

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: **May 20, 2004**
HEARING TIME: **10:00 a.m.**

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

**OBJECTION OF THE UNITED STATES TRUSTEE TO
SECOND INTERIM APPLICATIONS FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

TO THE HONORABLE ROBERT D. DRAIN, BANKRUPTCY JUDGE:

The United States Trustee for the Southern District of New York (the “United States Trustee”) has reviewed the following applications seeking interim awards of compensation and reimbursement of expenses and respectfully files this objection to certain of the applications.

APPLICANT	PERIOD	FEES	EXPENSES	TIME
Kirkland & Ellis LLP Counsel for the Debtors	10/01/03- 02/29/04	\$3,025,818.50	\$159,307.02	1216.90
Togut, Segal & Segal LLP Bankruptcy Co-Counsel for the Debtors	10/01/03- 02/29/04	\$188,667.00	\$6,662.37	426.8
Greenhill & Co., LLC Financial Advisor to the Debtors	10/01/03- 02/29/04	\$875,000.00	\$43,938.30	1,752.5
Impala Partners LLC Chief Restructuring Officer to the Debtors	10/01/03- 02/29/04	\$375,000.00	\$141,055.99	N/A
Swidler Berlin Shereff Friedman, LLP Special Regulatory Counsel for the Debtors	08/01/03- 02/29/04	\$547,754.00	\$14,417.84	1415.9
KPMG LLP Accountants, Auditors and Tax Advisors for the Debtors	10/01/03- 02/29/04	\$660,641.00	\$2,405.00	2651.0
Latham & Watkins LLP Counsel to the Special Committee of the Board of Directors	10/01/03- 02/29/04	\$77,031.00	\$5,328.43	128.3

APPLICANT	PERIOD	FEEES	EXPENSES	TIME
Akin Gump Strauss Hauer & Feld LLP Counsel for the Official Committee of Unsecured Creditors	10/01/03-02/29/04	\$851,662.75	\$116,774.60	1994.95
Kelley Drye & Warren LLP Special Counsel to the Official Committee of Unsecured Creditors	06/20/03-02/29/04	\$77,475.50	\$1,469.17	248.4
Bilzin Sumberg Baena Price & Axelrod LLP Special Conflicts Counsel to the Official Committee of Unsecured Creditors	10/02/03-02/29/04	\$44,433.50	\$314.34	150.4
Houlihan Lokey Howard & Zukin Capital Financial Advisor to the Official Committee of Unsecured Creditors	10/01/03-02/29/04	\$750,000.00	\$30,898.53 ^{1/2}	N/A
Communication Technology Advisors LLC Industry and Technology Advisors to the Official Committee of Unsecured Creditors	10/01/03-02/29/04	\$625,000.00	\$33,599.49	N/A

I. BACKGROUND

1. On May 14, 2003, Allegiance Telecom, Inc., and certain of its subsidiaries and affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. By Order dated May 15, 2003, the Court directed the procedural consolidation and joint administration of the Debtors' Chapter 11 cases and designated Case No. 03-13057 (RDD) as the Lead Case.

3. The Debtors have continued in possession of their property and have continued in the management of their businesses pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

^{1/2}Houlihan has agreed to voluntarily reduce its requested expense reimbursement by \$211.78 representing the difference between business class and coach airfare.

4. On May 30, 2003, the United States Trustee appointed a committee of unsecured creditors in this case (the “Committee”).

5. On June 13, 2003, the Court entered an Order Establishing Procedures for Monthly Compensation and Reimbursement of Professionals (the “Monthly Fee Order”).

6. By Order dated June 13, 2003, the Court authorized the retention of Scott, Douglass & McConnico, LLP, among others, as ordinary course professionals.

7. By Order dated June 13, 2003, the Court authorized the retention of Togut Segal and Segal LLP as Bankruptcy Co-Counsel for the Debtors, *nunc pro tunc* to May 14, 2003.

8. By Order dated June 13, 2003, the Court authorized the retention of Latham & Watkins LLP as Counsel to the Special Committee of the Board of Directors, *nunc pro tunc* to May 14, 2003.

9. By Order dated June 26, 2003, the Court authorized the retention of Kirkland & Ellis LLP as counsel for the Debtors, *nunc pro tunc* to May 14, 2003.

10. By Order dated July 29, 2003, the Court authorized the retention of Akin Gump Strauss Hauer & Feld LLP as counsel to the Committee, *nunc pro tunc* to May 23, 2003.

11. By Order dated September 16, 2003, the Court authorized the retention of Houlihan Lokey Howard & Zukin Capital as Financial Advisor to the Committee, *nunc pro tunc* to June 3, 2003.

12. By Order dated September 16, 2003, the Court authorized the retention of Communication Technology Advisors LLC as Industry and Technology Advisors to the Committee, *nunc pro tunc* to June 3, 2003.

13. By Order dated September 18, 2003, the Court authorized the retention of

Greenhill & Co., LLC as Financial Advisor to the Debtors, *nunc pro tunc* to May 14, 2003.

14. By Order dated October 14, 2003, the Court authorized the retention of Impala Partners LLC as Chief Restructuring Officer to the Debtors, *nunc pro tunc* to June 16, 2003.

15. By Order dated November 7, 2003, the Court authorized the retention of KPMG LLP.

16. By Order dated December 3, 2003, the Court authorized the retention of Swidler Berlin Shereff Friedman, LLP as Special Regulatory Counsel *nunc pro tunc* to November 6, 2003.

II. OBJECTION

All Applicants

17. Administrative Solvency. The Debtors do not set forth the amount currently available to satisfy the administrative expenses and professional fees, and the Debtors' attorneys do not state whether there are sufficient funds on hand to pay the Debtors' professional fees at this time.

18. Pursuant to the Monthly Fee Order, the professionals in this case have received payment of 80% of the fees requested in their monthly fee statements and 100% of their requested expenses.² At this time, certain of the applicants seek payment in full, without a "hold back" of any portion of the fees awarded. Even assuming that adequate funds exist to satisfy the professionals' fees, the United States Trustee respectfully objects to payment of the fees in full pending the final resolution of this case, and requests that the Court at this time award less than

² As of the date of the fee applications, some of the applicants had not received payment under the Monthly Fee Order for one or more of the months included in this fee period.

the full amount of the fees sought in these second interim fee applications.

19. The results achieved serve as an important factor in determining the success of the efforts of the applicants. Because those results remain unknown, the United States Trustee believes that an award of less than the full amount of the requested fees is proper at this time.

20. Internal Photocopying. The United States Trustee also notes that a number of applicants currently seek reimbursement for the expense of internal photocopying. General Order M-151 (the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases) (the “Amended SDNY Fee Guidelines”) provides that photocopying may be reimbursed at \$.20 per copy or cost, whichever is less. From this Office’s participation in the fee committees established by the Court in the Enron Corp. and Global Crossing cases, this Office understands that many professionals have been asked to demonstrate proof of their actual cost of internal photocopying, but have not done so. Therefore, the Enron and Global Crossing fee committees recommended that this expense be allowed at \$.10 per copy until proof of the actual cost of photocopying is shown, to ensure compliance with the Amended SDNY Fee Guidelines. This Office makes the same recommendation in this case.^{3/}

21. The United States Trustee reserves her right to object to these interim awards at

^{3/} Some of the applicants have specified internal photocopying charges at less than \$.20 per page. Specifically, Kirkland & Ellis charges \$.10 - \$.15 per page for internal copying charges (see First Application of Kirkland & Ellis LLP, (unnumbered page), ¶ 23); Akin Gump charges \$.15 per page for internal photocopying (see Application for Compensation and Reimbursement of Expenses of Akin Gump Strauss Hauer & Feld LLP at page 19, ¶ 47); and Latham & Watkins’ photocopy charges are billed at \$.17 per page (see First Interim Fee and Expense Application of Latham & Watkins LLP at ¶ 12). The United States Trustee does not object to reimbursement of the requested amounts to these applicants at this time, without prejudice to her right to request documentation and/or an explanation from these applicants in the future as to the calculation of their actual cost of internal photocopying.

any future time including, but not limited to, the final hearing on professional compensation.

Kirkland & Ellis LLP (“K&E”), Counsel for the Debtors

22. The United States Trustee has reviewed the time entries for fees sought by K&E. A number of time entries appeared to be for services constituting overhead. As a result of discussion with K&E regarding such services, K&E has agreed to reduce its fee request by \$10,000.

23. The United States Trustee objects to overtime and overtime-related expenses totaling \$21,303.77 unless further documentation is provided to substantiate that such charges were absolutely necessary to the case and that such services do not constitute administrative and overhead charges for which K&E is not entitled to reimbursement. The United States Trustee also objects to the reimbursement for meal expenses which exceeded \$20.

Togut, Segal & Segal LLP (“TS&S”), Bankruptcy Co-Counsel for the Debtors

24. The United States Trustee has no objection to the fees sought by TS&S, other than as set forth in paragraphs 16 - 19 above.

25. TS&S seeks reimbursement for internal photocopying in the amount of \$4,469.80. TS&S states that its charges for photocopying “do not exceed the maximum rate set by the Fee Guidelines . . .” but it does not state its actual cost of internal photocopying. See Certification of Frank A. Oswald at page 2, ¶ 8, attached to the Second Application of Togut, Segal & Segal LLP for Allowance of Interim Compensation. As set forth in paragraph 19 above, the United States Trustee objects to reimbursement in excess of \$.10 per copy and requests that this expense be reduced accordingly. The United States Trustee also requests an itemization of meals costs in the amount of \$245.08 to ensure that each meal does not exceed the \$20 per meal limit set forth in

the Local Rules. The United States Trustee does not object to reimbursement of the remaining expenses.

Greenhill & Co., LLC (“Greenhill”), Financial Advisor to the Debtors

26. The United States Trustee has no objection to the fees requested by Greenhill, other than as set forth in paragraphs 16 - 19 above.

27. The United States Trustee objects to reimbursement of \$3,197.76 for meals which appear to be in excess of \$20 as required by the Local Rules and \$1,302.47 on November 5, 2003 for monthly car service until additional supporting documentation is provided and determined to be adequate and reasonable. The United States Trustee objects to the reimbursement of \$9,032.93 for “Information Systems” until further information is provided and determined to be adequate and reasonable.

Impala Partners LLC (“Impala”), Chief Restructuring Officer to the Debtors

28. The United States Trustee has no objection to the fees requested by Impala , other than as set forth in paragraphs 16 - 19 above.

29. Impala had not provided documentation detailing expenses in the amount of \$48,459.84 for legal and transcript costs. Subsequent to the request of the United States Trustee supplemental documentation was provided justifying such requests. Accordingly, the United States Trustee has no further objection to the request for reimbursement of expenses in the amounts sought.

Swidler Berlin Shereff Friedman, LLP Special Regulatory Counsel for the Debtors

30. The United States Trustee has no objection to the fees requested by Swidler Berlin, other than as set forth in paragraphs 16 - 19 above.

31. Swidler Berlin has agreed to reduce its requested reimbursement of expenses of \$14,417.84 by \$ 2,384.68 representing excess photocopy expenses and expenses for secretarial time and secretarial overtime.

KPMG LLP, Accountants, Auditors and Tax Advisors for the Debtors

32. The United States Trustee has no objection to the fees requested by KPMG, other than as set forth in paragraphs 16 - 19 above.

33. The United States Trustee objects to the reimbursement of expenses in the amount of \$1,177 until supplemental documentation is provided to ensure that each meal does not exceed the \$20 per meal limit set forth in the Local Rules.

Latham & Watkins LLP, Counsel to the Special Committee of the Board of Directors

34. The United States Trustee has no objection to the fees requested by Latham & Watkins, other than as set forth in paragraphs 16 - 19 above.

35. The United States Trustee does not object to reimbursement of expenses in the amounts requested.

Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), Counsel for the Official Committee of Unsecured Creditors

36. The United States Trustee has no objection to the fees by Akin Gump, other than as set forth in paragraphs 16 - 19 above.

37. The United States Trustee requested that Akin Gump provide itemized documentation in support of meal expenses in the amount of \$2,882.26. Assuming the supplemental documentation is adequate, the United States Trustee has no objection to reimbursement of the expenses requested.

Kelley Drye & Warren LLP (“KDW”), Special Counsel to the Official Committee of Unsecured Creditors

38. KDW has voluntarily agreed to reduce its fee request by \$1,000 for services rendered in connection with its retention application. The United States Trustee has no objection to the reduced fees sought by this applicant, other than as set forth in paragraphs 16 - 19 above.

39. KDW has agreed to reduce the request for reimbursement of expenses sought by \$49.60 for excess photocopy costs and for amounts in excess of the \$20 per meal for meal expenses.

Bilzin Sumberg Baena Price & Axelrod LLP, Special Conflicts Counsel to the Official Committee of Unsecured Creditors

40. The United States Trustee has no objection to the fees and expenses sought by this applicant, other than as set forth in paragraphs 16 - 19 above.

Houlihan Lokey Howard & Zukin Capital (“Houlihan Lokey”), Financial Advisor to the Official Committee of Unsecured Creditors

41. The United States Trustee has no objection to the fees and expenses sought by this applicant, other than as set forth in paragraphs 16 - 19 above.

Communication Technology Advisors LLC (“CTA”), Industry and Technology Advisors to the Official Committee of Unsecured Creditors

42. The United States Trustee reviewed the time records provided by CTA and has requested additional detail regarding certain of the descriptions as follows: Doyle, 10/8/03-10/31/03, “Meetings in NYC”; Doyle, 10/8/03-10/31/03, “Off-Site Research & Report Preparation”; Sanchez, 10/13/03- 10/28/03, “Finishing Appendix Final Presentation”; 11/11/03-11/14/03, “Reviewing Appendix Final Presentation”. In addition, time records must be provided for services rendered by Mr. Abbruzzese. Assuming the supplemental documentation is

provided by Applicant and that such supplements are adequate, other than as set forth in paragraphs 16 - 19 above, the United States Trustee has no objection to the fees requested by CTA.

43. The United States Trustee has no objection to the reimbursement of expenses in the amounts requested by CTA.

WHEREFORE, the United States Trustee respectfully requests that this Court sustain the objections set forth herein and grant such other and further relief as it deems just and proper.

Dated: New York, New York
May 14, 2004

Respectfully submitted,

UNITED STATES TRUSTEE

By: /s/Pamela J. Lustrin
Pamela J. Lustrin (PJL 5890)
33 Whitehall Street, 21st Floor
New York, New York 10004
Tel. No. (212) 510-0500
Fax No. (212)668-2255