

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered

FINAL ORDER
AUTHORIZING USE OF CASH COLLATERAL BY CONSENT

This matter came on for a final hearing on June 23, 2003 pursuant to that certain Stipulation dated as of June 12, 2003 adjourning the final hearing set forth in the Emergency Order Authorizing Use of Cash Collateral By Consent entered on May 15, 2003 (the “Interim Order”) which granted on an interim basis the relief sought in the motion, dated May 14, 2003, (the “Motion”), filed by Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession identified on Exhibit “A” annexed hereto (collectively, the “Debtors”), which such Motion sought entry of (I) Interim and Final Orders Authorizing the Debtors to (A) Use Cash Collateral and (B) Provide Adequate Protection to the Prepetition Lenders and (II) Order Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001. The Motion sought entry of the Interim Order and entry of this Final Order (the “Final Order”) authorizing the Debtors to use “Cash Collateral” (as such term is defined in section 363(a) of title 11 of the United States Code (the “Bankruptcy Code”)) and to provide adequate protection, substantially all of which Cash Collateral is presently subject to a first-priority security interest and rights of setoff in favor of the Agent on behalf of the Lenders, as defined below, as senior

secured creditors.¹ At the hearing on the Motion held before this Court on May 15, 2003 (the “Interim Hearing”) and at the hearing held before this court on June 23, 2003 (the “Final Hearing”), attorneys for General Electric Capital Corporation, as Agent, and the Debtors appeared consenting to the use of Cash Collateral; provided, however, that such use is conditioned upon the entry of the Final Order imposing certain conditions and granting certain relief for the benefit of the Lenders as hereinafter set forth. Based upon the information presented to this Court at the Interim Hearing and Final Hearing on the Motion, entry of the Interim Order, review of the Motion itself, and the entire record, it appears as follows:

A. On May 14, 2003 (the “Commencement Date”), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code (collectively referred to as the “Cases”). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors retained possession of their assets and continue to operate their businesses as debtors in possession.

B. Prior to the Commencement Date, the Debtors entered into that certain Credit and Guaranty Agreement, dated as of February 15, 2000, (as amended, restated, supplemented or otherwise modified from time to time the “Prepetition Credit Agreement”) and related loan documents thereto (the “Prepetition Loan Documents”), between and among Allegiance Telecom Company Worldwide (the “Borrower”), Allegiance Telecom, Inc. (the “Company”), and other Debtor subsidiaries of the Company (together with the Company, the “Guarantors”), lenders party thereto from time to time (the “Lenders”), Goldman Sachs Credit

¹ On the Commencement Date, the Debtors had approximately \$26 million in cash (the “Disputed Amount”) in Account #343605, which is an interest bearing account, at JPMorgan Chase Bank (the “Disputed Account”). The Debtors dispute the Agent’s asserted security interest in the Disputed Account. Until further Order of this Court, the Debtors will maintain the Disputed Amount and all interest related thereto in the Disputed Account and not use such cash. The Debtors reserve their right to file an action to avoid any asserted security interest in the Disputed Amount or the Disputed Account and the Lenders reserve their right to defend, object or otherwise respond to any such action.

Partners L.P., as syndication agent, General Electric Capital Corporation (as successor in interest to Toronto Dominion (Texas), Inc.), as administrative agent (the “Agent”), and BankBoston, N.A. and Morgan Stanley Senior Funding, Inc., as Co-Documentation Agents, pursuant to which the Agent claims first priority liens on, and security interests in, substantially all of the Debtors’ assets, both tangible and intangible, real and personal, on behalf of the Lenders, including inter alia, the Debtors’ accounts, inventory, machinery and equipment, real property, chattel paper, books and records, intellectual property, licenses, deposit accounts, money, negotiable collateral, securities, general intangibles, right, title and interest in and to all shares of capital stock of each of their subsidiaries and the proceeds and recoveries of the foregoing (collectively, the “Collateral”).² As such, the Agent and the Lenders claim a perfected first-priority security interest in the Collateral.³

C. Pursuant to the terms of the Prepetition Credit Agreement, the Lenders have made prepetition extensions of credit and other financial accommodations to the Debtors from time to time.

D. A need exists for the Debtors to be permitted access to Cash Collateral to continue to operate their businesses. Without access to Cash Collateral, the Debtors will not be able to pay their payroll and other direct operating expenses or to maintain vendor and customer support. As a result, the Debtors and their estates would be irreparably harmed.

E. The Lenders have consented to the Debtors’ continued use of Cash Collateral on the express terms and conditions set forth in this Final Order.

² See footnote 1, supra.

³ Unless otherwise defined herein, capitalized terms in this Final Order shall be as defined in the Prepetition Credit Agreement.

F. Notice of the Motion, Interim Order and Final Hearing has been provided to (i) the Office of the United States Trustee for the Southern District of New York (the ‘U.S. Trustee’); (ii) attorneys for the Agent; (iii) attorneys for the *ad hoc* committee (the ‘Ad Hoc Committee’) of certain holders of 11 ¾% Senior Discount Notes due on February 15, 2008 and 12 % Senior Notes due on May 15, 2008 (collectively, the ‘Notes’); (iv) attorneys for the Committee; and (v) on the Debtors’ 40 largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions. Such notice constitutes good and sufficient notice of the Motion and Final Hearing in accordance with Bankruptcy Rule 4001 and section 102(1) of the Bankruptcy Code as required by section 363 of the Bankruptcy Code.

G. Good cause has been shown for the entry of this Final Order. Among other things, entry of this Final Order will minimize disruption of the Debtors’ businesses and operations and permit them to meet payroll and other operating expenses, and to maintain vendor support. The Cash Collateral use arrangement authorized hereunder is vital to avoid harm to the Debtors’ estates. Absent the use of Cash Collateral, none of the Debtors’ estates would have necessary funds to satisfy their respective obligations. Allowing the use of Cash Collateral therefore is in the best interests of the Debtors’ estates and creditors.

H. The use of Cash Collateral and adequate protection arrangements authorized hereunder have been negotiated in good faith and at arm’s length, and the terms of such Cash Collateral use and adequate protection arrangements are fair and reasonable under the circumstances, reflect the Debtors’ exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

I. The Debtors have requested immediate entry of this Order pursuant to rule 4001 of the Federal Rules of Bankruptcy Procedure (the ‘Bankruptcy Rules’). The permission

granted herein to allow the Debtors to use Cash Collateral is necessary to avoid harm to the Debtors. The Court concludes that entry of this Final Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND, AS APPLICABLE, STIPULATED⁴:

1. The Lenders have consented to the Debtors' use of Cash Collateral in the ordinary course of business in accordance with the budget annexed hereto as Exhibit "B" (the "Budget"), which Budget shall be updated no later than fifteen (15) business days following the last day of the month, to maintain a full 13 week forecast period (in the form of the Budget attached as Exhibit "B"), subject to the express terms and conditions set forth in this Final Order. Once updated and upon mutual agreement of the Agent and the Debtors, the updated budget for each month shall constitute the Budget in the Cases without further order of the Court, providing the U.S. Trustee and the Committee (as defined below) with five (5) days notice. Any Cash Collateral received on account of or from the Collateral in excess of that needed to conduct the Debtors' businesses as set forth in the Budget is to be retained by the Debtors where the Debtors currently maintain accounts to which the Agent's liens and claims for the benefit of itself and the Lenders shall attach, and the Debtors agree not to transfer any additional funds into the Disputed Account.

2. Subject to the terms and conditions of this Final Order, the Debtors may use the Cash Collateral to pay their ordinary and necessary business expenses as set forth on the

⁴ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

Budget; provided that such use shall not be in excess of cash on hand, collections actually received in connection with accounts, disposition of inventory, and sales of approved Collateral existing on the Commencement Date and generated thereafter. The Debtors believe that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course of business in connection with the operation of their businesses for the period set forth in the Budget. In no event shall the Debtors use any Cash Collateral to pay, in the aggregate, any amounts in excess of the Total Weekly Disbursements, as provided for in the Budget as the cumulative disbursements for such week (the “Total Weekly Disbursements”) provided, however, budgeted amounts not used in any one week may be carried forward in the Budget, with the exception of payroll, to be used by the Debtors in subsequent weeks; provided, further, however, any budgeted amounts not used in the Budget, may be applied in subsequent revised Budgets as reasonable and necessary amounts in the line items as provided for in Paragraph 1 of this Final Order. The Amounts disbursed for Capital Expenditures shall not exceed the capital expenditure line item in the Budget each week, inclusive of any Capital Expenditure carry forward amounts. Further, amounts disbursed for payroll shall not exceed the payroll line item in the Budget by more than 10% in each week and any unused amount in each payroll line item may not be carried forward. The Debtors shall not pay an expense in advance of the week in which a particular expense is scheduled to be paid, except for incidental items not greater than \$50,000. The Debtors further agree not to incur any administrative expenses other than as set forth in the Budget, exclusive of professional fees as to professionals whose engagements are approved by the Bankruptcy Court pursuant to sections 327 and 1103 of the Bankruptcy Code and fees payable pursuant to 28 U.S.C. § 1930, without the prior written

