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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 5/20/04
AT: 10:00 a.m.

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: In re : Chapter 11 Case
: : No. 03-13057 (RDD)
: ALLEGIANCE TELECOM, INC. *et al.*, :
: : Jointly Administered
: Debtors. :
: :
: :
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**SECOND APPLICATION OF TOGUT, SEGAL & SEGAL LLP
FOR ALLOWANCE OF INTERIM COMPENSATION
FOR SERVICES RENDERED AS CO-COUNSEL TO THE
DEBTORS FOR THE PERIOD OCTOBER 1, 2003 THROUGH
FEBRUARY 29, 2004 AND FOR REIMBURSEMENT OF EXPENSES**

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

Togut, Segal & Segal LLP (“TS&S”), as bankruptcy co-counsel for Allegiance Telecom, Inc. and the other above-captioned debtors and debtors in possession (collectively, the “Debtors”), as and for its second application (the “Application”) for allowance of interim compensation for professional services rendered for the period October 1, 2003 through and including February 29, 2004 (the “Second Interim Period”), and for reimbursement of expenses incurred in connection with such services, respectfully shows this Honorable Court that:

I. FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT

1. This Application is made pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for allowance of interim compensation for services rendered to the Debtors in the amount of \$188,667, and for reimbursement of expenses in the amount of \$6,662.37.

2. During the Second Interim Period, TS&S attorneys and paraprofessionals expended a total of 426.8 hours for which compensation is requested. A schedule setting forth the number of hours expended by the partners, associates and paraprofessionals, their respective hourly rates, and the year in which each attorney was admitted to practice is attached hereto as Exhibit "1." A schedule specifying the type of expenses for which TS&S is seeking reimbursement and the total amount of each such category is attached hereto as Exhibit "2." To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Second Interim Period, but are not processed until after the date hereof, TS&S reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

3. TS&S maintains computerized records of the daily time slips completed by all TS&S attorneys and paraprofessionals. Preceding the time entries is a chart listing the names, billing rates and time spent by each of the attorneys and paraprofessionals rendering services on behalf of the Debtors. In support of this Application, copies of these computerized records, together with a computer generated detailed itemization of the expenses incurred, have been filed electronically with the Court as a supplement to this Application and furnished to the Debtors, the

Court, the United States Trustee, the Debtors' prepetition lenders, and counsel for the official statutory committee appointed in these cases (the "Committee").

4. Other than the payments described below made in accordance with the terms of the Administrative Order establishing procedures for interim compensation and reimbursement of professionals dated June 13, 2003 (the "Administrative Fee Order"), TS&S has not received payment of any additional compensation or reimbursement of expenses for the professional services rendered by TS&S during the Second Interim Period.

5. Pursuant to the terms of the Administrative Fee Order, TS&S submitted four monthly invoices during the Second Interim Period: (i) for October 2003 in the amounts of \$37,634.50 for fees and \$5,017.45 for expenses; (ii) for November 2003 in the amounts of \$17,159.50 for fees and \$617.46 for expenses; (iii) for December 2003 in the amounts of \$8,947.50 for fees and \$122.59 for expenses; and (iv) for January 2004 in the amounts of \$27,782.50 for fees and \$164.91 for expenses. As of this date, TS&S has not submitted a monthly invoice for February 2004 fees and expenses.

6. In accordance with the Administrative Fee Order, TS&S has received payment of 80% of its fees and 100% of its expenses for the period October 2003 through December 2003. As of the date of this Application, TS&S has not received payment on account of January and February 2004 fees and expenses.

7. As confirmed by the Certification of Albert Togut, a member of TS&S, attached hereto as Exhibit "3," all of the services rendered by TS&S during the Second Interim Period for which compensation is sought were rendered for and on behalf of the Debtors in connection with their Chapter 11 cases.

II. BACKGROUND

8. On May 14, 2003 (the "Filing Date"), the Debtors each commenced with this Court a voluntary case under Chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. No trustee or examiner has been appointed in these Chapter 11 cases. On May 28, 2003, the United States Trustee for the Southern District of New York appointed the Committee in these cases.

10. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (*i.e.*, national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

III. RETENTION OF TS&S

11. TS&S was retained by the Debtors just prior to the Filing Date in April 2003 to serve as bankruptcy co-counsel with Kirkland & Ellis, LLP (“K&E”). Among other matters, TS&S is responsible for handling all bankruptcy-related matters where K&E has an actual or perceived conflict, and other general bankruptcy work complementing K&E’s services. In connection with its retention, TS&S received \$100,000 as a retainer (the “Retainer”). TS&S’ fees and expenses through May 13, 2003 were \$10,075.50, leaving a balance from the Retainer of \$89,924.50, which is being held pending payment of final fees and expenses awarded to TS&S at the completion of the cases.

12. By Order dated June 13, 2003, the Debtors were authorized to retain TS&S on a final basis (the “Retention Order”). A copy of the Retention Order is attached hereto as Exhibit “4.”

13. Since its retention, TS&S and K&E have coordinated their efforts so that they do not to do the same things and their work is complimentary, not duplicative.

14. TS&S is a highly specialized “boutique”; for more than twenty years, its practice has been limited, almost exclusively, to insolvency and bankruptcy matters pending in this Court. TS&S has considerable experience in representing high profile Chapter 11 debtors, and has acted in a professional capacity in hundreds of cases representing the interests of debtors, creditors’ committees, secured creditors, and trustees.

15. Some of the Chapter 11 debtors TS&S has represented include: (i) Enron Corp. and certain of its affiliates, which are primarily engaged in energy trading

and operating gas transmission systems and which filed the second largest Chapter 11 cases in U.S. history (TS&S is bankruptcy co-counsel for the Enron Debtors); (ii) Ames Department Stores, Inc., the largest regional discount retailer in the United States (where TS&S is co-counsel); (iii) the operating subsidiaries of Loews Cineplex Entertainment Corporation, which involved the restructuring of the second largest movie theatre exhibitors in the U.S. with over \$1.5 billion of debt (where TS&S is co-counsel); (iv) Daewoo International (America) Corp., an international trading company; (v) ContiMortgage Corporation and certain of its affiliates, which were engaged in the consumer finance business and which filed Chapter 11 cases to restructure more than \$1 billion of debt; (vi) OnSite Access, Inc. and certain of its subsidiaries, which provided voice and data communication services to tenants in commercial buildings located throughout the United States and which filed Chapter 11 cases to restructure more than \$100 million in debt; (vii) Rockefeller Center, which involved the restructuring of more than \$1.3 billion of debt and 12 historic land-marked buildings in the heart of Manhattan; and (viii) the Olympia & York Tower B Company's World Financial Center, which concerned the restructuring of more than \$1 billion of debt.

16. The work encompassed by this Application for which compensation is sought was performed efficiently and at the lowest cost to the estates. The manner in which staffing has been done has enabled TS&S to bill fewer hours than would have otherwise been possible.

17. All of the work summarized in this Application was performed in such a manner as to insure minimal duplication of services in an effort to keep the administration expenses to these estates to a minimum.

IV. SERVICES RENDERED BY TS&S DURING THE SECOND INTERIM PERIOD

18. The following is a summary description of the significant services performed by TS&S during the Second Interim Period. All of the professional services provided by TS&S are set forth in TS&S' computerized time records, and the Court is respectfully referred to those records for the details of all of the work performed.

19. TS&S addressed a wide array of matters during the Second Interim Period, including: (i) representing the Debtors in connection with section 366 adequate assurance demands made by certain utility service providers; (ii) representing the Debtors in connection with objections to the abandonment of certain personal property located at several collocation sites; (iii) handling objections interposed by utility companies to the Debtors' sale of substantially all of their assets to XO Communications, Inc.; and (iv) representing the Debtors in connection with the motion of SBC Communications, Inc. for immediate payment of amounts allegedly due for postpetition charges.

A. Requests Of Utility Companies For Additional Adequate Assurances

20. As more particularly described in the First Interim Fee Application, on May 15, 2003, this Court entered the Order deeming utilities adequately assured of future performance and establishing procedures for determining requests for additional adequate assurance (the "Utilities Order"). The Utilities Order, among other things, (i) directs the Debtors' utility service providers (collectively, the "Utilities") to provide postpetition service to the Debtors without postpetition deposits or prepayments, (ii) provides the Utilities with administrative expense priority claims under section 503(b) of the Bankruptcy Code for utility charges

that accrue postpetition, and (iii) establishes a procedure by which the Utilities may request additional assurances of future payment.

21. Following the entry and service of the Utilities Order, the Debtors requested that TS&S handle all demands for additional adequate assurances and termination notices from the Utilities. TS&S quickly coordinated with the Debtors' personnel and responded to numerous requests from the Utilities seeking additional adequate assurances, including, but not limited to, postpetition security deposits.

22. During the Second Interim Period, TS&S assisted the Debtors (i) in finalizing and obtaining approval of a section 366 adequate assurances stipulation with Verizon Communications Inc. and its operating subsidiaries (collectively, "Verizon"); (b) in successfully resolving the section 366 demands of BellSouth Telecommunications, Inc. ("BellSouth"); and (c) defending the Motion of San Diego Gas & Electric Company ("SDG&E"), Commonwealth Edison Company ("ComEd") and Southern California Edison Company ("SCE," and together with SDG&E and ComEd, the "Requesting Utilities") to vacate the Utilities Order.

(i) **Verizon's Adequate Assurance Demands**

23. During the Second Interim Period, TS&S assisted the Debtors in finalizing the settlement agreement reached with Verizon during the First Interim Period in connection with Verizon's request for additional adequate assurances pursuant to section 366 of the Bankruptcy Code.

24. Following entry of the Utilities Order, Verizon requested additional adequate assurances of payment from the Debtors, including, among other things, the payment of security deposits of approximately \$4 million and/or an agreement by the Debtors to make prepayments for utility services. Verizon thereafter

filed a motion in support of its adequate assurances demand under section 366 of the Bankruptcy Code.

25. In connection therewith, TS&S was required to devote considerable time to researching and drafting a response to Verizon's section 366 motion. After filing the Response, the Debtors, with the assistance of TS&S, continued to negotiate with Verizon and its counsel and, just prior to the hearing to consider Verizon's Motion, the parties reached an agreement resolving Verizon's section 366 demands. At the hearing, which was held *in camera* before the Court, with counsel for the Committee and the prepetition lenders present, the parties outlined the terms of the settlement.

26. After the hearing, TS&S assisted the Debtors in documenting the terms of the Verizon settlement. TS&S made sure that the terms accurately reflected the agreement reached and outlined to the Court at the *in camera* hearing. After an extended period of continued negotiations over the details of the settlement agreement, due in part to the proprietary and sensitive nature of certain provisions, the parties executed the final form of the agreement on October 23, 2003 (the "Verizon Stipulation"). During this process, TS&S made certain that counsel for the Creditors' Committee was kept informed of all terms of the Verizon Stipulation so that it could promptly review same with the members of the Creditors' Committee.

27. Significantly, the Verizon Stipulation does not provide Verizon with a cash security deposit and/or right to prepayment for charges; it provides Verizon with, among other things, a fixed payment cycle for postpetition service charges, default and termination provisions on shortened notice to the Debtors and the Committee and upon approval of the Court, and access to certain financial

information on a confidential basis. Pursuant to the Verizon Stipulation, the parties agreed to keep its terms confidential.

28. TS&S took an active role in negotiating the Verizon Stipulation and prepared the requisite pleadings to obtain Court approval of same. During the Second Interim Period, TS&S drafted the motion seeking Court approval of the Verizon Stipulation, as well as the application to file the Verizon Stipulation under seal. The Verizon Stipulation was approved by the Court on November 7, 2003 and filed under seal by the Clerk of the Court.

(ii) **BellSouth's Adequate Assurance Demands**

29. During the Second Interim Period, TS&S continued to assist and defend the Debtors in connection with a demand made by BellSouth for additional adequate assurances pursuant to section 366 of the Bankruptcy Code.

30. On or about May 20, 2003, the Debtors received BellSouth's demand for additional adequate assurances, which sought, among other things, payment of security deposits of approximately \$2.3 million and/or an agreement by the Debtors to make prepayments for utility services. On July 29, 2003, BellSouth filed its Motion in support of its section 366 demands. TS&S was required to devote substantial time to preparing a response to the BellSouth 366 Motion.

31. After months of continued negotiations between the parties (during which the Debtors continued to make payments to BellSouth for undisputed charges in the ordinary course of business), BellSouth, at the request of the Debtors, agreed to withdraw its section 366 Motion. On February 20, 2004 BellSouth filed a formal notice withdrawing its motion without prejudice. Because of TS&S' services, the Debtors were able to avoid costly and protracted litigation and BellSouth

ultimately withdrew its demands for additional assurances. TS&S continues to assist the Debtors in connection with their negotiations with BellSouth.

(iii) Requesting Utilities Motion To Vacate The Utilities Order

32. In June 2003, the Debtors received demands for additional adequate assurance demands pursuant to section 366 of the Bankruptcy Code from each of the Requesting Utilities – with each seeking cash deposits equal to two to four months of estimated service. The Debtors advised the Requesting Utilities that the additional assurance requests were unreasonable under the circumstances.

33. On August 1, 2003, the Requesting Utilities filed a motion (the “Motion to Vacate”) for an order (a) vacating the Utilities Order and (b) determining adequate assurances of future payment. In addition to seeking deposits, the Motion to Vacate sought to vacate the Utilities Order because (i) the Court entered it as a “first day” order without prior notice to the Requesting Utilities and (ii) it allegedly granted unauthorized injunctive relief by prohibiting the Requesting Utilities from terminating utility services to the Debtors in accordance with state regulatory procedures absent further order of the Court. The Requesting Utilities argued that section 366 of the Bankruptcy Code does not authorize the Bankruptcy Court to interfere with non-bankruptcy state law procedures for termination in the event of a postpetition default.

34. Prior to the hearing on the Motion to Vacate, the Debtors attempted to negotiate a resolution with the Requesting Utilities. The Requesting Utilities, however, would not agree to a settlement unless they were each provided with postpetition cash security deposits and the Debtors consented to state law termination procedures without prior Bankruptcy Court approval. The Debtors and the Committee were adamant that (i) no cash deposits be paid and (ii) the Requesting

Utilities obtain Bankruptcy Court approval, on notice to the Debtors, prior to any termination of service on account of a postpetition default.

35. Thereafter, TS&S researched and drafted an objection to the Motion to Vacate. TS&S was required to research a number of issues, including the Bankruptcy Court's authority to (i) enjoin the Requesting Utilities from terminating service without prior Bankruptcy Court approval on account of a postpetition default and (ii) enter the Utilities Order as a "first day" order in the absence of an adversary proceeding in accordance with Bankruptcy Rule 7001. After extensive research on the applicable bankruptcy and certain non-bankruptcy law, TS&S concluded that the Bankruptcy Court does have such authority.

36. TS&S filed and served the Objection on October 16, 2003. On October 17, 2003, the Requesting Utilities filed a Reply to the Objection. TS&S expended significant effort in reviewing and analyzing the arguments made by the Requesting Utilities and in preparing for the hearing.

37. On October 21, 2003, TS&S attended and argued the matter on behalf of the Debtors. After argument, the Court agreed with the Debtors and denied the Motion to Vacate. The Court ruled that section 366 of the Bankruptcy Court gives the Court authority to enjoin a utility company from terminating service for postpetition defaults and ordered the Requesting Utilities to first seek Bankruptcy Court approval before terminating service to the Debtors. Moreover, the Court ruled that the "first-day" motion procedure that has been adopted in this district is appropriate, and it works well, obviating commencement of an adversary proceeding (or multiple adversary proceedings) to obtain the relief typically provided by the Utilities Order.

38. At the Hearing, the Court read into the record a detailed bench decision denying the Motion to Vacate and directed the Debtors to settle an order in accordance therewith. Thereafter, the Debtors awaited the preparation of the transcript, which was ordered from Doyle Reporting immediately after the Hearing for delivery on an expedited basis. However, the Debtors were advised that Doyle's court reporter never prepared the transcript and the reporter's whereabouts were unknown. Doyle's efforts to locate the reporter proved fruitless.

39. Without aid of the transcript, TS&S drafted a proposed order and circulated the order to counsel for the Requesting Utilities. TS&S participated in extensive communications with the Requesting Utilities regarding suggested revisions to the draft order. Despite TS&S' efforts, the parties were unable to reach agreement on a consensual order. On December 16, 2003, TS&S submitted a proposed order to the Court for consideration. On December 23, 2003, the Requesting Utilities filed an objection to the proposed order. Thereafter, the Debtors, with the assistance of TS&S, continued to negotiate with the Requesting Utilities in an attempt to reach a consensual order. After further communication with counsel for the Requesting Utilities, the Debtors and the Requesting Utilities agreed to the terms of an order. TS&S revised the proposed order and submitted it to the Court for approval. The order was approved and entered by the Court on February 20, 2004.

B. Verizon's Objection To The Debtors' Motion To Abandon Personal Property

40. During the Second Interim Period, TS&S represented the Debtors in connection with the Objection filed by Verizon to the Debtors' motion dated December 24, 2003 (the "Abandonment Motion") for an order authorizing the Debtors

to abandon their personal property located at certain collocation sites owned by Verizon.

41. In the Abandonment Motion, the Debtors sought Court authorization to abandon certain personal property that was burdensome and of inconsequential value to the Debtors' estates. In the Objection, Verizon argued that the Debtors should not be authorized to abandon the personal property unless (a) the Debtors complied with any obligations they may have under certain non-bankruptcy laws and regulations; (b) the Debtors agreed to reimburse Verizon for the cost of removing such property; and (c) the Debtors obtained a release from any third parties that may have an interest in the personal property.

42. TS&S was required to devote considerable time to researching and drafting a reply to the Verizon Objection. TS&S prepared and filed the Debtors' Reply on January 14, 2004. In the Reply, the Debtors argued that the Bankruptcy Code provides a debtor with an expansive right to abandon property that is burdensome to the estate or of inconsequential value. Courts may limit or condition this right only when the proposed abandonment will contravene a law or regulation that was enacted to protect the public health or safety from imminent and identifiable harm. Verizon did not contend that the personal property had any value to the Debtors' estates nor did any of the rules or regulations that Verizon asserted would be violated implicate public health or safety. Furthermore, the Debtors agreed that to the extent that Verizon incurs any costs in removing the personal property, Verizon can file a claim against the Debtors without prejudice to the Debtors' right to object to same at a later date. TS&S also participated in conferences with counsel for the prepetition lenders to address their interests in the personal property and obtain releases satisfactory to

Verizon. TS&S attended and argued at the hearing held on January 21, 2004, at which time, the Court granted the Abandonment Motion.

43. The Court concluded that the Debtors' right to abandon property is broad and there are no public health or safety issues that could serve to curb the Debtors' right to abandon burdensome or inconsequential property. Furthermore, the Court agreed that Verizon could not condition the Debtors' right to abandon by asserting a right to get paid its clean-up costs before the abandonment is effective. The Court did note that Verizon may assert a claim to the extent it incurs costs in removal and the Court will address the priority of such claim when it is brought before the Court. The Court directed the Debtors to prepare an order and settle same on notice to Verizon. Following the Court's ruling, TS&S worked closely with, and coordinated the comments of, the Debtors and counsel for Verizon in preparing and submitting an order acceptable to the parties. The order approving the Abandonment Motion was entered on January 30, 2004.

C. ILEC Objections To Sale

44. During the Second Interim Period, TS&S represented the Debtors in connection with the Objections filed by Verizon, BellSouth, AT&T and AboveNet, Inc. (collectively, the "Objecting ILECS") to the Debtors' motion (the "Sale Motion") to sell substantially all of their assets to XO Communications, Inc.

45. The hearing (the "Sale Hearing") to consider the Sale Motion was scheduled for February 19, 2004 and the objection deadline was February 17, 2004. On February 17, 2004, the Objecting ILECs filed their respective objections to the Sale Motion and certain provisions of the proposed Sale Order that address the assumption and assignment procedures for executory contracts and tariffs of the Objecting ILECs.

46. Because TS&S represented the Debtors in connection with the ILECs' demands under section 366 of the Bankruptcy Code and TS&S had become fully familiar with the claims asserted by the Objecting ILECs, TS&S was asked to handle and respond to the ILEC Objections. This required TS&S to engage, on an expedited basis, in an intense review and analysis of the documentation underlying the sale, including the voluminous XO transaction documents, so that they could properly determine the sale's implications on the Objecting ILECs. Additionally, TS&S professionals were required to confer with the Debtors and their other professionals and representatives, and participated in numerous conferences with such representatives. After extensive review of the underlying documentation, TS&S researched, drafted and filed a response to the ILEC Objections.

47. In addition to researching and drafting a response to the ILEC Objections, TS&S participated in intense negotiations with counsel for the Objecting ILECs over a condensed time frame. TS&S advised the Objecting ILECs that the Sale Order did not contemplate the assumption and assignment of the ILECs' agreements with the Debtors. Following extensive discussions led by TS&S, the parties agreed to modifications to the Sale Order that would resolve the Objecting ILECs' concerns. TS&S attended the hearing on February 19, 2004 and informed the Court of the resolution. Thereafter, TS&S worked closely with the Debtors, their professionals and counsel for the ILECs to incorporate the agreed-upon modifications to the Sale Order. The Sale Order was entered by the Court on February 20, 2004.

D. SBC Motion For Immediate Payment Of An Alleged Administrative Expense Claim

48. On January 29, 2004, SBC filed its motion seeking an order enforcing the Utilities Order and granting SBC immediate payment of approximately \$13.5 million in alleged postpetition invoices as administrative expenses of the Debtors.

49. The Debtors requested TS&S to respond to the SBC Motion. Thereafter, TS&S worked closely with the Debtors in reviewing the SBC Motion and determining the extent of the Debtors' use, if any, of SBC services during the postpetition period. TS&S participated in conferences with representatives of the Debtors and SBC in an attempt to reach a resolution of the matter before the scheduled hearing.

50. Unable to resolve the matter consensually, TS&S researched, drafted and filed an objection to the SBC Motion on February 20, 2004. In addition, TS&S assisted the Debtors in preparing and filing the Affidavit of Jay Pendleton in Support of the Objection to the SBC Motion. Except for certain undisputed charges that the Debtors paid SBC in the ordinary course, the Debtors argued that SBC was not entitled to an administrative expense claim for certain charges claimed in the SBC Motion because the underlying services were terminated and not actually used by the Debtors. Those services did not provide a benefit to the estates and, accordingly, SBC is not entitled to payment on an administrative expense basis or pursuant to the Utilities Order.

51. On February 25, 2004, TS&S attended and argued the matter on behalf of the Debtors. After argument, the Court directed the parties to narrow the issues and determine which amounts requested by SBC relate to terminated, rejected

or abandoned services. Once the parties make such determination, the Court will determine whether SBC is entitled to immediate payment of those charges on administrative expense priority basis.

52. For those amounts sought by SBC that did not relate to terminated, rejected or abandoned services, the Court directed that the parties proceed with the dispute resolution procedures set forth in the SBC agreements and/or tariffs. If disputes exist after the dispute resolution procedures are complied with, the Court will determine whether SBC is entitled to payment for such disputed charges.

53. The Court directed SBC to draft and settle an order in accordance with its ruling. On February 27, 2004, SBC submitted an order to the Court for settlement on March 3, 2004. After reviewing the transcript of the hearing, the Debtors had several concerns and objections SBC's proposed order. TS&S thereafter participated in several conferences with representatives of the Debtors and SBC in an attempt to reach an agreement to resolve the Debtors' objections to the proposed order. On March 2, 2004, TS&S and counsel for SBC advised the Court that SBC would withdraw the proposed order and the parties would negotiate a consensual order for approval by the Court. After continued conferences and correspondence with the Debtors' representatives and SBC's counsel, the parties were able to reach resolution on a consensual order, which was approved by the Court on March 9, 2004.

54. TS&S continues to assist the Debtors in negotiations with SBC and address matters and issues related to SBC. TS&S has participated in telephonic and a conference in Dallas with representatives of the Debtors and SBC to discuss a resolution of SBC's claims and other matters related to SBC's agreements and tariffs.

E. Miscellaneous Matters Addressed By TS&S

55. In addition to the matters discussed above, TS&S has rendered services for, or on behalf of the Debtors in connection with other miscellaneous matters, such as:

- (i) participating at meetings between the Debtors and the Creditors' Committee;
- (ii) responding to inquiries from parties-in-interest as necessary;
- (iii) reviewing pleadings that impacted (or could impact) the Debtors' financial position in connection with responding to Utilities' requests for additional assurances;
- (iv) conferring with K&E regarding the delegation of responsibilities of certain matters in this case to identify matters to be handled by TS&S and to prevent duplication of efforts between the two firms;
- (v) commencing the review and analysis of claims in preparation of omnibus claim objections; and
- (vi) commencing the review and analysis of potential preference payments.

V. THE COMPENSATION REQUESTED

56. The perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to section 330 of the Bankruptcy Code:

[B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and

Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

124 Cong. Rec. H11,092 (daily ed. Sept. 28, 1978) (emphasis added). See also In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991); In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Service Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885 (Bankr. N.D. Ohio 1985).

57. The philosophy underlying the adoption of section 330 of the Bankruptcy Code is equally applicable to interim compensation. The Bankruptcy Code provides that the same considerations apply to making interim awards of compensation under section 331 as to final allowances under section 330. See In re Public Service Co. of New Hampshire, 93 B.R. at 826; In re International Horizons, Inc., 10 B.R. 895 (Bankr. N.D. Ga. 1981). Section 331 of the Bankruptcy Code provides:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the Court may allow and disburse to such applicant such compensation or reimbursement.

11 U.S.C. § 331.

58. At all times throughout this case, TS&S has successfully endeavored to avoid expensive litigation by brokering reasonable settlements among the parties. TS&S' efforts have therefore been of significant value to the Debtors and the creditors of these estates.

59. TS&S has not sought to burden this Court by setting forth all of the myriad services rendered to the Debtors and for the benefit of creditors. TS&S has reviewed all of its office files which indicate numerous legal situations and problems resolved over and above those detailed in this Application, and which are more fully summarized in the time sheet entries annexed hereto and made a part hereof which were contemporaneously prepared when the services were rendered.

60. TS&S has devoted 426.8 hours of actual recorded time during the Second Interim Period, resulting in time charges of \$188,667, as reflected in Exhibit "1" hereto.

61. Throughout the Second Interim Period, TS&S sought to assign projects in this case to associates, law clerks, and paraprofessionals who could most efficiently and expeditiously handle them. TS&S respectfully submits that the legal services reflected in the annexed time slip entries are fair and reasonable and are commensurate with the quality of services provided herein.

62. In addition to the fees sought for legal services, TS&S has incurred \$6,662.37 in out-of-pocket expenses during the Second Interim Period directly attributable to the representation of the Debtors. Annexed hereto as Exhibit "2" is a schedule of such out-of-pocket expenses incurred by TS&S. Accordingly, TS&S respectfully requests an allowance in the amount of \$6,662.37 for reimbursement of those out-of-pocket expenses.

63. No part of the compensation to be received pursuant to this Application will be shared with any other person or firm, and no other agreements, either express or implied, to share any compensation received as attorneys for the Debtors has been, or will be, made by TS&S.

64. Copies of this Application have been given to: (i) the Debtors; (ii) co-counsel for the Debtors; (iii) counsel for the Committee; (iv) the United States Trustee; and (v) counsel for the Debtors' prepetition lenders.

WHEREFORE, TS&S respectfully requests that this Application be granted and that it be awarded an interim allowance of \$188,667 for legal services rendered to the Debtors during the Second Interim Period, and \$6,662.37 for reimbursement of expenses, and that such other and further relief be granted as may be just and proper.

DATED: New York, New York
April 8, 2004

TOGUT, SEGAL & SEGAL LLP,
Co-Counsel for the Debtors

/s/ Albert Togut
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