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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	
ALLEGIANCE TELECOM, INC., <u>et al.</u> ,	:	Chapter 11 Case No
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**MOTION OF THE DEBTORS FOR AN ORDER,
PURSUANT TO SECTION 363(b) OF THE
BANKRUPTCY CODE, AUTHORIZING SHARED
TECHNOLOGIES, INC. TO ENTER INTO CERTAIN NEW LEASES**

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

Allegiance Telecom, Inc. (“ATT”) and its direct and indirect subsidiaries, including Shared Technologies, Inc. (“Shared Technologies”), as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent:

Introduction

1. On May 14, 2003 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

3. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York the (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Creditors Committee") in these chapter 11 cases.

Jurisdiction

4. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

An Overview of the Debtors' Businesses

5. The Debtors are facilities-based national local exchange carriers that provide 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. The Debtors offer their 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 collocation 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 collocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

6. As of December 31, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of December 31, 2003, the Debtors employed approximately 2,893 people, of which approximately 66 employees were covered by collective bargaining agreements.

7. As of December 31, 2003, the Debtors had approximately \$284.2 million of unrestricted cash on hand. As of December 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.136 billion and liabilities totaling approximately \$1.459 billion. For the twelve months ending December 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$776.9 million and net losses of approximately \$360.0 million.

Shared Technologies

8. Shared Technologies is one of the nation's largest providers of telecommunications customer premises equipment ("CPE"), including installation and maintenance services for CPE, with more than 5,000 business customers nationwide comprising of medium to large commercial businesses, national equipment accounts, governmental agencies and hospitals. Shared Technologies sells, installs and maintains CPE, including key telephone systems and other telephone and data equipment.

9. On February 20, 2004, this Court entered an Order approving the sale (the "XO Sale Transaction") to XO Communications, Inc. ("XO") of (a) substantially all of the assets of ATI and Allegiance Telecom Company Worldwide ("ATCW"), a direct subsidiary of ATI and

one of the Debtors in these chapter 11 cases, and (b) the stock of the reorganized subsidiaries of ATCW, *other than Shared Technologies*.

10. On April 22, 2004, the Court entered an order approving, among other things, the Debtors' amended disclosure statement, which sets forth the terms of the Debtors' amended chapter 11 plan (the "Plan"). Relevant to this Motion, the Plan provides that Shared Technologies will emerge from chapter 11 as a reorganized stand-alone entity. As such, the Debtors, in consultation with the Creditors Committee, are making provisions for Shared Technologies' emergence.

Existing Premises

11. In the ordinary course of business and to keep administrative costs down, Shared Technologies shares office space with the other Debtors at several locations. Specifically and relevant to this Motion, certain of Shared Technologies' employees work at the following locations: (a) 700 East Butterfield Road, Lombard, Illinois; (b) 111 East Wacker Drive, Chicago, Illinois; (c) Allegheny Center Mall, Suite 300, Pittsburgh, Pennsylvania; (d) 225 West 34th Street, Suites 2010, 2015 and 2016, New York, New York; and (e) 805 Third Avenue, New York, New York (collectively, the "Existing Allegiance Premises"). The tenants under the leases (the "Existing Allegiance Leases"), pursuant to which the Debtors occupy the Existing Allegiance Premises, are (i) ATI, with respect to the offices in Chicago and New York City, and (ii) ATCW, with respect to the offices in Lombard and Pittsburgh.

12. In addition, Shared Technologies leases office space on its own for certain employees at the following locations: (a) 750 Eighth Avenue, Suites 202, 205, 206 and 208, New York, New York; (b) 450 Spring Park Place, Herndon, Virginia; and (c) 9197 West Avenue, Lakewood, Colorado (collectively, the "Existing Shared Technologies Premises," and together with the Existing Allegiance Premises, the "Existing Premises").

Shared Technologies Office Space Needs

13. After this Court approved the XO Sale Transaction and the Debtors determined that Shared Technologies will emerge from chapter 11 as a stand-alone entity, Shared Technologies' management team, in consultation with the Creditors Committee, reviewed its office space needs. As stated above, the employees of Shared Technologies work out of, among others, the Existing Shared Technologies Premises and the Existing Allegiance Premises. In accordance with the XO Sale Transaction, XO may determine that it needs the Existing Allegiance Premises, from which employees other than Shared Technologies employees work. In such a scenario, the Debtors would assume the Existing Allegiance Leases and assign them to XO. If XO determines that it does not need the Existing Allegiance Premises, then the Debtors have determined they will reject the Existing Allegiance Leases. The reason for this (and the reason that the Debtors would not assume the Existing Allegiance Leases) is that the amount of office space at the Existing Allegiance Premises far exceeds the needs of Shared Technologies. Based on this, Shared Technologies will need to re-locate its employees that work from the Existing Allegiance Premises. An option is to move these employees to the Existing Shared Technologies Premises. Shared Technologies considered this option and, in doing so, conducted a search for alternative office space to determine whether it was more economical to move all of its employees from the Existing Premises to new locations. The search made it clear that office space was available to replace the Existing Premises for a better price and pursuant to more

favorable lease terms. Thus, Shared Technologies determined that it was in its best interests to re-locate its employees working at the Existing Premises to new locations.¹

New Premises

14. In connection with its search, Shared Technologies has located appropriate office space at the following five locations: (a) 1088 Thorndale Avenue, Bensenville, Illinois; (b) 602 Parkway View Drive, Pittsburgh, Pennsylvania; (c) 253 West 35th Street, New York, New York; (d) 10000 Virginia Manor, Beltsville, Maryland; and (e) 608 Garrison Street, Suite V, Lakewood, Colorado (collectively, the “New Premises”). A summary of certain key terms of the respective lease agreements (collectively, the “New Leases”), pursuant to which Shared Technologies intends to lease the New Premises, are set forth on Exhibit “A” to this Motion.

Relief Requested

15. The Debtors seek entry of an order, pursuant to section 363(b) of the Bankruptcy Code, authorizing Shared Technologies to enter in the New Leases upon the approval of the Motion by the Court.

Applicable Authority

16. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part that, “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a “sound business purpose” that justifies such action. See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Phoenix Steel Corp., 82

¹ Subsequent to the filing of this Motion, and upon Court approval of this Motion, the Debtors intend to reject the underlying leases with respect to the Existing Shared Technologies Premises, pursuant to section 365 of the Bankruptcy Code.

B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

17. In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” See Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

**Entering into the New Leases is Supported by the Debtors’
Business Judgment and Should be Approved by the Court**

18. The Debtors submit that entry into the New Leases by Shared Technologies is supported by the Debtors’ business judgment. As set forth above, as a result of (a) the XO Sale Transaction and the anticipated emergence of Shared Technologies as a stand-alone entity and (b) Shared Technologies’ determination that it can realize additional savings by replacing the Existing Premises with less expensive office space, the Debtors determined it is in their best interests to relocate the Shared Technologies employees from the Existing Premises to the New Premises. As set forth above, Shared Technologies intends to enter into the New Leases upon Court approval of this Motion.

19. The Debtors submit that entering into the New Leases will allow Shared Technologies to lease the needed office space cost-effectively at locations that satisfy Shared Technologies' needs. Notably, if Shared Technologies enters into the New Leases (other than the New Lease for the Pittsburgh, Pennsylvania location, which does not include a rent abatement provision) prior to June 1, 2004, it will be entitled to occupy the new office space rent-free for the first month or the first two months of the New Leases, as applicable.² Accordingly, the Debtors believe that moving Shared Technologies' employees and business operations from the Existing Premises to the New Premises is in the best interests of the Debtors, their estates and creditors.

20. Based on the foregoing, the entry into the New Leases by Shared Technologies is supported by the Debtors' sound business judgment and should be approved.

Waiver of Memorandum of Law

21. This Motion includes citations to the applicable authorities and does not raise any novel issues of law. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

Notice

22. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) attorneys for the Debtors' prepetition senior secured lenders; (c) attorneys for the Creditors Committee; (d) respective attorneys or in-house counsel for the prospective landlords under the New Leases; and (e) all other parties on the Master Service List maintained in these chapter 11

² The rent abatement terms of each of the New Leases are set forth on Exhibit "A" to this Motion.

cases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

23. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (a) grant the Motion, (b) enter an order authorizing Shared Technologies to enter into the New Leases and to perform all obligations thereunder, and (c) grant the Debtors such other and further relief as it deems just and proper.

Dated: New York, New York
May 7, 2004

Respectfully submitted,

/s/ Jonathan S. Henes

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Exhibit "A"

**New Leases to be Entered Into by
Shared Technologies, Inc.**

Existing Location(s)	New Location	Prospective Landlord at the New Location	Security Deposit	Square Footage	Price per Square Foot	Monthly Rent	Rent Abatement
700 East Butterfield Road, Lombard IL 111 East Wacker Drive, Chicago IL	1088 Thorndale Avenue, Bensenville, IL	Principal Life Insurance Company	\$16,681.20	7,991	\$8.35	\$5,560.40	1 month rent free
Allegheny Center Mall, Suite 300, Pittsburgh PA	602 Parkway View Drive, Pittsburgh PA	SAMDOZ, INC.	\$900.00	2,940	\$8.98	\$2,200.10	None
225 West 34th Street, Suites 2010, 2015 and 2016 New York, NY 750 Eighth Avenue, Suites 202, 205, 206 and 208, New York, NY 805 Third Avenue, New York, NY	253 West 35th Street, New York, NY	Balbo Realty LLC	\$43,177.00	8,900	\$18.00	\$13,350.00	1 month rent free
450 Spring Park Place, Herndon VA	10000 Virginia Manor, Beltsville, MD	Alexandria Real Estate Equities	\$12,132.75	622	\$10.50	\$5,392.33	1 month rent free
9197 West Avenue, Lakewood CO	608 Garrison Street, Suite V, Lakewood CO	First Industrial Realty	\$7,164.78	3,544	\$8.36	\$3,582.39	2 months rent free