

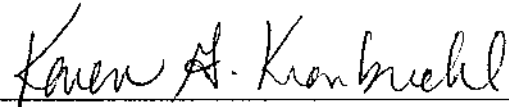
UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF FILING

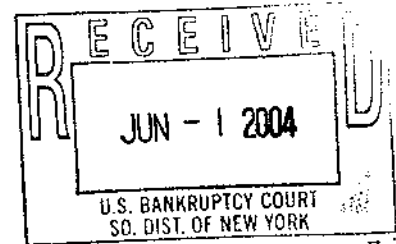
To: See attached Service List

PLEASE TAKE NOTICE that on **May 28, 2004**, there was sent by Federal Express to be filed with the Clerk of the United States Bankruptcy Court, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, 60604, the attached *Staffing Network LLC's Objection to Debtors' Assumption and Assignment of Alleged Executory Contract*, a true and correct copy of which is herewith served upon you.



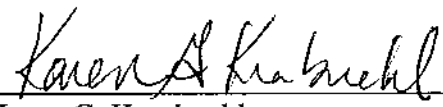
Karen G. Kranbuehl

Barbara L. Yong, Esq.
Karen G. Kranbuehl, Esq.
FIELD & GOLAN LLP
70 West Madison Street, Suite 1500
Chicago, Illinois 60602
(312) 263-2300



CERTIFICATE OF SERVICE

I, Karen G. Kranbuehl, an attorney, certify that on **May 28, 2004**, I caused a copy of the attached *Notice of Filing* and *Staffing Network LLC's Objection to Debtors' Assumption and Assignment of Alleged Executory Contract* to be served upon the individuals listed on the attached service list, via facsimile and United States mail, postage pre-paid, from 70 West Madison, Chicago, Illinois, 60602.



Karen G. Kranbuehl

SERVICE LIST

Kirkland and Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022-4611
Attn: Michael J. Frishberg, Esq.

The Office of the US Trustee
33 Whitehall Street
21st Floor
New York, NY 10004
Attn: Pamela J. Lustrin, Esq.

Paul, Hastings, Namofsky & Walker LLP
600 Peachtree Street, N.E.
24th Floor
Atlanta, GA 30308
Attn: Jesse Austin, III, Esq.

Akin Gump Strauss Hauer Feld LLP
590 Madison Avenue
New York, NY 10022
Attn: Ira S. Dizengoff, Esq.

Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111
Attn: Steven D. Pohl, Esq.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

**STAFFING NETWORK LLC'S OBJECTION TO DEBTORS'
ASSUMPTION AND ASSIGNMENT OF ALLEGED EXECUTORY CONTRACT**

Staffing Network, LLC, ("Staffing Network") by its attorneys, submits this objection to Allegiance Telecom, Inc.'s ("Allegiance") and its related debtors' (collectively, the "Debtors") assumption and assignment to XO Communications, Inc. ("XO") of Debtors' alleged executory contract with Staffing Network.

INTRODUCTION

On May 18, 2004, the Debtors served a Notice Of Debtor's Intent to Assume, Assume and Assign, or Assign Certain Executory Contracts and Unexpired Leases, including an alleged service contract with Staffing Network. However, Staffing Network does not have an executory contract, or any type of contract, with the Debtors. It therefore objects to the proposed assumption and assignment on the basis that it is not authorized under 11 U.S.C. §365 or any other section of the Bankruptcy Code.

BACKGROUND

In the summer of 2003, Allegiance representatives Kevin Fukumoto and Kevin Eagen called on Staffing Network for the purpose of selling Allegiance communications services for the entire Staffing Network company, encompassing 15 office locations and 22 billing telephone numbers related to over a hundred telephone lines. At the time, Staffing Network's services were with SBC for local service and MCI for long distance service.

Kevin Fukumoto made several proposals to Staffing Network during June and July 2003, which presented numbers that appeared to be able to save Staffing Network \$12,000 to \$15,000 per year if it transferred all of its services to Allegiance.

Prior to receiving the Allegiance proposal, Staffing Network had been given a statement of termination charges by SBC/Ameritech for some data circuits, which were cancelled as the result of Staffing Network moving some of its offices. At that time, Staffing Network was advised verbally and in writing that the termination charges would be approximately \$14,000. Staffing Network concluded that by switching to Allegiance, with the projected yearly savings, it would offset the \$14,000 Ameritech termination charges within a year. Staffing Network made it clear to Allegiance during all contact between them that the reason for Staffing Network's interest in switching to Allegiance's services was the offset of the \$14,000 in termination charges that Staffing Network could achieve as a result of the switch.

On August 6, 2003, at 10:00 a.m. Staffing Network signed a Services Agreement in the presence of Kevin Fukumoto and Kevin Eagen. Two hours later on that very same day, at 12:00 p.m., Staffing Network received an actual bill from Ameritech showing the full and final termination charges to be \$23,000 instead of the earlier stated \$14,000. Immediately thereafter, at 12:30 p.m., again the very same day, Staffing Network immediately contacted Kevin Eagen and told him Staffing Network could not go forward with the Allegiance contract, and not to put any orders through because Staffing Network would need to remain with SBC/Ameritech while it investigated how it could generate good will with Ameritech and cause it to waive the \$23,000 termination charges. During this phone call, Kevin Eagen stated that he understood, felt bad that Staffing Network was being treated so badly by SBC/Ameritech, and gave his word that he would not put the order through. He contacted Staffing Network almost daily for the next

several weeks to discuss the issue, and was fully aware of Staffing Network's situation and that it did not/could not go forward with Allegiance at this time because it was under that liability with SBC.

Despite Mr. Eagen giving Staffing Network his word that he would not put the orders through, on or about September 17, 2003, two Illinois Staffing Network offices' telephone services were suddenly switched from SBC to Allegiance without any notice or forewarning resulting in loss of voice mail after the switch. Mr. Eagen and Mr. Fukumoto apologized to Staffing Network for the unauthorized switch.

On September 24, 2003, Staffing Network sent a letter to Mr. Fukumoto to advise him that the services agreement, which Staffing Network believed was not going forward based on Mr. Eagen's representations, had to be made null and void. In its letter Staffing Network also advised that no more offices could be "accidentally" switched to Allegiance services. Staffing Network asked Mr. Fukumoto to acknowledge the letter in writing and return it to Staffing Network. A copy of that letter is attached hereto as Exhibit A. In addition, Mr. Eagen promised to send Staffing Network a written confirmation of his conversations with Staffing Network. As of this date, Staffing Network has not received such written confirmation from Mr. Fukumoto or Mr. Eagan.

Subsequently, at the end of September 2003, three of Staffing Network's California offices' services were switched to Allegiance services without Staffing Network's authorization or notice to Staffing Network. Mr. Eagan and Mr. Fukumoto apologized to Staffing Network for the switch, admitting that they did not know that the switch was going to occur and that it never should have happened.

On October 1, 2003, Staffing Network spoke with Mr. Eagen's manager, Mr. Jeff Fink, an Allegiance Vice President, and went over all of the events outlined here. Staffing Network advised him that it had been promised a cancellation in writing on several occasions and had never received one. Mr. Fink said he was aware of the situation and apologized for what had transpired. Staffing Network faxed to him a list of the errors made on its account up to that time, which is attached hereto as Exhibit B. He offered Staffing Network good will credits on its Allegiance bills to offset the inconvenience of the errors made with its account.

Later that day, Staffing Network received email correspondence from Mr. Eagen confirming that all of Staffing Network's Illinois and Michigan locations had been cancelled and taken out of their system and that Staffing Network could discuss with Mr. Fukumoto how to handle the three California offices that Allegiance had switched. That email message is attached hereto as Exhibit C.

Other than the 5 locations indicated above, none of Staffing Network's 11 other offices' telephone services have been switched to Allegiance.

**THERE IS NO CONTRACT BETWEEN
STAFFING NETWORK AND THE DEBTORS AND THEREFORE THE
PROPOSED ASSUMPTION AND ASSIGNMENT MUST BE DENIED**

There is no binding contract between Staffing Network and Allegiance and therefore there is nothing for the Debtors to assume and assign to XO. The Bankruptcy Code authorizes a debtor to assume and assign executory contracts to third parties pursuant to §356. However, the Bankruptcy Code does not authorize Debtors' to assume and assign proposed contracts. *See* 11 U.S.C. §365(a). Alternatively, the Debtors cannot assume and assign a contract that was cancelled or terminated prior to the filing of their bankruptcy cases because "[o]nce an agreement is terminated pre-petition, the bankruptcy court may not resurrect the agreement." *In*

re AGI Software, Inc., 199 B.R. 850, 860 (Bankr. D.N.J. 1995); *see also In re Island Helicopters, Inc.*, 211 B.R. 453, 464 (Bankr. E.D.N.Y. 1997). Bankruptcy courts do not have the power to expand a debtor's rights beyond that which it had at the filing of the bankruptcy case. *See Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1212 (7th Cir. 1984) (holding that contract terminated pre-petition cannot be assumed and assigned).

Allegiance's own actions establish that there is no service contract between it and Staffing Network. The proposed service contract was for service for all of Staffing Network's 15 locations, but Allegiance never initiated service for 10 of the locations. Moreover, Allegiance has admitted to Staffing Network that its initiation of service for 5 Staffing Network locations was done by mistake. Those actions indicate Allegiance's acknowledgement that it did not have the service contract with Staffing Network which it now asks to improperly assume and assign.

In addition, the many communications between Allegiance and Staffing Network establish its belief that the contract was either not going forward from the first day or that it had been cancelled. This is exemplified by the October 1, 2003 email from Mr. Eagan to Staffing Network in which he specifically acknowledges the cancellation of services with respect to the Illinois and Michigan offices.

Nonetheless, Staffing Network has paid and will continue to pay for the services that it has received at the five locations that were mistakenly switched. It objects, however, to the Debtors' attempting to assign a nonexistent contract for communications services to XO, and respectfully requests that the Court deny the Debtors' request for authority to assume and assign the alleged contract to XO.

WHEREFORE, Staffing Networks LLC respectfully requests that the Court deny the Debtors' request for authority to assume and assign the alleged contract to XO Communications and for such other and further relief as the Court deems just.

Respectfully submitted,

STAFFING NETWORKS LLC,

By: Karen G. Kranbuehl
One of its Attorneys

Barbara L. Yong, Esq.
Karen G. Kranbuehl, Esq.
Field & Golan LLP
70 W. Madison, Suite 1500
Chicago, IL 60602
Tel: 312/263-2300 Fax: 312/263-0939



1098 Greenleaf Avenue
 Elk Grove Village,
 IL 60007

September 24, 2003

Kevin Fukumoto
 Account Executive
 Allegiance Telecom, Inc.
 111 E. Wacker Drive
 Suite 1210
 Chicago, IL 60601

Dear Kevin,

This letter is follow up to our conversation earlier today. As I shared with you, Staffing Network regrets that we will not be able to move our phone servicas to Allegiance due to the financial implications of doing so. The Allegiance contracts which I signed on August 6 (and which later that same day I frantically called Kevin Eagan to tell him to place the contract on hold due to the fact that I had just received the SBC bill with the final amount of the penalty charges SBC was charging us) must be made null and void. As you know, I received the penalty bill in the amount of \$23,751.00 the very same day you were here.

When I was first contacted by you, Kevin, I was only willing to consider Allegiance because I thought it would save us considerable money. But now, by moving away from SBC, we will be required to pay this exorbitant bill – and there is no way out of it unless we stay with SBC for the next year, at least. This, coupled with the fact that we have a 36 month contract for our PRI, over which the majority of our outbound long distance traffic goes, makes the financial implications impossible to overcome. Plain and simple, we've been forced into a position where financlally we would be worse off if we switched, rather than better off.

Even though I called Kevin Eagan within a few hours of you both leaving my office, telling him of the receipt of the \$20K bill which would most likely result in not being able to make the switch and to hold off on acting on that contract, you chose to enter the orders anyway. Those orders, which you have scheduled for Sept 29, must be cancelled immediately. I hope you understand that I cannot have any more offices 'accidentally' switched to Allegiance, such as happened with our Midway and Aurora office lines.

I truly regret that this is the outcome. You and Kevin Eagan have worked very hard to try to make this work for all of us. Regrettably, there is no way you can offset these charges this year. I hope that sometime a year from now or in the future, when all this is behind Staffing Network, we can work together again to gain a financial advantage for our communications services through Allegiance Telecom.

Singerely,

A handwritten signature in cursive script that reads "Linda W. Gorman".

Linda W. Gorman
 Vice President, Staffing Network

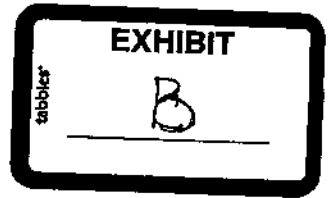
Please sign your acknowledgment of this letter below agreeing that the Voice Services/Integrated Services Agreement is null and void and return to me.

 Authorized Allegiance Telecom Representative, Title

 Date

Copy: Kevin Eagan, Market Development Manager, Allegiance Telecom





CORPORATE OFFICE
1098 GREENLEAF AVE.
BLK GROVE VILLAGE, IL 60007

Invoice from Tom
Burke attached

FACSIMILE TRANSMISSION

THIS TRANSMITTAL CONSISTS OF 2 PAGE(S) INCLUDING COVER PAGE.

PLEASE CALL SENDER AT IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION.

DATE: 10/1/03

TO: Jeff Fink FAX 630-522-5401

COMPANY Allegiance Telecom PHONE _____

FROM: Linda Gorman
Phone 847.437.5115
FAX 847.437.5608

*spoke to Jeff OK
10/6/03 → 630-522-5488*

MESSAGE

- Following are issues Staffing Network has had with Allegiance*
- *Mistaken transfer of 2 IL locations from SAC to ALEX on 9/16/03 with no notification*
 - *Need to have outside vendor for these 2 locs for V mail which had never been discussed regarding setup fees etc. Issue with no notification - \$100 credit will be of next bill*
 - *Frequent misunderstandings on setup of new #'s ordered for a new office opening in Cicero*
 - *Incorrect assignment of #'s in Cicero*
 - *Incorrect billing for Cicero location*
 - *Transfer of 1 IL location # and 3 California locations on 8/17/03 \$100 good with credit on next bill*

NOTICE OF CONFIDENTIALITY: THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS CONFIDENTIAL INFORMATION WHICH MAY CONTAIN INFORMATION THAT IS LEGALLY PRIVILEGED AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. THE INFORMATION IS INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS FACSIMILE TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE TO ARRANGE FOR THE RETURN OF THE ORIGINAL TRANSMISSION TO US.

without my approval and without notification

Linda Gorman

From: Eagan, Kevin [Kevin.Eagan@allegiancetelecom.com]
Sent: Wednesday, October 01, 2003 12:49 PM
To: 'Linda Gorman'
Subject: RE: email

Linda,
This is email to confirm all of your Illinois and Michigan locations have been cancelled and taken out of our system. Kevin Fukumoto will be contacting you in regards to all of the other locations Allegiance Telecom is currently servicing.

Thank you Linda and we appreciate the business,

Kevin Eagan
Senior Sales Manager- Chicago
allegiancetelecom, inc.
p: 312-228-4282
f: 312-228-6300
kevin.eagan@algx.com

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

> **From:** Linda Gorman [SMTP:lgorman@StaffingNetwork.com]
> **Sent:** Wednesday, October 01, 2003 10:46 AM
> **To:** 'kevin.eagan@algx.com'
> **Subject:** email

> Kevin,
> I have not received the written release and/or cancellation of the
> orders you indicated you would be sending me last night. Please
> followup. Thank you.

> Linda W. Gorman
> Vice President ~ Staffing Network
> 1098 Greenleaf Avenue
> Elk Grove Village, IL 60007
> (847-437-5115 (voice)
> (847) 437-5608 (fax)
> E-mail: lgorman@staffingnetwork.com

