

Hearing Date and Time: August 19, 2003, at 10:00 a.m.  
Objection Deadline: August 14, 2003, at 4:00 p.m.

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**Attorneys for Debtors and Debtors in Possession**

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

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

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**MOTION FOR AN ORDER PURSUANT TO SECTION 365(a)  
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

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. The Debtors’ chapter 11 cases have been consolidated for

procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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

### **Jurisdiction**

3. 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.

### **Background**

4. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (*i.e.*, national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;

- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

5. As of the Commencement Date, Allegiance served more than 100,000 business customers in 36 markets. As of the Commencement Date, Allegiance employed approximately 3,560 people, of which approximately 97 employees were covered by collective bargaining agreements.

6. 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.

### **The Leases**

7. As of the Commencement Date, the Debtors were parties to approximately 126 unexpired leases of nonresidential real property. Since the Commencement Date, the Debtors have been engaged in the process of evaluating their unexpired leases to determine which are valuable to their estates and which are burdensome. To date, the Debtors have obtained Court approval to reject thirty-two (32) of the Debtors' unexpired leases of nonresidential real property pursuant to section 365(a) of the Bankruptcy Code. By this motion, the Debtors seek Court approval to reject the Burbank Lease and the Philadelphia Lease (both of which are defined below) because the premises leased thereunder are not necessary to the Debtors' ongoing business operations and, therefore, are burdensome to their estates.

### **The Burbank Lease**

8. On or about June 16, 2002, Shared Technologies Allegiance, Inc. (“Shared Technologies”), a Debtor in these chapter 11 cases, acquired certain unexpired leases of nonresidential real property from WorldCom Technologies, Inc. (“WorldCom Technologies”), pursuant to that certain Asset Purchase Agreement, dated as of June 16, 2002. One of the unexpired leases of nonresidential property that Shared Technologies acquired from WorldCom Technologies was that certain lease, dated September 9, 1998, between Lake Street Industrial Partners (“Lake Street”), as landlord and WorldCom Technologies, as tenant, which governs the premises (the “Burbank Premises”) located at 1022 North Lake Street, Burbank, California 91502 (the “Burbank Lease”). The monthly rent under the Burbank Lease is \$5,883.82. The Burbank Lease is set to expire on October 31, 2003. The Debtors no longer conduct any business on the Burbank Premises and, as such, on June 6, 2003, the Debtors surrendered the Burbank Premises to Lake Street. Based on the foregoing, the Debtors have determined that the Burbank Lease is burdensome to the Debtors’ estates and should be rejected, effective as of June 6, 2003 (i.e., the date on which the Debtors surrendered the Burbank Premises), pursuant to section 365(a) of the Bankruptcy Code.

### **The Philadelphia Lease**

9. On or about June 17, 2002, Shared Technologies acquired certain unexpired leases of nonresidential real property from RealCom Communications Corporation (“RealCom”), an affiliate of WorldCom, Inc., pursuant to that certain Asset Purchase Agreement, dated as of June 17, 2002. One of the unexpired leases of nonresidential property that Shared Technologies acquired from RealCom was that certain lease, dated July 1, 1987, as amended, between Maguire/Thomas Partners-Philadelphia Plaza Associates (“Philadelphia Plaza”), as

landlord and RealCom, as tenant, which governs the premises (the “Philadelphia Premises,” together with the Burbank Premises, the “Premises”) located at 2005 Market Street, Philadelphia, Pennsylvania 19103 (the “Philadelphia Lease, and together with Burbank Lease, the “Leases”).

10. In connection with the acquisition of the Philadelphia Lease, Shared Technologies and RealCom entered into that certain Assignment and Assumption of Lease, dated July 16, 2002 (the “Philadelphia Lease Assignment Agreement”), to assign the Philadelphia Lease to Shared Technologies, effective as of June 18, 2002. Pursuant to the Philadelphia Lease Assignment Agreement, Philadelphia Plaza’s consent was a condition precedent to the effectiveness of the assignment of the Philadelphia Lease by RealCom to Shared Technologies. Philadelphia Plaza did not consent to the assignment of the Philadelphia Lease. Nonetheless, the Debtors began occupying the Philadelphia Premises on June 18, 2002. On or prior to September 3, 2002, the Debtors vacated the Philadelphia Premises. The tenant’s obligations under the Philadelphia Lease for rent and other charges were approximately \$10,000 per month. Shared Technologies paid this amount under the Philadelphia Lease from June 18, 2002 through and including May of 2003.<sup>1</sup>

11. Based on the foregoing, the Debtors do not believe that the assignment of the Philadelphia Lease to the Debtors was effective and, as a result, the Debtors submit that they are not a party to the Philadelphia Lease. Nevertheless, out of an abundance of caution, the Debtors request that the Court approve, to the extent the Debtors have an interest in the Philadelphia Lease, the rejection of the Philadelphia Lease as of the Commencement Date (as the

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<sup>1</sup> The Debtors reserve the right to pursue any and all claims they may have in connection with the Philadelphia Lease, including, claims under chapter 5 of the Bankruptcy code for overpayments of rent paid to Philadelphia Plaza.

Debtors vacated the Philadelphia Premises on or prior to September 3, 2002, more that eight (8) months prior to the Commencement Date).

### Applicable Law

12. 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).

13. Upon finding that a debtor has exercised its sound business judgment in determining that the rejection of a 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 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).

14. In an effort to maximize the value of their estates, the Debtors have commenced the process of reviewing their overall operations and, in that regard, have determined, in their sound business judgment, that the Leases are burdensome and provide no economic value to their estates.

15. In determining to seek authority to reject the Leases, the Debtors have concluded, based on a careful analysis, that the Leases hold little, if any, value given the terms of such Leases and the depressed commercial real estate markets in which the leased properties are located. Due to the foregoing and the continuing financial burden that the Debtors face as a result of the administrative expenses arising under the Leases during the chapter 11 cases, the Debtors believe that any attempt to market and assign the Leases would be significantly more costly than any potential value that might be realized by any future assignment or sublease thereof.

16. As noted above, the Debtors have surrendered the Premises. Specifically, the Debtors surrendered the Burbank Premises on June 6, 2003 and the Philadelphia Premises on or prior to September 3, 2002. Thus, the Debtors request the effective date of the rejection of the Burbank Lease to be June 6, 2003 and the Philadelphia Lease to be the Commencement Date.

17. By rejecting the Leases, the Debtors will realize monthly savings of approximately \$16,000 and annual savings of approximately \$192,000. Based on the foregoing, the Debtors submit that the decision to reject the Leases is a product of the Debtors' sound business judgment and the rejection of the Leases will inure to the direct benefit of the Debtors' estates. Accordingly, the relief requested herein should be approved.

#### **Waiver of Memorandum of Law**

18. 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**

19. Notice of this Motion has been provided to: (a) the Office of the U.S. Trustee; (b) attorneys for the Debtors' prepetition lenders; (c) attorneys for the Creditors' Committee and (d) the counterparties to the Leases (and/or their attorneys). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

20. 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, substantially in the form annexed hereto, authorizing the Debtors to reject each of the Leases effective as of the date set forth herein and granting such other relief as is just and proper.

Dated: New York, New York  
August 6, 2003

Respectfully submitted,

/s/ Matthew A. Cantor

Matthew A. Cantor (MC-7727)

Jonathan S. Henes (JH-1979)

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153 East 53<sup>rd</sup> Street

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Attorneys for Debtors and Debtors in Possession

Hearing Date and Time: August 19, 2003, at 10:00 a.m.  
Objection Deadline: August 14, 2003, at 4:00 p.m.

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

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

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**NOTICE OF HEARING ON THE DEBTORS' MOTION FOR AN ORDER  
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE  
APPROVING THE DEBTORS' REJECTION OF CERTAIN  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

PLEASE TAKE NOTICE that upon the annexed motion, dated August 6, 2003 (the "Motion"), of Allegiance Telecom, Inc. and its subsidiaries, as debtors and debtors in possession (the "Debtors"), requesting an order, pursuant to section 365(a) of title 11, United States Code, approving the rejection of certain unexpired leases of nonresidential real property, 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, One Bowling Green, New York, New York, 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 any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the

Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at <http://www.nysb.uscourts.gov>, the official website for the Bankruptcy Court), 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 shall be served in accordance with General Order M-242, upon (i) Kirkland & Ellis LLP, Citigroup Center, 153 East 53<sup>rd</sup> Street, New York, New York 10022 (Attn: Jonathan S. Henes, Esq.), (ii) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Pamela J. Lustrin, Esq.), (iii) Paul, Hastings, Janofsky & Walker LLP, 600 Peachtree Street, N.E., 24<sup>th</sup> Floor, Atlanta, Georgia 30308 (attn. Jesse Austin III, Esq.), and (iv) Akin Gump Strauss Hauer Feld LLP, 590 Madison, New York, New York 1022 (Attn. Ira S. Dizengoff, Esq.), so as to be received no later than August 14, 2003, at 4:00 p.m. (prevailing Eastern Time).

Dated: New York, New York  
August 6, 2003

Respectfully submitted,

/s/ Matthew A. Cantor  
Matthew A. Cantor (MC-7727)  
Jonathan S. Henes (JH-1979)  
KIRKLAND & ELLIS LLP  
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Attorneys for Debtors and Debtors in Possession

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

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

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**ORDER PURSUANT TO SECTION 365(a)  
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the “Motion”), dated August 6, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order approving the rejection of the Leases<sup>1</sup> pursuant to section 365 of the Bankruptcy Code, 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, pursuant to section 365 of the Bankruptcy Code, the Philadelphia Lease shall be deemed rejected effective as of the Commencement Date; and it is further

ORDERED that, pursuant to section 365 of the Bankruptcy Code, the Burbank Lease shall be deemed rejected as of June 6, 2003; and it is further

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

ORDERED that nothing herein shall constitute a waiver by the Debtors of any claims they may have against any of the lessors under the Leases, whether or not such claims are directly related to any of the Leases; 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

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UNITED STATES BANKRUPTCY JUDGE