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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

**HEARING DATE: 4/16/04**
**AT: 10:00 A.M.**

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

**DEBTORS' RESPONSE TO OBJECTIONS FILED BY**
**CERTAIN TELECOMMUNICATION SERVICE PROVIDERS**
**TO THE DEBTORS' PROPOSED DISCLOSURE STATEMENT**

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

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors"), by their co-bankruptcy counsel, Togut, Segal & Segal LLP, as and for their response to the objections (collectively, the "Objections") filed by (a) BellSouth Telecommunications, Inc. ("BellSouth"), Qwest Communications Corporation ("Qwest"), SBC Telecommunications, Inc. ("SBC"), Time Warner Telecom Holdings, Inc. ("Time Warner"), Verizon Communications, Inc. ("Verizon") and WorldCom, Inc. ("WorldCom," and together with BellSouth, Qwest, SBC, Time Warner, and Verizon, the "Objecting Utility Providers") and (b) KMC Telecom XI LLC ("KMC"), to approval of the Debtors' Disclosure Statement, dated March 18, 2004 (the "Disclosure Statement"), respectfully state that:

**PRELIMINARY STATEMENT[1]**

1. This Response incorporates by reference the discussion of factual background contained in the Debtors' Statement filed by Kirkland & Ellis LLP (the "K&E Statement") on April 15, 2004 in support of the Debtors' Motion dated March 18, 2004 (the "Disclosure Statement 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.

2. The primary objection of the Objecting Utility Providers is to sections 6.2 and 6.3 of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated March 28, 2004 (the "Plan"). Specifically, the Objecting Utility Providers primarily contend that such sections require "Utility Companies" and "Access Providers" to continue providing service to the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer, without the assumption, assignment and cure of alleged defaults under their tariffs with the Debtors.

3. In addition, certain of the Objecting Utility Providers and KMC have also asserted that the Disclosure Statement does not contain sufficient information regarding the provisions of the Plan concerning, among others, (i) the Debtors' compromise and settlement with the ATI Note Trustees and the treatment of the ATI Note Trustees' claims, (ii) the proposed deemed consolidation of the Debtors for Plan purposes, (iii) the scope and justification for releases of certain third parties by the

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[1] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan and the Disclosure Statement.

Debtors, (iv) the amounts of recoveries to be received by the Debtors' unsecured creditors and (v) the liquidation analysis contained in the Disclosure Statement. The Objecting Utility Providers and KMC argue that the Disclosure Statement should not be approved because the Plan is "unconfirmable," contending that the standards for the proposed compromise and settlement and substantive consolidation set forth in the Bankruptcy Code, the Bankruptcy Rules and applicable caselaw have not been met.

4. To address these issues, the Debtors have revised the Disclosure Statement to provide additional disclosure regarding the rationale and legal justification for the proposed compromise and settlement, substantive consolidation and additional information with respect to the majority of issues raised in the Objections. The amended version of the Disclosure Statement will be provided to the Court at the hearing to consider approval of the Disclosure Statement and the Disclosure Statement Motion.

5. As explained below, the issues raised by the Objecting Utility Providers and KMC in opposition to the Disclosure Statement, to the extent such issues have not been resolved by additional disclosure provided by the Debtors' in the amended version of the Disclosure Statement, are essentially matters that implicate the confirmability of the Plan and should be heard, if at all, at the hearing on confirmation. Moreover, there is simply no factual or legal basis for contending that the provisions contained in sections 6.2 and 6.3 of the Plan render the Plan unconfirmable on its face such that the Disclosure Statement should not be approved.

## RESPONSE

**A. The Disclosure Statement Contains Adequate Information and Confirmation Issues Should Be Determined at a Hearing on Confirmation**

6. As noted above, the majority of issues raised in the Objections deal with issues regarding the confirmability of the Plan and ***are not*** an appropriate basis for objecting to the Disclosure Statement. Confirmation issues and challenges should be determined at a hearing to consider confirmation of a plan of reorganization and in accordance with the procedures attendant to such a hearing. In re Waterville Timeshare Group, 67 B.R. 412 (Bankr. D.N.R. 1986) (holding that a conflict regarding the wisdom of a litigation compromise that was an integral part of the plan did not render the debtor's disclosure statement inadequate); In re Featherworks Corp., Inc., 45 B.R. 455 (Bankr. E.D.N.Y. 1984). The Debtors have the right to have challenges to confirmation determined on the basis of an appropriate record and the facts and circumstances developed up to and including the hearing on the confirmation of the Plan.

