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Hearing Date: May 19, 2004 @ 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ALLEGIANCE TELECOM, INC., *et al.*,

Debtors.

Chapter 11
Case No. 03-13057 (RDD)

RESPONSE OF LUCENT TECHNOLOGIES, INC.
IN OPPOSITION TO DEBTORS' OBJECTION TO CLAIMS 2122 AND 2264

Lucent Technologies, Inc. ("Lucent"), by its undersigned counsel, respectfully represents as follows:

INTRODUCTION

1. On April 6, 2004, Allegiance Telecom, Inc. and related debtors herein (collectively, the "Debtors") filed their first omnibus objection to certain proofs of claim, including a claim identified by number 2122 ("Proof of Claim No. 2122") and claim identified by number 2264 ("Proof of Claim No. 2264"), each of which was filed by Lucent prior to November 26, 2003, the last date fixed by the court for the filing of proofs of claim (the "Bar Date"). The stated basis for the Debtors' objection to Lucent's claims was that Lucent had failed to file the requisite documentation in support of its claims.

2. This document constitutes Lucent's response to the Debtors' objection.

LUCENT CONSENTS TO THE EXPUNGEMENT OF PROOF OF CLAIM NO. 2122

3. Proof of Claim No. 2122 represents a priority claim asserted by Lucent in the amount of \$4,000,000.00. At the time that Lucent filed that claim, it was unaware of the precise dollar amount of its claim, but desired to file its claim prior to the Bar Date. Accordingly, Lucent filed Proof of Claim No. 2122 in an estimated amount.

4. Proof of Claim No. 2264 represents a priority claim asserted by Lucent in the amount of \$9,314,451.00. That claim, however, is intended to replace and supersede Proof of Claim No. 2122. Lucent failed to note on Proof of Claim No. 2264 that it was intended to replace Proof of Claim No. 2122. Accordingly, to the extent that this Court and the Debtors recognize and acknowledge that Proof of Claim No. 2264 replaces and supersedes Proof of Claim No. 2122, Lucent has no objection to the entry of an order expunging Proof of Claim No. 2122.

**THE DEBTORS ARE FULLY AWARE OF THE BASIS FOR,
AND ARE IN POSSESSION OF ALL DOCUMENTATION TO SUPPORT PROOF OF CLAIM NO. 2264**

5. Proof of Claim No. 2264, filed in the amount of \$9,314,451.00, seeks amounts owing by the Debtors to Lucent for state sales and use tax associated with goods and services provided by Lucent to the Debtors. The Debtors' obligation for such taxes is set forth in a General Purchase Agreement, dated March 28, 2003 ("GPA"), the form of which is annexed hereto as **Exhibit A**. Paragraph 6 of the GPA provides, in relevant part, that:

Except for taxes on Lucent's income, Customer shall pay all applicable taxes and related charges, including interest and penalties, that any governmental or taxing authority may impose upon the purchase, license, ownership, possession, use, operation or relocation of any Products, Software or Services that Lucent furnishes under this Agreement.

(See ¶ 6, GPA).

6. Lucent, as a seller and provider of goods and services, is assessed sales and use tax by each state in which it transacts business. Such tax is computed on the basis of the applicable tax rate, plus interest and penalties, if applicable. Lucent has computed the sales and use tax that it may be assessed based upon the sale of goods and services it provided to the Debtors under the GPA. Those amounts, together with potential interest and penalties, are set forth on a schedule annexed hereto as **Exhibit B**, broken down by state.

7. Each state listed on the schedule annexed hereto as **Exhibit B** is at a different stage with respect to its efforts to assess Lucent with applicable sales and use taxes. In most states, the appropriate department of revenue is in the midst of an audit to determine Lucent's sales and use tax liability. In at least one state -- Washington -- an audit has been completed and Lucent has been assessed a tax liability. A summary of the status of each state's efforts is annexed hereto as **Exhibit C**.

8. The Debtors have provided Lucent with purported tax exemption certificates allegedly applicable to sales and use taxes in the states of Arizona, Indiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Texas, and the District of Columbia. While Lucent intends to utilize these certificates to challenge any assessment imposed by a state for sales and use tax, state taxing authorities may raise one or more issues with respect to those exemption certificates, including:

- (a) The tax exemption certificates are merely unilateral assertions by the Debtors that the goods and/or services purchased by the Debtors are subject to an exemption. The applicable taxing authorities have provided no assurance of any such exemption, and many have already asserted that the exemptions sought are not binding (see **Exhibit C**).
- (b) There is not, in every case, an absolute match between the specific legal entity that provided the tax exemption certificate and the specific legal entity that purchased goods and/or services from Lucent.

(c) The Debtors have not provided tax exemption certificates for all states that may impose sales and use tax liability upon Lucent.

9. Under the terms of the GPA, the Debtors are required to pay all sales and use tax that any state may impose upon Lucent. To the extent that Lucent is assessed such tax liability and pays it on the Debtors' behalf, Lucent would be entitled to be subrogated to the claims held by the various state taxing authorities, and is entitled to contractual indemnification from the Debtors under the GPA.

10. The Debtors are in possession of the documents annexed hereto as **Exhibits A and B**. In fact, Oliver Struble, the Assistant Tax Director for Lucent, has been in active communication with Randall Olsen, the Tax Director for the Debtors, with respect to these very issues.

CONCLUSION

11. Based on the foregoing, there is no basis to expunge Proof of Claim No. 2264 for lack of supporting documentation. The Debtors' Objection should accordingly be denied.

Dated: May 10, 2004

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