Hearing Date: May 20, 2004, at 2:30 p.m.
Objection Deadline: May 20, 2004, at 12:00 p.m.

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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 TELEPHONE OPERATING COMPANY SUBSIDIARIES OF VERIZON COMMUNICATIONS INC. TO DEBTORS' EMERGENCY MOTION FOR ORDER COMPELLING VERIZON TO EXECUTE NEW AGREEMENTS

The telephone operating company subsidiaries of Verizon Communications Inc. (collectively, "Verizon") hereby object to the Debtors' Emergency Motion for Order Compelling Verizon to Execute New Agreements (the "Emergency Motion"), dated May 17, 2004.

INTRODUCTION

The Debtors' so-called "Emergency Motion" should be denied. First, there is no emergency -- at least none that is not of the Debtors' own making. As the Debtors are forced to admit, they have long known of Verizon's position that if the Debtors wish post-confirmation to continue to obtain the benefits of the services and facilities they have ordered and obtained under interconnection agreements with Verizon, they must do what all debtors must do in those circumstances: assume the contracts and cure any defaults thereunder. Yet, the Debtors have waited until a few weeks before the scheduled hearing on confirmation of their Chapter 11 plan to file -- without any advance notice to Verizon or its counsel -- their “Emergency Motion,” forcing Verizon to respond in a matter of three days. Moreover, the Debtors have sought to preempt proceedings that the Debtors themselves commenced months ago, and that are currently pending before at least two state Public Service Commissions, on the very matter that the Debtors now ask this Court to decide on an “emergency basis.” Such gamesmanship should not be rewarded.

Second, the Debtors’ bankruptcy arguments, such as they are, are utterly meritless. The contention that Verizon is violating the automatic stay under Section 362 of the Bankruptcy Code by insisting that the Debtors must assume their interconnection agreements with Verizon, and cure any defaults thereunder, if they want to continue post-confirmation to obtain Verizon’s performance under those agreements is nonsensical. The automatic stay has no applicability post-confirmation; rather, it expressly terminates upon confirmation of a plan and the grant or denial of a discharge to the debtor. Moreover, the whole point of Section 365 of the Bankruptcy Code is that a non-debtor party to an executory contract may decline to continue to perform thereunder if the debtor rejects, rather than assumes, the contract. The exercise of that right by the non-debtor is no more a violation of the automatic stay than is the filing of a proof of claim or any other action by a creditor that the Bankruptcy Code authorizes. And the Debtors’ assertion that the existing interconnection agreements in the four jurisdictions in question are no longer in effect and “executory” is flatly wrong. Each specifies that, upon the conclusion of its initial term, it will continue “indefinitely” unless and until it is terminated by either side. The Debtors have not so terminated the agreements -- on the contrary, they have not only continued to seek and obtain services and facilities, and indeed have placed orders for additional services (which Verizon has provided), but have also continued to bill Verizon for charges they claim to be owed, all under those very agreements, belying the Debtors' assertion that the contracts have expired.

As for Section 366, all it does is obligate a "utility" to continue to provide service to a debtor during the pendency of a case, not after confirmation. Nothing in Section 366 purports to trump the basic import of Section 365 -- that, by the time of confirmation, a debtor must assume or reject its executory contracts and, if it chooses the latter, it has no further right to receive continued performance. Indeed, the Section 366 adequate assurance stipulation and order entered in these very cases with respect to Verizon expressly terminates upon confirmation. This basic principle has been applied in dozens upon dozens of telecommunications cases -- including many in this District, such as <u>WorldCom</u> and <u>Global Crossing</u> -- in which the debtors have assumed their interconnection agreements with Verizon and other telecommunications providers under Section 365, and cured their defaults thereunder, without even trying to argue that Section 366 somehow obligated the continued provision of contractually-ordered services and facilities to the debtors post-confirmation regardless of whether if the debtors assumed the relevant contracts.

<u>Third</u>, the "Emergency Motion" is likewise both substantively and procedurally flawed as a matter of telecommunications and contract law. The Debtors claim that Section 252(i) of the federal Telecommunications Act of 1996, 47 U.S.C. § 251 <u>et</u> <u>seq.</u>, (the "Telecommunications Act") gives them what they assert is an "absolute" and "unfettered" right to adopt new interconnection agreements with Verizon at any time, for any reason, in good faith or bad, and regardless of the effect of that adoption on the public interest. That proposition is demonstrably wrong. The Telecommunications Act does not permit a competitive local exchange carrier ("CLEC") to adopt a new interconnection agreement where that adoption -- like the adoptions

Debtors propose in this matter -- would contravene the public interest. Instead, as both courts and administrative agencies have repeatedly held, state public utility commissions have the right and responsibility to review adoption applications to ensure that they are in the public interest and to deny such applications, or to condition their approval on the CLEC's agreement to reasonable terms, where the CLEC is otherwise proposing to take action that the commission deems to be inconsistent with the public interest.

The Debtors' suggestion that they can obtain, under newly-adopted agreements, all the same services and facilities as they currently obtain under their existing interconnection agreements, without assuming the existing agreements and without paying their outstanding bills under the existing agreements, is equally unsupportable. Even if the Debtors had absolutely free rein to adopt new interconnection agreements, those newly adopted agreements would, as a matter of basic contract law, govern only new services and facilities ordered by Allegiance after the adoption, not the pre-existing services and facilities that Allegiance ordered, and Verizon provisioned, under the pre-existing contracts. The only way a different result could apply would be if the parties agreed that the newly-adopted agreements would cover the existing arrangements. In practice, Verizon typically does agree that existing service arrangements "roll up" into newly-adopted agreements, but only where any outstanding payables associated with those existing service arrangements also "roll up" into the new agreements. Thus, without the parties' express agreement otherwise, the new interconnection agreements could not require Verizon to provide the services and facilities ordered and provisioned under the old agreements.

Procedurally, the "Emergency Motion" seeks to interfere with the primary jurisdiction of the state Public Service Commissions over issues of telecommunications law. As noted, the Debtors themselves have already filed applications before two such commissions seeking the exact relief they seek here -- an order directing Verizon to enter into new interconnection agreements with the Debtors. As those applications make clear and, indeed, as the Debtors' "Emergency Motion" also makes clear, two of the central issues in dispute are whether the Debtors have the unfettered and unqualified right they claim under Section 252(i) of the Telecommunications Act to require Verizon to enter into the newly-adopted interconnection agreements with the Debtors without having the payables they owe under the existing agreements paid or "transferred" to the new agreements and, if so, whether the new agreements would obligate Verizon to provide the same services and facilities that have been ordered and provisioned under the old agreements -- the very same issues the Debtors seek to raise before this Court with their "Emergency Motion."

Finally, the "Emergency Motion" is also procedurally defective as a matter of bankruptcy law. It seeks a mandatory injunction -- an order directing Verizon "to immediately execute" new interconnection agreements with the Debtors. Under the Bankruptcy Rules, such an injunction can be sought only through an adversary proceeding, requiring the service of a complaint and affording the procedural protections that such a formal proceeding provides, and not by moving this Court for relief on three days notice. The "Emergency Motion" and the extraordinary injunction it seeks must be denied.

BACKGROUND

The Debtors' "Emergency Motion" arises out of an unprecedented ploy by these Debtors. During the course of these bankruptcy cases, the Debtors have obtained services and facilities from Verizon -- services and facilities the Debtors admit are critical to their continued operations. They have obtained these services and facilities pursuant to "interconnection agreements," agreements under which the Debtors interconnect their network with Verizon's and lease facilities from Verizon for the provision of services to the Debtors' end users.

The Debtors nevertheless now assert that their existing interconnection agreements with Verizon in three states (Maryland, New York and Pennsylvania), as well as in the District of Columbia, have expired. The Debtors are flatly wrong. Each of these agreements expressly provides for its continuation, "indefinitely," upon the completion of the initial term unless terminated by either party. Thus, by their terms, the agreements remain in effect. And the Debtors themselves have treated these agreements as very much alive. Each month they have continued to seek and obtain millions of dollars in services and facilities under each of them; indeed, the Debtors have continued, month after month, to order new or different services and facilities under these same agreements. In turn, Verizon has continued to provide such services and facilities. And the Debtors have also continued to bill Verizon for "reciprocal compensation" (amounts owing to a CLEC under an interconnection agreement) under those very same contracts. This mutual conduct establishes a clear course of dealing that, along with the "evergreen" provisions of the contracts, is fundamentally at odds with the Debtors' assertion that the existing interconnection agreements are no longer executory.[1] Thus, the impression that the Debtors seek to create in their "Emergency Motion" -- that the existing interconnection agreements at issue are no longer in existence and that Verizon is presently declining to provide

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1 Under these circumstances, the existing interconnection agreements would remain in effect even if they had terminated by their terms (which they have not). See Lunden's Inc. v. Local Union No. 6, 28 F.3d 347, 355-56 (3d Cir. 1994) ("[G]eneral principles of contract law teach us that when a contract lapses but the parties to the contract continue to act as if they are performing under a contract, the material terms of the prior contract will survive intact unless either one of the parties clearly and manifestly indicates, through words or through conduct, that it no longer wishes to continue to be bound thereby, or both parties mutually intend that the terms not survive.").

services and facilities to these Debtors in four jurisdictions, so that some true "emergency" exists -- is demonstrably false and misleading. See Declaration of Sharolyn Hessenthaler ("Hessenthaler Decl."), filed herewith, at ¶¶ 5 and 6.

To Verizon's knowledge, the tack the Debtors seek to take here is unique -- indeed, unprecedented -- in bankruptcy. Many other telecommunications providers, some small and some large, have filed for bankruptcy. Since 1996, Verizon has been a creditor in approximately 160 Chapter 11 and Chapter 7 telecommunications cases, a dozen or so in this District alone, in which the debtors owed Verizon sums arising under prepetition interconnection and other agreements. In virtually all of the Chapter 11 cases, the debtors have assumed their interconnection agreements (and tariff arrangements) with Verizon and cured their defaults.[2] In

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[2] In WorldCom, for example, the debtors assumed substantially all of their agreements with Verizon and paid Verizon $60 million in cash, 100% of the net amount the parties agreed that WorldCom owed to Verizon for prepetition services (after the debtors had already assumed two other contracts and paid an additional approximately $60 million). See Hessenthaler Decl., Ex. A. The following is a partial list of additional cases, in every one of which the debtors have assumed their interconnection agreements (and/or tariff arrangements) with Verizon and paid a cure under Section 365 of the Bankruptcy Code:

> In re WorldCom, Inc., 02-13533 (Bankr. S.D.N.Y.); In re Global Crossing Ltd., 02-40188 (Bankr. S.D.N.Y.); In re CTC Communications Group, Inc., CTC Communications Corp., CTC Communications of Virginia, Inc., and CTC Communications Leasing Group, 02-12873 (Bankr. D. Del.); In re Network Plus Corp., 02-10341 (Bankr. D. Del.); In re Network Access Solutions Corp. & NASOP, Inc., 02-11611 and 02-11612 (Bankr. D. Del.); In re Adelphia Business Solutions, Inc., 02-11389 (Bankr. S.D.N.Y.); In re Arch Wireless, Inc., 01-47330 (Bankr. D. Mass.); In re ATS Telecomms. Systems, Inc., 01-33453 (Bankr. S.D. Tex.); In re Cable & Wireless USA, Inc., 03-13711 (Bankr. D. Del.); In re EXDS, Inc. (f/k/a Exodus Communications, Inc.), 01-10539 (Bankr. D. Del.); In re FastNet Corp., 03-23143 (Bankr. E.D. Pa.); In re Focal Communications Corp., 02-13709 (Bankr. D. Del.); In re Genuity Inc., 02-43558 (Bankr. S.D.N.Y.); In re Logix Communications Corp. and Logix Communications Enters., Inc., 02-32105 and 02-32106 (Bankr. S.D. Tex); In re Mpower Holding Corp., 02-11046 (Bankr. D. Del.); In re Northpoint Communications Group, Inc., 01-30127 (Bankr. N.D. Cal.); In re Plan B Communications, Inc., 01-11443 (Bankr. S.D.N.Y.); In re Telscape Int'l, Inc., 01-1563 (Bankr. D. Del.); In re PSINet Inc., 01-13213 (Bankr. S.D.N.Y.); In re Rhythms NetConnections Inc., 01-14283 (Bankr.

some of these cases, just as in this one, the initial term of the agreements at issue had expired either during the pendency of the Chapter 11 case or even before the case was filed, yet the debtors properly treated the contracts as executory and assumed them, curing the defaults thereunder. Verizon is not aware of any other debtors who have taken the extraordinary position these Debtors have. Hessenthaler Decl., ¶ 7.

These Debtors have decided to take a different approach, manufacturing the supposed "emergency" that they now rush to this Court with. Beginning in September 2003 -- some eight months ago – the Debtors notified Verizon that they wished to adopt new interconnection agreements with Verizon in four jurisdictions: Maryland, New York, Pennsylvania, and the District of Columbia. Verizon responded to each request by informing the Debtors that it would consent to the adoption provided that the Debtors executed an adoption letter that is routinely used by Verizon. Each state-specific letter specified that, if Allegiance wanted the existing services and facilities, which were ordered under the existing agreement, to instead be provided pursuant to the new agreement, Allegiance's outstanding payables arising from those services and facilities would also be "rolled into" the new agreement, but would also maintain their character as prepetition debt:

> The Amended and Restated Interconnection Agreement is not intended to be, nor should it be construed to create, a novation or accord and satisfaction with respect to the original ICA. All monetary obligations of the parties to one another under the [existing interconnection agreement] shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that Allegiance is currently a debtor in a [bankruptcy] proceeding, nothing herein shall

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S.D.N.Y.); In re RSL COM PrimeCall, Inc. and RSL COM U.S.A., Inc., 01-11457 and 01-11469 (Bankr. S.D.N.Y.); In re Teligent, Inc., 01-12974 (Bankr. S.D.N.Y.); In re TSR Wireless, LLC, 00-41857 and 00-41858 (Bankr. D.N.J.); In re Usinternetworking, Inc., 02-50215 (Bankr. D. Md.); and In re World Access, Inc., 01-1286 (Bankr. D. Del.).

> convert any claim or debt that would otherwise constitute a prepetition claim or debt in Allegiance's [bankruptcy] Proceeding into a post-petition claim or debt.

Hessenthaler Decl., ¶ 8; Ex. B (Letter from Steve J. Pitterle, Director - Contract Negotiations, Verizon, to John C. Gockley, Vice President - Interconnection, Allegiance Telecom of Maryland, Inc. ¶ 1(D) (Nov. 17, 2003); Letter from Steve J. Pitterle, Director - Contract Negotiations, Verizon, to John C. Gockley, Vice President - Interconnection, Allegiance Telecom of the District of Columbia, Inc. ¶ 1(E) (Nov. 17, 2003); Letter from John C. Peterson, Contract Performance and Administration, Verizon, to Gegi Leeger, Director of Agreements, Allegiance Telecom of Pennsylvania, Inc, ¶ 1(E) (April 15, 2004); and Letter from John C. Peterson, Contract Performance and Administration, Verizon, to Gegi Leeger, Director of Agreements, Allegiance Telecom of New York, Inc, ¶ 1(E) (April 15, 2004)).

Thus, the letters sought simply to preserve the status quo with respect to the Debtors' bankruptcy proceedings and the parties' rights and obligations therein. The Debtors would be able to decide before confirmation of a plan whether to assume or reject the restated interconnection agreements. If the Debtors elected to assume them, they would (like any other debtor in bankruptcy) have to cure their defaults thereunder. But they could alternatively elect to reject the agreements, in which case their prepetition debt to Verizon would remain just that -- general unsecured prepetition debt (except to the extent that Verizon has rights of setoff that make it secured). Verizon has included this very same provision in numerous other adoption letters; indeed, it has included this language in its template interconnection agreement with CLECs. And many CLECs -- including at least one in bankruptcy -- have executed these letters. Hessenthaler Decl., ¶ 8.

Verizon's adoption letter also included other reasonable provisions. One simply asked Allegiance to acknowledge that critical aspects of the agreements Allegiance was seeking to adopt had been struck down by the Federal Communications Commission ("FCC") and were therefore no longer valid. Hessenthaler Decl., Ex. B. (Since Verizon sent Allegiance this adoption letter, the D.C. Circuit has affirmed significant parts of this FCC ruling and, even more importantly, has invalidated various other fundamental provisions contained in the agreements that Allegiance nevertheless seeks to adopt.)

These Debtors refused, however, to agree to any of the terms in Verizon's adoption letter. Instead, after waiting months without taking any action, they filed applications before the Public Service Commissions in Maryland and the District of Columbia, asking those agencies to grant the very same relief that the Debtors now seek before this Court: an order approving their unqualified adoption under Section 252(i) of the Telecommunications Act of the new interconnection agreements. In New York and Pennsylvania, the Debtors have not yet filed any papers before the Public Service Commissions. Hessenthaler Decl., ¶¶ 8 and 10.

The proceedings before the Maryland and DC Public Service Commissions are ongoing. The Debtors and Verizon have filed briefs and other papers before both Commissions. The hearing examiner in Maryland has requested the submission of further affidavits and has directed that the parties appear for a hearing on June 9, 2004, less than three weeks from now. But the Debtors evidently are unhappy, either with the pace of the proceedings before these Commissions or the sense they have obtained of their likely outcome, for they have now asked this Court to address the very same dispute that is pending before these Commissions.

The Debtors have proceeded in a most extraordinary way. They filed their "Emergency Motion" on Monday, May 17, 2004, seeking a hearing for three days later. They did so without any advance warning to Verizon. Indeed, even though Verizon's bankruptcy counsel had been in touch with the Debtors' bankruptcy counsel as recently as Friday, May 14, 2004, to discuss

Verizon's outstanding discovery requests with respect to the Debtors' Chapter 11 plan, and even though the parties have been in frequent contact over the last few weeks to see if the parties could consensually resolve their disputes, the Debtors' representatives did not even bother to call Verizon's counsel in advance to see if Verizon's counsel were available for a hearing on Thursday, May 20, 2004, or to provide any "heads up" of the "emergency" papers to be filed. Instead, the Debtors filed the papers without any warning and "served" them by e-mail at 5:13 p.m. on Monday, May 17, 2004, approximately 72 hours before the hearing on this matter.

ARGUMENT

The Debtors' "Emergency Motion" should be denied. First, there is no emergency other than one manufactured by the Debtors themselves after months of delay on their part. Second, the Debtors' bankruptcy arguments are utterly meritless and fly in the face of overwhelming precedent. Third, the Debtors' position is contrary to well-established telecommunications and contract law and would interfere with the jurisdiction of the state Public Service Commissions. Finally, although the Debtors are careful not to call the relief they seek what it is, the Debtors are requesting a mandatory injunction, and such relief cannot be obtained through a motion on three days' notice, but rather requires the filing of an adversary proceeding and the extension of all the procedural safeguards attendant thereto.

I. There Is No Emergency of Any Kind that Could Conceivably Justify the Emergency Hearing that the Debtors Seek.

The Debtors ask this Court to grant a permanent, mandatory injunction based on papers filed only three days ago. That requested injunction is intended to deny Verizon its rights under the Bankruptcy Code to the cure of many millions of dollars in prepetition defaults under the four contracts at issue. There is no "emergency," let alone one that could plausibly warrant affording Verizon such limited due process on a matter of such significance, both for this case and potentially for numerous other pending and future cases. And, if there is any emergency at all, the Debtors themselves are at fault.

The Debtors cannot and do not contend that Verizon is failing today to provide any services or facilities that the Debtors have requested. On the contrary, Verizon has continued to provide all the services and facilities that the Debtors continue to order. The "emergency" the Debtors cite has nothing to do with the present. It has to do with the indefinite and speculative future. The Debtors are concerned that <u>if</u> they elect to reject their existing interconnection agreements in these jurisdictions, and <u>if</u> their legal position turns out to be wrong and the consequences of that rejection are the same for them as for all other debtors -- i.e., they can no longer demand the same performance post-confirmation from Verizon -- they will have lost the benefits of the agreements. But, if that happens, the Debtors will have no one to blame but themselves. After all, it will be these Debtors who chose to reject their existing interconnection agreements and head down a path on which no other telecommunications debtor has ever proceeded.

If the Debtors truly thought that it was critical to resolve before the hearing on confirmation of their plan the effect of their potential rejection of the four interconnection agreements at issue, the Debtors could have brought the matter to the four Public Service Commissions, or to this Court if the Debtors believed this Court was the appropriate forum, many months ago. The Debtors have long known Verizon's position -- at least from the time they received Verizon's adoption letters last year. It is the Debtors who have delayed for months on end, first by waiting for several months from the time they received Verizon's adoption letters before filing their applications for adoption before the Maryland and D.C. Public Utilities Commissions, and then by waiting until the last moment to raise the same issues before this

Court. The Debtors should not be permitted to take advantage of a sudden "emergency" of their own construction.

The Debtors do not even claim that their pending sale agreement with XO Communications is threatened by anything Verizon has done or might do. Under that agreement, the Debtors are obligated to pay all cure amounts required for all contracts with any incumbent local exchange carriers, such as Verizon, and XO has no right to terminate the agreement simply because the Debtors must pay more or less than the Debtors had hoped in cures.[3] Moreover, XO has recently announced that it may well be prepared to close (a "soft closing" has apparently already occurred) on its purchase of Allegiance's operations even if the Debtors' chapter 11 plan is not confirmed. Thus, the only real consequence that will be felt if the Debtors must meet their obligations under Section 365 and cure their defaults under their interconnection agreements to the extent that they wish to continue to obtain Verizon's performance is that the current holders of the Debtors' bonds -- who expressly agreed that they would be structurally subordinated to all the Debtors' trade creditors in any event -- may receive a few pennies less on the dollar on their investments.

Before filing their "Emergency Motion," the Debtors were required to make "a clear and specific showing" by affidavit of "good and sufficient reasons" why they needed to proceed by order to show cause. See Local Bankruptcy Rule for the Southern District of New York 9077-1. The affidavit of Debtors' counsel does nothing of the kind. It makes no attempt to explain why the Debtors have waited months to file their papers. And it makes no attempt to explain why these Debtors are not proceeding as virtually all other telecommunications providers that have

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[3] See Asset Purchase Agreement by and among Allegiance Telecom, Inc. and Allegiance Telecom Company Worldwide jointly and severally as Sellers and XO Communications, Inc. as Buyer dated February 18, 2004, at § 3.5.

filed for Chapter 11 bankruptcy have proceeded in this District and around the country -- by assuming their interconnection and other agreements with Verizon and curing the defaults thereunder.

In short, the Debtors have utterly failed to meet their burden to justify such extraordinarily truncated notice and opportunity for Verizon to be heard, particularly on a matter of enormous significance to Verizon and the entire telecommunications industry. The "Emergency Motion" should be denied.

II. The Debtors' Contentions of Bankruptcy Law Are Baseless.

The Debtors' charge that Verizon's assertion of its legal rights violates the Bankruptcy Code is nothing short of frivolous. The Debtors claim that Verizon is violating the automatic stay, and in particular Section 362(a)(6) of the Bankruptcy Code, because it is insisting that the Debtors assume their interconnection agreements with Verizon if they want to continue, after confirmation, to obtain the same services and facilities they are now obtaining under those contracts. Emergency Motion at 13-16. The Debtors fail to cite a single case, and Verizon is unaware of one, that holds that a non-debtor party to an executory contract or unexpired lease violates the automatic stay, and its prohibition against acts to collect a prepetition debt, by requiring the debtor to assume the contract or lease and cure any defaults thereunder if the debtor wishes post-confirmation to continue to obtain the same contractual benefits. Section 365 expressly requires a debtor, by confirmation, to assume or reject all of its executory contracts and unexpired leases; it specifically obligates the debtor to an assumed agreement to cure all defaults thereunder; and it plainly authorizes the non-debtor party to a rejected contract to cease performing. 11 U.S.C. § 365(b)(1)(A); id. § 365(d)(2); See, e.g., Stoltz v. Brattleboro Housing Auth., 315 F.3d 80, 94 (2d Cir. 2002) ("In order to assume an unexpired lease, the executory contract provision requires the bankruptcy trustee [or the debtor-in-possession] to cure defaults, … compensate for losses, … and provide adequate assurance, … thereby protecting the creditor's pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor."); Manhattan King David Restaurant Inc. v. Levine, 154 B.R. 423, 429 (S.D.N.Y. 1993) ("If a debtor is in default of an unexpired lease, it may not assume the lease without promptly curing the default or providing adequate assurances. 11 U.S.C. § 365(b)(1). If a debtor fails to satisfy these conditions, the lease is deemed rejected and the debtor must surrender the premises."); Medical Malpractice Ins. Ass'n v. Hirsch (In re Lavigne), 183 B.R. 65, 72 (Bankr. S.D.N.Y. 1995) ("A decision to reject a contract relieves the parties of their obligations under the contract.") aff'd, 199 B.R. 88 (S.D.N.Y. 1996), aff'd, 114 F.3d 379 (2d Cir. 1997).

Simply put, under Section 365, the non-debtor party to an executory contract or unexpired lease has an absolute right to insist on the assumption of the contract or lease, and the cure of all defaults -- whether arising prepetition or postpetition -- if the debtor wishes to continue to obtain performance from the non-debtor party. This is black-letter law, and it is sheer nonsense to say that such a non-debtor violates the automatic stay by simply vindicating its legal rights.[4]

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[4] The courts have routinely held that a creditor does not violate the automatic stay's prohibition against acts to collect prepetition debt by exercising rights otherwise granted to the creditor under the Bankruptcy Code. See United States v. Inslaw, Inc., 932 F.2d 1467, 1474 (D.C. Cir. 1991) ("For obvious reasons . . . courts have recognized that § 362(a) cannot stay actions specifically authorized elsewhere in the bankruptcy code."). For example, a creditor does not violate the stay by filing a proof of claim, by seeking a reaffirmation agreement, or by filing a nondischargeability complaint, even though each of these could technically be deemed an act to collect a prepetition debt. See, e.g., In re Duke, 79 F.3d 43, 45-46 (7th Cir. 1996) (solicitation of a reaffirmation agreement with respect to an otherwise dischargeable debt did not violate section 362(a)(6) of the Bankruptcy Code); Sears, Roebuck & Co. v. Hodges (In re Hodges), 83 B.R. 25, 26 (Bankr. N.D. Cal. 1988) ("As a matter of law. . . a nondischargeability action can never violate the automatic stay"). Verizon's assertion of its rights under Section 365 of the Code is no different.

The Debtors' automatic stay claim fails for another reason as well. Even if Verizon's actions could somehow be deemed an impermissible attempt to collect a prepetition debt, the automatic stay terminates upon the grant or denial of a discharge to the Debtors -- i.e., upon confirmation of a plan. 11 U.S.C. § 362(c)(2)(C). The Debtors do not propose to reject any of their interconnection agreements with Verizon until confirmation of their plan. Verizon could not violate the automatic stay following confirmation of such a plan by declining to provide services or facilities under contracts that the Debtors elected to reject for the simple reason that the stay would no longer be in effect.

The Debtors' only other bankruptcy claim -- that Verizon is violating Section 366 of the Bankruptcy Code -- is equally unavailing. Even if Section 366 applies to the largely wholesale telecommunications services that Verizon provides to these Debtors, Verizon has not refused to provide any services to the Debtors during the pendency of these chapter 11 cases. Rather, it has simply made clear that once the Debtors emerge from bankruptcy, they will need to assume their agreements with Verizon if they wish to continue to require Verizon to perform thereunder, just as Section 365 specifies. The Debtors again fail to cite a single case holding that Section 366 has any continued application after a debtor emerges from Chapter 11 or that Section 366 somehow trumps and renders inoperative Section 365.[5] On the contrary, Section 366 applies only "during

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5 One reason Section 366 cannot be read to require the "utility" to continue to provide services post-confirmation under an executory contract without the debtor's assumption of that contract is that doing so would violate the basic principle of statutory construction that two sections of the same act (here Sections 365 and 366) should be interpreted in a way that nullifies neither and, instead, gives effect to both. See, e.g., TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (internal quotation marks and citations omitted). Moreover, if Section 366 had continued application post-confirmation, then the bankruptcy court would have to entertain indefinitely, long after confirmation of a plan and the closing of a chapter 11 case,

the pendency of the bankruptcy case[.]" Collier Pamphlet Edition - Bankruptcy Code - Part I 317 (Alan N. Resnick & Henry J. Sommer, eds.-in-chief, 2003). Indeed, this is consistent with the Debtors' own position in this very case. The Section 366 Stipulation and Order between the Debtors and Verizon, which was approved by this Court (docket no. 585), expressly provides that the stipulation "shall terminate immediately and without need for any order of the Bankruptcy Court upon the effective date of a chapter 11 plan for the Debtors."[6]

Moreover, even if Section 366 were at all applicable following confirmation of a chapter 11 plan, Verizon would not be violating it by insisting that the Debtors assume their executory contracts and cure their defaults if they wish to obtain Verizon's continued performance. As the Supreme Court has held time and time again, the Bankruptcy Code must be construed in accordance with its plain meaning. See, e.g., BFP v. Resolution Trust Corp., 511 U.S. 531, 552 (1994) (party seeking to defeat plain meaning of the Bankruptcy Code bears an "exceptionally heavy burden") (quoting Patterson v. Shumate, 504 U.S. 753, 760 (1992)) (internal quotation marks omitted); Perrin v. United States, 444 U.S. 37, 42 (1979) (statutory words should be given their ordinary meaning). By its express terms, Section 366 bars a utility from altering, refusing or discontinuing service to a debtor only if the utility so acts "solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due." 11 U.S.C. § 366(a). If

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issues of adequate assurance under Section 366(b), a result that would make no sense as matter of bankruptcy court jurisdiction.

[6] Accordingly, even if Section 366 could apply post-confirmation, Verizon could terminate services under the express terms of Section 366, since there would be no ongoing adequate assurance of payment. 11 U.S.C. § 366(b); see, e.g., In re 499 W. Warren Street Assocs. Ltd. P'ship, 138 B.R. 363, 364-365 (N.D.N.Y. 1991) ("However, once the 20-day period [of § 366(a)] has expired, Code § 366(b) allows a utility to terminate service if adequate assurance of future payment has not been provided, and is also effective regardless of the status of the debtor's pre-petition account.").

Verizon exercised its rights under Section 365 to decline to perform following the Debtors' rejection of its interconnection agreements, Verizon would not be so acting "solely" -- indeed, at all -- on the basis of either the commencement of the Debtors' cases or the Debtors' failure to pay their prepetition payables "when due" (i.e., before the Debtors filed for bankruptcy); on the contrary, Verizon has continued to provide the same services and facilities to the Debtors throughout these bankruptcy cases, notwithstanding their filing for bankruptcy and their failure to pay their prepetition payables when due. Rather, Verizon would be taking action because of the Debtors' failure to assume the relevant executory contracts before confirmation of the Debtors' plan, as Section 365 would expressly allow it to do. Moreover, the Debtors are not merely asking Verizon to provide them generic telecommunications services (and facilities) under Section 366, but rather the very same services, service arrangements, and facilities that Allegiance ordered under its existing interconnection agreements, something that Section 365 makes clear the Debtors can require only if they assume those agreements. In short, the Debtors' Section 366 claim is just as meritless as their Section 365 claim.

III. The Basic Premises on Which the Debtors Rest Their Motion Are Substantively and <u>Procedurally Flawed as a Matter of Telecommunications and Contract Law.</u>

A. Debtors Do Not Have an "Absolute" and "Unfettered" Right to Adopt Under Section 252(i).

The Debtors are wrong that section 252(i) of the Communications Act[7] gives them an "absolute" and "unfettered" right to adopt new interconnection agreements with Verizon at any time, for any reason, in good faith or bad, and regardless of the effect of that adoption on the public interest. The Communications Act does not permit a carrier to adopt a new

[7] Communications Act of 1934, 48 Stat. 1064, as amended by the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151, <u>et</u> <u>seq.</u>) (the "Communications Act").

interconnection agreement where that adoption -- like the adoptions Debtors propose in this matter -- would contravene the public interest.

As more fully explained in Verizon's pending oppositions to the Debtors' applications for adoption before the Maryland and D.C. Public Service Commissions,[8] numerous regulatory agencies have recognized and exercised their duty to ensure that section 252(i) adoptions do not contravene the public interest and have either granted or denied carriers' adoption applications on that basis.[9] To take just one example, one state Public Utilities Commission has "consistently

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[8] See Opposition of Verizon Maryland Inc., Petition of Allegiance Telecom of the District of Columbia Inc. for Expedited Approval of an Interconnection Agreement Adopted under Section 252(i) of the Telecommunications Act of 1996, Case No. 8999, at 20 n.24 (Md. Pub. Serv. Comm'n Apr. 21, 2004) (listing state public service commissions decisions in which the state commission examined public interest factors in determining whether to grant a CLEC's petition for adoption of an interconnection agreement under Section 252(i)). A copy of this Opposition is annexed to the Debtors' "Emergency Motion."

[9] See, e.g., Order Approving Negotiated Interconnection Agreement, In re Joint Application of Verizon Washington, DC, Inc. and Networks Plus, Inc. for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996, Order No. 12296, FC No. TIA 01-13, 2002 WL 1009261 (D.C. P.S.C. Jan. 11, 2002) (recognizing parties' acknowledgement that interconnection agreement adopted under Section 252(i) "must be consistent with the public interest, convenience, and necessity"); Re BellSouth Telecommunications, Inc., Docket No. 990959-TP, PSC-99-1930-PAA-TP, 1999 WL 1037143, at *2 (Fla. P.S.C. Sept. 29, 1999) (although "Section 252(i) of the Act is silent on a state's authority to reject an adoption . . . . [w]e believe that this Commission has the authority to reject [a CLEC]'s adoption of [an existing interconnection] [a]greement as not being consistent with the public interest"); Re MCI Telecommunications Corp., Cause No. 41268-INT-03, 1998 WL 971880, at *2 (Ind. U.R.C. Nov. 25, 1998) (reviewing an interconnection agreement submitted for adoption pursuant to section 252(i) and "find[ing] that the adoption is consistent with the public interest, convenience and necessity"); Joint Petition of CTSI, LLC and Sprint Spectrum, L.P. et al. for Approval of a Negotiated Interconnection Agreement under Section 252(i) of the Telecommunications Act of 1996, by Means of Adoption of an Interconnection Agreement between CTSI, LLC and Cellco Partnership and Allentown SMSA Limited Partnership d/b/a Verizon Wireless, Docket No. A-310513F7008, 2003 WL 22908789, at *2-*3 (Pa. P.U.C. Oct. 2, 2003) (recognizing application of Section 252(e)'s public interest test in considering requests for adoption under Section 252(i)); Joint Petition of Verizon Pennsylvania Inc. and Broadview NP Acquisition Corp d/b/a Broadview Net Plus for Approval of an Interconnection Agreement Under Sections 25[2](i) of the Telecommunications Act of 1996, by Means of Adoption of an Interconnection Agreement Between Verizon Pennsylvania Inc. and Level 3 Communications LLC, Docket No. A-311188F7000, 2003 WL 21916399, at *3 (Pa. P.U.C. July 10, 2003) (same);

held that it may reject the adoption of previously-approved agreements and require modifications in the public interest":

> The Commission does not read 47 U.S.C. § 252(i) to preclude the Commission from modifying the terms of previously-approved contracts in order to apply the insight and experience it has gained through numerous interconnection proceedings. To hold otherwise would be poor public policy and would also render meaningless the Act's requirement that negotiated agreements, including § 252(i) agreements, be submitted for state commission approval.[10]

Indeed, within the last two weeks, a U.S. District Court has confirmed that section 252(i) does not grant CLECs an absolute, unconditional right to adopt new agreements, rejecting the very same arguments the Debtors make here. Global NAPS, Inc., v. Verizon New England Inc., No. Civ. A 03-10437-RWZ, 2004 WL 1059792 (D. Mass. May 12, 2004). The Global NAPs case began before the Massachusetts Department of Telecommunications and Energy (the "DTE"), where Global NAPs, Inc. ("GNAPs") attempted to escape the results of an arbitration before the DTE over the terms of an interconnection agreement it sought with Verizon by purporting to adopt another agreement just one day before the date the DTE was to enter its arbitration order. See Order on Verizon New England, Inc. for Approval of Final Arbitration Agreement or, in the Alternative, for Clarification, Petition of Global NAPs, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc., Docket No. 02-45 (Mass. Dep't of Telecom. and Energy Feb. 19, 2003). Verizon asked the DTE to reject GNAPs' adoption of the

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Order Rejecting Interconnection Agreement, Requiring Further Filing, In re Application for Approval of an Interconnection Agreement Adopted Under the Federal Telecommunications Act of 1996, Section 252(i), Docket No. P-407, 5654/M-98-1920, 1999 WL 33595189 (Minn. P.U.C. Feb. 19, 1999) ("the Commission has consistently held that it may reject the adoption of previously-approved agreements and require modifications in the public interest").

[10] Order Rejecting Interconnection Agreement, Requiring Further Filing, In re Request to Approve the Adoption Agreement of GTE Midwest and AT&T Communications Interconnection Agreement for Use Between GTE Midwest and OCI Communications, Docket No. p-407, 5478/M-98-511, 1998 WL 1305525 (Minn. P.U.C. June 9, 1998).

new agreement because GNAPs had sought to adopt that agreement solely to avoid the effect of the DTE's arbitration order – just as the Debtors' purpose here is plainly to avoid the requirements of section 365 of the Bankruptcy Code. Like the Debtors here, GNAPs contended that section 252(i) granted it "an unconditional right to avoid obligations under a state-arbitrated agreement and to enter into another agreement of its choosing." Id. at 8. The DTE rejected GNAPs' position and issued an order finding that GNAPs' attempt to circumvent the arbitration process by exercising the section 252(i) adoption option violated the Communications Act:

> The § 252(i) adoption process . . . allows a CLEC to avoid the costs and delay associated with negotiating its own contract. *In the present case, we find that GNAPs' invocation of the § 252(i) adoption process is merely an attempt to avoid the Department's rulings in the Arbitration Order, and we agree with Verizon that such use is improper. The § 252(i) adoption process is not a loophole to evade the effectiveness of an arbitrated decision.* Accordingly, we reject GNAPs' attempted adoption of the Sprint Agreement as somehow satisfying its obligations under our Arbitration Order.

Id. at 12 (emphasis added). The DTE made clear that to allow CLECs to misuse the section 252 adoption process would "establish precedent that encourages 'strategic' arbitrations and permits carriers to game the system." Id. at 13. GNAPs appealed.

The District Court affirmed, endorsing two of the fundamental propositions underlying Verizon's objection to the Debtors' proposed adoption. First, the right to adopt under section 252(i) is not -- as the Debtors claim here -- absolute and unconditional. Second, and again contrary to the Debtors' arguments, a CLEC's motivation in seeking to adopt a new interconnection agreement is highly relevant to whether that adoption should be permitted, particularly where that motivation is contrary to the public interest. In particular, the District Court held that GNAPs could not then use its section 252(i) adoption rights to avoid the consequences of the arbitration it chose to commence. 2004 WL 1059792, at *2. The Global NAPs Court found that GNAPs was "attempting to avoid the agreement it arbitrated by opting into another one" and that GNAPs' "refusal to cooperate with the arbitrator's order constitutes a failure to negotiate in good faith." Id. at *2-3.

The Global NAPs Court's analysis applies equally here. Having chosen voluntarily to initiate bankruptcy proceedings, the Debtors should not be permitted to turn around and misuse their claimed "adoption rights" to avoid their obligations under Section 365 of the Bankruptcy Code. They should not be allowed effectively to assume the benefits of their existing interconnections agreements with Verizon while failing to cure their debts under those same agreements, as Section 365 requires.[11]

Allegiance's request that this Court order Verizon to allow Allegiance to adopt various interconnection agreements pursuant to Section 252(i) should also be rejected for another, related reason: the agreements with other carriers that Allegiance seeks to adopt are clearly inconsistent with applicable law. Since those agreements were executed, the FCC and, more recently, the D.C. Circuit have struck down many of the requirements that were previously imposed on Verizon and other ILECs in their dealings with CLECs. See United States Telecom Association v. Federal Communications Commission, 359 F.3d 554 (D.C. Cir. 2004). Those now-invalid

[11] Even without this federal and state authority demonstrating that section 252(i) adoptions are subject -- at the very least -- to public policy review by state commissions and federal courts to ensure their consistency with the public interest, this Court still would have cause to be suspicious of Debtors' suggestion that they can insist that Verizon continue to provide the very same services and facilities as Verizon currently provides under the existing interconnection agreements, even if the Debtors fail to assume those agreements and cure the defaults thereunder. If that were true, why then would some of the largest telecommunications providers in the nation -- WorldCom, Global Crossing, and others -- represented by some of the leading law firms in this country -- have assumed their interconnection agreements with Verizon and paid tens of millions of dollars in cures? And why would the regulators impose such a patently inequitable regulatory scheme that would require Verizon to continue to provide services and facilities ordered and provisioned under a contract without payment of the outstanding debt thereunder and deny Verizon the right that every other non-debtor party to an executory contract has: the right to insist on an assumption and cure by the debtor if Verizon is to be required to continue to perform? The Debtors provide no answers because there are none.

requirements are incorporated in the agreements (which were drafted before the recent FCC and D.C. Circuit rulings) which Allegiance seeks to adopt. Plainly, Verizon cannot be forced to execute those agreements without significant modifications; yet, that is precisely what the Debtors are demanding.

Indeed, as described more fully in Verizon's pleadings before the Maryland and D.C. Public Service Commissions, the public interest considerations that the Communications Act requires those Commissions to consider strongly counsel against permitting the Debtors to walk away from its payment obligations arising under the very same contractual arrangements they seek to maintain. Such a result would, of course, be contrary to the fundamental policy judgment that Congress made in Section 365 of the Code: that a debtor must take the burdens (in this case, the cure of its defaults) with the benefits (the contractual right to the services and facilities provisioned thereunder) of any contract. See N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513 (1984). Moreover, the "have-its-cake-and-eat-it-too" result that Allegiance demands would also contravene the public policy that animates the Communications Act. Under that statute, incumbent local exchange carriers, such as Verizon, are entitled to recover their costs of operation when they are required interconnect with CLECs like Allegiance. 47 U.S.C. §§ 251(c)(3) & 252(h). Indeed, the implementing regulations adopted by the Federal Communications Commission make absolutely clear that a CLEC's right of adoption is qualified by the ILEC's right to fully recover its costs. See 47 C.F.R. § 51.809(b)(1) (the right of adoption under section 252(i) does not apply where "[t]he costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement . . ."). Here, if Allegiance were allowed to adopt a new interconnection agreement and at the same time walk away from its payment obligations, Verizon's costs of providing service to Allegiance would be much greater than its costs of providing those same services to the carrier whose contract Allegiance would be adopting, since Allegiance would not have to reimburse Verizon for the costs it incurred in providing those services to Allegiance.

Allegiance's "Emergency Motion" is thus fundamentally contrary to both bankruptcy and telecommunications law and policy and must be denied.

B. Section 252(i) Does Not Negate the Basic Principles of Contract Law That Underlie Verizon's Rights.

Even if Debtors were permitted to adopt new interconnection agreements -- indeed, even if Debtors were somehow found to have an "absolute" and "unfettered" right to adopt new interconnection agreements regardless of the public interest -- those new adoptions would not affect Verizon's ability under both bankruptcy and contract law to discontinue service under the existing interconnection agreements if the Debtors reject those agreements at the confirmation. Unless Verizon agreed otherwise, the newly-adopted agreements would, as a matter of basic contract law, govern only *new* services and facilities ordered by Allegiance *after* the adoption, not the pre-existing services and facilities which Allegiance ordered, and Verizon provisioned, under the current contracts before any adoption of new agreements.

In the past, when the Debtors wished to continue receiving services ordered under previous agreements, the Debtors transferred the debt associated with those services, along with the service arrangements themselves, to the new agreement. Hessenthaler Decl., ¶ 9. There is no reason that the same result should not obtain here. As it has done in the past, Verizon is more than willing in this case to transfer the Debtors' existing service arrangements from their existing interconnection agreements into any newly-adopted interconnection agreements, just so long as the Debtors' payment obligations related to those same service arrangements are also transferred into the newly-adopted agreements as well. Verizon is equally willing to accept the Debtors' choice to reject its existing agreements, so long as that rejection applies equally to Verizon's service obligations as well as to Allegiance's payment obligations under those existing agreements. Thus, what the Debtors so dramatically mischaracterize as a "hold-up" is simply Verizon's insistence that, if the Debtors are going to use the section 252(i) adoption process in effect to assume their current service arrangements, they not be relieved of the obligation to cure the defaults thereunder, that goes hand-in-hand with that assumption under both bankruptcy law and general principles of contract law.

The Debtors cite no authority that would allow the Debtors to obtain under the newly-adopted agreements -- not only new services and facilities ordered and provisioned after the adoption of those agreements -- but the existing services and facilities that have been ordered and provisioned under the existing agreements. That is certainly not the normal result under contract law. To use a simple example, if a party contracts to lease one parcel of real estate from a lessor and then enters into a second agreement to lease a second parcel from the same party, the second agreement clearly would not govern the parties' rights and relationship with respect to the first parcel unless the parties expressly agreed to such a result. Rather, the first agreement would continue to govern the lease of the first parcel, and the second agreement would govern the lease of the second parcel.[12]

[12] See, e.g., Heidtman Steel Products, Inc. v. Compuware Corp., No. 3:97CV73892000, WL 621144 (N.D. Ohio Feb. 15, 2000) ("[A] subsequent contract does not supersede ... unambiguous terms in a preceding contract unless the subsequent [contract] specifically evidences an intent to do so.") (internal quotation marks and citations omitted); Haft v. Dart Group Corp., 841 F. Supp. 549, 568 (D. Del. 1994) ("Whether the parties to a contract intended a new contract to supersede an old one, whether partially or entirely, depends on their intent"; "[a] new contract . . . does not destroy the obligation of the former agreement, except as it is inconsistent therewith, unless it is shown that the parties intended the new contract to supersede the old contract entirely.") (internal quotation marks and citations omitted).

The same analysis applies here. As a matter of basic contract law, unless Verizon and the Debtors mutually agree otherwise, any new interconnection agreements that the Debtors adopt will govern only, and will entitle the Debtors to obtain only, any new services and facilities first ordered and provisioned under the new agreements, not the current services and facilities ordered and provisioned under the existing agreements. If the Debtors then reject the existing agreements, they will release Verizon from any obligation to continue to perform under those agreements. Both bankruptcy and contract law compel this result, and nothing in the Communications Act -- whether or not the Debtors are permitted to adopt new agreements -- requires a different result.

C. In the First Instance, the State Commissions Should Decide the Telecommunications and Administrative Law Issues Presented by the Debtors' Motion.

Finally, while this last issue (whether, as a matter of contract law, the Debtors' adoption of new interconnection agreements would somehow entitle the Debtors to obtain the services and facilities they ordered under their existing agreements) may ultimately be one that this Court can decide, the former issues (whether, under Section 252(i) of the Telecommunications Act, the Debtors have the "absolute" and "unfettered" right in the first place to adopt new agreements without any conditions and, if not, whether the public interest requires that the Debtors' existing payables attach to the new, restated agreements) are surely ones this Court cannot. They are quintessential issues of telecommunications law and policy that Congress has entrusted to the regulatory bodies charged with administering the Telecommunications Act to resolve.

Indeed, this Court's interference in those issues would be particularly inappropriate here. After all, the Debtors themselves commenced the pending proceedings before the Maryland and District of Columbia Public Service Commissions. This Court should allow those tribunals to decide the effect of Section 252(i) and the questions of telecommunications policy posed by Allegiance's petitions before the Commissions. See, e.g., MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1103 (3d Cir. 1995) (deferring to state PUC issues concerning the "reasonableness, adequacy and sufficiency of public utility services" and citing the PUC's enforcement power over its tariffs and regulations along with its particular expertise on matters that pertain to those tariffs.) (internal quotation marks and citations omitted); Total Telecommunications Servs., Inc. v. AT&T Co., 919 F. Supp. 472, 478 (D.D.C. 1996) ("case will require resolution of issues, which, under a regulatory scheme, have been placed in the hands of an administrative body") (internal quotation marks and citations omitted), aff'd, 99 F.3d 448 (D.C. Cir. 1996); Telecom Int'l America, Ltd. v. AT&T Corp., 67 F. Supp.2d 189, 220 (S.D.N.Y. 1999) (citing FCC cases addressing and deciding the issue and finding that the issue is "solely within the institutional competence of the FCC"); In re Megan-Racine Assoc., Inc., 180 B.R. 375, 382 (Bankr. N.D.N.Y. 1995) (deferring to Federal Energy Regulatory Commission on complex issues within agency expertise); In re Brown Transport Truckload, Inc., 176 B.R. 82 (Bankr. N.D. Ga. 1994) (deferring to the ICC issues of reasonableness of rates).

IV. The Debtors Cannot Obtain the Injunctive Relief They Seek by Motion.

Although the Debtors seek to disguise what they are requesting from this Court, it is clear they are seeking a mandatory injunction. The proposed order that the Debtors have submitted would require Verizon "to immediately execute" new interconnection agreements with the Debtors. Such an order requiring a party to take affirmative action is a mandatory injunction. See, e.g., Tom Doherty Assocs., Inc. v. Saban Entertainment, Inc., 60 F.3d 27, 34 (2d Cir. 1995) ("A mandatory injunction . . . is said to alter the status quo by commanding some positive act.") (citing Abdul Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir. 1985)). And such an injunction may issue "only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief." Id. (internal quotation marks and citation omitted). These Debtors have made no such showing or, for that matter, any showing that they have no adequate remedy at law, another basic prerequisite of injunctive relief.

In any event, an injunction can be issued only in connection with an adversary proceeding, not by motion. See Fed. R. Bankr. P. 7001(7) ("The following are adversary proceedings: . . . (7) a proceeding to obtain an injunction or other equitable relief, except when a . . . chapter 11 . . . plan provides for the relief"). An adversary proceeding, of course, requires the filing of a complaint and all the attendant due process that the formal complaint procedure mandates -- an opportunity for the defendant to answer or move in response, to take discovery, and otherwise to be heard on more than three days notice.

This jurisdictional defect is fatal to the relief the Debtors are seeking. See, e.g., In re Entz, 44 B.R. 483, 485 (Bankr. D. Ariz. 1984); In re Garnett, 47 B.R. 170, 172 (E.D.N.Y. 1985); Dahlquist v. First Nat'l Bank (In re Dahlquist), 33 B.R. 101, 103 (Bankr. D.S.D. 1983); In re Brookfield Tennis, Inc., 29 B.R. 1, 2 (Bankr. E.D. Wis. 1982). The Debtors have not filed an adversary proceeding and they have afforded Verizon none of the necessary procedural safeguards. Thus, even if the Debtors were substantively entitled to the relief they seek -- and they most surely are not -- their "Emergency Motion" would be procedurally defective and would have to be denied.

CONCLUSION

WHEREFORE, Verizon requests that this Court (i) deny the Emergency Motion in its entirety, (ii) award Verizon its fees and expenses in having to respond to the Emergency Motion, and (iii) grant Verizon such other and further relief as this Court deems appropriate.

Dated: May 20, 2004

Respectfully Submitted,

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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)

DECLARATION OF SHAROLYN ANN HESSENTHALER IN SUPPORT OF OBJECTION OF THE TELEPHONE OPERATING COMPANY SUBSIDIARIES OF VERIZON COMMUNCIATIONS INC. TO DEBTORS' EMERGENCY MOTION FOR ORDER COMPELLING VERIZON TO EXECUTE NEW AGREEMENTS

I, Sharolyn Ann Hessenthaler, depose and say:

1. I am the Vice President, Wholesale Finance, Billing and Collections of Verizon Communications Inc. ("VCI"). My responsibilities include the supervision and oversight of those VCI employees in the finance area that support the wholesale line of business and handle accounts of competitive local exchange carriers ("CLECs") and other telecommunications companies that file for bankruptcy. I have been employed by VCI or affiliated or predecessor companies for 19 years.

2. I provide this Declaration in support of the Objection of the Telephone Company Subsidiaries of Verizon Communications Inc. to Debtors' Emergency Motion for Order Compelling Verizon to Execute New Agreements.

3. Since 1996, the telephone operating company subsidiaries of Verizon Communications Inc. ("Verizon") have been creditors in approximately 160 Chapter 11 and Chapter 7 cases involving CLECs and other telecommunications companies. In the vast majority of those cases, except where such debtors have liquidated or exited the relevant markets, the debtors have assumed (and, in some instances involving sales, assumed and assigned)

interconnection agreements, contractual arrangements by tariff and/or other contracts with Verizon. The following is a partial list of such cases, in each of which Verizon obtained payment in cure of the defaults under one or more assumed contracts:

In re WorldCom, Inc., 02-13533 (Bankr. S.D.N.Y.); In re Global Crossing Ltd., 02-40188 (Bankr. S.D.N.Y.); In re CTC Communications Group, Inc., CTC Communications Corp., CTC Communications of Virginia, Inc., and CTC Communications Leasing Group, 02-12873 (Bankr. D. Del.); In re Network Plus Corp., 02-10341 (Bankr. D. Del.); In re Network Access Solutions Corp. & NASOP, Inc., 02-11611 and 02-11612 (Bankr. D. Del.); In re Adelphia Business Solutions, Inc., 02-11389 (Bankr. S.D.N.Y.); In re Arch Wireless, Inc., 01-47330 (Bankr. D. Mass.); In re ATS Telecomms. Systems, Inc., 01-33453 (Bankr. S.D. Tex.); In re Cable & Wireless USA, Inc., 03-13711 (Bankr. D. Del.); In re EXDS, Inc. (f/k/a Exodus Communications, Inc.), 01-10539 (Bankr. D. Del.); In re FastNet Corporation, 03-23143 (Bankr. E.D. Pa.); In re Focal Communications Corp., 02-13709 (Bankr. D. Del.); In re Genuity Inc., 02-43558 (Bankr. S.D.N.Y.); In re Logix Communications Corp. and Logix Communications Enters., Inc., 02-32105 and 02-32106 (Bankr. S.D. Tex); In re Mpower Holding Corporation, 02-11046 (Bankr. D. Del.); In re Northpoint Communications Group, Inc., 01-30127 (Bankr. N.D. Cal.); In re Plan B Communications, Inc., 01-11443 (Bankr. S.D.N.Y.); In re Telscape Int'l., Inc., 01-1563 (Bankr. D. Del.); *In re PSINet Inc.*, 01-13213 (Bankr. S.D.N.Y.); In re Rhythms NetConnections Inc., 01-14283 (Bankr. S.D.N.Y.); In re RSL COM PrimeCall, Inc. and RSL COM U.S.A., Inc., 01-11457 and 01-11469 (Bankr. S.D.N.Y.); In re Teligent, Inc., 01-

12974 (Bankr. S.D.N.Y.); In re TSR Wireless, LLC, 00-41857 and 00-41858 (Bankr. D.N.J.); In re Usinternetworking, Inc., 02-50215 (Bankr. D. Md.); In re World Access, Inc., 01-1286 (Bankr. D. Del.).

4. In many of these cases, the initial term of the relevant interconnection or other agreements had expired, either during the bankruptcy proceedings or before. The debtors nevertheless assumed (or assumed and assigned) the agreements, which remained in effect under various forms of "evergreen" contractual provisions. Attached hereto as Exhibit A is the motion (which Judge Gonzalez approved) filed in the WorldCom bankruptcy cases by the debtors therein to assume interconnection, tariff and other agreements with Verizon (those debtors had previously obtained court approval to assume two other sets of agreements with Verizon. As reflected therein, the debtors in those cases paid Verizon $60 million in cash in cures (they had previously obtained court approval to assume two other sets of agreements and had already paid Verizon an additional approximately $60 million in cash cures) and also paid Verizon through set-off another $376.5 million.

5. Verizon and the Allegiance Debtors are parties to interconnection agreements in various jurisdictions, including the four that are the subject of the Allegiance Debtors' "Emergency Motion": Maryland, New York, Pennsylvania and the District of Columbia. Each of those agreements permits the Allegiance Debtors to "interconnect" with Verizon's network, lease Verizon facilities, and resell Verizon services. Each month Verizon provides telecommunications services and facilities worth millions of dollars to the Allegiance Debtors under these agreements. Like the interconnection agreements at issue in the numerous other cases discussed above, each of these agreements specifies an initial term, after which the agreement may be terminated. But, as is typical with interconnection agreements, each of these

agreements also has an "evergreen" provision that provides for the agreement to continue even after the initial term expires unless and until the agreement is terminated. Indeed, some provide that, even after a notice of termination is sent and becomes effective, the agreement may continue to govern any services and facilities that continue to be provided.

6. Throughout this bankruptcy case, the Allegiance Debtors have continued to treat their interconnection and other agreements with Verizon as in effect. They have continued to request and obtain services and facilities from Verizon every month – the Allegiance Debtors' average monthly payable to Verizon is currently around $6.2 million. Indeed, they have frequently ordered new services and facilities or changes in services and facilities, and Verizon has completed these orders. These continued requests for the same, new and/or changed services and facilities have included the four jurisdictions at issue. Moreover, the Allegiance Debtors have continued to charge Verizon "reciprocal compensation" under these agreements, which would not otherwise be payable in the absence of an effective interconnection agreement.

7. I understand that, in this case, the Allegiance Debtors are asserting that they have the right to adopt new interconnection agreements with Verizon in the four jurisdictions at issue (Maryland, New York, Pennsylvania and the District of Columbia) without having their existing debts to Verizon under the pre-existing interconnection agreements with Verizon in those same jurisdictions paid or transferred to the new agreements – i.e., without assuming the pre-existing agreements and curing the defaults thereunder. I also understand that the Allegiance Debtors are asserting that they would be entitled under the new agreements to all the same services and facilities that they ordered and Verizon provisioned under the pre-existing agreements. To my knowledge, no other telecommunications company in bankruptcy has previously taken this

position with Verizon. The approach that the Allegiance Debtors have taken is, to my knowledge, unprecedented.

8. The Allegiance Debtors first notified Verizon that they wanted to adopt new interconnection agreements in any of the four jurisdictions at issue in September 2003, some eight months ago. Verizon responded in writing that it would consent to each such adoption provided that (in addition to certain other terms) the Debtors executed an adoption letter specifying that "the monetary obligations of the parties to one another under the [existing agreement] shall remain in full force and effect and shall constitute monetary obligations of the parties under the [new, restated agreement]." Copies of those letters are attached hereto as Exhibit B. This is standard language in such adoption letters (indeed, it also appears in the template for the standard Verizon interconnection agreement with CLECs), and many other CLECs (including at least one in bankruptcy) have agreed to it.

9. Indeed, this language is consistent with the history between the parties. Before the Allegiance Debtors filed for bankruptcy, they adopted different interconnection agreements with Verizon from time to time. In these situations, by agreement of the parties, the Allegiance Debtors' outstanding obligations to Verizon for services and facilities provided under the "old" agreement, as well those service and facilities, were effectively "transferred" to the "new" agreement.

10. The Allegiance Debtors have now refused to do so, however. Instead, they have commenced proceedings before the Public Service Commissions in Maryland and the District of Columbia. Copies of its petitions are attached hereto as Exhibit C. Verizon's initial responses are attached to the Allegiance Debtors' Emergency Motion. The parties have also filed additional papers, and the Maryland Public Service Commission has requested additional

submissions, and has scheduled a hearing for June 9, 2004. To my knowledge, the Allegiance Debtors have not filed any application for adoption in either New York or Pennsylvania.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on May 20, 2004.

/s/ Sharolyn Ann Hessenthaler
Sharolyn Ann Hessenthaler

<u>EXHIBIT A</u>

Hearing Date: July 29, 2003 at 10:00 a.m.
Objection Deadline: July 24, 2003 at 12:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case No.**
WORLDCOM, INC., et al.,	:	**02-13533 (AJG)**
	:	
	:	**(Jointly Administered)**
Debtors.	:	

MOTION OF THE DEBTORS PURSUANT TO BANKRUPTCY RULE 9019 SEEKING APPROVAL OF A SETTLEMENT AND COMPROMISE OF CERTAIN MATTERS WITH AND VERIZON COMMUNICATIONS, INC.

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "WorldCom" or the "Debtors"), respectfully represent:

Background

1. On July 21, 2002 (the "Commencement Date") and November 8, 2002, WorldCom, Inc. and certain of its direct and indirect subsidiaries commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By Orders dated July 22, 2002 and November 12, 2002, the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The

Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 29, 2002, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee").

2. WorldCom, Inc., one of the Debtors in the above captioned cases, together with approximately 200 direct and indirect domestic subsidiaries and 200 non-debtor foreign affiliates (collectively, the "Company"), is one of the world's preeminent global communications companies that provides a broad range of communication services in over 200 countries on six continents. Through its core communications services business, which includes voice, data, Internet and international services, the Company carries more data over its networks than any other entity. The Company is also the second largest carrier of consumer and small business long distance telecommunications services in the United States, provides a broad range of retail and wholesale communications services, including long distance voice and data communications, consumer local voice communications, wireless messaging and voice services, private line services and dial-up Internet access services.

3. For the year ended December 31, 2001, WorldCom recorded revenue of more than $30 billion.[1] As of March 31, 2002, WorldCom's books and records reflected liabilities totaling approximately $41 billion. As of June 30, 2002, WorldCom employed more than 63,900 individuals, of which approximately 57,700 were full-time employees and approximately 6,200 were part-time employees.

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[1] The amounts in this paragraph are stated on a consolidated basis, including Debtors and non-debtor domestic subsidiaries only. WorldCom, Inc. has announced its intention to restate the financial statements for 2000, 2001 and the first quarter of 2002.

Jurisdiction

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background Regarding the Parties' Relationship -- Claims Against and Disputes with Verizon Communications, Inc.[2]

5. The Debtors and the Verizon Entities (together, the "Parties") are parties to numerous prepetition contracts and arrangements pursuant to which they provide services and furnish facilities to one another, including without limitation (a) various interconnection agreements and arrangements provided under tariffs pursuant to which Verizon has made access to its network available to WorldCom, and (b) billing and collection agreements pursuant to which Verizon has purchased accounts receivable of WorldCom and provided billing services for WorldCom (all such agreements and arrangements, collectively, the "Executory Contracts"). Pursuant to section 365 of the Bankruptcy Code, WorldCom has assumed, and cured defaults under, certain of the Executory Contracts (the "Assumed Executory Contracts") and has rejected certain other Executory Contracts. There remain still other Executory Contracts that WorldCom so far has neither assumed nor rejected. The Debtors dispute whether certain of the services provided under tariff are provided under executory contracts and further contend that the purchase of non-usage-sensitive telecommunications services for a term of thirty (30) days or less are not purchased pursuant to executory contracts.

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[2] Verizon Communications, Inc. entered into the Settlement Agreement (as defined below) on behalf of itself and all its domestic subsidiaries and other domestic affiliates other than Puerto Rico Telephone Company and its subsidiaries and Cellco Partnership and its subsidiaries (d/b/a Verizon Wireless) (individually and collectively, "Verizon" or the "Verizon Entities").

6. On or about January 23, 2003, Verizon filed a proof of claim (the "Proof of Claim") in the chapter 11 cases of most of the Debtors, asserting claims against WorldCom arising prior to the petition dates totaling $790,152,169.46 plus other amounts described in an attachment thereto.

7. The Proof of Claim includes contingent claims totaling $257,709,832.40 for reciprocal compensation and other amounts that Verizon paid WorldCom pursuant to court or regulatory orders that Verizon has sought to have reversed or overturned (the "Verizon Disputed Intercarrier Compensation and Other Contingent Claims"). The Debtors dispute not only the Verizon Disputed Intercarrier Compensation and Other Contingent Claims but also many of the other claims asserted in the Verizon Proof of Claim.

8. WorldCom asserts claims against Verizon arising before the petition dates of the various Debtors that total (i) about $390,000,000 for accounts receivable other than reciprocal compensation and (ii) about $453,000,000 for reciprocal compensation and other intercarrier compensation charges. Verizon disputes many of the accounts receivable the Debtors claim are due. In addition, Verizon disputes all but about $27,600,000 of claims for reciprocal compensation and other intercarrier compensation (with the exception of such $27,600,000 of claims, the "WorldCom Disputed Intercarrier Compensation Claims"). There also exist certain commercial issues between the Parties affecting the cost of customer service.

9. The nature of the most significant disputes is discussed in greater detail below.

The Negotiations

10. The Parties have diligently sought to reconcile their competing prepetition claims and debts, as well as the disputes between them regarding the competing amounts each claimed the other owed as of the dates of filing of the bankruptcy petitions. As a result of such efforts, the Parties have reconciled and resolved all such competing prepetition claims and debts pursuant to the terms of the settlement, with the exceptions of the WorldCom Disputed Intercarrier Compensation Claims, the Verizon Disputed Intercarrier Compensation and Other Contingent Claims and certain other *de minimis* claims.

11. The Parties have also addressed and resolved some commercial disputes and the status of certain remaining executory contracts and the effect of any plan of reorganization on such remaining contracts.

The Settlement Agreement

12. On July 16, 2003, but dated as of June 2, 2003 (the "Settlement Date"), the Parties entered into a settlement agreement (the "Settlement Agreement")[3] to resolve the foregoing disputes to the extent described above. In summary, the Parties have agreed as follows:[4]

a. The settlement will become effective on the later of the effective date of the proposed plan of reorganization or the date of the Court's order approving the Settlement Agreement (the "Settlement Effective Date").

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[3] The Settlement Agreement contains substantial proprietary and confidential information, as well as provisions imposing confidentiality and non-disclosure obligations. Accordingly, the Debtors have not attached the Settlement Agreement to this Motion.

[4] To the extent that there are any inconsistencies between the summary description of the Settlement Agreement contained herein and the terms and conditions of the Settlement Agreement, the terms of the Settlement Agreement shall control.

b. As to the Parties' disputes respecting certain of their competing claims arising prior to commencement of the Debtors' respective chapter 11 cases (the "Petition Dates"), WorldCom and Verizon agree to the following amounts (the "Agreed Amounts") owing as of the Petition Dates that remain owing as of the Settlement Date (and excluding amounts already paid to Verizon in connection with the Debtors' prior assumptions of executory contracts and accompanying cures of defaults), excluding the WorldCom Disputed Intercarrier Compensation Claims and the Verizon Disputed Intercarrier Compensation and Other Contingent Claims and certain other *de minimis* claims Verizon retains:

    i. By WorldCom to Verizon: $436,500,000;

    ii. By Verizon to WorldCom $376,500,000;

c. In order to cure all prepetition defaults on all remaining Executory Contracts and to satisfy the obligation reflected above, WorldCom has agreed to setoff (the "Agreed Setoff") of the Agreed Amounts and to pay Verizon sixty million dollars ($60,000,000) (the "Settlement Payment");

d. For purposes of voting on the plan, Verizon will be deemed to have an allowed claim in the amount of $436,500,000;

e. WorldCom will be deemed to have assumed all of the remaining Executory Contracts, except those for which WorldCom had previously sought to reject or which are rejected pursuant to WorldCom's plan of reorganization;

f. The Parties will retain any and all rights and rights to payment of any and all amounts arising postpetition;

g. Verizon and the Debtors shall grant each other releases for any amounts owed prepetition, except for (i) claims arising under the settlement, (ii) the Verizon Disputed Intercarrier Compensation and Other Contingent Claims and the WorldCom Disputed Intercarrier Compensation Claims, (iii) any claims by or against Puerto Rico Telephone Company and its subsidiaries and Cellco Partnership and its subsidiaries, (iv) claims for postpetition payables, and (v) any claims by Verizon for rejection damages asserted in accordance with paragraph i below;

h. The Debtors shall be deemed to have released all claims against the Verizon Entities arising under Chapter 5 of the Bankruptcy Code;

i. Verizon will retain the right to assert further rejection damage claims, in addition to the pending rejection claims, to the extent that WorldCom rejects or has rejected any of the remaining executory contracts (including contracts or circuits that were rejected after the date Verizon prepared its Proof of Claim, or that otherwise were not specifically identified on an exhibit to the Settlement Agreement of rejected circuits), but the Parties agree to seek in good faith to resolve any disputes over the validity and amount of any such claim;

j. With respect to recovery on the Verizon Disputed Intercarrier Compensation and Other Contingent Claims, Verizon may use the Verizon Disputed Intercarrier Compensation and Other Contingent Claims, to the extent such claims are allowed, to reduce or offset any liability that Verizon may have to WorldCom on the WorldCom Disputed Intercarrier Compensation Claims and, if Verizon pays, in part or whole, any such WorldCom Disputed Intercarrier Compensation Claims, to recoup or recover, in part or whole, any such payment (no discharge WorldCom may obtain will affect these rights of Verizon), but Verizon will not be entitled to any recovery against WorldCom on the Verizon Disputed Intercarrier Compensation and Other Contingent Claims in excess of any amount paid or payable by Verizon to WorldCom on the WorldCom Disputed Intercarrier Compensation Claims;

k. The Parties reached compromises regarding certain commercial issues such as network grooming, voicemail interfaces and messaging capabilities, and rates applicable to unbundled local switching in New York and intercarrier compensation for ISP-bound traffic; and

l. Subject to an order approving the Motion by August 5, 2003, Verizon will not object to confirmation of the proposed plan reorganization or to any approvals from regulatory agencies that WorldCom seeks to obtain before the effective date of the plan (and that are, in fact, obtained before such effective date) and that are, in accordance with the terms of the Plan, required for such plan to go effective, but nothing bars Verizon from pursuing regulatory actions in connection with WorldCom's ongoing business operations or from objecting to or otherwise opposing any relief from any regulatory agency that WorldCom otherwise may seek.

Relief Requested

13. By this Motion, the Debtors respectfully request entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and section 362 of the Bankruptcy Code (a) approving the Settlement Agreement in its entirety, and (b) authorizing the Parties to enter into and implement the Settlement Agreement, including payment of and setoff of agreed amounts and prosecution of certain claims outside this Court, in accordance with the intent of the Parties. All of the various remaining Executory Contracts between the Parties are being assumed pursuant to section 365 of the Bankruptcy Code and the Debtors' proposed plan of reorganization.

Basis for Relief Requested

Standard for Approving the Agreement

14. This Court may authorize the Debtors to enter into the Settlement Agreement with Verizon pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

15. Bankruptcy Rule 9019 governs the procedural requirements to be followed before a settlement may be approved. Bankruptcy Rule 9019(a) provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement." Fed. R. Bankr. P. 9019(a). Settlements and compromises are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968) (*quoting Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)).

16. To approve a compromise and settlement under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise and settlement is fair and

equitable, reasonable, and in the best interests of the debtor's estate. *See, e.g.*, *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id.* at 122. The court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the bankruptcy court may exercise its discretion "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41 (Bankr. S.D.N.Y. 1998); *see also Shugrue*, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

17. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *see also Purofied Down Prods.*, 150 B.R. at 522 ("the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation").

18. In deciding whether a particular settlement falls within the "range of reasonableness," courts consider the following factors:

(i) the probability of success in the litigation;
(ii) the difficulties associated with collection;
(iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and
(iv) the paramount interests of creditors.

See, e.g., *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992).

19. "The 'reasonableness' of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of 'arms-length' bargaining, and not of fraud or collusions [sic]." *Ionosphere Clubs*, 156 B.R. at 428.

Basis for Approving the Agreement

20. The Debtors submit that the proposed Settlement Agreement is fair and reasonable under the circumstances and in no way unjustly enriches any of the Parties. The Debtors submit that the Settlement Agreement is in the best interest of the Debtors, their estates and creditors.

21. The Parties' differences are complex, involving both pre-bankruptcy disagreements and disputes arising from the intersection of bankruptcy and telecommunications law. The bankruptcy issues arise primarily from (i) differing positions on which telecommunications transactions between the Parties constitute executory contracts for purposes of assumption and cure, and (ii) the effect of substantive consolidation (as set forth in the Debtors' proposed plan of reorganization) on the mutuality of debts between Verizon and separate Debtor entities.

22. WorldCom asserts that many usage-sensitive services Verizon provides to the Debtors do not arise from "executory contracts" as that term is used in section 365 of the Bankruptcy Code, but are more in the nature of open accounts not governed by such section. The same holds true for certain very short-term non-usage-based services. The terms of the proposed plan incorporate WorldCom's understanding by providing that such services are not executory contracts and thus require no cure.

Verizon urges that the "term" distinction set forth in the plan is ambiguous, arbitrary, and contrary to law, and that all of the services it provides to the Debtors are under executory contracts.

23. Further, the Debtors' proposed plan of reorganization provides for substantive consolidation of Debtor entities. Because of the significant debts Verizon owes the various Debtors, Verizon asserts that substantive consolidation has the effect of making any debt between it and any Debtor entity mutual for setoff purposes under section 553 of the Bankruptcy Code. The Debtors maintain that while the plan preserves creditors' rights to setoff, such rights arose prior to commencement of the bankruptcy case under non-bankruptcy law, and it is the law under which a setoff right arises that delimits its scope. Verizon argues to the contrary.

24. While the Debtors strongly believe that they would prevail on a trial of any of these issues, the risks associated with losing are far reaching.

25. Because of the geographic scope of the Debtors' interaction with Verizon and highly regulated field from which many of the disputes arise, the Debtors face complex and expensive fights to resolve them. Some of the issues may require use of dispute resolution procedures before regulatory agencies at the state and federal level: procedures that, even in one only jurisdiction, often take years complete. Moreover, the bankruptcy issues involve the complicated areas of executory contracts and substantive consolidation. Given the business pressures WorldCom confronts to quickly emerge from bankruptcy, time is a major consideration. Litigation and administrative proceedings would be costly, time consuming, and distracting to management and employees alike.

26. In short, the opportunity to settle almost all matters between the Parties except reciprocal compensation on favorable terms and to continue uninterrupted services has high value for the Debtors. Approval of the Settlement Agreement and authorization of the Parties to enter into and implement it would eliminate the attendant risk of litigation and the expenditure of time it would consume. Creditors as well as the Debtors' customers are the direct beneficiaries of such settlement.

27. The settlement is the product of extensive, arms' length, good faith negotiations between the Parties. The Debtors expect the goodwill wrought through the compromise and settlement to benefit them as the Parties continue to negotiate outstanding issues. The settlement falls well within the range of reasonableness. Additionally, the settlement provides substantial benefits to the Debtors and their estates without the need for protracted litigation and insures uninterrupted service. Accordingly, the Debtors believe that the settlement is appropriate in light of the relevant factors and should be approved.

Memorandum of Law

28. This Motion does not raise any novel issues of law, and, accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted in support of the Motion.

Notice

29. Notice of this Motion has been provided in accordance with the First Amended Case Management Order dated December 23, 2002. The Debtors submit that no other or further notice need be provided.

30. No previous motion or application for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just.

Dated: New York, New York
July 18, 2003

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Debtors In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re WORLDCOM, INC., et al., Debtors.	:	Chapter 11 Case No. 02-13533 (AJG) (Jointly Administered)

ORDER APPROVING SETTLEMENT AND COMPROMISE OF CERTAIN MATTERS WITH VERIZON COMMUNICATIONS, INC.

Upon consideration of the motion (the "Motion") of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement and compromise of certain matters with Verizon Communications Inc., (including all its domestic subsidiaries and other domestic affiliates except Puerto Rico Telephone Company and its subsidiaries and Cellco Partnership and its subsidiaries (d/b/a Verizon Wireless)) (individually and collectively, "Verizon"), as more fully set forth in the Motion; and upon all the proceedings before the Court; and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § § 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these chapter 11 cases is proper pursuant to 28 U.S.C. § § 1408 and 1409.

A:\ORDER APPROVING SETTLEMENT VERIZON.DOC

B. As evidenced by the affidavits of service filed with the Court, (i) proper, timely and adequate notice of the Motion and the hearing thereon was provided in accordance with the First Amended Case Management Order dated December 23, 2002; (ii) such notice was good and sufficient and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion or the hearing thereon is required.

C. In the Motion, the Debtors moved this Court for the entry of an order pursuant to Bankruptcy Rule 9019 approving a settlement and compromise of certain matters with Verizon.

D. The legal and factual bases set forth in the Motion establish just cause for the relief requested. The settlement is fair and reasonable under the circumstances and in no way unjustly enriches any of the Parties.[1] In addition, such settlement is in the best interest of the Debtors, their estates and creditors.

E. Absent authorization to implement the settlement, the Parties might require extensive court and agency intervention to resolve their many disputes, and it is uncertain which of the Parties would emerge with a favorable and successful resolution of their claims. Such litigation would be costly, time consuming, and distracting to management and employees alike. Approval of the settlement and authorization of the Parties to implement it would eliminate the attendant risks of litigation and agency proceedings and insure uninterrupted service.

F. The settlement is the product of extensive, arms' length, good faith negotiations between the Parties.

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[1] Capitalized terms used herein, except as otherwise noted, shall have the meanings ascribed to them in the Motion.

G. Only one objection to the Motion has been filed. That objection, filed by the MCI Ad Hoc Trade Claims Committee (the "Ad Hoc Trade Committee"), is (by that committee's own acknowledgement) rendered moot by the terms of this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion of the Debtors is hereby granted in all respects; this Order constitutes a Final Order within the meaning of 28 U.S.C. § 158(a); and the provisions of this Order are non-severable and mutually dependent.

2. The objection of the Ad Hoc Trade Committee is resolved by the provisions of this paragraph. Verizon and the Debtors have agreed that, in light of the terms of the settlement and the setoffs by and payments to Verizon authorized thereunder, Verizon's allowed claim of $436.5 million will be deemed to be a claim not falling within Class 6 (general unsecured claims) under the Debtors' pending plan of reorganization and that, therefore, Verizon will not have a vote on that plan in Class 6. The objection of the Ad Hoc Trade Committee is moot.

3. The terms and conditions of the settlement and the Settlement Agreement are hereby authorized and approved, and the Debtors are authorized to implement the Settlement Agreement.

4. The Debtors are authorized to execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and to perform any and all obligations contemplated therein immediately upon entry of this Order.

5. The automatic stay created by operation of section 362(a) of the Bankruptcy Code is hereby modified, and the Parties are authorized, to make the payments and effect the setoffs the Settlement Agreement provides; the Parties are authorized litigate the Verizon Disputed Intercarrier Compensation and Other Contingent Claims, the WorldCom Disputed Intercarrier Compensation Claims, and any postpetition claims, including any appeals of any judgments or orders, outside the Bankruptcy Court in such courts or regulatory bodies as may have jurisdiction thereof.

6. This Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the construction, performance, and enforcement of the terms of this Order and the terms and conditions of the settlement and the Settlement Agreement are hereby authorized and approved.

7. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a memorandum of law is waived.

Dated: New York, New York
July 29, 2003

s/Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Steven J. Pitterle
Director – Contract Negotiations
Wholesale Markets

verizon

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November 17, 2003

Mr. John C. Gockley
Vice President - Interconnection
Allegiance Telecom of Maryland, Inc.
700 E. Butterfield Road, Suite 300
Lombard, IL 60148

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Gockley:

Verizon Maryland Inc. ("Verizon"), a Maryland corporation, with principal place of business at 1 East Pratt Street, Baltimore, Maryland 21202, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Allegiance Telecom of Maryland, Inc. ("Allegiance"), a Delaware corporation, with principal place of business at 9201 North Central Expressway, Dallas, Texas 75231, wishes to adopt the terms of the arbitrated Interconnection Agreement between Sprint Communications Company L.P. ("Sprint") and Verizon that was approved by the Maryland Public Service Commission (the "Commission") as an effective agreement in the State of Maryland in Docket No. 8887, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Allegiance has a copy of the Terms. Please note the following with respect to Allegiance's adoption of the Terms.

1. By Allegiance's countersignature on this letter, Allegiance hereby represents and agrees to the following five points:

   (A) Allegiance adopts (and agrees to be bound by) the Terms of the Sprint/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Allegiance shall be substituted in place of Sprint

Communications Company L.P. and Sprint in the Terms wherever appropriate.

(B) Notice to Allegiance and Verizon as may be required under the Terms shall be provided as follows:

To: Allegiance Telecom of Maryland, Inc.
Attention: John C. Gockley
700 E. Butterfield Road, Suite 300
Lombard, IL 60148
Telephone Number: 630-522-5493
Facsimile Number: 630-522-5453
Internet Address: john.gockley@algx.com

with a copy to:

Allegiance Telecom, Inc.
Attention: Gegi Leeger
Director of Interconnection Agreements
1919 M Street, NW, Suite 420
Washington, DC 20036
Telephone Number: 202-464-1791
Facsimile: 202-464-0762
Internet Address: gegi.leeger@algx.com

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

(C) Allegiance represents and warrants that it is a certified provider of local telecommunications service in the State of Maryland, and that its adoption of the Terms will cover services in the State of Maryland only.

(D) In the event that a voluntary or involuntary petition has been or is in the future filed against Allegiance under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Allegiance's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of Allegiance resulting from Allegiance's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366. In the event that an interconnection agreement between Verizon and Allegiance is currently in force in the State of Maryland (the "Original ICA"), Allegiance's adoption of the Terms (the "Amended and Restated Interconnection Agreement") shall be an amendment and restatement of, and replace in its entirety, the Original ICA. The Amended and Restated Interconnection Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. All monetary obligations of the parties to one another under the Original ICA shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that Allegiance is currently a debtor in an Insolvency Proceeding nothing contained herein shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in Allegiance's Insolvency Proceeding into a post-petition claim or debt.

(E) Verizon's standard pricing schedule for interconnection agreements in the State of Maryland (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to Allegiance's adoption of the Terms. Allegiance should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

2. Allegiance's adoption of the Sprint arbitrated Terms shall become effective as of October 1, 2003. The Parties understand and agree that Verizon will file this adoption letter with the Commission promptly upon my receipt of a copy of this letter, countersigned by Allegiance as to points (A), (B), (C), (D) and (E) of paragraph 1 above. The term and termination provisions of the Sprint/Verizon agreement shall govern Allegiance's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on August 8, 2004.

3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 8887, or to seek review in any way of any provisions included in these Terms as a result of Allegiance's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket No. 8887 (the Sprint arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

5. Verizon reserves the right to deny Allegiance's adoption and/or application of the Terms, in whole or in part, at any time:

   (a) when the costs of providing the Terms to Allegiance are greater than the costs of providing them to Sprint;
   (b) if the provision of the Terms to Allegiance is not technically feasible; and/or
   (c) to the extent that Verizon otherwise is not required to make the Terms available to Allegiance under applicable law.

6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section

251(b)(5) of the Act.[1] Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.[2] Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.[3] In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.[4]

7. Should Allegiance attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

---

[1] Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) *("FCC Remand Order")* ¶44, *remanded, WorldCom, Inc. v. FCC,* No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC,* No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

[2] For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

[3] *See, e.g.,* 47 C.F.R. Section 51.809(c).

4 *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of Allegiance to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERION MARYLAND INC.

____

Steven J. Pitterle
Director – Contract Negotiations
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D and E of paragraph 1:

ALLEGIANCE TELECOM OF MARYLAND, INC.

____
(SIGNATURE)

____
(PRINT NAME)

c: R. Ragsdale – Verizon

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

verizon

Wholesale Markets
600 Hidden Ridge, HQE03D52
P.O. Box 152092
Irving, TX 75038

Phone 972-718-5988
Fax 972-719-1519
john.c.peterson@verizon.com

November 17, 2003

Mr. John C. Gockley
Vice President - Interconnection
Allegiance Telecom of the District of Columbia, Inc.
700 E. Butterfield Road, Suite 300
Lombard, IL 60148

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Gockley:

Verizon Washington, DC Inc. ("Verizon"), a New York corporation, with principal place of business at 1710 H Street NW, Washington, DC 20006, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Allegiance Telecom of the District of Columbia, Inc. ("Allegiance"), a Delaware corporation, with principal place of business at 9201 North Central Expressway, Dallas, Texas 75231, wishes to adopt the terms of the arbitrated Interconnection Agreement between Yipes Transmission Incorporated ("Yipes") and Verizon that was approved by the District of Columbia Public Service Commission (the "Commission") as an effective agreement in the District of Columbia in Docket Nos. TAC 12 and TIA 02-19, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Allegiance has a copy of the Terms. Please note the following with respect to Allegiance's adoption of the Terms.

1. By Allegiance's countersignature on this letter, Allegiance hereby represents and agrees to the following five points:

   (A) Allegiance adopts (and agrees to be bound by) the Terms of the Yipes/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that

Allegiance shall be substituted in place of Yipes Transmission Incorporated and Yipes in the Terms wherever appropriate.

(B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), which became effective on October 2, 2003. In light of the effectiveness of the Triennial Review Order, any reasonable period of time for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act (*see, e.g.*, 47 CFR Section 51.809(c)).

(C) Notice to Allegiance and Verizon as may be required under the Terms shall be provided as follows:

To: Allegiance Telecom of the District of Columbia, Inc.
Attention: John C. Gockley
700 E. Butterfield Road, Suite 300
Lombard, IL 60148
Telephone Number: 630-522-5493
Facsimile Number: 630-522-5453
Internet Address: john.gockley@algx.com

with a copy to:

Allegiance Telecom, Inc.
Attention: Gegi Leeger
Director of Interconnection Agreements
1919 M Street, NW, Suite 420
Washington, DC 20036
Telephone Number: 202-464-1791
Facsimile: 202-464-0762
Internet Address: gegi.leeger@algx.com

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

(D) Allegiance represents and warrants that it is a certified provider of local telecommunications service in the District of Columbia, and that its adoption of the Terms will cover services in the District of Columbia only.

(E) In the event that a voluntary or involuntary petition has been or is in the future filed against Allegiance under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Allegiance's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of Allegiance resulting from Allegiance's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366. In the event that an interconnection agreement between Verizon and Allegiance is currently in force in the District of Columbia (the "Original ICA"), Allegiance's adoption of the Terms (the "Amended and Restated Interconnection Agreement") shall be an amendment and restatement of, and replace in its entirety, the Original ICA. The Amended and Restated Interconnection Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. All monetary obligations of the parties to one another under the Original ICA shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that Allegiance is currently a debtor in an Insolvency Proceeding nothing contained herein shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in Allegiance's Insolvency Proceeding into a post-petition claim or debt.

(F) Verizon's standard pricing schedule for interconnection agreements in the District of Columbia (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to Allegiance's adoption of the Terms. Allegiance should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

2. Allegiance's adoption of the Yipes arbitrated Terms shall become effective as of December 1, 2003. The Parties understand and agree that Verizon will file this adoption letter with the Commission promptly upon my receipt of a copy of this letter, countersigned by Allegiance as to points (A), (B), (C), (D), (E) and (F) of paragraph 1 above. The term and termination provisions of the Yipes/Verizon agreement shall govern Allegiance's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on July 17, 2004.

3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket Nos. TAC 12 and TIA 02-19, or to seek review in any way of any provisions included in these Terms as a result of Allegiance's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket Nos. TAC 12 and TIA 02-19 (the Yipes arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

5. Verizon reserves the right to deny Allegiance's adoption and/or application of the Terms, in whole or in part, at any time:

   (a) when the costs of providing the Terms to Allegiance are greater than the costs of providing them to Yipes;
   (b) if the provision of the Terms to Allegiance is not technically feasible; and/or
   (c) to the extent that Verizon otherwise is not required to make the Terms available to Allegiance under applicable law.

6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.[1] Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.[2] Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.[3] In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.[4]

7. Should Allegiance attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

---

[1] Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) *("FCC Remand Order")* ¶44, *remanded, WorldCom, Inc. v. FCC,* No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC,* No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

[2] For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

[3] *See, e.g.,* 47 C.F.R. Section 51.809(c).

4 *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of Allegiance to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON WASHINGTON, DC INC.

____

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:

ALLEGIANCE TELECOM OF THE DISTRICT OF COLUMBIA, INC.

____

(SIGNATURE)

____

(PRINT NAME)

c: R. Ragsdale – Verizon

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

verizon

Wholesale Markets
600 Hidden Ridge, HQE03D52
P.O. Box 152092
Irving, TX 75038

Phone 972-718-5988
Fax 972-719-1519
john.c.peterson@verizon.com

April 15, 2004

Gegi Leeger
Director of Agreements
Allegiance Telecom of Pennsylvania, Inc.
1919 M Street, N.W., Suite 420
Washington, DC 20036

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Ms. Leeger:

Verizon Pennsylvania Inc, f/k/a Bell Atlantic – Pennsylvania, Inc. ("Verizon"), a Pennsylvania corporation, with principal place of business at 1717 Arch Street, Philadelphia, Pennsylvania 19103, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Allegiance Telecom of Pennsylvania, Inc. ("Allegiance"), a Delaware corporation, with principal place of business at 9201 North Central Expressway, Dallas, Texas 75231, wishes to adopt the terms of the Interconnection Agreement between BullsEye Telecom Inc. ("BullsEye") and Verizon that was approved by the Pennsylvania Public Utility Commission (the "Commission") as an effective agreement in the Commonwealth of Pennsylvania, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Allegiance has a copy of the Terms. Please note the following with respect to Allegiance's adoption of the Terms.

1. By Allegiance's countersignature on this letter, Allegiance hereby represents and agrees to the following five points:

   (A) Allegiance adopts (and agrees to be bound by) the Terms of the BullsEye/Verizon agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Allegiance shall be substituted in place of BullsEye Telecom Inc. and BullsEye in the Terms wherever appropriate.

(B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), or that is otherwise not required by both 47 U.S.C. Section 251(c)(3) and 47 C.F.R. Part 51. Moreover, Verizon, on February 26, 2004, filed a petition at the Pennsylvania Public Utility Commission to arbitrate amendments to interconnection agreements (including the Terms) with respect to the Triennial Review Order ("TRO Arbitration"). Once the Commission issues an effective order approving an amendment with respect to the Triennial Review Order in the TRO Arbitration (an "Approved Amendment"): 1) the terms of such Approved Amendment shall be deemed to amend this adoption effective on the effective date of such Commission order, 2) Allegiance agrees to be bound by the terms of such Approved Amendment effective on the effective date of such Commission order, and 3) Verizon and Allegiance shall execute an amendment to this adoption to memorialize that this adoption is amended by the terms of such Approved Amendment effective on the effective date of such Commission order; provided, however, failure by either party to do so shall not be cited as a basis for contesting the effectiveness of the provisions in 1) and 2) above.

(C) Notice to Allegiance and Verizon as may be required under the Terms shall be provided as follows:

To: Allegiance Telecom of Pennsylvania, Inc.
Attention: Senior Vice President - Industry Development
Allegiance Telecom, Inc.
700 E. Butterfield Road, Suite 300
Lombard, IL 60148
Telephone Number: 630-522-5454
Facsimile Number: 630-522-5453
Internet Address: larry.strickling@algx.com

with a copy to:

Allegiance Telecom of Pennsylvania, Inc.
Director of Agreements
Allegiance Telecom, Inc.
1919 M Street, N.W., Suite 420
Washington, DC 20036

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

(D) Allegiance represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Pennsylvania, and that its adoption of the Terms will cover services in Verizon Pennsylvania's service territory in the Commonwealth of Pennsylvania only.

(E) In the event that a voluntary or involuntary petition has been or is in the future filed against Allegiance under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Allegiance's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of Allegiance resulting from Allegiance's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366. In the event that an interconnection agreement between Verizon and Allegiance is currently in force in the former Bell Atlantic service territory within the Commonwealth of Pennsylvania (the "Original ICA"), Allegiance's adoption of the Terms (the "Amended and Restated Interconnection Agreement") shall be an amendment and restatement of, and replace in its entirety, the Original ICA. The Amended and Restated Interconnection Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. All monetary obligations of the parties to one another under the Original ICA shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that Allegiance is currently a debtor in an Insolvency Proceeding nothing contained herein shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in Allegiance's Insolvency Proceeding into a post-petition claim or debt.

(F) Verizon's standard pricing schedule for interconnection agreements in the Commonwealth of Pennsylvania (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to Allegiance's adoption of the Terms. Allegiance should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

2. Allegiance's adoption of the BullsEye Terms shall become effective on April 29, 2004. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by an authorized officer of Allegiance. The term and termination provisions of the BullsEye/Verizon agreement shall govern Allegiance's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on September 3, 2004.

3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of Allegiance's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

5. Verizon reserves the right to deny Allegiance's adoption and/or application of the Terms, in whole or in part, at any time:

(a) when the costs of providing the Terms to Allegiance are greater than the costs of providing them to BullsEye;
(b) if the provision of the Terms to Allegiance is not technically feasible; and/or
(c) to the extent that Verizon otherwise is not required to make the Terms available to Allegiance under applicable law.

6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.[1] Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.[2] Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.[3] In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.[4]

7. Should Allegiance attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

[1] Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) *("FCC Remand Order")* ¶44, *remanded, WorldCom, Inc. v. FCC,* No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC,* No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).
[2] For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).
[3] *See, e.g.,* 47 C.F.R. Section 51.809(c).
4 *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of Allegiance to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON PENNSYLVANIA INC.

____

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

____
(DATE)

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:

ALLEGIANCE TELECOM OF PENNSYLVANIA, INC.

____

Lawrence E. Strickling
Senior Vice President - Industry Development

____
(DATE)

c: K. Robertson – Verizon

'jack.h.white@verizon.com'; 'sherry.hessenthaler@verizon.com'; 'william.g.cummings@verizon.com'; 'steven.h.hartmann@verizon.com'

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

Wholesale Markets
600 Hidden Ridge, HQE03D52
P.O. Box 152092
Irving, TX 75038

Phone 972-718-5988
Fax 972-719-1519
john.c.peterson@verizon.com

April 5, 2004

Gegi Leeger
Director of Agreements
Allegiance Telecom of New York, Inc.
1919 M Street, N.W., Suite 420
Washington, DC 20036

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Ms. Leeger:

Verizon New York Inc. ("Verizon"), a New York corporation, with principal place of business at 1095 Avenue of The Americas, New York, New York 10036, has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Allegiance Telecom of New York, Inc. ("Allegiance"), a Delaware corporation, with principal place of business at 9201 North Central Expressway, Dallas, Texas 75231, wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of New York Inc. ("AT&T") and Verizon that was approved by the New York Public Service Commission (the "Commission") as an effective agreement in the State of New York in Docket No. 01-C-0095, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Allegiance has a copy of the Terms. Please note the following with respect to Allegiance's adoption of the Terms.

1. By Allegiance's countersignature on this letter, Allegiance hereby represents and agrees to the following five points:

   (A) Allegiance adopts (and agrees to be bound by) the Terms of the AT&T/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Allegiance shall be substituted in place of AT&T

Communications of New York Inc. and AT&T in the Terms wherever appropriate.

(B) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon that no longer applies under the Report and Order and Order on Remand (FCC 03-36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), or that is otherwise not required by both 47 U.S.C. Section 251(c)(3) and 47 C.F.R. Part 51. Moreover, Verizon, on March 10, 2004, filed a petition at the New York Public Service Commission to arbitrate amendments to interconnection agreements (including the Terms) with respect to the Triennial Review Order ("TRO Arbitration"). Once the Commission issues an effective order approving an amendment with respect to the Triennial Review Order in the TRO Arbitration (an "Approved Amendment"): 1) the terms of such Approved Amendment shall be deemed to amend this adoption effective on the effective date of such Commission order, 2) Allegiance agrees to be bound by the terms of such Approved Amendment effective on the effective date of such Commission order, and 3) Verizon and Allegiance shall execute an amendment to this adoption to memorialize that this adoption is amended by the terms of such Approved Amendment effective on the effective date of such Commission order; provided, however, failure by either party to do so shall not be cited as a basis for contesting the effectiveness of the provisions in 1) and 2) above.

(C) Notice to Allegiance and Verizon as may be required under the Terms shall be provided as follows:

To: Allegiance Telecom of New York, Inc.
Attention: Senior Vice President - Industry Development
Allegiance Telecom Inc.
700 E. Butterfield Road, Suite 300
Lombard, IL 60148
Telephone Number: 630-522-5454
Facsimile Number: 630-522-5453
Internet Address: larry.strickling@algx.com

with a copy to:

Allegiance Telecom of New York, Inc.
Attention: Director of Agreements
Allegiance Telecom Inc.
1919 M Street, N.W., Suite 420
Washington, DC 20036

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

(D) Allegiance represents and warrants that it is a certified provider of local telecommunications service in the State of New York, and that its adoption of the Terms will cover services in the State of New York only.

(E) In the event that a voluntary or involuntary petition has been or is in the future filed against Allegiance under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (i) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Allegiance's adoption of the Verizon Terms shall in no way impair such rights of Verizon; and (ii) all rights of Allegiance resulting from Allegiance's adoption of the Verizon terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366. In the event that an interconnection agreement between Verizon and Allegiance is currently in force in the State of New York (the "Original ICA"), Allegiance's adoption of the Terms (the "Amended and Restated Interconnection Agreement") shall be an amendment and restatement of, and replace in its entirety, the Original ICA. The Amended and Restated Interconnection Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. All monetary obligations of the parties to one another under the Original ICA shall remain in full force and effect and shall constitute monetary obligations of the parties under the Amended and Restated Interconnection Agreement; provided, however, in the event that Allegiance is currently a debtor in an Insolvency Proceeding nothing contained herein shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in Allegiance's Insolvency Proceeding into a post-petition claim or debt.

(F) Verizon's standard pricing schedule for interconnection agreements in the State of New York (as such schedule may be amended from time to time) (attached as Appendix 1 hereto) shall apply to Allegiance's adoption of the Terms. Allegiance should note that the aforementioned pricing schedule may contain rates for certain services the terms for which are not included in the Terms or that are otherwise not part of this adoption, and may include phrases or wording not identical to those utilized in the Terms. In an effort to expedite the adoption process, Verizon has not deleted such rates from the pricing schedule or attempted to customize the wording in the pricing schedule to match the Terms. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights, and the use of slightly different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

2. Allegiance's adoption of the AT&T arbitrated Terms shall become effective as of April 19, 2004. The Parties understand and agree that Verizon will file this adoption letter with the Commission promptly upon my receipt of a copy of this letter, countersigned by Allegiance as to points (A), (B), (C), (D), (E) and (F) of paragraph 1 above. The term and termination provisions of the AT&T/Verizon agreement shall govern Allegiance's adoption of the Terms. The adoption of the Terms is currently scheduled to expire on June 23, 2005.

3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 01-C-0095, or to seek review in any way of any provisions included in these Terms as a result of Allegiance's 252(i) election.

4. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket No. 01-C-0095 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

5. Verizon reserves the right to deny Allegiance's adoption and/or application of the Terms, in whole or in part, at any time:

(a) when the costs of providing the Terms to Allegiance are greater than the costs of providing them to AT&T;
(b) if the provision of the Terms to Allegiance is not technically feasible; and/or
(c) to the extent that Verizon otherwise is not required to make the Terms available to Allegiance under applicable law.

6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.[1] Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.[2] Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.[3] In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.[4]

7. Should Allegiance attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

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[1] Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) *("FCC Remand Order")* ¶44, *remanded, WorldCom, Inc. v. FCC,* No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC,* No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

[2] For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

[3] *See, e.g.,* 47 C.F.R. Section 51.809(c).

4 *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of Allegiance to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NEW YORK INC.

____

John C. Peterson, Director
Contract Performance and Administration
Wholesale Markets

Reviewed and countersigned as to points A, B, C, D, E and F of paragraph 1:

ALLEGIANCE TELECOM OF NEW YORK, INC.

____

Lawrence E. Strickling
Senior Vice President - Industry Development

c: K. Robertson – Verizon

EXHIBIT C

BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA

APPLICATION OF ALLEGIANCE TELECOM OF THE DISTRICT OF COLUMBIA INC. FOR EXPEDITED APPROVAL OF AN INTERCONNECTION AGREEMENT ADOPTED UNDER SECTION 252(i) OF THE TELECOMMUNICATIONS ACT OF 1996	)	**Case __________**

APPLICATION OF ALLEGIANCE TELECOM OF THE DISTRICT OF COLUMBIA, INC. FOR APPROVAL OF AN ADOPTION OF AN ENTIRE INTERCONNECTION AGREEMENT PURSUANT TO SECTION 252(i)

Allegiance Telecom of the District of Columbia, Inc. ("Allegiance"), by its attorneys, respectfully requests that the Commission approve, on an expedited basis, Allegiance's adoption, pursuant to Section 252(i) of the Telecommunications Act of 1996 ("Act"), of that certain arbitrated interconnection agreement dated October 9, 2002 between Verizon Washington D.C. Inc. ("Verizon") and Yipes Transmission Incorporated ("Yipes") ("Yipes Agreement") approved by the Commission in Docket Nos. TAC 12 and TIA 02-19. Allegiance has been forced to file this Petition because Verizon has improperly attempted to condition Allegiance's adoption of the Yipes Agreement upon Allegiance's agreement to additional terms in violation of Allegiance's rights under Section 252(i of the Act and has refused to permit the adoption unless and until Allegiance capitulates to Verizon's demands As a result of Verizon's refusal to honor Allegiance's request to adopt the Yipes Agreement, Allegiance has been compelled to continue to operate under its existing interconnection agreement against its will in order to serve its customers. It is clear that without Commission intervention Verizon will continue to ignore its legal obligations under the Act by denying Allegiance its absolute and unfettered right to adopt the Yipes Agreement. In support of its request that the Commission approve the adoption of the Yipes Agreement without substantive modifications and as expeditiously as possible, Allegiance states as follows:

1. On December 11, 1998 Allegiance adopted the interconnection agreement between Verizon Washington, DC f/k/a Bell Atlantic Washington, D.C. Inc. and MFS Intelenet of Washington, D.C. approved by the Commission as an effective agreement in Formal Case TIA 99-15, Order No. 11445 on August 27, 1999. ("Original Interconnection Agreement") While the initial term of the Original Interconnection Agreement was to expire on July 1, 1999 the agreement provided that it continue in effect until terminated by either party upon 90 days advance notice. On October 17, 2003 Allegiance provided to Verizon via overnight mail the requisite 90 days advance notice of Allegiance's intent to terminate the Original Interconnection Agreement at 11:59 p.m. January 18, 2004. As the notice further informed Verizon that Allegiance was assessing whether to adopt another carrier's interconnection agreement or to request negotiations for a new interconnection agreement and that Allegiance would provide an appropriate notice in due course (See copy of Notice of Termination attached as Exhibit A).

2. On October 20, 2003, Allegiance provided a notice to Verizon via overnight mail that Allegiance had elected, pursuant to Section 252(i) of the Act, to adopt, in its entirety, the Yipes Agreement effective upon the expiration of the existing interconnection agreement. (See copy of the Notice of Adoption attached as Exhibit B). Allegiance requested to adopt the Yipes Agreement without any modifications save for those necessary to identify the parties.

3. On October 23, 2003, Allegiance received Verizon's standard information packet requesting such information as the address to which notices under the Yipes Agreement should be sent following its adoption by Allegiance. Allegiance returned the requested information the next day on October 24, 2003 and assumed that Verizon would promptly prepare any documents necessary to formalize the adoption of the Yipes Agreement by Allegiance in a timely fashion.

4. On November 18, 2003, almost one month after Allegiance provided its adoption notice and returned the information packet to Verizon, and after making numerous requests to Verizon to ascertain the status of its request, Allegiance finally received from Verizon a proposed adoption letter. (See copy of adoption letter attached as Exhibit C and hereinafter referred to as "Proposed Adoption Letter"). In the Proposed Adoption Letter, Verizon attempted to introduce several substantive changes to the terms and conditions of the Yipes Agreement without Allegiance's consent. These modifications go far beyond those necessary to effectuate the adoption. Verizon's actions constitute a clear breach of Allegiance's rights under section 252(i) of the Act which requires Verizon to make available to Allegiance any interconnection, service or network element arrangement contained in any agreement to which Verizon is a party on the same terms and conditions. This is especially true since Allegiance made it clear that it was adopting the Yipes Agreement in *toto* without any material change.

5. Although much of what is contained in Verizon's Proposed Adoption Letter goes beyond what is required by the Act and the FCC's rules to formalize the adoption by Allegiance of the Yipes Agreement, Allegiance limits its objections to the Proposed Adoption Letter to two:

a. Section 1.E of the Proposed Adoption Letter unlawfully attempts to have debts incurred under Allegiance's Original Interconnection Agreement carried forward so that such debts become obligations that are due and owing under the Yipes Agreement. The Yipes Agreement, by its own terms as approved by the Commission, however, does not provide that any debts under a predecessor interconnection agreement become debts under a successor agreement. Rather, under ordinary contract law, these debts will continue under the Original Interconnection Agreement and will be paid, if at all, just like any other obligation under an expired or terminated agreement. Verizon's proposal also flies in the face of bankruptcy law. Allegiance is currently seeking reorganization under Chapter 11 of the Bankruptcy Code. The Bankruptcy Code provides for a carefully orchestrated process in which creditors may participate and be heard in order to protect their interests and prosecute any claims they may have with the debtor. Among other things, Verizon's proposal is an attempt to circumvent the bankruptcy process completely by creating a claim under a post–bankruptcy agreement (Allegiance's adoption of the Yipes Agreement) for what is a pre-bankruptcy claim. Any claim that Verizon has for services provided under the Original Interconnection Agreement up to the date of Allegiance's bankruptcy filing is subject to the jurisdiction of the Bankruptcy Court and must and will be addressed by the Bankruptcy Court as part of any reorganization of Allegiance. Claims, if any, relating to the period after Allegiance's bankruptcy filing are subject to the rights and remedies under the Original Interconnection Agreement which by the terms of such agreement survive termination. Indeed, Verizon and

Allegiance have entered into a stipulation in the bankruptcy proceeding that provides Verizon with assurance of payment for all post-petition amounts. It is, however, inappropriate for any of these debts to be transferred forward under a new interconnection agreement such as the Yipes Agreement. Since Verizon's proposal is a substantive change to the Yipes Agreement and is inconsistent with Allegiance's Section 252(i) rights, Allegiance rightfully rejects this substantive modification.

b. Section 5 of the Proposed Adoption Letter purports to permit Verizon to deny adoption of the Yipes Agreement unilaterally <u>at any time</u> if Verizon concludes that (i) the cost of providing service to Allegiance is higher than the cost of providing service to Yipes, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. Verizon's suggestion that it can invalidate Allegiance's adoption of the Yipes Agreement is fundamentally at odds with the statute and the FCC's rules. Under section 252(i) of the Act and the FCC's rules, 47 C.F.R. 51.809, Verizon must make the Yipes Agreement available for adoption by other requesting carriers such as Allegiance unless *Verizon can prove* to the Commission prior to adoption that (i) the cost of providing, service to Allegiance is higher than the cost of providing service to Yipes, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. The Act and the FCC rules do not allow Verizon to make such determinations unilaterally either before or after the agreement has been approved by the Commission; but rather put the burden on Verizon to prove to the Commission that such facts weigh against adoption of the Yipes Agreement. Verizon's Proposed Adoption Letter is at odds with the FCC's rule addressing this precise issue. 47 C.F.R. 51.809 provides, in pertinent part, that:

> "The obligations of paragraph (a) of this section [to make available any interconnection agreement to requesting carriers on the same terms and conditions] shall not apply where the incumbent LEC proves to the state commission that:
>
> (1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater that the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
> (2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible."(emphasis added)

Thus, Verizon's Proposed Adoption Letter is an attempt to rewrite the FCC's rules governing Allegiance's right to adopt an interconnection agreement under §252(i).of the Act. In proposing a revision to the FCC's rules, Verizon awards itself greater rights, permitting Verizon to make a unilateral determination, and usurping the Commission's role in bypassing the requisite evidentiary showing to the Commission contemplated by the FCC's rule. This, Verizon is not permitted to do.

Thus, Section 5 of the Proposed Adoption Letter is illegal and Allegiance is not required to consent to its terms in order to exercise its rights under §252(i) and 47 C.F.R. § 51.809.

Section 5 of the Proposed Adoption Letter is also at odds with the change of law provision in the Yipes Agreement. As noted above, Verizon's Proposed Adoption Letter purports to permit Verizon to deny adoption of the Yipes Agreement unilaterally at any time if Verizon concludes that (i) the cost of providing, service to Allegiance is higher than the cost of providing service to

Yipes, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. This provision of Verizon's Proposed Adoption Letter is thus an attempt by Verizon to supersede the change of law provision in the Yipes agreement that has already been approved by the Commission. Under the Yipes Agreement, both parties have the ability under the Change of Law provisions in sections 4.6 and 4.7, to amend the agreement to account for any changes in law and it permits either party to cease providing services that they are no longer required to provide by law after taking certain steps. See Yipes Agreement attached as Exhibit D. However, the Yipes Agreement is explicit that the parties must adhere to the orderly procedures set out in the Yipes Agreement before taking such action. The additional term sought by Verizon, the ability to cease providing service on a moment's notice and based on Verizon's unilateral determination that it is no longer required to provide such service under law, is a complete affront to the change of law process contained in the Yipes Agreement and approved by the Commission.

6. On November 20, 2003, Allegiance shared its concerns with Verizon over similar language contained in a proposed adoption letter received from Verizon for an interconnection agreement Allegiance sought to adopt for the State of Maryland.[1] Verizon then responded on December 8, 2003 and made it plain that Verizon steadfastly refuses to remove either of the objectionable provisions identified in Paragraph 5, above. See Verizon Response Attached as Exhibit E. Since the provisions in the Maryland

[1] Allegiance received Verizon's Proposed Adoption Letters on the same date, November 18, 2003. When Allegiance responded with its redlined objections to Verizon's proposed adoption letter for Maryland it also considered its response applicable to the substantially similar Proposed Adoption Letter from Verizon Washington, DC.

proposed adoption letter sent by Verizon on December 8, 2003 (attached as Exhibit E) are identical to provisions in the Proposed Adoption Letter for the District of Columbia, (Exhibit C), Allegiance has no reason to assume that Verizon's position in the District of Columbia would be any different from its position in Maryland.

7. With the expiration of its interconnection agreement imminent and faced with Verizon's abject refusal to comply with Allegiance's lawful request to adopt the Yipes Agreement, Allegiance was compelled to modify its termination notice to Verizon to revise the termination date to the later of March 1, 2004 or such date that the parties enter into a successor agreement. (See letter dated January 7, 2004 from Allegiance to Verizon attached as Exhibit F). Thus, Verizon has succeeded in delaying Allegiance's lawful adoption of the Yipes Agreement indefinitely and has coerced Allegiance to remain subject to an interconnection agreement that Allegiance has done everything in accordance with relevant law to replace. Left to their own devices and without prompt Commission intervention, Verizon will keep Allegiance in interconnection limbo until Verizon has its way, regardless of how legally untenable Verizon's position may be.

Based upon the foregoing, Allegiance respectfully requests, that the Commission approve the adoption of the Yipes Agreement by Allegiance pursuant to Section 252(i) of the Act without any modifications except to recognize the change in party to Allegiance Telecom of the District of Columbia, Inc. and to provide for all notices under the Yipes Agreement to be sent in accordance with the notice information contained in the Proposed Adoption Letter.

Respectfully submitted,

Eric J. Branfman
D.C. Bar # 164186
Joshua M. Bobeck
D.C. Bar # 4436620
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 3000
Washington, DC 20007
Tel: 202/424-7500
Fax: 202/424-7643

Mark Stachiw, Esq.
General Counsel
Allegiance Telecom Company Worldwide
9201 North Central Expressway
Dallas, TX 75251

Dated: March 1, 2004

SERVICE LIST

I Joshua M. Bobeck hereby certify that on this 1st day of March, 2004 I served a copy of the foregoing Petition of Allegiance Telecom of the District of Columbia. Inc. For Approval of an Adoption of an Entire Interconnection Agreement Pursuant to Section 252(i) by U.S. first class mail, postage prepaid (except where otherwise noted), on the following individuals:

Joshua M. Bobeck

Sanford M. Speight, Acting Secretary
Public Service Commission
1333 H Street, NW
Washington, DC 20005

David A. Hill, Esq.
Verizon Washington D.C., Inc.
1710 H Street, NW, 11th Floor
Washington, DC 20006
(202) 392-5296
(202) 887-9195 (FAX)
Email: david.a.hill@verizon.com

Steven J. Pitterle
Director-Contract Negotiations
Wholesale Markets
600 Hidden Ridge HQE03B13
P.O. Box 152092
Irving, TX 75038

BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND

PETITION OF ALLEGIANCE TELECOM OF MARYLAND INC. FOR EXPEDITED APPROVAL OF AN INTERCONNECTION AGREEMENT ADOPTED UNDER SECTION 252(i) OF THE TELECOMMUNICATIONS ACT OF 1996	)	**Case ____________**

PETITION OF ALLEGIANCE TELECOM OF MARYLAND INC. FOR APPROVAL OF AN ADOPTION OF AN ENTIRE INTERCONNECTION AGREEMENT PURSUANT TO SECTION 252(i)

Allegiance Telecom of Maryland, Inc. ("Allegiance"), by its attorneys, respectfully requests that the Commission approve, on an expedited basis, Allegiance's adoption, pursuant to Section 252(i) of the Telecommunications Act of 1996, of that certain arbitrated interconnection agreement dated February 8, 2002 between Verizon Maryland Inc. ("Verizon") and Sprint Communications Company L.P. ("Sprint") ("Sprint Agreement") approved by the Commission in Docket No. 8887. Allegiance is filing this Petition because Verizon has improperly attempted to condition Allegiance's adoption of the Sprint Agreement upon Allegiance's agreement to additional terms in violation of Allegiance's rights under Section 252(i). As a result, Verizon's pattern of delay places Allegiance in jeopardy of having its existing interconnection agreement expire before the adopted Sprint Agreement becomes effective and available for use by Allegiance. In support of its request that the Commission approve the adoption of the Sprint Agreement without substantive modifications and as expeditiously as possible, Allegiance states as follows:

1. On October 17, 2000 Allegiance adopted the interconnection agreement between Sprint and Verizon for Maryland approved by the Commission as an effective agreement in Docket No. 8731. ("Original Interconnection Agreement") The initial term of the

Original Interconnection Agreement expired on February 28, 2001 but it continues in effect until terminated by either party upon 90 days advance notice. On September 23, 2003 Allegiance provided to Verizon via overnight mail 90 days advance notice of Allegiance's intent to terminate the Original Interconnection Agreement at 11:59 p.m. December 23, 2003 as required by such interconnection agreement. . The notice further informed Verizon that Allegiance was assessing whether to adopt another carrier's interconnection agreement or to request negotiations for a new agreement and that Allegiance would provide an appropriate notice in due course (See copy of Notice of Termination attached as Exhibit A).

2. On September 25, 2003, Allegiance provided a notice to Verizon via overnight mail that Allegiance had elected, pursuant to Section 252(i) of the Telecommunications Act of 1996, to adopt, in its entirety, the Sprint Agreement effective upon the expiration of the existing interconnection agreement. (See copy of the Notice of Adoption attached as Exhibit B). Allegiance's request was to adopt the Sprint Agreement without any modifications save for those necessary to identify the parties.

3. On September 29, 2003 Allegiance received Verizon's standard information packet requesting such information as the address to which notices under the Sprint Agreement should be sent following its adoption by Allegiance. Allegiance returned the requested information the next day on September 30, 2003 and assumed that Verizon would promptly prepare any documents necessary to formalize the adoption of the Sprint Agreement by Allegiance in a timely fashion.

4. On November 18, 2003, almost two months after Allegiance provided its adoption notice, six weeks after completing and returning the information packet to Verizon and after

numerous requests to Verizon to ascertain the status, Allegiance finally received from Verizon a proposed adoption letter. (See copy of adoption letter attached as Exhibit C and hereinafter referred to as "Proposed Adoption Letter"). In the Proposed Adoption Letter, Verizon attempted to introduce substantive changes to the terms and conditions of the Sprint Agreement without Allegiance's consent. These modifications go far beyond those necessary to effectuate the adoption. Verizon's actions constitute a clear breach of Allegiance's rights under Section 252(i) of the Telecommunications Act of 1996 which requires Verizon to make available to Allegiance any interconnection, service or network element arrangement contained in any agreement to which Verizon is a party on the same terms and conditions.

5. Nonetheless in an effort to expedite the process and accommodate Verizon, Allegiance sent correspondence via electronic mail to Verizon on November 20, 2003 noting Allegiance's specific objections to the Proposed Adoption Letter and providing proposed changes to the Proposed Adoption Letter. (See copy of electronic mail and red- line changes to draft adoption letter attached as Exhibit D)

6. Although much of what is contained in Verizon's Proposed Adoption Letter goes beyond what is required to formalize the adoption by Allegiance of the Sprint Agreement, Allegiance limited its objections to the Proposed Adoption Letter to three:

   a. Section 1.D of the Proposed Adoption Letter attempts to make Allegiance's adoption of the Sprint Agreement an amendment to and restatement of the Original Interconnection Agreement rather than a new agreement and to have any debts incurred under the Original Interconnection Agreement carried forward so that such debts become obligations that are due and owing under the Sprint

Agreement. The Sprint Agreement, however, is not an amendment to the Original Interconnection Agreement. The Original Interconnection Agreement will expire by its own terms at the moment the Sprint Agreement takes effect and so there will be nothing to amend. Furthermore, the Proposed Adoption Letter seeks to add this requirement notwithstanding the fact that the Sprint Agreement, by its own terms, does not provide that any debts under a predecessor interconnection agreement become debts under a successor agreement. Rather, these debts will continue under the Original Interconnection Agreement and will be paid, if at all, just like any other obligation under an expired or terminated agreement. Verizon's proposal also flies in the face of Bankruptcy law. Allegiance is currently seeking reorganization under Chapter 11 of the Bankruptcy Code. The Bankruptcy Code provides for a carefully orchestrated process in which creditors may participate and be heard in order to protect their interests and prosecute any claims they may have with the debtor. Verizon's proposal is an attempt to circumvent the bankruptcy process completely by providing a claim under a post – bankruptcy agreement (the Sprint Agreement) for what is a pre-bankruptcy claim. Any claim that Verizon has for services provided under the Original Interconnection Agreement up to the date of Allegiance's bankruptcy filing is subject to the jurisdiction of the Bankruptcy Court and must and will be addressed by the Bankruptcy Court as part of any reorganization of Allegiance. Claims, if any, relating to the period after Allegiance's bankruptcy filing are subject to the rights and remedies under the Original Interconnection Agreement which by the terms of such agreement survive termination. Indeed, Verizon and Allegiance have entered into a stipulation in the bankruptcy proceeding which provides Verizon with assurance of payment for all post-petition amounts. It is, however, inappropriate for any of these debts to be transferred forward under a new interconnection agreement. Since Verizon's proposal is a substantive change to the Sprint Agreement and is inconsistent with Allegiance's Section 252(i) rights, Allegiance rightfully rejected this substantive modification.

b. Section 2 of the Proposed Adoption Letter changes the effective date of the adoption from December 24, 2003 – the date contained in the adoption notice - to October 1, 2003. Allegiance knows of no reason for this change because Verizon has been unresponsive to Allegiance's inquiries as to why the Verizon altered the adoption date, Allegiance can only assume it to be a mistake. In any event, there is no legal basis for changing such date.

c. Section 5 of the Proposed Adoption Letter purports to permit Verizon to deny adoption of the Sprint Agreement unilaterally <u>at any time</u> if Verizon concludes that (i) the cost of providing service to Allegiance is higher than the cost of providing service to Sprint, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. Verizon's suggestion that it can invalidate Allegiance's adoption of the Sprint Agreement is fundamentally at odds with the statute and the FCC's rules. Under section 252(i) and the FCC's rules, 47 CFR 51.809, Verizon must make the Sprint Agreement available unless it can prove to the Commission that (i) the cost of providing, service to Allegiance is higher than the cost of providing service to Sprint, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. The Act and the rules do not allow Verizon to make such determinations unilaterally either before or after the agreement has been approved by the Commission, but rather put the burden on Verizon to prove to the Commission that such facts weigh against adoption of the Sprint Agreement. Verizon's Proposed Adoption Letter is at odds with the FCC's rule addressing this precise issue. 47 CFR 51.809 provides, in pertinent part, that:

> "The obligations of paragraph (a) of this section [to make available any interconnection agreement to requesting carriers on the same terms and conditions] shall not apply where the incumbent <u>LEC proves to the state commission that:</u>
>
> (1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater that the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
>
> (2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible."(emphasis added)

Thus, Verizon's Proposed Adoption Letter is an attempt to rewrite the FCC's rules governing Allegiance's right to adopt an interconnection agreement under §252(i). In proposing a revision to the FCC's rule, Verizon awards itself greater rights, permitting Verizon to, make a unilateral determination, and usurping the Commission's role bypassing the requisite evidentiary showing to the Commission contemplated by the FCC's rule. This, Verizon is not permitted to do.

Thus Section 5 of the Proposed Adoption Letter is illegal and Allegiance is not required to consent to its terms in order to exercise its rights under §252(i) and 47 CFR 51.809.

Section 5 of the Proposed Adoption Letter is also at odds with the change of law provision in the Sprint Agreement. Verizon's Proposed Adoption Letter purports to permit Verizon to deny adoption of the Sprint Agreement unilaterally at any time if Verizon concludes that (i) the cost of providing, service to Allegiance is higher than the cost of providing service to Sprint, or (ii) providing service to Allegiance is not technically feasible, or (iii) Verizon is not required to provide service under applicable law. Verizon's Proposed Adoption Letter is thus an attempt by Verizon to supersede the change of law provision in the Sprint agreement that has already been approved by the Commission. Under the Sprint Agreement, both parties have the ability under the Change of Law provisions in sections 8.3 and 8.4 to amend the agreement to account for any changes in law and it permits either party to cease providing services that they are no longer required to provide by law after taking certain steps. However, the Sprint Agreement is explicit that the parties must adhere to orderly procedures set out in the Sprint Agreement before taking such action. The additional term sought by Verizon, the ability to cease providing service on a moment's notice and based on Verizon's unilateral determination that it is no longer required to provide such service under law, is a complete affront to the change of law process contained in the Sprint Agreement and approved by the Commission.

7. Allegiance requested a response by Verizon to the three areas of concern described above by close of business on Friday, November 21, 2003. Having heard nothing from Verizon by Tuesday November 25, 2003, Allegiance left a voice mail message with John Peterson, Director, Contract Performance and Administration. As of the date of this

filing, Allegiance has heard nothing from Verizon. Allegiance's Original Interconnection Agreement is now scheduled to expire in just three weeks and the public would not be served by allowing Verizon's dilatory behavior to result in the inability of Allegiance to provide service to its customers.

Based upon the foregoing, Allegiance requests that the Commission approve the adoption of the Sprint Agreement by Allegiance pursuant to Section 252(i) of the Telecommunications Act of 1996 without any modifications except to recognize the change in party to Allegiance Telecom of Maryland, Inc. and to provide for all notices under the Sprint Agreement to be sent in accordance with the notice information contained in the Proposed Adoption Letter. Allegiance asks that the adoption be made effective, consistent with its Adoption Notice to Verizon, at 12:00 a.m. on December 24, 2003.

Respectfully submitted,

Eric J. Branfman
Robin F. Cohn
Joshua M. Bobeck
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 3000
Washington, DC 20007
Tel: 202/424-7500
Fax: 202/424-7643

Mark Stachiw, Esq.
General Counsel
Allegiance Telecom Worldwide
9201 North Central Expressway
Dallas, TX 75251

Dated: December 3, 2003

SERVICE LIST -

I Joshua M. Bobeck hereby certify that on this 3rd day of December, 2003, I served a copy of the foregoing Petition of Allegiance Telecom of Maryland Inc. For Approval of an Adoption of an Entire Interconnection Agreement Pursuant to Section 252(i) by U.S. first class mail, postage prepaid (except where otherwise noted), on the following individuals:

Joshua M. Bobeck

Ms. Felecia L. Greer (via overnight mail)
Executive Secretary
Public Service Commission
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