

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

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**STIPULATION AND ORDER RESOLVING MOTION OF  
TRANSAMERICA REALTY INVESTMENT PROPERTIES, LLC TO  
COMPEL IMMEDIATE PAYMENT OF POST-PETITION ADMINISTRATIVE  
EXPENSES ARISING FROM UNEXPIRED LEASE OF NONRESIDENTIAL  
REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(d)(3)**

Allegiance Telecom, Inc. (“ATT”) and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), and Transamerica Realty Investment Properties, LLC (“Transamerica”), by and through their respective undersigned attorneys, hereby stipulate and agree, subject to Court approval, as follows:

WHEREAS, on May 14, 2003, each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”); and

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, ATI leased office space at 505 Sansome Street, San Francisco, California (the “Premises”), pursuant to that certain lease agreement (“Lease”), between ATI and Transamerica, as a successor in interest to Pyramid Investment Corporation, dated November 18, 1999;

WHEREAS, pursuant to the Lease, ATI posted with Transamerica a cash security deposit in the amount of \$37,482.50 (the “Security Deposit”) and provided Transamerica with an irrevocable standby letter of credit issued by Bank of America in the amount of \$112,447.50 (the “Letter of Credit”); and

WHEREAS, on or about December 10, 2003, Transamerica made a draw on the Letter of Credit; and

WHEREAS, Transamerica is holding the Security Deposit and the proceeds from the Letter of Credit (the “LOC Proceeds”); and

WHEREAS, on April 29, 2004, Transamerica filed that certain Motion to Compel Immediate Payment of Post-Petition Administrative Expenses Arising from Unexpired Lease of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(3) (the “Motion”); and

WHEREAS, in the Motion, Transamerica requested that the Court compel ATI to pay Transamerica the following amounts (the “Unpaid Amounts”): (a) the aggregate amount of unpaid base rent under the Lease of \$104,669.46 (the “Unpaid Base Rent”), (b) certain unpaid operating expenses of \$10,612.94 (the “Unpaid Operating Expenses”), (c) certain unpaid charges of \$356.09 (the “Unpaid Charges”) and (d) the late fees and interest with respect to the foregoing amounts in the amount of \$8,061.86 (the “Unpaid Late Fees”); and

WHEREAS, on May 18, 2004, the Debtors filed that certain “Schedule 1” to the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated April 22, 2004 (as amended, the “Plan”), which listed the Lease among the unexpired

leases of nonresidential real property that the Debtors seek to reject effective as of the Initial Effective Date (as defined in the Plan);<sup>1</sup> and

WHEREAS, subsequent to the filing of the Motion, the Debtors and Transamerica reached a consensual resolution with respect to the Motion, as set forth below.

**ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

1. Within five (5) business days of the entry of the order approving this Stipulation, ATI will pay Transamerica in cash (by wire transfer or by check) the amount of \$115,638.49 (i.e., the Unpaid Base Rent, the Unpaid Operating Expenses and the Unpaid Charges) (the “Payment”) in exchange for Transamerica’s waiver of (a) payment of the Unpaid Late Fees (i.e., the amount of \$8,061.86) and (b) any potential claims for reimbursement of attorneys’ fees incurred in connection with the prosecution of the Motion and the dispute related to the Unpaid Amounts. Nothing in this Stipulation shall be construed to require Transamerica to apply either the Security Deposit or the LOC Proceeds towards ATI’s obligation to make the Payment.

2. ATI will comply with its obligations under the Lease, through, but not including, the Initial Effective Date, in accordance with section 365(d)(3) of the Bankruptcy Code, including without limitation payment of Basic Monthly Rental (as defined in the Lease), Operating Expenses (as defined in the Lease) and additional rent pursuant to section 10(d) of the Lease (only if incurred). Nothing in this Stipulation shall be construed to require Transamerica to apply either the Security Deposit or the LOC Proceeds towards the payments that ATI is required to make pursuant to section 365(d)(3) of the Bankruptcy Code.

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<sup>1</sup> On June 10, 2004, the Court entered an Order confirming the Plan, as amended.

3. As of the Initial Effective Date, any right, title, or interest that ATI may have in property remaining on the Premises on the Initial Effective Date shall be abandoned and shall no longer constitute property of ATI's estate.

4. This Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation and Order.

5. The undersigned on behalf of the Debtors and Transamerica each warrants and represents that he or she has been duly authorized and empowered to execute and deliver this Stipulation and Order on behalf of such party.

6. This Stipulation and Order shall have no force or effect and shall not be binding upon either the Debtors or Transamerica until it is approved by the Court.

7. The parties acknowledge that no promise, inducement, or agreement not stated herein has been made to them in connection with this Stipulation, and that this Stipulation constitutes the entire agreement between them. The parties understand and agree that this Stipulation may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by both parties. The parties agree and acknowledge that they will make no claim at any time or place that this Stipulation has been orally altered or modified or otherwise changed by oral communication of any kind or character.

8. This Stipulation may be executed simultaneously or in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

A facsimile copy of a signature page is the equivalent of an original signature page.

Dated: New York, New York  
June 24, 2004

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ATTORNEYS FOR TRANSAMERICA

SO ORDERED, this 24th day of June 2004

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE