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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Case No.  
03-13057

ALLEGIANCE TELECOM, INC.,

Debtors.

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January 9, 2004

United States Custom House  
One Bowling Green  
New York, New York 10004

Motion to Approve the sale to Qwest  
Communications International, Inc., Debtors' Motion  
to Extend time within which to assume or reject  
unexpired leases; Objection by State of Washington  
to 1146(c) Exemption for proposed sale; Doc#826;  
Objection.

B E F O R E:

HON. ROBERT D. DRAIN,

U.S. Bankruptcy Judge.

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

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1

2 A P P E A R A N C E S (continued):

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A P P E A R A N C E S (continued):

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BY: BRIAN M. SHER, ESQ.

1 ALLEGIANCE TELECOM, INC.

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

3 THE COURT: Please be seated.

4 Do we have the people on the phone  
5 as well?

6 THE CLERK: Yes.

7 THE COURT: Mr. Cantor, let me take  
8 the uncontested matters first, and then we can get  
9 on with the bidding procedures.

10 MR. CANTOR: Good morning, Judge.

11 Matthew Cantor of Kirkland and Ellis, here with  
12 Jonathan Henes, counsel for the debtors.

13 The first motion on is the debtors'  
14 second motion for an order under section 365(d)4 of  
15 the Bankruptcy Code seeking to extend the time  
16 within which the debtors can assume or reject  
17 leases. We are looking for an extension of time  
18 through the confirmation of the plan. We've  
19 received no objections.

20 THE COURT: I haven't seen any  
21 either.

22 Given the status of the case on the  
23 other matters we're here on today, I think it's  
24 reasonable to grant that extension. It's obviously  
25 subject to the right of any lessor to move for

1 ALLEGIANCE TELECOM, INC.  
2 cause to shorten the time. So, you can hand up  
3 that order after the end of this hearing.

4 MR. CANTOR: Thank you, Judge.

5 The next matter on is the debtors'  
6 motion for approval of our bidding procedures and  
7 approving certain bid protections for Qwest Telecom  
8 and setting a hearing to approve the sale. I  
9 thought we start with -- we've resolved a number of  
10 objections and actually revised the order that we  
11 will be presenting today.

12 THE COURT: I have a copy of your  
13 various replies, as well as the black line revised  
14 order which I've gone through.

15 MR. CANTOR: So what I would plan to  
16 do first is just go through the objections that  
17 we've resolved, if that's okay.

18 THE COURT: That's good.

19 MR. CANTOR: We had received an  
20 objection from the Attorney General of the State of  
21 Washington, and for the Texas Controller's Office,  
22 the Attorney General for the State of Texas, and  
23 also for the City and County of Denver. The issue  
24 went to the breath of the relief we were seeking in  
25 this action under Section 1146(c). Our resolution

1                   ALLEGIANCE TELECOM, INC.  
2     with them for this hearing was that we would make  
3     it clear in the notice seeking approval of the  
4     sale, which would be served on all the applicable  
5     taxing authorities, we would make it clear that we  
6     would be seeking relief from stamp and similar  
7     taxes under Section 1146(c) of the Bankruptcy Code.  
8     The primary concern here was that we give proper  
9     notice to the taxing authorities so they know  
10    whether they would come in and object or not.

11                   THE COURT: I saw your change there.  
12    And I think you should make one other change  
13    consistent with that in the notice. The change was  
14    in paragraph 5 that you made. In the first  
15    paragraph on page 1 of the notice three lines from  
16    the bottom it says, "B certain transfer taxes,"  
17    just to be consistent I think you should say stamp  
18    and similar -- pick up the language from paragraph  
19    5; it doesn't have to be as lengthy, but just  
20    mention the stamp and similar taxes.

21                   MR. CANTOR: We will do that.

22                   MR. BROWNING: Your Honor, this is  
23    Mark Browning from Texas Attorney General's office.  
24    We were put on time to call, although, as counsel  
25    has indicated, our objections were resolved in the

1 ALLEGIANCE TELECOM, INC.  
2 revised language and we are satisfied with the form  
3 of notice as it's going out now.

4 THE COURT: Very well. And I'm  
5 assuming that since I haven't heard from Washington  
6 State or Denver, they agree with that as well.

7 MR. BROWNING: That's correct, your  
8 Honor, I've communicated with both of their  
9 attorneys and they're both agreeable with those  
10 changes.

11 THE COURT: Thank you. You are free  
12 to stay on, but you can also leave if you want.

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

15 MR. CANTOR: Your Honor, the next  
16 objection that we resolved was an objection from  
17 Wells Fargo Leasing Vender Services Corporation.  
18 The resolution was that we would make it clear on  
19 the record today that the sale will not moot any of  
20 the equipment owned by Wells Fargo Leasing Vendor  
21 Services Corporation.

22 That equipment was previously leased  
23 to the debtor under equipment finance leases. We  
24 will also make it clear that in the sale order it  
25 doesn't included any of their equipment.



1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay, so you are only  
3 selling what you own.

4 MR. CANTOR: Yes, that's exactly it.  
5 We agreed to make it clear on the record.

6 THE COURT: I guess you are not  
7 making a determination today whether it's finance  
8 or an equipment lease, but you are telling them you  
9 are only selling what you own.

10 MR. CANTOR: Correct.

11 THE COURT: All right.

12 MR. CANTOR: The next objection was  
13 an objection by Oracle Corporation, and they have  
14 agreed to put their objection off to the final sale  
15 hearing.

16 We have gotten some inquiries which  
17 I thought I would let your Honor know about. Bell  
18 South Corporation had made inquiry concerning the  
19 assumed contracts and whether or not -- our order,  
20 was -- they had an issue with what it looked like.  
21 It's just that they were concerned we were seeking  
22 an order basically finding that we've already shown  
23 adequate assurance of future points, and we made  
24 the appropriate change in our order today. And I  
25 think that I have it --

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Paragraph 4.

3 MR. CANTOR: Paragraph 4, correct.

4 And they are satisfied with that. And then  
5 Multnomah County, Oregon didn't file an objection,  
6 they sent us an inquiry concerning the taxes owed.  
7 And we have returned those calls and we actually  
8 haven't heard from them, so they may show up at the  
9 sale hearing. We've also resolved some of the  
10 objections --

11 THE COURT: Could I stop you for a  
12 moment? You said that the Oracle one is adjourned.  
13 I don't want to carry some objection to some relief  
14 that I may grant today. It's really that they are  
15 reserving their rights to raise that at the sale  
16 hearing?

17 MR. CANTOR: That's correct, your  
18 Honor.

19 THE COURT: I'm sorry, go ahead with  
20 the other ones that you partially resolved.

21 MR. CANTOR: I thought we would go  
22 through the creditors' committee's objections and  
23 identify for you some of the issues that we've  
24 taken off the table with them through some changes.

25 THE COURT: When you say that, are

1 ALLEGIANCE TELECOM, INC.  
2 these issues that they agree are off the table as a  
3 result of the changes?

4 MR. CANTOR: That's correct, your  
5 Honor.

6 THE COURT: Okay.

7 MR. CANTOR: Your Honor, the  
8 committee had objected to the bidding procedures to  
9 the extent that they felt they were not entitled to  
10 participate in the process of determining the  
11 successful bidder and in terms of the receipt of  
12 the information concerning the qualified bids. And  
13 we've made changes. If you look at page -- it's  
14 paragraph 2 of the order approving the sale. We've  
15 made the changes to include the attorneys for the  
16 banks and the creditors' committee in terms of who  
17 needs to be served with competing bids. And  
18 likewise, with the bid requirements, the bidders  
19 must provide the committee and the bank agent with  
20 copies of their bids. We've made that change; it's  
21 paragraph little "e" from the bid requirements. My  
22 order is not page numbered, so I'm at a loss.

23 THE COURT: All right. I note that  
24 in several places you have added the consultation  
25 language in the order. I think that the only place

1 ALLEGIANCE TELECOM, INC.  
2 you haven't, and I may be wrong about this, and  
3 maybe the committee or the lenders will correct me,  
4 is in the summary -- not the summary, the bidding  
5 procedures as set forth in paragraph 2 of the  
6 order, it's about four pages in.

7 MR. CANTOR: Yes.

8 THE COURT: In the due diligence box  
9 in the first phrase where it says, "unless  
10 otherwise determined by the debtors," and then at  
11 the end of that phrase -- I'm sorry, the end of  
12 little paragraph "e" in that box which says, "which  
13 the debtors and their adviser will determine in  
14 their sole discretion." You probably ought to add  
15 that there as well.

16 MR. CANTOR: After consultation with  
17 the bank and the committee.

18 THE COURT: Right.

19 MR. CANTOR: And the bank agent.  
20 We'll add that.

21 THE COURT: I think those are the  
22 only places I put marks where I thought that type  
23 of language might come in. But obviously if the  
24 committee thinks -- anyway, the record is clear  
25 that that's what the debtors intend to do.

1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: The committee also  
3 objected to the bidding procedures, to the extent  
4 it appeared to exclude bids for individual assets.  
5 And we've changed the bid procedures to include  
6 that.

7 The committee also objected that the  
8 bidding procedures should be revised to enable us  
9 to qualify a bid even if it's contingent upon  
10 regulatory approval, and that change has been made.  
11 We've made some other changes to the order which  
12 have not resolved the objections, so I thought it  
13 would be worthwhile.

14 There was one other issue that the  
15 committee raised that we've resolved. There was a  
16 concern that competing bidders be required to  
17 submit their list of the contracts they would be  
18 assuming five days prior to the auction, and Qwest  
19 was not obligated to do that until the auction.  
20 The concern was that it might give Qwest some  
21 unfair advantage in the context of the auction on  
22 the pricing, of being able to identify what  
23 contracts other parties were taking or not, so that  
24 they would be able to gauge what contracts they  
25 should take or not; that goes to the purchase

1 ALLEGIANCE TELECOM, INC.  
2 price. This would have an effect on rejection  
3 damage claims and cure amounts.

4 We've made it clear to the  
5 committee, we'll state on the record, that with  
6 respect with our consultations with competing  
7 bidders and Qwest, although we will not be sharing  
8 the contracts that any party bidder provides to us  
9 as to what they will be taking or not be taking, we  
10 will share with them information concerning our  
11 estimate of each bidder's cure amounts and the  
12 resulting rejection damage claims for contracts  
13 that aren't taken, thus giving everybody the same  
14 information as to what the bid price is.

15 THE COURT: And the timing will be  
16 the same?

17 MR. CANTOR: We haven't changed the  
18 timing, but at the end of the day --

19 THE COURT: I guess it doesn't  
20 matter, because you've made the analysis either  
21 way.

22 MR. CANTOR: That's correct, Judge.  
23 It's really just a matter of --

24 THE COURT: I actually think you can  
25 probably, in so many words, lay that out in the

1                   ALLEGIANCE TELECOM, INC.  
2 notice, because that is -- if you were representing  
3 a bidder, that might present some confusion. You  
4 have a provision in the notice, and I think this is  
5 appropriate, that the actual contracts being  
6 assumed and the amounts will be kept confidential.  
7 But then you can add, however the debtors will  
8 share their estimate of -- just as you said, the  
9 cure amounts with the bidders.

10                   MR. CANTOR: We will make that  
11 change, Judge.

12                   THE COURT: So you are  
13 contemplating, then, a process where the committee  
14 and the lenders will be kept up to date as far as,  
15 and maybe more up to date, be involved in the  
16 analyses of what the cure costs estimates will be,  
17 so they can, along with you guys, decide what's  
18 highest and best; is that correct?

19                   MR. CANTOR: Yes, your Honor.

20                   THE COURT: Okay.

21                   MR. CANTOR: Excuse me one second.  
22 (Debtors' counsel and Committee's counsel confer.)

23                   MR. CANTOR: And, your Honor, the  
24 other change was we would be sharing all of the  
25 qualified bidder's bids with each other bidder so

1 ALLEGIANCE TELECOM, INC.

2 that everyone has the same information.

3 THE COURT: I appreciate that. I  
4 had a follow-up question on that, so we might as  
5 well deal with it now.

6 I think the way the document works,  
7 the qualified bids are the bids that come in first.  
8 I don't care either way, I think you can run an  
9 auction either way. But assuming that there are  
10 qualified bids and the bids terms change during the  
11 auction, are you going to keep the bidders in the  
12 dark and just have Mr. Kramer tell them what he  
13 thinks the bids are worth, or are they going to  
14 have time to review each bid? Again, I don't care  
15 either way, I just think you should be clear as to  
16 what you are doing.

17 MR. CANTOR: Your Honor, I will  
18 admit that --

19 THE COURT: Mr. Kramer is talking  
20 behind you.

21 MR. CANTOR: I have consulted with  
22 Mr. Kramer, we had talked about it --

23 THE COURT: You don't necessarily  
24 have to resolve it today, I just think you be  
25 consistent with each bidder.



1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: And that's the advice I  
3 received from our investment advisors.

4 THE COURT: Okay.

5 MR. CANTOR: We will be consistent  
6 and we will make it clear at the auction so that  
7 everybody knows what the rules are.

8 THE COURT: Okay. And so that no  
9 bidder has more information than the other does as  
10 to each bid.

11 MR. CANTOR: The remaining  
12 objections I think the committee stands by, going  
13 to sort of the material things, the amount of the  
14 break up fees and the timing of its payment, the  
15 cap on the fees and expenses to be reimbursed.  
16 There is an issue as to the -- they are concerned  
17 that Qwest's bid does not remain irrevocable,  
18 meaning that if they get paid the break up fee for  
19 some reason and we go forward with another  
20 transaction, that they don't stay in place even  
21 though they've received the break up fee. And they  
22 also have an objection to the transition committee  
23 concept in the agreement, and I'll let them state  
24 their objections after we get into it. And there's  
25 also an objection to the length of sale process,

1 ALLEGIANCE TELECOM, INC.  
2 and we will address in our case, why we believe the  
3 bid procedures are fair and ultimately be approved,  
4 not withstanding those objections.

5 We have some other objections which  
6 I think we can deal with before we get into the  
7 meat of the case here. We have an objection from  
8 NCX Office Development Corporation, the contract  
9 party, they are seeking to have some comfort today  
10 that their contract was either going to be assumed  
11 or rejected. We think that's an issue for the sale  
12 hearing. If it ultimately gets taken, we will  
13 prove up what we need to prove up then, and I don't  
14 see that as a real objection to the bid procedures,  
15 and I would like to give them an opportunity to  
16 state their case and deal with that now.

17 THE COURT: Okay.

18 MR. ABRAMOWITZ: Thank you, your  
19 Honor.

20 MR. CANTOR: Excuse me, your Honor.  
21 This is a contract that we had already assumed, and  
22 really the question is whether it's going to be  
23 taken.

24 MR. ABRAMOWITZ: Thank you, your  
25 Honor. Steven Abramowitz of Vinson and Elkins on

1 ALLEGIANCE TELECOM, INC.

2 behalf of NCX Development.

3 As your Honor is aware from our  
4 papers, we essentially are the landlord for the  
5 debtors' worldwide headquarters. During the case  
6 we had before the lease had been assumed or  
7 rejected, we had worked out an amendment to the  
8 lease with the debtors in which the debtors took  
9 significantly less space, and in return we got the  
10 advantage of having a tenant. And it certainly  
11 became a fact, since they are the sole tenant in  
12 our property. Although we don't object to the sale  
13 itself, your Honor, or so the so-called bidding  
14 procedures, given the status of the lease to our  
15 property and the fact that it is an assumed  
16 contract, we were concerned that we would not know,  
17 in a reasonable period of time, what they intend to  
18 do with our lease, which will have, of course, a  
19 material effect on our property. And all we are  
20 asking is that as soon as the debtors and Qwest or  
21 whomever the successful bidder is, make that  
22 determination no later than three business days  
23 after the auction we be notified of that so we can  
24 act appropriately.

25 THE COURT: Your lease has been

1 ALLEGIANCE TELECOM, INC.

2 assumed, correct?

3 MR. ABRAMOWITZ: Correct, it has  
4 been.

5 THE COURT: You don't object to the  
6 bidding procedures per se?

7 MR. ABRAMOWITZ: Correct.

8 THE COURT: I'm going to deny the  
9 objection. Frankly I'm not sure what relief you  
10 have, other than your co-involved, and I'm not sure  
11 that, in some jurisdictions, including New York,  
12 the issue of mitigating damages. I don't think you  
13 have a motion to compel assumption or rejection  
14 because it's already been assumed. But in any  
15 event, the relief you are seeking isn't really  
16 appropriately brought on for today.

17 So I think that as a commercial  
18 matter, the debtors may decide to help you mitigate  
19 damages that they are deciding to breach the lease  
20 in the future, that they would do that. But I'm  
21 not sure you have any rights under the Bankruptcy  
22 Code at all, but I don't see you as having any  
23 today, and that's the important thing; that's why  
24 I'm denying your objection.

25 MR. ABRAMOWITZ: Okay. But if at a

1 ALLEGIANCE TELECOM, INC.  
2 future time I believe the circumstances change I of  
3 course reserve my right to seek relief.

4 THE COURT: Right, of course.  
5 Although I made some comments about the overall  
6 rights of the Bankruptcy Code, they are more in the  
7 nature of that.

8 MR. ABRAMOWITZ: There might be some  
9 future rights which may ripen as the circumstances  
10 change.

11 THE COURT: Yes.

12 MR. ABRAMOWITZ: Thank you, your  
13 Honor.

14 MR. CANTOR: The next objection I  
15 think we can dispose with today for the same  
16 reason, that it's not really an objection to the  
17 bidding procedures, is an objection from Level 3  
18 Communications. And I thought I would like to give  
19 them the opportunity to state their objection and  
20 then I would reserve the opportunity to give my  
21 response.

22 THE COURT: Okay.

23 MR. SCHAEDELE: Good morning, your  
24 Honor. Michael Schaedle of Blank Rome. I'm here  
25 with my colleague Edward LoBello from the same

1 ALLEGIANCE TELECOM, INC.

2 firm.

3 Your Honor we have only brief  
4 comments today. I think that in some important  
5 part, the committee, in its objection, has taken up  
6 one of our core concerns, which rates relates to  
7 the transparency of information relating to a  
8 servicing arrangement that is contemplated by the  
9 Qwest Asset Purchase Agreement. And the debtor  
10 has, in its reply, confirmed that Section 6.26 of  
11 that Asset Purchase Agreement and a related  
12 schedule relate to that servicing agreement, and  
13 that bidders and stake holders, which of course  
14 include Level 3 importantly, will have transparency  
15 on that point.

16 Let me also state that Level 3  
17 disagrees with and denies the various allegations  
18 contained in the replay relating to the conduct in  
19 the case. Again, I think the primary moving force  
20 here today, your Honor, are the resolution of the  
21 issues that the committee has in connection with  
22 the bidding architecture. But let me state for the  
23 record that the integrated purchase agreement that  
24 Level 3 is a contract counter-party to with  
25 Allegiance Telecom Company Worldwide, is a contract



1                   ALLEGIANCE TELECOM, INC.  
2     understanding how that servicing is going to be  
3     accomplished is a very substantial endeavor which  
4     will require thorough analysis, including reviews  
5     the of documentation, and that suggests to Level 3  
6     that as the auction proceeds that there is, with  
7     respect to the limited universe of issues relating  
8     to servicing the Integrated Network Solutions  
9     Purchase Agreement, probably appropriate to craft  
10    in these procedures some form of consultative  
11    hitching point so that Level 3's issues, in  
12    connection with this important servicing can be  
13    understood, and so that all stake holders can  
14    evaluate that how that plays in connection with any  
15    other bids the debtors may receive.

16                   THE COURT: Consulting with whom?

17                   MR. SCHAEDEL: Level 3, your Honor.

18                   I have nothing further, your Honor.

19                   THE COURT: Well, before you sit  
20    down, do you acknowledge then that the other issue  
21    that you raised about the assumability of the  
22    agreement is really --

23                   MR. SCHAEDEL: That is not for  
24    today, your Honor.

25                   THE COURT: Okay.



1 ALLEGIANCE TELECOM, INC.

2 MR. SCHAEDEL: What we are trying to  
3 do is we are trying to be visible to the concerns  
4 that arise as this process proceeds. We didn't  
5 want to ambush anybody at a sale hearing after an  
6 auction has been completed and not allow people to  
7 discuss with us, consult with us, the nature of  
8 these issues. They are out there, and that's why  
9 we wanted to show a little light in our pleadings.

10 THE COURT: All right.

11 MR. SCHAEDEL: We of course reserve  
12 all of our rights.

13 THE COURT: Okay.

14 MR. CANTOR: Your Honor, I don't  
15 know whether you have mind to rule, but we think  
16 the objection obviously should be overruled. It's  
17 not pertinent to the bid procedures that we are  
18 seeking to be approved here today.

19 I would like to make one remark here  
20 concerning any attempt by Level 3 to inject itself  
21 into our sale process any more than they already  
22 have to date. This is a contract we had to take  
23 out of the sale because it was a difficult contract  
24 transfer. That difficulty was created by Level 3.  
25 To the extent there was any objection to that from

1 ALLEGIANCE TELECOM, INC.

2 them, it's their own fault.

3 I think what we've done is, and it's  
4 sort of caused us to put a lot more time and effort  
5 into how we organize this sale process, to enable  
6 us to go forward and sell our valuable assets  
7 without any hitch from anybody, so I would resist  
8 any change in our bid protections that would give  
9 Level 3 the ability to inject itself into the  
10 process any more than they have. And as it relates  
11 to the assumption and assignment of that contract,  
12 the rejection of that contract, or the retention of  
13 that contract by the estate, I agree with Mr.  
14 Schaedle, that that's something we can take up at  
15 the purchase agreement approval hearing, and I  
16 appreciate Level 3's willingness to give us a heads  
17 up if they are going to have a problem with that,  
18 but I would prefer they and strongly resist  
19 enabling them to inject themselves any further into  
20 the auction.

21 THE COURT: Okay. And I know you  
22 take issue with the representation of what your  
23 client's been up to or not be up to. There is some  
24 superficial overlap with Level 3's objections and  
25 one of the committee's objections, but I think that



1                   ALLEGIANCE TELECOM, INC.  
2 issues, your Honor, and we will do our best to  
3 resolve them one way or another. Thank you.

4                   THE COURT: All right.

5                   MR. CANTOR: Your Honor, the next  
6 objection is from Corvis Corporation. Their  
7 objection went to two issues, primarily. Corvis  
8 Corporation is, as they stated in their papers --  
9 the company had been negotiating with them to seek  
10 whether or not they were going to be the successful  
11 stalking horse bidder. We got pretty far down the  
12 road with them, and it appears as though that they  
13 are still ready, willing and able to hop back into  
14 this auction. And their objection goes to the  
15 auction procedure itself. They had a concern about  
16 the amount of the initial over bid, but the first  
17 incremental bid against Qwest's deal, they thought  
18 that 40 million was too high. We have actually had  
19 an opportunity over the last 12, 18 hours, to have  
20 that reduced to 30 million dollars from 40 million  
21 dollars. And I guess, first, I would want to see  
22 if they were acceptable to Mr. Schein for Corvis's  
23 first objection concerning the first over bid.

24                   With respect to the second issue,  
25 we've actually modified the bid procedures to

1                                   ALLEGIANCE TELECOM, INC.  
2     provide the debtor and his successful second bidder  
3     could mutually agree to close the transaction if  
4     the winning bidder of the auction fails to, and  
5     we've also provided in our procedures order that  
6     that would be after consultation with the bank  
7     agent and the creditors' committee. So I suspect  
8     we've satisfied the second objection.

9                                   So if there's an attorney here from  
10    Corvis here.

11                                  MR. RICOTTA: Good morning, your  
12    Honor. Paul Ricotta from Glovsky and Popeo on  
13    behalf of Corvis Communications.

14                                  Your Honor, Mr. Cantor has correctly  
15    stated that our second objection has been resolved,  
16    and that is to the extent that we ask for the  
17    provision in the order such that the second and  
18    highest bidder will be allowed to continue to have  
19    its bid open; and if the first or the successful  
20    bidder, at least at the auction, failed to close,  
21    then the debtor could close with the second highest  
22    and best bidder. And I believe the order, at least  
23    the one that I saw this morning, was appropriately  
24    modified to satisfy our concerns. If anyone else  
25    has concerns of the court, obviously we are willing

1 ALLEGIANCE TELECOM, INC.

2 to address those.

3 However, your Honor, the reduction  
4 from 40 million to 30 million with respect to the  
5 over bid is not sufficient. And it's not  
6 sufficient very simply because at that price, that  
7 will chill the bidding. And in our view, and as  
8 Mr. Cantor correctly stated, we have been in  
9 negotiations with the debtor for quite sometime.  
10 We are quite familiar, at least with the due  
11 diligence. We believe that that level of over bid  
12 will probably ensure that Qwest Communications will  
13 be the only bidder at this auction.

14 THE COURT: Okay. On that point, I  
15 know that it's a point that the committee raised  
16 too, so I'll deal with that in the second part of  
17 the hearing.

18 As to the first point, I had, and I  
19 appreciate the parties effort to resolve  
20 objections, and I don't want to be critical of  
21 their objections. I had a significant problem,  
22 perhaps, with the way the language was worded in  
23 the proposal. But before I deal -- I'll say it  
24 now. You can read it as suggesting that the court  
25 never has to approve the actual second best bid.

1                   ALLEGIANCE TELECOM, INC.  
2     And, as I think the debtors have appropriately  
3     done, that second best bid could be materially  
4     different from the winning bid, not just in terms  
5     of price, but in terms of what's actually being  
6     purchased. So I think you need to build in a court  
7     approval hearing so that you can do it at the -- if  
8     you want to multiply your issues, you can do it at  
9     the sale hearing, or you could have a hearing  
10    shortly after the debtor approves the second best  
11    bid. But I think that that may be more appropriate  
12    because otherwise you'll be having a hearing on a  
13    transaction that may never occur, I guess the  
14    debtors hope never will occur. So I think you have  
15    need to have a separate court approval of it.

16                   MR. CANTOR: I appreciate your  
17    obvious, Judge.

18                   THE COURT: The other parties may  
19    have problems with the second best bid concept as  
20    well, and I don't want to indicate that I have  
21    signed off on it, but I think if I do sign off on  
22    it, it has to have that element in.

23                   MR. DUBLIN: Your Honor, Phil Dublin  
24    Akin Gump on behalf of the committee.

25                   It may have just been an oversight

1                                   ALLEGIANCE TELECOM, INC.  
2    or a misunderstanding, but the way we read it, the  
3    bid procedures, were that bid requirements require  
4    each deposit that is held by the committee is  
5    irrevocable until the closing of the sale, whether  
6    it be with Qwest or other winning bidder. With  
7    that provision, it had been the understanding of  
8    the committee that that is something that would be  
9    a requirement of the debtors, to the extent the  
10   winning bid did not close, the debtors would have  
11   the right to go back to A, B, C, D, E, F, G, down  
12   the line, getting people to close, because their  
13   bids were outstanding as being the highest and the  
14   best. So limiting it to the second bid, there's a  
15   problem with the committee, we think it should be  
16   that all bids should have to remain outstanding.  
17   And we do have an issue with Qwest, that Mr. Cantor  
18   mentioned earlier about their bid remaining  
19   irrevocable. We think that issues needs to be  
20   addressed as well.

21                               THE COURT: Let me make sure I  
22   understand what you are saying. What you are  
23   saying is rather than give the bidders the  
24   assurance that at least the debtor will seek  
25   approval of the second best bid if the first one



1 ALLEGIANCE TELECOM, INC.  
2 falls through, you basically want to put more of  
3 the option on the estate as to whether you want to  
4 do that or not.

5 MR. DUBLIN: Correct, your Honor.  
6 And I believe that each bid that is not the winning  
7 bid must remain outstanding.

8 THE COURT: Well, that's still the  
9 case.

10 MR. DUBLIN: And it essentially  
11 pulls the rug out from that provision if we are not  
12 able to come back to the court saying bidder two we  
13 want to close the deal you have to close. We  
14 believe that should be a requirement as well.

15 THE COURT: All right. This is what  
16 I suggest, because I think this deals with all the  
17 objections except for the ones that remain open.

18 MR. CANTOR: Yes, your Honor.

19 THE COURT: Given the number of  
20 objections that remain open, and again, I am  
21 grateful for the debtors' efforts and Qwest's  
22 efforts and any of the other parties efforts to  
23 resolve as many of the issues as they have, I  
24 thought that I would -- and also the basic fact  
25 that what we're dealing here with is a purchase

1                                   ALLEGIANCE TELECOM, INC.  
2    agreement that has numerous features in it, and  
3    ultimately then one is thinking about a negotiation  
4    whenever any of these points are proposed to be  
5    resolved.  And finally the fact, and it's probably  
6    no surprise to either the debtor or the committee  
7    or Qwest, that none of their positions is going to  
8    carry the day in full, that I would lay out for you  
9    my preliminary thoughts about the objections.  And  
10   then we can take a break and the parties can talk  
11   about them and inevitably do some negotiating.

12                                And in that context I think the  
13   debtors, Mr. Kramer, the committee's financial  
14   advisor, the lender's financial advisor, might  
15   consider, in addition this second best bid concept,  
16   and see whether they think in their judgment it  
17   makes more sense to give the bidders some assurance  
18   that the second best one will have a chance, more  
19   than just what the committee is proposing or not,  
20   whether that might increase the bids generally.  
21   And I'll give some thought to it, too, because I  
22   haven't fully considered the committee's point,  
23   although I've given some thought to it.

24                                So why don't I go through the order  
25   and give you my thought on some of the outstanding

1                   ALLEGIANCE TELECOM, INC.  
2     objections and a couple of other reactions to the  
3     order.

4                   You can sit down sir, if you want.

5                   MR. RICOTTA: Thank you.

6                   THE COURT: I focus really on the  
7     order, so if the parties want to take notes they  
8     can keep the order in front of them.

9                   The first point is on page one of  
10    the order, and I know this is what the motion was  
11    captioned, but I think it should be clear that the  
12    order is not doing this. I'm not today approving  
13    the Purchase Agreement, which is item C in the  
14    caption and then little 3 in the order. I'm not  
15    even really approving the form of the Purchase  
16    Agreement today; as the committee says, at the sale  
17    hearing it may be that even if the debtors accept  
18    the Qwest offer as the highest and best offer,  
19    there may be something in that agreement that I  
20    conclude just doesn't work. So I'm not really  
21    approving it. And I don't think it really affects  
22    the bidding procedures, because people are supposed  
23    to make higher or better proposals than the  
24    Purchase Agreement. I don't know if you cure that  
25    just by taking out the reference, but what the

1                                   ALLEGIANCE TELECOM, INC.  
2     ultimate relief granted here is is the grant of the  
3     motion. So if the motion actually sought approval  
4     of the Purchase Agreement, I can't really grant  
5     that motion.

6                                   The order correctly lays out what I  
7     need to find to approve these procedures, i.e. that  
8     they are fair reasonable and designed to maximize  
9     recovery in the value of the estate and provide a  
10    benefit to the estate and it's creditors. And to  
11    the extent that the Third Circuit case law is  
12    helpful here, if they are actual and necessary  
13    costs and expenses to preserve the estate.

14                                  So in light of that, and my reading  
15    of the Integrated Resources case and the O'Brien  
16    case and the other cases, I reviewed the actual  
17    procedures that were sought to be approved here. I  
18    think you are going to need to establish a little  
19    bit more for me, given the process that you went  
20    through, the finding that the execution of the  
21    Purchase Agreement is a necessary prerequisite to  
22    determining whether any party, other than the  
23    buyers, are willing to enter into a definitive  
24    agreement, which is in paragraph E, because I know  
25    you went pretty far with at least one other buyer

1 ALLEGIANCE TELECOM, INC.  
2 here. And obviously that issue affects how I treat  
3 some of these later issues.

4 MR. CANTOR: And, your Honor, just,  
5 we have Mr. Kramer here and he is prepared to put  
6 on evidence how all the findings will connect.

7 THE COURT: I understand.

8 As I said, you took care of a lot of  
9 the issues that I had already and we've already  
10 discussed them. So let me go to the first one.  
11 And I'm taking these in no order of priority, it's  
12 just as it comes through on the order, although  
13 I'll indicate that some are more significant than  
14 others, like the committee and Corvis. I have real  
15 concerns that even a 30 million dollar offset price  
16 could chill the bidding here. The case law in this  
17 area talks about the courts having to walk a  
18 tightrope between having regular bidding procedures  
19 and maximizing the estate value. If, however, the  
20 upset price is at least 12 million more than the  
21 amount sought for the break up fee and expense  
22 reimbursement, that's a lot of money. And as  
23 you'll be hearing in a moment, it may be more  
24 than that, so I'm not sure why it has to be that  
25 much more. If there's a real strong reason, which

1                   ALLEGIANCE TELECOM, INC.  
2    is that Mr. Kramer is confident that whoever wants  
3    this will put it on the table, and why stop  
4    pussyfooting around, I'm willing to listen to that,  
5    but it seems like a lot of money to me for an upset  
6    price.

7                   We dealt with the issue of the  
8    consistency on disclosing the bids after what I  
9    call the initial qualified bids, you may want to  
10   put that in here in the section, in the box marked  
11   bid deadline where it talks about the bids being  
12   shared among the parties, saying that there will be  
13   a consistent sharing or not sharing, as the case  
14   may be, of any bids made at the auction.

15                  I had a question, if you turn to the  
16   box marked big bid requirements, in C, I appreciate  
17   that you deleted the regulatory approval. At this  
18   point are there any outs that Qwest has that this  
19   provision would exclude for other bidders? I don't  
20   think so, because obviously people are able to bid  
21   on the contract; the contract has the bring down  
22   and the right.

23                  MR. CANTOR: You are correct, Judge,  
24   this would not.

25                  THE COURT: All right. And does the

1 ALLEGIANCE TELECOM, INC.

2 Qwest bid remain irrevocable until the closing if  
3 it's out bid.

4 MR. CANTOR: No. That was one of  
5 the issues that the committee had requested be made  
6 irrevocable.

7 THE COURT: Frankly that's I think  
8 of somewhat lesser importance to me, but it's one  
9 to note.

10 And then as far as the deposit is  
11 concerned, the Qwest deposit is 30 million,  
12 correct?

13 MR. CANTOR: Yes, cash.

14 THE COURT: So that's been fixed,  
15 the difference.

16 MR. CANTOR: The difference is, your  
17 Honor, is the bidding procedures require cash  
18 deposits of 30 million dollars. The committee has  
19 requested that that be cash or letters of credit.

20 MR. DUBLIN: Or any other type of  
21 security.

22 THE COURT: Cash equivalent.

23 MR. DUBLIN: Cash equivalent,  
24 correct.

25 MR. CANTOR: And that's not an

1 ALLEGIANCE TELECOM, INC.  
2 acceptable change to the bidding procedures to  
3 Qwest.

4 THE COURT: I don't understand that.  
5 As far as the estate is concerned --

6 MR. BASTA: Your Honor, I'll take it  
7 up with my client at the break.

8 THE COURT: Okay. Because there is  
9 a separate provision about the financial wherewith  
10 all, but it's just as far as the deposit is  
11 concerned.

12 MR. BASTA: I'm not following that  
13 one.

14 THE COURT: The provision at the top  
15 of the next page, still in the box auction and  
16 overbids that let's the buyer bid already part of  
17 the break up fee and the expense reimbursement is  
18 fine. I don't have a problem with that. There's a  
19 mechanical issue, though, which is the expense  
20 reimbursement is not a flat 5 million dollars, it's  
21 based on the actual reasonable expenses. Now,  
22 maybe they have already exceeded the 5 million  
23 dollars, so it's not an issue.

24 MR. CANTOR: That would be my bet,  
25 that they probably beat that already.



1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay.

3 MR. BASTA: Unfortunately, your,  
4 Honor, that's not an issue.

5 THE COURT: We talked about the  
6 second highest bid issue already. Unless someone  
7 else has any other issue than the one that's been  
8 flagged. I just want the parties to think about it  
9 and they the can talk about that point during the  
10 break.

11 Then turning to the box, the break  
12 up fee and expense reimbursement point; I don't  
13 have a problem with the 5 million itself  
14 particularly. I do have an issue with the 12.8,  
15 particularly given the 5 million. But I know that  
16 the reply adds onto the 390 million purchase price  
17 additional amounts, but I'm really focusing on the  
18 390 million, because I don't know the cure costs  
19 for the contracts since the liability is being  
20 assumed and the like. So maybe you can address  
21 that later. But I'm really focusing on the 390  
22 million as a basis for a buyer protection.

23 MR. CANTOR: And, your Honor, I  
24 appreciate that, and we will take that on at the  
25 break.

1 ALLEGIANCE TELECOM, INC.

2 There are some unique things about  
3 Allegiance that might convince your Honor that in  
4 this particular case, looking at some other things,  
5 particularly the cash that's being left behind on  
6 as asset that sucks a lot of cash. Its real value  
7 goes to the creditors of the consequence of the  
8 buyer buying it, but I hear your issue and I want  
9 to reserve it.

10 THE COURT: I appreciate that, and I  
11 also note that there are purchase price adjustments  
12 in the agreement itself. So for want of knowing  
13 more, and you can fill me in, and the committee can  
14 disagree if they want to; it seems to me that in  
15 weighing what's fair and appropriate here,  
16 particularly given that there has been some  
17 interest already and apparently seems to be some  
18 real interest by other parties in buying these  
19 assets, that an aggregate of 3 percent, i.e. the  
20 aggregate of the break up fee and expense  
21 reimbursement, is about the high end here; 3  
22 percent of the purchase price. And that would  
23 effect, I think, again, the issue of the upset  
24 price, if in fact the total here is between 10 and  
25 12 million as opposed to 17.8, then I think the 30

1                                   ALLEGIANCE TELECOM, INC.  
2 million would come down even more than what I said  
3 it should come down, because then you are talking  
4 about a 20 million dollar gap between making the  
5 estate whole again.

6                                   I note that the buyer and the debtor  
7 agreed to amend when the break up fee and expense  
8 reimbursement were paid, as set forth in the order  
9 provided to me today, tying the payment now to the  
10 court's entry of an order approving an alternative  
11 transaction, whether that's in the plan or as a  
12 sale transaction. I think that went a very long  
13 way to resolving a serious concern I had about the  
14 agreement, which is that it's very hard to find  
15 benefit to the estate if a break up fee is not paid  
16 out of the proceeds of an alternative transaction.  
17 The change doesn't really provide for payment out  
18 of the proceeds of an alternative transaction, but  
19 it does at least tie the payment to court approval  
20 of that transaction, and one has to assume that the  
21 parties, as a whole, would have enough confidence  
22 that that transaction would happen in order to seek  
23 court approval. And it avoids some of the issues  
24 that usually come up if you have the payment tied  
25 to an actual receipt of proceeds, which is whether

1                                   ALLEGIANCE TELECOM, INC.  
2   the debtor somehow kills a transaction to preserve  
3   an option element. However, one of the three  
4   categories isn't really tied to a court order,  
5   which is the acceptance to a second highest bidder,  
6   but that may be resolved by what we talked about  
7   earlier which is that you need on court order. So  
8   I think as long as the amendment in each of the  
9   three triggering event is tied to entry of a court  
10  order approving the transaction, it's okay,  
11  particularly if the amount is reduced, as I  
12  suggested. An alternative would be to have the  
13  expense reimbursement fee paid then and the higher  
14  break up fee paid out of the actual proceeds  
15  because then you are assured there is a benefit.

16                                   Then I tried to wend my way through  
17  the trigger events for the right to get a break up  
18  fee, not the trigger events payment, but the  
19  trigger events where it's actually being earned.  
20  And I assume that the parties have focused on them  
21  as well. But I did have a couple of issues with  
22  them. The first one is perhaps not that serious,  
23  the agreement and the order says that the break up  
24  fee is earned if the Purchase Agreement is  
25  terminated, A, by buyer pursuant to Section 8.1 B

1                   ALLEGIANCE TELECOM, INC.  
2   when is ATI does not have the right to terminate,  
3   i.e., ATI is in breach. And I think 8.1 is the  
4   one, it refers to the eight month delay. But this  
5   provision seems to me to be redundant, in part, and  
6   maybe in whole, with other triggering events. I'm  
7   not quite sure why it's here. You don't have to  
8   tell me now, but you can tell me later, if you  
9   disagree.

10                   You already have the Schedule J  
11   events, and there's an elaborate distinction  
12   between the seller's intentional breach and other  
13   breaches. But this provision 8.1 B seems to cross  
14   over that distinction, because, as I read it, or  
15   maybe I'm wrong, the buyer will have the right to  
16   terminate the agreement upon any material breach,  
17   whether it's in the sellers intentional breach or  
18   not. And you may have to wait eight months to do  
19   that under this provision to get its break up fee,  
20   but eventually it's going to have the right to  
21   terminate.

22                   So this provision seems to  
23   contradict the distinction that should make this in  
24   the seller's intentional breach and the other  
25   breaches and add on to it an additional right to

1                   ALLEGIANCE TELECOM, INC.  
2     get the break up fee.  If it's just tied to delay  
3     for eight months, maybe you can put it in Schedule  
4     J, but it just seems to me to be an additional  
5     trigger of the parties intent.

6                   MR. CANTOR:  Your Honor, when we  
7     come back we will take that up.  My sense is that  
8     we just want to make sure that 8.1 B doesn't  
9     undercut the rights we've negotiated.  Because with  
10    respect to the Schedule J the bankruptcy events,  
11    the debtor retains the right to elect to proceed  
12    with a sale under 363 C rather than under the plan,  
13    but we will make sure we have it.

14                  THE COURT:  If it's a timing point I  
15    think I understand it, but I think this also gives  
16    them the right to terminate because of a breach,  
17    and they get the break up fee and expense  
18    reimbursement, not withstanding the work that was  
19    done to distinguish the seller's intentional breach  
20    from the rest.

21                  Then if you go to the trigger event  
22    under 8.1 C, I think there are three issues,  
23    unfortunately.  The first one is that one of the  
24    triggering events under 8.1 C, specifically C 7 B,  
25    is the entry of the sale order as specified in B.

1 ALLEGIANCE TELECOM, INC.

2 MR. BASTA: I'm sorry, your Honor,  
3 where are you?

4 THE COURT: Twelve. I'm flipping  
5 back and forth, that's why it's confusing. I'm  
6 still on the page of the proposed order under the  
7 box with the break up fee and expense  
8 reimbursement, and it says that the expense  
9 reimbursement and break up fee are earned if the  
10 Purchase Agreement is terminated, and it says B by  
11 buyer pursuant to 8.1 C or D as to the Purchase  
12 Agreement.

13 And then you have to turn to 8.1 C  
14 of the Purchase Agreement. And unfortunately, 8.1  
15 C 7 of the of the Purchase Agreement sends you to  
16 7.1 B of the Purchase Agreement because it requires  
17 a sale order to be entered. And there's a  
18 description of the sale order in D.

19 MR. BASTA: In D, your Honor?

20 THE COURT: D.

21 MR. BASTA: As in dog?

22 THE COURT: Yes.

23 In any event, there are provisions  
24 of this sale order which may or may not be entered  
25 by me. I'm comfortable with most of it, but as the

1 ALLEGIANCE TELECOM, INC.  
2 taxing authorities made clear, there is an issue,  
3 at least if the plan isn't confirmed simultaneously  
4 with the sale, as to whether 1146 C will apply, so  
5 that goes to little 7 B.

6 Secondly, I'm not deciding this now,  
7 but there is an issue as to whether I will have the  
8 ability to cleanse the buyer, not only the assets  
9 but the buyer, of any successor liability.

10 MR. BASTA: Your Honor, if I could  
11 stand up just a second, just back on your point,  
12 number 7 under the 1146(c).

13 THE COURT: Yes.

14 MR. BASTA: We did address that,  
15 because Mr. Henes had actually raised this as a  
16 point and we've seen it in other cases. So it's  
17 qualified by saying to the extent provided by 1146  
18 C.

19 THE COURT: Fine. I still have the  
20 probably with little "a" I think. I can imagine  
21 some parties who aren't here today raising this  
22 issue, and I can't approve a break up fee that  
23 would pre-decide that issue, at least to the tune  
24 of somewhere between 10 and 17.8 million dollars.

25 I think 9 is okay, because I read



1                   ALLEGIANCE TELECOM, INC.  
2   the agreement 9 says all assumed contracts shall be  
3   assumed. I think that's okay because I believe  
4   that you say somewhere else that any contract that  
5   can't be assumed won't be an assumed contract; is  
6   that correct? If that's the case, I'm not quite  
7   sure why you have it in there.

8                   And then I think the committee  
9   raises an issue with 14 which says the buyer shall  
10   be granted a lien on all non transferred asset  
11   pending approval. I think their issue was when  
12   does that stop? There's some point where you don't  
13   get the approval, is there some limit to that? So  
14   that there are issues, I don't know how you deal  
15   with this, maybe you put some sort of  
16   reasonableness qualification on the whole thing,  
17   but, and maybe Qwest gets some comfort by the fact  
18   that I've highlighted the ones that I think may  
19   raise issues. But it just doesn't seem to me that  
20   I can approve a break up fee where I know there  
21   might well be an issue with the sale order, at  
22   least in those respects. I'm not saying that I'm  
23   deciding the issue one way or the other, but I'm  
24   saying it's clearly an open issue.

25                   I think that there's another

1                   ALLEGIANCE TELECOM, INC.  
2   condition in here, in 8.1 C which is the cross  
3   reference to 7.1 D, the approval of a plan. And I  
4   think that's redundant with one of the other  
5   triggering events for the break up fee. I'm not  
6   quite sure what else it adds, but it raises the  
7   last issue that I had here, which is that 8.1 C --  
8   let me check. The bankruptcy court terminates the  
9   exclusivity period or declines to extend the  
10  exclusivity period.

11                   Again, you have D already there. It  
12  seems to me that the key here is that you don't  
13  want the debtor to be pursuing alternative plans or  
14  exclusivity period terminated where other parties  
15  are pursuing completing plans. But if those plans  
16  are ones there include your transaction, then it  
17  shouldn't be a problem. And I think the way it's  
18  drafted just terminating the exclusivity period  
19  doesn't necessarily go too far. If, for example,  
20  there is a dispute between the committee and the  
21  debtor as to what the plan distribution provisions  
22  should say and they persuade me to terminate  
23  exclusivity, but the committee wants the sale to  
24  happen, then I don't think you should get your  
25  break up fee. Maybe that's all mooted by the fact

1                           ALLEGIANCE TELECOM, INC.  
2   that it only gets paid when a different plan is a  
3   confirmed, but that's because I reviewed this  
4   yesterday when you proposed that, rather than this  
5   morning. But I don't want you to get your break up  
6   fee or to even earn the break up fee if people are  
7   still pursuing the sale to your client.

8                           MR. BASTA: Your Honor, I just want  
9   to make sure I understood the concern. Are you  
10  suggesting that both the committee and the company  
11  would be in agreement that the sale would be  
12  consummated, but that the committee and the company  
13  would propose different distribution mechanics?

14                          THE COURT: Yes.

15                          MR. BASTA: And that in that  
16  scenario it should not be entitled because we would  
17  get the asset either way?

18                          THE COURT: Yes, that's right. And  
19  maybe it's mooted by the paragraph that you added,  
20  but I'm not even sure you should have a right to  
21  earn it at that point, and you may not want to have  
22  earned it and then not get it because maybe that  
23  raises other issues for your client.

24                          The committee's objection talks  
25  about simple breaches giving rise to some or both

1                   ALLEGIANCE TELECOM, INC.  
2 of these fees. As I read it, the breaches had to  
3 be material and there was a MAC element as well.  
4 So I have less of an issue, or no issue  
5 particularly unless I'm misreading it, with that  
6 objection.

7                   There is a paragraph, it was  
8 paragraph 6, it's now been changed, but it says  
9 that the debtors are authorized and empowered to  
10 pay the break up fee and expense reimbursement to  
11 the buyer as required pursuant to the Purchase  
12 Agreement without further order of the court. I  
13 just want to make it clear on the record that if a  
14 party in interest says that it objects to the  
15 payment of the expense reimbursement saying they  
16 are not reasonable and necessary fees, I'm assuming  
17 it's understood that that can come into court. I  
18 think as Mr. Basta has said, that there have been  
19 so many issues and so much has been incurred that I  
20 couldn't possibly reduce them to below 5 million.

21                   I'm still going on the old order,  
22 paragraph 8, I think in the last line there it says  
23 survive, rejection or breach of the Purchase  
24 Agreement, the buyer's rights to survive rejection  
25 or breach of the Purchase Agreement, I think you

1 ALLEGIANCE TELECOM, INC.

2 have to add the word seller before breach.

3 MR. CANTOR: Your Honor, you have to  
4 add what before breach?

5 THE COURT: Seller before the word  
6 breach.

7 And then paragraph 9 certainly could  
8 -- which is a paragraph that says that following  
9 the sale order approval date and so long as the  
10 Purchase Agreement has not been terminated, the  
11 debtors are not directed not to enter or solicit a  
12 competing transaction as set forth in 6.17. I  
13 guess one could say that given that injunction why  
14 do you need any liquidated damages or break up fee  
15 since they are supposed to do this now on an  
16 injunction of being in contempt? It really goes to  
17 liquidate damages point, which I understand is an  
18 issue for the sale hearing not for today, but --

19 MR. BASTA: Your Honor, on this  
20 point I think what I suggest is that we leave --  
21 this is also a provision that is in that sale order  
22 language, and I think maybe the best way is that we  
23 leave, until the sale hearing, whether or not post  
24 sale hearing there will or will not be an  
25 injunction.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay.

3 MR. BASTA: Obviously, the concern  
4 of Qwest by agreeing to the plan condition, which I  
5 understand can benefit the estate, is that it will  
6 be a perpetual stalking horse.

7 THE COURT: I understand that; it's  
8 just that I was kind of giving you a heads up that  
9 this may affect my view of the liquidated damages  
10 provision at the sale hearing, if it's in here or  
11 not, this injunction.

12 Okay. Paragraph 11 in the old  
13 order and paragraph 12 have, I believe, different  
14 notice time lines then as set forth in the motion.  
15 The motion says that no later than five days after  
16 the bidding order is entered we will publish notice  
17 and serve on all who have filed proofs of claims as  
18 well as all of the other parties. I think that's a  
19 better approach than what's laid out in 11 and 12.

20 We haven't talked about the timing  
21 point yet. I think 30 days as opposed to the 65  
22 which the committee sought. Unless the facts just  
23 aren't stated accurately, it strikes me that this  
24 process has been going on for some time, and in a  
25 very meaningful I way, at least since October.

1 ALLEGIANCE TELECOM, INC.  
2 Given that fact and a some of the other  
3 representations that were made, it seems to me that  
4 the weighing of all things together, the time line  
5 that the debtors have agreed to with Qwest and are  
6 pursuing on their own is acceptable.

7 MR. DIZENGOFF: Your Honor, could I  
8 raise one point on that? We are going to want  
9 testimony on that.

10 THE COURT: I understand that, and  
11 I'm happy to have that, because I qualified it all  
12 by my statement as to what's been happening so far  
13 and issues like what the cost to the estate set for  
14 the delay.

15 MR. DIZENGOFF: It's our opinion  
16 that this hasn't been shopped in terms of bidders  
17 came to the debtors, they didn't negotiate with  
18 them. But we know that there are people who have  
19 done, for example, no diligence whatsoever, who are  
20 interested in the assets, and we think that the 30  
21 day window is a little short.

22 THE COURT: Okay. To the extent  
23 it's meaningfully longer, and I do note there's  
24 some flexibility with regard to the auction itself  
25 as opposed to the qualified bids. To the extent

1 ALLEGIANCE TELECOM, INC.  
2 it's meaningfully longer than the 30 days, I'm more  
3 receptive, obviously, to a higher expense  
4 reimbursement amount, at least.

5 MR. CANTOR: Your Honor, you'll hear  
6 that. That's on an issue that's not only important  
7 to Qwest, but it's an issue for the --

8 THE COURT: I appreciate that. Then  
9 the last comments I have, turning to the cure  
10 notice, you took care of my first concern was with  
11 the former paragraph 4.

12 Then turning to paragraph 9, there  
13 is a -- the last sentence of that paragraph says  
14 the fact that any assumption and assignment  
15 objection are not resolved, shall not prevent or  
16 delay the occurrence of the assumption or  
17 assignment of any assumed contracts. And the  
18 objection is only, of course, after the relevant  
19 assumption date shall be to the segregated amounts.  
20 That's all fine as to assumption and assignment  
21 objections as to cure, but if it's as to adequate  
22 assurance and the like, or assignability, it  
23 doesn't work. So what I propose doing is you  
24 strike the last clause and the objectors only, of  
25 course, after the relevant assumption date shall be



1                   ALLEGIANCE TELECOM, INC.  
2   to the to segregated amount. You can put that up  
3   in the prior sentence which talks about the money  
4   being held in the segregated account, you can say  
5   that any objections as to cure are limited to that  
6   amount in the segregated account. And then  
7   underneath you can say the fact that the assumption  
8   assignment objection, and add the phrase, as to  
9   cure or not resolve, shall not prevent or delay the  
10  occurrences to the date of the assumption and  
11  assignment of any of the contracts.

12                   And then we talked about the sharing  
13  of the information on the cure amounts with the  
14  committee and the lenders and the notation in the  
15  bidding procedures about the debtors providing  
16  their best estimate of what those amounts are to  
17  the other bidders all at the same time so that they  
18  can as much bid apples to apples, in terms of  
19  dollar amount at least, as they can.

20                   So those are my comments. I don't  
21  know if I've missed any of the committee's  
22  objections.

23                   MR. DUBLIN: Your Honor, going  
24  through our list, I believe the only one that  
25  wasn't discussed with was the incremental bids.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: All right, the 5  
3 million?

4 MR. DUBLIN: Yes.

5 THE COURT: You are absolutely  
6 right. I had something there.

7 Basically I think that the debtor  
8 should reserve the right to modify that amount in  
9 the context of the auction. I think that's  
10 consistent with FNN and the like, and probably has  
11 a fiduciary to do that anyway. In the debtors'  
12 judgment, if someone is going to bid another  
13 million dollars you wouldn't turn that down,  
14 consisting on a 5 million dollar upset if they  
15 aren't going to bid that much, but that's at the  
16 debtors' reasonable discretion.

17 So it's 11:20. It may make sense to  
18 resume at 2:30 or 3 o'clock. I don't know whether,  
19 Mr. Basta, your client is around. This is sort of  
20 a multi party group here, you've been getting along  
21 pretty well lately, but I still think it may take  
22 some time to sort these things out.

23 MR. CANTOR: Your Honor, if I may  
24 just take a moment recess to confer with the  
25 committee and Mr. Basta, we can let you know what

1                   ALLEGIANCE TELECOM, INC.  
2 we think is the appropriate amount of time to sort  
3 these things out.

4                   THE COURT: I do have to tell you I  
5 am having lunch with someone at 12:30, so there's  
6 probably a period of 12:30 and 2:00, 2:30 or so  
7 when I'm going to be out-of-pocket.

8                   MR. CANTOR: 2:30 is fine.

9                   THE COURT: These are my preliminary  
10 thoughts, and I hoped by giving them to you to help  
11 you organize your response to this. I fully intend  
12 to hear argument, and if necessary take testimony  
13 if there are open issues. I don't want to leave  
14 you with the impression it's otherwise.

15                   And I'm also prepared, if there are  
16 issues that are of a sensitive nature that go to  
17 issues that the debtor would rather not air in  
18 public, particularly in a forum where there are  
19 bidders present, I'm happy to have a chambers  
20 conference with the debtor and the lenders on those  
21 points. And that might, in particular, go to the  
22 timing issue.

23                   MR. CANTOR: Your Honor, just for  
24 the purpose of saving time, since we have you at  
25 until 12:30, I would pose to go ahead and put our

1 ALLEGIANCE TELECOM, INC.  
2 record on and have the evidence, and then we can go  
3 work two hours and come back, then at least we can  
4 try to work on this by the end of the day.

5 THE COURT: Well, we can restart  
6 with that. If you want to put on the evidence as  
7 to the process you've been through and the like,  
8 that's fine.

9 MR. DIZENGOFF: Your Honor, the only  
10 caveat is if you are leaving for lunch at 12:30, I  
11 would like to do the cross after lunch.

12 THE COURT: That's fine. I'm  
13 actually leaving about 12:15.

14 Do you want to take a five minute  
15 break, Mr. Cantor?

16 MR. CANTOR: Yes.

17 (Recess taken.)

18 THE COURT: Please be seated.

19 MR. CANTOR: Your Honor, we all  
20 conferred and thought it best be time to start  
21 negotiating now and we all to that at 2:30 when he  
22 come back.

23 THE COURT: All right, that's fine.  
24 You should all fee free to use this room that you  
25 used before and we will come back at 2:30.

1 ALLEGIANCE TELECOM, INC.

2 And again, if at that time you think  
3 there may be a point or points that you want to  
4 raise in chambers with me, you can do that either  
5 with Qwest or without. I'll leave that up to.

6 MR. CANTOR: All right. Thank you,  
7 Judge.

8 THE COURT: Thank you.

9 (Luncheon recess taken.)

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1 ALLEGIANCE TELECOM, INC.

2 A F T E R N O O N S E S S I O N

3 THE COURT: Please be seated.

4 Where do we stand?

5 MR. CANTOR: We've had some success  
6 on almost all the issues, and would like to take  
7 you up on your invitation to talk to you in  
8 chambers, just to go through them with you to make  
9 sure we did all the things here we were supposed to  
10 have done.

11 THE COURT: All right. So it's  
12 going to be the committee, the banks, you; and are  
13 you bringing in Qwest?

14 MR. CANTOR: And Qwest is still part  
15 of the negotiations.

16 THE COURT: All right. Why don't  
17 you come back?

18 (Recess taken.)

19 THE COURT: Please be seated.

20 COURT: Okay, going back on the  
21 record in Allegiance.

22 MR. CANTOR: Your Honor, I would  
23 like to describe into the record, the settlement of  
24 the issues that the committee raised and that at  
25 Corvis raised and that your Honor identified

1                   ALLEGIANCE TELECOM, INC.  
2   concerning the bid procedures order, I would like  
3   to read it into the record and I hope to make an  
4   offer of proof and provide the evidence to support  
5   the record, and if acceptable, I would like your  
6   Honor to so order record. It's probably going to  
7   take us a little bit of time to modify the bid  
8   procedures order, so we're going to ask your Honor  
9   to of course authorize us to go ahead and begin  
10  solicitation once the bid procedures order has been  
11  approved, and then do the lock-up that we had.

12                   THE COURT: You mean once it's  
13  approved today?

14                   MR. CANTOR: Today, as opposed to  
15  entered, correct.

16                   So I'm just going to read into the  
17  record, and I'm going to address each issue.

18                   The first issue that has been raised  
19  was an understanding that the court would not be  
20  entering an order today approving the Asset  
21  Purchase Agreement, and the procedures will be  
22  clear that it won't be approved. There were two  
23  provisions in the Asset Purchase Agreement that  
24  were effectively being approved by the order today,  
25  and we and the committee request and Qwest have

1 ALLEGIANCE TELECOM, INC.  
2 agreed to modify them. The first is that the  
3 agreement provided for a transitions committee to  
4 be formed at the company with Qwest to be involved  
5 with the company employees to oversee the business,  
6 and that would be modified to include that one  
7 member from CTA, the committee's and telecom's  
8 advisors.

9 THE COURT: Okay.

10 MR. CANTOR: There was also a  
11 provision in the agreement concerning the payment  
12 of bonuses --

13 THE COURT: Before you get to that,  
14 was there additionally something about the actions  
15 of the committee, if there is --

16 MR. CANTOR: Yes, Judge.

17 THE COURT: -- a disagreement by CTA  
18 what it's deciding on?

19 MR. CANTOR: If CTA has a view that  
20 the committee is doing something or making  
21 decisions that it has trouble with, the committee  
22 would cease operating until the committee has had  
23 the opportunity to either resolve with Qwest or  
24 bring it to your Honor.

25 THE COURT: Okay.



1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: Just to be clear, I  
3 guess we would decrease taking that particular  
4 action if it proves to be a problem, but not all  
5 actions.

6 There is a condition in the  
7 agreement that the those fee bonuses be paid, and  
8 that matter is set for hearing before this court on  
9 the 21st of this month. The agreement is that in  
10 the event that motion were to be denied and the  
11 company couldn't pay the bonuses, Qwest would have  
12 a termination right at that time, but they would  
13 not be entitled to get their break up fee, only  
14 their documented reasonable expenses, up to the 5  
15 million dollar cap.

16 MR. DIZENGOFF: Judge, I just want a  
17 clarification on the termination right expires at  
18 the end of that day. So effectively if the court  
19 were to deny that motion, they would basically have  
20 an hour to determine to decide what to do.

21 THE COURT: Until the end of the  
22 day.

23 MR. BASTA: Your Honor, I think the  
24 end of the day would be midnight. We don't know;  
25 just until it's finished.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: It would probably be  
3 more than a couple of hours.

4 MR. DIZENGOFF: Correct.

5 THE COURT: But otherwise, the  
6 language of that provision would stay the same as  
7 to the way it's phrased as to the bonuses, and no  
8 more than 10 million. That language still stays  
9 the same, it's just as of the effect the of the  
10 denial of the motion, correct?

11 MR. DIZENGOFF: That's correct, your  
12 Honor. We just don't want that issue prejudged by  
13 the court to the point of this contract to say that  
14 this jeopardizes the transaction.

15 THE COURT: Okay.

16 MR. CANTOR: The next issue is the  
17 break up fees, expense reimbursements, and the  
18 ultimate first overbid dollar amount.

19 The parties have agreed, and we  
20 would recommend that the break up fee be an 8  
21 million dollar fee, that the expense reimbursement  
22 cap remain at 5 million, and that the overbid  
23 amount been set at 21 million, meaning that the  
24 first bid at the auction in order to beat Qwest's  
25 bid would need to exceed it by 21 million dollars.

1 ALLEGIANCE TELECOM, INC.

2 The committee had raised an  
3 objection that Qwest's bid and agreement remain  
4 irrevocable once this order has been entered if  
5 they were out bid and Qwest has not agreed to that,  
6 and the committee has withdrawn that objection.

7 With respect to the issue of whether  
8 or not the second highest bidder, at the conclusion  
9 of the auction, whether the debtor would be able to  
10 close this agreement with that bidder, the  
11 understanding would be that upon the consent of  
12 that runner up in the auction and the debtor, after  
13 the debtor consults with the committee and the  
14 agent group, that that deal could be closed after  
15 coming back to the court on ten days notice on  
16 approval, of course, to the extent there are issues  
17 concerning notice to contract parties whose  
18 contracts are being assumed or rejected, we would  
19 address that with some further notice and an  
20 opportunity to be heard.

21 THE COURT: Let me stop you there  
22 for a second.

23 I thought I heard you say that the  
24 pursuit of the backup bid would be on the consent  
25 of the second highest bidder; is that correct, or

1 ALLEGIANCE TELECOM, INC.  
2 are they supposed to have their bids be  
3 irrevocable? Maybe I just misheard you.

4 MR. CANTOR: That's the problem with  
5 doing this on the cuff. You are correct, your  
6 Honor, the second bid would be irrevocable. So  
7 once the bid is made, you have agreed to stand  
8 there until close.

9 THE COURT: Subject to court review  
10 in that prospect.

11 MR. CANTOR: That's correct.

12 THE COURT: Okay.

13 MR. CANTOR: With respect to the  
14 good faith deposit by other bidders, the good faith  
15 deposit could be made by transferring 30 million  
16 dollars in cash or that bidder could propose an  
17 alternative form of credit support to the debtors  
18 in lieu of the earnest money deposit or in terms  
19 reasonably acceptable to the debtors after  
20 consultation with the committee and the bank agent.  
21 And that's how we propose to address that issue.

22 THE COURT: Okay. Does that  
23 language come out of something?

24 MR. CANTOR: It is the last sentence  
25 of Section 3.3 of the Purchase Agreement.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay.

3 MR. CANTOR: The next issue was the  
4 timing of the auction period or the date for the  
5 auction, and then the sale hearing. And we've  
6 agreed that the dates are, as proposed to Schedule  
7 J which is 30 days, is that fair, so the 9th and  
8 11th respectfully -- 9th and 12th for the auction  
9 and sale hearing.

10 MR. BASTA: Just for clarification,  
11 the bid deadline is February 9th.

12 MR. CANTOR: Right.

13 MR. BASTA: The auction is February  
14 12th.

15 THE COURT: Right.

16 MR. BASTA: And what is the date of  
17 the sale hearing?

18 THE COURT: I thought we picked the  
19 17th.

20 MR. BASTA: The 17th, okay.

21 THE COURT: And Schedule J itself  
22 doesn't change.

23 MR. BASTA: Right.

24 MR. CANTOR: Your Honor, with  
25 respect to the issue considering the section of the

1 ALLEGIANCE TELECOM, INC.  
2 Purchase Agreement providing for the specifics that  
3 the sale order must provide that Section 7.1 B,  
4 that section is going to come out. And the sale  
5 order will need to approve the agreement and be  
6 presented in a form reasonably acceptable to the  
7 buyer.

8 THE COURT: So are you changing the  
9 definition of sale order? Is that what's going to  
10 be changed, to an order as attached or otherwise as  
11 reasonably acceptable to buyer? Is that what it's  
12 going to be changed to? I'm just wondering whether  
13 it's going to be changed in the contract or the  
14 order?

15 MR. CANTOR: It will be the a change  
16 in this order, the bid procedures order.

17 THE COURT: Not withstanding  
18 anything set forth in the APA?

19 MR. CANTOR: Yes.

20 THE COURT: The sale order is?

21 MR. BASTA: Yes, the sale order  
22 shall mean an order entered by the court not  
23 proposed by the debtor, on the record I just want  
24 to be clear on that, an order entered by the court  
25 that approves the Purchase Agreement in a form

1 ALLEGIANCE TELECOM, INC.

2 reasonably acceptable to the buyer.

3 THE COURT: Okay.

4 MR. DUBLIN: Just to clarify, that's  
5 the sale order form?

6 THE COURT: Right. And that's to  
7 take care of the situation where there may be an  
8 issue with the form of sale order attached to this  
9 motion; and this revised language gives the buyer  
10 the right either to -- not either, but two rights,  
11 to walk and potentially to earn the break up fee  
12 and expense reimbursement if the change to the sale  
13 order is not reasonably acceptable. So there's an  
14 element of objectivity in there.

15 MR. CANTOR: Your Honor, the next  
16 issue went to triggers for termination in the  
17 agreement -- triggers for termination for the  
18 payment of the break up of the agreement. And we  
19 have some proposed language to go into Section 8.  
20 -- this will be right in the sale order.

21 MR. DUBLIN: Paragraph 3 of the sale  
22 order.

23 MR. CANTOR: Paragraph 3 of the sale  
24 order, your Honor, which basically approves those  
25 trigger events, the payment of the break up fee at

1                                   ALLEGIANCE TELECOM, INC.

2   the end of it. We are going to put a proviso that

3   says provided, however, that, and there will be a

4   little "x" buyers termination of the Purchase

5   Agreement in accordance with Section 8.1 B shall

6   not trigger buyer's right to the break up fee if

7   the delay in closing has occurred by reason of a

8   breach of Section 8.1 E of the Purchase Agreement

9   that does not constitute a seller's Intentional

10   Breach, and that's a capitalized term, in

11   accordance with Section 8.2 (ii) of the Purchase

12   Agreement, and then a little semicolon. And then,

13   and then "y" buyer's termination of the Purchase

14   Agreement in accordance with Section 8.1 C of the

15   Purchase Agreement by reason of the court's entry

16   of an order denying an extension of, or termination

17   of exclusivity shall trigger, and the break up fee

18   will be paid within two business days of, little

19   "a" the entry of an order by the court -- I

20   apologize, backing up, within two business days of

21   the earlier to occur of "a" the entry of the order

22   by the court approving the sale of any of the sale

23   assets to any party other than the buyer, or "b"

24   the entry of an order of the court approving a

25   disclosure statement for a plan of reorganization



1                   ALLEGIANCE TELECOM, INC.  
2 or liquidation that does not expressly contemplate  
3 the sale of the sale assets to the buyer.

4                   Stated more simply, we were trying  
5 to correct the issue your Honor had identified with  
6 the first part there, that it was possible for the  
7 buyer to earn the break up fee, and through a  
8 breach of reps that wasn't the function of an  
9 intentional breach. And the second issue goes to  
10 what happens if the exclusivity is terminated.

11                  MR. DUBLIN: And, your Honor, in the  
12 event that exclusivity is terminated prior to that  
13 time, the committee or the agent can petition the  
14 court on what would be very limited notice to  
15 require the debtor to exercise the early closing  
16 elections.

17                  MR. CANTOR: Right.

18                  THE COURT: Let me just be clear on  
19 this; these two provisos relate only to the right  
20 to the break up fee, correct? That's how Mr.  
21 Cantor recited, at least. In other words, these  
22 caveats don't apply to collect the expense  
23 reimbursement.

24                  MR. BASTA: That's correct, your  
25 Honor.

1 ALLEGIANCE TELECOM, INC.

2 MR. DUBLIN: That is correct, your  
3 Honor.

4 THE COURT: Okay.

5 MR. CANTOR: The next issue, and  
6 we'll draft that into the order, is to make clear  
7 that with respect to the payment, the expense  
8 reimbursement to Qwest in the event they are not  
9 the buyer and they are entitled to it, they would  
10 be paid with no need for further order of the  
11 court. But we will create some mechanism for Qwest  
12 to provide notice of what those fees are to the  
13 banks, the debtors and the committee, so that if  
14 there's an objection they can petition the court as  
15 to their reasonableness.

16 As we had said before, we are going  
17 to amend the cure notice to make clear that in the  
18 event there are issues of adequate assurance or  
19 assignability of contracts, there would be an  
20 opportunity to notice a hearing with respect to  
21 those issues.

22 MR. BASTA: Your Honor, if I could  
23 make one clarifying point about the expenses.

24 Qwest is prepared to give that  
25 backup, but Qwest would preserve the right to

1 ALLEGIANCE TELECOM, INC.  
2 redact from its time entries sensitive matters and  
3 confidential matters, especially those that may  
4 relate to regulatory and other processes.

5 THE COURT: You are just looking for  
6 a reservation of rights.

7 MR. DUBLIN: Your Honor, we have no  
8 objection. I just want to clarify one other issue  
9 with respect to the payment of the break up fee in  
10 the language in the context of resolution of other  
11 issues and make it understood, make sure that we  
12 are all on the same page. The break up fee is not  
13 payable until a sale order has been entered for  
14 competing transactions, and that's under all  
15 circumstances where a competing transaction is.

16 MR. BASTA: We made the order clear  
17 that whenever a break up fee is payable, it's  
18 payable on the earlier occurrence of a court order  
19 approving competing transaction, or court order  
20 approving the disclosure statement or a plan of  
21 reorganization that was not contemplated in the  
22 sale. Thank you.

23 THE COURT: Okay.

24 MR. CANTOR: Your Honor, the last  
25 two changes were with respect to incremental bids

1                   ALLEGIANCE TELECOM, INC.  
2   that's at the first 21 million overbid. And I  
3   think the procedures stay the same, with the debtor  
4   retaining the discretion to set it. Of course that  
5   discretion would be after consultation with the  
6   committee and the bank agent.

7                   The last issue which we had  
8   identified for your Honor which I just wanted to  
9   repeat, was that although we wouldn't be sharing  
10  lists of material contracts to be assumed or  
11  rejected received from either Qwest or any of the  
12  other bidders with any of the other bidders, we  
13  will make the process transparent by sharing with  
14  each bidder our views as to each other bidder's  
15  cure amounts of rejection damage claims arising  
16  from the list they do provide us with.

17                  THE COURT: And you'll be consulting  
18  with the creditors' committee and the bank agent on  
19  that analysis?

20                  MR. CANTOR: Absolutely.

21                  THE COURT: All right.

22                  MR. CANTOR: That's the sum total, I  
23  think, of the settlement of all of the objections  
24  and your Honor's concerns.

25                  THE COURT: Let me go back to one

1                                   ALLEGIANCE TELECOM, INC.  
2    thing you said at the beginning.  The order I  
3    entered scheduling this hearing approved a  
4    provision of the contract that restricted the  
5    debtors' ability to shop the transaction until the  
6    entry of the bidding procedures order.  And I think  
7    what I heard you say a little while ago is that you  
8    and Qwest and the committee and the bank agent are  
9    in agreement, that even though the entry of the  
10   order itself may not occur until Monday or Tuesday,  
11   once these provisions that you've outlined on the  
12   record are drafted, given the agreement of the  
13   parties on the record and assuming I approve this,  
14   my approval of it on the record that the no shop  
15   provision would end as of the end of this hearing  
16   so that the debtors could be free to shop the deal  
17   at the end of the hearing.

18                               MR. CANTOR:  That's an accurate  
19   understanding.

20                               And lastly and I guess we can come  
21   back to this for the purposes of the order, we are  
22   going to need a date for receipt of the objections  
23   for the motion to approve the sale.  We would  
24   prefer to have a few more days.  I was thinking  
25   about something like the 10th.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Well, when is the  
3 auction? The auction is the 12th, right?

4 MR. CANTOR: The auction is the  
5 13th, your Honor.

6 THE COURT: 13th? It's the 12th, I  
7 think.

8 MR. CANTOR: The 12th.

9 THE COURT: It's hard to approve to  
10 object unless you know who is actually the winning  
11 bidder, potentially, if something comes up that  
12 changes the agreement.

13 The auction is on Thursday. The  
14 13th is a Friday, and then Presidents' Day is that  
15 Monday the 16th. So while I appreciate the desire  
16 to have objections before the hearing, one thing  
17 you could do is schedule the hearing for the 18th  
18 and have the objections deadline Tuesday morning.

19 MR. CANTOR: The 18th, your Honor?

20 THE COURT: So we'll have the  
21 hearing on the 18th.

22 MR. CANTOR: With the objections  
23 deadline on?

24 THE COURT: The morning; 12 o'clock  
25 on the 17th.

1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: The eve on the 17th.

3 It's going to look like this will look.

4 THE COURT: Well --

5 MR. CANTOR: And the hearing on the  
6 18th is scheduled for?

7 THE COURT: Whatever time you like.  
8 My schedule is open. Would you rather have it in  
9 the afternoon; 2 o'clock, 2:30, to give you some  
10 more time?

11 MR. CANTOR: 2:30 will be great,  
12 your Honor.

13 THE COURT: All right.

14 MR. CANTOR: And I would like to  
15 make a brief offer of proof.

16 THE COURT: First, before you do  
17 that, I saw people nodding their heads through your  
18 recitation, but I want to make it clear on the  
19 record, since people will be relying on this record  
20 between now and the date that the order is entered.  
21 Does the recitation by Mr. Cantor of how these  
22 various issues were resolved in fact resolve the  
23 issues as far as the objecting parties are  
24 concerned?

25 MR. DUBLIN: Your Honor, as

1 ALLEGIANCE TELECOM, INC.

2 represented on the record, it resolves the issues  
3 that the committee has.

4 THE COURT: Is Corvis' counsel still  
5 here?

6 MR. LO BELLO: I am, your Honor, and  
7 that resolves our objection as well.

8 THE COURT: Very well. Does anyone  
9 else have anything to add? Hearing that consensus,  
10 Mr. Cantor, you can go ahead with an offer of  
11 proof.

12 MR. CANTOR: Thank you, your Honor.  
13 Can I have one moment?

14 Your Honor, if called to testify,  
15 Michael Kramer, the managing director of Greenhill  
16 and Company of the debtors' investment banker and  
17 financial advisors would testify that we had asked  
18 him to render an opinion concerning the propriety  
19 and fairness and necessity of the bid procedures  
20 that we had presented today. And he would indicate  
21 that he had granted such an opinion.

22 I would indicate also on the record  
23 that he has substantial experience in restructures  
24 and Chapter 11 cases, mergers and acquisitions and  
25 sales in the context of Chapter 11 cases. He would



1 ALLEGIANCE TELECOM, INC.

2 also testify that he has testified as an expert on  
3 similar matters in other cases.

4 He would testify that he has been  
5 involved with the Allegiance restructuring since  
6 November of 2002 performing various rolls. He  
7 would testify that he has been integrally involved  
8 in the various aspects of the sale until now,  
9 including the negotiation of the sales agreement in  
10 terms of the Qwest agreement and potential  
11 agreements with other companies who indicated an  
12 interest of the purchasing the assets, and advising  
13 the board of the progress of the sale process and  
14 the ultimate outcome. He would describe the sale  
15 process starting early on, even before the Chapter  
16 11 case when the company had been talking to  
17 potential non strategic investors. He would  
18 testify that from that time through now the company  
19 has been very open with parties of moving interest  
20 and making an investment in the company, and  
21 basically has given access to the interested  
22 purchasers who indicated a willingness to sign a  
23 non disclosure statement and do some diligence.

24 He would testify that starting in  
25 September and October of 2003 when it became

1                                   ALLEGIANCE TELECOM, INC.  
2   apparent that our creditors' committee and our bank  
3   lenders were supportive of a sale process that  
4   negotiations with Qwest became very intense and  
5   went on intensely through the signing of the  
6   agreement. There were also intense negotiations  
7   with Corvis corporations, but we had not reached an  
8   agreement with them. He would testify that the  
9   board of directors had been very active in this  
10  process, that there were three levels of reviewing  
11  the process, and that there were full board  
12  meetings. There was a special committee of  
13  independent directors involved, and there were also  
14  meetings between or among the board members and the  
15  companies' advisers without management being  
16  involved. There were approximately 10 or 11 board  
17  meetings since October to address this issue.

18                                   He would testify that the creditors'  
19  committee and the bank lenders have been fully  
20  advised of the entire process, and at most times  
21  supported the process, and certainly have supported  
22  the companies' determination to sell its assets and  
23  business under the terms of this agreement,  
24  although we fully recognize that the committee had  
25  some objections to the terms and conditions in the

1                   ALLEGIANCE TELECOM, INC.  
2 agreement, but all the creditors, we felt, were in  
3 support of that.

4                   He would testify that he is familiar  
5 with the bid procedures here today; he would  
6 testify that in his opinion, concerning the  
7 propriety of the process and the bid procedures  
8 protections being presented here today, that there  
9 was nothing unusual or out of the ordinary with the  
10 bid procedures that we are presenting, including  
11 the break up fee and the overbid amount and the  
12 other auction procedures, that they were comparable  
13 with other cases that he's been involved in; that  
14 being able to commence the sale process with Qwest  
15 now, with the quality of its bid as it goes to the  
16 low conditionality of the closure of that bid, the  
17 floor price that upsets, and the path that it puts  
18 the company on, to having a full and fruitful  
19 auction with a certainty of closure was the best  
20 way to maximize value and the benefit, that the  
21 estate was receiving substantial benefit in the  
22 payment of the break up fee, and agreeing to the  
23 other potential procedures required by Qwest.

24                   He would testify in view of how  
25 heavily and intensely negotiated the agreement,

1 ALLEGIANCE TELECOM, INC.  
2 including the bidding procedures were, he thought  
3 the company got the best deal it could have under  
4 the circumstances; and in view of all that, that  
5 the procedures were fair and likely to incur an  
6 active auction, not likely to chill bidding, and  
7 obviously not tainted by any kind of self dealing.

8 And that is what Mr. Kramer's  
9 testimony would be as it relate to those issues.

10 THE COURT: All right. Mr. Kramer,  
11 you heard the proffer. Is that what you would  
12 testify to if asked.

13 MR. KRAMER: Yes, your Honor.

14 MR. DUBLIN: Your Honor, the  
15 committee does not want to cross examine Mr. Kramer  
16 at this time, but we would like to make it clear on  
17 the record that -- or suggest that that testimony  
18 is only administering to the extent that the  
19 debtors wish to introduce that testimony at another  
20 point, that Mr. Kramer may be subject to cross on  
21 that the testimony.

22 THE COURT: That sounds fair to me.

23 MR. CANTOR: That's fair.

24 THE COURT: All right. Do you have  
25 anything else to add?

1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: I don't believe I do.

3 As a matter of convenience, we  
4 request that the sale hearing be put off until  
5 February 19th at 2:30, as a matter of personal  
6 convenience, to 10:00 in the morning, as, your  
7 Honor, there was a scheduling problem.

8 MR. DUBLIN: That's fine with the  
9 committee. Can we get the deadline on that to 4  
10 o'clock instead of noon, on the objection deadline.

11 THE COURT: That's fine to me.

12 All right; is the baby is supposed  
13 to come by then?

14 MR. CANTOR: We are looking at next  
15 Thursday; it's getting a little hairy.

16 THE COURT: We'll have it on the  
17 19th at 10 o'clock, and Tuesday the 17th at 4 for  
18 the objection deadline.

19 MR. CANTOR: Thank for your help.

20 THE COURT: All right. Well, based  
21 on, first and foremost, the parties' hard work in  
22 reaching agreement on these issues, secondly, the  
23 testimony of Mr. Kramer, and third the very wide  
24 notice of this hearing as corroborated by the  
25 affidavit of service that was filed, I guess this

1 ALLEGIANCE TELECOM, INC.  
2 morning, I will approve the bidding procedures  
3 order as revised on record and as set forth on the  
4 record today.

5 In addition to Mr. Kramer's  
6 testimony, the fact that no respective bidder  
7 appeared and asked for more time was significant to  
8 me in thinking that this process is on track, and  
9 the other adjustments to the bidding procedures I  
10 think make it easy for me to approve the order, so  
11 I'll do that.

12 When do you think you can actually  
13 circulate and get it submitted? I'm sure that  
14 Qwest would like it submitted promptly, and I would  
15 hope to get it by Tuesday, if possible. In the  
16 meantime, I view the parties as bound by the  
17 recitations and modifications to the procedures as  
18 laid out on the record, and will, unless something  
19 very odd happens that would meet the requirements  
20 of Rule 60(b), or 59, I would modify any provision  
21 in the order that's different than what's spelled  
22 out on the record today. So Qwest can be  
23 comfortable in assuming it's going to get the  
24 relief that was granted today as well as all the  
25 other parties, and also relying on what was set

1 ALLEGIANCE TELECOM, INC.

2 forth in the record today.

3 Thank you.

4 MR. CANTOR: Thank you, your Honor.

5 MR. DUBLIN: Thank you.

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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  
\_\_\_\_\_, 2004.

\_\_\_\_\_  
DENISE NOWAK