7. In In re Waterville Timeshare Group, 67 B.R. 412, the court recognized the inherent limitations of a disclosure statement hearing. The court observed that:

> [A ]pproval of a disclosure statement is an interlocutory action in the progress of a chapter 11 reorganization effort leading to a confirmation hearing at which all parties have ample opportunity to object to confirmation of the plan.

Id. at 413.

8. Moreover, the court observed that section 1125(a) of the Bankruptcy Code excludes from a disclosure statement hearing those strategic objections "designed to delay and hobble the efforts of the [plan proponent] to put a plan before the court." Id. at 414.

9. The hearing on the adequacy of a disclosure statement should not be seized upon by creditors to address the confirmability of a plan of reorganization. As one court stated, "[i]f creditors oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan's confirmability will await the hearing on confirmation" In re Scioto Valley Mortgage Co., 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988). In In re Matter of Featherworks Corp., Inc., 45 B.R. 455, the court approved the adequacy of an amended disclosure statement filed in connection with a plan that almost exactly mirrored a previously rejected plan. Id. at 457. In approving the adequacy of the disclosure statement the court held that:

> [I]t is too early before the hearing on confirmation to conclude that the present plan cannot be confirmed. That determination must await examination of the evidence offered at the hearing on confirmation.

Id.

10. The Objecting Utility Providers and KMC want this Court to address confirmation issues at the hearing to approve the Disclosure Statement. Such review, however, is permitted only when the proposed plan of reorganization is "patently" or "facially" unconfirmab1e. See In re Cardinal Congregate I, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) ("Where objections relating to confirmability of a plan of reorganization raise novel or unsettled issues of law, the Court will not look behind the disclosure statement to decide such issues at the hearing on the adequacy of the disclosure statement."); In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) (". . . care must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those defects that could not be cured by voting"); In re Monroe Well Service, Inc., 80 B.R. 324,333 (Bankr. E.D. Pa. 1987) ("Occasionally it might be appropriate to disapprove of a disclosure statement, even if it

properly summarizes and provides adequate information, when the court is convinced that the plan could not possibly be confirmed.”).

11. Here, the Plan is neither “patently” nor “facially” unconfirmable. To the contrary, the Debtors believe that their Plan will be accepted by the requisite majority of its creditors and is confirmable as both a factual and legal matter. The objections to confirmability premised on substantive consolidation, unfair discrimination, unequal treatment, and the propriety of the proposed compromise and settlement, should not be addressed at the hearing to approve the Disclosure Statement because due process considerations entitle each creditor, as well as the Debtors, to be heard on the merits of these issues. The proper time for this debate is at the confirmation hearing.

**B. Sections 6.2 and 6.3 of the Plan Do Not Render the Plan Patently Unconfirmable**

12. The Objecting Utility Providers assert that the Plan is not confirmable because sections 6.2 and 6.3 of the Plan require “Access Providers” and “Utility Companies” to continue providing tariff and utility services to the Debtors, the Reorganized STFI, Reorganized Subsidiaries or Buyer, without providing for a “cure” of the defaults under the tariffs and utility agreements.

13. The two Plan sections at issue provide as follows:

> **6.2 Utility Services.**
>
> After the Initial Effective Date, all Utility Companies shall continue to provide to the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer without interruption all Utility Services provided to the Debtors prior to the Initial Effective Date whether such Utility Services were provided pursuant to a contract or Tariff. Utility Companies shall not be entitled to request any additional deposits or other financial security from the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer as a result of, arising out of, or in connection with, the Chapter 11 Cases. Any Claim against a Debtor by a Utility Company (or a Holder of a Claim of a

> Utility Company) for the provision of Utility Services to such Debtor prior to the Commencement Date shall be deemed to be an ATCW Unsecured Claim and shall be treated in accordance with Section 3.4 hereof. The Buyer shall have standing with respect to Claims arising out of Utility Services.

Section 6.2 of the Plan.

> **6.3 <u>Tariff Services.</u>**
>
> After the Initial Effective Date, all Access Providers shall continue to provide to the Debtors, Reorganized STFI, the Buyer or the Reorganized Subsidiaries, as the case may be, without interruption all Tariff Services, specifically including usage-sensitive access services, provided to the Debtors prior to the Initial Effective Date. Access Providers shall not be entitled to request any additional deposits or other financial security from the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer as a result of, arising out of, or in connection with, the Chapter 11 Cases. Any Claim against a Debtor by an Access Provider (or a Holder of a Claim of an Access Provider) for the provision of Tariff Services to such Debtor prior to the Commencement Date shall be deemed to be an ATCW Unsecured Claim and shall be treated in accordance with Section 3.4 hereof. The Buyer shall have standing with respect to Claims arising out of Tariff Services.

Section 6.3 of the Plan.

14. The Plan reflects the Debtors' position that obligations provided by tariffs and utility service orders do not arise under an "executory contract" as such term is defined under the Bankruptcy Code and that the Debtors' agreements with Access Providers and Utility Providers are governed by section 366 of the Bankruptcy Code, rather than by section 365 of the Bankruptcy Code as asserted by the Objecting Utility Providers. Notably, none of the Objecting Utility Providers have asserted that section 366 does not apply to them. In fact, all of the Objecting Utility Providers requested the Debtors treat them as Utilities under the Utilities Order previously entered by this Court.

15. Moreover, not one of the cases relied on by the Objecting Utility Providers deals with the issue of whether a tariff is an "executory contract" under

section 365 of the Bankruptcy Code. In fact, some of the cases relied on by the Objecting Utility Providers actually define tariffs to be analogous to public laws and regulations, not contracts. See Metro E. Center for Conditioning & Health v. Qwest Communications Int'l, Inc., 294 F.3d 924, 926 (7th Cir. 2002) ("by virtue of federal law a tariff is more conclusive than a contract and is said to have the status of a regulation… tariff also may be enforced through suit just as a contract may be enforced."); Am. Tel. & Tel. Co. v. New York City Human Res. Admin., 833 F. Supp. 962, 970 (S.D.N.Y. 1993) ("It is clear from the case law in this area that these tariffs are not mere contracts, but rather have the force of law."); MCI Telecomms. Corp. v. Garden State Inv. Corp., 981 F.2d 385, 387 (8th Cir. 1992) ("the fact that federal tariffs are the law, not mere contracts"); Marcus v. AT&T Corp., 138 F.3d 46, 56 (2d Cir. 1998) ("federal tariffs are the law, not mere contracts.") (citation omitted).

16. Importantly, nothing precludes the Objecting Utility Providers from seeking a determination of whether the tariffs should be treated as executory contracts, independent of the hearing on approval of the Disclosure Statement.[2] The Debtors' Plan also does not preclude the resolution of disputes regarding these issues by agreement.

17. The Objecting Utility Providers further argue that the Plan is not confirmable because it seeks to require Access Providers and Utility Providers to continue providing services to the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer and prohibits the Access Providers and Utility Providers from requesting any additional deposits or other financial security after the Plan Effective Date.

18. Again, this is an issue for confirmation and need not be addressed at the hearing to consider approval of the Disclosure Statement. In any event, it is noted that nothing in section 366 of the Bankruptcy Code, or any other provision of the Bankruptcy Code, confines the applicability of section 366 to the period prior to the Effective Date of a plan of reorganization. Section 366(a) of the Bankruptcy Code states:

> Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a).

