

Hearing Date and Time: June 2, 2004 at 10:00 a.m.
Objection Deadline: May 28, 2004 at 12:00 p.m.

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d/b/a SBC Missouri and/or SBC Texas, and
Wisconsin Bell, Inc. d/b/a SBC Wisconsin

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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: In re: : Chapter 11 Cases
: :
: ALLEGIANCE TELECOM, INC., et al., : Case No. 03-13057 (RDD)
: :
: Debtors. : (Jointly Administered)
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**MOTION BY SBC TELECOMMUNICATIONS, INC. PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 3018 FOR TEMPORARY
ALLOWANCE OF CERTAIN CLAIMS FOR VOTING PURPOSES**

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

SBC Telecommunications, Inc. on behalf of certain of the operating telephone
companies affiliated with SBC Telecommunications, Inc., including Illinois Bell
Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated
d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio

Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, Southwestern Bell Telephone, L.P. d/b/a SBC Missouri and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin (hereinafter collectively “SBC”) by and through its undersigned counsel, Mayer, Brown, Rowe & Maw LLP, hereby submits this motion pursuant to Federal Rule of Bankruptcy Procedure 3018 seeking the temporarily allowance of certain claims for voting purposes (the “Motion”) and in support thereof, states the following:

Summary of Response

SBC’s Subject Claims (as defined below) should be temporarily allowed for voting purposes in their full face aggregate amount of \$2,404,560.60 because the Subject Claims were not late-filed, as asserted in the Debtors’ Objection (as defined below), but rather are rejection damage claims generally filed in accordance with this Court’s Rejection Orders (as defined below) approving the Debtors’ rejection of certain individual service orders. Alternatively, to the extent any of the Subject Claims may be considered to have been late-filed, the Court should permit them to be temporarily allowed for voting purposes in their full face amount and find that they were late-filed due to excusable neglect.

Procedural Background

1. On March 14, 2003 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court.
2. On January 29, 2004, SBC filed the following rejection damage claims:
 - (a) Claim No. 2748 for \$4,287.00;
 - (b) Claim No. 2749 for \$265,119.90;

- (c) Claim No. 2750 for \$154,040.40;
- (d) Claim No. 2751 for \$54,958.35;
- (e) Claim No. 2752 for \$377,658.24;
- (f) Claim No. 2753 for \$562,581.11; and
- (g) Claim No. 2754 for \$985,915.61 (collectively, the “Subject Claims”).

3. On April 6, 2004, the Debtors filed their First Omnibus Objection to Certain Proofs of Claims (the “Objection”).¹

4. The Order (I) Approving the Debtors’ 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 “Order Approving the Disclosure Statement”) was entered on April 22, 2004.

Facts

5. Beginning in about July 1997, SBC, an ILEC, and the Debtors, who are competitive local exchange carriers or CLECs, entered into numerous agreements whereby SBC agreed to provide telecommunications services and access to its telecommunications network to the Debtors, including without limitation certain interconnection agreements, service agreements and tariffs. The Debtors have acknowledged that the services and access provided by SBC “are vital to any telecommunications company’s ability to operate its business and the Debtors’ business in particular.” *Motion of the Debtors Pursuant to §§ 105 and 366 of the Bankruptcy*

¹ A hearing was scheduled on the Debtors’ Objection for May 19, 2004, however, the Debtors and SBC have agreed to adjourn the hearing as to SBC’s claims pending further discussions regarding the Subject Claims.

Code for an Order Deeming the Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance, dated May 14, 2003, at ¶39.

6. As of the Petition Date, the Debtors were indebted to SBC for at least \$17,808,509.54 for prepetition services and access provided by SBC to the Debtors. In addition, the Debtors owe SBC nearly \$13,000,000 for postpetition service obligations.

7. During the pendency of the Debtors' bankruptcy cases, the Debtors have sought to reject a number of individual service orders with SBC, the rejection of which has resulted in additional damages to SBC. Each of the Subject Claims is for rejection damages.²

8. Generally, the Rejection Orders set forth a deadline by which any rejection damage claims must be filed with the Court and SBC filed its rejection damage claims in accordance with such deadline.

Analysis

I. The Subject Claims Should Be Temporarily Allowed For Voting Purposes In The Full Amount of the Proof Of Claim

9. The Order Approving the Disclosure Statement provides:

If any claimant seeks to challenge the allowance of its claim for voting purposes in accordance with the Tabulation Rules, such claimant must file a motion, pursuant to Bankruptcy Rule 3018(a) for an order temporarily allowing such claim in a different amount or classification for purposes of voting to accept or reject the Plan and file with the Court (with a copy to chambers) and serve such motion on the Debtors on or before the tenth (10th) day after the later of (a) service of the Confirmation Hearing Notice and (b) service of notice of an objection, if any, to such claim. In

² The rejected service orders which are the basis of the Subject Claims were subject of the Debtors' August 22, 2003, September 24, 2003, October 7, 2003 and November 19, 2003 motions for authority to reject certain service orders, which motions were granted by orders of this Court entered on September 4, 2003, October 8, 2003, October 21, 2003 and December 16, 2003 (collectively, the "Rejection Orders").

accordance with Bankruptcy Rule 3018, as to any creditor filing such a motion, such creditor's Ballot should not be counted unless temporarily allowed by the Court for voting purposes, after notice and hearing.

Order Approving the Disclosure Statement at ¶11.

10. Federal Rule of Bankruptcy Procedure 3018(a) provides in relevant part "Notwithstanding [an] objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

11. Temporary allowance of a claim is appropriate where a full hearing on the objection to the claim would delay administration of the case. *See In re Gardinier*, 55 B.R. 601 (Bankr. M.D. Fla. 1985); *In re Zolner*, 173 B.R. 629 (Bankr. N.D. Ill. 1994). Temporary allowance of a claim is within the reasonable discretion of the court. *See Zolner*, 55 B.R. at 633.

12. Neither the Bankruptcy Code nor Rule 3018 provide guidance as to the test to be applied in determining a motion for temporary allowance. However, temporary allowance should be considered in light of the "underlying purposes of the Code." *In re Stonehedge Properties*, 191 B.R. 59, 63-64 (Bankr. M.D. Pa. 1995). Because Rule 3018 allowance is in connection with voting, a court should look to whether the debtor scheduled the claim, the proof of claim filed by the claimant and the objection, to determine what the parties intentions were with respect to the amount and nature of the claim to be voted. *Id.* at 65.

13. "An estimator of claims must take into account the likelihood that each party's version might or might not be accepted by the trier of fact. The estimated value of a claim is then the amount of the claim diminished by [the] probability that it may be

sustainable only in part or not at all.” *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771 (Bankr. S.D.N.Y. 1996).

14. “Because a temporary allowance order only arises if there is an objection to a claim, we conclude that the burden of proof should be on the claimant to present sufficient evidence that it has a colorable claim capable of temporary evaluation.” *Armstrong v. Rushton (In re Armstrong)*, 292 B.R. 678, 686 (10th Cir. B.A.P. 2003).

15. As set forth in more detail in the Facts section above, SBC generally filed its rejection damage claims in accordance with the deadline set forth in the Rejection Orders entered by this Court approving the Debtors’ motion to reject the individual service orders.

16. In the alternative, to the extent any of the Subject Claims are found to have been filed late, they should nonetheless be temporarily allowed for voting purposes in their full amount because they were late-filed due to excusable neglect. *See In re Enron Corp.*, 2003 WL 21756785, *4 (Bankr. S.D.N.Y. 2003)(“Bankruptcy Rule 9006(b)(1) provides that a bankruptcy court in its discretion may accept a late-filed proof of claim where claimant establishes ‘excusable neglect.’”); *In re PT-1 Communications, Inc.*, 292 B.R. 482, 487 (Bankr. E.D.N.Y. 2003)(citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993))(“The court may deem an untimely claim allowable if the claimant establishes excusable neglect.”).³

³ In the event the Court determines that any of the Subject Claims were late-filed, SBC will make a supplemental filing setting forth the facts and circumstance that illustrate that late-filing was due to excusable neglect.

CONCLUSION

WHEREFORE, for the foregoing reasons, SBC respectfully requests that the Court temporarily allow the Subject Claims for voting purposes in the aggregate amount of \$2,404,560.60 and grant such other relief as is appropriate.

Dated: May 13, 2004
New York, New York

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