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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
ALLEGIANCE TELECOM, INC., et al., :
Debtors. : Case No. 03-13057 (RDD)
: (Jointly Administered)
: :
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**LIMITED OBJECTION OF KMC TELECOM XI LLC TO CONFIRMATION OF THE
SECOND AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO
CHAPTER 11 OF THE BANKRUPTCY CODE IN CONNECTION WITH THE
REJECTION OF THE INFRASTRUCTURE INTERCONNECTION AGREEMENT
BETWEEN KMC AND ALLEGIANCE TELECOM COMPANY WORLDWIDE**

KMC Telecom XI LLC (“KMC”), hereby files its Limited Objection (the
“Limited Objection”)¹ to Confirmation of the Second Amended Joint Plan of Reorganization
Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”) in Connection with the Rejection of
the Infrastructure Interconnection Agreement (the “Collocation Agreement”) between KMC and

¹ Separate and apart from this Limited Objection, KMC also joins in a more comprehensive objection with a group of trade creditors including Verizon, BellSouth and SBC, filed substantially contemporaneous herewith.

Allegiance Telecom Company Worldwide (“Allegiance”), one of the above-captioned Debtors in these cases (the “Debtors”).² Facts and circumstances in support of this Limited Objection are set forth in the concurrently-filed Affidavit of Constance Loosemore (the “Loosemore Affidavit”), attached hereto as Exhibit A.

In further support of its Limited Objection, KMC respectfully represents as follows:

1. As this Court is aware, KMC is party to two agreements with Allegiance – a Primary Rate Interface Services Agreement dated February 11, 2002 (the “PRI Agreement”), and the Collocation Agreement. The PRI Agreement was assumed and assigned to Level 3 Communications, LLC (“Level 3”) by order entered on March 31, 2004 (as amended by order entered at Docket No. 1092 on April 6, 2004, the “Level 3 Order”). The assumption and assignment to Level 3 of the PRI Agreement was part of a global settlement of pending litigation between Allegiance and Level 3, which culminated in an Amended and Restated Confidential Settlement Agreement and Mutual Release (the “Settlement Agreement”) the entirety of which similarly was approved pursuant to the Level 3 Order.

2. The Settlement Agreement clearly recognized that KMC’s ability to continue to collocate its equipment so as to achieve connectivity to Allegiance’s equipment – purchased by Level 3 under the Settlement Agreement – would be integral to KMC’s ability to

² KMC notes that the procedures for objecting to confirmation of the Plan require that the objecting party include information relating to the nature and amount of claims that it holds against the Debtors. KMC previously has filed two unsecured claims in these cases: (i) a claim for pre-petition arrearages under the PRI Agreement (as defined below) in the amount of \$1,431,858.58 (the “PRI Claim”); and (ii) a claim for pre-petition arrearages under that certain Master Service Agreement dated December 8, 2000 (the “MSA”) in the amount of \$16,743.37 (the “MSA Claim”). Although the PRI Agreement was assumed and assigned pursuant to the Level 3 Order (as defined below), the pre-petition arrearages under the PRI Agreement remain outstanding and, therefore, KMC continues to hold the PRI Claim unless and until those obligations are cured. In addition to the foregoing, to the extent (if any) that the Debtors reject the MSA and/or the Collocation Agreement by operation of the Plan, KMC will hold additional claims for rejection damages in an amount to be determined, which claims will be filed within the time limits imposed by the Plan, and KMC reserves all rights in connection therewith.

service Level 3 under the assumed PRI Agreement. Indeed, the Settlement Agreement explicitly requires Allegiance to “use reasonable good faith efforts to enter into a collocation agreement (containing standard terms, conditions and pricing) with KMC to provide KMC with use of two (2) racks of collocation space and associated power in thirteen (13) Allegiance facilities currently occupied by KMC” so that KMC is able to provide proper services to Level 3 under the PRI Agreement. See Settlement Agreement at ¶3(h) (emphasis added).

3. Although KMC has been in ongoing discussions with XO Communications, Inc. (“XO”), the purchaser of substantially all of the Debtors’ assets – including all of the 13 collocation sites where KMC’s equipment currently is housed. KMC has been unable independently to reach an agreement with XO that would allow KMC to keep its equipment where it is at the Allegiance sites (the “Space”). See Loosemore Affidavit, at ¶ 4. Knowing that it is essentially the only game in town, and that KMC must either pay XO whatever it chooses to charge KMC to collocate or face an expensive and expedited move from the Space to new and perhaps disparate sites, causing significant KMC customer service disruption in the process, XO’s collocation pricing as proposed to KMC is far above prevailing market rates – as among other things, XO (i) has provided KMC with only retail (list) rates, (ii) refused to give KMC anything other than one-year pricing (as opposed to pricing for a three-year agreement, which usually would include discounts recognizing the longer term), and (iii) refused to recognize any “volume” discount for the fact that KMC would be collocating at thirteen sites, as opposed to one site. See id.

4. For its part, however, Allegiance has done precious little to satisfy the requirements of the Settlement Agreement by assisting KMC to secure collocation rights in the Space at reasonable, standard rates. See id. at ¶ 5. Instead, Allegiance has thrown up its hands and told KMC that there is little they can do to get XO to budge on its pricing, and incredibly,

immediately placed the Collocation Agreement on a list of contracts to be rejected as of the Initial Effective Date of the Plan – which could occur in as little as a few weeks.

5. This hardly can be the “reasonable good faith efforts” in assisting KMC to obtain the required collocation space in thirteen facilities that the Settlement Agreement envisions, rendering Allegiance in clear violation of this Court’s order of April 6, 2004. In failing to intercede with XO and in simultaneously rejecting the Collocation Agreement, Allegiance has pulled the rug out from under KMC and ensured that KMC will suffer substantial rejection damages that will be visited upon these estates. See Loosemore Affidavit, at ¶ 6.

6. During its bench ruling on KMC’s motion for a finding that the Collocation Agreement and the PRI Agreement are one contract (the “Collocation Motion”), as recently as four days ago, this Court expressly reminded Allegiance of its promise under the Level 3 Settlement Agreement to help ensure that KMC could continue to operate from the Space to service Level 3 and KMC’s third party customers. Although as of this writing, a final transcript of the hearing on the Collocation has not yet been made available, KMC believes that there was an explicit recognition by this Court that the Settlement Agreement imposes a duty on Allegiance to mitigate the injury to KMC were the Collocation Agreement to be rejected.

7. Not only is Allegiance in violation of the Level 3 Order having failed to provide any affirmative assistance with XO to KMC, Allegiance’s summarily scheduled rejection of the Collocation Agreement guarantees that KMC either will (i) be forced to exit the Space and find new collocation space very quickly with no way to provide services to Level 3 pursuant to the PRI Agreement and its third party customers without significant customer disruptions, or (ii) be forced to pay the astronomical rates that XO sees fit to charge it to remain in the Space. In either case, Allegiance will saddle itself with sizable rejection claims that would run into the millions for direct damages, and could run into additional millions in consequential

damages, all of which would have been avoided had Allegiance meaningfully endeavored to fulfill its commitment under paragraph 3(h) of the Settlement Agreement. See Loosemore Affidavit, at ¶ 6.

8. KMC submits that Allegiance should not be allowed to reject the Collocation Agreement unless and until it complies with the Level 3 Order, and works with KMC to solve the collocation problems in a way that makes economic and logistic sense.³

9. On the facts and circumstances of this case, KMC respectfully requests that this Court enter an order denying confirmation of the Plan as it relates to the rejection of the Collocation Agreement, and compelling Allegiance to comply with the Level 3 Order as it relates to paragraph 3(h) of the Settlement Agreement requiring Allegiance to mitigate KMC's damages by assisting KMC to remain in the Space on a reasonable basis.

WAIVER OF MEMORANDUM OF LAW

10. Because this Limited Objection does not present any novel or difficult issues of law, KMC respectfully requests that the Court waive the requirement of submission of a responsive memorandum of law pursuant to Local Bankruptcy Rule 9013-1.

³ In that regard, given that approximately \$15 million of equipment located at thirteen separate collocation sites are at issue, KMC believes that it would need a minimum of 120 days to transition the equipment to new collocation sites while minimizing any interruption to customer service, and requests that any rejection ultimately approved by this Court (if any) be effective only after such a reasonable time period has elapsed. See Loosemore Affidavit, at ¶ 6.

WHEREFORE, KMC respectfully requests that this Court (i) deny confirmation of the Plan with respect to the rejection of the Collocation Agreement, (ii) enforce the Level 3 Order and compel Allegiance to assist KMC in securing collocation space on a reasonable basis and (iii) grant such other and further relief as is just and proper under the circumstances .

Dated: New York, New York
June 1, 2004

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