19. It is clear from the plain language of section 366 that it was enacted to prohibit discrimination against a debtor that has commenced a case under title 11 and has had its debts discharged. The Plan does not seek to enlarge the Debtors' rights beyond those provided in section 366. In fact, the Plan merely requires Access Providers and Utility Providers to continue providing services and only prohibits the Objecting Utility Providers from seeking deposits or other security "as a result of, arising out of, or in connection with, the Chapter 11 Cases." This provision of the Plan is in compliance with section 366 of the Bankruptcy Code and does not render the Plan unconfirmable. Nothing in the Plan will adversely affect the rights of the Objecting Utility Providers under their respective tariffs and agreements with respect to post-Effective Date obligations of the Reorganized Debtors, the Reorganized Subsidiaries, the Buyer or any other entity.

20. Certain Objecting Utility Providers also erroneously argue that the Plan is not confirmable because it would require the Utility Providers to continue

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[2] SBC argues that the Debtors must seek a determination by filing an adversary proceeding if the Debtors do not seek to treat tariffs as executory contracts. Neither the Bankruptcy Code nor the

providing services to a non-debtor, namely the Buyer. That factual contention, however, is false.

21. Substantially all of the services provided by the Objecting Utility Providers are provided to the Subsidiaries. Pursuant to the Plan, and as contemplated by the Purchase Agreement, the Subsidiaries are being reorganized and, as such, substantially all of the post-Effective Date Utility Services and Access Services will be provided to the Reorganized Subsidiaries, not a third party. Although there may be some Utility Services and Access Services provided at the ALGX and ATI level, the vast majority of tariffed charges (and all interconnection agreements) will be provided to the Reorganized Subsidiaries.

22. Moreover, as correctly noted by the Objecting Utility Providers, section 366 of the Bankruptcy Code restricts utilities and prohibits them from altering, refusing or discontinuing service to, or discriminating against, a debtor. The Plan requires the Access Providers and Utility Providers to continue providing only those services that are being provided to the Debtors "prior to the Initial Effective Date." According to the Plan, the term "Tariff Services":

> means telecommunications services required to be provided by an Access Provider pursuant to a Tariff filed by such Access Provider with the Federal Communications Commission or relevant state commission. For purposes of the Plan, the obligation of an Access Provider to provide Tariff Services does not arise under an executory contract.

See Plan § 1.117.

23. Further, according to the Plan, the term "Access Provider":

> means an **Entity providing telecommunications services to the Debtors** pursuant to an executory contract or a Tariff filed by such Entity with the Federal Communications Commission or a relevant state commission.

Bankruptcy Rules require the filing of an adversary proceeding for such a determination.

See Plan § 1.11 (emphasis added).

24. Finally, the Plan provides that "Utility Services":

> means those services generally provided by utility providers and telecommunications vendors pursuant to a Tariff **requested by the Debtor** via a Utility Service Order, including, but not limited to, electricity, gas, water, telephone, telecommunications, Utility Services as defined in the Utilities Order, and other utility services.

See Plan § 1.227 (emphasis added).

25. As made expressly clear by the foregoing definitions set forth in the Plan, there is nothing that requires the Access Providers or Utility Providers to provide services to any third party of the type that were not being provided to the Debtors.

26. To address the potential risk of continued litigation over these issues, the Debtors propose to add the following language to the Disclosure Statement to advise interested parties of the opposition of the Objecting Utility Providers to the Plan's treatment of the tariffs and utility services:

> "Certain Utility Companies and Access Providers have asserted that the Plan cannot be confirmed because it requires Utility Companies and Access Providers to continue providing service to the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer, without the assumption, assignment or cure of alleged defaults under certain tariffs. These Utility Companies and Access Providers contend that (a) Utility Services and Tariff Services are generally provided pursuant to executory contracts within the meaning of the Bankruptcy Code and that, therefore, the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer may not continue to obtain such services post-confirmation without curing all defaults relating thereto, and (b) even if it were correct that Utility Services and Tariff Services as defined in the Plan were not provided under executory contracts within the meaning of the Bankruptcy Code, it would be impossible for the Debtors, Reorganized STFI, the Reorganized Subsidiaries or Buyer to continue to demand such services following the Effective Date. The Debtors and the Committee dispute each of these contentions."

### C. The Disclosure Statement Provides Adequate Information Regarding Rights of Creditors with Executory Contracts

27. Certain Objecting Utility Providers assert that the Disclosure Statement should not be approved because the Debtors have not yet identified which contracts they intend to assume or reject.

28. Nothing in the Bankruptcy Code requires a debtor to set forth in its disclosure statement which executory contracts will be rejected, assumed, or assumed and assigned. The Bankruptcy Code explicitly authorizes a debtor to "assume or reject an executory contract or unexpired lease . . . of the debtor at any time **before confirmation of the plan** . . . ." 11 U.S.C. § 365(d)(2) (emphasis added). See also 11 U.S.C. § 1123(b)(2) (a plan may "subject to section 365 of this title, provide for the assumption or rejection, or assignment of any executory contract not previously rejected under such section"); Nat'l Sugar Refining Co. v. C. Czarnikow, Inc. (In re Nat'l Sugar Refining Co.), 27 B.R. 565, 573 (S.D.N.Y. 1983) (in absence of order requiring assumption or rejection, debtor in possession may wait to assume or reject contract until confirmation of plan of reorganization).

29. As this Court is aware, the Debtors have a significant number of executory contracts and unexpired leases, and have a fiduciary duty to maximize the value of their estates for the benefit of their creditors. To fulfill this fiduciary duty, the Debtors need to examine and analyze their executory contracts and unexpired leases to determine whether such contracts and leases are beneficial to the estates. Many courts in large chapter 11 cases permit the debtor to file an exhibit evidencing their decisions regarding assumption or rejection of executory contracts and unexpired leases after the disclosure statement hearing has occurred. See, e.g., In re Global Crossing Ltd., Case.

No. 02-40188 (REG) (Bankr. S.D.N.Y. Oct. 31, 2002); PWS Bruno's, Inc., Case No. 98-212 (SLR) (Bankr. D. Del.).

**D. The Disclosure Statement, As Revised, Provides Adequate Information Regarding the Proposed Compromise and Settlement Rights and Substantive Consolidation**

30. The Debtors submit that the amended version of the Disclosure Statement provides adequate information with respect to the proposed compromise and settlement and consolidation of the Debtors for Plan purposes. Specifically, the Disclosure Statement was amended to add the provision regarding substantive consolidation (as opposed to "deemed consolidation") of the ATCW Debtors, the legal bases for the claims made by the ATI Note Trustees, and the process of approval of the proposed compromise and settlement by the Creditors Committee.

31. The only procedural requirements that must be met with regard to substantive consolidation are notice to creditors and opportunity for a hearing. See In re Affiliated Foods, 249 B.R. 770, 775 n.3 (Bankr. W.D. Mo. 2000). In Affiliated Foods, the court noted that substantive consolidation had been proposed for the first time in the debtors' chapter 11 plan, and commented that "… it is not inappropriate to propose substantive consolidation in a Chapter 11 plan." Id. The court further held that inclusion of substantive in a Chapter 11 plan and an opportunity to be heard on that issue at the confirmation hearing satisfied procedural due process requirements. Id.

32. Here, as in Affiliated Foods, creditors' due process rights are protected. All creditors have been given specific notice of the Debtors' proposal to consolidate certain estates for Plan purposes only, both in the Disclosure Statement and the Plan. The revised versions of the Plan and the Disclosure Statement, which contain additional disclosure regarding substantive consolidation of the certain of the Debtors'

estates, will be distributed to creditors in the solicitation process. All creditors, including the Objecting Utility Providers and KMC, will have the opportunity to have any objection to substantive consolidation considered by the Court at the confirmation hearing.

33. In the revised version of the Disclosure Statement, the Debtors have described the legal standards relating to substantive consolidation and the key factors supporting substantive consolidation. The Debtors submit that such information is more than adequate under section 1125 of the Bankruptcy Code to enable creditors to make an informed judgment regarding the Plan. Moreover, to the extent the Objections allege that the Disclosure Statement fails to adequately disclose information regarding intercompany claims and the impact of substantive consolidation, the Objections are, in reality, disguised objections to confirmation of the Plan and should be reserved until the confirmation hearing.

34. In addition, the revised version of the Disclosure Statement contains adequate information regarding the propriety of the proposed compromise and settlement under the Plan. The Disclosure Statement, as revised, provides adequate disclosure with respect to the settlement and the discussion of its merits.

35. Moreover, it is settled that issues with respect to the approval of compromises and settlements embodied in a plan of reorganization should be decided at the confirmation hearing. In In re Waterville Timeshare Group, 67 B.R. at 413, the court stated that:

> Much of the conflict between the objecting general partners and the Chapter 11 trustee revolves around the wisdom of the compromise with Columbia University that is an integral part of the pending Joint Plan. The actual settlement is attached to the plan and will go with the disclosure materials to the parties to the parties in interest. The objecting partners believe that the suspended litigation with Columbia University should be pursued to obtain a subordination of their claim. However, the

> wisdom of that compromise will be a prime issue at the confirmation hearing on the Joint Plan, and the objecting partners as well as any other party in interest will have a full opportunity to voice and have heard their objections to the compromise at that time.

Id. at 413-14 (emphasis added).

36. The Debtors are empowered to compromise and settle claims in Chapter 11 plans with bankruptcy court approval. See 11 U.S.C. § 1123(b)(3). Moreover, as has been pointed out by numerous courts, compromises and settlements may be affected by the confirmation of a plan. In re Texaco, Inc., 84 B.R. 893, 901 (Bankr. S.D.N.Y. 1988); United States v. AWECO, Inc. (In re AWECO, Inc.), 725 F.2d 293, 297 (5th Cir. 1984). The Debtors will demonstrate at the confirmation hearing that the proposed compromise and settlement is fair and equitable and does not fall below the lowest point in the range of reasonableness." In re W.T. Grant Co., 699 F. 2d 599, 608 (2d Cir. 1983).

**E. XO Has The Requisite Standing To Participate In The Confirmation Process**

37. In its Objection, BellSouth argues that XO has no standing to participate in the Debtors' Plan process. This argument has no merit and does not impact whether the Disclosure Statement contains adequate information. XO is the buyer of substantially all of the Debtors' assets and has a significant stake in the successful confirmation and consummation of the Plan. For instance, pursuant to the Purchase Agreement, XO has agreed to pay certain liabilities relating to post-petition periods, which may be administrative claims of the Debtors' estates.

38. At a minimum, XO is a "party in interest" with a right to be heard pursuant to section 1109 of the Bankruptcy Code. While section 1109 provides a list of parties that qualify, the "list of examples is not exhaustive and not meant to exclude

other types of parties from the purview of the section." In re Wells, 227 B.R. 553, 559 (Bankr. M.D. Fla. 1998) (citing In re Amatex Corp., 755 F.2d 1034, 1042 (3d Cir. 1985)). Moreover, "[c]ourts have recognized that the term 'party in interest' should be construed broadly to allow all parties affected by a chapter 11 proceeding to be heard." Id. Whether a party qualifies is determined on a case-by-base basis dependent on if the party has a "sufficient stake in the proceeding so as to require representation." Id. (quoting Amatex, 755 F.2d at 1042).

39. Moreover, the Sale Order (which was consented to by BellSouth), expressly provides that the Buyer shall have the right to participate in the Debtors' cases and in the "negotiation and settlement discussion with the ILECs and shall have standing to participate in any disputes before the Bankruptcy Court regarding ILEC and non-ILEC Cure Amounts." Sale Order ¶ 19.

**WHEREFORE** the Debtors respectfully request entry of an order (i) granting the relief requested in the Disclosure Statement Motion, (ii) approving the Disclosure Statement as containing adequate information, (iii) denying the Objections interposed by the Objecting Utility Providers, and (iv) granting such other and further relief as is just.

DATED: New York, New York
April 15, 2004

ALLEGIANCE TELECOM, INC., et al.,
Debtors and Debtors-in-Possession,
By their Co-Bankruptcy Attorneys,
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