

5/14/2004 Falvey, Anne

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

ALLEGIANCE TELECOM, INC., et al.,

Debtors,

Chapter 11

Case No.

03-13057 (RDD)

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3:00 p.m.

May 14, 2004

One Penn Plaza

New York, New York

DEPOSITION of ANNE FALVEY, a Witness in  
the above entitled matter, taken pursuant to  
Notice, before Stephen J. Moore, a Registered  
Professional Reporter, Certified Realtime  
Reporter, and Notary Public of the of New York.

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ANNE FALVEY

A P P E A R A N C E S:

TOGUT, SEGAL & SEGAL, LLP

Attorneys for Debtors

One Penn Plaza

New York, New York 10119

BY: GERARD DiCONZA, ESQ.

- and -

JONATHAN HOOK, ESQ.

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Attorneys for Creditors Committee

590 Madison Avenue

New York, New York

BY: COLIN M. ADAMS, ESQ.

- and -

BLOSSOM KAN, ESQ.

SIDLEY AUSTIN BROWN & WOOD LLP

Attorneys for KMC

787 Seventh Avenue

New York, New York 10019

BY: KIMBERLY A. JOHNS, ESQ.

1 ANNE FALVEY

2 A N N E F A L V E Y, called as a witness,  
3 having been first duly sworn by the Notary  
4 Public, was examined and testified as  
5 follows:

6

7 EXAMINATION BY MR. DiCONZA:

8

9 Q Hi, Anne, my name is Gerry DiConza  
10 from Togut, Segal & Segal, we are co-counsel for  
11 Allegiance Telecom Inc. in their Chapter 11  
12 bankruptcy case.

13 Thanks for coming down on a Friday  
14 afternoon.

15 Let's just get some preliminaries  
16 out of the way.

17 Have you ever been deposed before?

18 A No.

19 Q This is your first time being  
20 deposed.

21 Are you familiar with the way  
22 depositions work?

23 I will ask the questions, you will  
24 answer them, the reporter will jot everything  
25 down?

1 ANNE FALVEY

2 A Yes.

3 Q If you don't understand everything  
4 that I have said, just ask me to slow down or ask  
5 me to repeat the question and I will be glad to do  
6 that.

7 Do you know of any reason today why  
8 you won't be able to testify truthfully?

9 A No.

10 Q Have you done anything to prepare  
11 for this deposition?

12 A Yes.

13 Q Have you read any pleadings?

14 A Not in preparation for the  
15 deposition.

16 Q What have you done to prepare for  
17 the deposition?

18 A Spoke with counsel.

19 Q You are currently employed for  
20 whom?

21 A Sidley Austin Brown & Wood.

22 Q When did you start working at  
23 Sidley Austin?

24 A May 1, 2003.

25 Q Are you currently a partner at

1 ANNE FALVEY

2 Sidley Austin?

3 A Yes.

4 Q Were you always a partner at Sidley  
5 Austin?

6 A Since May 1, 2003.

7 Q Where were you before May 1, 2003?

8 A Kelley, Drye & Warren.

9 Q How long were you at Kelley, Drye?

10 A Since September of '87.

11 Q Prior to that?

12 A That was right out of law school.

13 Q You graduated law school, which law  
14 school?

15 A Boston College.

16 Q Where did you go undergraduate?

17 A Smith College.

18 Q You were at Kelley, Drye from 1987  
19 through 19 -- how long were you at Kelley, Drye?

20 A September of '87 until the end of  
21 April of '03.

22 Q Which department do you work in?

23 A Corporate.

24 Q Are you aware of KMC Telecom Inc.?

25 A Yes.

1 ANNE FALVEY

2 Q Do you know, is KMC Telecom a  
3 client of yours?

4 A It's a client of the firm's.

5 Q Of which firm?

6 A Sidley -- I will answer only for  
7 Sidley Sidley Austin Brown & Wood.

8 Q Was KMC also a client of Kelley,  
9 Drye?

10 A Yes.

11 Q Were they considered your client  
12 when you were at Kelley, Drye?

13 A I'm not sure I understand the  
14 question.

15 Q Did you bring in the business, when  
16 KMC needed legal counselling did they call you or  
17 did they --

18 A They would call me.

19 Q Do you know if Sidley Austin did  
20 any work for KMC prior to you going to Sidley  
21 Austin?

22 A I don't know.

23 Q Do you understand the corporate  
24 structure of KMC?

25 A Yes.

1 ANNE FALVEY

2 Q The holding company is KMC Telecom  
3 Holdings, Inc.?

4 A Correct.

5 Q Do you know who KMC Telecom XI, LLC  
6 is, in the corporate structure where is it?

7 A Yes.

8 Q Is it a wholly owned subsidiary of  
9 KMC Telecom Holdings, Inc.?

10 A Yes, indirectly.

11 Q What entity is in between the  
12 holding company and Telecom XI, LLC?

13 A I believe there are three entities,  
14 I couldn't give you the exact names.

15 Q How long have you been working for  
16 KMC Telecom? And when I say KMC Telecom, I mean  
17 KMC telecom and all its affiliates and  
18 subsidiaries.

19 A As best I recall, 1996.

20 Q That's while you were at Kelley,  
21 Drye?

22 A Is that a question?

23 Q Yes.

24 A Yes.

25 Q What type of work did you do for

1 ANNE FALVEY

2 KMC Telecom in 1996?

3 MS. JOHNS: I will caution the  
4 witness just to give a general, nothing  
5 specific about the work that was done for  
6 the client.

7 A I don't recall what I did  
8 specifically in '96. I don't know that I can  
9 remember.

10 Q Did you work on contracts for KMC  
11 and its third-party customers?

12 A In '96 in particular?

13 Q Starting in 1996.

14 A Yes.

15 Q Did you work on financing type  
16 arrangements?

17 MS. JOHNS: I am going to object  
18 the nature of the work that she did for  
19 KMC is attorney-client privileged.

20 MR. DiCONZA: I am just asking her  
21 if she did corporate type work for KMC.

22 MS. JOHNS: You can ask that  
23 question, I will let her answer that  
24 question.

25 Q What type of work did you do for

1 ANNE FALVEY

2 KMC?

3 A Can you rephrase the question?

4 Q Did you work on contracts for KMC?

5 Draft, negotiate contracts?

6 A Yes.

7 Q Did you do anything other than  
8 drafting and negotiating contracts?

9 MS. JOHNS: Yes or no?

10 It really goes to the work that  
11 she's doing for the client.

12 I think it's covered by the  
13 privilege.

14 MR. DiCONZA: I don't see that  
15 being covered by the privilege. I am not  
16 asking her about the work, did she do  
17 other work other than drafting contracts  
18 and corporate documents.

19 MS. JOHNS: I will let you answer  
20 it yes or no, but I don't think we should  
21 go into what type of work was being done.

22 A Can you repeat the question, or  
23 read it back.

24 (The question requested was read  
25 back by the reporter.)

1 ANNE FALVEY

2 A Yes.

3 Q What is your general understanding  
4 of the type of business that KMC Telecom is?

5 A It's generally telecommunications  
6 services.

7 Q Who does it provide services to?

8 A Customers.

9 Q What type of customers, are they  
10 individuals, corporations, other telecom?

11 A I don't know who all of their  
12 customers are.

13 Q Generally?

14 A I don't have any idea -- I don't  
15 know who all of their customers are.

16 I know generally who some of them  
17 are, so I am not sure I can answer you that  
18 question.

19 Q What type of agreements have you  
20 worked on for KMC?

21 MS. JOHNS: I am going to object.

22 MR. DiCONZA: On what basis?

23 MS. JOHNS: Attorney-client  
24 privilege.

25 MR. DiCONZA: On the type of

1 ANNE FALVEY

2 agreements she's worked on?

3 MS. JOHNS: Yes, that goes to the  
4 nature of the work the client is seeking  
5 advice on.

6 MR. ADAMS: Can we go off the  
7 record for a second here.

8 (At this point in the proceedings  
9 there was a recess, after which the  
10 deposition continued as follows:)

11 Q Generally as a corporate attorney  
12 at Kelley, Drye and now Sidley Austin, did you  
13 work on corporate type documents for KMC?

14 MS. JOHNS: Go ahead.

15 A Yes.

16 Q What type of corporate type  
17 documents are we discussing in general?

18 Asset purchase agreements,  
19 contracts, lending agreements?

20 MS. JOHNS: Let me talk to her.

21 A Can you read the question or repeat  
22 it, please.

23 (The question requested was read  
24 back by the reporter.)

25 A I worked on a variety of contracts

1 ANNE FALVEY

2 including finance agreements, third-party  
3 contracts, debt and equity contracts.

4 Q Now, when KMC needs legal counsel,  
5 who at KMC contacts you?

6 Is it Mr. Young?

7 A Sometimes.

8 Q Can it be Mr. Bittner?

9 A Sometimes.

10 Q So, it could be any of the  
11 corporate officers at KMC?

12 A I haven't necessarily been  
13 contacted by every corporate officer at KMC, but  
14 Mr. Young and Mr. Bittner have asked for legal  
15 work previously.

16 Q What is your understanding of the  
17 financial situation at KMC?

18 Do you know if KMC is a profitable  
19 company?

20 MS. JOHNS: Do you know that  
21 separate and apart from anything the  
22 client has told you?

23 THE WITNESS: No.

24 MS. JOHNS: Then I instruct the  
25 witness not to answer the question.

1 ANNE FALVEY

2 Q Do you ever read the newspapers?

3 Is KMC ever in the newspapers?

4 A I don't know.

5 Q So you haven't seen any publicity  
6 about KMC?

7 A I don't recall.

8 Q Is KMC a public company?

9 A No.

10 Q Do you know who the majority  
11 shareholders are?

12 MS. JOHNS: Do you know?

13 A I know who the shareholders are.

14 Q Can you tell me who the  
15 shareholders are?

16 MS. JOHNS: Do you know that  
17 separate and apart from information you  
18 have received from the client?

19 A It's a private corporation.

20 MS. JOHNS: So that's information  
21 that's come from the client?

22 THE WITNESS: Yes.

23 MS. JOHNS: I instruct the witness  
24 not to answer.

25 Q Are the shareholders mutual funds,

1 ANNE FALVEY

2 can you tell me if they are mutual funds?

3 A I don't know.

4 MR. DiCONZA: Can we just go off  
5 the record for a second.

6 (Discussion off the record.)

7 MR. DiCONZA: Back on the record.

8 Q Were you doing corporate work for  
9 KMC in 2001, late 2001?

10 A Yes.

11 Q Were you ever approached by KMC to  
12 negotiate and draft an agreement between KMC and  
13 Allegiance?

14 A Yes.

15 Q Do you recall when you were  
16 approached?

17 A I don't.

18 Q Did you know who Allegiance was  
19 before that?

20 A No.

21 Q Who approached you?

22 A From?

23 Q From KMC.

24 A I don't remember.

25 Q Was it Mr. Young?

1 ANNE FALVEY

2 A I don't remember.

3 Q When they initially approached you,  
4 what did they ask you to do?

5 MS. JOHNS: I am going to object.

6 MR. DiCONZA: On what basis?

7 MS. JOHNS: Attorney-client  
8 privilege.

9 Q Were you asked to take a look at an  
10 agreement between Allegiance and KMC and give  
11 advice --

12 MR. DiCONZA: I am not asking her  
13 what advice she gave, I am asking if she  
14 was asked to give advice and counsel.

15 MS. JOHNS: You can answer yes or  
16 no.

17 A Yes.

18 Q Do you recall if this was prior to  
19 2002?

20 A Yes.

21 Q Do you recall what type of an  
22 agreement this was going to be?

23 A Yes.

24 Q Generally what type of an agreement  
25 was this supposed to be?

1 ANNE FALVEY

2 MS. JOHNS: I will allow the  
3 witness to answer some general questions  
4 as it relates to the agreements that are  
5 at issue for this motion.

6 MR. DiCONZA: I am not asking her  
7 to give what she told the client.

8 MS. JOHNS: I will allow her to  
9 answer in general, but I want it  
10 understood her answering these general  
11 questions as to the transaction that is at  
12 issue that's the subject of this  
13 deposition is not a waiver of  
14 attorney-client privilege as to any other  
15 communications between the client and her.

16 MR. DiCONZA: Understood.

17 A Can you repeat the question,  
18 please?

19 MR. DiCONZA: We are going to have  
20 to go off the record.

21 (At this point in the proceedings  
22 there was a recess, after which the  
23 deposition continued as follows:)

24 MR. DiCONZA: Can we go back on the  
25 record.

1 ANNE FALVEY

2 A KMC was going to provide telecom  
3 services to Allegiance.

4 Q You received a draft of this  
5 agreement from whom?

6 A I don't remember.

7 Q Do you know if the initial drafters  
8 of this agreement was KMC or Allegiance?

9 A I believe it was Allegiance.

10 Q Do you know if Allegiance forwarded  
11 the agreement to your client and then was  
12 forwarded to you from your client?

13 A Yes.

14 Q After you received the agreement,  
15 were you involved in any meetings between and  
16 amongst Allegiance, KMC and other attorneys in  
17 discussions over the agreement?

18 A Yes.

19 Q How many meetings were there?

20 A I can recall three separate  
21 occasions when we met.

22 Q In person?

23 A In person.

24 Q And where were these meetings?

25 A One was in Dallas -- no, excuse me,

1 ANNE FALVEY

2 two were in Dallas and one was in Chicago.

3 Q Do you recall who from KMC was at  
4 these meetings?

5 A Yes.

6 Q Can you tell me who?

7 A At the first meeting Roscoe Young  
8 and perhaps someone else, but I can't recall.

9 At the second meeting Kevin  
10 Bittner, Ken Jones and Chris Manier.

11 Q From your understanding are all  
12 these people who were at the meeting on behalf of  
13 KMC, were they all corporate officers of KMC?

14 A No.

15 Q Which ones are not corporate  
16 officers?

17 MS. JOHNS: Can we just go back,  
18 did you give people for all three  
19 meetings?

20 THE WITNESS: No.

21 MS. JOHNS: Do you want to get the  
22 people.

23 Q There was a third meeting, sure,  
24 who was at the third meeting?

25 A From KMC?

1 ANNE FALVEY

2 Q Yes.

3 A Kevin Bittner, Chris Manier, John  
4 Miller, Ken Jones and, perhaps, someone else, but  
5 I can't remember.

6 Q Do you recall who was there on  
7 behalf of Allegiance?

8 A At which meeting?

9 Q At all three meetings.

10 A The first meeting Royce Holland,  
11 Mark Tresnowski, Randall Hand, I believe John  
12 Dumbledon, I believe John Nishimoto and there was  
13 at least one other person whose name I don't  
14 recall.

15 The second meeting, Dumbledon,  
16 Nishimoto, Randall Hand and at the third  
17 meeting -- excuse me at the second meeting  
18 Nishimoto, Jeff Feinbeg and at the third meeting  
19 Jeff Feinbeg, John Nishimoto and I don't recall if  
20 Dumbledon was there or not.

21 Q I asked you previously if all of  
22 the persons who were there on behalf of KMC were  
23 corporate officers of KMC and you responded no.

24 Which one of those persons was not  
25 a corporate officer?

1 ANNE FALVEY

2 A Bittner, Manier, I don't know about  
3 John Miller, I'm sorry, Constance Loosemore was at  
4 the third meeting as well, she is a corporate  
5 officer,.

6 Q Anybody else?

7 A Ken Jones is not an officer.

8 Q What was the purpose of these  
9 meetings?

10 A To negotiate the terms of an  
11 agreement.

12 Q It took three meetings to negotiate  
13 all the terms of an agreement?

14 A No.

15 Q How many meetings did it take?

16 A We had three meetings in person, we  
17 had numerous telephone calls.

18 Q Were there any hotly contested  
19 issues between the parties?

20 A Yes.

21 Q Which issues were contested?

22 A There was a long list.

23 Pricing, indemnities, limitations  
24 on liability, parties, operational issues, force  
25 majeure, the list goes on and on, I'm not sure I

1 ANNE FALVEY

2 can remember each item.

3 Q Do you recall if you have  
4 negotiated similar type arrangements for KMC with  
5 other telecom providers similar to Allegiance?

6 MS. JOHNS: In general terms?

7 MR. DiCONZA: Yes.

8 A I'm not sure there were other  
9 agreements with respect to the same services.

10 Q Meaning the services provided under  
11 the telecom services provided by KMC to  
12 Allegiance?

13 A Yes.

14 Q I am going to show you a copy of  
15 Allegiance's Exhibit 1 which was introduced at Ms.  
16 Loosemore's deposition yesterday. These are the  
17 two amendments.

18 Have you ever seen that document?

19 A Yes.

20 Q Do you understand what that  
21 agreement is for?

22 A I think I do, yes.

23 Q In general terms, what is the  
24 agreement for and what does it provide?

25 A KMC provides telecommunications

1 ANNE FALVEY

2 services to Allegiance.

3 Q What is the purpose of the  
4 agreement?

5 A For Allegiance to receive  
6 telecommunications services.

7 Q We have been calling that agreement  
8 the PRI agreement.

9 Is that the PRI agreement, is that  
10 your understanding of the PRI agreement?

11 A Yes.

12 Q That's the agreement that is  
13 referred to in the motion filed by KMC on May 3 to  
14 seek an order integrating the colocation agreement  
15 with the PRI agreement?

16 A Yes.

17 Q Can you look at the signature page  
18 to the PRI agreement.

19 A The the original.

20 Q Yes. Who was it signed by on  
21 behalf of KMC?

22 A It says Constance Loosemore.

23 Q To the best of your knowledge did  
24 she have the corporate authority to sign that  
25 agreement?

1 ANNE FALVEY

2 A Yes.

3 Q Can you tell me if the agreement  
4 was dated when she signed it?

5 A I don't know.

6 Q Is there a date by her signature?

7 A No.

8 Q Can you flip the page and tell me  
9 who signed on behalf of Allegiance?

10 A It says Jeffrey Feinbeg.

11 Q Is Mr. Feinbeg's signature dated?

12 A No.

13 Q Do you know what date the  
14 agreements were signed?

15 A I believe they were signed February  
16 11, 2002.

17 Q Were they signed by both parties on  
18 February 11, 2002?

19 A I believe so.

20 Q Why do you believe so?

21 A The signature pages for the PRI  
22 agreement and the colo agreement were transmitted  
23 simultaneously by both parties.

24 Q So, transmitted to whom?

25 A To the attorneys.

1 ANNE FALVEY

2 Q So you were the attorney on behalf  
3 of KMC, who was the attorney on behalf of  
4 Allegiance?

5 A Piper Rudnick.

6 Q And at the same time faxes were  
7 sent out to each attorney?

8 A Yes.

9 Q Do you know when Allegiance  
10 actually executed the PRI agreement?

11 A No.

12 Q Now, you said earlier that KMC was  
13 providing telecommunication ports and services to  
14 Allegiance so that Allegiance can provide services  
15 to its customers, do you know who that customer  
16 was?

17 A I don't think I said that.

18 Q What did you say? Do you recall  
19 what you said?

20 A I think I said KMC provided  
21 services to Allegiance.

22 Q For what purpose under the PRI  
23 agreement?

24 A Under the PRI agreement, I believe  
25 they provided services in turn to Genuity.

1 ANNE FALVEY

2 Q So Allegiance needed KMC's services  
3 so that Allegiance can provide services to Genuity  
4 under a separate contract that Allegiance had with  
5 Genuity?

6 A That's my understanding.

7 Q Do you know who negotiated the  
8 discussions amongst the parties?

9 Do you know if Allegiance went to  
10 KMC or if KMC went to Allegiance?

11 A I don't know.

12 Q Do you recall what the pricing  
13 terms were under the PRI agreement?

14 A I have a general recollection.

15 Q Generally is all I am asking.

16 A Yes.

17 Q What were they? Did KMC owe money  
18 to Allegiance under the PRI, were they reciprocal?

19 A Under the PRI agreement KMC  
20 provided -- generally, KMC provided services to  
21 Allegiance, Allegiance paid KMC for those  
22 services.

23 Q Do you recall if the payment from  
24 Allegiance to KMC was a market rate charge?

25 A I don't know.

1 ANNE FALVEY

2 Q How many drafts of the agreement  
3 were circulated?

4 A I don't recall.

5 Q More than 10?

6 A As best I recall, probably.

7 Q Less than 20?

8 A I don't remember.

9 Q Do you recall how many months it  
10 took between the initial discussions and the final  
11 product that you have in front of you?

12 A I don't remember.

13 Q Was it half a year, a year?

14 A It was less than a year.

15 Q Do you recall if there were any  
16 final sticking points that the parties could not  
17 agree on?

18 A Yes.

19 Q What type of points were those?

20 A There was a buyout provision.

21 Q What is the buyout provision?

22 A There is a provision in the PRI  
23 agreement that generally gave Allegiance the  
24 opportunity to purchase assets in the event  
25 certain events took place.

1 ANNE FALVEY

2 Q Who wanted that buyout provision?

3 A Allegiance.

4 Q And KMC did not agree with that?

5 A KMC objected to that provision.

6 Q But ultimately the final product

7 included the buyout provision?

8 A It included a version of of a

9 buyout provision.

10 Q Based on your knowledge did the PRI

11 agreement on its own, did it make economic sense

12 for KMC?

13 A I don't know.

14 Q Was it a fair contract as far as

15 consideration going both ways for KMC?

16 A I'm not sure I understand the

17 question.

18 Q Was it possible for KMC to make a

19 profit under the PRI agreement?

20 A I don't know.

21 Q If you look at Section 12.2 of the

22 PRI agreement, do you recall that section?

23 A Generally.

24 Q Based on your recollection what

25 does that section provide KMC with?

1 ANNE FALVEY

2 A I'm sorry, can you read the  
3 question.

4 (The question requested was read  
5 back by the reporter.)

6 A It says Allegiance allows KMC  
7 access to Allegiance facilities, I don't have a  
8 particular recollection of the provision.

9 Q But based on your understanding  
10 under this provision, KMC would be allowed access  
11 to certain of Allegiance's facilities?

12 A That's what it says.

13 Q Then if you look in the middle of  
14 that paragraph on the first page, there is a  
15 parenthetical that says, "excluding access to  
16 Allegiance's colocation space, which shall be  
17 addressed in a separate agreement."

18 What does that mean to you?

19 A I believe this means Allegiance  
20 would allow access under certain circumstances in  
21 addition to the colo space.

22 Q Which shall be addressed in a  
23 separate agreement?

24 Q Correct?

25 A Can you read the question.

1 ANNE FALVEY

2 (The question requested was read  
3 back by the reporter.)

4 A I don't know if that was a  
5 question.

6 Q Well, you said that Allegiance  
7 would provide access to its space, except for  
8 colocation space, then I asked you because that  
9 will be addressed in a separate agreement?

10 A The colocation space was -- there  
11 is a separate colocation -- there is another  
12 colocation agreement.

13 Q I am going to ask you to take a  
14 look at exhibit number 2.

15 Can you read the title of that  
16 agreement?

17 A Infrastructure interconnection  
18 agreement.

19 Q Is that the agreement that has been  
20 referred to as the colocation agreement and as  
21 defined in KMC's motion?

22 A Yes.

23 Q If we look at Section 12.2 of the  
24 PRI agreement in the parenthetical, where it says  
25 which shall be addressed in a separate agreement,

1 ANNE FALVEY

2 is the Exhibit 2 colocation agreement the separate  
3 agreement that is referred to?

4 A I believe so.

5 Q When negotiations between the  
6 parties were taking place, was it understood that  
7 there would be a PRI agreement and a colocation  
8 agreement?

9 A Understood -- yes.

10 Q Between the parties?

11 A Yes.

12 Q Was there any reason why the terms  
13 of the colocation agreement weren't included  
14 within the terms of the PRI agreement?

15 A I don't recall.

16 Q Do you recall if they were ever  
17 included in the PRI agreement then taken out and a  
18 separate agreement was created?

19 A I don't recall that.

20 Q From your recollection and  
21 understanding, what was the general purpose of the  
22 colocation agreement?

23 A It's an agreement to permit KMC to  
24 place equipment in space owned or leased by  
25 Allegiance.

1 ANNE FALVEY

2 Q What was the purpose, why did KMC  
3 need to put the equipment in this space?

4 A KMC needed to put the equipment in  
5 Allegiance's space in order to provide the  
6 services to Allegiance under the PRI agreement.

7 Q Were there any other purposes?

8 A There were additional purposes.

9 Q Do you know what those additional  
10 purposes were?

11 A To put the equipment that it owned  
12 in Allegiance's space.

13 Q To?

14 A To potentially provide services.

15 Q To?

16 A To other -- to third parties.

17 Q Now, do you recall if the  
18 colocation agreement was drafted simultaneously,  
19 at the same time as the PRI agreement?

20 A Yes.

21 Q Do you recall if the colocation  
22 agreement was executed at the same time as the PRI  
23 agreement?

24 A I believe they were.

25 Q Can we go to the signature page on

1 ANNE FALVEY

2 the colocation agreement?

3 Who signed it on behalf of KMC?

4 A It says Constance Loosemore.

5 Q Did she date it?

6 A No.

7 Q Who signed it on behalf of -- is it  
8 legible?

9 A It says Jeffrey Feinbeg.

10 Q Was it dated?

11 A No.

12 Q Is the colocation agreement dated  
13 anywhere?

14 A I don't know.

15 Q Is it dated in the first paragraph?

16 A No.

17 Q Do you know if there is a provision  
18 in the PRI agreement that conditions the  
19 effectiveness of the PRI agreement on the  
20 execution of the colocation agreement?

21 A I don't know.

22 Q Did you draft the PRI agreement?

23 A No.

24 Q Did you review the PRI agreement?

25 A Yes.

1 ANNE FALVEY

2 Q You read the entire agreement?

3 A Yes.

4 Q And you don't recall if there is  
5 any provision in there that conditions its  
6 effectiveness on the colocation agreement?

7 A I don't recall.

8 Q Do you recall if there was any  
9 economic benefit to Allegiance for entering into  
10 the colocation agreement?

11 A I don't know.

12 Q If we go to Exhibit C to the  
13 colocation agreement, have you ever seen Exhibit C  
14 before?

15 A Yes.

16 Q Do you recall what it does? What's  
17 it in the agreement for?

18 A Sets forth pricing.

19 Q Generally paragraph 1 provides  
20 pricing if KMC uses Allegiance's colocation space  
21 only for Allegiance, is that correct?

22 A I believe generally that's correct.

23 Q So, the parties entered into the  
24 colocation space whereby KMC could use  
25 Allegiance's colocation space and if it was using

1 ANNE FALVEY

2 that space to provide service to Allegiance, KMC  
3 did not have to pay Allegiance?

4 A Was that a question?

5 Q Is that your understanding?

6 MS. JOHNS: Can you read it back so  
7 we are all on the same page.

8 (The question requested was read  
9 back by the reporter.)

10 A KMC did not have to pay Allegiance.

11 Q Is that correct?

12 A Yes.

13 Q Is there a method under the  
14 colocation agreement whereby KMC would have to pay  
15 Allegiance for services?

16 A Yes.

17 Q And your understanding of that?

18 A If KMC were using the equipment for  
19 third parties there was a mechanism.

20 Q Do you recall if this was  
21 negotiated, if the parties -- if this was a hotly  
22 contested matter, if the parties went over these  
23 terms?

24 A I recall there were negotiations.

25 Q Do you recall if it was a deal

1 ANNE FALVEY

2 breaker or not?

3 A The colocation agreement was a deal  
4 breaker.

5 Q And the pricing under the  
6 colocation agreement?

7 A The pricing of the whole deal  
8 inclusive of the colocation was a deal breaker.

9 Q You have read the entire colocation  
10 agreement and you also read the PRI agreement.

11 Do you know if there are any  
12 provisions in the colocation agreement that make  
13 it's effectiveness on the PRI agreement?

14 A I don't recall specifically.

15 Q From your understanding, if the  
16 colocation agreement was terminated for any  
17 reason, did that automatically terminate the PRI  
18 agreement?

19 A I don't recall.

20 Q If we could go to the first page,  
21 at the bottom of the last page where it says,  
22 "early termination by either party of this  
23 agreement or any space provided hereunder  
24 for any reason shall not release such  
25 party from its obligations under the

1 ANNE FALVEY

2 service agreement."

3 And the service agreement is  
4 defined herein as the PRI agreement, is that  
5 correct?

6 A That's what it says, yes.

7 Q So, based on a reading of this  
8 sentence, if the colocation agreement is  
9 terminated, the PRI agreement can still remain in  
10 effect?

11 A The parties remain obligated under  
12 the PRI agreement.

13 Q Do you know what the current status  
14 of the PRI agreement is?

15 A Yes.

16 Q Who is the party to the PRI  
17 agreement?

18 A KMC XI and Level III, but I don't  
19 know the exact name of the entity.

20 Q So, the PRI agreement was assumed  
21 and assigned by Allegiance to Level III by court  
22 order?

23 A That's my understanding.

24 Q Do you know if KMC is still  
25 complying with the terms of the PRI agreement?

1 ANNE FALVEY

2 A I believe so.

3 Q When the parties entered into these  
4 two agreements, was it understood at that time  
5 that if the PRI agreement was either terminated or  
6 assigned to somebody else, as it is right now,  
7 that the colocation agreement could survive?

8 A I'm sorry, can you just repeat  
9 that?

10 Q Sure. When the parties originally  
11 negotiated and negotiated the agreement and  
12 entered into the PRI agreement and the colocation  
13 agreement, was it understood, was it the intent  
14 that if the PRI agreement was eventually  
15 terminated or assigned to a new party, that the  
16 colocation agreement could survive and exist on  
17 its own?

18 A Yes.

19 Q Do you know if KMC is providing  
20 services under the colocation agreement to any  
21 third-party other than Allegiance?

22 A I don't know.

23 Q Do you know if there were any  
24 discussions between KMC and Level III over the  
25 terms of the PRI agreement and terminating the PRI

1 ANNE FALVEY

2 agreement or buying out the PRI agreement?

3 MS. JOHNS: Can you read that one  
4 back.

5 (The question was read back by the  
6 reporter.)

7 A Yes.

8 Q Generally when were these  
9 discussions held?

10 A I don't recall when they -- as I  
11 recall, December.

12 Q Of what year?

13 A Of '03.

14 Q Do you know if Level III approached  
15 KMC about entering into a transaction?

16 A I don't know.

17 Q What were these discussions about?

18 What were the general terms of this  
19 transaction that KMC and Level III were  
20 discussing?

21 MR. DiCONZA: I don't need to know  
22 any discussions between you and the  
23 client, but I need to know what the two  
24 parties were discussing.

25 A There is a confidentiality

1 ANNE FALVEY

2 confidentiality agreements in place between KMC  
3 and Level III.

4 Q Over the terms of this proposed  
5 transaction?

6 A With respect to a number of items,  
7 including the PRI agreement.

8 Q Did you ever disclose the terms of  
9 this proposed transaction to any third-party?

10 A I don't recall.

11 Q Let me show you a copy of  
12 Allegiance Exhibit 6.

13 Do you recall that e-mail?

14 A Not specifically.

15 Q Well, is it from you?

16 A Yes.

17 Q Who is it sent to?

18 A It's addressed to Mark Tresnowski,  
19 Royce Holland, Hal Kamin, Bill Stewart, Roscoe  
20 Young, Kevin Bittner and Alan Epstein.

21 Q In your text of the e-mail you  
22 advise the parties that you are attaching a draft  
23 of the proposed term sheet for settlement amongst  
24 Allegiance, KMC and Level III?

25 Is that correct?

1 ANNE FALVEY

2 A That's what it says, yes.

3 Q If we go to the proposed term  
4 sheet, do you recall if you drafted this term  
5 sheet?

6 A I don't believe I did.

7 Q Do you recall if it was drafted by  
8 Allegiance?

9 A I don't believe so.

10 Q Could it have been drafted by Level  
11 III?

12 A I don't believe so.

13 Q So, how did you get this term  
14 sheet?

15 A I believe it came to me from  
16 another attorney at Sidley.

17 Q The terms of the term sheet were  
18 prepared by, I am assuming, an attorney at Sidley  
19 at the request of KMC?

20 A I believe so.

21 Q In general what does the term sheet  
22 propose to do?

23 A I have to read it.

24 Q Sure.

25 MS. JOHNS: I will just restate my

1 ANNE FALVEY  
2 objection from the prior depositions that  
3 the questioning as to any of the terms of  
4 this term sheet which is labeled that it  
5 is done in the context of a settlement  
6 proposal is inadmissible and is  
7 inappropriate for questioning in this  
8 deposition.

9 MR. DiCONZA: Noted.  
10 (The question requested was read  
11 back by the reporter.)

12 A Resolve the Genuity Allegiance and  
13 the Allegiance KMC contracts.

14 Q When you say resolve, you mean  
15 settle, compromise?

16 What were the issues, were there  
17 disputes?

18 A Level III had filed -- had filed  
19 numerous pleadings with the Bankruptcy Court with  
20 respect to their contract with Allegiance.

21 Q Level III had disputes with  
22 Allegiance in connection with their contract and  
23 KMC sought to resolve the disputes between  
24 Allegiance and Level III?

25 A PRI agreement was such that the

1 ANNE FALVEY

2 services provided by KMC were, in turn, provided  
3 to Genuity/Level III and the performance standards  
4 in the Allegiance KMC contract were similar to the  
5 performance standards in the Allegiance/Level III  
6 contract.

7 The performance standards were  
8 among the claims that Level III brought against  
9 Allegiance in the bankruptcy court.

10 Q Do you know if Allegiance had  
11 claims against KMC based on those same type of  
12 performance standards?

13 A Allegiance did not make claims  
14 against KMC under its contract, but the contracts  
15 were similar.

16 Q So we had claims from Level III  
17 against Allegiance and then we have the agreement  
18 between Allegiance and KMC and under the proposed  
19 settlement here, KMC proposed to settle those  
20 claims?

21 A There would be no claims against  
22 KMC.

23 Q Because KMC would receive a buyout  
24 of the PRI agreement?

25 A Pursuant to Item 1.

1 ANNE FALVEY

2 Q Right, so the proposal here would  
3 be to get rid of the PRI agreement, to get rid of  
4 those claims between Level III and Allegiance and  
5 then there would be no claims against KMC?

6 A Right.

7 Q So, the PRI agreement would be  
8 bought out, KMC would receive payment?

9 A Right, correct.

10 Q And then how do we deal with the  
11 colocation space?

12 A Paragraph 3 says Allegiance would  
13 grant to KMC at no cost a five year colo agreement  
14 in order that the telco boxes remained at their  
15 present locations, including rights to additional  
16 space at those same sites.

17 Q Why would KMC need this colocation  
18 space?

19 A To maintain equipment in Allegiance  
20 sites.

21 Q So, to maintain the same equipment  
22 that it has in Allegiance's sites right now under  
23 the colocation agreement?

24 A That equipment plus additional  
25 space for an extended period of time.

1 ANNE FALVEY

2 Q Why does KMC need that colocation  
3 space?

4 A To maintain its equipment in the  
5 Allegiance sites.

6 Q So that it can provide services?

7 A To provide services.

8 Q To?

9 A Third parties.

10 Q Because it wouldn't have to provide  
11 the services to Allegiance under the PRI?

12 Because that would be terminated?

13 A Once the PRI agreement were  
14 terminated, KMC wouldn't provide services under  
15 the PRI agreement, so it wouldn't need equipment  
16 because there are no services to provide.

17 Q So, a condition to this term sheet  
18 was that in order for the PRI agreement to be  
19 terminated and for KMC to receive payment,  
20 Allegiance would have to agree to provide it with  
21 colocation space, and if Allegiance did not agree  
22 to do this, KMC would not do the deal?

23 A It appears in this draft to be a  
24 condition to the entire transaction.

25 Q I am going to ask you some general

1 ANNE FALVEY  
2 questions about the PRI agreement and the  
3 colocation agreement.

4 From your understanding of the two  
5 agreements, do you understand that they have  
6 similar terms?

7 Do you recall that the terms were  
8 set to expire at the same time under the two  
9 agreements?

10 A I recall generally that there was a  
11 reference in the colo agreement to the term of the  
12 PRI agreement.

13 Q But that doesn't necessarily mean  
14 that they had the same terms.

15 A No.

16 Q Do you recall if the colocation  
17 agreement was ever referred to in the PRI  
18 agreement, other than in Section 12.2 that we  
19 looked at before.

20 A I believe it may have been, but I  
21 don't recall specifically.

22 Q Would it make sense, I am not a  
23 corporate lawyer, but if two documents are  
24 actually integrated and intertwined and actually  
25 one agreement, would it make sense to have some

1 ANNE FALVEY  
2 sort of definitional phrase in one of the  
3 agreements actually defining the other agreement  
4 and saying that other agreement is actually a part  
5 of this agreement?

6 A Not necessarily.

7 Q Why wouldn't you do that?

8 A Depends on the nature of the  
9 agreements.

10 Q From my understanding of speaking  
11 with the corporate officers and deposing the  
12 officers of KMC, they thought it was absolutely  
13 essential that the colocation space be given with  
14 the PRI agreement, yet the two agreements aren't  
15 one agreement, they are two separate agreements  
16 and there is no reference in the PRI agreement to  
17 a separate colocation agreement, nor does it  
18 define it.

19 Is there any reason why it was done  
20 in this situation?

21 A There is a reference to it in 12.2  
22 that you pointed out earlier.

23 Q Right, it refers to it as a  
24 separate agreement.

25 A It was part of the same deal, it

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ANNE FALVEY

was delivered at the same time, there are a number of ways to address two agreements that constitute one transaction.

Q For example, you could have an integration clause in an agreement that says this agreement and such and such agreement are one contract?

A That could be done.

Q But it wasn't done in the PRI agreement?

A I don't recall specifically.

Q Let's take a look at Section 21.2, it's on Page 43.

Do you want to read it?

A I'm sorry, did you ask me a question?

Q I haven't asked you a question yet.

A Do you want me to read it?

Q Sure.

If we look at the first sentence of Section 21.2 it says that, "This agreement, the PRI agreement, including Exhibits A, B, C, C1, C2, D, E, F and G and all schedules or attachments incorporated herein constitute

1 ANNE FALVEY  
2 the entire agreement of the parties with  
3 regard to the services and matters  
4 addressed herein and all prior agreements,  
5 letters, proposals, discussions and other  
6 documents regarding the services and the  
7 matters addressed in this agreement are  
8 superseded and merged into this  
9 agreement."

10 Now when you review Exhibits A, B,  
11 C through G, the colocation agreement is not one  
12 of those exhibits, do you agree?

13 A Yes.

14 Q Yes, it's not one of those  
15 exhibits?

16 A Yes, it's not one of A through G.

17 Q Now if, in fact, the agreements are  
18 integrated and to be deemed as one, don't you  
19 think that it should have been referred to in this  
20 section?

21 A It says all prior agreements,  
22 letters, proposals, discussions and other  
23 documents regarding the services and the matters  
24 addressed in this agreement are superseded or  
25 merged into this agreement.

1 ANNE FALVEY

2 It doesn't say contemporaneous  
3 agreements.

4 Q So, because it doesn't say  
5 contemporaneous agreements you didn't have to  
6 include the colocation agreement in Section 21.2?

7 A Right.

8 Q You didn't have to refer to it  
9 there?

10 A Right.

11 Q Do you know if the colocation  
12 agreement is integrated in any other provision in  
13 the PRI agreement?

14 A I don't know specifically.

15 Q What if I were to tell you that I  
16 read the entire agreement three times and I  
17 haven't found an integration clause?

18 A Is that a question?

19 Q Would you believe me?

20 A Yes.

21 Q Would it make sense?

22 A I would believe you.

23 MR. DiCONZA: Can we just take five  
24 minutes.

25 (At this point in the proceedings

1 ANNE FALVEY

2 there was a recess, after which the  
3 deposition continued as follows:)

4 MR. DiCONZA: Back on the record.  
5 I am done with my questioning, thank you  
6 Ms. Falvey.

7 THE WITNESS: You are welcome,  
8 Mr. DiConza.

9

10 EXAMINATION BY MS. KAN:

11

12 Q Good afternoon, Ms. Falvey, my name  
13 is Blossom Kan from the law firm of Akin Gump  
14 Strauss Hauer & Feld, I represent the Official  
15 Committee of unsecured creditors.

16 I am going to just ask you a couple  
17 of more questions.

18 Let me turn your attention to a  
19 document that has been marked as Exhibit 6.

20 As you previously stated, it's an  
21 e-mail from you to Mark Tresnowski, Royce Holland,  
22 Bill Stewart, Roscoe Young, Hal Kamin, Kevin  
23 Bitner and Alan Epstein, is that correct?

24 A Yes.

25 Q I know you have been asked about

1 ANNE FALVEY

2 this, but just so that we can have the predicate  
3 here, what exactly is this document?

4 A This e-mail says it attaches a  
5 draft proposed term sheet for settlement among  
6 KMC, Allegiance and Level III.

7 Q You said that you did not draft  
8 this document, is that correct?

9 A I don't believe I did.

10 Q Do you know who did?

11 A I believe it may have been Alan  
12 Epstein.

13 Q Alan Epstein is an attorney at  
14 Sidley?

15 A Yes.

16 Q Who asked Alan Epstein to draft  
17 this agreement?

18 A I don't know.

19 Q Did you ask him to draft this  
20 agreement?

21 A No.

22 Q Why was this agreement sent to you?

23 A I sent it out to the parties listed  
24 on the e-mail address.

25 Q I understand that, but why was the

1 ANNE FALVEY

2 term sheet sent to you in the first place?

3 A As I recall, to review it for my  
4 information.

5 Q Did you review it?

6 A I may have. I don't recall  
7 specifically.

8 Q Did you provide any input on it?

9 A I don't recall.

10 Q Did you provide any comments or  
11 edits on this agreement?

12 A I don't recall.

13 Q Do you recall modifying this  
14 agreement?

15 A I don't recall.

16 Q Do you recall, was this the first  
17 time this term sheet was sent to Allegiance?

18 A I don't know.

19 Q Do you recall if there were  
20 multiple drafts of this agreement that were  
21 circulated?

22 A I don't know.

23 Q Do you recall seeing any other  
24 draft of this agreement?

25 A I don't recall.

1 ANNE FALVEY

2 Q Do you recall discussing this  
3 agreement with Allegiance?

4 A I don't.

5 Q Do you recall having any  
6 discussions relating to this agreement with anyone  
7 at Allegiance?

8 A I don't recall.

9 Q Did anyone at KMC have any  
10 discussions with anyone at Allegiance with respect  
11 to this agreement?

12 A I don't know.

13 Q Were you involved in any  
14 negotiations with respect to this agreement?

15 A I don't recall specifically.

16 Q What do you mean by that?

17 A I don't recall specific  
18 negotiations.

19 Q Do you recall general negotiations?

20 A I recall generally that there were  
21 negotiations, there were discussions that took  
22 place among KMC Level III and Allegiance.

23 Q Who at KMC and Allegiance had these  
24 discussions?

25 A I don't know specifically.

1 ANNE FALVEY

2 Q When you say you don't know  
3 specifically, do you mean that you know generally  
4 which types of employees would have these  
5 discussions, or do you mean you don't know the  
6 specific names and identities of the employees who  
7 had these discussions?

8 MS. JOHNS: I object to the form.

9 Q Do you understand the question?

10 A With respect to KMC?

11 Q Let's take with respect to KMC.

12 A I don't recall specifically -- I  
13 don't recall specifically who at KMC.

14 Q Do you recall in any way who at KMC  
15 you had these discussions with, or who were  
16 involved in these discussions?

17 A Can you repeat the question? Was  
18 the question about discussions I had?

19 Q No, I'm sorry, let me rephrase the  
20 question.

21 You say you don't recall  
22 specifically who at KMC was involved in  
23 negotiations regarding this agreement, is that  
24 correct?

25 A Correct.

1 ANNE FALVEY

2 Q Do you recall anything at all about  
3 anyone at KMC having discussions with respect to  
4 this agreement?

5 A I believe there were discussions, I  
6 believe it may have been Bill Stewart, but I don't  
7 recall specifically.

8 Q Who is Bill Stewart?

9 A Bill Stewart is the CFO of KMC.

10 Q Who did he have these discussions  
11 with?

12 A Level III and Allegiance.

13 Q Who at Level III did he have these  
14 discussions with?

15 A I don't know.

16 Q Who at Allegiance did he have these  
17 discussions with?

18 A I don't know.

19 Q Were you involved in any of these  
20 discussions?

21 A I don't recall. I don't recall  
22 specifically.

23 Q What do you mean by specifically?

24 A I don't recall a specific -- I  
25 don't recall a conversation among myself, KMC and

1 ANNE FALVEY

2 Level III.

3 Q Do you recall any discussions  
4 between you or Level III or anyone at KMC, not  
5 necessarily all three parties?

6 A I recall discussions about the  
7 nondisclosure agreement.

8 Q Why don't you tell me about those  
9 discussions?

10 MS. JOHNS: Who were those  
11 discussions with?

12 A With Level III and with Allegiance.

13 MS. JOHNS: I just wanted to make  
14 sure it wasn't an attorney-client  
15 communication.

16 THE WITNESS: No.

17 Q Tell me about those discussions.

18 A There were discussions about  
19 negotiating a nondisclosure agreement that I  
20 believe was signed by KMC, Allegiance and Level  
21 III.

22 Q Who at Level III and Allegiance did  
23 you discuss this nondisclosure agreement with?

24 A Mark Tresnowski and John Ryan.

25 Q Approximately when did these

1 ANNE FALVEY

2 discussions take place?

3 A I believe in December.

4 Q Of 2003?

5 A Of 2003.

6 Q Did you have any other discussions  
7 with Level III and Allegiance?

8 A I don't recall specifically.

9 Q Do you recall anything at all?

10 A We had discussions with Allegiance  
11 in connection with the ongoing bankruptcy case  
12 with Mark Tresnowski.

13 I don't recall other  
14 conversations -- I don't recall other  
15 conversations other than the bankruptcy court  
16 proceedings.

17 Q Just tell me what were those  
18 discussions about the bankruptcy proceedings?

19 A At that time I believe Level III  
20 had filed papers alleging breach by Allegiance of  
21 the PRI contract in the bankruptcy court, so there  
22 were discussions concerning those filings, and I  
23 believe there were a series of filings that took  
24 place in the bankruptcy court along the same lines  
25 with respect to allegations about performance

1 ANNE FALVEY  
2 issues and other issues relating to the PRI  
3 agreement.

4 Q Anything else?

5 A There were discussions with  
6 Allegiance about the claims that KMC had filed in  
7 the bankruptcy as well.

8 Q Anything else?

9 A Not as related to anything other  
10 than the -- those topics.

11 Q Let's take a look at the term  
12 sheet.

13 I know you previously discussed  
14 this, but let's just go through this to lay a  
15 predicate.

16 What is the purpose of this term  
17 sheet?

18 MS. JOHNS: I will renew my  
19 objections from before with regard to this  
20 term sheet, the settlement negotiation.

21 A It says it's an effort to find a  
22 mutually agreeable resolution to the  
23 Genuity/Allegiance and the Allegiance/KMC  
24 contract.

25 Q What is that resolution?

1 ANNE FALVEY

2 A Level III would purchase the  
3 Allegiance/KMC contract, Level III would pick up  
4 some costs, Allegiance would grant an extension to  
5 the colo agreement and permit use of additional  
6 space.

7 Level III would provide some rights  
8 to KMC to terminate traffic on Level III's network  
9 and KMC would waive rights to rejection of the  
10 contracts with Allegiance and KMC would retain its  
11 prepetition claim and Level III would continue to  
12 pay KMC for the circuits that it used.

13 Q Now, when you say Allegiance/KMC  
14 contracts, you are referring to the PRI agreement,  
15 correct?

16 A This says the rejection of the KMC  
17 XI/Allegiance contract, I don't know if its  
18 defined.

19 Q But is it your understanding that  
20 this is referring to a buyout of the PRI  
21 agreement?

22 A Yes, the PRI agreement.

23 Q So, this term sheet contemplates  
24 the buyout or termination of the PRI agreement,  
25 correct?

1 ANNE FALVEY

2 A As part of a series of transactions  
3 that would take place simultaneously.

4 Q Was this agreement ever  
5 consummated?

6 A No.

7 Q But if this agreement had been  
8 consummated and the PRI agreement had been  
9 terminated or bought out, would KMC continue to  
10 use the colocation space that it has, the  
11 colocation agreement to which it has a colocation  
12 agreement with Allegiance?

13 A Can you read that again?

14 Q Let me rephrase that.

15 My only question is assuming this  
16 contract -- assuming the PRI agreement had been  
17 terminated and it had been bought out, would KMC  
18 continue to utilize the colocation space that it  
19 has a colocation agreement with Allegiance on?

20 A Under the terms set forth in this  
21 term sheet?

22 I'm sorry, I'm not sure I  
23 understand.

24 Q What is your understanding as to  
25 whether or not KMC would continue to seek to use

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ANNE FALVEY

the colocation space that it has from Allegiance  
if the PRI agreement had been bought out according  
to this?

A It would continue to use the colo  
space and the colo agreement would be extended for  
five years.

MS. KAN: I have no more questions.

Thank you.

THE WITNESS: Thank you.

\_\_\_\_\_

ANNE FALVEY

Subscribed and sworn  
to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2004.

\_\_\_\_\_

Notary Public

1 ANNE FALVEY

2  
3 C E R T I F I C A T E

4  
5 I, STEPHEN J. MOORE, a Shorthand  
6 Reporter and Notary Public of the State of New  
7 York, do hereby certify:

8  
9 That, ANNE FALVEY, the witness  
10 whose deposition is hereinbefore set forth was  
11 duly sworn, and that such deposition is a true  
12 record of the testimony given by such witness.

13  
14 I further certify that I am not  
15 related to any of the parties to this action by  
16 blood or marriage; and that I am in no way  
17 interested in the outcome of this matter.

18  
19 \_\_\_\_\_  
20 Stephen J. Moore, RPR, CRR.



5/14/2004 Falvey, Anne

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