Hearing Date: April 16, 2004 at 10:00 a.m.
Objection Deadline: April 13, 2004 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION OF TIME WARNER TELECOM HOLDINGS, INC. TO MOTION FOR AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING A RECORD DATE; (III) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (IV) APPROVING FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON THE PLAN; AND (V) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PLAN

Time Warner Telecom Holdings, Inc ("TWTC"), by its counsel, Otterbourg, Steindler, Houston & Rosen, P.C., hereby submits this objection (the "Objection") to the Motion For An Order (I) Approving The Disclosure Statement; (II) Establishing A Record Date; (III) Approving Solicitation Packages And Procedures For Distribution Thereof; (IV) Approving Forms Of Ballots And Establishing Procedures For Voting On The Plan; And (V) Establishing Notice And Objection Procedures For Confirmation Of The Plan (the "Motion"). In support thereof, TWTC represents and alleges the following:

PRELIMINARY STATEMENT[1]

1. This Court should not expend precious judicial resources to consider approval of the Disclosure Statement which is woefully deficient as a matter of law and proposes a Plan which is patently unconfirmable. The Debtors' solicitation of creditors' votes would achieve nothing but the dissipation of the estates' assets and resources to the detriment of their creditors. Given the deficiencies of the Disclosure Statement and the current structure of the Plan, this Court should deny the Debtors' request for approval of the Disclosure Statement.

BACKGROUND

2. On May 14, 2003 (the "Commencement Date"), Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors" or "Allegiance") commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. TWTC and the Debtors are parties to a contract pursuant to which TWTC provides certain telecommunications services to the Debtors.

5. On March 18, 2004, the Debtors filed their joint plan of reorganization under chapter 11 of the Bankruptcy Code (the "Plan"), and the related disclosure statement for the Plan (the "Disclosure Statement").

6. Pursuant to the Plan, all of the Debtors' subsidiaries are to be reorganized. XO will purchase the stock of the reorganized subsidiaries and substantially all of the assets of Allegiance Telecom, Inc. ("ATI") and Allegiance Telecom Company Worldwide ("ATCW").

[1] Terms not defined herein shall have the meaning set forth in the Motion.

The Plan provides for the assumption or rejection of various contracts/leases, but does not provide a list of the contracts to be assumed or rejected. The Plan has a provision pursuant to which certain executory contracts will not be rejected until up to 180 days after the Initial Effective Date of the Plan.

7. The Plan states that after the Initial Effective Date, Utility Companies and Access Providers (which include companies providing telecommunication services such as TWTC) must continue to provide all utility and tariff services previously provided to the Debtors, without interruption, to the Debtors, Reorganized Subsidiaries or XO. The Plan also prohibits Utility Companies and Access Providers from requesting additional deposits or other financial security from the Debtors, XO or any reorganized entity as a result of the bankruptcy. In addition, Plan provides that XO will have standing to object to claims arising out of utility services and tariff services.

OBJECTION

8. Although consideration of whether a plan satisfies the conditions of Section 1129 of the Bankruptcy Code is generally addressed at a confirmation hearing, a court may refuse to approve the Disclosure Statement, if it is apparent that the Plan is not confirmable. In fact, it makes little sense to send out a disclosure statement to solicit votes on a plan which is not confirmable on its face. *See,* e.g., In re Silberkraus, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) (Waste of resources to approve disclosure statement if improper classification of claims renders plan unconfirmable); In re Allied Gaming Management, Inc., 209 B.R. 201, 202 (Bankr. W.D. La. 1997); Atlanta West, 91 B.R. at 622; In re Pecht, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986) (Court held that if a plan does not comply with Section 1129 of the Bankruptcy Code Court must decline approval of the disclosure statement and prevent diminution of the estate.)

9. The Debtors' Plan is uncconfirmable as a matter of law for various reasons, any one of which standing alone mandates that the Court decline approval of the Plan. Thus, this Court should now prevent undue delay and dissipation of the estates' assets, by disapproving the Disclosure Statement. Specifically, the Plan is unconfirmable as a matter of law for the following reasons:

A. Sections 6.2 and 6.3 of the Plan require TWTC, and other similarly situated creditors, to continue to provide services to the Reorganized Subsidiaries and XO on the same terms as previously provided to the Debtors without complying with the assumption and assignment process established by section 365 of the Bankruptcy Code;

B. The Plan states that all executory contracts and unexpired leases which are set forth on Schedules 2, 3, 4 and 5 shall be deemed rejected, but the Plan requires the non-debtor party to perform under contracts which will apparently be rejected; and

C. The third party releases provided under the Plan are unduly broad and without sufficient justification.

10. The Pecht court articulated a sensible policy basis for declining approval of a disclosure statement pursuant to Section 1125 of the Bankruptcy Code for a nonconfirmable plan where the plan violated the absolute priority rule:

> Not only would allowing a nonconfirmable plan to accompany a disclosure statement, and be summarized therein, constitute inadequate information, it would be misleading and it would be a needless expense to the estate.

Id. *See also* Allied, 209 B.R. at 202 ("the estate should not be burdened (both in terms of time and expense) with going through the printing, mailing, noticing, balloting, and other exercises in the confirmation process where inability to attain confirmation is a *fait accompli*".)) As stated by one bankruptcy court, disapproval of a disclosure statement when it is apparent that the plan is not confirmable avoids "engaging in wasteful and fruitless exercise of sending disclosure statement to creditors and soliciting votes on a proposed plan when the plan is unconfirmable on its face. Such an exercise in futility only serves to further delay a debtor's attempts to reorganize." In re Atlanta West VI, 91 B.R. at 621 (Bankr. N.D. Ga. 1988).

11. A court should deny approval of a proposed disclosure statement if the underlying plan of reorganization is unconfirmable on its face. *See e.g.*, In re Beyond.com Corp., 289 B.R. 138, 140 (Bankr. N.D. Cal. 2000); In re United States Brass Corp., 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996); In re Curtis Ctr. Ltd., 195 B.R. 631, 638 (Bankr. E.D. Pa. 1996) (holding that "a disclosure statement should be disapproved where the plan it describes is patently unconfirmable"); In re Felicity Assocs., 197 B.R. 12, 14 (Bankr. D.R.I. 1996) (noting that "[i]t has become standard Chapter 11 practice that 'when an objection raises substantive plan issues that are normally addressed at confirmation, it is proper to consider and rule upon such issues prior to confirmation, where the proposed plan is arguably unconfirmable on its face'") (Citations omitted); Pecht, 57 B.R. 137 (Bankr. E.D.Va 1986) (disapproving disclosure statement where debtor is unable to cramdown plan over dissenting impaired class); In re McCall, 44 B.R. 242, 243 (Bankr. E.D.Pa. 1984) (objection to disclosure statement is proper where plan is unconfirmable because "[a] contrary result would merely delay the consideration of an inevitable objection at a cost to [the estate]"); In re 266 Washington Assocs., 141 B.R. 275, 288 (Bankr. E.D.N.Y. 1992), *aff'd* 147 B.R. 827 (E.D.N.Y. 1992) (where cramdown under Section 1129(b)

of the Bankruptcy Code was not possible, court disapproved disclosure statement given that it "describes a plan which is fatally flawed and thus incapable of confirmation.").

WHEREFORE, TWTC respectfully requests that this Court enter an order disapproving the Disclosure Statement, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 13, 2004

Respectfully submitted,

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.

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