

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

**UNITED STATE BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

Allegiance Telecom, Inc. et. al.

**Chapter 11
Case No. 03-13057 (RDD)**

Assumption and Assignment
Objection

Debtors.

With reference to the attached DEDICATED INTERNET SERVICE AGREEMENT between Allegiance Telecom, Inc. and:

The Heights, LLC
400 East Pioneer Ave. Suite 101
Puyallup, WA 98372.


The Heights, LLC hereby objects to the assignment of its contract with Allegiance Telecom to XO Communications. This objection to the potential assignment of this Assumed Contract is based on lack of adequate assurance that XO Communications will be able to provide an adequate level of technical support. A survey published by Interactive Week on September 10,2001 found that, "51 percent of XO Communications' customers surveyed indicate that the level of technical support they receive is inadequate – higher than for any

1 other ISP.” The Heights acts as a second tier ISP and is responsible for technical support to
2 its customers, and needs a reliable technical partner in order to retain its business.

3
4 Under these circumstances, The Heights intends to seek ISP services from a different
5 vendor. The Heights advises XO Communications to exercise its rights under paragraph 11 of
6 the **NOTICE OF DEBTOR’S INTENT TO ASSUME, ASSUME AND ASSIGN, OR**
7 **ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES,**

8 Dated May 18, 2004, to exclude the attached contract from the Sale of Assets.

9
10
11 Dated May 26, 2004.



12 Stan Lippmann
13 WSBA # 29661
14 Attorney for The Heights, LLC



allegiance telecom
ONE SOURCE FOR BUSINESS TELECOM

DEDICATED INTERNET SERVICE AGREEMENT

CUSTOMER CARE NUMBER
1-800-553-1989

NEW CUSTOMER
 EXISTING CUSTOMER ADDING TO EXISTING SERVICE AGREEMENT

RENEWAL CUSTOMER - no changes to current services
 RENEWAL CUSTOMER - changes listed below or on attached form

CUSTOMER PROFILE			
Customer Account Name The Heights	Multi Locations #1 Yes, use Multi-Location Addendum <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Invoice <input type="checkbox"/> Suppress Paper Invoice <input checked="" type="checkbox"/> Paper Invoice	
Customer Account Contact Person Hans Lindstrom	Account Contact Phone Number 253.841.8189	Customer Account Contact Fax	
Customer Account Mailing Address 400 East Pioneer Avenue, Ste 101	City Puyallup	State WA	Zip 98372
Customer Account Contact E-mail Address hans.lindstrom@hordevin.com	May we use this e-mail address for: <input type="checkbox"/> Notifications/New Product Offerings <input type="checkbox"/> Customer Surveys		
Billing Contact Person #1 SAME AS ABOVE	Billing Contact Phone Number #1	Ext. #1	
Billing Contact E-mail Address #1	Billing Contact Fax #1		
Billing Address #1	City #1	State #1	Zip #1
Service Location Contact Person #1 SAME AS ABOVE	Service Location Contact Phone Number #1	Ext. #1	
Service Location Contact E-mail Address #1	Primary Service Location Contact Fax #1		
Service Location #1	City #1	State #1	Zip #1
Sales Representative Carma Seabloom	Colocation PCLPWADL	PAL Lead ID	
Term* (Beginning from date of installation) <input type="checkbox"/> 1 YEAR <input checked="" type="checkbox"/> 2 YEAR	\$25 Account Set-up Fee * * Set-Up Fee Applicable to each billing invoice established		
Promotion Code(s) D1622002 (\$599.00)	Renewal Code(s) ICB: 03070212		

TECHNICAL PROFILE			
Service Location Contact #2	Service Location Contact Cellular #2		
Service Location Contact Phone #2	Service Location Contact Person Fax #2	Service Location Contact E-Mail Address #2	
MAIL RELAY <input type="checkbox"/> YES <input type="checkbox"/> NO	HOSTED BY CUSTOMER	WEBSITE: <input type="checkbox"/> YES <input type="checkbox"/> NO	E-MAIL: <input type="checkbox"/> YES <input type="checkbox"/> NO
WEB HOST VENDOR	E-MAIL VENDOR		

DEDICATED INTERNET ACCESS			
Dedicated Internet		Multi-Meg Dedicated Internet	
Speed	QTY (1)	Speed	QTY (2)
<input type="checkbox"/> 256K	_____ X _____	<input type="checkbox"/> 3M	_____ X _____
<input type="checkbox"/> 512K	_____ X _____	<input type="checkbox"/> 4.5M	_____ X _____
<input type="checkbox"/> 768K	_____ X _____	<input type="checkbox"/> 6M	_____ X _____
<input checked="" type="checkbox"/> 1.5M	_____ X _____	<input type="checkbox"/> 7.5M	_____ X _____
		<input type="checkbox"/> 9M	_____ X _____
		<input type="checkbox"/> 12M	_____ X _____
(1) Maximum of 2 circuits per location. (2) A minimum of \$499 installation fee applies per circuit.		(3) Maximum of 1 circuit per location. (4) A minimum of \$100 installation fee applies per circuit.	

ADD-ONS		
<input type="checkbox"/> Domain Pointer (6) QTY. _____	<input type="checkbox"/> Additional Dial-Up (8) QTY. _____	<input type="checkbox"/> Web Hosting - 51MB (7) QTY. _____
<input type="checkbox"/> E-Mail Boxes (5MB per box) QTY. _____	<input type="checkbox"/> UPS QTY. _____	<input type="checkbox"/> Web Site Storage Space - 2MB QTY. _____
<input type="checkbox"/> E-Mail Storage Space - 25MB QTY. _____		<input type="checkbox"/> Secure Sockets Layer (SSL) QTY. _____
(5) Domain registration fee not included. (6) Includes dial-up access and 1 E-Mail box. (7) A \$10 set-up fee will apply to each 50MB ordered.		

CUSTOMER ACCEPTANCE			
The person signing below represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of Customer. By signing below, Customer hereby agrees, ratifies and agrees (i) to be bound by all the terms and conditions on the reverse side of this form, and (ii) that the Customer has read and understands that such terms and conditions (including the limitation of liability) govern the services ordered hereunder.			
Customer Signature <i>[Signature]</i>	MGR MGR	Date 8-25-03	
Customer Name (Printed) HANS LINDSTROM	Title (Printed)		
Allegiance Telecom Sales Representative Signature <i>[Signature]</i>	Allegiance Telecom Sales Representative (Printed) CARMA SEABLOOM	Date 8/6/03	

** For exact rates and charges please refer to www.igt.com/terms.

(Front)

ALLEGIANCE INTERNET SERVICE
DEDICATED INTERNET SERVICE AGREEMENT

ENTIRE AGREEMENT AND TARIFFS: References in the Agreement to Allegiance, "we", "us", and "our" mean Allegiance Internet, Inc. References in the Agreement to "you" and "your" mean Customer or Subscriber. The services ordered hereunder ("Service") are subject to our rates, terms and conditions, all of which are available at www.algx.com/term and are incorporated herein by reference as if fully stated herein (collectively, the "Terms"). We may amend the Terms from time to time without prior notice. This Dedicated Internet Service Agreement ("Form"), together with the Terms and any applicable addendum (the foregoing collectively the "Agreement"), establish the terms and conditions upon which we agree to provide Service to you. The Agreement sets forth the entire understanding between the parties and supercedes any prior or contemporaneous oral or written representations, offers or proposals made by us or representatives of us. Your use of the Service constitutes acceptance of the Terms and your continued use after an amendment of the Terms constitutes agreement to the modified Terms. The Agreement also governs any additional services or changes you may request during the term of the Agreement. In the event of any inconsistency between this Form and the Terms, the Terms shall control. Some portions of the Service involve or include services that are subject to federal or state tariffs (the "Tariffed Services"). Notwithstanding anything to the contrary in the Agreement, the Tariffed Services are governed by the terms and conditions of the applicable tariff, and the terms and conditions set forth in the Agreement do not modify or supercede such tariff provisions, terms or conditions. Defined terms used herein with initial capital letters shall have the meanings ascribed herein, in the Terms or the tariff(s), as applicable. We will provide Service to you in exchange for recurring payment of subscription fees and strict compliance with the terms of the Agreement.

MODIFICATION: The Agreement shall not be amended, changed, or modified by you except in writing, approved by our Legal Department and executed by your representative and 2 of our duly authorized representatives (one of whom must be an officer). Allegiance may amend the Terms from time to time without prior notice. Any unauthorized modification to the Agreement may render the Agreement null and void and subject to immediate termination.

TERM AND RENEWAL OF TERM: The Agreement is effective when signed by both parties ("Effective Date") and shall continue in effect thereafter until expiration of the term of the Service as set forth below or unless earlier terminated in accordance with the Agreement. Upon expiration of the initial term specified on the front of this Form ("Initial Term") of the Service, unless the parties enter into a new agreement, the term will automatically renew on a month-to-month basis, and your rates may be adjusted to reflect our standard published list prices, unless either party provides the other party at least 30 days prior written notice of its intent to terminate the Service or the Agreement.

EARLY TERMINATION FEES: If you cancel, disconnect or terminate a Service after it is installed but before the expiration of the initial term for that service, you will be required to pay an early termination fee(s) as follows:

Service Type	Term	Early Termination Fee
Dedicated Internet and Multi-Meg Dedicated Internet Services	Each Service has its own term. The Initial Term begins when the Service is installed and shall continue for the duration as specified on the front of this Form.	\$350.00 x remainder of initial term, per circuit

You agree that it would be extremely difficult and impracticable to calculate our damages for early termination and that the above early termination fees are liquidated damages and are not imposed as a penalty.

RIGHT TO CANCEL: We will make reasonable efforts to provide you with the Service ordered under the Agreement; however, there may be circumstances in which we may not be able to provide such Service. If we determine for any reason that we cannot provide Service to you on the terms and conditions contemplated by the Agreement, we may, at our sole discretion, either (i) immediately terminate the Agreement, without liability and without any further obligations, or (ii) propose different prices, terms and conditions.

EQUIPMENT AND INSTALLATION: The Service ordered hereunder may require us to install certain equipment on your premises. Note that the Terms referenced above and fully incorporated herein contain specific provisions, which govern the use, access, ownership and maintenance of equipment as defined therein. You will be responsible for and will indemnify us against any damage to or loss of any component of the equipment and any related spare parts stored on your premises. You shall return the equipment to us upon discontinuance of Service or else you shall pay us the list price for such equipment.

Allegiance shall install high-speed telecommunication circuit(s), required premise equipment and reasonable and customary inside wiring to extend circuit from building entry point into your premises. Note that in addition to the following provisions, the Terms contain specific provisions which govern the use, access, ownership and maintenance of equipment as defined therein ("Standard Installation of Service"). Customer shall provide to Allegiance a local premise contact and backup contact to coordinate access to the building telephone closet as required during installation process. Data services will be terminated on the appropriate network interface block in the Customer premise. Standard Installation Service does NOT include: any inside wiring required, including, but not limited to, core drilling or wiring extensions in excess of twenty-five (25) feet from the building entrance to your premises, installation of new conduit or water-proof shielding or shielded cable, installation of aerial circuit runs, obstructed wiring runs, hazardous materials removal or the like as determined by Allegiance in its sole discretion. You are responsible for all efforts, including any and all costs associated therewith, required to connect your phone system or network device to the network interface block provided by Allegiance.