consent of the Agent or approval by the Bankruptcy Court after notice to the Agent and a hearing.

3. In addition to maintaining compliance with the Budget as provided for herein, the Debtors shall maintain a minimum weekly cash balance (the “Minimum Cash Balance”) as reflected on the Budget.

4. The Debtors’ right to use Cash Collateral commenced upon entry of the Interim Order and shall expire on the earlier of (i) the close of business on December 31, 2003, unless mutually extended by the Agent and the Debtors, or (ii) the occurrence of a Termination Event as defined in Paragraph 18 of this Final Order (collectively referred to as the “Expiration Date”). In no event shall the Debtors be authorized to use Cash Collateral for any purposes or under any terms other than those set forth herein and as set forth in the Budget or as may otherwise be approved by this Court following notice and hearing as may be required; provided, however, that nothing in this Final Order shall be deemed a waiver of the Debtors’ rights to seek additional use of Cash Collateral or the Agent’s and the Lenders’ rights to oppose any such request.

5. In allowing use of Cash Collateral as provided for herein, pursuant to the Debtors’ existing cash management system, the Debtors are required to maintain accounts to which the Agent’s liens and claims for the benefit of itself and the Lenders attach with respect to collections to the extent Debtors receive any such collections or proceeds from the Collateral. Unless and until new procedures are established as may be required by the U.S. Trustee or otherwise, the Debtors are authorized and directed to maintain their prepetition cash management system and bank account systems as were in effect on the Commencement Date.

6. The Lenders are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Collateral to extent that there is a diminution in the value of the Lenders' interest in the Collateral from and after the Commencement Date. As adequate protection for any diminution in value of the Lenders' interest in the Collateral from and after the Commencement Date, the Agent, for itself and on behalf of the Lenders, is hereby granted a valid, perfected and enforceable security interest (the "Replacement Liens") equivalent to a lien granted under the section 364(c) of the Bankruptcy Code in and upon all of the assets of the Debtors in existence prior to the Commencement Date and hereby created after the Commencement Date, including without limitation, all of the Debtors' accounts, contract rights, inventory, machinery and equipment, licenses, general intangibles, real property, and such other collateral in which the Agent on behalf of itself, and the Lenders had an interest prior to the initiation of the Cases (but not including claims or causes of action arising solely under sections 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code and the proceeds therefrom), whether such property was owned on the Commencement Date or thereafter created, acquired or arising, and all improvements, additions and extensions thereto, all replacement thereof, all books and records with respect thereto and all products and proceeds of the foregoing, specifically including any proceeds of the foregoing deposited into bank accounts opened by the Debtors prepetition, any accounts opened by the Debtors after the Commencement Date and the accounts themselves; provided, however, that nothing in this Final Order shall grant a lien or security interest in favor of the Lenders in the Disputed Account or the Disputed Amount. The Replacement Liens shall be subject only to (a) the Carve Out (defined below); (b) the security interests of the Agent, on behalf of itself and the Lenders, in the same order of priority as such interests existed on the Commencement Date; (c) any certificates of deposit; (d)

any Collateral subject to valid security interests or liens, including without limitation, any assets acquired or to be acquired by the Debtors which are subject to a purchase money security interest by a third party (except to the extent such Collateral was encumbered by junior liens and security interests in favor of the Agent); and (e) the Disputed Account and the Disputed Amount.

