

KRONISH LIEB WEINER & HELLMAN LLP  
1114 Avenue of the Americas  
New York, NY 10036  
(212) 479-6000  
Ronald R. Sussman (RS 0641)  
Richard S. Kanowitz (RK 0677)  
Jeffrey L. Cohen (JC 2556)

Hearing Date: February 19, 2004 at 10:00 a.m.

Attorneys for AboveNet, Inc. et al.  
(f/k/a Metromedia Fiber Network, Inc. et al.)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

In re:

Chapter 11 Cases

Allegiance Telecom, Inc., et al.,

Case No. 03-13057 (RDD)

Debtors.

(Jointly Administered)

----- X

**ABOVENET, INC.'S JOINDER TO LIMITED OBJECTION OF THE TELEPHONE OPERATING COMPANY SUBSIDIARIES OF VERIZON COMMUNICATIONS INC. TO DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) 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**

TO: THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE:

AboveNet, Inc., (f/k/a Metromedia Fiber Network, Inc.), for itself and on behalf of its reorganized debtor subsidiaries (collectively, the “AboveNet”),<sup>1</sup> by and through their counsel Kronish Lieb Weiner & Hellman LLP, hereby joins in and adopts by reference herein certain of the arguments made in the Limited Objection of the Telephone Operating Company Subsidiaries of Verizon Communications, Inc. (the “Verizon Objection”) to Debtors’ Motion for Orders for Orders Pursuant to Sections 105(a), 363, 365 and 1146(c) 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 (the “Sale Motion”) and respectfully represents the following:

### **BACKGROUND**

1. On May 14, 2003, Allegiance Telecom, Inc. and its debtor subsidiaries (the “Debtors” or “Allegiance”) each commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code (the “Bankruptcy Code”).

---

<sup>1</sup> On May 20, 2002, Metromedia Fiber Network, Inc. and the following reorganized debtor subsidiaries, voluntarily filed Chapter 11 petitions in the Bankruptcy Court for the Southern District of New York, Case No. 02-22736 (ASH): Metromedia Fiber Network Services, Inc., AboveNet Communications, Inc., SiteSmith, Inc., PAIX.net, Inc., Metromedia Fiber Network of Illinois, Inc., MFN Purchasing, Inc., Metromedia Fiber Network of New Jersey, Inc., MFN of Utah, L.L.C., MFN of Virginia, L.L.C., Metromedia Fiber National Network, Inc., Metromedia Fiber Network International, Inc., MFN International, L.L.C., MFN Japan Backhaul, Inc., and MFN Europe Finance, Inc. AboveNet’s Chapter 11 Plan was confirmed on August 21, 2003 and became effective on September 8, 2003.

2. On August 21, 2003, AboveNet's plan of reorganization (the "AboveNet Plan") was confirmed by order of another bankruptcy court in this district. See In re Metromedia Fiber Network, Inc. et al., Case No. 02-22736 (ASH) (Bankr. S.D.N.Y. May 20, 2002). The AboveNet Plan became effective on September 8, 2003, at which time the former Metromedia Fiber Network, Inc. emerged from bankruptcy as AboveNet, Inc.

3. Prior to the bankruptcy filing (the "Allegiance Petition Date"), Allegiance and AboveNet entered into certain fiber agreements and product orders and collocations schedules in connection therewith. These fiber agreements are as follows:

- (i) Fiber Optic Lease Agreement, dated December 30, 1999, between MFN and Allegiance Finance Corp. (including more than fifty (50) integrated and non-divisible orders) pursuant to which MFN leases to Debtor dedicated fiber optic strands and related facilities in eleven (11) cities, with a pending orders for a twelfth city ("Multi-City Agreement").
- (ii) Fiber Optic Lease Agreement dated June 8, 1999 between MFN and Allegiance Telecom of Texas, Inc. (defined above as, the "Houston Network") pursuant to which MFN leases to Debtor dedicated fiber optic strands and related facilities in Houston, Texas;
- (iii) Fiber Optic Lease Agreement, dated December 4, 1998, between MFN (as successor in interest to Communication Systems Development, Inc.) and Allegiance Telecom of Texas, Inc. (defined above as, the "Dallas Network") pursuant to which MFN leases to Debtor dedicated fiber optic strands and related facilities in Dallas, Texas; and
- (iv) The Fiber Optic Private Network Agreement Product Order dated May 29, 1998 between MFN and Allegiance Telecom of New York, Inc. along with the Fiber Optic Private Network Agreement General Terms and Conditions (the "New York Network") pursuant to which MFN leases to Debtor dedicated fiber optic strands and related facilities in the New York City metropolitan area (collectively, the "AboveNet Fiber Leases").

4. The Houston Network and Dallas Network are currently subject to that certain rejection motion filed by the Debtors on October 8, 2003 (the "Rejection Motion")<sup>2</sup> in these

---

<sup>2</sup> The Debtors have advised AboveNet that the Multi-City Agreement and the New York Network may be the subject of rejection motions in the future.

bankruptcy cases which have been repeatedly adjourned while the process in connection with the Sales Motion has run its course.<sup>3</sup>

**JOINDER TO VERIZON OBJECTION TO THE EXTENT THE ISSUES  
IDENTIFIED THEREIN IMPLICATE THE INTERESTS OF  
EXECUTORY CONTRACT COUNTERPARTIES, INCLUDING ABOVE NET, INC.**

5. For the applicable reasons stated in the Verizon Objection, AboveNet respectfully requests that the Court deny the Sale Motion unless the proposed sale order is revised to address the concerns set forth therein which implicate the interests of AboveNet, as counterparty to the AboveNet Fiber Leases, and to fully preserve all of AboveNet's and other counterparties' rights with respect to any proposed assumption and/or assignment of any executory contract or unexpired lease. AboveNet also reserves all rights to object to any proposed cure amounts or any other terms of any proposed assumption and/or assignment of the AboveNet Fiber Leases.

**WHEREFORE**, AboveNet respectfully requests that the Court enter an order sustaining the arguments raised in the Verizon Objection to the extent joined and incorporated herein by reference and any other relief as is just.

Dated: New York, New York  
February 18, 2004

KRONISH LIEB WEINER & HELLMAN LLP  
1114 Avenue of the Americas  
New York, New York 10036  
(212) 479-6000

By: /s/ Ronald R. Sussman  
Ronald R. Sussman (RS 0641)  
Richard S. Kanowitz (RK 0677)  
Jeffrey L. Cohen (JC 2556)

Attorneys for AboveNet, Inc. et al. (f/k/a  
Metromedia Fiber Network, Inc. et al.)

---

<sup>3</sup> The Rejection Motion hearing is currently scheduled to be heard on February 25, 2004 at 10:00 a.m., absent further adjournment.