

HEARING DATE AND TIME: November 7, 2003 at 10:00 a.m.
OBJECTION DEADLINE: November 3, 2003 at 4:00 p.m.

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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 OF THE DEBTORS FOR AN ORDER PURSUANT TO
SECTION 365(a) OF THE BANKRUPTCY CODE AND RULE 6006
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR
APPROVAL OF REJECTION OF CERTAIN INDIVIDUAL SERVICE ORDERS**

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").

2. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) 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”).

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. No trustee or examiner has been appointed 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. The Debtors are facilities-based national local exchange carriers that provide 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. The Debtors offer their 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 June 30, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of June 30, 2003, the Debtors employed approximately 3,350 people, of which approximately 91 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.

The Service Orders

8. In the ordinary course of business, the Debtors purchase certain telecommunication services pursuant to (a) tariffs filed by incumbent and competitive local exchange carriers ("LECs") and interexchange carriers ("IXCs") with the Federal Communications Commission and/or various state public utility commissions and (b) various master service agreements ("MSAs") among the Debtors and certain access providers (the "Providers"). In general, the Debtors purchase these services by submitting a service order to the LEC, IXC, or Provider, respectively.

9. Since the Commencement Date, the Debtors have reviewed the operating expenses and capacity of their network to determine how to maximize its value on a long-term basis. This network optimization process is an ongoing, integral component of the Debtors' long-range business plan. In connection with the foregoing, the Debtors have determined that

they do not require the circuits and facilities (the “Circuits”) purchased through the service orders (the “Service Orders”), which are listed on Exhibit “A” annexed hereto. In making this determination, the Debtors analyzed and considered, among other things, network capacity, costs, the remainder of the term of the Service Orders, any overlap in services, other inefficiencies with respect to the Circuits and their ability to move traffic to alternative circuits in a more cost-effective manner. Each of the Service Orders is for a specific term and certain of the Service Orders carry a penalty for early termination.

10. In addition to the Service Orders, the Debtors are parties to numerous other service orders for telecommunication services. In that regard and consistent with the foregoing, the Debtors are in the process of evaluating such service orders to determine which are valuable to the estate and which are burdensome. The Debtors anticipate identifying additional burdensome service orders, other than the Service Orders, and, in such event, will seek authority from this Court to reject them in the future.

Relief Requested

11. By this Motion, the Debtors respectfully request the entry of an order, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, approving the rejection of the Service Orders, effective as of the disconnect date set forth in the disconnect notice for each Circuit.

Basis for Relief

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). The business judgment standard requires that the court approve the debtor's business decision unless that judgment is the product of bad faith, whim or caprice. Lubizol Enters. V. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.) 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

13. Upon finding that the Debtors have exercised their sound business judgment in determining that rejection of the Service Orders is in the best interests of the Debtors, their 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. As noted above, in an effort to maximize the value of their estates, the Debtors have been reviewing their overall operations and, in that regard, have determined, in their sound business judgment, that the Service Orders are burdensome and provide no economic value to their estates. Specifically, the Debtors analyzed the Circuits and determined that they either are no longer of any value to the Debtors or the Debtors have been able to secure alternate facilities at lower or comparable rates. Thus, due, in part, to the continuing burden that the Debtors face as a result of the administrative expenses arising under the Service Orders and the Debtors' ability to purchase products and services from third parties on similar or more favorable terms and conditions when needed, the Debtors believe, in their sound business judgment, that the rejection of the Service Orders is in the best interests of the Debtors' estates. Moreover, the

monthly charges under the Service Orders are \$11,000. Accordingly, the rejection of the Service Orders will enable the Debtors to realize savings of \$209,000 for the remainder of the terms of the Service Orders. Based on the foregoing, the Debtors submit that the rejection of the Service Orders, effective as of the disconnect date set forth in the disconnect notice for each Circuit, is in the best interests of the Debtors and their estates and should be approved.

Waiver of Memorandum of Law

15. 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

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

No Prior Request

17. 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 Service Orders effective as of the disconnect date set forth in the disconnect notice for each Circuit; and (ii) granting such other relief as is just and proper.

Dated: New York, New York
October 24, 2003

Respectfully submitted,

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

Exhibit A

List of Individual Service Orders to be Rejected

Debtor Entity	Name & Mailing Address of Vendor	Circuit Number	Term Start Date	Term End Date	MSA or Tariff
Allegiance Telecom of California, Inc. Case No: 03-13069-rdd	Pacific Bell n/k/a SBC Contract Administration Attn.: Notices Manager 311 S. Akard, 9th Floor Dallas, TX 75202-5398	18/OBGS/507521	06/01/02	06/01/05	Tariff
Allegiance Telecom of California, Inc. Case No: 03-13069-rdd	Pacific Bell n/k/a SBC Contract Administration Attn.: Notices Manager 311 S. Akard, 9th Floor Dallas, TX 75202-5398	18/OBGS/507520	06/01/02	06/01/05	Tariff

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Debtors.	: Jointly Administered
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**NOTICE OF HEARING ON MOTION OF THE DEBTORS FOR AN ORDER
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE AND RULE 6006
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR
APPROVAL OF REJECTION OF CERTAIN INDIVIDUAL SERVICE ORDERS**

PLEASE TAKE NOTICE that upon the annexed motion, dated October 24, 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 individual service orders 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 November 7, 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 LLP, 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 November 3, 2003, at 4:00 p.m. (prevailing Eastern Time).

Dated: New York, New York
October 24, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11 Case No
Allegiance Telecom, Inc., et al.,	:	03-13057 (RDD)
Debtors.	:	Jointly Administered
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**ORDER PURSUANT TO SECTION 365(A) OF THE BANKRUPTCY CODE
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6006 AUTHORIZING
THE REJECTION OF CERTAIN INDIVIDUAL SERVICE ORDERS**

Upon consideration of the motion (the “Motion”), dated October 24, 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 pursuant to section 365(a) of title 11 of the United States Code (the “Bankruptcy Code”) and rule 6006 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtors to reject the Service Orders,¹ as more fully set forth in the Motion; and the Court having jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. sections 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and due and proper notice of the Motion having been given; and after due deliberation and consideration; and good and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the rejection of the Service Orders is approved, with such rejection being effective as of the date of the disconnect order submitted for each Service Order; and it is further

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

ORDERED that any proof of claim for damages arising from the rejection of any of the Service Orders must be filed on or before forty-five (45) days after the receipt of a disconnect order for a Service Order, and any claims resulting from the rejection of the Service Orders not so filed shall be forever barred from participating in the Debtors' chapter 11 cases and receiving any dividend or distribution thereon; 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 Service Orders and claims; and it is further

ORDERED that nothing in this Order shall be construed as relieving the Debtors or any other person or entity of any obligation to comply with section 214 of the Federal Communications Act or any other applicable law; and it is further

ORDERED that the Debtors are hereby 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 retains 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