

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION FOR AN ORDER PURSUANT TO SECTION 365(a)
OF THE BANKRUPTCY CODE APPROVING THE REJECTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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 September 30, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of September 30, 2003, the Debtors employed approximately 2,912 people, of which approximately 98 employees were covered by collective bargaining agreements.

7. As of September 30, 2003, the Debtors had approximately \$284.1 million of unrestricted cash on hand. As of September 30, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.226 billion and liabilities totaling approximately \$1.455 billion. For the nine months ending September 30, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$589.4 million and net losses of approximately \$275.6 million.

Relief Requested

8. By this Motion, the Debtors request the entry of an order, pursuant to section 365(a) of the Bankruptcy Code, approving the rejection of (a) a certain executory contract (the "Rejected Contract") and (b) certain unexpired personal property leases (the "Rejected Leases," and together with the Rejected Contract, the "Rejected Agreements"). 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 decide 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 determined that they no longer need the products and/or services

covered by the Rejected Agreements. 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 in the future.

Basis for Relief

10. 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).

11. 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).

12. In an effort to maximize the value of their estates, the Debtors have been reviewing their overall operations and, as noted above, have determined that they no longer need the products and/or services covered by the Rejected Agreements. 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 relieve the Debtors' estates of \$9,644.38 per month and approximately \$86,300 for the remainder of the terms of Rejected Agreements. 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.

Waiver of Memorandum of Law

13. 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

14. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) attorneys for the Committee; (c) attorneys for the Debtors' prepetition secured lenders; (d) the counter-parties to the Rejected Agreements; and (e) all the 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

15. 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 Rejected Agreements effective as of the date hereof; and (ii) granting such other relief as is just and proper.

Dated: New York, New York
November 19, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Debtors and Debtors in Possession

Exhibit A

List of Contracts and Leases to be Rejected

Debtor Entity	Counter Party and Mailing Address	Description of Contract or Lease	Effective Date of Contract or Lease (if known)
Shared Technologies Allegiance Inc.	Xerox Capital Services 1301 Ridgeview Dr. Lewisville, TX 75057	#666872411	Unknown
Shared Technologies Allegiance Inc.	Xerox Capital Services 1301 Ridgeview Dr. Lewisville, TX 75057	#78340312	Unknown
Allegiance Telecom, Inc.	Taurus Publishing, Inc. 3300 N. Central Avenue Phoenix, AZ 85012	Advertising Agreement	03/31/03

HEARING DATE AND TIME: December 16, 2003 at 10:00 a.m.
OBJECTION DEADLINE: December 11, 2003 at 4:00 p.m.

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**NOTICE OF HEARING ON MOTION FOR AN
ORDER PURSUANT TO SECTION 365(a) OF THE
BANKRUPTCY CODE APPROVING THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that upon the annexed motion (the “Motion”), dated November 19, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), requesting an order approving the rejection of certain executory contracts and unexpired leases, 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

December 16, 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, Citigroup Center, 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 December 11, 2003, at 4:00 p.m. (prevailing Eastern Time).

Dated: New York, New York
November 19, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER PURSUANT TO SECTION 365(a) OF THE
BANKRUPTCY CODE APPROVING THE REJECTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon consideration of the motion (the “Motion”), dated November 19, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, debtors in possession (collectively, the “Debtors”), seeking entry of an order, pursuant to section 365(a) of the Bankruptcy Code,¹ approving the rejection of the Rejected Agreements, 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

ORDERED that any proof of claim for damages arising from the rejection of the Rejected Agreements must be filed on or before forty-five (45) days after the date of this Order, and any claims resulting from the rejection of the Rejected Agreements not so filed shall be

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

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 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