LIMITATION OF LIABILITY; NO SPECIAL DAMAGES; DISCLAIMER OF WARRANTIES: THE ENTIRE LIABILITY OF US AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ALL CLAIMS OR DAMAGES OF WHATEVER NATURE ARISING FROM OR IN ANY WAY RELATED TO THE AGREEMENT OR THE PROVISION OF SERVICE (INCLUDING THE FAILURE TO PROVIDE SERVICE), INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR ANY OTHER BASIS OF LIABILITY FOR US, ARE SOLELY RESPONSIBLE FOR ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, AND EXPENSES ARISING OUT OF USE OF THE SERVICES BY YOU, YOUR USERS, OR ANY OTHER PERSON OR ENTITY USING THE ACCOUNT WITH OR WITHOUT YOUR KNOWLEDGE OR CONSENT. SOME JURISDICTIONS MAY NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY, AND WE LIMIT OUR LIABILITY IN SUCH JURISDICTIONS ONLY TO THE DEGREE ALLOWED BY APPLICABLE LAW. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, WE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, GOODWILL OR COSTS TO COVER), WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF OUR EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER WE HAVE BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, THE SERVICES PROVIDED BY US AND ANY EQUIPMENT OWNED BY ALLEGIANCE AND USED BY YOU ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ALLEGIANCE, ITS EMPLOYEES, AGENTS, SUPPLIERS, VENDORS AND DISTRIBUTORS MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY, VALIDITY, OR SPEED OF THE DATA AND/OR INFORMATION AVAILABLE OR TRANSMITTED ON ITS SYSTEMS, OR RESIDING ON OR PASSING THROUGH ITS INTERCONNECTING NETWORKS, OR THAT THE SERVICES WILL BE COMPLETELY SECURE, UNINTERRUPTED OR ERROR FREE. ACTUAL DATA TRANSMISSION SPEEDS EXPERIENCED MAY VARY BASED ON FACTORS OUTSIDE ALLEGIANCE'S CONTROL INCLUDING, BUT NOT LIMITED TO, TRAFFIC ON THE INTERNET, THE PERFORMANCE OF THIRD PARTY SERVERS HOSTING WEB SITES YOU VISIT, THE DISTANCE BETWEEN YOUR PREMISES AND THE TELEPHONE COMPANY SERVING OFFICE, AND THE CONDITION OF YOUR LINE.

NOTICES: All notices, including notices for termination of the Agreement or Service, must be sent to our Customer Care Department at 1950 Stammos Freeway, Suite 3026, Dallas, TX 75207. Attention: Contract Administrator. You must provide Allegiance with at least 30 days prior written notice of your intent to terminate the Agreement or Service. We may not accept a notice for termination of the Agreement or Service unless it is sent in accordance with this notices provision.

Please Initial



[Handwritten signature]

(Back)

CERTIFICATE OF SERVICE

A copy of the foregoing Limited Objection to Notice of Debtor's Intent to Assume, Assume and Assignment, or Assign Certain Executory Contracts and Unexpired Leases was mail by Priority United States mail, postage prepaid and/or electronically served, on the 28th day of May, 2004.

1. Michael J. Frishberg, Esq.
Kirkland & Ellis
Citigroup Center
153 E. 53rd St, 39th Floor
New York, NY 10022-4611

Attorney for Debtor

2. Office of the U.S. Trustee
Attn: Pamela J. Lustrin, Esq.
33 Whitehall Stree, 21st Floor
New York, NY 10004

3. Jesse Austin
Paal, Hastings, Janofsky & Walker LLP
600 Peachtree Street, N.E. 24th Floor
Atlanta, GA 30308

Attorneys for PrePetition Lenders

4. Ira Dizengoff
Akin Gump Strauss Hauer & Feld, LLP
590 Madison Ave.
New York , NY 10022

Unsecured Creditors Committee

5. Steven D. Pohl
Brown Rudnick Berlack Israels, LLP
One Financial Center
Boston, MA 02111

Attorneys for the Buyer

June 2, 2004



Stanley I. Lippmann
Attorney for Heights, LLC