

TOGUT, SEGAL & SEGAL LLP
One Penn Plaza, Suite 3335
New York, NY 10119
Telephone: (212) 594-5000
Facsimile: (212) 967-4258
Albert Togut, Esq. (AT 9759)
Attorneys for Debtors

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645
Michael J. Lichtenstein, Esq. (DC Bar # 419302)
Special Counsel to Debtors

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

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In re : **Chapter 11**
:
ALLEGIANCE TELECOM, INC. : **Case No. 03-13057 (RDD)**
:
Debtors. : **(Jointly Administered)**
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**DEBTORS' EMERGENCY MOTION FOR ORDER COMPELLING
VERIZON TO EXECUTE NEW AGREEMENTS**

Allegiance Telecom of Maryland, Inc., Allegiance Telecom of New York, Inc., Allegiance Telecom of the District of Columbia, Inc., and Allegiance Telecom of Pennsylvania, Inc. (collectively, the "Debtors"), by their counsel, make this Motion for an Order compelling Verizon Maryland, Inc., Verizon New York, Inc., Verizon Washington D.C., Inc. and Verizon Pennsylvania, Inc. (collectively "Verizon") to comply with 11 U.S.C. § 362(a)(6) and § 366 by executing certain interconnection agreements, as specified below; to date, Verizon has violated these provisions of the Bankruptcy Code by refusing to execute such agreements. The Debtors respectfully refer the Court to the Memorandum of Law, with the exhibits attached thereto, filed contemporaneously herewith in support of the relief requested, which contains the factual and

legal bases for this Motion and the relief sought herein. A short summary of the bases for the Motion is set forth below.

Jurisdiction and Statutory Predicates for Relief

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief sought herein are Sections 105, 362 and 366 of the United States Bankruptcy Code (the “Bankruptcy Code”).

RELEVANT FACTS

A. Background

5. Allegiance Telecom, Inc. (“ATI”) is a facilities-based national local exchange carrier that provides integrated telecommunication products and services to small and medium-sized business customers, large businesses, governmental entities, network service providers, and other institutional users. ATI must rely on the networks of incumbent local exchange carriers (“ILECS”) such as Verizon to provide its services and, without the utility service of the ILECs, ATI would not be able to continue providing services.

6. On May 14, 2003, ATI and certain of its subsidiaries, including the Debtors, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Section 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their affairs as debtors-in-possession.

7. On November 7, 2003, Verizon and Allegiance entered into a Stipulation and Order for Adequate Assurance of Future Payment to Verizon Communications, Inc. and its

Operating Telephone Company Subsidiaries (the “Adequate Assurance Order”) pursuant to Section 366 of the Bankruptcy Code.

8. On February 20, 2004, the Court entered an order approving the sale (the “Sale Order”) to XO Communications, Inc. (“XO”) of (i) substantially all of the assets of Allegiance Telecom, Inc. and Allegiance Telecom Company Worldwide (“ATCW”) and all of the stock of the direct and indirect reorganized subsidiaries of ATCW, excluding the stock of Shared Technologies Allegiance, Inc. and certain other assets of ATI not relevant to this Motion (collectively, the “Subsidiary Sellers”). The sale is to be effectuated through a plan of reorganization.¹

9. On April 22, 2004, the Court entered an Order Approving the Debtors’ Second Amended Disclosure Statement. A confirmation hearing on the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”) is scheduled for June 7, 2004.

B. Verizon’s Attempt to Enforce its Pre-Petition Claim Outside of the Bankruptcy Process.

10. In the past few months, the Debtors notified Verizon that they were terminating four interconnection agreements (the “Old Agreement”) and were adopting four new Verizon interconnection agreements under Section 252(i) of the Telecommunications Act (collectively, the “New Agreements”). Notwithstanding the requirement under Section 252(i) of the Telecommunications Act that a carrier is permitted to adopt such an existing agreement on **exactly the same terms and conditions as contained therein**, Verizon has refused to take the

¹ Alternatively, at the election of either of the parties as provided in and subject to the terms of the Purchase Agreement, and subject to approval by the Court, the sale may be effectuated under Section 363 of the Bankruptcy Code as the sale of substantially all of the assets of ATI, ATCW, and the Subsidiary Sellers.

ministerial act of signing the New Agreements, and has taken the position that it will not agree to any such adoption of a New Agreement unless Allegiance guarantees that its pre-petition claim be treated as a cure cost which has to be paid in full as a condition to the Debtors' assumption of the Agreement.

11. Specifically, Verizon has demanded that the following language be added to any New Agreement between Verizon and Allegiance, despite the fact that such language is not contained in any prior agreement:

All monetary obligations of the parties to one another under the [Expired Interconnection Agreement] shall remain in full force and effect and shall constitute monetary obligations of the parties under the [New Interconnection Agreement]. (The "Verizon Pre-Petition Payment Condition.")

12. Such language is discriminatory against a Chapter debtor and violates Section 362(a)(6) of the Bankruptcy Code by seeking to enforce a pre-petition debt in violation of the automatic stay. In refusing to allow the Debtors to adopt the New Agreements unless they agree to waive their federally mandated right to the New Agreements on precisely the same terms as the existing agreements and pay a cure on an alleged debt arising under the Expired Agreements, Verizon has also discriminated against the Debtors in violation of Section 366 of the Bankruptcy Code. Verizon has violated Section 366 of the Bankruptcy Code in another way by refusing to provide the Debtors with service, absent payment of a pre-petition cure and by providing service to the existing counterparty to the New Agreements on different terms than those Verizon offered to the Debtors. Verizon has also violated the automatic stay, Section 362(a)(6) of the Bankruptcy Code, by seeking to collect a pre-petition debt. This Court should not allow Verizon to be able to coerce the Debtors to waive federal rights and to pay amounts that they are otherwise not required to pay. While the Debtors could seek to hold Verizon in contempt and to seek damages, the better remedy is for this Court to enter an Order directing Verizon to execute

the New Agreements or, if Verizon fails to sign, deeming that the New Agreements have been adopted.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons and in accordance with 11 U.S.C. §§ 105, 362(a)(6) and 366, the Debtors request the entry of an Order compelling Verizon to execute the New Agreements or deeming the New Agreements to have been adopted and granting the Debtors such other and further relief as this Court deems just and proper.

Date: May 17, 2004

Respectfully submitted,

TOGUT, SEGAL & SEGAL LLP

By: /s/Albert Togut
Albert Togut, Esq. (AT 9759)
One Penn Plaza, Suite 3335
New York, NY 10119
Telephone: 212-594-5000
Facsimile: 212-967-4258
Attorneys for the Debtors

and

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
Michael J. Lichtenstein (DC Bar 419302)
3000 K Street, NW, Suite 300
Washington, D.C. 20007
Telephone: 202-424-7500
Facsimile: 202-424-7645
Special Counsel to the Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
_____	X	

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ORDER
COMPELLING VERIZON TO EXECUTE NEW AGREEMENTS**

This matter having come before the Court upon the Emergency Motion of the Debtors to Compel Verizon Maryland, Inc., Verizon New York, Inc., Verizon Washington D.C., Inc. and Verizon Pennsylvania, Inc. (collectively "Verizon") to Execute New Agreements (the "Motion") filed by Plaintiffs Allegiance Telecom of Maryland, Inc., Allegiance Telecom of New York, Inc., Allegiance Telecom of the District of Columbia, Inc., and Allegiance Telecom of Pennsylvania, Inc. (collectively, the "Debtors"), and in accordance with 11 U.S.C. §§ 105, 362(a)(6) and 366, it is hereby

ORDERED, that Verizon shall immediately execute the New Agreements (as defined in the Motion) with the Debtors; and it is further

ORDERED, that if Verizon fails to execute the New Agreements within 5 days after entry of this Order, the New Agreements shall be deemed to be adopted by the Debtors and shall be binding on Verizon.

Dated: New York, New York
_____, 2004

UNITED STATES BANKRUPTCY JUDGE
SOUTHERN DISTRICT OF NEW YORK