request of the Designated Companies, ICG Telecom Group, Norlight Telecommunications, The Small Rural Telecommunications Utilities Group, the Iowa Telecommunications Utilities Group, NTS Communications, Inc., FBN America, Inc., Florida Power & Light, Entergy and Michigan Exchange Carriers Associates, Inc., as well as their counsel, (the "Flash Report Entities"), weekly flash reports disclosing the Debtors' restricted (i.e., subject to a lien, or to some other spending constraint that would prohibit payment to utilities) and unrestricted cash (the "Flash Reports"), provided, however, that each Flash Report Entity

is hereby ordered to keep such Flash Report and its contents confidential, distribute the report or its contents within its organization only on a "need to know" basis and disclose such report or its contents only in connection with a request of this Court for further adequate assurances of payment upon a material adverse change in the liquidity of the Debtors or other material change in the Debtors' circumstances that could affect the Debtors' ability to pay for future Utility Services; and it is further

ORDERED that the Flash Report Entities shall designate one individual on behalf of all of them who shall both receive the Flash Reports on behalf of the Flash Report entities and distribute them thereto, and who may submit reasonable questions to the Debtors with respect thereto, to which the Debtors shall respond within a reasonable period of time; and it is further

ORDERED that any disputes with respect to charges or reconciliations for the Utility Services may be made by Motion to this Court and will be heard on ten (10) days notice, unless a longer time for presentations is jointly agreed upon (the "Dispute Resolution Period"), provided, however, that the Debtors shall not be required to segregate any disputed amounts during such Dispute Resolution Period; and it is further

ORDERED that, except as expressly permitted by order of this Court, payments made by the Debtors after January 28, 2002 (the petition date) shall be applied toward Utility Services incurred by the Debtors subsequent to the filing of these chapter 11 cases, and shall not be used to pay any amounts outstanding to the Utility and Telecommunications Companies for prepetition Utility Services or as a deposit for future Utility Services and, likewise, the Debtors may not (without Utility or

Telecommunication Company consent) use credits earned or arising prepetition to reduce their postpetition obligations; and it is further

ORDERED that the Utility and Telecommunications Companies shall have the right to petition for reconsideration of this Order upon a material adverse change in the liquidity of the Debtors or other material change in the Debtors' circumstances that could affect the Debtors' ability to pay for future Utility Services, and there shall be a presumptive right to reconsideration if the amount of the Debtors' unrestricted cash or cash equivalents falls below \$100 million (net of any indebtedness that may be secured by a postpetition lien) and to take discovery under Federal Bankruptcy Rules 7026 through 7037 with respect to adequate assurance of payment, if the amount of the Debtors' unrestricted cash and cash equivalents drops below \$200 million (net of any indebtedness that may be secured by a postpetition lien); and it is further

ORDERED that the relief granted herein shall not constitute an approval or assumption of any agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that entry of this Order is without prejudice to the right of the Debtors to seek, by adversary proceeding or otherwise, entry of an order prohibiting termination of a Utility Service based upon an alleged postpetition default by the Debtors, the right of a Utility or Telecommunications Company to seek by appropriate pleading the right to alter the terms for the provision of new postpetition utility services ordered by the Debtors pursuant to a prepetition agreement, tariff or other arrangement or the right of the Debtors and the Utility and Telecommunication Companies to seek entry of an order

determining that a particular provider is or is not a Utility Company or that the service is or is not a Utility Service; and it is further

ORDERED that this Order shall supersede ~~supereede~~ the Order Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code Authorizing Debtors to Provide Adequate Assurance to Utility Companies approved by this Court on January 28, 2002; and it is further

ORDERED that the requirement pursuant to Local Rule 9013-1(b) that the Debtors file a memorandum of law in support of the Motion is hereby waived.

Dated: March 15, 2002
New York, New York

/s/ Robert E. Gerber
HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT D

C

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Harvey R. Miller, Esq. (HRM 6078)
Michael F. Walsh, Esq. (MFW 8000)
Paul M. Basta, Esq. (PMB 4434)

Attorneys for Debtors and
Debtors In Possession

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

In re	:	
	:	Chapter 11 Case Nos.
	:	
GLOBAL CROSSING LTD., <u>et al.</u> ,	:	02-40187 (REG) through
	:	02-40241 (REG)
	:	
Debtors.	:	(Jointly Administered)
	:	

**STIPULATION AND ORDER DEEMING BELL SOUTH
TELECOMMUNICATIONS, INC.
ADEQUATELY ASSURED OF FUTURE PERFORMANCE**

1. On January 28, 2002 (the "Commencement Date"), Global Crossing, Ltd. and its debtor subsidiaries, (collectively, the "Debtors"), each commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

2. On January 28, 2002, the Debtors filed a motion pursuant to section 105(a) and 366(b) of the Bankruptcy Code, deeming their utility and telecommunications providers adequately assured of future performance (the "Motion"). In response to the

Motion, the Debtors received over 400 requests for adequate assurance from their utility and telecommunications providers.

3. In order to resolve such requests for adequate assurance, the Court held a hearing on February 20, 2002. After considering the statements and proffers in support of and in opposition to the Motion, the Court entered that certain Order deeming the Debtors' utility and telecommunications providers adequately assured of future performance dated March 15, 2002 (the "Utility Order"). Pursuant to the Utility Order, the Debtors were required, among other things, to pay their utility and telecommunications providers within 14 days of receipt of invoice. In addition, the Court provided expedited hearing procedures to protect utility and telecommunications providers in the event of a payment default by the Debtors.

4. With respect to the Debtors' eight largest telecommunications providers, the Utility Order required the Debtors and such telecommunications providers to negotiate shortened post-petition payment terms and offset agreements, as adequate assurance to those telecommunications providers who could consolidate the amount of invoices provided to the Debtors on a monthly basis.

5. BellSouth Telecommunications, Inc. ("BellSouth") is one of the Debtors' eight largest telecommunications providers. BellSouth has sufficiently consolidated its billing and made other efforts to streamline billing satisfactory to the Debtors.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through their undersigned counsel, that:

6. Effective on the date hereof, the Debtors shall pay on a timely basis, in accordance with prepetition practices, the undisputed portion of any invoices from

BellSouth within the lesser of fourteen (14) calendar days after receipt of any invoice or such earlier time provided in a particular pre-existing agreement between the Debtors and BellSouth (the "Payment Date"); provided, however, that if the Payment Date falls on a weekend or holiday, the Debtors shall make such payments on the business day preceding the Payment Date.

7. If the Debtors fail to timely pay any undisputed postpetition invoice from BellSouth, BellSouth may send, via facsimile, to the Debtors and Debtors' counsel, a notice of default (the "Notice of Default") which shall include, inter alia, the amount outstanding, the billing date and the Debtors' account number. The Debtors shall have three (3) business days from receipt of the Notice of Default to cure any such default by wire transfer or similar good federal funds, provided, however, that nothing herein shall prohibit BellSouth from pursuing those remedies available to it under the terms of its contracts with the Debtors, so long as the terms of such contract afford the Debtors a longer period of time to cure the default.

8. In the event the Debtors do not cure the payment default within three (3) business days of receipt of the Notice of Default, BellSouth may petition the Court, through an Order to Show Cause, for immediate payment of such outstanding invoices and the Debtors' objections shall be returnable within such time as required by the Court, including on as little as two business days thereafter.

9. Except for the provisions provided for herein, all other provisions of the Utility Order shall be applicable to BellSouth and are expressly incorporated herein by reference.

10. This Stipulation shall terminate immediately and without further order of the Court upon the giving of notice to the Debtors (or a trustee) by BellSouth after the occurrence of any of the following:

- a. Entry of an Order by the Court approving the termination of services after a post-petition payment default that is not cured by the Debtors in accordance with the terms of this Stipulation;
- b. The Debtors' cases, or any one of them, is converted to a liquidation case under Chapter 7 and consensual arrangements for continued services are not made between the parties to the Stipulation, or any one of them, and any such Debtors' Chapter 7 trustee(s);
- c. A Chapter 11 trustee or examiner with expanded powers is appointed for the Debtors or any one of them;
- d. The Debtors' cases, or any one of them, is dismissed;
- e. An order is entered confirming a chapter 11 plan for the Debtors, or any one of them, or authorizes a sale of substantially all of the Debtors' assets; and
- f. An order is entered by the Court deeming the Debtors' Utility and Telecommunications Providers, including BellSouth, adequately assured of future performance without the need for such expedited payment terms.

11. This Stipulation is subject to the approval of the Court and shall be of no force and effect unless and until such approval. If this Stipulation is not approved by the Court, it shall be null and void and shall not be referred to or used for any purpose by any of the parties hereto or any of the other parties in the Debtors' chapter 11 cases.

12. This Stipulation contains the entire agreement between the Parties with respect to adequate assurance under section 366 of the Bankruptcy Code and supersedes all prior agreements and undertakings between the Parties relating to the subject matter hereof.

13. Any notice required or permitted to be given hereunder by BellSouth to any of the Debtors or any of the Debtors to BellSouth, shall be deemed received when transmitted by facsimile or delivered by a nationally recognized overnight delivery service as set forth below:

If to the Debtors:

Global Crossing

Attn: Barbara McConnell
COA Verification Manager
7 Giralda Farms
Madison, MJ 07940
Tel: 973-410-5884
Fax: 973-410-5813

With a copy to:

Paul M. Basta, Esq.
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310-8772
Fax: (212) 310-8007

If to BellSouth:

BellSouth Telecommunications, Inc.

Sandra Cetti
BellSouth
675 W. Peachtree Street
Suite 35H63
Atlanta, GA 30375
(404) 927-7546 phone
404-688-3979 fax

With a copy to:

Paul M. Rosenblatt, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street – Suite 2800
Atlanta, Georgia 30309-4530
Tel: (404) 815-6321
Fax: (404) 541-3373

14. This Stipulation can only be amended or otherwise modified by a signed writing executed by the parties.

15. Each person who executes this Stipulation represents that he or she is duly authorized to execute this Stipulation on behalf of the respective Parties hereto and that each such Party has full knowledge and has consented to this Stipulation.

16. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and it shall constitute sufficient proof of this Stipulation to present any copy, copies or facsimiles signed by the Parties hereto to be charged.

17. Except as expressly provided for herein, the parties reserve all of their respective rights, claims and defenses.

18. This Stipulation and Order is not a finding that BellSouth is a "utility" under Section 366 of the Bankruptcy Code.

Dated: May 17, 2002
New York, New York

/s/ Paul M. Rosenblatt
Paul M. Rosenblatt, Esq. (PMR 6300)
Kilpatrick Stockton, LLP
1100 Peachtree Street - Suite 2800
Atlanta, Georgia 30309-4530
Tel: (404) 815-6321
Fax: (404) 815-6555

Attorneys for BellSouth
Telecommunications, Inc.

/s/ Paul M. Basta
Harvey R. Miller, Esq. (HRM 6078)
Michael F. Walsh, Esq. (MFW 8000)
Paul M. Basta, Esq. (PMB 4434)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtor and
Debtor In Possession

SO ORDERED
this 31st day of May, 2002

/s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE