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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re:

Allegiance Telecom, Inc., et al.,

Chapter 11
Case No. 03-13057 (RDD)
Jointly Administered

Debtors.

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**OBJECTION OF AMERITECH TO THE MOTION OF THE DEBTORS
FOR AN ORDER AUTHORIZING THE REJECTION OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED PERSONAL PROPERTY
LEASES AND THE ABANDONMENT OF CERTAIN PERSONAL PROPERTY**

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) ("Ameritech"), by their counsel, Jaspan Schlesinger Hoffman LLP, hereby submits the following objection to the 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 (the "Rejection Motion") and respectfully states:

Background

1. On May 14, 2003 (the "Petition Date"), the Debtors commenced cases under Chapter 11, Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

2. The Debtors have a number of interconnection agreements with Ameritech in each state in which they operate. Each interconnection agreement provides the terms by which the Debtors access the Ameritech network elements and interconnect with the Ameritech network in order to operate in the applicable state. Each of the interconnection agreements is a single, integrated contract that is not severable. Ameritech has consistently maintained that if the Debtors wish to, reject or assume and assign any of the services or facilities provided under an interconnection agreement, the Debtors must assume and assign the entire interconnection agreement and cure all of the defaults thereunder.

3. On September 2, 2003, the Debtors filed the Rejection Motion. In the Rejection Motion the Debtors seek authority to reject the contracts and leases (the "Contracts") listed in Exhibit A ("Exhibit A") of the Rejection Motion. Two of the Contracts listed in Exhibit A are interconnection agreements between the Debtors and Ameritech (the "Ameritech Interconnection Agreements").

4. In the Rejection Motion, the Debtors also seek, pursuant to Bankruptcy Code section 544, to abandon all Personal Property of the Debtors located in the thirteen colocation sites in Illinois and the five colocation sites in Wisconsin that are governed by the Ameritech Interconnection Agreements.¹ The Debtors state that they "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 and the cost of

¹ Personal Property is defined in the Rejection Motion.

removing, storing and selling the Personal Property would be greater than the proceeds that would be derived from a sale of the Personal Property" Debtor's Rejection Motion ¶ 10.

Argument

5. Under section 365 of the Bankruptcy Code "an executory contract may not be assumed in part and rejected in part. The Trustee must either assume the entire contract, *cum onere*, or reject the entire contract, shedding obligations as well as benefits" Collier on Bankruptcy ¶ 365.03[1]. *See, In re City Stores Co.*, 21 B.R. 809, 812 (Bankr. S.D.N.Y. 1982) ("A contract cannot be rejected in part and assumed in part."); In re Atlantic Computer Sys., Inc., 173 B.R. 844, 849 (S.D.N.Y. 1994) (noting that a debtor may not "cherry-pick" pieces of a contract it wishes to assume or reject).

6. In the Rejection Motion the Debtors seek to reject the Ameritech Interconnection Agreements to rid themselves of burdensome obligations, without relinquishing the valuable benefits they have acquired under the Ameritech Interconnection Agreements, specifically the possession and occupancy of thirteen colocation sites in Illinois and five colocation sites in Wisconsin to store the Debtors' Personal Property at the expense of Ameritech.

7. If the Debtors wish to reject the Ameritech Interconnection Agreements in full, the Debtors must relinquish all of the benefits thereunder, including use of the colocation sites for any purpose. This requires that the Debtors remove all of the Personal Property from the colocation sites. If the Debtors' Rejection Motion is granted in its present form, the Debtors will be able to reject the Ameritech Interconnection Agreements while still occupying these colocation sites. The Debtors' continued occupation of these colocation sites would preclude Ameritech from using and/or re-assigning the use of these colocation sites to others.

8. The Personal Property the Debtors seek to abandon, which they themselves recognize as burdensome and valueless, would have to be removed by Ameritech. The task of clearing the Debtor's personal property out of the eighteen colocation sites would be a tremendous expense for Ameritech to bear. To place this burden on Ameritech rather than on the Debtors is an inequitable shift of burden from the Debtors to Ameritech. This shifting of responsibility is made more offensive by the Debtors failure to provide any information regarding the existence of potential liens and/or claims in and to the Personal Property. Ameritech, in undertaking the removal of the Debtors' Personal Property may be exposed to liability to third parties who may have ownership and/or security interest in such Personal Property. Some of the Personal Property may be subject to tax liens. The Debtors have failed to provide any of this critical information.

9. Moreover, three of the Illinois colocation sites, specifically the sites numbered NPVLILNAH12, NBRKILNBH20, and EGVGILEGH22, have identifiers that are not the same as the Debtors' identifiers (the "Misidentified Sites"). The Debtors have failed to accurately identify the Misidentified Sites, therefore, it is impossible for Ameritech to determine precisely which sites may be rejected. Ameritech may also be exposed to liability for taking down sites that belong to another entity. The Debtors should not be allowed to put Ameritech in the position of having to guess which sites the Debtors seek to reject. The Debtors must provide additional information specifically identifying which sites they seek to reject. With respect to the Misidentified Sites the Debtors must provide documentary proof of the right to exercise dominion and control over these sites.

10. Accordingly, Ameritech requests that the Court order that a rejection of the Ameritech Interconnection Agreements will not be deemed effective until such time as the Debtors have removed all

of their equipment from and have completely vacated and tendered back to Ameritech, all eighteen of the colocation sites, that all colocation sites be specifically identified, and that all cost associated with the removal of the colocation sites be paid by the Debtors' together with such other and further relief as this Court deems just and proper.

Dated: Garden City, New York
September 10, 2003

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