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**HEARING DATE: 6/2/04
AT: 10:00 A.M.**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**RESPONSE OF THE DEBTORS TO MOTION BY SBC
TELECOMMUNICATIONS, INC. PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 3018 FOR TEMPORARY
ALLOWANCE OF CERTAIN CLAIMS FOR VOTING PURPOSES**

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "Allegiance" or the "Debtors"), for their response to the Motion by SBC Telecommunications, Inc. ("SBC") pursuant to Federal Rule of Bankruptcy Procedure 3018 for temporary allowance of certain claims for voting purposes, dated May 13, 2004 (the "Motion") respectfully state that:

Preliminary Statement

1. SBC, on behalf of certain of its operating telephone companies, including Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, Southwestern Bell Telephone, L.P. and Wisconsin

Bell, Inc. (collectively, the “SBC Operating Companies”) seeks to have seven (7) claims filed by the SBC Operating Companies against the Debtors (each a “Late Claim,” and, collectively the “Late Claims”), which are the subject of objections by the Debtors, temporarily allowed for purposes of voting on the Debtors’ plan of reorganization. The Late Claims are addressed in the Debtors’ first omnibus objection to certain proofs of claim, dated April 6, 2004 (the “Omnibus Objection”).¹ The Omnibus Objection seeks to disallow the Late Claims as being late filed. The Late Claims, as well as other SBC Operating Companies proofs of claim (together with the Late Claims, the “SBC Claims”), are also the subject of the Debtors’ sixth objection to certain proofs of claims filed by SBC, dated May 28, 2004 (the “Sixth Objection”). The Sixth Objection seeks to disallow all of the SBC Claims on substantive grounds.

2. SBC argues in the Motion that the Late Claims, which assert contract rejection damages, were filed in accordance with various orders entered by this Court, or if any were late filed such filings were due to excusable neglect.

3. For the reasons set forth herein below, the Debtors believe that this Court should not permit SBC to vote the Late Claims, as they are, in fact, late filed, and/or susceptible to expungement based on meritorious substantive grounds. Further, should SBC seek to have the remainder of the SBC Claims temporarily allowed for voting purposes, such relief should be denied as these claims are the subject of legitimate substantive objections filed by the Debtors.

Background

4. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-

¹ The Omnibus Objection addressed approximately 780 claims.

sized business customers, large businesses (i.e., national customers with multiple locations), governmental entities and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and collocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- equipment collocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

Claims Bar Date

5. In the Debtors' chapter 11 cases, which were commenced on May 14, 2003, this Court entered an Order, dated September 23, 2003, pursuant to Bankruptcy Rule 3003(c)(3), (i) establishing a final date for filing proofs of claim in these chapter 11 cases, and (ii) approving the form of the bar date notice and the notice and publication procedures (the "Bar Date Order"). The Bar Date Order, among other things, established November 26, 2003 (the "Bar Date") as the last date for all persons and entities (including governmental units) holding or wishing to assert pre-petition and certain other "Claims" (as such term is defined in 11 U.S.C. § 101(5)) against the Debtors to file a proof of claim with respect to each such Claim. A copy of the Bar Date Order is attached hereto as Exhibit "1."

6. The Bar Date Order provides, in relevant part, that "any person or entity that holds a claim that arises from the rejection of an executory contract or

unexpired lease as to which the order authorizing such rejection is dated on or before ten (10) days after the date hereof, must file a proof of claims based on such rejection on or before the Bar Date..." See bar Date Order, page 4.

7. Within fifteen (15) days of the entry of the Bar Date Order, the Debtors' notice and claims agent, Bankruptcy Management Corporation ("BMC" or the "Voting Agent"), provided notice of the Bar Date by mailing (i) the notice of the Bar Date approved by the Court (the "Bar Date Notice"), and (ii) a proof of claim form to the persons or entities listed in the Debtors' Schedule of Assets and Liabilities (the "Schedules"), which were previously filed with the Court, and upon those additional parties listed in the Bar Date Order. Importantly, SBC and its counsel were served with copies of the Bar Date Notice. See Affidavit of Service of Richard J. Reilly of BMC filed in these chapter 11 cases, docket no. 496.

8. In addition, the Debtors published the Bar Date Notice in the USA Today (National Edition) on one occasion at least twenty-five (25) days before the Bar Date.

