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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION FOR AN ORDER PURSUANT TO SECTION 365(a)
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO
REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

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

Introduction

1. On May 14, 2003 (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11, of the United States Bankruptcy 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.

2. 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").

3. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York the ("U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Committee") in these chapter 11 cases.

Jurisdiction

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

An Overview of Allegiance's Business

5. 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.

6. As of the Commencement Date, Allegiance served more than 100,000 business customers in major markets throughout the United States. As of the Commencement Date, Allegiance employed approximately 3,560 people, of which approximately 97 employees were covered by collective bargaining agreements.

7. As of the Commencement Date, the Debtors had approximately \$245 million of cash. As of March 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.349 billion and liabilities totaling approximately \$1.424 billion. For the three months ending March 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$204.58 million and net losses of approximately \$120.084 million.

Relief Requested

8. By this Motion, the Debtors respectfully request the entry of an order, pursuant to section 365(a) of the Bankruptcy Code, authorizing and approving the rejection of certain (a) executory contracts (collectively, the "Rejected Contracts") and (b) unexpired personal property leases (collectively, the "Rejected Leases," together with the Rejected Contracts, the "Rejected Agreements"). The Rejected Agreements are identified in Exhibit "A" annexed hereto.

9. The Debtors are parties to numerous executory contracts and unexpired personal property leases. Since the Commencement Date, the Debtors have been evaluating these executory contracts and unexpired personal property leases to determine which are valuable to their estates and which are burdensome. In that regard, as of the date hereof and as described below, the Debtors have identified that the Rejected Agreements are no longer integral

to the Debtors' ongoing business operations and are burdensome to their estates. Because the evaluation process is ongoing, the Debtors anticipate identifying additional burdensome executory contracts and unexpired personal property leases and seeking the authority to reject such contracts and leases at later dates.

Basis for Relief

10. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard to be applied by a court to determine whether to authorize the rejection of an executory contract or an unexpired lease is the "business judgment" test, which is premised upon the debtor's business judgment that rejection of the executory contract or unexpired lease would be beneficial to its estate. Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098-99 (2d Cir. 1993).

11. Upon finding that a debtor has exercised its sound business judgment in determining that the rejection of a contract or lease is in the best interests of the debtor, its creditors, and all parties in interest, the court should approve the rejection under section 365(a) of the Bankruptcy Code. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Bradlees Stores, Inc., 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

12. In an effort to maximize the value of their estates, the Debtors have commenced the process of reviewing their overall operations and, as noted above, have

determined that they no longer need the products or services covered by the Rejected Contracts. In many instances, to the extent necessary, the Debtors can purchase similar products and services from third parties on the same or more favorable terms and conditions. In addition, the Debtors have determined that they no longer need the personal property leased under the Rejected Leases. Consequently, the Debtors, in their sound business judgment, have determined that the Rejected Agreements do not provide an economic value to their estates and, therefore, the administrative costs and obligations associated therewith are burdensome. Moreover, the rejection of the Rejected Agreements will relieve the Debtors' estates of approximately \$101,400.00 per month and over \$1,216,600.00 annually in liabilities. Accordingly, the Debtors seek authority, pursuant to section 365(a) of the Bankruptcy Code, to reject the Rejected Agreements effective as of the Commencement Date.

Waiver of Memorandum of Law

13. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

14. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) attorneys for the Creditors' Committee; (c) attorneys for the Debtors' prepetition secured lenders; (d) all the other parties on the Master Service List maintained in these chapter 11 cases; and (e) all the counter parties to the Rejected Agreements. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

15. No prior Motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to reject each of the Rejected Agreements effective as of the Commencement Date; and (ii) granting such other relief as is just and proper.

Dated: New York, New York
August 4, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
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Exhibit A

List of Contracts and Leases to be Rejected

Debtor Entity	Counterparty and mailing address	Description of Contract or Lease	Effective Date of agreement (if known)
Allegiance Telecom Company Worldwide	Northeast Optic Network, Inc. 2200 West Park Drive Suite 200 Westborough, MA 01581	Agreement for the provision of Fiber Optic Facilities and Services between NorthEast Optic Network, Inc. ("NEON") and HarvardNet (assigned to Allegiance Telecom Company Worldwide) dated May 25, 1999	25-May- 99
Allegiance Telecom Company Worldwide	Paix.net, Inc. n/k/a Switch and Data 1715 N. Westshore Boulevard Suite 650 Tampa, FL 33607	Participant License Agreement - NY	06-June-00
Allegiance Telecom Inc.	InfoSpace (f/k/a Go2Net, Inc.) 999 Third Avenue Suite 4700 Seattle WA 98104	Customized Portal Development Agreement	15-Dec-99
Allegiance Telecom Inc.	Premium Coffee Service P.O. Box 560991 Miami, FL 3256-0991	Beverage Service Agreement	05-Jul-00
Allegiance Telecom Inc.	ADT Security Services, Inc. Attn.: Joshua C. Cook CARMS Billing Manager 777 South Sable Aurora, CO 80012	Service for 3 Gannett Drive, Suite 100 White Plains, NY	
Allegiance Telecom Inc.	ADT Security Services, Inc. Attn.: Joshua C. Cook CARMS Billing Manager 777 South Sable Aurora, CO 80012	Service for 1221 East Dyer Road, Suite 215 Santa Ana, CA	
Allegiance Telecom Inc.	ADT Security Services, Inc. Attn.: Joshua C. Cook CARMS Billing Manager 777 South Sable Aurora, CO 80012	Service for 1400 Centre Park Blvd., Suite 605 West Palm Beach, FL	
Allegiance Telecom Inc.	ADT Security Services, Inc. Attn.: Joshua C. Cook CARMS Billing Manager 777 South Sable Aurora, CO 80012	Service for 201 Route 17 North, Suite 1002 Rutherford NJ	

Allegiance Telecom Inc.	ADT Security Services, Inc. Attn.: Joshua C. Cook CARMS Billing Manager 777 South Sable Aurora, CO 80012	Service for 3350 Shelby Street, Suite 150 Ontario, CA	
InterAccess Co. merged into Allegiance Internet, Inc.	DELL Financial Services One Dell Way Mail Location: SP1 Round Rock, TX 78682	Equipment Lease #001-1121039-002	28-Mar-00
InterAccess Co. merged into Allegiance Internet, Inc.	DELL Financial Services One Dell Way Mail Location: SP1 Round Rock, TX 78682	Equipment Lease #001-1121039-004	06-Jun-00
InterAccess Co. merged into Allegiance Internet, Inc.	Rave Financial Services, Inc (n/k/a Comtech Capital, LLC) 36940 Metro Court Sterling Heights, MI 48312	Lease Agreement	07-Aug-00
Jump.Net, Inc.	Deutsche Financial Services 950 Winter Street Suite 1200 Waltham, MA 02154	Master Lease Agreement #40003292	11-Feb-00
Jump.Net, Inc.	United Capital Leasing Corporation (and) Macarthur Business Credit, LLC 2082 Business Center Drive Suite 235 Irvine, California 92612	Master Equipment Lease Agreement No: 1099-14	15-Oct-99
Jump.Net, Inc.	Warden-Kent Enterprises, Inc. 920 18th Street Plano, TX 75074	Equipment Lease #52-272231-1	05-Feb-99
Shared Technologies Allegiance Inc.	American Alarm Systems 1101 S. Grand Ave., Suite G Santa Ana, CA 92705	Lease, Installation & Monitoring Contract	15-Oct-99
Virtualis Internet Systems a/k/a Virtualis Systems, Inc.	Clarity Credit Corporation 311 Park Place Boulevard Suite 100 Clearwater, FL 33759	Clarity Asset Management Program	15-Jul-99
Virtualis Systems, Inc.	DELL Financial Services One Dell Way Mail Location: SP1 Round Rock, TX 78682	Lease #007356948-004	12-Oct-99
Virtualis Systems, Inc.	Sony Financial Services 24301 Southland Drive Suite 300 Hayward, CA 94545	Business Lease Agreement #599398	

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	:	
Debtors.	:	Jointly Administered
	X	

**NOTICE OF HEARING ON MOTION FOR
AN ORDER PURSUANT TO SECTION 365(a) OF THE
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that upon the annexed motion, dated August 4, 2003 (the “Motion”), of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), requesting an order authorizing the Debtors to reject certain executory contracts and unexpired leases pursuant to section 365(a) of title 11 of the United States Code, as more fully set forth in the Motion, a hearing will be held before the Hon. Robert D. Drain, United States Bankruptcy Judge, in Room 610 of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004-1408,

on August 19, 2003, at 10:00 a.m., prevailing Eastern Time, or as soon thereafter as the Debtors are heard.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Southern District of New York, shall set forth the name of the objectant, the nature and amount of claims or interests held or asserted by the objectant against the Debtors' estates or property, the basis for the objection, and the specific grounds therefore, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-242, and shall further be served upon (a) Kirkland & Ellis, 153 East 53rd Street, New York, New York 10022 (Attn. Samuel S. Kohn, Esq.); (b) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn. Pamela J. Lustrin, Esq.); (c) Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., 24th

Floor, Atlanta, Georgia 30308 (Attn. Jesse Austin, III, Esq.); and (d) Akin Gump Strauss Hauer
Feld LLP, 590 Madison Avenue, New York, New York 10022 (Attn. Ira S. Dizengoff, Esq.), so
as to be actually received no later than August 14, 2003, at 4:00 p.m. (prevailing Eastern Time).

Dated: New York, New York
August 4, 2003

Respectfully submitted,

/s/ Jonathan S. Henes

Matthew A. Cantor (MC-7727)

Jonathan S. Henes (JH-1979)

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Debtors.	:	Jointly Administered
	X	

**ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY
CODE AUTHORIZING THE DEBTORS TO REJECT CERTAIN
REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon consideration of the motion (the “Motion”), dated August 4, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, debtors in possession (collectively, the “Debtors”), seeking entry of an order, pursuant to section 365(a) of the Bankruptcy Code,¹ authorizing the Debtors to reject the Rejected Agreements, as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates and creditors; and due and proper notice of the Motion having been given; and good and sufficient cause appearing therefor; it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejected Agreements shall be deemed rejected effective as of the Commencement Date; and it is further

ORDERED that the Debtors do not waive or release any rights, claims, causes of action, or defenses, including rights of set-off or recoupment with respect to such Rejected Agreements; and it is further

¹ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion.

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2003

UNITED STATES BANKRUPTCY JUDGE