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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTION OF THE TELEPHONE OPERATING COMPANY SUBSIDIARIES OF
VERIZON COMMUNICATIONS INC. TO PROPOSED CURE AMOUNTS**

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

The telephone operating company subsidiaries of Verizon Communications Inc. (collectively, “Verizon”), by and through their undersigned counsel, hereby object (the “Objection”) to the cure amounts proposed by the Debtors’ for their executory contracts with Verizon which they wish to assume in connection with their proposed Plan (“Plan”).¹ In support of its Objection, Verizon states as follows:

¹ Capitalized terms not otherwise defined in this Objection shall have the meanings given to them in the Plan, or in the Bidding Procedures Order, as applicable.

1. On February 20, 2004, this Bankruptcy Court entered an order approving the sale to XO Communications, Inc. (“XO”) of (i) substantially all of the assets of Allegiance Telecom Company Worldwide (“ATCW”) and (ii) the stock of the reorganized subsidiaries of ATCW, other than Shared Technologies Allegiance, Inc. Order (I) Approving the Sale Free and Clear of Liens, Claims and Encumbrances to the Successful Bidder, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief” (the “Sale Order”). In the Sale Order, this Court made clear that, in order for XO to obtain (directly or indirectly) the benefits of any of the executory contracts of the Debtors, it would have to do what every other buyer of the business of a debtor must do: have the debtor assume the contracts, cure all defaults, provide adequate assurance of future performance, and (if the buyer itself is to obtain the contracts) assign the contracts to the buyer. Thus, the Court specified that any assumption and/or assignment of any of the Debtors’ contracts could occur only if “the requirements of section 365 of the Bankruptcy Code are satisfied.” Sale Order at 11 (¶ 12). And the Court also directed that “[a]ll defaults or other obligations of the Debtors under the Assumed Contracts . . . shall be promptly cured by the Debtors or Buyer as set forth in the Purchase Agreement as provided in section 365(b)(1) of the Bankruptcy Code . . .” *Id.* at 12 (¶ 15).²

² This Court also made clear that the rights of Verizon and other ILECs, including their right to insist on a full cure of all amounts owed to them, were to be fully preserved:

Notwithstanding any of the foregoing, or anything else to the contrary contained in this Order, the Purchase Agreement or any documents executed therewith, nothing in this Order, the Purchase Agreement or any documents executed therewith shall be deemed to affect the rights of any ILECs, as to any executory contracts or unexpired leases, to object, respond or otherwise be heard with respect to (without limitation) . . . (b) the assumption and assignment of any such executory contract or unexpired lease to the Buyer . . . and (d) the amount and

2. The Debtors have failed to follow the required procedures for assuming executory contracts. The Debtors' Plan references the Bidding Procedures Order, which this Court entered on January 15, 2004. That Order provides, at page 19, that

At least 20 days prior to the hearing to confirm the Bankruptcy Plan . . . the Debtors . . . shall serve a copy of the Bidding Procedures Order together with the Notice of the Debtors' Intent to Assume and Assign Executory Contracts and Unexpired Leases (the "Contract Assignment Notice"), . . . by first class mail to the Contract Parties and, the extent an attorney representing a Contract Party has filed a notice of appearance in the Debtors' chapter 11 cases on behalf of the Contract Party, the attorney for the Contract Parties, notifying them of the Debtors' intent to assume and assign each agreement listed on Exhibit A of the Contract Assignment Notice . . . and of the Cure Amount determined by the Debtors for each such Assumed Contract to be necessary for such assumption and assignment on the Closing Date.

But, as of the date of this filing -- five days before the Confirmation Hearing -- neither Verizon nor its counsel has ever received any such Contract Assignment Notice. In fact, Verizon was only informed that the Debtors intended to assume some Verizon executory contracts after Verizon's counsel complained to Debtors' counsel that, as the Confirmation Hearing neared, Verizon had not received any information about which of its executory contracts the Debtors wanted to assume. Late on Monday, May 24, 2004, Debtors' counsel provided Verizon with a portion of a schedule filed under seal with this Court purporting to identify executory contracts with Verizon which the Debtors may want to assume (the "Schedule"). A copy of that excerpt, with a cover e-mail from Debtors' counsel, is attached hereto as Exhibit A.

timing of any cure and payments proposed by the Debtors All rights of the ILECs and the Debtors, with respect to the matters relating to executory contracts, are hereby fully reserved.

Id. at 15 (¶ 20).

3. The Schedule contains insufficient information for Verizon to identify which of its executory contracts the Debtors propose to assume and how much the Debtors acknowledge owing (and need to cure) under those contracts. Among other defects, the Schedule fails to identify any proposed cure amount for most contracts. It therefore fails to trigger any requirement for Verizon to respond. Verizon accordingly reserves all of its rights.

4. Nevertheless, in light of the ongoing disputes and uncertainties about which contracts will be assumed, and in light of the impending Confirmation Hearing, Verizon is filing this Objection out of an abundance of caution.

OBJECTION

5. As of April 30, 2004, based on the records currently available to it, Verizon was owed a total of \$83,449,383.17 (the “Total Cure Amount”) under its various contracts with the Debtors. This total amount includes (i) Verizon’s original filed prepetition proof of claim in the amount of \$61,532,048.73, (ii) Verizon’s amended prepetition proof of claim which asserted an additional \$37,089.00 in claims, (iii) an overpayment rendered to certain of the Debtors pertaining to telecommunications services in the state of California in the approximate amount of \$7,800,000.00,³ and (iv) outstanding postpetition accounts receivable (disputed and undisputed) through April 30, 2004 in the amount of \$14,080,245.44.⁴

³ This amount also constitutes a defense to or offset against any alleged payables due from Verizon to the Debtors.

⁴ Between the proofs of claim filed by Verizon, invoices, and other documents provided by Verizon to the Debtors, the Debtors have already received sufficient documentation supporting the amounts owed to Verizon. However, Verizon will provide additional copies upon reasonable request.

6. Verizon fully reserves its rights to amend the Total Cure Amount as appropriate, and all its other rights including -- without limitation -- any and all rights with respect to executory contracts under section 365 of the Bankruptcy Code, and any and all rights of setoff under section 553 of the Bankruptcy Code.

CONCLUSION

WHEREFORE, Verizon requests that this Court (i) condition the assumption of the Verizon Contracts on the payment in full of \$83,449,383.17, plus any other amounts determined to be owed under contracts the Debtors seek to assume, and (ii) grant Verizon such other and further relief as this Court deems appropriate.

Dated: June 2, 2004

Respectfully Submitted,

WILMER CUTLER PICKERING
HALE AND DORR LLP

/s/ Philip D. Anker

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Attorneys for the telephone operating company
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EXHIBIT A

Dembrow, Adam

From: Anker, Phil
Sent: Monday, May 24, 2004 10:12 PM
To: 'steven.h.hartmann@verizon.com'; 'jack.h.white@verizon.com';
'sherry.hessenthaler@verizon.com'; 'william.g.cummings@verizon.com'
Cc: Gasparini, Elisabetta; Dembrow, Adam; Mahr, Eric; Harwood, John
Subject: FW: Allegiance - Contracts



Verizon - Schedule [4].pdf



Schedule 2 Notes (final[4].pdf..)

Here is the schedule (or the portion thereof relating to Verizon) of contracts to be assumed under the plan. I haven't studied it carefully yet.

-----Original Message-----

From: Al Togut [mailto:altogut@teamtogut.com]
Sent: Monday, May 24, 2004 7:00 PM
To: Anker, Phil
Cc: Mark Stachiw; Chris Luna
Subject: Re: Allegiance - Contracts

Phil, the schedule was filed under seal; it contains the names of all of our customers. I had the Company pull out the information for your client and attached is the excerpt from the master list for schedule 2 as it relates to Verizon and the notes that accompanied schedule.

Al

on 5/24/04 5:42 PM, Anker, Phil at Philip.Anker@wilmer.com wrote:

> Thanks.

>

> -----Original Message-----

> **From:** Al Togut [mailto:altogut@teamtogut.com]
> **Sent:** Monday, May 24, 2004 5:38 PM
> **To:** Anker, Phil
> **Subject:** Re: Allegiance - Contracts
> **Importance:** High

>

>

> I've passed your email onto Mark Stachiw. I'll let you know the answer when
> I get it.

>

>

Al

>

>

> on 5/24/04 4:50 PM, Anker, Phil at Philip.Anker@wilmer.com wrote:

>

>>

>> Al -- When you and I talked last Wednesday, I mentioned that we had received
>> (that day) Schedules regarding executory contracts to be assumed and rejected
>> by the debtors, and no Verizon contracts were listed to be assumed. You
>> called me back and told me that the relevant Schedule had not yet been filed
>> and served, but would be. I have confirmed that what we were reviewing was
>> Schedules 1, 3 and 4 and did not include schedule 2, which are the contracts

>> to be assumed on the Initial Effective Date. But we still have not received
>> that Schedule. Under the Court's orders, and as set forth in the Disclosure
>> Statement, Schedule 2 was supposed to be filed and served at least 20 days
>> before the confirmation hearing; we are now 14 days away. Does the Schedule
>> exist? If so, can it be sent to me? If not, when will it be ready? Verizon,
>> of course, reserves all of its rights. Thanks Phil
>>
>>
>
>

