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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

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**MOTION OF THE DEBTORS FOR AN ORDER PURSUANT TO SECTIONS 365(a)  
AND 554 OF THE BANKRUPTCY CODE AUTHORIZING THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED PERSONAL PROPERTY  
LEASES AND THE ABANDONMENT OF CERTAIN PERSONAL 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.

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 June 30, 2003, the Debtors had approximately \$269.2 million of cash on hand. As of June 30, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.292 billion and liabilities totaling approximately \$1.459 billion. For the six months ending June 30, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$401.2 million and net losses of approximately \$212.4 million.

### **Relief Requested**

8. By this Motion, the Debtors request the entry of an order authorizing and approving the (a) rejection, pursuant to section 365(a) of the Bankruptcy Code, of certain (i) executory contracts (collectively, the "Rejected Contracts") and (ii) unexpired personal property leases (collectively, the "Rejected Leases," together with the Rejected Contracts, the "Rejected Agreements") and (b) abandonment of certain personal property related to the Rejected Agreements pursuant to section 554 of the Bankruptcy Code. 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.

10. Currently, certain of the Debtors' personal property, including frames, cables, switches, data aggregation equipment and related cards (the "Personal Property"), is located at each collocation site which is associated with the following Rejected Agreements: (i) the Interconnection Agreement with Ameritech Wisconsin, dated November 12, 1998, and (ii) the Interconnection Agreement with Ameritech Illinois, dated April 8, 1998. Specifically, such Personal Property is located at thirteen (13) collocation sites in Illinois and five (5) collocation sites in Wisconsin. The Debtors do not need the Personal Property to operate their businesses. In addition, the Debtors believe that the Personal Property has little or no value to the Debtors' estates as the cost of removing, storing and selling the Personal Property would be greater than the proceeds that would be derived from a sale of the Personal Property. Accordingly, the Debtors submit that the Personal Property should be abandoned in accordance with section 554 of the Bankruptcy Code and such abandonment is in the best interests of the Debtors' estates.

#### **Basis for Relief**

11. 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).

12. 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).

13. Section 554(a) of the Bankruptcy Code provides that a debtor may abandon, subject to bankruptcy court approval, “property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” Thus, in order to authorize the abandonment of property, the bankruptcy court must find either: (a) the property is burdensome to the estate or (b) the property is both of inconsequential value and inconsequential benefit to the estate. See, e.g., Midlantic Nat’l Bank v. N.J. Dep’t of Evtl. Prot., 474 U.S. 494, 497 (1986), reh’g denied, 475 U.S. 1091 (1986); In re Texaco, Inc., 90 B.R. 38, 44 (S.D.N.Y. 1988); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 882 n.7 (Bankr. S.D.N.Y. 1990).

**The Rejection of the Rejected Agreements and the Abandonment  
of the Personal Property is in the Best Interests of the Estates**

14. 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 enable the Debtors' estate to realize savings of approximately \$44,487.59 per month and over \$533,800.00 annually. Accordingly, the Debtors seek authority, pursuant to section 365(a) of the Bankruptcy Code, to reject the Rejected Agreements effective as of the date hereof.

15. As discussed above, the Personal Property is burdensome insofar as the cost of removing and storing such property will exceed the net proceeds that would be realized from its sale. Consistent with the provisions of the Bankruptcy Code, the abandonment of the Personal Property will terminate any and all of the Debtors' obligations related to or connected with the Personal Property as of the effective date of the abandonment. Accordingly, the Debtors seek authority, pursuant to section 554 of the Bankruptcy Code, to abandon the Personal Property effective as of the date hereof.

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

16. 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**

17. 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**

18. 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 authorizing the Debtors to (i) reject each of the Rejected Agreements and (ii) abandon the Personal Property effective as of the date hereof and granting such other relief as is just and proper.

Dated: New York, New York  
September 2, 2003

Respectfully submitted,

/s/ Jonathan S. Henes  
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Attorneys for Debtors and Debtors in Possession



## Exhibit A

### List of Contracts and Leases to be Rejected

<b>Debtor Entity</b>	<b>Counterparty and mailing address</b>	<b>Description of Contract or Lease</b>	<b>Effective Date of Contract or Lease</b>
Allegiance Telecom Company Worldwide	Paix.net, Inc. fka Metromedia Fiber Networks aka Abovenet nka Switch and Data 1715 N. Westshore Blvd. Suite 650 Tampa, FL 33607	Participant License Agreement - Dallas	6-June-00
Allegiance Telecom Inc.	Avaya Financial Services P.O. Box 463 Livingston NJ 07039-0463	Personal Svc. No. #73420550 (Account number S420550)	Unknown
Allegiance Telecom Inc.	Verizon Select Services 700 Hidden Ridge Irving, TX 75038	Maintenance Agreement	25-Oct-99
Coast to Coast Telecommunications, Inc.	Guardian 20800 Southfield Rd. Southfield, MI 48075-4238	Alarm Agreement	9-July-98
Coast to Coast Telecommunications, Inc.	Guardian 20800 Southfield Rd. Southfield, MI 48075-4238	Alarm Agreement for 123 N. Saginaw, Pontiac MI	2-Nov-99
Coast to Coast Telecommunications, Inc.	Guardian 20800 Southfield Rd., Southfield, MI 48075-4238	Alarm Agreement for 6060 N. Dixie, Clarkston MI	1-Dec-99
InterAccess Telecommunications Co.	Ameritech Wisconsin c/o SBC Telecommunications, Inc. V.P. and General Counsel 350 North Orleans, Floor 5 Chicago, IL 60654	Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and all amendments	12-Nov-98
InterAccess Telecommunications Co.	Ameritech Illinois c/o SBC Telecommunications, Inc. V.P. and General Counsel 350 North Orleans, Floor 5 Chicago, IL 60654	Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and all amendments	8-April-98
Allegiance Telecom Inc.	CareerBuilder LLC, 8420 W. Bryn Mawr Suite 900 Chicago, IL 60631	Website Recruitment Vendor	1-Jan-03

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Debtors.	:	Jointly Administered

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**NOTICE OF HEARING ON MOTION OF THE DEBTORS  
FOR AN ORDER PURSUANT TO SECTIONS 365(a) AND 554 OF  
THE BANKRUPTCY CODE AUTHORIZING THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED PERSONAL PROPERTY  
LEASES AND THE ABANDONMENT OF CERTAIN PERSONAL PROPERTY**

PLEASE TAKE NOTICE that upon the annexed motion, dated September 2, 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 (a) reject certain executory contracts and unexpired leases and (b) abandon certain personal property, pursuant to sections 365(a) and 554 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 September 15, 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](http://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 September 10, 2003, at 4:00 p.m. (prevailing Eastern  
Time).

Dated: New York, New York  
September 2, 2003

Respectfully submitted,

/s/ Jonathan S. Henes  
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UNITED STATES BANKRUPTCY COURT  
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	:	03-13057 (RDD)
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Debtors.	:	Jointly Administered

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**ORDER PURSUANT TO SECTIONS 365(a) AND 554  
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED PERSONAL  
PROPERTY LEASES AND ABANDON CERTAIN PERSONAL PROPERTY**

Upon consideration of the motion (the “Motion”), dated September 2, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, debtors in possession (collectively, the “Debtors”), seeking entry of an order authorizing the Debtors to (a) reject, pursuant to section 365(a) of the Bankruptcy Code,<sup>1</sup> the Rejected Agreements and (b) abandon the Personal Property pursuant to section 554 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 the Rejected Agreements shall be deemed rejected effective as of the date of the Motion; 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 the Personal Property shall be deemed abandoned and all of the Debtors' obligations related to or connected with the Personal Property shall terminate effective as of the date of the Motion; 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

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