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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**LIMITED OBJECTION OF NCX OFFICE DEVELOPMENT, L.P. TO DEBTORS’
MOTION FOR AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II)
ESTABLISHING A RECORD DATE; (III) APPROVING SOLICITATION PACKAGES
AND PROCEDURES FOR DISTRIBUTION THEREOF; (IV) APPROVING FORMS OF
BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN; AND
(V) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR
CONFIRMATION OF THE PLAN**

NCX Office Development, L.P. (“NCX”), by and through its undersigned counsel, hereby submits this limited objection (the “Limited Objection”) to Debtors’ Motion for an Order (I) Approving the Disclosure Statement; (II) Establishing a Record Date; (III) Approving Solicitation Packages and Procedures for Distribution Thereof; (IV) Approving Forms of Ballots and Establishing Procedures for Voting on the Plan; and (V) Establishing Notice and Objection Procedures for Confirmation of the Plan (“Approval Motion”) and in support thereof states as follows.

PROCEDURAL FACTS

1. On May 14, 2003 (the “Petition Date”), the Debtors filed their voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

SUMMARY

2. NCX is the owner of a property leased by the Debtors. After the filing of these cases, NCX and the Debtors negotiated amendments to the lease terms favorable to the Debtors, who thereafter assumed the leases as amended. From the Disclosure Statement, Plan, and other documents filed by the Debtors, NCX is unable to discern the treatment of their property that is intended by the Debtors. Based on the structure of the Plan, as described in the Disclosure Statement, NCX believes there are several possible treatments, each of which could materially impact upon NCX’s rights under the Lease (as defined herein). These possible treatments include (A) the Lease could be assigned to XO, or a designee of XO; (B) the Lease could be assigned to STFI (as defined in the Plan); (C) the Lease could be retained by the Debtors (whereupon it would be assigned to ATLT, the liquidating trust contemplated by the Plan) or (D) the Lease could be rejected by the Debtors. We further understand that the proposed schedule will allow NCX only 15 days to review the treatment of the Lease (including the financial capability of any intended assignee thereof) and raise any potential objections to the treatment of the Lease. This amount of time is insufficient to give NCX sufficient time to analyze all factors relevant to the modification under the Plan of their significant property rights and to make appropriate objections related thereto. We therefore respectfully request that this Court order that the Debtors give NCX notice of their intended treatment of the Lease at least thirty (30) days prior to the deadline for objection to the confirmation of the Plan.

BACKGROUND

3. On or about July 19, 2000, Allegiance Telecom Company Worldwide (“Allegiance”), one of the Debtors in these Chapter 11 proceedings, and NCX entered into that certain Lease Agreement (as amended from time to time, the “Lease”) pursuant to which, among other things, NCX agreed to lease to Allegiance space in certain of the buildings in the office park commonly known as The Pyramids at Park Lane (the “Pyramids”) in Dallas, Texas. More particularly, as originally drafted, the Lease called for NCX to rent to Allegiance approximately 293,044 square feet of space, consisting of approximately 93,618 square feet of space located on floors one through four of Building 1 of The Pyramids, located at 9101 North Central Expressway, Dallas, Texas 75231, and approximately 145,426 square feet of space located at Building 2 of The Pyramids, located at 9201 North Central Expressway, Dallas, Texas 75231, for a term of approximately 147 months, or until about October 31, 2012. The Lease and Amendments thereto are voluminous and available as attachments to NCX’s previous filing [Docket No. 830]. On information and belief, the premises represented by the Lease represent the principal worldwide headquarters of the Debtors. The Debtors represent the sole tenant for the Pyramids and the ultimate status of the Lease is material to the operations and financial well being of NCX.

4. Following the Petition Date, the Debtors and NCX engaged in extensive arms-length, good faith negotiations concerning possible modifications to the lease in order to address, among other things, the Debtors reduced space needs and NCX’s desire for an assumption of the Lease and greater certainty concerning the treatment of such lease and any related claims in connection with the Debtors’ bankruptcy cases. On September 15, 2003 (Docket Number 418), the Debtors filed a motion for an order approving assumption of the Lease, as amended by

Amendment No. 5 thereto, and authorizing certain ancillary matters related thereto (together with the exhibits thereto, the “Assumption Motion”). The Assumption Motion described the changes to the Lease made by Amendment No. 5 and the related agreements between the Debtors and NCX relating thereto.

5. In summary, taking into account the cumulative effects of Amendment No. 1 dated April 10, 2001, Amendment No. 2 dated February 13, 2002, Amendment No. 3 dated February 13, 2002, Amendment No. 4 dated May 1, 2002, and Amendment No. 5, dated August 1, 2003 (collectively, the “Amendments”), the Lease currently provides that NCX rent Allegiance approximately 145,426 square feet of space at Building 1 of the Pyramids (the “Leased Premises”) for a term expiring on or about July 31, 2010. In addition, critical to NCX, Amendment No. 5 also contains provision setting forth the types and amounts of claims that NCX would have in the Debtors bankruptcy cases in the event of a subsequent rejection by the tenant, termination by the tenant or a Chapter 7 Conversion.

6. On October 8, 2003, the Court approved the Assumption Motion (Docket Number 495). Thus, the Lease has been assumed by the Debtors, but, as noted in this Objection, the ultimate treatment of such Lease under the Plan and related transactions is unknown, and, given the structure of the Plan and the multiplicity of scenarios, this determination is of critical import to NCX, and the propriety of the Plan with respect to the ultimate treatment of the Lease.

7. On February 20, 2004, this Court entered an Order (the “Sale Order”) approving the sale (the “Sale”) to XO Communications, Inc. (“XO”) of (a) substantially all of the assets of Allegiance Telecom, Inc. and Allegiance Telecom Company Worldwide and (b) the stock of the reorganized subsidiaries of ATCW, other than Shared Technologies Allegiance, Inc. (the

“Reorganized Subsidiaries”). Currently, the Debtors contemplate effectuating the Sale pursuant to the Plan (as defined herein) to enable the sale of the stock of the Reorganized Subsidiaries.

SUMMARY OF OBJECTION

8. By the Approval Motion, the Debtors seek entry of an Order governing five matters relating to the Disclosure Statement and Plan. These matters include approval of the Disclosure Statement and establishment of notice and objection procedures regarding the Plan (the “Notice and Objection Procedures”). NCX reserves its right to object in full to all other phases of the underlying sale and related transactions, including, without limitation, the disposition of sale proceeds, feasibility of the Plan and the related chapter 11 plan transaction. NCX likewise reserves its right to amend, modify or supplement this Limited Objection through and including any hearing thereon and to re-assert any objections contained in this Limited Objection in connection with subsequent phases of the Plan.

9. Given the interrelationship between the timing under the Plan for determinations of the treatment of leases such as the Lease and the Notice and Objection Procedures, NCX objects to the Notice and Objection Procedures as allowing NCX an insufficient amount of time to determine whether to object to the confirmation of the Plan.

Objection

10. Under the procedures governing assumption and assignment of executory contracts as set forth in the Order (A) Establishing Bidding Procedures and Bid Protections In Connection with the Sale of Substantially all of the Assets of the Debtors, (B) Approving the Form and Manner of Notices and (C) Setting a Sale Hearing Date, entered January 15, 2004 [Docket No. 867], the Debtors are required to serve a notice of their intent to assume and assign the Lease within 20 days prior to the hearing to consider confirmation of the Plan. Upon receipt

of such notice, NCX shall have a period of 15 days under the Notice and Objection Procedures to object to the proposed assumption and assignment. The Approval Motion seeks to set May 21, 2004 as the deadline for objecting to the Plan and May 26, 2004 for the hearing on confirmation. Thus, the Debtors apparently intend to give notice of their intent to assume and assign contracts on or around May 6, 2004.

11. Under the terms of the Plan, there are four possible treatments of the Lease. These are (A) the Lease could be assigned to XO, or a designee of XO; (B) the Lease could be assigned to STFI (as defined in the Plan); (C) the Lease could be retained by the Debtors (whereupon it would be assigned to ATLT, the liquidating trust contemplated by the Plan) or (D) the Lease could be rejected by the Debtor. The precise treatment of the Lease will not be known until, apparently, May 6, 2004, when the Debtors give notice of their intent with respect to executory contracts and leases.

12. The Disclosure Statement and Plan provides very little relevant information regarding STFI, such as (1) the adequacy of its capital structure; (2) the earning power of its business; (3) economic conditions relevant to STFI; (4) the ability of its management; (5) the probability of the continuation of the same management; or (6) any other related matters which will determine the prospects of STFI to enable performance of the provisions of the Plan.

13. In the event that the Debtors decide to seek to assume and assign the Lease to the XO or STFI, NCX will need adequate time to determine, among other things, whether the requirements of section 365(f)(2)(B) have been satisfied. Further, to the extent the Debtors intend to assign the Lease to STFI or ATLT or provide some other treatment under the Plan, NCS will need sufficient time to determine whether the Plan complies with the various requirements of §1129, including, without limitation, feasibility and best interests.

14. In the event that the Lease is retained by the Debtors and assigned to ATLT, a liquidating trust, NCX, as a minimum, has a number of concerns regarding the ability of that trust to comply with the Lease for the significant remainder of the term. If the Lease is ultimately rejected, the Plan will have to treat the large administrative expense and other claims arising from the rejection, in accordance with the terms of Amendment No. 5, in a manner that complies with the Bankruptcy Code.

15. The ultimate treatment of the Lease will greatly influence whether NCX will object to the Plan, and if so, the nature and type of objection. Given the history of the Lease and the critical importance of the Lease to its well being, NCX simply seeks a reasonable period of time to respond to the treatment.

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PRAYER

WHEREFORE, NCX respectfully requests that this Court order that the Debtors must give NCX notice of Buyer's intention with respect to the Lease at least thirty (30) days prior to the deadline for objection to the confirmation of the Plan and that NCX receive such other and further relief as this Court may deem just and proper. NCX also fully reserves all rights in connection with the confirmation of the Plan.

Dated: New York, New York
April 13, 2004

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ATTORNEYS FOR NCX OFFICE DEVELOPMENT, L.P.

CERTIFICATE OF SERVICE

I certify that on April 13, 2004 I caused the foregoing Limited Objection of NCX to be served by overnight delivery upon those parties listed on the attached service list.

/s/ E. Ramey Layne
E. Ramey Layne

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