Plan of Reorganization

9. By an Order dated April 22, 2004, this Court, inter alia, (i) approved the Debtors' Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code, dated April 22, 2004, relating to the Debtors' Amended Joint Plan of Reorganization, as thereafter amended (the "Plan"), (ii) established various dates and procedures regarding voting to accept or reject the Plan, (iii) prescribed procedures for filing objections to confirmation of the Plan, and (iv) scheduled a hearing to consider confirmation of the Plan (the "Disclosure Statement Order").

10. Pursuant to the Disclosure Statement Order, ballots for voting on the Plan must be received by the Voting Agent by June 1, 2004. Further, the Disclosure Statement Order provides that holders of claims against the Debtors that are subject to objection based on liability and/or amount are entitled to vote their claims for or against Plan confirmation in the amount of one (\$1.00) dollar. The hearing to consider confirmation of the Plan is scheduled for June 7, 2004 at 10:00 a.m.

Debtors' Objections to the SBC Claims

11. The Omnibus Objection seeks to expunge the Late Claims on the grounds that the claims were not filed timely. The Sixth Objection seeks to disallow all of the SBC Claims on the following grounds: (i) the claim amounts are disputed, miscalculated and overstated; (ii) the claims are subject to set off rights of the Debtors for amounts due and owing by SBC to the Debtors; and (iii) the claims are disallowed under section 502(d) of title 11 of the United States Code (the "Bankruptcy Code") as a result of the Debtors' preference claims against SBC and the SBC Operating Companies.

Debtors' Opposition to the Motion

12. The Debtors object to the temporary allowance of the Late Claims, and any further request that may be made by SBC to have the remainder of the SBC Claims temporarily allowed, for the reasons set forth below and requests that this Court deny the Motion, and any supplement thereto, in its entirety.

A. Rejection Damage Claims Not Timely Filed

13. SBC states that the Late Claims assert damages arising out of the rejection by the Debtors, pursuant to section 365(a) of the Bankruptcy Code, of certain telecommunications agreements known as Service Orders between the Debtors and various of the SBC Operating Companies. The relevant Service Orders are the subject of the following filed claims of SBC and the referenced rejection orders.

<u>Claim No.</u>	<u>Amount</u>	<u>Rejection Order Date</u>
2748	\$ 4,287.00	12/16/03
2749	265,119.90	10/21/03
2750	154,040.40	10/08/03
2751	54,958.35	09/04/03
2752	377,658.24	09/04/03
2753	562,581.11	09/04/03
2754	985,915.61	09/04/03

All of the Late Claims were filed by SBC on January 29, 2004.

14. The rejection orders dated October 8, 2003 (Claim 2750), October 21, 2003 (Claim 2759) and December 16, 2003 (Claim 2748) all contain provisions and deadlines for filing rejection damages claims. These three Orders provide that SBC must file respective rejection damage claims relating to the pertinent Service Orders within a prescribed time period after SBC's receipt of a disconnect order from the Debtors. In the case of the October 8 Order, the period is sixty (60) days and in the October 21 and December 16 Orders it is forty-five (45) days.

15. The rejection order dated September 4, 2003 (the "September Order"), applicable to Claim Nos. 2751, 2752, 2753 and 2754 does not contain any provision for filing rejection damages claims. A copy of the September Order is attached hereto as Exhibit "2."

16. Claim No. 2748 for \$4,287 does not identify the disconnect order receipt dates. Accordingly, there is no basis to conclude that this Late Claim was filed

within the 45-day period prescribed by the December 16 rejection order. The Debtors are in the process of reviewing their books and records to determine if the asserted disconnect order receipt dates in Claim Nos. 2749 and 2750 are valid. As of this date the Debtors have not been able to verify these dates and therefore cannot determine if Claim No. 2749 for \$265,119.90 and Claim No. 2750 for \$154,040.40 were timely filed.

17. The Debtors submit that Claim Nos. 2751 for \$454,958.35, 2752 for \$377,658.24, 2753 for \$562,581.11 and 2754 for \$985,915.61 are undoubtedly late filed. The September Order did not prescribe a date by which rejection damage claims for the service terminations covered by these Late Claims had to be filed. As a result, claims asserted based on the September Order are subject to the provisions of the Bar Date Order.

18. As set forth above, if an order authorizing rejection of an executory contract or an unexpired lease is entered on a date, which is on or before ten days after the date of the Bar Date Order (i.e. prior to October 3, 2003) a proof of claim with respect to the rejection damages under such contract must be filed on or before the Bar Date (i.e. November 26, 2003). These four Late Claims were filed on January 29, 2004 (i.e. sixty-four (64) days after the Bar Date).

19. SBC failed to comply with the requirements of the Bar Date Order in filing these four Late Claims. The September Order was entered on September 6, 2003 which was "on or before ten (10) days after the date" of the Bar Order (September 23, 2003). Accordingly, the Bar Date applies for the assertion of any contract rejection damage claims SBC might have had in connection with the Service Orders rejected under the September Order.

20. Contrary to SBC's vague contentions that it "generally filed its rejection damage claims in accordance with the deadlines set forth in the Rejection Orders" (See Motion ¶15), it is clear that SBC actually violated the applicable orders with respect to the Late Claims, Nos. 2751, 2752, 2753 and 2754. SBC did not file any claims for damages arising out of the rejections authorized by the September Order before the Bar Date.² SBC filed Claims 2751, 2752, 2753 and 2754 in late January 2004, more than two (2) months after the Bar Date. This was done by SBC despite the Bar Date Order's explicit requirement that rejections damages as a result of the Service Order rejections covered by the September Order were to be filed by the Bar Date. Therefore, SBC has failed to meet its burden to establish grounds for temporary allowance of the Late Claims. See, *Armstrong v. Rushton (In re Armstrong)*, 292 B.R. 678 (10th Cir. B.A.P. 2003) (providing that the burden of proof for a temporary allowance motion rests with the claimant when an objection has been made).

21. Similarly, SBC's alternative cursory argument that any failure to timely file the Late Claims was due to excusable neglect is without merit.

22. The Motion provides no explanation of SBC's alleged "excusable neglect". The argument appears in paragraph 16, the last one of the Motion, and is supported only by citation to two cases that speak to the general proposition of excusable neglect. It is likely that no description of excusable neglect is given in the Motion because none exists.

23. SBC cannot get around the Bar Date Order's clear mandate that rejection damage claims arising out of the September Order must be filed by the Bar

² Even if the actual damage amount were not known to SBC by the Bar Date it should have filed contingent unliquidated claims before the Bar Date.

Date. SBC is a large national corporation with a unit dedicated to handling bankruptcy matters (the SBC Claims were prepared and signed by a senior credit manager in the SBC bankruptcy department). SBC has sophisticated bankruptcy counsel representing it in the Debtors' chapter 11 cases. SBC's counsel had an opportunity to review rejection orders prior to submission to the Court and could very well have provided for rejection damages filing dates in the September Order, as was done in the later orders. Both SBC and its professionals had an opportunity to review the Bar Date Order and determine whether SBC's rights to file rejection damage claims were impacted by the order provisions. Based upon all of these factors, it is not surprising that SBC did not even attempt to explain what negligence occurred. Accordingly, the Court should disregard the excusable neglect argument.

B. Debtors' Objections to the Merits of SBC Claims

24. The Omnibus Objection specifically reserved the Debtors' rights to bring further objections to claims addressed in the Omnibus Objection. In addition to the untimely filing of the Late Claims, the Debtors have substantive objections to the Late Claims, as well as all of the other SBC Claims. These additional grounds include that the SBC Claims (27 claims in the aggregate, including the Late Claims) are disputed and overstated, are subject to set-off rights of the Debtors and are disallowed pursuant to section 502(d) of the Bankruptcy Code. These are well-supported and valid objections and constitute an independent basis for the Court to deny temporary allowance of all of the SBC Claims for Plan voting purposes.

Overstated Claims

25. The Debtors purchase various telecommunications facilities and services on a wholesale, retail, or other basis, from SBC. The Debtors use most of these services to provide its own integrated telecommunications products and services to Allegiance's customers. The Debtors also provide certain telecommunications facilities and services to SBC that SBC uses to provide services to its customers. The relationship between the Debtors and SBC and the charges for the subject services is governed, among other things, by state and federal tariffs (the "Tariffs"), and Interconnection Agreements ("ICA").