<u>Vendor Name & Mailing Address</u>	<u>Description of Contract</u>	<u>Allegiance Entity</u>	<u>Execution Date</u>	<u>Estimated Cure Amount</u>
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Verizon - Maryland	Adoption effective as of December 24, 2003 of Agreement between Verizon Maryland Inc., f/k/a Bell Atlantic - Maryland, Inc. and Sprint Communications LP, dated February 8, 2002 ¹	Allegiance Telecom of Maryland, Inc.	24-Dec-03	\$ -
Verizon - Massachusetts	Interconnection Agreement	Allegiance Telecom of Massachusetts, Inc.		\$ -
Verizon - New Jersey	Interconnection Agreement Adoption effective as of April 19, 2004, by Allegiance Telecom of New York, Inc. of the Interconnection Agreement, dated June 24, 2002, between AT&T Communications of New York, Inc. ("AT&T") and Verizon New York Inc., f/k/a Bell Atlantic -- New York, Inc. ²	Allegiance Telecom of New Jersey, Inc.	24-Feb-99	\$ -
Verizon - New York	Adoption effective April 29, 2004 of Agreement between Verizon Pennsylvania, Inc. and BullsEye Telecom, Inc by, dated September 4, 2002 ³	Allegiance Telecom of New York, Inc.	19-Apr-04	\$ -
Verizon - Pennsylvania		Allegiance Telecom of Pennsylvania, Inc.	29-Apr-04	\$ -

Verizon - Washington D.C.	Adoption effective as of January 19, 2004 of Agreement between Verizon Washington, DC Inc., f/k/a Bell Atlantic – Washington, D.C., Inc. and Yipes Transmission Incorporated, effective October 9, 2002 ⁴	29-Jan-04	\$	-
Verizon California, Inc.	Interconnection Agreement		\$	-
Verizon Florida Inc.	Operator Services Agreement (Facilities-Based)	2-Oct-03	\$	-
Verizon Florida, Inc.	Interconnection Agreement		\$	343,666
Verizon Maryland Inc	Operator Services and Directory Assistance Agreement (UNE-P)	7-Nov-03	\$	-
Verizon Maryland Inc	Operator Services Agreement (Facilities-Based)	2-Oct-03	\$	-
Verizon Network Services	Limited Blanket Agency Agreement		\$	-
Verizon New England Inc.	Operator Services Agreement (Facilities-Based)	2-Oct-03	\$	-
Verizon New England Inc.	Operator Services and Directory Assistance Agreement (UNE-P)	7-Nov-03	\$	-
Verizon New England Inc., d/b/a Verizon Massachusetts	Supplemental Agreement No. 1 - 30-day UNE Remand	28-Mar-01	\$	-
Verizon New England Inc., d/b/a Verizon Massachusetts	Supplemental Agreement No. 2 - 120-day UNE Remand		\$	-
Verizon New Jersey Inc	Operator Services Agreement (Facilities-Based)	2-Oct-03	\$	-
Verizon New Jersey Inc	Operator Services and Directory Assistance Agreement (UNE-P)	7-Nov-03	\$	-
Verizon New Jersey Inc., f/k/a Bell Atlantic - New Jersey, Inc.	Supplemental Agreement No. 1 - 2 way trunking	28-Nov-00	\$	-
Verizon New Jersey Inc., f/k/a Bell Atlantic - New Jersey, Inc.	Supplemental Agreement No. 2 - 30-day UNE Remand	28-Mar-01	\$	-

Verizon New Jersey Inc., f/k/a Bell Atlantic - New Jersey, Inc.	Supplemental Agreement No. 3 - 120-day UNE Remand	Allegiance Telecom of New Jersey, Inc.	\$	-
Verizon New Jersey Inc., f/k/a Bell Atlantic - New Jersey, Inc.	Supplemental Agreement No. 4 - Recip Comp	Allegiance Telecom of New Jersey, Inc.	\$	-
Verizon New York Inc.	Operator Services Agreement (Facilities-Based)	Allegiance Telecom of New York, Inc.	\$	2-Oct-03
Verizon New York Inc.	Operator Services and Directory Assistance Agreement (UNE-P)	Allegiance Telecom of New York, Inc.	\$	7-Nov-03
Verizon Oregon, Inc.	Interconnection Agreement	Allegiance Telecom of Oregon, Inc.	\$	-
Verizon Pennsylvania Inc.	Operator Services Agreement (Facilities-Based)	Allegiance Telecom of Pennsylvania, Inc.	\$	2-Oct-03
Verizon Pennsylvania Inc.	Operator Services and Directory Assistance Agreement (UNE-P)	Allegiance Telecom of Pennsylvania, Inc.	\$	7-Nov-03
VERIZON SOUTH INC., F/K/A GTE SOUTH INCORPORATED	Supplemental Agreement - Dispute Resolution	Allegiance Telecom of Virginia, Inc.	\$	24-Aug-01
Verizon South Incorporated f/k/a GTE South Incorporated	Interconnection Agreement	Allegiance Telecom of Virginia, Inc.	\$	14-May-01
Verizon Texas, In.	Interconnection Agreement	Allegiance Telecom of Texas, Inc.	\$	-
Verizon Virginia Inc.	Operator Services Agreement (Facilities-Based)	Allegiance Telecom of Virginia, Inc.	\$	1-2/03
Verizon Virginia Inc.	Operator Services and Directory Assistance Agreement (UNE-P)	Allegiance Telecom of Virginia, Inc.	\$	7-Nov-03
Verizon Virginia, Inc.	Interconnection Agreement	Allegiance Telecom of Virginia, Inc.	\$	11-Dec-98
Verizon Washington DC Inc.	Operator Services Agreement (Facilities-Based)	Allegiance Telecom of the District of Columbia, Inc.	\$	3-Oct-03
Verizon Washington DC Inc.	Operator Services and Directory Assistance Agreement (UNE-P)	Allegiance Telecom of the District of Columbia, Inc.	\$	7-Nov-03
Verizon Washington, Inc.	Interconnection Agreement	Allegiance Telecom of Washington, Inc.	\$	-

Notes:

- (1) On May 17, 2004, Allegiance filed an Emergency Motion For Order Compelling Verizon to Execute New Agreements which, if granted, would compel Verizon to execute this agreement and no cure amount is owed under this agreement. In the event that the Court does not order Verizon to execute this agreement or deem this agreement adopted, the Debtors will instead assume the following agreements: Interconnection Agreement, dated October 17, 2000, by and between Verizon Maryland Inc., f/k/a Bell Atlantic – Maryland, Inc. and Allegiance Telecom of Maryland, Inc., as amended; Supplemental Agreement No. 1 between Verizon Maryland Inc., f/k/a Bell Atlantic – Maryland, Inc. and Allegiance Telecom of Maryland, Inc. dated December 21, 2000; Supplemental Agreement No. 2 between Verizon Maryland Inc., f/k/a Bell Atlantic – Maryland, Inc. and Allegiance Telecom of Maryland, Inc. dated March 28, 2001; Supplemental Agreement No. 3 between Verizon Maryland Inc., f/k/a Bell Atlantic – Maryland, Inc. and Allegiance Telecom of Maryland, Inc. dated July 24, 2001; and Supplemental Agreement No. 4 between Verizon Maryland Inc., f/k/a Bell Atlantic – Maryland, Inc. and Allegiance Telecom of Maryland, Inc. dated June 24, 2002 (collectively “Old Maryland Agreement”). The cure amount associated with the Old Maryland Agreement is \$0.
- (2) On May 17, 2004, Allegiance filed an Emergency Motion For Order Compelling Verizon to Execute New Agreements which, if granted, would compel Verizon to execute this agreement and no cure amount is owed under this agreement. In the event that the Court does not order Verizon to execute this agreement or deem this agreement adopted, the Debtors will instead assume the following agreements: Interconnection Agreement, dated October 17, 2000, by and between Verizon New York Inc., f/k/a Bell Atlantic – New York, Inc. and Allegiance Telecom of New York, Inc. as amended; Supplemental Agreement No. 1 between Verizon New York, Inc. and Allegiance Telecom of New York, Inc. dated March 28, 2001; and Supplemental Agreement No. 2 between Verizon New York, Inc. and Allegiance Telecom of New York, Inc. dated July 24, 2001 (collectively “Old New York Agreement”). The cure amount associated with the Old New York Agreement is \$0.

(3) On May 17, 2004, Allegiance filed an Emergency Motion For Order Compelling Verizon to Execute New Agreements which, if granted, would compel Verizon to execute this agreement and no cure amount is owed under this agreement. In the event that the Court does not order Verizon to execute this agreement or deem this agreement adopted, the Debtors will instead assume the following agreement: Interconnection Agreement, dated December 11, 1998, by and between Verizon Pennsylvania Inc., f/k/a Bell Atlantic – Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc., as amended (collectively “Old Pennsylvania Agreement”). The cure amount associated with the Old Pennsylvania Agreement is \$1,462,837; however, given Verizon’s refusal to provide the adoption agreement in a timely manner, the Debtors believe that the cure amount should be \$0.

