

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

Allegiance Telecom, Inc., et al.,

Hosting Debtors.

Chapter 11

Case No. 02-130507 (RDD)

(Jointly Administered)

**ORDER (I) APPROVING THE SALE OF CERTAIN ASSETS FREE AND CLEAR
OF ALL LIENS, CLAIMS AND ENCUMBRANCES TO THE SUCCESSFUL BIDDER,
(II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated May 4, 2004 (the "Motion") of Hosting.com, Inc., Allegiance Internet, Inc., Adgrafix Corporation, and Virtualis Systems, Inc., as debtors and debtors in possession (collectively, the "Hosting Debtors"), for an order (i) approving the sale of the Sale Assets,¹ free and clear of (a) all liens, claims and encumbrances and (b) certain transfer taxes, to the successful bidder (the "Successful Bidder"); (ii) authorizing the assumption and assignment of certain executory contracts; and (iii) granting certain related relief, and the Court having entered an order (the "Bidding Procedures Order") on [insert date]__ 2004, approving the Bidding Procedures (as defined therein); and the Court having held a hearing on June 18, 2004, to approve the relief requested in the Motion (the "Sale Hearing"); and it appearing that notice of the Sale Hearing has been provided to (i) the Office of the United States Trustee; (ii) the attorneys for the agent for the Prepetition Lenders; (iii) the attorneys for the Creditors Committee; (iv) all nondebtor contracting parties identified in Section 2.1 of the Purchase Agreement (including those parties listed on the Schedules referenced in Section 2.1 of the

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the Purchase Agreement, as applicable.

Purchase Agreement), (v) the attorneys for the Buyer; (vi) all parties who have made written expressions of interest in acquiring the Sale Assets within two (2) months prior to the date of the Motion; (vii) all known persons holding a lien on any of the Sale Assets; (viii) the Securities and Exchange Commission; (ix) all taxing authorities that have jurisdiction over the Sale Assets; (x) all Governmental Agencies having jurisdiction over the Sale Assets with respect to Environmental Laws, (xi) the attorneys general of all states in which the Sale Assets are located; and (xii) all other parties that had filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 2002 as of the date of the Motion; and it appearing that such notice constitutes good and sufficient notice of the Motion and Sale Hearing and that no other or further notice need be provided; and upon the Motion and the record of the Sale Hearing and all other proceedings had before the Court; and it appearing that an order approving the transaction(s) contemplated in the Purchase Agreement is in the best interests of the Hosting Debtors and all parties in interest; and it appearing that the Court has jurisdiction over this matter; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), (m), and (n) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.

C. Proper, timely, adequate, and sufficient notice of the Motion and the sale set forth herein (the "Sale") has been provided in accordance with sections 105(a) and 363 of the

Bankruptcy Code and Bankruptcy Rules 2002, 2002(i), 6004, and 9014, in compliance with the Order Establishing Notice Procedures, dated May 15, 2003, and in compliance with the Bidding Procedures Order, such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Motion or the Sale Hearing is or shall be required.

D. As demonstrated by the pleadings and affidavit of publication filed herein, the Hosting Debtors have marketed the Sale Assets and conducted the sale process in compliance with the Bidding Procedures Order and have completed a full and complete auction process.

E. No consents or approvals, other than those expressly set forth in and required by the Purchase Agreement or expressly set forth herein, are required for the Hosting Debtors or Buyer to consummate the transaction(s) contemplated in the Purchase Agreement.

F. Approval of the Purchase Agreement and consummation of the transaction(s) contemplated therein at this time are in the best interests of the Hosting Debtors, their creditors, and their estates.

G. The Hosting Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for approval of the sale transaction(s) contemplated in the Purchase Agreement pursuant to section 363(b) of the Bankruptcy Code and in connection with a plan of reorganization.

H. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

I. The Purchase Agreement was negotiated, proposed, and entered into by the Hosting Debtors and Buyer, in good faith, without collusion, and from arm's-length bargaining positions. Neither the Hosting Debtors nor Buyer have engaged in any conduct that

would cause or permit the Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. Buyer is not an “insider” of any of the Hosting Debtors, as that term is defined in Bankruptcy Code section 101.

J. Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Purchase Agreement at all times after the entry of this Order.

K. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The Purchase Price for the Sale Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest or best offer for the Sale Assets, and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

M. The transfer of the Sale Assets to Buyer will be a legal, valid, and effective transfer of the Sale Assets, and will vest Buyer with all rights, title, and interest in and to the Sale Assets free and clear of all liens, claims, encumbrances, and interests, which have, or could have, been asserted by the Hosting Debtors or their creditors.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:**

1. The Motion is granted.
2. All objections to the Motion or the relief requested therein, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of the Purchase Agreement

3. The Purchase Agreement and all of the terms and conditions thereof are hereby approved.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Hosting Debtors and Buyer are authorized and directed to consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.
5. The Hosting Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be reasonably requested by Buyer as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

6. The Hosting Debtors have completed a full and complete auction process.

Transfer of the Sale Assets

7. Pursuant to sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, the transfer of the Sale Assets to Buyer on the Closing shall vest Buyer with all rights, title, and interest in and to the Sale Assets and shall be, free and clear of all liens, claims, encumbrances,

and interests which have, or could have, been asserted by the Hosting Debtors or their creditors in connection with the Hosting Debtors' chapter 11 cases, if any, with all such liens, claims, encumbrances, and interests of any kind or nature whatsoever to attach to the net proceeds that the Hosting Debtors ultimately realize from the sale transaction contemplated herein in the order of their priority, with the same validity, force and effect which they now have as against the Sale Assets, subject to any claims and defenses the Hosting Debtors may possess with respect thereto.

8. Buyer shall have no liability or responsibility for any liability or other obligation of the Hosting Debtors arising under or related to the Sale Assets other than as expressly set forth in the Purchase Agreement and in no event shall Buyer have any liability or responsibility for any Excluded Liabilities. Without limiting the effect or scope of the foregoing, the transfer of the Sale Assets from the Hosting Debtors to Buyer does not and will not subject Buyer or its affiliates, successors or assigns or their respective properties (including the Sale Assets) to any liability for claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Hosting Debtors or the Sale Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither Buyer nor its affiliates, successors, or assigns shall be deemed, as a result of actions taken in connection with the purchase of the Sale Assets: (i) to be a successor to the Hosting Debtors (except for purposes of section 1145 of the Bankruptcy Code) or (ii) be a continuation or substantial continuation of the Hosting Debtors or any enterprise of the Hosting Debtors. Neither Buyer nor its affiliates, successors, or assigns is acquiring or assuming any liability, warranty, or other obligation of the Hosting Debtors, including, without limitation, any tax incurred but unpaid by the Hosting Debtors prior to the date of the Closing (except as expressly set forth in the Purchase Agreement), including, but not limited to, any tax, any fine or penalty

relating to a tax, or any addition to a tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Purchase Agreement.

Assumption and Assignment of Assumed Contracts to Buyer

9. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, on the Closing, the Hosting Debtors' assumption and assignment to Buyer and Buyer's assumption on the terms and conditions set forth in the Purchase Agreement of the Assumed Contracts is hereby approved, provided that the requirements of section 365(b)(1) of the Bankruptcy Code with are satisfied as set forth in the Hosting Debtors Notice of Intent to Assume and Assign (as defined below).

10. Subject to the Closing, the Hosting Debtors are hereby authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to Buyer the Assumed Contracts free and clear of all liens, claims, and encumbrances as well as all interests of any kind or nature whatsoever and (b) execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to Buyer.

11. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with their respective terms, notwithstanding any provision in any of the Assumed Contracts (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Hosting Debtors shall be

relieved from any further liability with respect to the Assumed Contracts after such assignment to and assumption by Buyer.

12. All defaults or other obligations of the Hosting Debtors under the Assumed Contracts (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be promptly cured by the Buyer as set forth in the Purchase Agreement as provided in Bankruptcy Code section 365(b)(1) and the cure amounts with respect to the Assumed Contracts will be those amounts (the “Cure Amounts”) established in accordance with the procedures set forth in the Bidding Procedures Order and Exhibit 2 thereto.

13. With the exception of the Cure Amounts, except as otherwise set forth herein, each nondebtor party to an Assumed Contract hereby will be forever barred, estopped, and permanently enjoined from asserting against the Hosting Debtors or Buyer, or the property of any of them, any default existing under the Assumed Contracts as of the Closing; or, against Buyer, any counterclaim, defense, setoff, or any other claim under the Assumed Contracts asserted or assertable against the Hosting Debtors.

14. If the Hosting Debtors receive an objection to the cure amounts (the “Cure Amount Objection”) in the Notice of Intent to Assume and Assign, they shall attempt to resolve such disputed cure amounts with the party asserting the objection. If consensual resolution of the Cure Amount Objection cannot be reached, the Buyer, as provided in the Purchase Agreement, will (i) pay in full the undisputed portion of such Cure Amount on or before the applicable date of assumption and (ii) segregate the disputed portion of such cure amount (the “Segregated Amounts”) pending the resolution of the Cure Amount Objection by this Court or by mutual agreement of the parties. In light of these procedures, the fact that any Cure Amount Objection

is not resolved shall not prevent or delay the occurrence of the date of assumption or the assumption and assignment of any Assumed Contracts, and the objectors' only recourse after the relevant date of assumption shall be to the segregated amounts.

Additional Provisions

15. Any amounts payable by the Hosting Debtors pursuant to the Purchase Agreement or any of the documents delivered by the Hosting Debtors pursuant to or in connection with the Purchase Agreement shall (i) constitute administrative priority expenses of the Hosting Debtors' estates pursuant to Bankruptcy Code sections 503(b) and 507(a)(1), except as otherwise specifically provided in the Purchase Agreement, (ii) be paid by the Hosting Debtors in the time and manner provided in the Purchase Agreement without further order of this Court, and (iii) not be discharged, modified, or otherwise affected by any plan of reorganization of any of the Hosting Debtors.

16. On the date of the Closing, each of the Hosting Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its interest in the Sale Assets, if any, as such interests may have been recorded or may otherwise exist.

17. Regardless of whether the Hosting Debtors' creditors execute the releases set forth in the above paragraphs, this Order (a) shall be effective as a determination that, on the date of the Closing, all liens, claims, security interests, encumbrances, and interests of any kind or nature whatsoever existing with respect to the Hosting Debtors and the Sale Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents,

title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Sale Assets.

18. Each and every federal, state, and local governmental agency or department is hereby directed to accept for filing and/or recording and approve as necessary any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

19. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing claims or interests with respect to the Hosting Debtors or the Sale Assets shall not have delivered to the Hosting Debtors prior to the date of the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Hosting Debtors or the Sale Assets or otherwise, then (a) the Hosting Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Sale Assets and (b) Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all claims and interests in the Sale Assets of any kind or nature whatsoever.

20. Pursuant to sections 105(a) and 1146(c) of the Bankruptcy Code, the transfer of the Sale Assets in connection with the Bankruptcy Plan is not subject to taxation under any federal, state, local, municipal, or other law imposing or purporting to impose a stamp,

or any other similar tax on any of the Hosting Debtors' transfers or conveyances of the Sale Assets, which includes real estate, personal property, and any other assets and is deemed to be part of a plan pursuant to section 1146(c) of the Bankruptcy Code.

21. All entities who presently are in possession of some or all of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Hosting Debtors at the Closing.

22. The Hosting Debtors are hereafter not permitted to cause their Representatives to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any inquiry, proposal, offer, sale or other disposition related to any or all of the Sale Assets.

23. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement (including the breach of the Purchase Agreement), all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects.

24. The transaction contemplated by the Purchase Agreement is undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transaction(s) contemplated herein shall not affect the validity of the sale of the Sale Assets to Buyer, unless such authorization is duly stayed pending such appeal. Buyer is a purchaser in good faith of the Sale Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

25. The Purchase Agreement and the transactions and instruments contemplated hereby shall be specifically performed and enforceable against and binding upon,

and not subject to rejection or avoidance by, the Hosting Debtors, and their respective affiliates, successors, and assigns, or any chapter 7 or chapter 11 trustee of the Hosting Debtors and their estates.

26. The Purchase Agreement and the transactions and instruments contemplated hereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by, the Hosting Debtors or any chapter 7 or chapter 11 trustee of the Hosting Debtors and their estates.

27. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

28. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court.

29. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(g) and this Order shall be effective and enforceable immediately upon entry.

Dated: New York, New York
_____, 2004

UNITED STATES BANKRUPTCY JUDGE