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for Assigned Names and Numbers

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTION BY THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS TO DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF THE BANKRUPTCY CODE: (A) FIXING THE TIME, DATE AND PLACE FOR THE BIDDING PROCEDURES HEARING; (B)(I) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF CERTAIN OF THE ASSETS OF CERTAIN DEBTORS, (II) APPROVING THE FORM AND MANNER OF NOTICES, AND (III) SETTING A SALE APPROVAL HEARING DATE; AND (C)(I) APPROVING THE SALE TO WEBONTAP, INC. FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND (III) GRANTING RELATED RELIEF**

The Internet Corporation for Assigned Names and Numbers ("ICANN") hereby files this objection to the Debtors' Motion for Orders Pursuant to Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code: (a) Fixing the Time, Date and Place for the Bidding

Procedures Hearing; (b)(i) Establishing Bidding Procedures and Bid Protections in Connection with the Sale of Certain of the Assets of Certain Debtors, (ii) Approving the Form and Manner of Notices, and (iii) Setting a Sale Approval Hearing Date; and (c)(i) Approving the Sale to WebOnTap, Inc. Free and Clear of All Liens, Claims and Encumbrances, (ii) Authorizing the Assumption and Assignment of Certain Executory Contracts and (iii) Granting Related Relief (the "Sale Motion") filed by Hosting.com, Inc., Allegiance Internet, Inc., Adgrafix Corporation and Virtualis Systems, Inc., all of which are debtors and debtors in possession in the above-captioned cases (collectively, the "Hosting Debtors"). In support hereof, ICANN respectfully represents as follows:

### **Background**

1. On May 14, 2003, Allegiance Telecom, Inc. ("ATI") and each of its direct and indirect subsidiaries, including the Hosting Debtors (collectively, with ATI, the "Debtors"), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

2. On February 20, 2004, this Court entered an order approving the sale to XO Communications, Inc. ("XO") of (a) substantially all of the assets of ATI and its Debtor subsidiary, Allegiance Telecom Company Worldwide ("ATCW"), and (b) the stock of the reorganized subsidiaries of ATCW. The shared web hosting assets of the Hosting Debtors and Shared Technologies Allegiance, Inc. and certain other assets were excluded from the sale to XO.

3. On May 4, 2004, the Hosting Debtors filed the Sale Motion, seeking, inter alia, authority to sell certain of the Hosting Debtors' shared web hosting assets (the "Sale Assets") to WebOnTap, Inc. ("WebOnTap") or to the successful bidder at an auction for sale of the Sale Assets (the "Successful Bidder"). The Sale Assets include a Registrar Accreditation Agreement (the "Registrar Agreement") with ICANN, and as a part of the sale, the Hosting Debtors propose to assume and assign this agreement to WebOnTap or the Successful Bidder.

4. The Hosting Debtors notified ICANN of the proposed assumption and assignment of the Registrar Agreement through a Notice of Debtors' Intent to Assume and Assign Certain Executory Contracts (the "Assumption Notice"). No discussions, however, between ICANN, on the one hand, and the Hosting Debtors, WebOnTap or any other potential bidder for the Sale Assets, on the other, regarding the proposed assumption and assignment of the Registrar Agreement have taken place.

5. Counsel for the Hosting Debtors agreed to extend the deadline by which ICANN is required to file an objection to the Sale Motion until 10:30 a.m. on June 16, 2004.

**The Proposed Assumption and Assignment  
of the Registrar Agreement Should Be Denied  
Absent Adequate Assurance of Future Performance**

6. Section 365(f)(2) of the Bankruptcy Code permits a debtor to assign an executory contract to a third party "only if" (a) the debtor assumes such contract in accordance with the provisions in section 365 of the Bankruptcy Code and (b) "adequate assurance of future performance by the assignee of such contract . . . is provided, whether or not there has been a default in such contract . . . ." 11 U.S.C. § 365(f)(2); See also In re Martin Paint Stores, 199 B.R. 258, 261-62 (Bankr. S.D.N.Y 1996). In the Assumption Notice, the Hosting Debtors have indicated that they will comply with the first requirement by curing existing defaults under the Registrar Agreement, in accordance with section 365(b)(1) of the Bankruptcy Code. ICANN

does not contest the proposed cure amount reflected in the Assumption Notice. The issue remaining, however, is whether WebOnTap or the Successful Bidder can and will comply with the second requirement under section 365(f)(2) mandating the provision of adequate assurance of future performance.

7. In particular, WebOnTap or the Successful Bidder must meet certain criteria in order to enter into the Registrar Agreement. Because neither WebOnTap nor any other prospective bidder has communicated with ICANN regarding the Registrar Agreement, ICANN has not ability to determine whether WebOnTap or any other potential assignee can satisfy the criteria. If the criteria cannot be met, ICANN will not be provided with the adequate assurance of future performance to which it is entitled to under the Bankruptcy Code.

8. ICANN does not wish to impede the Debtors' efforts to sell assets in their bankruptcy cases. Nonetheless, pursuant to section 365(f)(2) of the Bankruptcy Code, ICANN is entitled to know whether the prospective assignee of the Registrar Agreement is qualified to enter into and perform under that agreement. At this juncture, ICANN simply has no assurance that WebOnTap or any other potential assignee can perform under that contract.

### **Conclusion**

9. For the foregoing reasons, ICANN requests that the Court (a) deny the proposed assumption and assignment of the Registrar Agreement unless WebOnTap or the Successful Bidder demonstrate that it can satisfy the criteria for entering into the Registrar Agreement and (b) grant ICANN such other and further relief as may be just and proper.

Dated: June 16, 2004

Respectfully submitted,

/s/ Erica M. Ryland

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