26. Since telecommunication traffic flows in both directions, on a monthly basis both parties have amounts due to and from each other. In general, Allegiance reviews and analyzes charges from SBC upon receipt of SBC's invoices and, except as explained below, all charges that Allegiance determines are appropriate are paid, and the balance of the disputed charges are set aside for resolution at a later date. As these disputed charges accumulate, they can result in a significant amount. Periodically, representatives from both Allegiance and SBC settle the disputed amounts but that has not occurred for these claims. Here, a significant portion of the claims that SBC assert as unpaid pre-petition amounts continue to be disputed.

27. The Debtors have reviewed the SBC Claims and have determined that such claims are overstated. SBC has asserted amounts that are not due under the ICA or Tariffs, or has miscalculated or otherwise improperly asserted the amounts due by the Debtors to SBC. The Debtors' books and records reflect that the total pre-

petition amount actually invoiced by SBC under the ICA and Tariffs is \$25,308,618.³ After taking into consideration the pre-petition disputed and overstated amounts of \$14,302,711 invoiced by SBC per the Debtors' books and records, the aggregate of the SBC Claims should be reduced to \$11,005,907.

28. In addition to the foregoing reductions, the SBC Claims should be further reduced in amount based on certain rights of set off that the Debtors have against SBC as discussed below.

Setoff Rights

29. Section 553 of the Bankruptcy Code preserves the non-bankruptcy rights of parties (creditors and debtors) to effect set off of mutual obligations. Allegiance's books and records show that the pre-petition claims in favor of the Debtors against SBC arising under the ICA or Tariffs total \$3,280,371. Consequently, Allegiance may set off amounts due against the SBC Claims. After reduction of the SBC Claims on account of the disputed and overstated amounts, the aggregate of the SBC Claims must be further reduced by the set off amount to \$7,725,536, as a consequence of the application of the Debtors' right of set off against the SBC Claims.

Section 502(d) Objection

30. The Debtors' review of its books and records revealed that on or within ninety (90) days before the commencement of these chapter 11 cases, the Debtors made one or more transfers by check, wire transfer or its equivalent directly to or for the benefit of SBC. The Debtors believe that these payments constitute

³ This amount is based on what the Debtors' books and records indicate are the aggregate of invoiced charges from SBC. The Debtors have not yet been able to reconcile these invoices with the total amount asserted in the SBC Claims.

preferential transfers (the “Preferential Transfers”) avoidable under section 547 of the Bankruptcy Code.

31. Section 502(d) of the Bankruptcy Code provides:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

11 U.S.C. § 502(d).

32. The Debtors contend that they can assert preference actions against SBC in the aggregate amount of approximately \$11.1 million. Accordingly, pursuant to section 502(d), the SBC Claims must be disallowed unless SBC returns the Preferential Transfers to the Debtors.

Discussion

33. In deciding whether an objected to claim should be temporarily allowed for plan voting purposes courts examine the merits of the claim objection and how the debtors listed potential liabilities owing to the creditor in its schedules. See In re Stone Hedge Properties, 191 B.R. 59 (Bankr. M.D. Pa. 1995).

34. In the present case, Allegiance scheduled the majority of SBC claims as contingent, unliquidated and disputed. Thus, from early on in these chapter 11 cases, SBC was on notice that the Debtors had serious issues with the validity of potential SBC claims and the process by which SBC might arrive at claim amounts. In fact, prior to the commencement of these chapter 11 cases, Allegiance was attempting to address discrepancies between the charges invoiced by SBC and the amounts the Debtors’ books and records reflected were owed between the parties. Further, SBC, as

well as other major ICA providers that Allegiance has relationships with, such as Verizon Communications and the BellSouth Companies, have been in protracted discussions during the cases regarding the obligations running between them under the ICA and Tariffs. Therefore, there can be no question that SBC has been long aware of the position of the Debtors concerning the SBC Claims and the potential for objection to the claims.

35. The bases for the objections to the SBC Claims are well founded. The vast majority of the rejection damages claims (over \$2 million) are clearly late filed and SBC has no justifiable excuse for the late filings. Further, the Debtors have legitimate grounds to contest the overstated and improper charges and rejection damages asserted in the SBC Claims. Likewise, the SBC Claims do not take into account the significant pre-petition charges owed by SBC to Allegiance under the ICA and Tariffs. Taken together, the Debtors' right of set off and the elimination of the SBC overcharges reduce the aggregate of the SBC Claims by more than 70% (from a gross amount of over \$20 million to approximately \$7 million). Finally, the existence of the Preferential Transfers of more than \$11 million fully wipes out the remainder of the SBC Claims.

36. The underlying purposes of the Bankruptcy Code are to be considered by the courts in evaluating a motion for temporary allowance of a claim. See Stone Hedge, at 65. By the relief sought in the Motion, SBC seeks the ability to vote the full amount of claims for or against confirmation of the Plan that are clearly late filed and with respect to all of the SBC Claims are in face amount that far exceed the legitimate amount of the actual obligations owed by Allegiance. Though a creditor's right to vote on a plan of reorganization is not to be withheld lightly, the competing

purposes of the Bankruptcy Code to ensure fairness and integrity in the voting process cannot be ignored. SBC should not be permitted to wield disproportionate and unjustified influence in the voting on Plan confirmation by temporary allowance of its late filed and vastly inflated unsecured claims. To do so would be highly prejudicial to the rights of all of the holders of allowed unsecured claims against the Debtors. The voting of all of the SBC Claims in the full amount of \$20 million would unfairly dilute the impact of the votes of the rest of the unsecured creditors. Accordingly, the Debtors request that this Court deny the Motion.

WHEREFORE, the Debtors respectfully request that the Court (a) deny the Motion, which seeks temporary allowance of the SBC Claims for Plan voting purposes, and (b) grant such further relief as it deems just and proper under the circumstances.

Dated: New York, New York
May 28, 2004

Respectfully submitted,

ALLEGIANCE TELECOM, INC., *et al.*,
Debtors and Debtors in Possession
By: Their Co-Bankruptcy Counsel,
TOGUT, SEGAL & SEGAL LLP

By: /s/ Albert Togut
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER PURSUANT TO BANKRUPTCY RULE 3003(c)(3)
FIXING FINAL DATE FOR FILING PROOFS OF CLAIM,
APPROVING PROPOSED PROOF OF CLAIM FORM, APPROVING
PROPOSED BAR DATE NOTICE, AND APPROVING
PROPOSED NOTICE AND PUBLICATION PROCEDURES**

Upon the application dated September 10, 2003 (the "Application") of Allegiance Telecom, Inc., and its direct and indirect subsidiaries, as debtors and debtors in possession (the "Debtors"), for an order, pursuant to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), fixing a final date for filing certain proofs of claim (the "Bar Date"), approving the proposed proof of claim form, approving the proposed bar date notice, and approving the proposed notice and publication procedures, all as more fully set forth in the Application; and it appearing that the Court has jurisdiction over this matter; and it appearing that (i) establishment of a date by which creditors must assert claims against the Debtors or be forever barred from voting on any chapter 11 plan or participating in any distributions from the Debtors' estates in accordance with the authority granted to this Court by title 11 of the United States Code (the "Bankruptcy Code") and the Bankruptcy Rules, is necessary for the prompt and efficient administration of these chapter 11 cases and to protect the interests of the Debtors, their creditors, and other parties in interest, and (ii) notification of the relief granted by this Order in the manner proposed by the Debtors, as set forth herein, is fair and

reasonable and will provide good, sufficient, and proper notice to all creditors of their rights and obligations in connection with claims they may have against the Debtors in these chapter 11 cases; and it further appearing that the relief requested in the Application is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is granted; and it is further

ORDERED that, pursuant to Bankruptcy Rule 3003(c)(3), and except as otherwise provided herein, each person or entity (including, without limitation, each individual, partnership, joint venture, corporation, estate, trust, and governmental unit) that asserts a claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtors that arose prior to May 14, 2003 (the "Commencement Date"), can only timely file an original, written proof of such claim which substantially conforms to Exhibit "B" annexed to the Application (the "Proof of Claim"), which form is hereby approved, or Official Form No. 10, if it is received on or before November 26, 2003, at 5:00 p.m. (prevailing Eastern Time) (the "Bar Date") by Bankruptcy Management Corporation ("BMC"), either by mailing the original proof of claim to United States Bankruptcy Court, Southern District of New York, Allegiance Claims Docketing Center, Bowling Green Station, P.O. Box 95, New York, New York 10274-0095, or by delivering the original proof of claim by messenger or overnight courier to the United States Bankruptcy Court, Southern District of New York, Allegiance Claims Docketing Center, One Bowling Green, Room 534, New York 10004-1408 (together, the "Allegiance Claims Docketing Center"); and it is further

