

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In the Matter

6 of

Case No.

03-13057

7 ALLEGIANCE TELECOM, INC., et al.,

8 Debtors.

9 -----x

10 July 29, 2003

11 United States Custom House

One Bowling Green

12 New York, New York 10004

13 MOTION for Order to Approve Settlement and
14 Compromise with Bayerische Hypo-Und Vereinsbank AG
and Bank Austria Creditanstalt Corporate Finance,
15 Inc.

16 MOTION for Approval of Interim Retention of
17 Impala Partners.

18 APPLICATION of Final Retention of Akin Gump
19 Strauss Hauer & Feld LLP as Official Counsel for
the Creditors' Committee.

20 APPLICATION of Retention of Greenhill &
21 Company, LLC; Houlihan Lokey Howard & Zukin and
22 Communication Technology Advisors LLC.

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25
B E F O R E:

HON. ROBERT D. DRAIN,

U.S. Bankruptcy Judge.

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2 A P P E A R A N C E S:
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-and-
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2324 BY: PAMELA LUSTRIN, ESQ., of Counsel
25

1 ALLEGIANCE TELECOM, INC.

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

3 THE COURT: Allegiance.

4 I have a request from the committee
5 for a chambers conference; is that correct?

6 MR. DIZENGOFF: That is correct,
7 your Honor.

8 THE COURT: I guess, who did you
9 have in mind for the conference? The debtor,
10 counsel for the lenders and yourself?

11 MR. DIZENGOFF: Right.

12 THE COURT: Why don't we come back
13 then through here.

14 (Whereupon the hearing was adjourned for
15 an off the record chambers conference.)

16 THE COURT: Please be seated.

17 Mr. Cantor, do you want to go with
18 the uncontested matters first?

19 MR. CANTOR: Your Honor, the first
20 is the debtor's motion under Rule 9019 to approve a
21 compromise and settlement with two banks in our
22 prepetition bank lien through Edward Miller. And
23 my colleague is going to take you through that.
24 There are no objections.

25 THE COURT: Okay.

1 ALLEGIANCE TELECOM, INC.

2 MS. CHUPLYGINA: Your Honor, we
3 filed the motion to authorize us to enter into the
4 settlement agreement with two of the practition
5 lenders on July 18th of this year. The settlement
6 agreement was subject to your Honor's approval and
7 entered on July 15th. And it was among the
8 debtors, and as I said, two prepetition lenders,
9 Bayerische Hypo-Und Vereinsbank AG and also Bank
10 Austria Creditanstalt Corporate Finance.

11 Right after the filing of the motion
12 we asked your Honor to shorten notice for this
13 hearing. Your Honor entered a motion shortening
14 notice on July 18th. In accordance with your
15 order, we served every one on the master service
16 list either by overnight mail or by hand delivery
17 with all the pleadings. Your Honor set the
18 objection deadline for this motion this morning at
19 8:00 a.m., and as Mr. Cantor just said, we did not
20 receive any objections.

21 The agent for the bank group has
22 acknowledged and agreed to the terms of the
23 settlement agreement, and as I understand, the
24 creditors' committee also did not object to the
25 relief requested in the motion.

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2 Just as a short summary of the facts
3 related to the dispute that lead to the entry into
4 the settlement agreement, the dispute is related or
5 was related to the practition credit agreement on
6 June of -- in June of last year. As I understand,
7 the debtor sent funding notice to the practition
8 lenders asking to provide them with an advance on
9 an infused portion to go over under the practition
10 credit agreement. The practition lenders performed
11 their obligations and provided those group of
12 funding, and the two banks who were settling
13 refused to do so. And in January of this year, we
14 sent -- the debtor sent a declaration for operation
15 to the banks are defaulting lenders.

16 Approximately two months ago, the
17 debtors in the two sovereign banks have decided
18 into enter into a settlement agreement and resolve
19 the dispute. We believe that the settlement
20 agreement satisfies the standards for approval of
21 the agreement. We think it's fair and reasonable.
22 As a result of this agreement, the estate will
23 receive approximately 724 million dollars in
24 exchange for certain grievances on behalf of the
25 debtors, and also in exchange for its

1 ALLEGIANCE TELECOM, INC.
2 acknowledgment, upon your approval of the
3 settlement agreement and receipt of the payment,
4 the defaulting lenders will not be defaulting
5 lenders anymore and will be lenders in good
6 standing, and we will refrain from referring to
7 them as defaulting lenders.

8 THE COURT: Is the 4. something --

9 MS. CHUPLYGINA: 7.4.

10 THE COURT: The 7.4 million payment,
11 is that treated at prepetition debt?

12 MS. CHUPLYGINA: That would come
13 into the estates and will be treated as cash
14 collateral. And I also wanted to point out to your
15 Honor that under the final cash collateral order,
16 the debtors are required to maintain minimum cash
17 balance. And we agreed with the agent that the
18 amount that is coming in will not be counted
19 against that cash balance, because when we decided
20 to make this compilation, we were not aware that
21 this was going to be settled.

22 MR. AUSTIN: Your Honor, for the
23 record Jesse Austin on behalf all agent banks for
24 General Electric Capital Corporation, the
25 prepetition agent. We'll be adding the actual

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2 amount that's being funded as part of prepetition
3 claim. And as was stated, it is going to be
4 treated as cash collateral under the confines of
5 the cash collateral order.

6 THE COURT: This is really the same
7 as the other amount owed to the banks.

8 MR. AUSTIN: Yes, sir. It will
9 increase that, but it will come in under that
10 creditor.

11 THE COURT: Does anyone else have
12 anything to add to this motion?

13 MR. DIZENGOFF: Your Honor, the
14 committee has no objection.

15 THE COURT: Well, based on my review
16 of the settlement and the fact that there are no
17 objections, I'll approve the settlement.

18 MS. CHUPLYGINA: Thank you, your
19 Honor. We will enter an order at the end of the
20 hearing?

21 THE COURT: Yes. Thank you.

22 MR. CANTOR: Judge, the next motion
23 on is the debtor's motion to employ, and it's an
24 interim hearing, Impala, LLC as a chief
25 restructuring officer under Bankruptcy Code Section

1 ALLEGIANCE TELECOM, INC.

2 105 and under 363.

3 We filed a motion asking for an
4 interim order on July 11th. It was served on the
5 master service list by first class mail on July
6 11th, along with the affidavit of Paul Street of
7 Impala. And we haven't received any objections.
8 And we are asking approval today, on an interim
9 basis, for the approval of a monthly fee of 250
10 thousand dollars a month. Impala will be providing
11 restructuring advisory services; not in the context
12 of financial restructuring, but in the context of
13 restructuring the company's operations and
14 providing assistance and advice as it relates to
15 cutting costs, preparation of a presentation of
16 numbers to go to the banks and the creditors'
17 committee, and basically supplement the company's
18 ability to take advantage of the cost cutting
19 opportunities in a Chapter 11 case, and present
20 sort of a restructured operating model.

21 This was originally a concept that
22 was proposed to us by our prepetition lenders.
23 They felt strongly, as you recall at our very first
24 cash collateral hearing, that the company strongly
25 consider retaining a chief restructuring officer to

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2 help supplement the company's ability to turn
3 around the business. At that hearing we
4 represented that we would strongly consider that,
5 certainly if it was something worth doing, the
6 board of directors approve it. Then subsequently
7 we did interview a number of restructuring advisory
8 firms and concluded that Impala had the abilities
9 to best serve our needs here, and we retained them.
10 So we know we have the support of our banks.

11 Again, generally speaking, Impala
12 will serve as the chief restructuring officer.
13 Primarily, that responsibility will be borne by Mr.
14 Paul Street, who has been in the restructuring
15 business for a some time. He founded Impala back
16 in 1977. And as you can see from his list in other
17 cases he was involved in in his affidavit, his
18 experience in the telecom industry is substantial.

19 So the chief restructuring officer
20 and Impala will report directly to the independent
21 committee, the board of directors, in addition to
22 reporting to the whole board, as to their views as
23 to the cost cutting needs and the other
24 restructuring opportunities. So I would -- and I
25 believe we have run this by the United States

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2 trustee, who also has no objection, and we revised
3 the indemnification provisions in the agreement
4 that make the U.S. trustee comfortable.

5 Lastly there is the issue of a
6 success fee. Impala has indicated they will be
7 looking for a success fee. We have not agreed to
8 it or the amount of it, but the arrangement that we
9 have negotiated with the committee and the banks
10 and the U.S. trustee, that the company will
11 negotiate a fee during the first 45 days of the
12 entry of this interim order, if your Honor chooses
13 to do so. If we are unable to agree on a fee in
14 that 45 day period, Impala will have the right to
15 resign from the commitment and keep whatever
16 monthlys they have received. I suspect they have
17 always had the right, but we are making it clear
18 that they might do that.

19 Thereafter, if we agree on the
20 success fee, we will discuss that with the U.S.
21 trustee and the creditors' committee and the
22 prepetition lenders. We will share with them our
23 justification to this fee and see if we can't get
24 some buy-in, and we will try to resolve that for
25 about ten days we've given ourselves. And if we

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2 are unable to get the consensus among the U.S.
3 trustee, the committee and bank lenders, we will
4 bring that to your Honor for approval on, I think
5 it was 20 days notice if memory serves me.

6 THE COURT: So when you say this is
7 an interim retention, it's interim in that respect?
8 It's not interim in the sense that K and E's
9 retention was an interim retention earlier on in
10 the case and we are going to have a subsequent
11 hearing on retention?

12 MR. CANTOR: That's my
13 understanding, your Honor. We are asking that
14 Impala's retention be approved today. We will be
15 coming back to your Honor in all likelihood on the
16 success fee if we can't get a consensus, which
17 seems to be elusive here.

18 THE COURT: All right. And as I
19 read the application in the order, the order
20 approving Impala's retention has their fee subject
21 to the 330 review standard.

22 MR. CANTOR: That's correct, Judge.

23 THE COURT: Okay. All right, well
24 does anyone else have anything to add on this?

25 MR. DIZENGOFF: Your Honor, we have

1 ALLEGIANCE TELECOM, INC.

2 no objection.

3 MR. AUSTIN: Your Honor, the lenders
4 have no objection. Obviously we are interested in
5 the success fee and the following of my clients to
6 be compared what they have asked for.

7 THE COURT: All right. I will
8 approve the retention, which obviously contemplates
9 further negotiation on its success fee, but in the
10 meantime, the retention is approved. That includes
11 the -- I guess the debtor's right to terminate the
12 engagement if the success fee is not agreed to, as
13 well as Impala's right to do so as well. But I'll
14 approve the engagement.

15 MR. CANTOR: Thank you Judge, we'll
16 submit an order.

17 The next motion is Mr. Dizengoff's.

18 MR. DIZENGOFF: Your Honor, I don't
19 have the calendar.

20 MR. CANTOR: I'm sorry.

21 MR. DIZENGOFF: Your Honor, before
22 you is the -- I'm sorry, Ira Dizengoff, Akin Gump
23 Strauss Hauer and Feld, counsel for the committee.

24 Your Honor, before you is the
25 application of the committee to retain my firm,

1 ALLEGIANCE TELECOM, INC.

2 Akin Gump, as its primary bankruptcy counsel and
3 general counsel. There were no objections to the
4 application, and we've had some discussions with
5 the debtor about some additional disclosure that I
6 think we satisfied those by filing a supplemental
7 affidavit. The U.S. trustee and the debtor were
8 provided with drafts of the retention application,
9 the U.S. trustee signed off on the retention
10 application, and your Honor, we have not received
11 any objections and we ask that the order be
12 entered.

13 THE COURT: Okay. Does anyone have
14 anything to add on this?

15 MR. CANTOR: Your Honor, there was
16 one open issue, as you recall, the issue came up in
17 connection with our retention, and it was a
18 suggestion that the committee was concerned that an
19 independent attorney review prepetition payments
20 for preferences. And we had, in our Kirkland and
21 Ellis's retention order proviso, that the debtor's
22 conflicts counsel here would undertake the
23 responsibilities that the debtor's estate has to
24 look into preferences and potential avoidance
25 actions and look into Kirkland and Ellis's

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2 prepetition payment history to determine whether or
3 not there was a preference, and determine whether
4 or not any preference action needs to be pursued.

5 We strongly recommend to the
6 committee that the same language be put into their
7 retention order, that Togut Segal and Segal would
8 be undertaking the obligation that the estate had
9 to look into potential preferential payments, and
10 look into the fees received by Akin Gump,
11 prepetition payments.

12 The response was that well Togut
13 Segal and Segal is the debtor's conflicts counsel.
14 We want our conflicts counsel to take a look at
15 that. And while there is some symmetry in that
16 responsive argument, it's argued that it is the
17 estate's obligation to look into preferences and
18 bring avoidance actions. Of course the estate
19 chooses not to, and the committee thinks that
20 something should be brought that the estate isn't
21 bringing, then the committee has the right to
22 request the right to bring this action. So we
23 would request that the committee's -- Akin Gump's
24 retention order include similar language that the
25 debtor's estate, through Togut Segal and Segal,

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will be authorized to investigate and determine all payments made in the prepetition period.

THE COURT: The payments were in their capacities as counsel to the ad hoc orders?

MR. CANTOR: Yes, Judge.

MR. DIZENGOFF: They were, your Honor. Can I address two points?

Your Honor, first the issue with Kirkland and Ellis's retention was we did not take issue with the advance payment that was made to Kirkland and Ellis. I think New York laws clearly supports that as not being preference and/or fraudulent conveyance. The issue in the Kirkland retention was some four hundred thousand dollars that was paid by check or wire transfer, I don't remember which, was not an advanced payment or retainer.

So the issue in connection with that was that we needed to understand what actually should have been or should be a preference analysis that was done.

In contrast to the Akin Gump retention, we clearly set forth in our affidavit the nature of those payments and the specific dates

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2 they were paid, and the characterization of those
3 payments pursuant to a signed engagement letter
4 with the debtor and the ad hoc committee. So we
5 don't think a preference analysis is necessary at
6 all. And that was our initial reaction to their
7 comment about, well, some independent third party
8 should investigate preferences. So the mindset is
9 we crawl outside of preferences altogether, because
10 these were in the nature of advanced payment of
11 retainer.

12 The second point, your Honor, is
13 that there is a symmetry between having, if the
14 court wanted to go in that route, which is have an
15 independent firm investigate the nature of these
16 payments, there is a symmetry between having the
17 committee's conflicts counsel investigate and
18 having the debtor's conflicts counsel investigate
19 the debtors. It's somewhat form over substance,
20 your Honor, but in terms of Kirkland and Ellis
21 brought to table and the debtors brought to the
22 table the Togut firm. Your Honor, it's the same
23 thing. The committee doesn't want their lawyers
24 the subject of a target of investigation as some
25 retaliatory action for something that the debtors

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2 don't like on behalf of the committee.

3 MR. CANTOR: Your Honor, I didn't
4 want to really get into a he said she said. There
5 were actually payments now that I am seeing -- you
6 know, your Honor, I believe that there were
7 payments that were made that are worth while taking
8 a look at. If there was nothing preferential about
9 them, then there's no issue. And I don't think
10 we'll be wasting a whole lot of the estate's money
11 to ask Togut Segal and Segal to look at that; and I
12 think it will be well worth while to leave the
13 argument there.

14 THE COURT: Yes. I wouldn't have
15 approved Togut Segal and Segal if I didn't think
16 they were independent in the first place to review
17 the K and E preference issue. My experience with
18 that firm is that they are also quite practical and
19 economical. If in fact the payments are as you
20 say, Mr. Dizengoff, I think they would probably
21 spend about an hour on the whole thing, and I think
22 it's better than having a separate firm getting
23 involved in all that stuff, so I'm going to
24 designate them as the firm responsible for that
25 task.

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2 On the other hand, if you can make
3 this clear to Mr. Togut, if he doesn't know
4 already, he's not supposed to make a second career
5 out of it, and I'm sure he won't.

6 MR. CANTOR: I have no doubt about
7 that, your Honor.

8 MR. DIZENGOFF: Your Honor, that's
9 fine.

10 THE COURT: Well, with that side
11 issue cleared up, I'm prepared to approve the
12 retention.

13 MR. DIZENGOFF: Thank you, your
14 Honor.

15 THE COURT: I don't know if you need
16 to mark up the order to reflect that correction.

17 MR. DIZENGOFF: Okay. We'll have to
18 revise it.

19 THE COURT: And you can just e-mail
20 it to chambers later today.

21 MR. DIZENGOFF: Okay. Thank you.

22 THE COURT: The next matter on the
23 calendar is submitted by Kirkland and Ellis, and it
24 is the motion to retain Greenhill and Company.

25 As a result of the chamber

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discussion that we had earlier in the morning, that matter is going to be adjourned to a date that is going to be decided by the objectants and the debtor and Greenhill that will be sometime either the 11th, 12th or 13th of August. And I guess if K and E will just get in touch with my chambers which of those dates the parties have selected.

MR. CANTOR: That's great, your Honor. And I believe everybody who has interposed an objection is here, and we'll make sure they get notice sufficiently in advance of the date.

THE COURT: Yes. You don't have to re notice to the service list, just to the parties who are here.

MR. DIZENGOFF: Okay. Thank you, your Honor. We'll give Mr. Cantor the dates that work for us as promptly as possible.

THE COURT: Okay.

MR. DIZENGOFF: Your Honor, next on the calendar is matters five and six, which are the applications of the official creditor's committee to retain the investment banking firm of Houlihan Lokey Howard and Zukin as its financial advisor, and the firm of Communication Technology Advisors,

1 ALLEGIANCE TELECOM, INC.

2 LLC as the industry and technology advisors to the
3 creditors' committee.

4 Your Honor, the applications set
5 forth the fees for the CTA firm, which is
6 Communication Technology Advisors, I'll just refer
7 to them in shorthand as CTA, and Houlihan, and they
8 are set forth in those applications in detail. The
9 CTA firm, your Honor, will earn 125 thousand
10 dollars a month flat fee, and the Houlihan firm
11 will earn 150 thousand dollars as a flat fee.

12 Noteworthy, your Honor is that
13 neither firm is seeking a success fee, which is a
14 marked departure from their ordinary fee
15 structures, as your Honor has no doubt seen in the
16 other engagements. Your Honor, I know that there
17 has been one objection interposed, which is by
18 GECC, which is the counsel to the agent bank and a
19 couple of other banks, and they can speak for
20 themselves in their objection.

21 I would have two witnesses in the
22 courtroom your Honor, here today, that would
23 address all points raised in the banks' objection.
24 And if I could, your Honor, I would like to proffer
25 their testimony for the court, unless you want to

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2 hear live witnesses.

3 THE COURT: Does anyone have an
4 objection to at least an initial proffer with
5 reservation to ask questions if you are think
6 that's appropriate?

7 MR. AUSTIN: We have no objection
8 to proffer, your Honor.

9 THE COURT: Okay. Can I ask you,
10 not to interrupt you but to just make sure I
11 understand; with regard to CTA, is the committee
12 looking for approval under Section 328(a) of the
13 monthly fee? The interim order seems to suggest
14 that, but the final order doesn't. So I just want
15 to make sure I understand what's been sought.

16 MR. DIZENGOFF: Your Honor, I
17 believe both CTA and Houlihan are under 328(a) of
18 the Bankruptcy Code. If there is an inconsistency
19 with the order, we'll correct it.

20 THE COURT: Okay. I just wanted to
21 make sure your proffer deals with the
22 reasonableness and appropriateness of the case.

23 MR. DIZENGOFF: That's fine. Your
24 Honor, I'll proffer first the testimony of Mr.
25 Christopher R. DiMauro of the Houlihan Lokey firm.

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2 Your Honor, if asked to testify, Mr.
3 DiMauro will testify that he is a director in the
4 finance restructuring group in the Los Angeles
5 office of Houlihan Lokey. During his tenure at
6 Houlihan Lokey, Mr. DiMauro has lead a number of
7 financial restructuring and emanating engagements
8 across a variety of issues.

9 He would further testify that
10 Houlihan Lokey has served as financial advisor in
11 some of the largest and most complex restructuring
12 matters in the United States, including serving as
13 the financial advisors to the official creditors'
14 committee in the Chapter 11 proceedings of Enron
15 Corporation, Williams Communications Grouping, and
16 WorldCom, Inc. In addition, Houlihan Lokey has
17 provided financial advisory and investment banking
18 services to numerous telecommunication companies
19 and their creditors, including in connection with
20 the following companies, McCloud USA, Impsat Fiber
21 Networks, Flag Telecom, and Asia Global Crossing.

22 As to the scope of the retention,
23 Mr. DiMauro would testify that he has reviewed
24 carefully the committee's application to employ
25 Houlihan Lokey and the committee's response to

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2 General Electric Capital Corporation's objection.

3 He would testify that paragraph 9 of the

4 application and the more detailed description of

5 the Houlihan Lokey engagement, found in the chart

6 in paragraph 21 of the committee's response,

7 accurately describes the scope of Houlihan Lokey's

8 services. Mr. DiMauro's would testify that as more

9 fully described in paragraph 21 of the committee's

10 response, the scope of Houlihan Lokey's engagement

11 will be generally limited to advising the committee

12 with respect to finance restructuring matters,

13 including the debtor's enterprise value, the

14 debtor's capital structures and the capital market

15 issues.

