

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	

**STIPULATION AND ORDER ADJOURNING THE HEARING
ON MOTION OF BP COMMERCE, LLC FOR RELIEF FROM
AUTOMATIC STAY TO EXERCISE SETOFF RIGHTS AGAINST
SECURITY DEPOSIT AND TO COMPEL PAYMENT OF POST-PETITION RENT**

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), and BP Commerce, LLC (“BP Commerce”), by and through their respective undersigned attorneys, hereby stipulate and agree, subject to Court approval, as follows:

WHEREAS, on May 14, 2003, the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”); and

WHEREAS, the Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, on June 9, 2003, the Debtors filed that certain Motion For an Order Pursuant to Section 365(a) of the Bankruptcy Case Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property (the “Rejection Motion”); and

WHEREAS, by the Rejection Motion, the Debtors sought authorization to reject, among others, that certain Office Building Lease, dated June 22, 2000, between BP Commerce (as successor in interest to CC II Realty, Inc.) and ALGX Business Internet, Inc. (as successor in

interest to Intermedia Communications, Inc.) (the “Rejected Lease”) for the premises at 7601 Ora Glen Drive, Greenbelt, Maryland 20770 (the “Premises”); and

WHEREAS, on June 20, 2003, BP Commerce filed a limited objection to the Rejection Motion, which objection has been subsequently resolved; and

WHEREAS, under the Rejected Lease, prior to the Commencement Date, the Debtors have posted and BP Commerce currently holds a cash security deposit in the amount of \$1,158,000.10 (the “Security Deposit”); and

WHEREAS, on June 26, 2003, BP Commerce filed that certain Motion for Relief from the Automatic Stay to Exercise Setoff Rights Against Security Deposit and to Compel Payment of Post-Petition Rent (the “Lift Stay Motion”); and

WHEREAS, on July 15, 2003, this Court entered the Order granting the Rejection Motion; and

WHEREAS, on July 24, 2003, BP Commerce filed a proof of claim on account of the alleged rejection damages under the Rejected Lease in the amount of \$1,811,575.30 (the “Proof of Claim”); and

WHEREAS, the Lift Stay Motion was set for a hearing before this Court on July 29, 2003 (the “Hearing”); and

WHEREAS, on July 29, 2003, BP Commerce entered into a new lease agreement with The Presidio Corp. (“Presidio”) with respect to a portion of the Premises, which agreement provides for monthly rent in the amount of \$35,239.21; and

WHEREAS, in an attempt to resolve the matter amicably, the Debtors and BP Commerce have mutually agreed to adjourn the Hearing to August 19, 2003, at 10:00 a.m., prevailing Eastern Time; and

WHEREAS, in connection with the aforementioned adjournment, the Debtors have agreed to allow BP Commerce to deduct from the Security Deposit an amount of **\$186,596.17** (the “Deducted Amount”), which is equal to the amount of rent for July 2003 and for August 1 through and including August 15, 2003 (i.e., the aggregate amount of \$203,647.28) minus the amount of rent to be received from Presidio (i.e. the amount of \$17,051.11), which amount shall be further reduced by the pro rata portion of any rent received by BP Commerce from any other third party tenant with respect to the Premises from the date hereof through and including August 15, 2003; provided that BP Commerce represents in this Stipulation that, during the period from July 1, 2003 through and including the date hereof, BP Commerce has not signed a lease agreement with respect to the Premises with a third party tenant, other than the new lease agreement with Presidio as set forth above; and

WHEREAS, BP Commerce has been maintaining and has agreed to continue maintaining the Security Deposit (as reduced by the Deducted Amount) in a segregated interest bearing bank account.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The hearing with respect to Lift Stay Motion shall 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, 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 (the “Adjourned Hearing Date”).

2. If the Debtors and BP Commerce are unable to resolve the issues presented by the Lift Stay Motion, the Debtors reserve their rights to object to the relief requested in the Lift Stay Motion and BP Commerce reserves its right to respond to any such objection.

3. The deadline to object to the relief requested in the Lift Stay Motion is extended until August 15, 2003 at 5:00 p.m., prevailing Eastern Time.

4. BP Commerce represents that, during the period from July 1, 2003 through and including the date hereof, BP Commerce has not signed a lease agreement with respect to the Premises with a third party tenant, other than the new lease agreement with Presidio.

5. BP Commerce is authorized to deduct from the Security Deposit the Deducted Amount (as reduced, if applicable, in accordance with this Stipulation) upon approval of this Stipulation by the Court; provided, however, that to the extent that the event triggering reduction of the Deducted Amount occurs after BP Commerce deducts the Deducted Amount from the Security Deposit, BP Commerce agrees to return the amount of such reduction to the Debtors as soon as reasonably practicable.

6. Within five (5) business days from the date on which BP Commerce deducts the Deducted Amount from the Security Deposit, BP Commerce shall file an amended proof of claim (the "Amended Proof of Claim") indicating that the amount of BP Commerce's claim, which was reflected in the Proof of Claim, has been reduced by the Deducted Amount and the amount of rent to be received from Presidio on an ongoing basis; provided that the Debtors reserve their rights to object to the Proof of Claim, and after the amendment thereof, to the Amended Proof of Claim on any grounds; provided, further that BP Commerce reserves all of its rights to respond to any objection to the Proof of Claim and/or the Amended Proof of Claim filed by the Debtors.

7. Other than as otherwise agreed to herein, BP Commerce is stayed, pursuant to section 362 of the Bankruptcy Code, from taking any action in respect of the Security Deposit.

8. Any and all rights that BP Commerce may assert with respect to relief under section 362(e) of the Bankruptcy Code shall commence no earlier than thirty (30) days after the Adjourned Hearing Date.

9. This Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation and Order.

10. The undersigned on behalf of the Debtors and BP Commerce each warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Order on behalf of such party.

11. This Stipulation and Order shall have no force or effect and shall not be binding upon either the Debtors or BP Commerce until it is approved by the Court.

Dated: New York, New York
August 4, 2003

KIRKLAND & ELLIS LLP
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
(212) 446-4800

WHITEFORD, TAYLOR & PRESTON,
L.L.P.
Seven Saint Paul Street
Baltimore, Maryland 21202-1626
(410) 347-8700

By: /s/ Matthew A. Cantor
Matthew A. Cantor (MC-7727)

By: /s/ Brent C. Strickland, Esq.
Brent C. Strickland, Esq.

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

ATTORNEYS FOR BP COMMERCE

SO ORDERED, this 18th day of August 2003

/s/ Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE