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(f/k/a Metromedia Fiber Network, Inc., et al.)

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)
	:	
	:	

DECLARATION IN SUPPORT OF ORDER TO SHOW CAUSE IN CONNECTION WITH EMERGENCY MOTION FOR AN ORDER (I) DIRECTING THE DEBTORS, CREDITORS COMMITTEE AND THE TRADE CREDITOR GROUP TO ALLOW ABOVE NET, INC. TO REVIEW THE TRADE CREDITOR GROUP'S OBJECTION TO CONFIRMATION AND EXHIBITS FILED UNDER SEAL AND THE SETTLEMENT AGREEMENTS WITH CERTAIN UNSECURED CREDITORS AND (II) ADJOURNING CONFIRMATION HEARING

ANDREW K. GLENN, being duly sworn, deposes and says:

1. I am a member of Kasowitz, Benson, Torres & Friedman LLP, co-counsel for AboveNet, Inc. (f/k/a Metromedia Fiber Network, Inc.), for itself and on behalf of its reorganized debtor subsidiaries (collectively, "AboveNet"). I submit this affidavit pursuant to Local Bankruptcy Rule 9077-1(a) in support of AboveNet's application for an order to show cause in connection with the *Emergency Motion for an Order (I) Directing The Debtors, Creditors Committee and the Trade Creditor Group to Allow AboveNet, Inc. to Review the Trade*

Creditor Group's Objection to Confirmation and Exhibits Filed Under Seal and the Settlement Agreements with Certain Unsecured Creditors and (II) Adjourning Confirmation Hearing (the "Motion").

2. On May 14, 2003 (the "Petition Date"), Allegiance Telecom, Inc. ("ATI") and certain of its subsidiaries (collectively, the "Debtors" or "Allegiance") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their affairs as debtors-in-possession.

The Confidentiality Agreement and the Trade Creditor Group's Objection Under Seal

3. On or about May 14, 2004, counsel for the "Trade Creditor Group"¹ an ad hoc group of trade creditors, the Debtors and the Creditors Committee entered into an *Agreement Governing the Production and Exchange of Confidential Information* (the "Confidentiality Agreement"). The Confidentiality Agreement is annexed to the Motion as Exhibit A thereto. The Confidentiality Agreement sets forth certain procedures that govern the production and exchange of documents in connection with extensive discovery taken by the Trade Creditor Group.

4. In connection with the Confidentiality Agreement, on June 1, 2004, the Trade Creditor Group filed a motion (the "Request Motion") for the entry of an order to file its objection to the confirmation of the Plan (the "Sealed Objection") under seal. In the Request Motion, the Trade Creditor Group stated:

¹ The Trade Creditor Group consists of (i) the telephone operating subsidiaries of Verizon Communications Inc.; (2) KMC Telecom XI LLC; (iii) BellSouth Telecommunications, Inc.; and (iv) SBC Telecommunications, Inc. et al.

“[m]any of the exhibits referred to, quoted, or attached to the [Sealed Objection] have been designated by either the Debtors or the Committee as ‘Confidential.’” Moreover, the Trade Creditor Group has conferred with the Debtors or the Committee who have requested that this [Sealed Objection] and the attached exhibits be filed under seal.

Request Motion, ¶ 6. By order dated June 2, 2004, the Court approved the Request Motion.

5. On June 3, 2004, AboveNet filed the *Objection of AboveNet, Inc. to Confirmation of Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the “AboveNet Objection”).

6. Upon information and belief, the Sealed Objection contains many of the same legal objections to the Plan and Compromise and Settlement as the AboveNet Objection, and also contains facts supporting these arguments.

7. AboveNet has made several requests of the Debtors, the Committee and the Trade Creditor Group to view the Sealed Objection. These requests have included an offer by AboveNet to enter into the Confidentiality Agreement or a separate confidentiality agreement on substantially the same terms. In furtherance of this commitment, counsel to AboveNet has executed the Confidentiality Agreement, a copy of which is annexed as Exhibit B to the Motion..

8. In response to the requests by AboveNet, three of the four members of the Trade Creditor Group have given their consent in writing on the condition that the Debtors and the Committee consent – or the Court so orders. The e-mails denoting the consent of three of the four members of the Trade Creditor Group are annexed as Exhibit C to the Motion. However, to date, the Debtors and the Committee have withheld their consent without providing any basis for their objection despite several requests for this document made on June 2, 2004 and thereafter. Copies of the foregoing requests are annexed as Exhibit D to the Motion.

Necessity Of Immediate Relief

9. The hearing (the “Confirmation Hearing”) to consider the Compromise and Settlement and the confirmation of the Plan is currently scheduled for June 7, 2004 at 10:00 a.m. (prevailing eastern time), but the Debtors have indicated that they will seek an adjournment until June 8, 2004 at 2:00 p.m. Thus, AboveNet has brought the request for relief by Order to Show Cause because AboveNet needs the requested information to prepare for the Confirmation Hearing on an extremely expedited basis. Emergency relief is, therefore, necessary.

10. As set forth in the Motion, the Debtors and the Committee have not consented to allow AboveNet to review the Sealed Motion. Upon information and belief, the Debtors and the Committee are stalling because the Sealed Objection includes significant legal and factual issues that support AboveNet’s claims and will likely thwart the Debtors’ attempt to confirm the Plan. Indeed, after the filing of the Sealed Objection, the Debtors and at least three of the members of the Trade Creditor Group reached a settlement.

11. After extensive discovery, filing confirmation objections and voting against the plan (as reported at a status conference last week), the members of the Trade Creditor Group have settled with the Debtors. AboveNet has every reason to believe that the members of the Trade Creditor Group have changed their votes to accept the Plan in exchange for receiving enhanced treatment not provided to other similarly situated creditors. The Debtors presumably did this to obtain sufficient votes to carry Class 4 (where AboveNet’s rejection claim should also be classified). Tellingly, AboveNet has requested records or summaries of the voting with respect to the Plan, but the Debtors have refused. A copy of the e-mail requests and the Debtors’ counsel’s responses are annexed to the Motion as Exhibit E.

12. If the members of the Trade Creditor Group (or any other member of Class 4) received consideration² for voting in favor of the Plan not ratably shared with other creditors in Class 4 (the only logical explanation for their abrupt change of course), that would raise serious issues about (i) the Debtors' good faith in proposing the plan under 1129(a)(3) of the Bankruptcy Code, (ii) whether votes should be designated as being solicited in bad faith under Section 1126(e), and (iii) whether creditors have been treated disparately in violation of Section 1123(a)(4).

13. Accordingly, AboveNet respectfully submits that it should be provided with all documents relating to the settlements with the Trade Creditor Group to ensure that these agreements comply with the Bankruptcy Code.

The Confirmation Hearing Should Be Adjourned.

14. AboveNet believes that, because Class 4 did not vote to accept the Plan by the voting deadline, the Debtors will be seeking relief from this Court to allow the Trade Creditor Group's votes to be changed. Because the Confirmation Hearing will be held today or tomorrow and the settlements reached with certain members of the Trade Creditor Group have not been disclosed (AboveNet understands that the Debtors have sought to keep these agreements under seal), the Confirmation Hearing should be adjourned until at least June 11, 2004. This will enable AboveNet and other similarly situated creditors to scrutinize these agreements to ensure that these settlements do not give the members of the Trade Creditor Group an unfair advantage or prejudice other creditors such as AboveNet.

² AboveNet believes that this consideration may include excessive cure payments for certain assumed executory contracts.

15. No previous application has been made for the relief requested herein before this or any other court. Accordingly, for the reasons set forth herein, and in the Motion contemporaneously herewith, the Order to Show Cause should be granted.

I swear under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 7, 2004

/s/ Andrew K. Glenn
Andrew K. Glenn