16 He would further testify that the

17 scope of Houlihan Lokey's engagements in these

18 cases has been tailored to prevent duplication of

19 effort between Houlihan Lokey and the CTA firm.

20 Mr. DiMauro would further testify that Houlihan

21 Lokey has requested a fee of 150 thousand dollars

22 per month and reimbursement for reasonable expenses

23 as compensation for its work on behalf of these

24 cases. He would testify that for an engagement of

25 this kind, Houlihan Lokey typically seeks a higher

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monthly fee and almost always seeks a success fee.

He would testify, your Honor, that the fees charged in this case are below the average fees Houlihan charges in general, and in particular, where there is a coadvisor it is substantially below their average.

He would testify that he is generally familiar with the standard of professional retention under Bankruptcy Code Section 328(a), and that Houlihan Lokey always seeks all of retention fees approved pursuant to that standard. Mr. DiMauro would testify that as a result of negotiations with the ad hoc committee, bond holders, and the official creditors' committee, Houlihan Lokey agreed to reduce its usual and customary monthly fee and forego a success fee.

Your Honor, that will be Mr. DiMauro's testimony.

THE COURT: Does he have a number which would be their usual and customary fee?

MR. DIZENGOFF: I can give you that detail. Bear with me a second.

Your Honor, as I read from the

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chart, Mr. DiMauro would testify, your Honor, that in co-advising engagements, Houlihan Lokey's fees, as a benchmark against funded debt, which is the prepetition funded debt, the average is 33 basis points.

THE COURT: And this is as advisor to creditors or creditors' committees?

MR. DIZENGOFF: Yes. Bear with me a second. Yes. In every instance. In one instance there's an out of court engagement where there's not an official creditors' committee but an ad hoc committee. It is 33 basis points benchmarked against prepetition funded debt. And in this instance, Houlihan Lokey fee is 13 basis points benchmarked against prepetition funded debt. So it is, I guess, roughly a third of what they typically charge.

THE COURT: Okay. Mr. DiMauro, you heard the of proffer of your testimony. Can you tell me whether, if in fact you were called to testify on direct, that that proffer is what you would testify to?

MR. DiMAURO: Yes.

THE COURT: Okay. Thank you.

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Does anyone wish to cross examine Mr. DiMauro?

MR. AUSTIN: No questions, your Honor.

THE COURT: All right. I will accept the testimony.

MR. DIZENGOFF: Thank you, your Honor.

I have, as the next witness, Mr. Wayne Barr, Jr. of the CTA firm, and with your permission I'll proffer the testimony.

THE COURT: Yes.

MR. DIZENGOFF: If asked to testify, Mr. Barr would testify that he is the senior vice president and general counsel of Communication Technology Advisors. Mr. Barr has been involved in the telecommunications industry for over eight years, including serving as the general counsel of CAI Wireless Systems, Inc., and as senior vice president and general counsel of Tech One Capital Group, LLC, a telecommunications and investment fund.

He will testify that CTA has served as an operations advisor to creditors and

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2 committees of creditors in several cases, including
3 Primus Telecommunications, Classic Communications,
4 Globix Corporation, Motion Corporation, Leap
5 Wireless International Inc., and XO Communications.
6 He would further testify that in these and other
7 cases, CTA has been retained by creditors to work
8 with its financial advisor/investment banker, to
9 help them and the committee better understand the
10 debtor's telecommunications operations.

11 Mr. Barr would testify that he's
12 reviewed the committee's application to employ CTA,
13 and the committee's response to General Electric's
14 objection. He would testify that paragraph 9 of
15 the application and the more detailed description
16 of CTA's engagement are found in the chart of
17 paragraph 21 of the committee's response, and
18 accurately describes the scope of CTA'S retention.
19 Mr. Barr would testify that as more fully described
20 at paragraph 21 of the committee's response, the
21 scope of CTA's engagement is that of an operational
22 consultant, charged with advising the committee
23 with respect to operational matters, including the
24 viability of the debtor's cost reduction program,
25 analysis of the debtor's various business line, and

1 ALLEGIANCE TELECOM, INC.

2 providing the committee with strategic advice on
3 technical and co-location facilities. He would
4 further testify that the scope of CTA's engagement
5 in these cases has been tailored to prevent
6 duplication of efforts between CTA and Houlihan
7 Lokey.

8 Mr. Barr would testify that CTA has
9 requested a 125 thousand dollar per month fee and
10 the reimbursement of reasonable expenses as
11 compensation to perform work on behalf of the
12 committee in these cases. He would testify that in
13 other engagements, CTA has received a higher fee,
14 and in many instances a success fee. On average,
15 your Honor, he would testify that the average fees
16 proposed here are less than 40 percent of the
17 average CTA fees in comparable cases, and amount to
18 11 basis points when benchmarked against common
19 debt in this case.

20 He would testify that he is
21 generally familiar with the standards of
22 professional retentions under Section 328(a) of the
23 Bankruptcy Code, and that CTA seeks that all of its
24 retentions be approved pursuant to 328(a). Mr.
25 Barr would further testify that as a result of

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ALLEGIANCE TELECOM, INC.

negotiations with the ad hoc committee and the official creditors' committee, CTA agreed to modify its customary monthly fee in light of Houlihan Lokey's fee in this case as financial advisers to the debtors.

THE COURT: Okay. Is Mr. Barr present in the courtroom?

MR. BARR: Yes, your Honor.

THE COURT: Mr. Barr, you heard the proffer of your direct testimony. If actually called upon to testify under oath, is that what you would testify to?

MR. BARR: Yes, it is.

THE COURT: Does anyone wish to cross examine Mr. Barr.

MR. AUSTIN: I would like to ask Mr. Barr a few questions.

THE COURT: All right. Mr. Barr if you would come up please?

W A Y N E B A R R, J R.,
called as a witness, having been first duly sworn by the Notary Public, Denise Nowak, was examined and testified as follows:

THE WITNESS: Yes.

1 ALLEGIANCE TELECOM, INC. - BARR - CROSS EXAMINATION

2 MR. AUSTIN: Your Honor, may I
3 stand right here and ask the questions?

4 THE COURT: Yes.

5 CROSS EXAMINATION BY MR. AUSTIN:

6 Q. Good morning, Mr. Barr. I'm Jesse
7 Austin, general counsel to General Electric Capital
8 Corporation. I want to ask you some questions.

9 Are you the one who is personally
10 leading the investigation on the Allegiance matter?

11 A. I am involved with the debtor with
12 Peter Atinum who is one of my colleagues.

13 Q. So you are personally familiar with
14 the services that CTA is providing or undertaking
15 on behalf of the committee?

16 A. Yes.

17 Q. And I believe your representation is
18 that CTA's work is primarily focused on really
19 understanding the company's operational aspects and
20 reorganizing the operations of the business; is
21 that right?

22 A. Yes.

23 Q. Are you familiar with Impala's
24 engagement?

25 A. Yes.

1 ALLEGIANCE TELECOM, INC. - BARR - CROSS EXAMINATION

2 Q. And is it fair to say that that's
3 also what Impala is focusing on for the company at
4 this time?

5 A. As I understand the proceedings
6 today, yes.

7 Q. So, in part, you are analyzing
8 Impala's work?

9 A. We are working with Paul Street at
10 Impala in analyzing his work, as well as assisting
11 him.

12 Q. And would it also be a fair
13 characterization that you would not anticipate that
14 this operational review will last through, for
15 example, December of this year?

16 A. I don't think we have an expectation
17 as to the length of engagement. Our expectation is
18 that we would go through the various operational
19 aspects of the company. If that should go through
20 December, I'm not familiar with how long that might
21 take, but the charge from the committee is that we
22 will review all of the operational aspects of the
23 company, working with Impala, and get back to them.

24 Q. So if Impala essentially completed
25 its work and analysis on the operational aspects

1 ALLEGIANCE TELECOM, INC. - BARR - REDIRECT EXAMINATION
2 that it's working on in early September, do you
3 have an expectation whether CTA will complete its
4 review of that by late September, early October?

5 A. Again, while we are working with
6 Impala, our review is independent, and we will be
7 reporting back to the committee. And if the
8 committee is satisfied with the operational review
9 that we had prepared separately, and that was done
10 in the end of September, then I would assume that
11 our engagement could be concluded.

12 MR. AUSTIN: Thank you. Your
13 Honor, that's all I have.

14 THE COURT: All right. Does anyone
15 else have any questions of Mr. Barr?

16 MR. DIZENGOFF: Your Honor, just a
17 few redirect

18 REDIRECT EXAMINATION BY MR. DIZENGOFF:

19 Q. Mr. Barr, Impala's work you
20 understand is focused -- what's your understanding
21 of Impala's work?

22 A. That they are working on behalf of
23 the debtor to try to take advantage of some of the
24 operational efficiencies that Chapter 11 might be
25 able to provide and to streamline their operations.

1 ALLEGIANCE TELECOM, INC. - BARR - REDIRECT EXAMINATION

2 Q. And Mr. Barr, is it your continued
3 opinion that CTA's work goes beyond what is the
4 limited scope of Impala's engagement?

5 A. Yes.

6 Q. Could you describe that a little
7 further?

8 A. In an addition to looking at the
9 operations from a standpoint of the reorganization,
10 CTA is also looking at the operations of the
11 company going forward and evaluating and analyzing
12 the projections that the company has come up with
13 for the future periods the company has in Chapter
14 11.

15 Q. Mr. Barr, are you familiar with how
16 many co-location sites the debtor has?

17 A. Yes, I am.

18 Q. How many?

19 A. 830.

20 Q. 800 and how many?

21 A. 830.

22 Q. Is it Impala's job to look at every
23 single co-location site and determine how to
24 optimize it?

25 A. I'm not sure of the exact scope of

1 ALLEGIANCE TELECOM, INC. - BARR - RECROSS EXAMINATION
2 it.

3 Q. Is that something CTA would do for
4 the committee?

5 A. Yes. We are analyzing all the
6 company's facilities, as well as all of the
7 company's products in terms of return of
8 profitability of those locations and the
9 properties.

10 Q. And, in your opinion, Mr. Barr, is
11 that a simple task?

12 A. No. We have had three or four full
13 time resources dedicated to this task since prior
14 to the petition here.

15 Q. Thank you.

16 MR. AUSTIN: On redirect, your
17 Honor.

18 THE COURT: Recross.

19 MR. AUSTIN: Recross, sorry.

20 RECROSS EXAMINATION BY MR. AUSTIN:

21 Q. Mr. Barr, you testified, based on
22 the questions Mr. Dizengoff asked you, that CTA's
23 job description is actually a little broader than
24 Impala's in that you also would be doing future
25 analysis on the company's operations and projected

1 ALLEGIANCE TELECOM, INC. - BARR - RECROSS EXAMINATION
2 financial performance; do you recall that?

3 A. Yes.

4 Q. That sounds very similar to what I
5 understand Houlihan Lokey will be doing. How do
6 you distinguish between the two roles in that
7 regard?

8 A. We are very interested in the
9 operations of the company and the go forward
10 perspective. While Houlihan Lokey may be looking
11 at the financial results, we are actually going
12 through and taking a look at various cross
13 structures, operations in the future, and improving
14 the operations in an effort to improve those
15 financial results. Houlihan Lokey is more looking
16 at a valuation, whereas we are looking more from an
17 operational standpoint.

18 MR. AUSTIN: Thank you, your Honor.

19 THE COURT: Okay, Mr. Barr, you are
20 excused.

21 MR. DIZENGOFF: Your Honor, at this
22 point I would like to secede to the banks, and they
23 can talk about their objections, and then I have a
24 few closing remarks.

25 THE COURT: Okay.

1 ALLEGIANCE TELECOM, INC.

2 MR. AUSTIN: Thank you, your Honor.
3 With respect to our objection, your Honor, I will
4 clarify and modify the objections in at least at
5 this point we will not have an objection to the
6 retention. We do have questions about whether or
7 not these fees should be totalled as far as the
8 amount being paid, but what we would really like at
9 this stage, your Honor, is that in approving the
10 retention of the financial advisors to the
11 committee, we do request that this court set
12 another date in early October to determine whether
13 there is still the need to have two financial
14 advisers for the committee. At that point we ought
15 to be able to get the operational issues reviewed.
16 And if indeed CTA's primary responsibility is
17 operational review and one can say that job has
18 been completed, that may be an appropriate time to
19 evaluate whether the estate should be burdened by
20 the continued expense of two advisers.

21 One of the comments made by the
22 committee in its response to our objection is that
23 the lenders here should not concern themselves with
24 the retention of both advisers because they are to
25 be paid in full, and that the money that's being

1 ALLEGIANCE TELECOM, INC.

2 expended is effectively the money of the
3 unsecureds.

4 We would simply note that until we
5 are indeed paid in full, we certainly take the
6 position that the money being expended is an
7 interest of the lenders. And we suggest, your
8 Honor, that by modifying the application at the
9 point as we request, would be a way of at least
10 controlling some of those expenses and disbursement
11 of money. Thank you.

12 MR. CANTOR: Your Honor, if I may
13 just add one thing. We had set for September 15th,
14 a hearing on the final order on both of these
15 retentions. Since the debtor has not interposed an
16 objection to the entry of an interim, we are
17 reserving all of our rights to final order. And I
18 rise in response to Mr. Austin's suggesting, that
19 maybe September 15th serve the purpose that Mr.
20 Austin was looking for.

21 MR. AUSTIN: It would, your Honor.

22 THE COURT: Okay. Let me ask you a
23 different question. As far as the budget for the
24 cash collateral agreement, are these fees -- these
25 fees don't take the debtor over the current budget

1 ALLEGIANCE TELECOM, INC.

2 or break the bank, or however you want to phrase
3 it?

4 MR. CANTOR: I would be guessing my
5 answer to this question, but I would guess it that
6 it doesn't.

7 MR. AUSTIN: My understanding is,
8 your Honor, that when the budget was put together
9 we already had an idea as to what the cost of these
10 two advisers were going to be, and they were
11 factored into the budget. And we can advise the
12 court that thus far the debtor has been in clear
13 compliance with the cash collateral order and the
14 cash collateral budget.

15 MR. DIZENGOFF: Your Honor, just
16 some closing remarks on the two retentions.

17 Your Honor, the fiduciary
18 representative of all these creditors, which is the
19 committee, has determined in its reasonable
20 business judgment that it needed a financial
21 advisory firm and it needed an industry consultant.
22 And the committee has delineated very carefully
23 what each is to do.

24 In broad, general terms, your Honor,
25 Houlihan's focus is on a financial restructuring,

1 ALLEGIANCE TELECOM, INC.

2 which is evaluations, capital markets issues and
3 the like, and CTA's focus is on the nuts and bolts
4 of what the debtor sells, whether it's done
5 efficiently, cost cutting and things of that realm.
6 The response, your Honor, the committee sets forth
7 in very painstaking detail what each will be doing
8 in this case, and I think it's plain that we will
9 be avoiding a duplication of effort.

10 Your Honor, as to the point on cash
11 collateral. This is a debtor who can make in
12 excess of 215 odd million dollars of cash. It's my
13 understanding that these fees are in the cash
14 collateral budget. It was the prepetition
15 practice, when there was an ad hoc committee, for
16 these fees to be budgeted; so I would expect they
17 would be in there.

18 Your Honor, as to the fees, I
19 believe the evidence is clear that both Houlihan
20 and CTA typically charge higher monthly fees, and
21 they typically charge a success fee. And neither
22 CTA nor Houlihan in this case is seeking a success
23 fee. Your Honor, just by way of example, if I
24 could. If a success fee of just one percent of
25 restructure debt was charged, and that's just

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restructured unsecured debt, this case would have to last almost two years to equal those kinds of fees. The plain fact, your Honor, is that a flat monthly fee with no success component which equates to 275 thousand dollars a month, which is the two fees combined, is quite frankly a savings to the estate.

In addition, your Honor, the committee is quite mindful of this. And if it turns out that if the work of Houlihan or CTA is finished at an appropriate point in time, it is up to the committee who hired the professionals, to fire the professionals.

THE COURT: And you have the right to do so?

MR. DIZENGOFF: I think that that's right, your Honor.

Your Honor, the committee is the fulcrum of security in this case, and the committee constituency bears the expense of virtually every penny spent in this case. And these fiduciaries, your Honor, have determined that we need the Houlihan Lokey firm, and we need the CTA firm. Your Honor, I think it's just disingenuous to argue

1 ALLEGIANCE TELECOM, INC.

2 to the contrary.

3 The fiduciary -- the only fiduciary
4 for the entire unsecured creditor body has
5 determined that both firms are necessary for it to
6 acquit its fiduciary responsibility. They have
7 negotiated hard these fees down from what the
8 testimony says is their typical standard fees,
9 which are higher, and these are quite dramatic
10 reductions instructions from what they normally
11 get, and as a result, your Honor, we think both
12 retentions should be approved.

13 MR. CANTOR: Your Honor, just as Mr.
14 Dizengoff pointed out, the answer to your question
15 concerning the budget. The budget does not include
16 any line items for professional fees. Those are
17 excluded from the budget, but are included in the
18 use of cash collateral, so the retention of these
19 professionals should not put us out of whack on
20 these.

21 THE COURT: Okay. I will grant both
22 applications on an interim basis pending the
23 hearing in September. I think that, while I
24 appreciate all the parties' statements about trying
25 to each keep the fees down, which is frankly done

1 ALLEGIANCE TELECOM, INC.

2 here best by making it very short, both retentions
3 here are reasonable and can be approved certainly
4 on an interim basis under Section 328(a).

5 I think given that fact, the
6 emphases on duplication of efforts is largely a red
7 herring when you have a flat monthly fee. Frankly,
8 I'd be happy to have them duplicate as much effort
9 as possible, as long as it leads to quality
10 services and working as hard as possible and as
11 many hours as possible, obviously without them
12 tripping over each other or over the debtor or the
13 lenders. And the evidence does establish that on
14 an aggregate basis, 275 thousand dollars a month,
15 that aggregate fee is less than the fee that would
16 normally be charged by Houlihan alone. So, I think
17 the fee, again, is reasonable.

18 That does leave the very valid point
19 that the banks have made, which is it may well be
20 that at some point one or both of these
21 professionals, but more likely the operational
22 consultant, will have a greatly reduced level of
23 work. But I think that that can be reviewed in
24 September when this comes up for a final hearing.
25 And even if, at that final hearing, there is still

1 ALLEGIANCE TELECOM, INC.

2 work to do, I think that the 328 standard, the
3 improvident standard, leaves ample room for
4 terminating the fee when the work is done.

5 And on top of that, as Mr. Dizengoff
6 has acknowledged, since the committee is a
7 fiduciary for the unsecureds, it would really be
8 under an obligation to either fire the professional
9 or negotiate a reduced fee arrangement if in fact
10 their list of tasks is greatly reduced, and they
11 are just being kept on, for example, to have them
12 available for testimony or spot checking of a
13 disclosure statement or the like. So, I think we
14 can deal with those issues down the road. But on
15 an interim basis I'll approve the retention.

16 I do want to say one thing about
17 both applications though -- or actually both
18 retention agreements. There is an exculpation
19 provision in both of them that provides that no
20 party, including, I'm assuming, parties that
21 weren't on notice of this retention application,
22 will have a claim against the professionals, except
23 for certain designated types of misconduct. I
24 don't believe that type of language is enforceable,
25 certainly as to someone who doesn't have notice.

1 ALLEGIANCE TELECOM, INC.

2 Having said that, I don't want the professionals to
3 start quaking in their boots, because they are
4 professionals retained by a creditors' committee,
5 and the case law is pretty clear that the committee
6 members, and I think it's extended to their
7 professionals, do have certain protection under the
8 Code by the rights of the other parties. But I
9 don't want you relying on that language, certainly
10 of someone who didn't have notice of the
11 application.

12 MR. DIZENGOFF: Your Honor, just to
13 address that latter point, by the hearing in
14 September -- I mean it has been served on the
15 entire creditor body, and you should only know the
16 number of phone calls I get because people think
17 they owe me money by these retention applications.
18 So by that point in time the entire creditor body
19 will have notice of 328 and the exculpation, et
20 cetera, but we can address it again at that period.

21 THE COURT: Very well. So at the
22 end of the hearing you can hand up the orders.

23 MR. DIZENGOFF: Thank you.

24 THE COURT: I think that leaves the
25 Sprint matter; is that right, Mr. Cantor?

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MR. CANTOR: Yes. And that should have been in camera.

THE COURT: That, by the court's prior order, is to be dealt with in camera, in addition to the debtors and counsel for Sprint, counsel for the banks, and for the creditors' committee. So consistent with the earlier order, I would like the courtroom emptied except for those parties.

If there anyone who is not here as counsel to the committee, to the bank lenders, the debtor or Sprint, or a witness, in case they want to offer a witness, should leave now. The U.S. trustee of course can stay if she wants to.

(Whereupon, the transcript was put under court seal.)

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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