Hearing Date and Time: June 7, 2004 at 10:00 a.m.[1]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' RESPONSE TO OBJECTIONS TO CONFIRMATION OF DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION OF THE BANKRUPTCY

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

Allegiance Telecom, Inc. ("ATI") and its direct and indirect subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors"), in response (the "Response") to objections filed by certain parties in opposition to confirmation of the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated April 22, 2004 (as amended, the "Plan"), respectfully represent as follows:

[1] The Debtors have requested an adjournment of the hearing to June 8, 2004, at 2:00 p.m., prevailing Eastern time.

Preliminary Statement

1. Throughout these chapter 11 cases, the Debtors focused on maximizing the value of their estates for the benefit of all creditors. The negotiation of the Debtors' chapter 11 plan was long and arduous and required the Debtors to negotiate with each of its major creditor constituencies -- the Senior Lenders, the Creditors Committee and the ATI Note Trustee -- to address the various issues that enabled the Debtors to propose a consensual and confirmable plan of reorganization. As the Debtors' chapter 11 cases evolved and the means to maximize the value of their estates gained clarity, the negotiations among the various parties also evolved.

2. Initially, in an effort to emerge promptly from chapter 11, the Debtors and the Senior Lenders began negotiating a stand-alone reorganization plan, which would have significantly de-levered the Debtors' balance sheet and provided the Senior Lenders with a significant equity stake in the reorganized Debtors. In the fall of 2003, the Creditors Committee began to resist that plan because it believed the recovery unsecured creditors would not be maximize. Coincident with this plan negotiation process, the Debtors began to receive indications of interest from potential acquirers which also suggested that distributable value would be enhanced if the Debtors' CLEC business were sold rather than retained. Consequently, the Debtors evaluated their options and determined it was in the best interests of their estates to conduct a sale process for substantially all of the Debtors' business operations – a decision that was supported by the Debtors' major creditor constituencies.

3. As the sale process was in progress, the Debtors continued discussing and negotiating the terms of a chapter 11 plan with the Debtors, the Creditors Committee, the Senior Lenders and the ATI Note Trustee. In connection with these discussions and negotiations, a number of critical issue were raised that, if litigated, could have significantly impacted the

recoveries of certain classes of creditors and prolonged these chapter 11 cases, resulting in a severe diminution of value of the Debtors' estates.

4. Specifically, the Creditors Committee asserted that it might have causes of action against the Senior Lenders to subordinate their claims. Moreover, the ATI Note Trustee contended that (a) certain violations of the ATI Note Indentures had occurred, which provided the ATI Notes Trustee with claims against each of the direct and indirect subsidiaries of ATI and equitable liens against the Debtors' assets and (b) ATI had a valid claim against ATCW of more than $1 billion. The positions of the parties with respect to these issues lead to extensive negotiations surrounding the distributions to be made under the Plan. One of the critical settlements that occurred early on in the Plan negotiations was that the Creditors Committee agreed to forgo its claims against the Senior Lenders in exchange for the Senior Lenders' agreement to set aside $26 million of cash for unsecured creditors.

5. On February 20, 2004, this Court entered an Order (the "Sale Order") approving the sale to XO Communications, Inc. ("XO")of (a) substantially all of the assets of ATI and Allegiance Telecom Company Worldwide ("ATCW"), a direct subsidiary of ATI and one of the Debtors in these chapter 11 cases, and (b) the stock of the reorganized subsidiaries of ATCW, other than Shared Technologies Allegiance, Inc. (the "Sale"),[2] pursuant to that certain Asset Purchase Agreement (the "Purchase Agreement"), by and among ATI, ATCW and XO, dated February 18, 2004, for a substantial price of $311.2 million in cash, 45.38 million shares of XO Common Stock and the assumption of certain liabilities.

6. The Sale is structured to be consummated pursuant to the Plan to enable the Debtors to sell the stock of the Reorganized Subsidiaries (as defined in the Plan) to XO. The

[2] As of April 16, 2004, Shared Technologies Allegiance, Inc. changed its name to Shared Technologies Inc.

Debtors determined that the sale of the stock of the Reorganized Subsidiaries, as opposed to the sale of their assets, would allow the Debtors to maximize the value of their estates due to certain strategic considerations relating to the "transfer" of telecommunication contracts to XO. XO agreed to purchase the stock through the Plan, but only if the Debtors agreed to comply with a timeline regarding the confirmation of the Plan. Thus, to gain the benefits from its strategy regarding the telecommunications contracts, benefits that would be lost if the Debtors sold the assets, rather than the stock, of the subsidiaries, the Debtors were under significant time pressure to confirm the Plan in these chapter 11 cases by June 9, 2004.[3]

7. In addition, current developments relating to the Telecommunications Act of 1996 required the Debtors to move toward confirmation of the Plan with alacrity. In that regard, the Debtors' businesses are heavily dependent on the Federal Communications Commission's ("FCC") interpretations of Telecommunications Act of 1996. In 1993, the FCC issued a so-called "Triennial Review Order" concerning incumbent local exchange carriers' obligations to unbundle network elements they make available to local exchange carriers, such as the Debtors. Certain telecommunications providers appealed the Triennial Review Order to the Court of Appeals of the District of Columbia (the "D.C. Circuit"). The D.C. Circuit vacated the Triennial Review Order, and such ruling will be effective as of June 16, 2004, unless the stay of the ruling is extended. If the Triennial Review Order is vacated, the Debtors' costs of conducting their businesses and maintaining their networks will increase significantly. The D.C. Circuit's ruling has created a tremendous uncertainty in the telecommunications industry. The Debtors are concerned that if the Triennial Review Order is vacated prior to the consummation of the Sale, the closing of the transaction could be jeopardized and give rise to additional

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3 In connection with settlement talks with XO, XO has agreed to extend the date by which the Debtors must confirm the Plan to June 11, 2004.

litigation with XO. Accordingly, if the Debtors are unable to obtain confirmation of the Plan prior to June 16, 2004, then their estates will face the substantial risk of a significant reduction of the value.

8. In addition to maximizing the value of the Debtors' estates, the Sale also changed the dynamics of these cases. First, the purchase price generated by the Sale far exceeded the Debtors' and all of its creditor constituencies' expectations. Second, the high purchase price impacted the settlement reached by the Debtors, the Creditors Committee and the Senior Lenders. Specifically, as discussed above, prior to the Sale, the Senior Lenders, in an effort to reach a settlement on the terms of a chapter 11 plan, agreed that they would give up their rights to $26 million of cash, which the Creditors Committee believed was unencumbered, and, therefore, make it available to fund the payment of certain administrative expenses and cash distributions to unsecured creditors under the Plan's "cash-out" option. Due to the purchase price, it became relatively clear that the Senior Lenders would be paid in full (not including additional interest at a default rate to which they might have been entitled) notwithstanding their agreement regarding the $26 million. Thus, the reservation of the $26 million loan for the unsecured creditors became a moot issue; nonetheless, the Debtors and the Creditors Committee upheld the bargain they struck with the Senior Lenders under the Plan, which enables the Senior Lenders to be paid in full, less any default interest. Third, the finality of the Sale enabled the Debtors to focus on concluding their negotiations with the Creditors Committee and the ATI Note Trustee regarding the terms of the Plan.

9. The Debtors determined that a global settlement of all unsecured claims was necessary to, among other things, (a) maximize the value of the Debtors' estates, (b) treat all unsecured creditors fairly and (c) comply with the timeline regarding the confirmation of the Plan. Without a global settlement, the Debtors believed, after careful analysis, that litigation

regarding the ATI Note Trustee's claims for equitable liens and guarantees and with respect to the Intercompany Claims would cause undue delay and expense to the estates, which would lead to a significant decrease to the value of the Debtors' estates. In that regard, the Debtors and the Creditors Committee engaged in arm's-length discussions regarding a potential settlement of the claims of the Debtors' unsecured creditor constituencies.

10. The Creditors Committee, which was appointed by the United States Trustee at the commencement of these chapter 11 cases and is charged as the fiduciary for all unsecured creditors, and its advisors, carried the load in proposing a settlement of claims between the unsecured creditors of ATI and its direct and indirect subsidiaries. Specifically, the advisors for the Creditors Committee informed the Debtors that it provided the members of the Creditors Committee (which included trade creditors) with a comprehensive analysis of the claims made by the ATI Note Trustee and the various outcomes for different classes of creditors depending on the success or defeat of such claims. The Debtors were then advised that the Creditors Committee had voted unanimously (there was one abstention) in favor of a settlement that treated the unsecured creditors of ATCW and its subsidiaries and the unsecured creditors of ATI on a pari passu basis. The Debtors considered this vote and determined that it was reasonable based on, among other things, an analysis of the allegations made by the ATI Note Trustee, the potential cost and delay of any litigation commenced by the ATI Note Trustee, the value to the estates of (a) confirming the Plan in compliance with the timeline, (b) selling the stock of the subsidiaries to XO under the Plan, (c) the reliance on the informed views of the Creditors' Committee's experienced advisors and (d) the need to close the Sale promptly.

11. On April 22, 2004, the Debtors filed (a) the Plan and (b) the Debtors' Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code, dated

April 22, 2004 (as amended, the "Disclosure Statement") with respect to the Plan. On April 22, 2004, the Bankruptcy Court entered an Order approving the Disclosure Statement.

12. The Debtors received nine (9) objections (collectively, the "Objections") to the confirmation of the Plan.[4] The Debtors have reached settlements in principal with six (6) of the parties filing objections (i.e., Verizon Communications, Inc., SBC Telecommunications, Inc., Bell South Telecommunications, Inc., Broadwing Communications, LLC, Local Texas Authorities and Texas Comptroller of Public Accounts). Thus, this Response solely addresses the primary arguments set forth in the Objections relating to (a) the opposition of the approval of the Compromise and Settlement (raised by KMC Telecom XI LLC ("KMC") in the Objection of the Trade Creditor Group (the "Trade Creditor Objection"),[5] MCI (through its joinder in the Trade Creditor Objection) and AboveNet, Inc. ("AboveNet"),[6] (b) the Debtors' ability to set the effective date of rejection of certain executory contracts and unexpired leases post-confirmation (raised by MCI and AboveNet), (c) the propriety of the release, exculpation and injunction provisions set forth in the Plan (raised by KMC and MCI, through its joinder in the Trade Creditor Objection) and (d) the process for voting on the Plan (raised by AboveNet).

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[4] The Debtors also received sixty-two (62) objections to the Notices of Assumption and Assignment that were served in accordance with the order approving the Disclosure Statement. The Debtors and XO have been working diligently to resolve these objections. The status of these objections is set forth in Exhibit "A" annexed hereto.

[5] Verizon Communications, Inc. ("Verizon"), SBC Telecommunications, Inc. ("SBC"), and Bell South Telecommunications, Inc. ("Bell South") were also signatories to the Trade Creditor Objection. Subsequent to the filing of the Trade Creditor Objection, Verizon, SBC and Bell South have withdrawn the Trade Creditor Objection as it relates to them. Thus, KMC remains the only objecting party under the Trade Creditor Objection.

[6] The Debtors believe that AboveNet's objection as it relates to the Compromise and Settlement was filed late and in bad faith. The Debtors will be prepared to present evidence at the hearing regarding this issue.

Argument

I. THE COMPROMISE AND SETTLEMENT SHOULD BE APPROVED

13. In the Objections, KMC, MCI and AboveNet assert that the Compromise and Settlement should not be approved because it is not legally supportable and is contrary to the fundamental fairness requirements of Bankruptcy Rule 9019. This is patently incorrect. The Compromise and Settlement is an integral part of the Plan, the product of good faith, arm's-length negotiations between the Debtors and the Creditors Committee and is fair and reasonable based on all of the facts and circumstances of these chapter 11 cases. Set forth below is a discussion summarizing the allegations resulting in the compromising of claims under the Compromise and Settlement.

Allegations Made by the ATI Note Trustee

14. In 1998, ATI issued the following two series of notes (the "ATI Notes"): (a) 11 3/4% Senior Discount Notes with a face value of $445 million, due on February 15, 2008, and (b) 12 7/8% Senior Notes with a face value of $205 million, due on May 15, 2008. The Bank of New York (the "ATI Note Trustee") is the ATI Note Trustee under those certain Indentures, dated as of February 3, 1998 and July 7, 1998, respectively (collectively, the "ATI Note Indentures"). Section 4.07 of the ATI Note Indentures provided, subject to certain exceptions, that ATI was not permitted to allow its direct or indirect subsidiaries to guaranty any indebtedness of ATI unless they also guaranteed the payments due and owing under the Notes. Moreover, Section 4.09 of the ATI Note Indentures provided, subject to certain exceptions, that ATI was not permitted to allow its direct or indirect subsidiaries to grant any liens on their assets without securing the indebtedness under the ATI Notes with equal and ratable liens. Sections 4.07 and 4.09 of the ATI Note Indentures will be referred to herein collectively as the "Negative Pledge Clauses."

15. After the issuance of the ATI Notes, ATCW entered into that certain Credit and Guaranty Agreement, dated as of February 15, 2000, as amended as of November 27, 2002 (the "Prepetition Credit Agreement"), among ATCW, as borrower; all of the other Debtors, as guarantors; General Electric Capital Corporation ("GECC") (as successor to Toronto Dominion (Texas), Inc.), as administrative agent; and lenders party thereto from time to time (collectively, the "Senior Lenders"). Pursuant to a security agreement entered into in connection with the Prepetition Credit Agreement, the Debtors pledged substantially all of their assets as collateral to the Senior Lenders, including (a) the capital stock of ATCW and (b) substantially all of the assets of ATCW and its direct and indirect subsidiaries, including the capital stock owned by ATCW in each of its Debtor subsidiaries. Moreover, each of the Debtors guaranteed the repayment of funds borrowed by ATCW in accordance with the Prepetition Credit Agreement. The Debtors did not grant liens or guarantees to the ATI Note Trustee.

16. On or around January 12, 2004, the ATI Note Trustee filed proofs of Claim (the "Proofs of Claim") against each of the Debtors. The Proofs of Claim alleged that based on the ATI Note Trustee's review of the Prepetition Credit Agreement, the ATI Note Indentures and applicable law, the ATI Note Trustee believed that the liens created and guarantees granted by the Debtors under the Senior Credit Agreement may have violated the Negative Pledge Clauses because equal and ratable liens and guarantees were not granted to the Holders of ATI Notes. As a result of this alleged violation, the ATI Note Trustee asserted that the Holders of ATI Note Claims may be entitled to (a) claims (based on the guarantees) against all of the Debtors and (b) equal and ratable liens against substantially all of the assets of the Debtors. Thus, the ATI Note Trustee alleged that the ATI Note Claims were secured claims against each of the Debtors.

17. The Debtors carefully analyzed the allegations made by the ATI Note Trustee. First, the Debtors reviewed the Prepetition Credit Agreement and the ATI Note Indentures to determine whether the liens and guarantees granted in connection with the Prepetition Credit Agreement violated the Negative Pledge Clauses. Based on this review, the Debtors believed that no violation occurred. However, the Debtors also believed that the ATI Note Trustee's interpretation of the agreements was plausible and, therefore, subject to litigation.

18. Next, the Debtors reviewed case law to determine whether the ATI Note Trustee could have a claim against all of the Debtors and whether the holders of ATI Notes could be entitled to equitable liens. In reviewing the case law, the Debtors also considered the factual allegations that the ATI Note Trustee would posit. The Debtors believed that the allegations could include that (a) there was collusion between the Debtors and the Senior Lenders at the expense of the holders of ATI Notes and with knowledge of the Negative Pledge Clauses and (b) that ATI controlled ATCW and its subsidiaries and, therefore, ATI, ATCW and the subsidiaries were, in actuality, a single entity. Although the Debtors would vehemently deny these allegations as utterly unfounded, their factual nature could require the Debtors to defend against them in a litigation.

19. Moreover, the Debtors reviewed case law regarding equitable liens and considered various potential outcomes depending on the results of any litigation regarding the granting of equitable liens. In connection with this research and analysis the Debtors determined the following:

- In general, a court can award an equitable lien under New York law where "it is clear from a contract that the purpose and intent of the parties was to give a lien. . . upon specific property, equity will give to the transaction the result it was intended to produce, . . . and treats as done that which the parties intended to be done. An equitable lien is a right. . . to have a fund, specific property or its proceeds, applied in whole or in part to the payment of a particular debt." <u>Bank</u>

of India v. Weg & Myers, 691 N.Y.S.2d 439, 445 (1st Dep't 1999) (internal citations omitted) (emphasis added).

- Under New York law, a person who obtains a lien in violation -- and with notice -- of a negative pledge clause is liable for an equitable lien. Chase Nat'l Bank of City of N.Y. v. Sweezy, 281 N.Y.S. 487 (Sup. Ct. N.Y. Co. 1931), aff'd, 261 N.Y. 710 (1933); see also Kelly v. Central Hanover Bank & Trust Co., 85 F.2d 61 (2d Cir. 1936) (remanding case for determination by trial court as to whether banks had notice of negative pledge clause in indenture before extending secured loans to debtor; claim for "superior lien" asserted against banks). In Sweezy, a company issued unsecured bonds pursuant to a trust indenture which contained the negative pledge clause prohibiting the company from incurring any indebtedness while any of the bonds are outstanding unless such bonds are equally and ratably secured by the liens provided as security for the incurred obligations. Sweezy, 281 N.Y.S. at 490. After the bonds were issued in Sweezy, the issuer obtained financing from a group of banks, who, having actual knowledge of the negative pledge clause, obtained liens in violation thereof. Id. at 492. Consequently, the Sweezy court held that an equitable lien should be imposed on any collateral pledged to the banks in violation of the negative pledge so that the bondholders could share in the collateral equally and ratably as the indenture required. Id. at 492-93. The court only excluded from the equitable lien collateral actually purchased with the proceeds of the bank loan. Id.

- Prior to December 10, 2002, in connection with the Hechinger Investment Company of Delaware, Inc. ("Hechinger") chapter 11 cases, the Hechinger Liquidation Trust filed a complaint against BankBoston Retail Finance, Inc. and General Electric Capital Corporation seeking, among other things, an equitable lien on the property of Hechinger. On March 28, 2004 (more than two years later), the United States District Court for the District of Delaware held, after a three day bench trial on the merits of the case, that the Hechinger Liquidation Trust "has failed to prove by a preponderance of the evidence that it is entitled to an equitable lien." Hechinger Liq. Trust v. BankBoston Retail Finance Inc. (In re Hechinger Investment Company of Delaware, Inc.), 2004 WL 724960, *1 (D. Del. March 28, 2004). Specifically, the Court provided that in order "[t]o obtain an equitable lien under New York law, plaintiff has burden of demonstrating both the breach of the Negative Pledge, . . . and [actual] knowledge[, in the absence of the badges of fraud,] by the defendents both of the clause and its breach." Id. at *5. Moreover, the Court stated that "[u]nder New York law, an equitable lien may be imposed notwithstanding the failure of a creditor and debtor to observing the formalities of perfecting a proper security interest." Id. at *4 (citation omitted). Based on the analysis of this case, the Debtors believed the following:

  - Any litigation commenced by the ATI Note Trustee regarding the issue of whether it is entitled to an equitable lien could cause significant delay to the Debtors' chapter 11 cases. Specifically, the litigation in Hechinger took more than two years.

    - Many of the issues raised in any litigation would be factual, requiring significant discovery, and, therefore, the result of any litigation would be difficult to predict (especially before the specific factual allegations were developed).

- If the ATI Note Trustee was successful in its litigation, it would be granted a lien against all of the Debtors' assets. Thus, it would be treated pari passu with the Senior Lenders. As a result, the holders of the ATI Note Claims would receive a significant recovery and the holders of the ATCW Unsecured Claims would not receive any recovery. If the ATI Note Trustee was unsuccessful in its litigation, and assuming that it did not pursue any other options for receiving value, such as litigating the issues surrounding the Intercompany Claims, the Holders of Senior Notes would receive a small recovery. Thus, allowing any litigation to go forward would place the recovery of the ATCW Unsecured Claims at risk, while the holders of the ATI Unsecured Claims would receive a recovery regardless of whether litigation was pursued.

- The litigation would place the value of the Debtors' estates at risk. As stated above, to maximize the value of the Debtors' estates, the Debtors needed to move with alacrity toward the confirmation of the Plan. Until any litigation was concluded, the Debtors would be unable to determine how to structure the recoveries to the various creditors under the Plan. In other words, the Debtors would not be able to confirm the Plan within a time period that would allow them to maximize the value of the estates for all creditors.

Based on this research and analysis (as well as the Debtors' considerations of other factors set forth below), the Debtors determined that the Compromise and Settlement was in the best interests of their estates and all parties in interest.

Dispute Regarding the Treatment of the Intercompany Claims

20. After its inception, ATI raised approximately $1.9 billion through the issuance of equity and debt securities. This $1.9 billion was deposited in an account held by ATI. Thereafter, ATI provided capital to ATCW and its subsidiaries to, among other things, build the Debtors' operations and network. The funds provided to ATCW and its subsidiaries were reflected on the ATI's books and records as a receivable. As funds flowed and transactions occurred between ATI and its direct and indirect subsidiaries, the amount of the receivable

fluctuated. As of May 31, 2004, ATI's books and records reflected a receivable of $1,905,267,847.00[7] and approximately $26 million was deposited in an ATI bank account.[8]

21. At the time that the Debtors entered into the Senior Credit Agreement, the Debtors opened a bank account in the name of ATCW into which the loan proceeds borrowed under the Senior Credit Agreement would be deposited. Thereafter, the transactions between ATI and its direct and indirect subsidiaries were infrequent. Nonetheless, when transactions did occur, the amount of such transactions was netted against the intercompany balance on ATI's books.

22. During the Debtors' negotiations with the Creditors' Committee and other parties in interest, including the ATI Note Trustee, the issue was raised as to whether ATI had a claim of $1.9 billion against ATCW based on the ATI receivable. The specific issue was whether the provision of funds from ATI to ATCW was in the form of a loan or an equity contribution. As the outcome of this issue would substantially impact the recoveries of the creditors of ATI and the creditors of ATCW and its subsidiaries, the Debtors carefully considered the following:

- A fundamental issue is whether a bankruptcy court has the ability to recharacterize a debt as equity. Compare In re Autostyle Plastics, Inc., 269 F. 3d 726 (6th Cir. 2001) (holding that "bankruptcy court can consider whether to recharacterize a claim of debt as equity), with In re Pacific Express, Inc., 69 B.R. 112, 115 (9th Cir. BAP 1986). See also In re Williams Communications Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002).

- The Debtors considered the case law regarding whether a claim should be recharacterized as equity. In that regard, the Debtors observed that bankruptcy

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7 As of September 30, 2003, the Debtors' books and records reflected a receivable of $1,903,275,254.00, which indicates an increase of approximately $2 million between September 30, 2003 and May 31, 2004.

8 The $26 million in the ATI bank account is the cash that was in dispute between the Senior Lenders and the Creditors Committee and the subject of the mutual settlement among the Senior Lenders, the Creditors Committee and the Debtors.

courts "weigh[] the substance over the form of the advance." In re Interstate Cigar Co., 182 B.R. at 678 (citations omitted). Moreover, while no one factor is decisive, generally, courts consider, among others, the following factors in assessing whether to recharacterize a claim:

- names given to documents evidencing indebtedness;
- presence or absence of a fixed maturity date and schedule of payments;
- presence or absence of a fixed rate of interest and interest payments;
- source of repayments;
- identity of interest between the creditor and the stockholder;
- corporation's ability to obtain financing from outside lending institutions;
- extent to which the advances were subordinated to the claims of outside creditors; and
- the intent of the parties.

- Upon reviewing the facts and legal issues regarding the characterization of the intercompany claim running from ATCW to ATI, the Debtors determined that valid arguments could be made in favor of and against characterizing the intercompany claim as a loan. For example, the identity of interest between ATI and ATCW, the failure to reliably specify an applicable interest rate or maturity date for the repayment of ATI's advances and the incomplete documentation of the receivable support a determination that the intercompany claim is a capital contribution. On the other hand, the intent of the parties to establish intercompany loans and the recording of the ATI advances as a receivable in the Debtors' books and records, may weigh in favor of treating the receivable as a valid debt obligation.

23. After concluding their analysis, the Debtors determined that any litigation to determine whether the Intercompany Claims were loans or equity contributions would be highly complex and fact dependent. In that regard, any litigation would require extensive discovery (potentially of individuals who had not been employed by the Debtors for years) and testimony at trial regarding the appropriate way to treat the Intercompany Claims. As a result, the Debtors determined that litigation of all of the issues related to the allegations of the ATI Note Trustee and the potential dispute regarding the treatment of Intercompany Claims would be

complex, protracted and costly and would delay the Debtors' ability to propose a consensual plan of reorganization. Moreover, depending on the result of any litigation, different unsecured creditor constituencies could have been benefited or harmed. Thus, based on this review, their negotiations with the Creditors Committee and the representations made by the Creditors Committee regarding its members views on the issue, the Debtors determined it was in the best interests of theirs estates to propose the Compromise and Settlement under the Plan.

Summary of the Proposed Compromise and Settlement and Creditor Recoveries Thereunder

24. The Compromise and Settlement proposes to treat Holders of Allowed Claims in Class 4 (i.e., Holders of Allowed ATCW Claims) and Holders of Allowed Claims in Class 5 (i.e., Holders of Allowed ATI Unsecured Claims, including Holders of Allowed ATI Note Claims) in the same manner, except that Holders of Allowed Claims in Class 4 will have the right to elect the Cash Recovery Election, which provides for a Cash payment equal to 50% of the value of the consideration that otherwise would have been received absent such election before Holders of Allowed Claims in Class 5 may make such an election.

25. Absent the proposed Compromise and Settlement and (a) absent any threatened litigation regarding the priority of Claims and (b) assuming that contrary to the Debtors' historical booking of certain Intercompany Claims as debt obligations, such Intercompany Claims were deemed equity contributions, the Debtors estimate that Holders of Allowed Claims in Class 4 would receive payment in full, while Holders of Allowed Claims in Class 5 would receive an estimated recovery of between 14.5% and 27.7% of the amount of their Claims.

26. However, if the ATI Note Trustee was to prevail in litigation with respect to the violations of the Prepetition Credit Agreement and the ATI Note Indentures and the

Bankruptcy Court determined that the ATI Note Claims constituted Allowed Secured Claims, then the ATI Note Claims would be treated pari passu with the Senior Lender Claims to the extent of such amount. As a result, if the ATI Notes constituted Allowed Secured Claims for a portion of such Claims and the deficiency claims in respect of the ATI Note Claims were treated pari passu with other Unsecured Claims, the Holders of ATI Note Claims would receive substantial recoveries whereas the Holders of Allowed ATCW Unsecured Claims would not receive any recoveries.

27. In addition, if the Bankruptcy Court were to characterize the Intercompany Claims as debt obligations, (and assuming the ATI Note Trustee did not commence litigation over the alleged violations of the Negative Pledge Clauses), then holders of Allowed Claims in Class 4 would receive recoveries of between 23.1% and 25.5%, and the Holders of Allowed Claims in Class 5 would receive between 39.6% and 43.8% of their Claims.

28. Based on the foregoing, the proposed Compromise and Settlement arguably reduces the estimated recoveries to Holders of Allowed ATCW Unsecured Claims to the range of 35.4% to 40.4%. However, this reduction in estimated recoveries reflects the Debtors' reasonable assessment of the strengths and weaknesses of potential litigation arguments made by each of the Debtors, the Creditors Committee, the Senior Lenders and the ATI Note Trustee with respect to the disputes outlined above, the excessive costs and the risks to such holders of the ATI Note Trustees not successful in its litigation.

29. Importantly, the aforementioned estimated recoveries absent the proposed Compromise and Settlement represent the best assessment of the Debtors of the potential recoveries and there is no guarantee that absent the proposed Compromise and Settlement these recoveries would have been received.

Standard for Approval of the Proposed Compromise and Settlement

30. Bankruptcy Rule 9019(a) provides, in relevant part, that "[o]n motion by [a debtor in possession] and after notice and a hearing, the court may approve a compromise and settlement." Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code, a debtor may compromise and settle claims under a chapter 11 plan. Compromises and settlements 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, 424 (1968) (citing Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)). See also In re Allegheny Int'l, Inc., 118 B.R. 282, 310 (Bankr. W.D. Pa 1990). Accordingly, this Court is authorized to approve the Compromise and Settlement on the terms and subject to the conditions set forth in the Plan.

31. The Supreme Court set forth the standard a Bankruptcy Court should follow in determining whether or not it should approve a compromise agreement in TMT Trailer, 390 U.S. at 424. A proposed settlement should be approved pursuant to Bankruptcy Rule 9019 if it is "fair, reasonable and adequately based on the facts and circumstances before the Court." Id.; In re Hibbard Brown & Co.. Inc., 217 B.R. 41, 45 (S.D.N.Y. 1998) (citing In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292, 293 (2d Cir. 1992)). The proposal should be approved unless it "fall[s] below the lowest point in the range of reasonableness." In re Teltronics Servs., Inc., 762 F.2d 185, 189 (2d Cir. 1985); see also Cosoff v. Rodman, (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983); In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), aff'd sub nom. Sobchack v. American Nat'l Bank & Trust Co., 17 F.3d 600 (2d Cir. 1994); In re Best Prods. Co., 168 B.R. 35, 51 (Bankr. S.D.N.Y. 1994), aff'd, 68 F.3d 26 (2d Cir. 1995).

32. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. Nellis v. Shugrue, 165 B.R. 115, 122-23 (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 debtor in possession and its counsel that the settlement is fair and reasonable); see In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court "in light of the general public policy favoring settlements." Hibbard Brown, 217 B.R. at 46; Shugrue, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

33. The Court "need not conduct an independent investigation in formulating its opinion as to the reasonableness of the settlement. The Court can give weight to the trustee's informed judgment that a compromise is fair and equitable." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496 (S.D.N.Y. 1991).

34. 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.'" W.T. Grant, 699 F.2d at 608; 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 [dispute]"). "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.

35. The assessment of a proposed settlement is a two-step process. First, the court should consider "'the substantive terms of the settlement' and compare them to 'the likely rewards of litigation,'" Hibbard Brown, 217 B.R. at 46 (quoting Weinberger v. Kendrick, 698 F.2d 61,73 (2d Cir. 1982)), considering in that process the following factors:

(i) the complexity, expenses and likely duration of litigation;

(ii) the balance between the likelihood of success compared to the present and future benefits offered by the litigation;

(iii) the risk of establishing liability and damages;

(iv) the relative benefits achieved through settlements;

(v) the proportion of the Bankruptcy Class that supports the settlement; and

(vi) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

Id. (quoting Nellis v. Shrugue, 165 B.R. at 121). See also TMT Trailer, 350 U.S. at 424; Drexel Burnham, 960 F.2d at 292; Purofied Down Prods., 150 B.R. at 122 (citing Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1989)); Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp., 286 B.R. 236, 248 n.13 (S.D.N.Y. 2002).[9]

36. The second step of analysis required the court to "examine the process by which the settlement was reached to ensure that it was the product of arms-length negotiation rather than collusion, and all interests have been effectively represented." Hibbard Brown, 217 B.R. at 46.

37. Where "the integrity of the negotiation process was not impaired, and all the parties' interests have been effectively represented, the Settlement [will be] approved as fair and reasonable." Hibbard, Brown, 271 B.R. at 48. "In passing on the propriety of the settlements, it is not the function of the Bankruptcy Court to substitute judgment for judgment of the [debtor]. Rather it is the task of the court to determine whether or not the [debtor's]

[9] Some bankruptcy courts in this district use a similar test to determine whether the proposed settlement should be approved. For instance, in In re Texaco, Inc., the court considered, among others, the following criteria: (a) the balance between the likelihood of plaintiff's or defendant's success should the case go to trial vis-a-vis the concrete present and future benefits held forth by the settlement without the expense and delay of a trial and subsequent appellate procedures; (b) the prospect of complex and protracted litigation if the settlement is not approved and (c) the competency and experience of counsel who support the settlement. See In re Texaco, Inc., 84 B.R. 893, 902 (Bankr. S.D.N.Y. 1988).

judgment is adequate so that the Bankruptcy Judge can approve it, and no more." Purofied Down Prods., 150 B.R. at 523.

38. As set forth in greater detail below, the Debtors satisfy the standards set forth in Bankruptcy Rule 9019 with respects to both steps of the analysis necessary to determine whether a compromise and settlement is reasonable.

Pursuant to Bankruptcy Rule 9019(a), the Compromise and Settlement Should be Approved

The Complexity, Expense and Likely Duration of Litigation

39. In determining the fairness of settlement, courts consider the length and cost of litigation of the disputed claims, "the factual and legal uncertainty of the outcome of those claims," "the significant and substantial direct and indirect potential exposure to the debtors," the settlement benefits to the claimants, the arm's length nature of the negotiations, and the critical role the settlement plays in confirmation of the plan of reorganization. See In re Drexel Burnham Lambert Group, Inc., 140 B.R. 347, 348 (S.D.N.Y. 1992).

40. Therefore, as discussed above, in evaluating the Compromise and Settlement, the Debtors considered the length of time that would be necessary to defend the allegations asserted by the ATI Note Trustee and the issues raised by the Creditors Committee regarding the characterization of the Intercompany Claims, the risks and uncertainties associated with such litigation, the costs and delay of such a litigation and the effect of such delay on the XO Sale Transaction and the benefits of assurance and expeditious resolution of these disputes to the Debtors' estates and their creditors.

41. The Debtors believe that litigation of these disputes would require extensive discovery and expert testimony and cause significant cost and delay. The Debtors submit that the disputed issues are highly complex, and factual in nature. The result of litigation

of these issues is impossible to predict. The Compromise and Settlement reflects a fair, equitable and reasonable compromise of the many complex and interrelated intercreditor and debtor-creditor issues in these cases.

42. Accordingly, the Debtors submit the proposed Compromise and Settlement adequately addresses the probability of success in litigation, the complexity, expense and likely duration of litigation

The Balance between the Likelihood of Success Compared to the Present and Future Benefits Offered by the Litigation

43. The ATI Note Trustee asserted various arguments, which if upheld by the Bankruptcy Court, could reduce and the recovery for Holders of ATCW Unsecured Claims, if any, to an amount that is substantially less than range of recoveries proposed by the Compromise and Settlement. In contrast, under the proposed Compromise and Settlement, the creditors get sizable recoveries today that may have a higher value than potentially higher recoveries in indefinite future.

44. As set forth above, the outcome of the litigations with regard to the ATI Note Trustee's allegations and the characterization of Intercompany Claims are uncertain. Due to the complexity of the issues raised and the absence of discovery necessary to prove such allegations, the Debtors have been unable to ascertain the relative likelihood of the success of the parties. However, regardless of the parties' likelihood of success, "a Court may approve a settlement even if it believes that the trustee or debtor-in possession ultimately would be successful at trial." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499 (S.D.N.Y. 1991) (quoting In re Teltronics Services, Inc., 46 B.R. 426 (E.D.N.Y. 1984), aff'd, 762 F.2d 185 (2d Cir. 1985)).

45. "[T]he assessment of a settlement does not require resolution of [the] issues; it requires only their identification so that the bounds of reasonableness can be seen with some clarity[.] The very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise. This could hardly be achieved if the test on hearing for approval meant establishing success or failure to a certainty." Carla Leather, 44 B.R. at 470 (citations omitted). Even where "the dollar value of the settlement is rather low, the uncertainty of the outcome of the litigation and the costs of pursuing the litigation [may] counsel[] against rejection of the [s]ettlement." Purified Down Prods., 150 B.R. at 523-34.

46. Any delay in confirmation of the Plan will result in a significant cash drain on the Debtors' estates. As set forth above, the Debtors' inability to consummate the Sale transaction by the agreed upon deadline may result in diminution of the Debtors' cash otherwise available for distribution to their creditors under the Plan. Importantly, the negative consequences of such delay are aggravated by the uncertainty created by the D.C. Circuit's ruling vacating the Triennial Review Order, pursuant to which the Debtors were enjoying low rates for leasing the necessary telecommunications lines from the ILECs and running their business at a profit. The effect of the aforementioned ruling on the successful consummation of the Sale, which provides the funds for distribution to creditors under the Plan, is difficult to predict. Moreover, until and unless the Plan is consummated, the Debtors are obligated to pay a significant amount of interest to the Senior Lenders under the Cash Collateral Order.

47. As a result, regardless of the outcome of litigation commenced in connection of the aforementioned disputes, if the Plan confirmation is delayed, the recoveries of Holders of the Allowed Claims in both Classes 4 and 5 will most likely be reduced.

The Relative Benefits Achieved Through Settlements

48. Notably, the courts frequently consider the effect of the settlement on expeditious resolution of chapter 11 cases and plan confirmation. In re Drexel Burnham Lambert Group, Inc., 130 B.R. 910, 926-27 (S.D.N.Y. 1991) ("By conclusively resolving the Securities Litigation Claims, the Settlement eliminates one of the most significant hurdles standing in the way of resolution of these Chapter 11 cases. In the absence of the Settlement, there could be no Plan and indeed, no successful and prompt resolution of these Chapter 11 cases"). In Drexel, the district court held that the proposed settlement was fair and reasonable where "[l]itigation of the complex and numerous … [c]laims threaten[ed] to erode the Debtors' remaining assets at an accelerating rate and eliminate the possibility of a successful reorganization." Id.

49. The Debtors believe that the proposed Compromise and Settlement is a necessary element of the Plan, is fair and is well within the range of reasonableness. In assessing the fairness of the settlement, "a judge does not have to be convinced that the settlement is the best possible compromise or that the parties have maximized their recovery. As [the] Second Circuit has clearly stated, the task of the bankruptcy judge was not to determine whether the settlement was the best that could have been obtained, something that neither [the judge] nor we can ever know…." Shugrue, 165 B.R. at 123 (citing W.T. Grant, 699 F2d at 613).

50. As set forth above, the outcomes of the potential litigations that are being settled are uncertain. Regardless of the eventual outcome of the disputes resolved by the Compromise and Settlement, continued litigation of these issues would result in substantial cost to the Debtors' estates and extensive delays in confirming the Plan. As set forth above, these costs and delays would certainly diminish the amount of cash available for distribution to unsecured creditors.

51. In contrast, the Compromise and Settlement provides for the consensual, reasonable and fair resolution of these issues, which the Debtors believe is in the best interests of the creditors as a whole. Under the proposed Compromise and Settlement, all creditors will obtain sizable recoveries within a certain time frame as a result of the Debtors' ability to timely confirm and consummate the Plan.

The Proposed Compromise and Settlement is a Product of Extensive Negotiations

52. As set forth above, the Compromise and Settlement is a product of extensive negotiation among, and independent assessments by, the Debtors, the Creditors Committee, the ATI Note Trustee and the Senior Lenders. As such, the Compromise and Settlement takes into account the risks and potential recoveries related to each of the intercreditor and the debtor-creditor issues resolved thereby.

53. The Debtors believe that the Compromise and Settlement is in the best interest of creditors because it will (a) avoid extensive and expensive litigation regarding the ATI Note Trustee's allegations and the Intercompany Claims that would create significant delay in these chapter 11 cases, (b) avoid additional administrative expenses in the chapter 11 cases and the continued payment of interest to the Senior Lenders at a rate of $2.25 million per month while such litigation continues; (c) permit the Debtors to proceed to confirmation of the Plan; and (d) avoid the reduction in available recoveries as a result of XO's exercise of the Early Closing Election (as defined in the Purchase Agreement).

54. The Debtors have reviewed the Compromise and Settlement, conducted an independent analysis of the issues resolved thereby, and determined that the Settlement falls within the range of reasonableness. In addition, the Creditors Committee has represented to the

Debtors that it utilized a fair process in obtaining the approval of the proposed Compromise and Settlement.

55. In determining whether a settlement falls below the lowest range of reasonableness, bankruptcy courts in this District often take into consideration whether the settlement was scrutinized by a creditors committee and whether the creditors committee supports such settlement. See, e.g., In re Enron Corp., 2003 WL 230838, at *2 (S.D.N.Y. Jan. 31, 2003) (holding on appeal that "[the] settlement certainly [did] not fall below [the lowest] point [in the range of reasonableness]: the Debtors testified that the settlement was in their best interests, as did the Creditors Committee"); Drexel Burnham, 134 B.R. 493 (Bankr. 1991) (the court approved the settlement, which "survived the independent and careful scrutiny of the Official Committees appointed to protect the interests of creditors and shareholders of [the] chapter 11 estates"); Shugrue, 165 B.R. at 120 (in reviewing the fairness of the settlement on appeal, the district court noted that, in addition to argument from counsel, "the bankruptcy court heard directly from … the Unsecured Creditors Committee who supported the settlement").

56. Under the circumstances, the Debtors submit that the Compromise and Settlement is fair and reasonable, satisfies the requirements of Bankruptcy Rule 9019, and should therefore be approved. The Debtors believe that the proposed Compromise and Settlement is a necessary element of the Plan, is fair and is well within the range of reasonableness.

II. THE PLAN COMPLIES WITH SECTION 365(d)(2) OF THE BANKRUPTCY CODE

57. In the Objection, AboveNet asserts that the Plan violates section 365(d)(2) of the Bankruptcy Code by failing to provide for the rejection of the AboveNet Rejected Leases (as defined below) before confirmation. As a result, AboveNet contends that it will be forced to

provide services to a third-party, without that third-party assuming any liability. AboveNet's claims are contradicted by the facts and the law.

Rejection Procedures under the Plan

58. Article VI of the Plan establishes procedures for the assumption or rejection of executory contracts and unexpired leases. Specifically, Article 6.1(a) provides that Schedule 4, which comprises a list of rejected contracts and leases, will be filed with the Bankruptcy Court and served on all parties at least 20 days prior to the Confirmation Hearing. Article 6.1(a) further provides that contracts and leases listed on Schedule 4 shall be deemed rejected on the later of (i) 180 days after the Initial Effective Date and (ii) the date reflected on Schedule 4. With respect to the Buyer's obligations under the rejected contract or lease pending the effective date of rejection, Article 6.1(a) provides that "the Buyer must perform under such rejected contract or lease, as the case may be, until the applicable effective date of rejection." On May 18, 2004, the Debtors filed Schedule 4 with the Court, which included certain leases (the "AboveNet Rejected Leases") entered into with AboveNet.

Section 365(d)(2) of the Bankruptcy Code

59. Section 365(d)(2) of the Bankruptcy Code provides that the debtor "may assume or reject. . .an executory contract unexpired lease. . .of the debtor at any time before the confirmation of the plan. . . ." See 11 U.S.C. § 365(b)(2). Courts have uniformly held that section 365(d)(2) of the Bankruptcy Code requires the debtor to decide whether to assume or reject an executory contract or unexpired lease by the confirmation of the plan. See, e.g., In re Adelphia Communications Corp., 291 B.R. 283, 292 (Bankr. S.D.N.Y. 2003); In re Enron, 279 B.R. 695, 702 (S.D.N.Y. 2002).

60. A significant number of courts have held that a rejection is deemed effective for section 365(d)(2) purposes upon the debtor's filing of the rejection motion,

assuming subsequent court approval of such motion. See, e.g., In re Kroh Bros. Development Co., 100 B.R. 480, 484 (W. D. Mo. 1989). Recent decisions in this district, including the Adelphia opinion cited by AboveNet in its Objection, seem to embrace this standard by holding that the "debtor-in-possession ordinarily has until plan confirmation to *decide* whether to assume or reject an executory contract." See Adelphia, 291 B.R. at 292 (emphasis added); see also Enron 279 B.R. at 702. Indeed, in the interests of promoting equity and debtor rehabilitation, courts historically have refrained from creating any inflexible rule requiring that all issues involving applications to reject executory contracts be finally adjudicated prior to confirmation. Courts have held that, so long as a debtor has applied to reject or assume a contract before confirmation of the plan, a court may properly review applications for assumption or rejection post-confirmation, in accordance with section 365(d)(2) of the Bankruptcy Code. See, e.g., Kroh Bros., 100 B.R. at 484 ("section 365(d)(2) only sets forth the time limitations in which the Trustee must act. . . with the proper retention of jurisdiction contained in the confirmation Plan, the Court may properly consider pending motions post-confirmation."); In re J.M. Fields, Inc., 26 B.R. 852, 855 (S.D.N.Y. 1983) (pursuant to a retention of jurisdiction clause in the plan of reorganization, the court had jurisdiction to permit rejection of a lease after confirmation.). Here, the Plan contains just such a retention of jurisdiction clause in Article XI.

61. Moreover, bankruptcy courts in this District have confirmed chapter 11 plans that provide for the effective date of rejection of a contract or lease to occur post-confirmation. See, e.g., In re Dairy Mart Convenience Stores, Inc., et al., Case No. 01-42400 (AJG) (S.D.N.Y. Mar. 5, 2003) (the confirmed plan of reorganization provided that the debtors shall have until the two-month anniversary of the effective date of such plan to assume or reject executory contracts and unexpired leases); In re Loews Cineplex Entertainment Corp., et al., Case Nos. 01-40346 through 01-40582 (ALG) (S.D.N.Y. Mar. 1, 2002) (order confirming the

plan which allowed the liquidating trustee to assume or reject certain executory contracts by the deadline which was five months after the confirmation date).

The Debtors Are Rejecting the AboveNet Rejected Agreements in Accordance With Section 365(d)(2) of the Bankruptcy Code

62. In the instant case, the Debtors have plainly satisfied each of the legal standards described above. On May 18, 2004, the Debtors notified AboveNet, other interested parties and the Bankruptcy Court of their intention to reject the AboveNet Rejected Leases by serving and filing Schedule 4 to the Plan. Such filing occurred at least 20 days prior to the Confirmation Hearing and constituted an application to reject the AboveNet Rejected Leases. Furthermore, confirmation of the Plan would constitute court approval of the rejection of the AboveNet leases, thereby satisfying the alternative standard applied by other courts.

63. Under the circumstances, the Debtors question AboveNet's true motives. AboveNet, having made no effort whatsoever to compel assumption or rejection during the entire pendency of the Debtors' chapter 11 cases, now argues, scarcely four days prior to confirmation, that the leases must be rejected immediately. AboveNet's eleventh-hour attack is especially suspicious given that AboveNet is completely protected pending the effective date of the rejection of its leases. Indeed, pursuant to Article 6(a) of the Plan, XO *must continue to perform all its obligations to AboveNet under the rejected leases until the applicable effective date of the rejection*. AboveNet's assertion that it somehow is being forced to incur new risk in the interim period therefore is contradicted by the facts. For the reasons discussed above, AboveNet's argument has no basis either under the Bankruptcy Code, case law or the facts of the instant case and should be rejected by the Bankruptcy Court.

III. THE RELEASE, EXCULPATION AND INJUNCTION PROVISIONS IN THE PLAN SHOULD BE APPROVED

64. In connection with the negotiation of the Compromise and Settlement, the Debtors, the Senior Lenders, the Creditors Committee and the ATI Note Trustee negotiated certain release, exculpation and injunction provisions to be included in the Plan.

65. KMC and MCI, through its joinder in the Trade Creditor Objections, contend that the releases, exculpation and injunctions provision in the Plan are improper on the basis that they (a) release any claim by a creditor - whether or not that creditor agreed to grant the release, (b) release a broad category of non-debtors, some of which have not provided adequate consideration for such release, (c) release Holders of ATI Note Claims but not Holders of ATCW Unsecured Claims, and (d) release causes of action not limited to postpetition activities, but rather cover all maters relating to the Debtors, whenever the relevant events occurred.

The Release Provisions Should Be Approved

66. After filing the Plan, the Debtors, the Senior Lenders, the Creditors Committee and the United States Trustee's Office engaged in extensive discussions regarding the releases (including exculpation) set forth in the Plan. As a result of these discussions, all parties agreed to modify the releases. The modifications will be set forth in the modified version of the Plan. In addition to these modifications, the Debtors are also modifying the releases to include the release of Holders of ATCW Unsecured Claims and Holders of ATI Unsecured Claims.

67. The releases in the Plan were negotiated among the Debtors, the Creditors Committee and the Senior Lenders in connection with the Compromise and Settlement and do not fall outside the provisions of the law or the bounds of reasonableness. With respect to the releases by the Debtors, the Debtors have investigated the potential claims they may hold against

parties that they are releasing under the Plan and do not believe that any such causes of action exist. The Creditors Committee concurs with this conclusion. Furthermore, the releases specifically exclude any actions the Debtors may have against such parties for fraud, gross negligence, willful misconduct, malpractice, criminal conduct, unauthorized use of confidential information that causes damages or for personal gain, or for ultra vires acts (collectively, the "Release Exceptions").

68. The releases to be granted by Holders of Claims receiving Distributions under the Plan are similarly limited by the Release Exceptions. Additionally, the proposed releases to be granted by the Holders of Claims receiving Distributions do not, as KMC and MCI suggest, release all causes of action relating to the Debtors generally, regardless of when they occurred. Rather the release provisions relate solely to prepetition negotiations regarding the restructuring of the Debtors, the chapter 11 cases and the formulation of the Plan and Disclosure Statement. The only broader release granted is to the directors and officers of the Debtors who waive their claims for indemnification against the Debtors, an action which is valuable to the Debtors' estates.

69. Section 105(a) of the Bankruptcy Code states that "[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Several circuit courts, including the Second Circuit, have cited section 105(a) of the Bankruptcy Court as a bases for releasing non-debtors from liabilities to third-parties. See LTV Corp. v. Aetna Casualty and Surety Co. (In re Chateaugay Corp.), 167 B.R. 776 (S.D.N.Y. 1994) (citing MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 93 (2d Cir. 1988), cert. denied, 488 U.S. 868, 109 S.Ct. 176, 102 L.Ed.2d 145 (1988); In re A.H. Robins Co., 880 F.2d 694, 701 (4th Cir. 1989), cert. denied, 493 U.S. 959 (1989). However, such releases have generally been approved where such a set was essential to confirmation of the Plan.

See, e.g., Drexel Burnham, 960 F.2d at 293 (2d Cir. 1992) (a non-debtor may be released from liability to a third party if such release "plays an important part in the debtor's reorganization plan").

70. The release provisions set forth in the Plan were heavily negotiated as part of the Compromise and Settlement. The Compromise and Settlement is the cornerstone of the consensual Plan. Thus, the releases are essential for confirmation of the Plan and should be approved.

The Exculpation Provision Should be Approved

71. The exculpation contained in the Plan exculpates the Debtors, the Buyer, the Holders of ATI Note Claims, the ATI Note Trustees, the Holders of Senior Lender Claims and the Creditors Committee from liability for any act or omission in connection with the chapter 11 cases, the pursuit of confirmation of the Plan, the consummation and administration of the Plan, or the property to be distributed under the Plan, except for such parties' willful misconduct, criminal conduct, misuse of confidential information that causes damages or for personal gain, fraud, ultra vires acts or gross negligence. KMC and MCI contend that such exculpation provision must also except breaches of any party's fiduciary obligations.

72. The Debtors submit that the exculpation provision complies with applicable law. See In re PWS Holding Corp., 228 F.3d 224, 246 (3d Cir. 2000) (approving exculpation of the debtors, the committee and its members, officers, directors, employees, advisors, professionals or agents from liability for any act or omission in connection with, related to, or arising out of, the chapter 11 cases or the plan of reorganization, except for willful misconduct or gross negligence). Moreover, similar exculpation provisions, without an exception for breach of fiduciary duty causes of action, are standard in chapter 11 plans, including chapter 11 plans approved in this District. See, e.g., In re Worldcom, Inc., et al., Case

No. 02-13533 (AJG), Findings of Fact and Conclusions of Law Approving (i) Substantive Consolidation and (ii) The Settlements Under Debtors' Modified Second Amended Joint Plan of Reorganization, dated October 21, 2003; In re XO Communications, Inc., Case No. 02-12947 (AJG), Order Confirming Third Amended Plan of Reorganization, dated August 26, 2002; In re Global Crossing, Ltd., et al., Case No. 02-40188 (REG), Order Pursuant to Section 1129(a) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Joint Plan of Reorganization, dated December 26, 2002; In re Dairy Mart Convenience Stores, Inc., et al., Case No. 01-42400 (AJG), Findings of Fact and Conclusions of Law Relating to, and Order Confirming, First Amended Joint Plan of Liquidation of Dairy Mart Under Chapter 11 of the Bankruptcy Code and Granting Related Relief, dated March 5, 2003.

73. The exculpation provision protects parties in interest who have made substantial contributions to the restructuring process and the chapter 11 cases. The Debtors believe that the exculpation complies with applicable law and, thus, should be approved.

The Injunction Provision Should be Approved

74. The Debtors believe that the injunction provision is a necessary and appropriate component of the Plan. Bankruptcy Courts may issue injunctions enjoining creditors from bringing certain causes of action in order to resolve finally all claims in connection with a debtor's estate and give finality to a plan of reorganization. Ionosphere Clubs, 184 B.R. 648. Injunctions may prevent creditors from suing third parties, provided the injunction plays an important part in the settlement of the plan. Drexel Burnham Lambert, 960 F.2d at 292; see also In re A.H. Robins Co., 880 F.2d at 700-02 (upholding an injunction against suits by creditors against certain third parties including the debtor's directors and lawyers); In re Keene Corp., 164 B.R. 844, 849 (Bankr. S.D.N.Y. 1994) (bankruptcy court has the power to issue an appropriate injunction to ensure orderly reorganization).

75. In this case, the injunction provision set forth in the Plan is a necessary component of the Plan. The provision was heavily negotiated as part of the Compromise and Settlement and prevents parties from raising litigation against the Debtors and parties in interest post-confirmation. Accordingly, the injunction provision should be approved.

IV. ABOVENET SHOULD NOT BE ENTITLED TO VOTE ON THE PLAN

76. In its Objection, AboveNet asserts that it should be allowed to vote on the Plan. Having neglected to avail itself of the significant procedural protections provided by the Debtors and approved by the Bankruptcy Court, AboveNet now attempts to coerce the Debtors into a favorable settlement of its claim by threatening to derail the Debtors' emergence from bankruptcy scarcely four days before the Confirmation Hearing.

77. The facts are undisputed. Both AboveNet and its counsel received (a) notice that the Debtors filed a motion seeking approval of the Disclosure Statement and Disclosure Statement Order, (b) a copy of the motion and (c) notice of the objection deadline and date for the Disclosure Statement Hearing. Paragraph H(a) of the Disclosure Statement and Article VI of the attached Plan amply disclosed the Debtors' intention to notify, within 20 days of the Confirmation Hearing, their decision to reject any contracts listed on Schedule 4, to be attached to the Plan. Paragraph 15 of the proposed Disclosure Statement Order clearly disclosed that any parties that did not hold claims as of April 23, 2004 would not be entitled to vote on the Plan. AboveNet and its counsel, as recipients of these documents, had ample opportunity to review them and file any objections with the Bankruptcy Court. Indeed, many parties availed themselves of the opportunity to object to the proposed Disclosure Statement and Disclosure Statement Order. AboveNet, however, did not.

78. On April 24, 2004, the Debtors mailed copies of the Information Package to interested parties, including AboveNet. The Information Package included copies of the Disclosure Statement Order, the Disclosure Statement and the Plan. Paragraph 11 of the Disclosure Statement authorized any party seeking to challenge allowance of its claim for voting purposes to file a motion pursuant to Bankruptcy Rule 3018(a) within a prescribed period. Thus, AboveNet was presented with another opportunity to challenge its treatment under the proposed Plan. Many parties availed themselves of the opportunity to object pursuant to Bankruptcy Rule 3018. AboveNet, however, did not.

79. Having repeatedly neglected its right to object, AboveNet cannot now argue that it was somehow disenfranchised from voting on the Plan. If AboveNet had any concerns about the voting arrangement, it should have addressed those concerns to the Bankruptcy Court pursuant to the myriad objection procedures approved by the Bankruptcy Court, utilized by large numbers of other interested parties, and clearly set forth in the Disclosure Statement/plan-related documents and Information Package.

80. AboveNet has in no way been prejudiced by its inability to vote on the Plan. Currently, AboveNet does not hold any actual claim. In that regard, AboveNet was a party to four fiber optic lease agreements and one collocation license agreement with the Debtors. Two of the lease agreements and the collocation agreement are being assumed by the Debtors. The remaining two lease agreements are scheduled for rejection. The rejection date has not yet occurred. In the meantime, XO and AboveNet are negotiating to enter into leases to replace the two rejected lease agreements. Thus, until the two lease agreements are rejected, which most likely will not occur until XO and AboveNet agree on the terms of new leases, AboveNet does

not hold a claim and the Debtors have to try to determine what the size of the claim will be.[10] Thus, as of the Record Date, AboveNet was not entitled to vote on the Plan.

[10] In that regard, the $89 million Claim asserted by AboveNet in its objection is patently incorrect.

Conclusion

WHEREFORE, for all of the foregoing reasons, the Debtors request that the Bankruptcy Court overrule the Objections and grant such other and further relief as the Bankruptcy Court deems appropriate.

Dated: New York, New York
June 5, 2004

Respectfully submitted,

/s/ Jonathan S. Henes_

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EXHIBIT A

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
OBJECTING PARTY ALLEGES THAT THE CONTRACT WAS TERMINATED							
1	Alight, Inc.	Assumption objection: Contract was terminated and cure dispute	$1,500.00			William S. Hennessey (214) 891-9800	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
2	AlphaSmart	Assumption dispute, terminating contract				Erika Nelson (408) 355-1025	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
3	Brown & Connery, LLP	Argues contract no longer exists				Joseph M. Garemore (856) 854-8900	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
4	Craftsman Upholstery	Assumption Objection: contract was canceled and cure dispute				Patricia A. Bradburn (703) 278-8550	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
5	Dale Earwood	Assumption Objection: contract no longer exists				Dale C. Earwood (318) 426-5435	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
6	Jack J. Schmerling	Assumption Objection: claims contract was terminated when Allegiance failed to fix his telephone problems (despite numerous communications)		251503		Jack J. Schmerling 7429 Baltimore Annapolis Blvd. Glen Burnie, MD 21061 (410) 787-0022	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
7	Li H. Chu, DDS, PC	Assumption objection: contract was terminated on 3/31/04 because of Allegiance's alleged breach of contract terms				Li H. Chu, DDS 13231 Champion Forest Dr. Suite 300 Houston, Texas 77069 Phone: (281) 866-0300 Fax: (281) 866-0883	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
8	McNeill, Collella & Associates	Assumption disputes, contract terminated on November 6, 2003				J. Mark Dickison (617) 439-4990	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
9	Stephen J. Fimian	Assumption dispute. No longer a customer of Allegiance				(972) 702-9533	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
10	Tiny Teeth Dental Care	Assumption Objection: contract was terminated on 4/5/04				Dan L. Nydegger (609) 776-9700	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
11	Vilven Design Group	Assumption dispute – cancelled contract Cure dispute				Liz Vilven (713) 526-3212	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
12	Voyence	Assumption dispute cancelled contract, effective May 31, 2004		DALLA.4030004		Linda Kimbell (972) 759-4082	Notice of Assumption has been withdrawn. Allegiance agrees that the contract has been terminated.
OBJECTING PARTY HAS A CURE DISPUTE[1]							
13	5761 Copley Drive	Cure dispute	$3,258.73			Joel M. Shafferman (212) 267-7600	Adjourned to 6/18
14	Ameritech Advertising Services	Cure dispute	$74,024.53			Otto Beatty III (614) 228-1541	Adjourned to 6/18
15	Avaya	Cure dispute				Carolyn Magaha (410) 453-6563	Adjourned to 6/18
16	Centro Presente	Cure dispute	$644.56	149893		Carmen I. Paniagua (617) 497-9080, x24	Left messages on 6/2, 6/3 and 6/5 re adjournment. The objecting party has failed to respond to these messages.
17	Cleveland Technology Center	Cure dispute	$2,366.23			Nicholas J. Cremona, Esq. (212) 836-7189	Adjourned to 6/18
18	Daleen Solutions, Inc.	Cure dispute	$965,841.12			Jeff Rich, Esq. (212) 536-3900	Adjourned to 6/18
19	Eagle Print	Cure dispute	$131.72 plus applicable taxes			Deanne B. Truess (425) 883-9010	Adjourned to 6/18
20	Ergonomic Solutions	Cure dispute	$1,485.69	2509759		Craig Lombardi (404) 284-3746 ext. 100	Adjourned to 6/18
21	Evangelical Lutheran Church in America	Cure dispute	$429.43			Sandra J. Pilgrim (651) 649-0454, x229	Adjourned to 6/18
22	FSP Telecom Business Center Limited Partnership	Cure dispute	$3,258.73			Joel M. Shafferman, Esq. (212) 267-7600	Adjourned to 6/18
23	Globe Building Company	Cure dispute	$10,755.17			E. Rebecca Case (314) 721-7011	Adjourned to 6/18
24	Hi-Grade	Cure dispute	$4,490.00	2587237		Andrew Abrams (312) 704-2172	Adjourned to 6/18
25	Irving Tobin	Cure dispute	$661.00	2410632		Irving Tobin (908) 354-2222	Adjourned to 6/18

[1] To the extent any of these objecting parties have asserted any other objections, such objecting parties have agreed to limit their objection to a cure dispute.

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
62	Ludstrom &Associates	Cure dispute	$538.76			(949) 250-1772	Left message on 6/5 re adjournment. The objecting party has failed to respond to the message.
26	Mass. Affordable Housing Alliance	Cure dispute		002231352262			Adjourned to 6/18.
27	M-Cubed	Cure dispute	$21,600			Peter Jones (301) 495-9280 ext. 625	Adjourned to 6/18
28	MFN	Cure dispute				Jeffrey Cohen (212) 479-6218	Adjourned to 6/18
29	Party Hackett Electronics, Inc.	Cure dispute	$246.25			Cheryl Hackett (408) 283-9000	Left message on 6/2, 6/3 and 6/4 re adjournment. The objecting party has failed to respond to the message.
30	Planned Environmental Design Corporation	Cure dispute	$104.60			Ernest Lane, Registered Architect 22550 Lake Shore Blvd. Euclid, Ohio 44123 Phone: (216) 797-1081 Fax: (216-797-1084	Adjourned to 6/18
31	SBC Telecommunications, Inc., Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a/ SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC California, Southwestern Bell Telephone, L.P. d/b/a SBC Missouri and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin	Cure dispute	$17,808,509.54 for prepetition services $13,000,000 for postpetition service obligations			Michelle R. Hull Mayer, Brown, Rowe & Maw LLP 1675 Broadway New York, New York 10019-5820 (212) 506-2124	Adjourned to 6/18
32	Solutions	Cure dispute				Bruce Lerner (310) 498-4800	Adjourned to 6/18
33	Steve Hamidi & Associates	Cure dispute	$455.30			Steve Hamidi (818) 995-0599	Adjourned to 6/18
58	Stellar Communications LLC	Cure dispute	$183.00			David Beckett (503) 699-5505	Left message on 6/5 re adjournment. The objecting party has failed to respond to the message.
34	Ultra Networks Incorporated	Cure dispute	$2,821.77	2641619		Brenton Ulfig	No telephone number

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
59	Verizon Communications	Cure dispute	$83,449,383.17			Philip D. Anker (212) 23--8800	Resolved pursuant to the settlement.
60	Lawrence Visnic	Cure dispute				Lawrence Visnic	No telephone number
35	Westlakes Primary Care, P.A.	Cure dispute	$775.80	2687382		Westlakes Primary Care, P.A. 8303 Military Drive West San Antonio, TX 78227 Phone: 210-674-6130 Fax: 210-674-0990	Adjourned to 6/18
OBJECTING PARTY CLAIMS NOTICE WAS NOT SPECIFIC (NOT ENOUGH INFORMATION TO IDENTIFY CONTRACT)							
36	AIG/International Plaza, Philadelphia, PA; AIG/National Union Buyer Ins., Seattle, WA; AIG/National Union Fire, Philadelphia, PA; AIG/National Union Fire, Pittsburgh, PA; AIG/National Union Fire, Washington, DC; AIG/New York City, New York, NY; AIG/Sandy Springs, Sandy Springs, GA; AIG/Seattle, Seattle, WA	Assumption Objection: claims that Debtor provided inadequate information from which to discern which contracts the debtors are assuming				Michael S. Davis, Esq. (212) 223-0400	Adjourned to 6/18.
37	Broadwing Communications, LLC	Assumption Objection: notice lacked specificity as to which contracts are being assumed		.DALLA4020017		C. Wade Cooper, Esq. (512) 236-2000	E-mailed objecting party on 6/3 more specific information re which contracts the Debtors are assuming. Left message on 6/4 re adjournment. The objecting party has failed to respond to the message.
38	Connecticut General Life Insurance Company	Assumption Objection: notice lacks specificity as to which contracts Debtor is assuming and cure dispute	$134,084.60			Thomas A. Martin, Esq. (212) 682-0020	Adjourned to 6/18
39	Lucent Technologies, Inc.	Assumption Objections: lacks specificity and cure dispute	$770,000.00			Andrew J. Pincus (973) 597-2438	The Debtors, Lucent and XO remain in discussion in an attempt to resolve the objection. If the objection is not resolved, any disputes will be presented to the Court on Tuesday, June 8, 2004 at 2:00 p.m.

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
40	Veritas Software Corporation	Assumption dispute – unclear what contracts being assumed – need consent to assume				Thomas M. Gaa, Esq. (650) 857-9500	Objection has been resolved.
OBJECTING PARTY HAS ADEQUATE ASSURANCE CONCERNS							
41	Analytech	Assumption (adequate assurance issues) and cure disputes	$930.60		Last month's invoice $573.05	William Gardiner (770) 477-0515	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
42	Hop One	Adequate assurance objection				Haralds Jass (604) 638-2526	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
43	Pyramid Building	Adequate Assurance Objection: who will be the assignee; credit worthiness of assignee				David M. Bennett (214) 979-1700	Resolved – The objecting party has agreed to the assumption of the contract
44	The Heights LLC	Assumption dispute – lack of adequate assurance			Last month's invoices $629.63	Stan Lippmann (206) 442-1407	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
45	Tires on Fire Express, Inc.	Assumption Objection: lack of adequate assurance		2693942	Last month's invoices $571.29	Elizabeth Kangas Miller 50 East Old Mill Road Lake Forest, Illinois 60045 (847) 295-7341	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
OBJECTING PARTY WANTS OUT OF THE CONTRACT							
46	Arctic Printing & Graphics, Inc.	Assumption objection, wants to cancel			Last month's invoice $575.50	Michael W. Stelma (206) 281-7600	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
47	Arma Corp.	Assumption objection, wants to cancel contract		2668043	Last month's invoice $75.08	Mimi Arbabi	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
48	Bi-Lo Industries	Assumption objection: wants to cancel contract			Last month's invoice $317.56	William Senese (631) 595-1328	Resolved – The objecting party has agreed to the assumption of the contract.

No.	Objecting Party	Reason for Objection	Proposed Cure Amount	Contract Information	Magnitude	Contact Information	Response/ Resolution
49	Business Cards Tomorrow	Assumption objection changing carriers			Last month's invoice $888.53	Louis Mayer (281) 498-2600	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
50	Community First Mortgage, LLC	Assignment objection: they oppose the transfer of their telecom agreement to XO Communications.			Last month's invoice $468.28	Barrett Court 1925 Vaughn Road Suite 215 Keenesaw, GA 30144 (770) 422-9292	Resolved – The objecting party has agreed to the assumption of the contract
51	McGhee Blinds & Awnings, Inc.	Assumption dispute – changing carriers on June 3, 2004			Last month's invoice was $249.59	Colleen Hardenbrook McGhee Blinds & Awnings, Inc. (503) 235-4111	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
61	Ron Molinaro	Assumption objection, argues no contract.				Ron Molinaro	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
52	Pacific Magnetic & Penetrant Co., Inc.	Assumption objection: contract expired 5/13/04		2519625	Last month's invoice $78.73	Erik B. Anderson (818) 765-7266	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
53	Primerica	Complaints regarding service				Kevin Malone (916) 266-4462	Resolved – The objecting party has agreed to the assumption of the contract
54	SaltRun Productions	Assumption objection: wants to cancel contract		2610766	Last month's invoices $497.66	Allen S. Facemire (770) 448-3181	Resolved – The objecting party has agreed to the assumption of the contract
55	Southern Express Lubes, Inc.	Assumption objection (no specifics in letter)				Thomas A. Statas (301) 657-0774, x105	Resolved – The objecting party has agreed to the assumption of the contract
56	Staffing Network	Assumption dispute, argues no contract			Last month's invoices $934.45 and $552.75	Karen Kranbuehl (312) 263-2300	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.
57	Cooper, Phillips & Peterson LLP	Assumption dispute, claims Allegiance breached contract				Fil Santos (213) 430-9255	XO is reviewing the objection and its rights under the APA, all of which are reserved. If necessary, XO will respond at the hearing.