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Hearing Date: July 15, 2003 at 10:00 a.m.
Objection Deadline: July 11, 2003 at 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MOTION FOR AN ORDER, PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO REJECT THE SETTLEMENT AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY L.P.

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "Allegiance" or the "Debtors"), respectfully represent:

Introduction

1. On May 14, 2003 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

2. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Creditors Committee") in these chapter 11 cases.

Jurisdiction

3. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

An Overview of Allegiance's Business

4. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (i.e., national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

5. As of the Commencement Date, Allegiance served more than 100,000 business customers in major markets throughout the United States. As of the Commencement

Date, Allegiance employed approximately 3,560 people, of which approximately 97 employees are covered by collective bargaining agreements.

6. As of the Commencement Date, the Debtors had approximately $245 million of cash. As of March 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately $1.349 billion and liabilities totaling approximately $1.424 billion. For the three months ending March 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately $204.58 million, net losses from operations of approximately $91.036 million and net losses of approximately $120.084 million.

Settlement Agreement with Sprint Communications Company L.P.

7. Relevant to this Motion is that certain Settlement Agreement and General Release, dated as of September 21, 2000, by and between Allegiance Telecom, Inc. and Sprint Communications Company L.P. (the "Settlement Agreement").[1] Pursuant to the Settlement Agreement, to the extent that Sprint (as defined below) meets certain volume requirements, the Debtors provide to Sprint Communications Company L.P. ("Sprint") certain telecommunications services at prices lower than the Debtors' tariffed rates.

Relief Requested

8. By this Motion, the Debtors respectfully request the entry of an order, pursuant to section 365(a) of the Bankruptcy Code, authorizing and approving the rejection of the Settlement Agreement effective as of the date hereof.

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[1] On June 30, 2003, this Court entered that certain Order, Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, (A) Authorizing the Debtors to File the Settlement Agreement with Sprint Communications Company L.P. Under Seal and (B) for Authorization to Conduct an In Camera Hearing on the Motion for an Order, Pursuant to Section 365(a) of the Bankruptcy Code, Authorizing the Debtors to Reject the Settlement Agreement with Sprint Communications L.P. (the "Under Seal Order"). Pursuant to the Under Seal Order, the Debtors are authorized to file (and have filed), under seal, with this Court a complete copy of the Settlement Agreement. Contemporaneously with the filing of this Motion, the Settlement Agreement has been provided to the U.S. Trustee and attorneys for the Creditors Committee and the Debtors' prepetition lenders (the "Prepetition Lenders"), subject to the Under Seal Order, strict confidentiality and their understanding that the Settlement Agreement or the terms thereof shall not be shared or discussed in any way whatsoever with any other party.

Basis for Relief

9. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract … of the debtor." 11 U.S.C. § 365(a). The standard to be applied by a court to determine whether to authorize the rejection of an executory contract is the "business judgment" test, which is premised upon the debtor's business judgment that rejection of the executory contract would be beneficial to its estate. Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098-99 (2d Cir. 1993).

10. Upon finding that the Debtors have exercised their sound business judgment in determining that rejection of the Settlement Agreement is in the best interests of the Debtors, their creditors, and all parties in interest, the Court should approve the rejection under section 365(a) of the Bankruptcy Code. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Bradlees Stores, Inc., 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

11. In an effort to maximize the value of their estates, the Debtors have determined, in their sound business judgment, that the Settlement Agreement is burdensome and, therefore, should be rejected. The variance in the amount Sprint owes to the Debtors for services under the Settlement Agreement as compared to the Debtors' tariffed rates for such services is substantial. In that regard, as a result of the terms of the Settlement Agreement, the Debtors receive significantly lower revenue than they would otherwise receive under their federal and state tariffs. Despite the rejection of the Settlement Agreement, the Debtors believe they will continue to receive revenue from Sprint because Sprint will continue to utilize the Debtors' telecommunications services. However, the rates charged for such services will be the

higher tariffed rates, thereby providing a direct and immediate economic benefit to the Debtors estates. Thus, approval of the relief requested herein, is in the best interests of the Debtors' estates and should be approved.[2]

Waiver of Memorandum of Law

12. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

13. This Notice has been provided to (a) the U.S. Trustee; (b) attorneys for Sprint; (c) attorneys for the Prepetition Lenders; (d) attorneys for the Creditors Committee and (e) all other parties on the Master Service List maintained in these chapter 11 cases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

14. No prior Motion for the relief requested herein has been made to this or any other court.

2 The Debtors will provide the specific amount of the economic benefit that will be realized by the Debtors to the Court, the U.S. Trustee and the attorneys for the Creditors Committee and the Prepetition Lenders on a confidential basis to protect the Debtors' confidential commercial information.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to reject the Settlement Agreement effective as of the date hereof and (ii) granting such other relief as is just and proper.

Dated: New York, New York
July 1, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
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