ORDERED that proofs of claim will be deemed timely filed only if actually received by the Allegiance Claims Docketing Center on or before the Bar Date; and it is further

ORDERED that the Allegiance Claims Docketing Center shall **not** accept proofs of claim sent by facsimile, teletype, or electronic mail transmission; and it is further

ORDERED that the following persons or entities are **not** required to file a proof of claim on or before the Bar Date:

- a. any person or entity that has already properly filed, with the Clerk of the United States Bankruptcy Court for the Southern District of New York, a proof of claim against the applicable Debtor or Debtors, utilizing a claim form which substantially conforms to the Proof of Claim or Official Form No. 10;
- b. any person or entity (i) whose claim is listed on the Debtors' Statements of Financial Affairs, Schedules of Assets and Liabilities and Schedules of Executory Contracts (collectively, the "Schedules"), (ii) whose claim is not described on such Schedules as "disputed," "contingent," or "unliquidated," and (iii) who does not dispute the amount or nature of the claim for such person or entity as set forth in the Schedules;
- c. any person having a claim under sections 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of any of the Debtors' chapter 11 cases;
- d. any person or entity whose claim has been paid in full by any of the Debtors;
- e. any Debtor having a claim against another Debtor;
- f. any person or entity that holds a claim that has been allowed by an order of this Court entered on or before the Bar Date;
- g. any person or entity whose claim is limited exclusively to the repayment of principal, interest, and/or other applicable fees and charges (a "Debt Claim") on or under any bond or note issued by the Debtors (the "Debt Instruments"); *provided, however,* that (i) the foregoing exclusion in this subparagraph shall not apply to the Indenture Trustee under the applicable Debt Instruments (the "Indenture Trustee"), (ii) the Indenture Trustee shall be required to file one proof of claim, on or before the Bar Date, on account of all of the Debt Claims on or under each of the Debt Instruments and (iii) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to the Debt Instruments shall be required to file a proof of claim on or before

the Bar Date, unless another exception in this paragraph applies;
and

- h. any holder of a claim for which specific deadlines have previously been fixed by this Court;

and it is further

ORDERED that holders of equity security interests in the Debtors need not file proofs of interest with respect to the ownership of such equity interests, **provided, however,** that if any such holder asserts a claim against the Debtors (including a claim relating to an equity interest or the purchase or sale of such equity interest), a proof of such claim must be filed on or prior to the Bar Date pursuant to the procedures set forth in this Order; and it is further

ORDERED that any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease as to which the order authorizing such rejection is dated on or before ten (10) days after the date hereof, must file a proof of claim based on such rejection on or before the Bar Date, and any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease as to which the order authorizing such rejection is dated after ten (10) days after the date hereof, must file a proof of claim on or before such date as the Court may fix in the applicable order authorizing such rejection; and it is further

ORDERED that each proof of claim to be properly filed pursuant to this Order shall (i) be written in the English language, (ii) include a claim amount denominated in lawful currency of the United States, (iii) conform substantially with the Proof of Claim or Official Form No. 10, (iv) indicate the Debtor against which the creditor is asserting a claim, (v) include supporting documentation (if voluminous, attach a summary) or an explanation as to why such documentation is not available, and (vi) be signed by the claimant or if the claimant is not an individual, by an authorized agent of the claimant; and it is further

ORDERED that any holder of a claim against one or more of the Debtors who is required, but fails, to file a proof of claim for such claim in accordance with this Order on or before the Bar Date shall be forever barred, estopped, and enjoined from asserting such claim against such Debtor (or filing a Proof of Claim with respect thereto) and such Debtor's estate and its property shall be forever discharged from any and all indebtedness or liability with respect to such claim, and such holder shall not be permitted to vote on any chapter 11 plan or participate in any distribution in such Debtor's chapter 11 case on account of such claim or to receive further notices regarding such claim; and it is further

ORDERED that notice of the entry of this Order and of the Bar Date in a form substantially similar to the notice attached to the Application as Exhibit "C" (the "Bar Date Notice"), which Bar Date Notice is hereby approved in all respects, shall be deemed good, adequate, and sufficient notice if it is served together with one or more Proof of Claim forms (as appropriate) by being deposited in the United States mail, first class postage prepaid, within fifteen (15) days after the date of entry of this Order, upon:

- a. the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee");
- b. each member of the statutory creditors' committee (the "Creditors' Committee"), and the attorneys for the Creditors' Committee;
- c. attorneys for the Debtors' prepetition senior secured lenders;
- d. all known holders of claims listed on the Schedules at the addresses stated therein (or a more accurate last known address);
- e. all counterparties to the Debtors' executory contracts and unexpired leases listed on the Schedules at the addresses stated therein (or a more accurate last known address);
- f. the District Director of Internal Revenue for the Southern District of New York;
- g. the Securities and Exchange Commission;

- h. certain other entities with whom, prior to the Commencement Date, the Debtors had done business or who may have asserted a claim against the Debtors in the recent past;
- i. the entities set forth in the Debtors' Master Service List established pursuant to that certain Order Establishing Notice Procedures, dated May 15, 2003;
- j. all persons or entities that have requested notice of the proceedings in Debtors' cases; and
- k. all parties to litigation with the Debtors;

and it is further

ORDERED that, with regard to those creditors listed on the Schedules, the Debtors shall mail one or more proof of claim forms (as appropriate) substantially similar to the Proof of Claim form annexed to the Application as Exhibit "B," indicating in the top right hand corner thereof how the Debtors have scheduled such creditor's claim in the Schedules (including, the identity of the applicable Debtor, the amount of the claim (if any listed) and whether the claim has been scheduled as contingent, unliquidated, or disputed); and it is further

ORDERED that, with respect to the Debtors' current employees, the Debtors shall distribute notice by e-mail of the Bar Date to such employees using a notice substantially similar to the form of notice annexed to the Application as Exhibit "D," which notice is approved in all respects, and utilizing the Employee Notification Procedures (as such procedures are described in the Application) within ten (10) business days after the date of entry of this Order; and it is further

ORDERED that, pursuant to Bankruptcy Rule 2002(1), the Debtors shall publish a Bar Date Notice in substantially the form annexed to the Application as Exhibit "E" (the "Publication Notice"), in USA Today (National Edition), on one occasion at least twenty-five (25) days prior to the Bar Date, which publication is hereby approved in all respects and which

shall be deemed good, adequate, and sufficient publication notice of the Bar Date; and it is further

ORDERED that if the Debtors amend or supplement their Schedules subsequent to the date hereof, the Debtors shall give notice of any amendment or supplement to the holders of claims affected thereby, and such holders shall be given notice of such deadline and shall be afforded thirty (30) days from the date on which such notice is given to file proofs of claim in respect of their claim or be forever barred from doing so; and it is further

ORDERED that the Debtors and BMC are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order; and it is further

ORDERED that notification of the relief granted by this Order as provided herein and in the Exhibits to the Application is fair and reasonable and will provide good, sufficient, and proper notice to all creditors of their obligations in connection with claims they may have against the Debtors in these chapter 11 cases; and it is further

ORDERED that nothing in this Order shall prejudice the right of the Debtors or any other party in interest to dispute or assert offsets or defenses to any claim reflected in the Schedules, and it is further

ORDERED that entry of this Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing the date by which holders of a claim not subject to the Bar Date established herein must file such claim against one or more of the Debtors or be forever barred from voting upon any chapter 11 plan or plans for such Debtor, from receiving any payment or distribution of property from such Debtor's estate or its successors or assigns with respect to such claim, and from asserting such claim against any Debtor; and it is further

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

/s/ ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Dated: New York, New York
September 23, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6006 AUTHORIZING
THE REJECTION OF CERTAIN INDIVIDUAL SERVICE ORDERS**

Upon consideration of the motion, dated August 22, 2003 (the “Motion”) of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order pursuant to section 365(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtors to reject the Service Orders,¹ as more fully set forth in the Motion; and the Court having jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. sections 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and due and proper notice of the Motion having been given; and after due deliberation and consideration; and good and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the rejection of the Service Orders is approved, with such rejection being effective as of the date of the disconnect order submitted for each Service Order; and it is further

¹ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion.

ORDERED that the Debtors do not waive or release any rights, claims, causes of action, or defenses, including rights of set-off or recoupment with respect to such Service Orders and claims; and it is further

ORDERED that nothing in this Order shall be construed as relieving the Debtors or any other person or entity of any obligation to comply with section 214 of the Federal Communications Act or any other applicable law; and it is further

ORDERED that the Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York
September 4, 2003

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE