

Hearing: February 19, 2004 at 10:00 a.m.  
Response Deadline: February 17, 2004

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

No 03-13057

ALLEGIANCE TELECOM, et al.,

Debtors.

**Local Texas Tax Authorities' Objection to Debtors' Motion for Orders Pursuant to Sections 105(a), 363, 365, and 1146© of the Bankruptcy Code: (A)(I) Fixing the Time, Date, and Place for the Bidding Procedures Hearing and (II) Approving the No-Shop Provisions Set Forth in the Asset Purchase Agreement with Qwest Communications International Inc.; (B)(I) Establishing Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Assets of the Debtors, (II) Approving the Form and Manner of Notices, (III) Approving the Asset Purchase Agreement Subject to Higher and Better Offers and (IV) Setting a Sale Approval Hearing Date; and ( C )(I) Approving the Sale to Qwest Communications International Inc. Free and Clear of All Liens, Claims and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases**

### **and (III) Granting Related Relief**

Now come Bexar County, Cypress-Fairbanks ISD, Dallas County, Harris County, City of Houston, Houston ISD, City of Richardson, Round Rock ISD, Sabine County, Tarrant County, and West University Place (jointly the “Local Texas Tax Authorities” or “Tax Authorities”) and object to the relief sought by the Debtors in their Motion requesting the Court approve the sale of substantially all of their assets. In support of their Objection, the Local Texas Tax Authorities would show the Court as follows:

1. The Local Texas Tax Authorities are holders of pre-petition secured claims for unpaid ad valorem taxes for the 2003 tax years. These taxes are secured by first priority perfected liens on the personal property of the Debtors’ estates pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. In re: Winn’s Stores, Inc., 177 B.R. 253 (Bankr. W.D. Tex. 1995) (Texas tax liens are non-avoidable in bankruptcy); Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. - Eastland 1995) (Texas tax liens are senior to liens of any consensual lender). These liens are *in solido* and attach on January 1 of each year to all personal property of the property owner, and to property subsequently acquired. In re: Universal Seismic Associates, Inc., 288 F.3d 205 (5th Cir. 2002); City of Dallas v. Cornerstone Bank, N.A., 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The Texas Tax Authorities’ pre-petition claims total in excess of \$800,000.

2. Further, on January 1, 2004, the Debtors’ incurred liability for the 2004 ad valorem taxes as an administrative expense of the estate, which taxes are also secured by first priority liens on all property of the estate. Tex. Prop. Tax Code §§ 32.01 and 32.07; 11 U.S.C. § 503(b). The Local Texas Tax Authorities estimate that the taxes for 2004 will be approximately equal in amount to the

2003 taxes, but the final amount will not be determined pursuant applicable non-bankruptcy law until October 2004.

3. The relief requested by the Debtors fails to set forth any provisions which adequately protect the liens and claims of the Local Texas Tax Authorities as required by 11 U.S.C. § 363(e). Unless the 2003 taxes (including accrued interest) are paid at the time of sale and an escrow is made from the sale proceeds to which the Tax Authorities' liens with respect to any unpaid tax liens may attach, the Tax Authorities will not be adequately protected. These escrowed proceeds should not be available for the Debtors to use absent agreement of the Tax Authorities. Further, to the extent any property is sold for which the purchaser is assuming any liability with respect to the current 2004 tax year, that property must be sold subject to the tax liens until the taxes are satisfied by either the Debtors or purchaser. Finally, upon resolution of any outstanding issues regarding the Tax Authorities' claims, the Debtors should be authorized to pay them out of the sale proceeds or the escrow account without further authorization from the Court

Wherefore, based upon the foregoing, the Local Texas Tax Authorities request the Court to enter an order denying the relief sought by the Debtors, or, alternatively, requiring the Debtors to pay the secured claims of the Texas Tax Authorities at the time of sale from the sale proceeds and for such other and further relief to which the Court may find they are entitled.

Respectfully Submitted,

/s/ Elizabeth Weller

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Certificate of Service

I hereby certify that this 17th day of February, 2004, I caused a true and exact copy of the foregoing to be served upon all parties pursuant to the Court's Notice of Electronic Filing via electronic mail, and upon the parties on the following Service List via facsimile and first class mail.

/s/ Elizabeth Weller  
Elizabeth Weller

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