7. The Replacement Liens herein granted: (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of the Agent and the Lenders on the Commencement Date; (ii) are and shall be valid, perfected, enforceable and effective as of the date of the entry of this Final Order without any further action by the Debtors or the Agent, and the Lenders and without the necessity of the execution, filing or recordation of any financing statements, security agreements, vehicle lien applications, filings with the United States Patent and Trademark Office, mortgages or other documents; and (iii) shall secure the payment of indebtedness to the Agent and the Lenders, as the case may be, in an amount equal to any diminution in value of the Cash Collateral or any other Collateral.

8. In addition to the Replacement Liens granted to the Agent on behalf of itself and the Lenders pursuant to this Final Order, the Agent is hereby granted an administrative claim under sections 503(b)(1), 507(a), and 507(b) of the Bankruptcy Code (the “507(b) Claims”) for the amount by which adequate protection afforded herein for any diminution of value of the Cash Collateral from and after the Commencement Date or any other Collateral proves to be inadequate. Such 507(b) Claims shall be allowed and have priority over all other costs and expenses of the kind specified in or ordered pursuant to sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 of the Bankruptcy Code, subject to the Carve Out. As further adequate protection, for the use of Cash Collateral and other Collateral, the Agent shall receive from the Debtors periodic payments in an amount equal to the interest payments due and

owing under the Prepetition Credit Agreement at the applicable non-default rate of interest on the principal amount of the obligations due and owing under the Prepetition Credit Agreement as of the Commencement Date, with such payments being due on the dates mandated for payments of interest under the Prepetition Credit Agreement. In addition, the Debtors will continue to pay to the Agent all other actual and reasonable fees, costs and expenses provided for under the Prepetition Credit Agreement, including, but not limited to actual and reasonable legal fees and costs of the Agent's counsel and financial advisory fees and costs, of such professionals engaged by the Agent on behalf of the Lenders; provided, however, that such financial advisory fees and costs shall not exceed \$175,000 per month. The foregoing payments are to be made to the Agent because, among other things, the Debtors will continue to use the Cash Collateral and other Collateral which secure the claims and Obligations owing under the Prepetition Credit Agreement and will continue to use their ongoing business and operating facilities. Such payments are being made for the purpose of, among other things, protecting the Agent's and the Lenders' claims, obligations, and collateral interests from such use and the potential depreciation and deterioration of the Cash Collateral and the Collateral as a result of such use and as consideration for the Agent's and the Lenders' consent to the use of such collateral under the terms of this Final Order.

9. Notwithstanding any provision of this Final Order to the contrary, the liens on the Collateral, the Replacement Liens and the 507(b) Claims granted to the Agent on behalf of itself and the Lenders pursuant to this Order shall be subject and subordinate to a carve out (the "Carve Out") for the payment of: (a) the allowed and unpaid professional fees and expenses incurred by the Debtors and by any statutory committee appointed in these chapter 11 cases (the "Committee"), pursuant to sections 327(a) and 1103 of the Bankruptcy Code, through the

Expiration Date plus \$2 million to cover professional fees and expenses accrued after the Expiration Date (the “Professional Fee Carve Out”); (b) the approved professional fees and expenses incurred by any court approved professional employed by a Chapter 7 Trustee or Chapter 11 Trustee up to the amount of \$50,000 (the “Trustee Cap”); and (c) fees payable to the U.S. Trustee required to be paid pursuant to 28 U.S.C. §1930; provided, however, that in any event, the Carve Out shall not include, and no Cash Collateral available to the Debtors pursuant to this Final Order shall be used to pay, professional fees and disbursements incurred in connection with prosecuting and asserting any claims or causes of action against the Agent or the Lenders, other than the Lenders that failed to meet their obligations under the Prepetition Credit Agreement (the “Defaulting Lenders”)⁵, provided however, that the Carve Out shall include the fees and costs specifically related to the Committee’s investigation rights pursuant to Paragraph 14. Nothing herein shall be construed as a waiver of the right of any party to object to the allowance of any such professional fees. Notwithstanding anything to the contrary, the Professional Fee Carve Out shall not be reduced by any allowed interim amounts paid to the professionals pursuant to separate orders of the court or any prepetition retainers paid by the Debtors to professionals retained by it.

⁵ Bayerische Hypo-und Vereinsbank AG, New York Branch, Bank Austria Creditanstalt Corporate France, Inc., and Dresdner Bank AG, New York and Grand Cayman branches (collectively, the “Banks”) reserve their right to dispute the language herein referring to “Lenders that failed to meet their obligations under the Prepetition Credit Agreement” and to any other provision in the Final Order which explicitly or implicitly characterizes the Banks’ status as Defaulting Lenders as defined under the Prepetition Credit Agreement. The Banks hereby specifically reserve all of their rights to dispute, object or defend any action which claims that the Banks have failed to meet any of their funding obligations under the Prepetition Credit Agreement or any action, argument, statement, or position which characterizes the Banks as Defaulting Lenders as defined under the Prepetition Credit Agreement. The Debtors and the Agent, for itself or on behalf of the other Lenders, hereby specifically reserve their respective rights to assert that the Banks are Defaulting Lenders as defined under the Prepetition Credit Agreement and to dispute or object to any assertion made by the Banks or defend any action brought by the Banks in connection with the foregoing.

10. Upon reasonable notice to the Debtors, the Agent and the Lenders, or any of them, shall have access to, and the right to examine and audit the Debtors' books and records to the extent allowed and in accordance with the procedures under the terms of the Prepetition Credit Agreement.

11. The use of Cash Collateral by the Debtors shall give rise to an obligation of the Debtors to the Agent for repayment of the amount by which the Cash Collateral decreased in value from the Commencement Date to the Expiration Date, but which amount shall not exceed the total amount of Obligations which may be due and owing, or become due and owing, under the Prepetition Credit Agreement.

12. In consenting to the continued use of Cash Collateral, the Debtors and the Agent and the Lenders stipulate and agree that:

- (a) the certain Prepetition Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time), the Guaranties and related Loan Documents entered as of February 15, 2000, between and among, inter alia, the Debtors, the Lenders, and the Agent are in all respects, valid and binding agreements and obligations of the Debtors;
- (b) as of the Commencement Date the principal balance due and owing under the revolving credit facility of the Prepetition Credit Agreement was \$319,800,000, plus interest, fees, costs and expenses, and that the principal balance due and owing under the delayed draw term loans of the Prepetition Credit Agreement was \$145,500,000, plus interest, fees, costs and expenses.
- (c) the Debtors (i) are not aware of any claim, counterclaim, recoupment, setoff or defense of any kind or nature (except for those of the Defaulting Lenders) which would in any way affect the validity, enforceability and non-avoidability of the Agent's and the Lenders' obligations owing under the Prepetition Credit Agreement or any of the Lenders' liens claims or security interests, or, reduce or affect the obligations of the Debtors to pay any of the Agent's or the Lenders' claims; (ii) acknowledge and agree that the liens and security interests held by the Agent on behalf of itself and the Lenders with respect to the Prepetition Credit Agreement (exclusive of the Disputed Amount and the Disputed Account) are valid, enforceable, properly perfected and non-avoidable (other than the Disputed Account

and the Disputed Amount); and (iii) except for the Defaulting Lenders, further acknowledges and agrees that if the Debtors now have or ever did have, any offsets, defenses, claims, or counterclaims against the Agent and the Lenders, or their respective officers, directors, employees, attorneys, representatives, parent, affiliates, predecessors, successors, or assigns, whether known or unknown, at law or in equity, from the beginning of the world through this date arising under the Prepetition Credit Agreement, all of them are hereby expressly **WAIVED**, and the Debtors hereby **RELEASE** the Agent and the Lenders, other than the Defaulting Lenders and their respective officers, directors, employees, attorneys, representatives, parent, affiliates, predecessors, successors, and assigns from any liability thereof.

13. The stipulations set forth in Paragraph 12 of this Final Order shall be binding on the Debtors and any of their successors-in-interest and assigns, but are subject to the provisions contained in Paragraph 14 below.

14. Notwithstanding anything herein to the contrary, until August 29, 2003 the Committee shall be entitled to investigate the validity, amount, perfection, priority, and enforceability of the Agent's liens, claims and security interests held on behalf of the Lenders and the obligations arising under the Prepetition Loan Documents, or to assert any other claims or causes of action against the Agent and the Lenders (the "Investigation Termination Date") held by the Debtors' estates. If the Committee determines that there may be a challenge to the Agent's prepetition liens, claims or security interest, or the Lenders' prepetition obligations by the Investigation Termination Date, upon five (5) business days' written notice to the Debtors, the Agent and the Lenders, the Committee shall be permitted to file and prosecute an objection or claim related thereto, and shall have only until the Investigation Termination Date to file such objection or otherwise initiate an appropriate action (including a motion to obtain court authority to bring such an action) or adversary proceeding setting forth the basis of any such challenge, claim or cause of action. If such action is not filed on or before the Investigation Termination Date (or such other later date as extended by the written consent of the Debtors and the Agent),

the stipulations contained in Paragraph 12 of this Final Order and any consideration granted as adequate protection hereunder in this Final Order shall be irrevocably binding on the Committee and all parties in interest without further action by any party or this Court. Unless the Agent and the Debtors each consents in writing to an extension, the Investigation Termination Date may not be extended, unless cause therefor is shown and only after notice to the Agent and the Debtors and the filing of a motion and scheduling of a hearing date before the expiration of the Investigation Termination Date.

15. So long as the Lenders are consenting to or otherwise providing use of Cash Collateral and except as expressly provided herein, no expenses of administration of the Debtors' estates shall be charged pursuant to section 506(c) of the Bankruptcy Code, or otherwise, against the Collateral or any collateral supporting the Replacement Liens. Nothing contained in this Final Order shall be deemed to be consent by the Agent or the Lenders, whether express or implied, to any claims against the Collateral or the collateral supporting the Replacement Liens under section 506(c) of the Bankruptcy Code or otherwise.

16. The Debtors shall maintain all necessary insurance, including, without limitation, life, fire, hazard, comprehensive, public liability, and workmen's compensation as may be currently in effect, and obtain such additional insurance in an amount as is appropriate for the business in which the Debtors are engaged, naming the Agent on behalf of itself and the Lenders as loss payee with respect thereto. The Agent, on behalf of the Lenders, consents to the use of Cash Collateral to pay the premiums associated with such insurance as reflected in the Budget or approved by separate Order of the Court. The Debtors shall continue to provide the Agent with proof of all such coverage, as well as prompt notification of any change in such coverage which may hereafter occur.

17. The Debtors shall furnish to the Agent, the Lenders and the Committee, or as may be more appropriate, their respective counsel, such financial and other information as the Agent shall reasonably request including, but not limited to, the following:

(a) As soon as available and in any event within thirty (30) calendar days after the end of each fiscal month, beginning with the fiscal month of May 2003, the consolidated balance sheet of Debtors and at the end of such fiscal month, together with the related statements of cash flow and profit and loss for such fiscal month (including market level profit and loss statements) and schedules of operating metrics describing: gross lines sold, net lines sold, sales productivity, gross installed lines, churn and net installed lines and with respect to the last three operating metrics listed, each by product and a month end headcount of all employees;

(b) The financial reporting package delivered to the Debtors' board of directors as soon as is practicable after such delivery;

(c) As soon as available and in any event within thirty (30) calendar days after the end of each fiscal month, beginning with the fiscal month of May 2003, a report in form and substance satisfactory to the Agent comparing the Debtors' budgeted financial performance for such month as set forth in the Debtors' Revised Business Plan provided to the Lenders on or about May 7, 2003 (or such Revised Business Plan as is further revised, restated, or supplemented from time to time if elected by the Agent), for the current Fiscal Year to Debtors' actual financial performance for such month;

(d) As soon as available, but in no event later than Wednesday after the end of each week a report comparing the Debtors' actual performance with the projected performance, as summarized on the Budget, which report shall be in the form attached hereto as Exhibit "C" and contain details of the information identified by line item per the attached Exhibit "C";

(e) As soon as available, but in no event later than Wednesday after the end of each week, a report reflecting the Minimum Cash Balance as defined in Paragraph 3;

(f) As soon as possible, but in no event later than fifteen (15) business days following the last day of the month, beginning with the month of May 2003, a cash balance report for the month comparing (i) the Debtors' month end ledger cash balance (excluding the Disputed Amount), to (ii) the Debtors' month end cash balances in each bank account;

(g) No later than August 12, 2003 and an update every ninety (90) days thereafter, a list of the executory contracts to which any Debtor is a party as described further below, such list to include without limitation, the following: (i) a

statement indicating whether such executory contract has been assumed or rejected pursuant to section 365 of the Bankruptcy Code; (ii) the contracting parties, term, price and other key economic terms, and estimated total contract value. The Debtors shall only be required to list the following executory contracts:

- (i) Any supplier contract where the remaining liability under the contract exceeds \$1,000,000;
 - (ii) Any retail end-user contract for telecommunications services where the monthly recurring revenue exceeds \$10,000;
 - (iii) Any wholesale customer contract for telecommunications or other services where the monthly recurring revenue exceeds \$10,000;
 - (iv) Any contract with an customer for the hosting of such customer's application or content where the monthly recurring revenue exceeds \$10,000;
 - (v) Any installation contract with customers where the purchase price of the equipment by customer exceeds \$400,000;
 - (vi) Any contract for the maintenance of customer premises equipment which is in excess of \$200,000;
 - (vii) Employment contracts that provide for a guaranteed term of employment, base salary, bonus or severance (excluding standard offer letters);
 - (viii) All real estate leases;
 - (ix) All contracts for maintenance for Debtor's equipment in excess of \$50,000; and
 - (x) All indefeasible right of use contracts (including dark fiber agreements);
- (h) Simultaneously with their filing, any financial information and pleadings filed with the Bankruptcy Court;
- (i) All financial information and reports prepared by the Debtors, as required by the Bankruptcy Court or by the Operating Guidelines and Reporting Requirements of the U. S. Trustee's Office; and

(j) All other reports and financial information required by the Prepetition Credit Agreement unless such report or financial information has been provided in accordance with this Paragraph 17.

18. Notwithstanding anything to the contrary in this Final Order, a Termination Event shall occur, unless cured by the Debtors or waived by the Agent and Requisite Lenders (the "Termination Event"), (a) upon the fifth (5th) business day following the delivery of written notice to the Debtors by the Agent of any breach or default by the Debtors of the terms and provisions of this Final Order, including, but not limited to (i) failure to furnish to the Agent those reports and information listed in Paragraphs 1 and 17 of this Final Order, (ii) noncompliance with the Budget as defined in Paragraph 2 of this Final Order, unless with respect to each of the foregoing, the Debtors have cured such breach or default within such five (5) business day period; and (b) without notice of any kind upon (i) the failure to maintain the Minimum Cash Balance as required by Paragraph 3 of this Final Order, (ii) the failure to make any payment to or for the Agent on behalf of itself or the Lenders as required by this Final Order, (iii) the conversion of any of the chapter 11 cases to a chapter 7 case or appointment of a trustee without the consent of the Agent and (iv) the initiation of any lawsuit or adversary proceeding by the Debtors (excluding any lawsuit or proceeding related to the Disputed Amount and Disputed Account) seeking to challenge the validity or priority of (or to subordinate) any of the Agent's and the Lenders' liens and security interests on any of the Collateral, unless waived by the Agent at the direction of the Required Lenders.

19. The Debtors shall serve a copy of this Final Order on (i) the U.S. Trustee; (ii) attorneys for the Agent; (iii) attorneys for the Committee and (iv) attorneys for the Ad Hoc Committee and (v) the Debtors' 40 largest unsecured creditors on a consolidated basis, as

identified in their chapter 11 petitions, and otherwise consistent with any notice procedures ordered by this Court.

20. The provisions of this Final Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court with the consent of the Agent. If any or all of the provisions of this Final Order are hereby modified, vacated or stayed by subsequent order of this or any Court, such stay, modification or vacation shall not affect the validity and enforceability of any lien, priority, or benefit, or application of payment authorized hereby with respect to any indebtedness of the Debtors to the Agent and the Lenders.

21. Payments delivered by the Debtors and received by the Agent for the benefit of itself and the Lenders in accordance with the terms of this Final Order shall be applied in accordance with the terms of the Prepetition Credit Agreement. The Debtors reserve the right, on behalf of themselves and their estates, to request a reallocation of any amounts so paid to and received by the Agent and applied to the Lenders' claims if it is determined that such claims are undersecured.

22. The subject of this Final Order is a "core" proceeding within the meaning of 28 U.S.C. § 157. This Final Order shall be fully effective upon its entry.

SO ORDERED, ADJUDGED, DECREED AND STIPULATED, this 23rd day of June, 2003.

/s/Robert D. Drain
ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE