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Hearing Date: January 15, 2004, at 10:00 am
Objection Deadline: January 12, 2004, at 4:00 pm

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ALLEGIANCE TELECOM, INC., et al.,	:	Case No. 03-13057 (RDD)
Debtors.	:	(Jointly Administered)

OBJECTION OF THE OPERATING TELEPHONE COMPANY SUBSIDIARIES OF VERIZON COMMUNICATIONS INC. TO MOTION OF THE DEBTORS PURSUANT TO SECTION 554 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6007 FOR AN ORDER AUTHORIZING THE ABANDONMENT OF PERSONAL PROPERTY LOCATED AT CERTAIN COLLOCATION SITES

The operating telephone company subsidiaries of Verizon Communications Inc. (collectively, "Verizon") hereby object (the "Objection") to the pending Motion of the Debtors Pursuant to Section 554 of the Bankruptcy Code and Bankruptcy Rule 6007 for an Order Authorizing the Abandonment of Personal Property Located at Certain Collocation Sites (Docket No. 799) (the "Motion"). In support of its Objection, Verizon states as follows:

Background

1. On May 14, 2003 (the "Petition Date"), Allegiance Telecom, Inc. and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to sections 1107(a) and

1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their affairs as Debtors-in-Possession.

2. The Debtors are competitive local exchange carriers ("CLECs") that rely upon existing or "incumbent" local exchange carriers ("ILECs") as critical wholesale service providers supporting the Debtors' CLEC business. Verizon is one such ILEC. The Debtors use the telecommunications services furnished by Verizon not only for their own communications needs, but as a critical component of the Debtors' own telecommunications business. Indeed, the Debtors have acknowledged that their ability to continue in business and provide telecommunications services to their end user customers is "dependant" upon the services they obtain from Verizon and other telecommunications providers. *See* Motion of the Debtors Pursuant to §§ 105(a) and 366 of the Bankruptcy Code for an Order Deeming the Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance, dated May 14, 2003, ¶ 39. They have also acknowledged that Verizon is their most significant provider of telecommunications services and their largest trade creditor. In the list of their 20 largest unsecured creditors filed at the outset of this case, the Debtors included only one trade creditor (the rest of the creditors listed were bondholders or banks): Verizon. Verizon is owed more than $61 million by the Debtors, as reflected in its prepetition proof of claim filed in these cases.

3. In their Motion, the Debtors now seek to abandon "certain of the Debtors' personal property, including obsolete racks, cables, power materials, panels, frames and miscellaneous hardware … located at certain collocation sites in Massachusetts, Dallas and New York" (collectively, the "Equipment"). Motion ¶ 8. Many of the collocation sites in question belong to Verizon (the "Collocation Sites").

4. The Motion does not at all address how this proposed abandonment would be accomplished. In particular, the Motion fails to address two critical points:

a) Whether the Debtors propose to remove any abandoned Equipment located at the Collocation Sites and restore the premises to usable condition, as is their legal obligation, and; if not, whether the Debtors will reimburse Verizon for all costs it incurs in so removing the Equipment and restoring the premises to usable condition, as is also the Debtors' legal obligation; and

b) Whether any other parties (such as the Debtors' debtor-in-possession lenders or any lessors of the Equipment) have liens on or other interests in the Equipment, and, if so, whether they have agreed to abandon their interests in the Equipment, such that the abandonment will be free and clear of any such interests.

5. Each of these issues must be addressed in a manner that complies with applicable law.

Objection

6. Verizon objects to the Motion to the extent that (a) the Debtors propose to leave the Equipment on Verizon's premises, and to fail to restore the Collocation Sites to usable condition, without paying for all costs Verizon will incur as a result, and (b) the Motion does not address and resolve the interests of any third-parties in the Equipment. We address each point in turn.

I. The Debtors Must Remove The Equipment And Restore The Collocation Sites Or, At A Bare Minimum, Pay For The Cost Of All Removal And Restoration, And Must Pay All Collocation Charges Until The Equipment Is Removed And The Collocation Sites Are Restored.

7. Section 554 of the Bankruptcy Code gives a debtor the right to abandon its legal interest in personal property that is of inconsequential value or benefit to the estate. However, it does not give a debtor the right to foist the cost of removing and disposing of the property on the owner of the premises, and it does not permit a debtor to avoid its obligation to pay for the use of

those premises until and unless the debtor so removes and disposes of the property. There is no basis in law to allow the Debtors to shift the cost arising out of the disposition of their own equipment onto Verizon. Instead, any abandonment should be conditioned on compliance by the Debtors with its obligations under applicable law, as described more fully below, including without limitation the removal by the Debtors of the Equipment pursuant to standard procedures and terms acceptable to Verizon and the restoration by the Debtors of the Collocation Sites to usable condition (or, alternatively, the payment by the Debtors to Verizon of all charges incurred by Verizon in so removing the Equipment and restoring the premises), and the payment of all collocation charges incurred by the Debtors for all periods through the dates of such removal and restoration. Otherwise, granting the Debtors the relief they seek will violate the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.* (the "Telecom Act"), the applicable tariffs, and state trespass laws.

8. *First*, allowing the Debtors to shift the cost of disposing of the Equipment and restoring the Collocation Sites onto Verizon would violate the Telecom Act. Verizon allowed the Debtors to place their telecommunications equipment on the Collocation Sites because it was required to do so by the Telecom Act. That federal law imposes on ILECs, like Verizon "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations." 47 U.S.C. § 251(c)(6).

9. However, the Telecom Act allows a CLEC, like the Debtors, to physically collocate its equipment at Verizon's premises only if that equipment is *"necessary* for interconnection or access to unbundled network elements." *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000) (emphasis added). Because a broader interpretation of the term "necessary" would "invite[] unwarranted intrusion upon [I]LECs' property rights" and would "result in an unnecessary taking" of the ILEC's property, an ILEC only has a duty to permit equipment on its premises that is "required or indispensable" to achieve interconnection. *Id.* at 422-23. Therefore, once the Debtors stop using the Equipment they seek to abandon, the continued presence of that Equipment on Verizon's premises would constitute an "*unnecessary* taking of [Verizon's] private property." *Id.* at 423 (emphasis in original); *see also Bell Atl. Tel. Cos. v. FCC*, 24 F.3d 1441, 1445-47 (D.C. Cir. 1994) (vacating FCC orders requiring local exchange carriers to permit competitive access providers to connect their facilities to local exchange carriers' networks through physical collocation because then-existing Communications Act did not authorize any taking).

10. Accordingly, the tariffs which, pursuant to these Telecom Act mandates, govern the Collocation Sites in question (the "Applicable Tariffs"), require a CLEC, such as the Debtors, to remove its equipment and to restore the premises to their original, usable condition upon its termination of the collocation arrangement.[1] The tariffs also provide that if the CLEC does not so remove its equipment and restore the premises, Verizon may perform or have performed such removal and restoration at the carrier's expense, and without liability on

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[1] These tariffs are incorporated by reference into the interconnection agreements between the Debtors and Verizon. The Debtors have rejected none of those interconnection agreements, all of which remain binding on the Debtors.

Verizon's part for any damage to such equipment. By way of example, the state tariff for Massachusetts – many of the Collocation Sites at issue are in Massachusetts – specifies:

> Upon termination of the CLEC's collocation arrangement or any twenty-five square foot portion thereof, the CLEC must remove its equipment from that space within thirty days. Upon removal by the CLEC of all its equipment from the multiplexing node area or portion thereof, the CLEC must restore that multiplexing node area to its original condition at time of occupancy. Due to physical and technical constraints, removal of cable is at the Telephone Company's option. If the CLEC fails to remove its equipment within thirty days, the Telephone Company may elect, at its option, to remove the equipment at the CLEC's expense.

DTE Mass. No. 17, Part E, § 2.2.8(K). The other Applicable Tariffs are equally unequivocal, imposing in no uncertain terms the obligation on the Debtors to remove the Equipment and restore the Collocation Sites (or pay Verizon therefor).[2]

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[2] The other Applicable Tariffs and their pertinent sections are as follows:

FCC Tariff No. 1, § 19.3.5(Q)

Upon termination of all or any 100-square-foot portion of the Physical Collocator's Collocated Interconnection arrangements pursuant to Section 2 of this tariff, the Physical Collocator must remove its equipment from that space within 30 days. Upon removal by the Physical Collocator of all its equipment from the Collocated Interconnection Space or portion thereof, the Physical Collocator will reimburse the Telephone Company for the cost to restore the Collocated Interconnection Space to its original condition at time of occupancy and to make whatever modifications are needed to reduce the size of the occupancy. The cost will be applied on a time and materials basis as set forth in Section 13 preceding. Due to physical and technical constraints, removal of cable will be at the Telephone Company's option. When the Physical Collocator wishes to consolidate its facilities which were located in two or more Collocated Interconnection Space locations, a request must be submitted to the Telephone Company, and the Telephone Company will provide the Physical Collocator with an estimate of the cost which the Physical Collocator must pay for such a consolidation, the cost of which will be calculated on the basis of the initial construction. The cost will be applied on a time and materials basis as set forth in Section 13 preceding. Monthly charges for Cable Support Structure apply until the cable is removed. The Removal Charge will be applied on a time and materials basis as set forth in Section 13 preceding.

11. These terms, like filed rates, have the force of law under the Telecom Act. *See AT&T v. City of New York*, 83 F.3d 549, 552 (2d Cir. 1996) ("[T]ariffs have the force of law and are not simply contractual."); *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488 (7th Cir. 1998) ("A tariff filed with a federal agency is the equivalent of a federal regulation."); *In re Pennichuck Water Works*, 419 A.2d 1080, 1083 (N.H. 1980) ("[T]he tariffs or rate schedules required to be

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FCC Tariff No. 11, § 28.9.12

Upon termination of a customer's multiplexing node or any 100 square foot portion thereof, roof space or transmitter/receiver space, the customer must disconnect and remove its equipment up to the point of termination from its multiplexing node and all other areas identified as common between the customer and the Telephone Company within thirty (30) days.

The customer must restore its multiplexing node to its original condition at the time of occupancy upon removal by the customer of all its equipment from its multiplexing node.

Due to physical and technical constraints, removal of cable and roof mounted equipment is at the Telephone Company's option.

The Telephone Company can terminate an Expanded Interconnection arrangement in the event that the customer is not in conformance with Sections 28. and 2.1 preceding and/or in the event that the customer imposes continued disruption and threat of harm upon the Telephone Company's employees and/or network or its ability to provide service to other customers.

NY PSC No. 8, § 14.3.4(A)(1)

The CLEC shall disconnect and remove its equipment from the designated collocation space by the effective date of the termination. Upon removal by the CLEC of all its equipment from the collocation space, if the CLEC does not restore the collocation space to its original condition at time of occupancy, the CLEC will reimburse the Telephone Company for the cost to do so. Due to physical and technical constraints, removal of the CLEC's cables will be at the Telephone Company's option.

The Telephone Company reserves the right to remove the CLEC's equipment if the CLEC fails to remove and dispose of the equipment by the effective date of the termination. The CLEC will be charged the appropriate additional labor charge in Section 35.15 for the removal and disposal of such equipment.

All monthly recurring charges will continue to be charged to the CLEC until the effective date of the termination or, at the Telephone Company's discretion, until any later date, not to exceed 60 days, that all equipment is removed and the collocation space is restored to its original condition at space turnover.

filed with the [New Hampshire] PUC . . . do not simply define the terms of the contractual relationship between a utility and its customers. They have the force and effect of law and bind both the utility and its customers.”). Moreover, these provisions serve the public interest. For instance, placement of one carrier’s equipment at a Collocation Site may prevent that Collocation Site from being available to serve other carriers; thus, if the Debtors do not remove their Equipment and restore the premises, other carriers may not be able to collocate at those premises, in contravention’s of Congress’ express purpose under the Telecom Act. In addition, Equipment installed and not maintained at a Collocation Site may fall and cause property damage or personal injury.

12. Where, as here, two federal statutes are implicated (in this case, the Bankruptcy Code and the Telecom Act), courts must, of course, seek to give effect to both. *See*, *e.g.*, *United States v. Palumbo Bros.*, 145 F.3d 850, 865 (7th Cir. 1998); *Pryner v. Tractor Supply Co.*, 109 F.3d 354, 358 (7th Cir. 1997). Here, this Court can give effect to both the Bankruptcy Code and the Telecom Act by allowing the Debtors to abandon the Equipment – that is, release any legal interest they have in the property – and by requiring them to pay the costs of such abandonment and to take the necessary steps to remove the Equipment pursuant to standard procedures and terms acceptable to Verizon and restore the Collocation Sites, as the Telecom Act requires. Nothing in the Bankruptcy Code allows the Debtors to impose on Verizon the costs of the Debtors’ own decisions — in the first instance to place the Equipment on Verizon’s premises and in the second to abandon the Equipment without making any provision for its removal and the restoration of the Collocation Sites. In fact, the case law is to the contrary. *See Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 438 (5th Cir. 1998) (debtor or trustee may not abandon well without paying as an administrative expense costs incurred by third party in

plugging well as required under state law); *see also* Order Granting Motion of the Debtors and the Operating Subsidiaries of Verizon Communications Inc. for an Order Directing Removal of Equipment, *In re Telecom Consultants, Inc.*, No. 01-10907 (RLB) (Bankr. S.D.N.Y. Dec. 10, 2001) (the "TCI Order") (attached hereto as Exhibit 1) (requiring debtor's equipment vendors to remove equipment installed on Verizon's premises pursuant to rejected telecommunications agreement).

13. *Second*, by abandoning the Equipment, the Debtors themselves would not only eliminate the justification under the Telecom Act for permitting the Debtors to place and maintain any Equipment on Verizon's premises, but would also leave themselves subject to state trespass law. Under New York State law, for example, a trespass is an unlawful interference with another's property rights. *See*, *e.g.*, *Trustco Bank New York v. S/N Precision Enters. Inc.*, 234 A.D.2d 665, 667-678, 650 N.Y.S.2d 846, 849 (3d Dep't 1996) (defendant's unauthorized use of property constituted trespassing); *see also* Restatement of Torts (Second), § 158 (1965) ("One is subject to liability to another for trespass… if he intentionally… fails to remove from the land a thing which is under a duty to remove."). Here, the Debtors would no longer be authorized to use Verizon's Collocation Sites following the abandonment of the Equipment. Therefore, they would be required to remove the Equipment from Verizon's premises to eliminate their unlawful trespass. *See* 28 U.S.C. § 959(b) (debtor must manage and operate property according to the requirements of applicable state law). And the law is clear that any postpetition tort liabilities of the Debtors related to their postpetition use of the Collocation Sites and the Equipment installed, attached, or maintained on Verizon's premises postpetition are entitled to treatment as administrative expenses. *See Reading Co. v. Brown*, 391 U.S. 471

(1968); *accord In re Enron Corp.*, No. 01 B 16034 (AJG), 2003 WL 1562201, at *4 (Bankr. S.D.N.Y. Mar. 17, 2003).

14. *Third*, insofar as the Debtors have apparently had use of the Collocation Sites postpetition they must, having obtained the benefits thereof, pay all associated postpetition liabilities, including without limitation the postpetition cost of removal of the Equipment pursuant to the Applicable Tariffs, as an administrative expense. *See* 11 U.S.C. § 503(b).

15. Therefore, any order permitting the Debtors to abandon the Equipment should, pursuant to the Applicable Tariffs, require the Debtors to remove all the Equipment they have installed, attached and/or maintained (including without limitation any cables they have attached to Verizon racks) on Verizon's Collocation Sites (while, of course, leaving any property owned by Verizon). It should also require the Debtors to restore the Collocation Sites to their original, usable condition, in accordance with the terms of the Applicable Tariffs. Alternatively, it should require the Debtors to pay all costs incurred by Verizon in so removing such Equipment and restoring such Collocation Sites. In either event, it should obligate the Debtors to pay for all Collocation charges for all periods through the date all the Equipment is removed and the Collocation Sites are fully restored to their original, usable condition.

II. Any Other Parties With Interests In The Equipment Must Abandon Those Interests As Well If The Debtors Do Not Remove The Equipment Themselves.

16. The Debtors should be required to remove their Equipment from Verizon's Collocation Sites, as the Applicable Tariffs require. But, if they are to be permitted to leave the Equipment on Verizon's premises, not only must they then pay Verizon for all costs it incurs in removing the Equipment, as the Applicable Tariffs also specify, but they must also obtain the release of any interest that any other party may have in the Equipment. Otherwise, Verizon will

have no idea what to do with the Equipment and will be put in the untenable position of having to determine who, if anyone, has interests in the Equipment other than the Debtors. Nothing in Section 554 permits a Debtor to foist such a burden on an innocent third party.

17. The Motion contains no representation by the Debtors as to whether any third parties have any interests in the Equipment. Verizon presumes that at least one set of parties does: the Debtors' prepetition lenders. Verizon understands that those lenders were granted postpetition liens (and claim to hold prepetition liens) in all, or substantially all, of the Debtors' property. Moreover, some of the Equipment may not even be owned by the Debtors, but instead may be leased by them. Again, the Motion is utterly silent. Verizon has no way of knowing whether the Debtors have sole ownership and rights in the Equipment, or whether there are equipment lessors or other secured parties with liens on such Equipment.

18. The Court can solve this problem by simply requiring the Debtors to remove the Equipment pursuant to standard procedures and terms acceptable to Verizon. The Debtors can then deal with how to dispose of the Equipment and the interests of any third parties. This is yet another reason – in addition to the express terms of the Applicable Tariffs – why the Debtors should be required to remove the Equipment and not to impose on Verizon the burden of having to do so, with the Debtors to reimburse Verizon for all costs it incurs. But, if the Debtors are to pay Verizon for the cost of removing the Equipment, then Verizon must be free to dispose of or otherwise deal with the Equipment as it sees fit. And that, in turn, means that all third parties claiming any interest in the Equipment, including the Debtors' prepetition lenders and any lessors, must also abandon or waive their interests as well in the Equipment or this Court's order must so provide, making the abandonment free and clear of any such liens or other interests of third parties. Moreover, any third parties to whom the Equipment is abandoned by the Debtors--

such as any owners of the Equipment who leased it to the Debtors or the Debtors' prepetition lenders-- must themselves remove the Equipment pursuant to standard procedures and terms acceptable to Verizon (and restore the Collocation Sites), or be liable therefor under state trespass and other applicable law. *See* TCI Order.

WHEREFORE, Verizon requests that this Court (i) deny the Debtors' Motion, unless and until the objections raised herein are fully satisfied, and (ii) grant Verizon such additional relief as the Court deems appropriate.

Dated: January 12, 2004

Respectfully Submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In re:	Chapter 11
TELECOM CONSULTANTS, INC., et al.,	Case No. 01-10907 (RLB)
Debtors.	Jointly Administered

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ORDER GRANTING MOTION OF THE DEBTORS AND THE OPERATING SUBSIDIARIES OF VERIZON COMMUNICATIONS INC. FOR AN ORDER DIRECTING REMOVAL OF EQUIPMENT

This matter came before the Court on the Motion of North American Telecommunications Corporation, Long Island Telephone Company, Mid-Atlantic Telephone Company, Global Multimedia Services, Inc. and Telecom Consultants, Inc., the above-captioned debtors and debtors-in-possession (the "Debtors"), and the operating subsidiaries of Verizon Communications Inc. (such subsidiaries collectively, "Verizon"; the Debtors and Verizon collectively, the "Movants"), for an Order Directing Removal of Equipment, and based upon consideration of the pleadings filed in this case, the arguments of counsel, and the record as a whole, including the record of the hearing held in this case on December 10, 2001, the Court hereby finds and concludes as follows:

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, as made applicable to these proceedings pursuant to Federal Rule of Bankruptcy Procedure 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law, it will be so deemed and vice versa.

2. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §157 and §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

3. Due and proper notice of the hearing on this Motion has been given.

4. Prior to the filing of these Chapter 11 reorganization proceedings, the Debtors operated as a regional provider of telecommunications services to small and medium sized businesses, as well as governmental and institutional users primarily in the Northeastern United States and in Florida.

5. The Telecommunications Act of 1996, 47 U.S.C. §151 *et. seq.* (the "Telecom Act"), restructured the telecommunications industry to make it more competitive. To accomplish that goal, the Telecom Act required incumbent local exchange carriers ("ILECs"), such as Verizon, to make their networks available to competitors. Among other things, the Telecom Act required each ILEC to allow competitive local exchange carriers ("CLECs") to access the ILEC's network. Accordingly, ILECs were required to provide interconnection for CLECs at "any technically feasible point" in the ILEC's network. 47 U.S.C. § 251(c)(2). To facilitate CLEC interconnection and unbundled access, each ILEC was also required, upon a CLEC's request, to permit physical collocation of a CLEC's equipment at the ILEC's own switching center. Finally, the Telecom Act required parties to negotiate in good faith to execute interconnection agreements that satisfied the requirements of the Act. See 47 U.S.C. §251(c)(1); 252(a)(1).

6. The Debtors entered into an interconnection agreement with the applicable Verizon Operating Telephone Company in each state where the Debtors operated and a Verizon Operating Telephone Company was the incumbent local exchange carrier. The interconnection agreements between the Debtors and Verizon are collectively referred to as the "Verizon/NATelCo Agreements."

7. As contemplated by the Telecom Act, the Verizon/NATelCo Agreements provide the terms by which the Debtors accessed Verizon's network elements and interconnected with Verizon's network in order to operate in the covered states. Among other things, the Verizon/NATelCo Agreements permitted the Debtors to physically install or "collocate" telecommunications equipment (such equipment, the "Telecom Equipment") at Verizon's switching centers (the "Collocation Spaces"), for the sole purpose of effectuating the Debtors' interconnection rights with Verizon. Without the services provided by Verizon under the Verizon/NATelCo Agreements, the Debtors would have been unable to provide services to certain of their end users.

8. The Telecom Equipment located at the Collocation Spaces was not owned by the Debtors. Instead, the Debtors leased the Telecom Equipment from various providers, including, but not necessarily limited to, Telecommunication Finance Group of Siemens Carrier Networks, LLC ("Siemens"), Marconi Communications and Lucent Technologies Inc. ("Lucent") (all providers of the Telecom Equipment collectively, the "Equipment Vendors"), and installed it in Verizon's Collocation Spaces with the full consent and knowledge of the Equipment Vendors. The Telecom Equipment, which is owned by the Equipment Vendors is still located at over 20 Verizon Collocation Spaces.

9. On April 10, 2001, this Court entered that certain Stipulation and Consent Order Establishing Adequate Assurance of Payment to the Subsidiaries of Verizon Communications Inc. Under Bankruptcy Code Section 366 (the "Verizon 366 Stipulation"). The Verizon 366 Stipulation required the Debtors, among other things, to post a deposit and to make semi-monthly advance payments for services rendered under the Verizon/NATelCo Agreements.

10. On May 18, 2001, this Court entered an Order (the "May 18 Order") allowing the Debtors to sell all of their assets not related to the Debtors' payphone business to MCG Finance Corporation ("MCG"). Since the Telecom Equipment remained in the Collocation Spaces while MCG (or its assignee) processed the transfer of the Debtors' customers, the May 18 Order provided that the Debtors would be obligated to continue to make payments to Verizon until the Debtors fully returned to Verizon all of its Collocation Spaces. Specifically, the May 18 Order provided that under the Verizon 366 Stipulation:

> "payments shall continue to accrue and to be made until the Debtors' migration or disconnection of customers is complete and all facilities of Verizon (including, without limitation, Verizon's colocation space) have been returned to Verizon, [and the Verizon 366 Stipulation] shall remain in full force and effect notwithstanding any other provision of this Order; and (b) the rights of Debtors, Purchaser and their assignees are subject to all applicable contracts between such entities and Verizon … and all applicable local, state and federal statutes, tariffs, rules and regulations relating to Verizon['s] …provision of services."

(May 18 Order ¶ 8)

11. The Debtors determined that they would be unable to fund operations after July 31, 2001, and, therefore, decided to stop providing services to its end user customers as of July 22, 2001 (the "Termination Date").

12. In anticipation of their termination of operations, on July 18, 2001, the Debtors filed and served their Notice of Abandonment. Pursuant to the Notice of Abandonment, the Debtors abandoned the equipment identified on Schedule A to the Notice of Abandonment, including a portion of the Telecom Equipment, to those parties having an ownership interest in the equipment. All of the Debtor's creditors were served with notice of the Debtor's abandonment of property and were directed to contact the Debtor's attorney if they believed the property list attached to the Notice of Abandonment was inaccurate or incomplete.

13. The Equipment Vendors, however, have not completed the removal of the equipment from Verizon's Collocation Spaces. Indeed, equipment remains in over 20 Collocation Spaces. As a result, Verizon is precluded from making any further use of the Collocation Spaces, or from re-assigning those facilities to any other CLECs that might desire to use them and pay Verizon for such use.

14. The relief requested is necessary to implement the terms and intent of the May 18 Order. See In re Chateaugay Corp., 201 B.R. 48, 62 (Bankr. S.D.N.Y. 1996) (Lifland, J.), aff'd, 213 B.R. 633 (S.D.N.Y. 1997) ("Bankruptcy courts have inherent or ancillary jurisdiction to interpret and enforce their own orders wholly independent of the statutory grant of jurisdiction under 28 U.S.C. § 1334.").

15. Removal of the equipment is also required by applicable federal and state law. The Telecom Act allows a CLEC to physically collocate its equipment at Verizon's switching centers only where the equipment is "necessary for interconnection or access to unbundled network elements." GTE Services Corp. v. F.C.C. 205 F.3d 416, 422 (D.C. Cir 2000).

16. Here, the Debtors have terminated their operations and abandoned their interest in the Telecom Equipment to equipment lessors who are not telecommunications carriers. The Telecom Equipment is no longer necessary for interconnection, and therefore is no longer legally on Verizon's premises, and the continued existence of the equipment on Verizon's premises constitutes an "unnecessary taking of [Verizon's] private property." GTE Services Corp. v. F.C.C., 205 F.3d at 423.

17. Further, an unlawful interference with another's property rights constitutes a trespass. See, e.g., Trustco Bank New York v. S/N Precision Enterprises Inc., 234 A.D.2d 665, 650 N.Y.S.2d 846 (3d Dep't 1996) (finding that defendant's unauthorized use of property constituted trespassing). Here, as in Trustco, the Equipment Vendors are not authorized to use Verizon's premises, and therefore, the presence of the Telecom Equipment at the Collocation Spaces constitutes an unlawful trespass.

Based on the foregoing findings of fact and conclusions of law, IT IS ORDERED THAT:

1. The Motion is Granted;

2. All Equipment Vendors shall immediately remove the Telecom Equipment at their own cost from the Collocation Spaces in accordance with Verizon's applicable removal procedures as described in the Verizon /NATelCo Agreements and/or applicable tariffs, including all provisions governing liability and indemnification for damages caused by the removal of the Telecom Equipment;

3. In the event that any such Equipment Vendor fails to remove such equipment within 10 business days of entry of this Order, Verizon shall be allowed to remove and dispose of the Telecom Equipment and recover the costs of such removal and

disposal from the appropriate Equipment Vendor;

4. Telecommunications Finance Group of Siemens Carrier Networks, LLC and Lucent Technologies Inc. shall have until January 15, 2002 and December 31, 2001, respectively, to complete the equipment removals described in Paragraphs two and three.

Dated: New York, New York
December 10, 2001

s/Richard L. Bohanona
United States Bankruptcy Judge