(4) On May 17, 2004, Allegiance filed an Emergency Motion For Order Compelling Verizon to Execute New Agreements which, if granted, would compel Verizon to execute this agreement and no cure amount is owed under this agreement. In the event that the Court does not order Verizon to execute this agreement or deem this agreement adopted, the Debtors will instead assume the following agreement: Interconnection Agreement, dated December 11, 1998, by and between Verizon Washington, D.C., Inc., f/k/a Bell Atlantic – Washington, D.C., Inc. and Allegiance Telecom of the District of Columbia, Inc., as amended (collectively “Old DC Agreement”). The cure amount associated with the Old DC Agreement is \$2,283,528; however, given Verizon’s refusal to provide the adoption agreement in a timely manner, the Debtors believe that the cure amount should be \$0.

NOTES TO SCHEDULE 2
Filed by Allegiance Telecom, Inc., et al.
United States Bankruptcy Court for the Southern District of New York
Case No. 03-13057 (RDD)

Parties to contract. Each Contract (including, without limitation, each Executory Contract and Real Property Lease) described herein shall be "assumed" by Allegiance (as defined below), "assumed and assigned" herein by Allegiance to the Buyer (as defined below) or the Buyer's designee (including, without limitation, any wholly owned direct or indirect subsidiary of the Buyer), or "assigned" herein by the applicable Allegiance to Buyer or Buyer's designee (including, without limitation, any wholly owned direct or indirect subsidiary of the Buyer), all in accordance with the terms of the Asset Purchase Agreement (as defined below).

Reservation of rights. Allegiance and Buyer each hereby reserves all of their rights provided under (1) the Second Amended Joint Plan of Reorganization filed by Allegiance with the Bankruptcy Court on April 22, 2004 (the "Plan"), including but not limited to Section 6.1 of such Plan and (2) the Asset Purchase Agreement (as defined below). Allegiance has tentatively listed certain items on the Schedules as Executory Contracts without waiving any argument that such items do not constitute Executory Contracts. Specifically, Allegiance reserves all of its rights with respect to (1) whether any of the items listed on the attached schedule are properly classified or defined as Executory Contracts under the Asset Purchase Agreement or executory contracts under bankruptcy law, (2) whether such items are Utility or Tariffed Services as defined under the Plan or utility services generally as defined under bankruptcy law, and (3) whether the cure amounts set forth on this Schedule are in fact due under such items. Allegiance and Buyer hereby reserve any rights that each such party has: (1) to designate additional Contracts to be assumed, assumed and assigned, or assigned, as the case may be, (2) to designate alternative rejection effective dates for Contracts to be rejected, (3) to change any designations reflected herein, (4) to modify the schedule with respect to the cure amount, if any, due under any of the arrangements set forth on this Schedule, and (5) to otherwise amend or modify this list

Defined terms. Reference is made to that certain Asset Purchase Agreement dated as of February 18, 2004 (as amended, the "Asset Purchase Agreement") among Allegiance Telecom, Inc. ("ATI"), Allegiance Telecom Company Worldwide ("ATCW") (ATI, ATCW and ATCW's direct and indirect subsidiaries, collectively, "Allegiance") and XO Communications, Inc. ("Buyer"). Terms used in these Notes but not defined shall have the meanings ascribed to them in the Asset Purchase Agreement.

Modifications and Amendments. Each Contract marked with a double asterisk ("**") shall be assumed by Allegiance, assumed by Allegiance and assigned to the Buyer, or assigned to the Buyer, as the case may be, subject to the prior or simultaneous execution, delivery and approval by the Bankruptcy Court of an amendment or modification thereto satisfactory in form and substance to the Buyer and Allegiance. Copies of such amendments and modifications will be provided under separate cover. The Buyer and Allegiance hereby reserve their rights to have such Contracts rejected or otherwise treat such Contracts as Excluded Assets and the liabilities relating thereto as Excluded Liabilities if such amendments and modifications are not executed, delivered and approved by the Bankruptcy Court as appropriate, all in accordance with the Asset Purchase Agreement.

Nothing in these Notes or the attached Schedule is intended to modify or waive any terms of the Asset Purchase Agreement (including any disclosure schedules attached thereto). Specifically, nothing in this Note is intended to modify the structure of the sale of the stock of Allegiance Telecom Company Worldwide's subsidiaries to Buyer. Nothing on the Schedules shall be deemed an admission or acknowledgement of any item or amount listed on such Schedule.