

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 In the Matter

5 of

Case No.

6 03-13057

7 ALLEGIANCE TELECOM, INC., et al.,

8 Debtors.

9 -----x

10 September 25, 2003

11 United States Custom House
12 One Bowling Green
13 New York, New York 10004

14 Motion for Relief From Stay Filed on Behalf
15 of BP Commerce, LLC.; Order Shortening Notice and
16 Scheduling a Hearing on Motion to Authorize Key
17 Employee Retention Program.

18 B E F O R E:

19 HON. ROBERT D. DRAIN,

20 U.S. Bankruptcy Judge.
21
22
23
24
25

1
2 A P P E A R A N C E S:
34 KIRKLAND & ELLIS LLP
Attorneys for the Debtors
5 153 East 53rd Street
New York, New York 10022
67 BY: MATTHEW CANTOR, ESQ.
-and-
JONATHAN S. HENES, ESQ.
8 -and-
MICHAEL J. FRISHBERG, ESQ.
910
11 AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for Creditors' Committee
12 590 Madison Avenue
New York, New York 10022
1314 BY: IRA S. DIZENGOFF, ESQ.
-and-
COLIN M. ADAMS, ESQ.
1516
17 PAUL, HASTINGS, JANOFSKY & WALKER LLP
Attorneys for General Electric
Capital Corporation
18 1055 Washington Boulevard
Stamford, Connecticut 06901
1920 BY: LESLIE A. PLASKON, ESQ.
21
22
23
24
25

1 ALLEGIANCE TELECOM, INC.

2 P R O C E E D I N G S :

3

4 THE COURT: Please be seated.

5 MR. CANTOR: Good afternoon, Judge.

6 Matthew Cantor, Kirkland and Ellis on behalf of the
7 debtors.

8 We're here on two matters, both of
9 which are not contested. One is the continued debt
10 on the curb program. If you remember, there were
11 about ten senior executives left when we had an
12 issue with the committee and the banks. We are
13 here to talk about a further adjournment to October
14 18th, and I believe we've cleared it with your
15 clerk, and we've settled as it relates to four of
16 the senior executives as to what the appropriate
17 curb would be for them.

18 THE COURT: You want to adjourn it
19 to six?

20 MR. CANTOR: Adjourn it actually to
21 five. One of the ten has since left the company,
22 that was one of the assist general counsels, who
23 went to Acamine. So the ten went to nine quickly.

24 THE COURT: Okay.

25 MR. CANTOR: So four of the nine

1 ALLEGIANCE TELECOM, INC.

2 we're here today on, and that's Clay Meyers. His
3 rights under the curb -- he actually received and
4 read them, it's just a matter of getting them
5 approved, and it takes for the company, assuming
6 the curb as related to Clay Meyers and also to Tim
7 Naramore. They had received value under the curb
8 for 375 thousand for Mr. Meyers; Tim Naramore
9 received 150 thousand dollars. It was a mixture of
10 loan forgiveness and some cash payments to cover
11 taxes for stock. And the committee has no
12 objection to them getting the curb approved as it
13 relates to those two.

14 And also the bank has also signed
15 off two other senior executives, Larry Strickland
16 and Kevin Joseph. The agreement would be generally
17 that they would receive 25 percent of the curb due
18 to them now, and they would receive the remaining
19 50 percent on the effective date of the plan. That
20 would be -- Mr. Joseph would be getting --

21 THE COURT: Is this memorialized in
22 the order?

23 MR. CANTOR: This is memorialized in
24 the order. So basically Mr. Joseph would be
25 getting 187 thousand or so dollars. Today you

1 ALLEGIANCE TELECOM, INC.
2 would be approving of him getting 46,875 and then
3 the remaining 140,645 would be approved upon -- he
4 would get upon the effective date of the plan. And
5 Mr. Strickland would be getting 10 thousand today
6 and the remaining 30 thousand on the effective
7 date, and the committee signed off on that.

8 THE COURT: And is it part of the
9 deal that they stay through confirmation?

10 MR. CANTOR: Yes.

11 And there was also an issue, and
12 you'll see it in the orders, some of the executives
13 have received letters of credit and also secured
14 their rights under the curb, and they have
15 also agreed -- and it's in your Honor's order
16 today, that they will again extend until, at least
17 after the hearing on October 8th, they would
18 forebear in exercising the rights and maintaining
19 status quos.

20 The company had actually come up
21 with sort of a compromise proposal for the
22 remaining five executives, they have shared it with
23 the banks and the creditors' committee. I believe
24 we are very close, if we haven't gotten it already,
25 the bank are sort of approving that and the

1 ALLEGIANCE TELECOM, INC.

2 committee has not taken a position on that.

3 So right now we have on for the 8th
4 a contested hearing for the five remaining, for
5 scheduling reasons relating to the Jewish holidays
6 coming up next week and the litigators various
7 schedules, the creditors' committee needs to take
8 one more deposition, and that's Mr. Kramer. The
9 earliest date that he can do that that works with
10 their schedule is October 2nd. So they have
11 requested from us an extension of time to file
12 their objection. We have no objection to the
13 filing on the day before the hearing. And I want
14 to give your Honor the opportunity to hear that
15 because I don't want to agree for you, but we have
16 no objection to that and we are prepared to go
17 forward.

18 THE COURT: And this is on the curb?

19 MR. CANTOR: Yes.

20 THE COURT: That's fine.

21 MR. CANTOR: So as it relates to the
22 curb, I have an order to hand up that reflects that
23 understanding.

24 THE COURT: Okay. And as far as the
25 committee and bank counsel are here, that's your

1 ALLEGIANCE TELECOM, INC.

2 understanding of the deal?

3 MR. DUBLIN: Your Honor, Ira
4 Dizengoff, Akin Gump on behalf of the committee.
5 That's correct.

6 MS. PLASKON: Your Honor, Leslie
7 Plaskon on behalf of the banks. That's correct.

8 THE COURT: Okay.

9 MR. CANTOR: Your Honor, the second
10 motion on was a motion of BP Commerce for authority
11 to effect the setoff. We had rejected their leases
12 in a premises in Maryland. They were holding a
13 security deposit of about a million 158. We're
14 pretty comfortable that their lease rejection
15 damage claim would greatly exceed that; it would be
16 about a million 8.

17 THE COURT: And what are they
18 holding now?

19 MR. CANTOR: They are holding a
20 million 1. They are owed a million 8. We did have
21 some issues that we raised to them that's related
22 to mitigation and we've had some discussions with
23 them. And ultimately we would agree, and we have
24 that set forth in our order, to let them take that
25 security deposit in satisfaction of that claim,

1 ALLEGIANCE TELECOM, INC.

2 less 15 thousand dollars, which they would be
3 remitting back to the estate as sort of an
4 understanding as to what they should be entitled
5 to. We've socialized this with the committee and
6 the banks and they have no objection.

7 THE COURT: You what?

8 MR. CANTOR: We've reviewed this
9 with the committee and the banks. We've -- it was
10 a very collegial atmosphere.

11 THE COURT: Was that because I
12 scheduled the October 8th hearing by accident at 10
13 p.m.?

14 MR. CANTOR: Yes. It's cocktails
15 first.

16 THE COURT: Okay. I'll approve that
17 motion as well.

18 MR. CANTOR: Thank you, Judge.
19 That's all we have for you today.

20 THE COURT: Okay, very well. You
21 can hand up those two orders.

22 MR. HENES: Your Honor, one of the
23 orders, the one with the curb, there's one change
24 that needs to be made. So we have to send it back
25 in by e-mail. Everybody knows about it.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay. Very well.

3 You are going to send both of them
4 down?

5 MR. HENES: Yes.

6 MR. CANTOR: Thank you.

7 THE COURT: The other one you have
8 to run any changes by the committee on the real
9 estate order. Is there some other change you've
10 got to make the on that that you have to run by the
11 committee?

12 MR. HENES: Yes, we do. We will do
13 that.

14 THE COURT: Okay. Very well.

15 MR. CANTOR: Thank you, Judge.

16 THE COURT: Okay.

17 MR. DUBLIN: Thank you.

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEW YORK }
 } ss.:
COUNTY OF WESTCHESTER)

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2003.

DENISE NOWAK