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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	X
	:	
Allegiance Telecom, Inc., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Hearing Date: July 29, 2003 at 10:00 a.m.
	:	X Objection Deadline: July 25, 2003 at 4:00 p.m.

**GENERAL ELECTRIC CAPITAL CORPORATION'S LIMITED OBJECTION
TO APPLICATIONS OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR ENTRY OF ORDERS AUTHORIZING THE EMPLOYMENT
AND RETENTION OF (I) COMMUNICATION TECHNOLOGY ADVISORS,
LLC, AS INDUSTRY AND TECHNOLOGY ADVISOR AND (II) HOULIHAN
LOKEY HOWARD & ZUKIN CAPITAL, AS FINANCIAL ADVISOR**

COMES NOW, General Electric Capital Corporation as Agent for itself and certain other lenders (the "Agent") and files this limited objection (the "Objection") to the Application of the Official Committee Of Unsecured Creditors For Entry Of Orders Authorizing The Employment And Retention Of (i) Communication Technology

Advisors, LLC, as Industry and Technology Advisor and (ii) Houlihan Lokey Howard & Zukin Capital, as Financial Advisor the Agent represents as follows:

I.

INTRODUCTION

1. 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”), the Agent and Lenders party thereto from time to time (the “Lenders”).

2. Pursuant to the Prepetition Credit Agreement and Prepetition Loan Documents, the Agent, on behalf of the Lenders, asserts a first priority security interest in substantially all of the Debtors’ assets.

3. The Debtors filed voluntary petitions for relief on May 14, 2003 (the “Petition Date”).

4. As of the Petition Date, the Borrower and Guarantors were indebted to the Lenders under the Prepetition Loan Agreement in the principal amount of \$465,300,000, plus interest and various other charges, including costs, expenses and attorney fees.

5. The Debtors obtained the use of the Lenders' cash collateral on a final basis pursuant to the Final Order Authorizing the Use of Cash Collateral by Consent entered on June 23, 2003¹ (the "Final Order").

6. On May 30, 2003 the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the "Committee").

7. On July 11, 2003, the Committee filed an Application for an Order Authorizing the Retention of Communication Technology Advisors, LLC ("CTA") as Industry and Technology Advisor, Nunc Pro Tunc to June 3, 2003 (the "CTA Application").

8. On July 11, 2003, the Committee also filed an Application for Order Authorizing the Retention of Houlihan Lokey Howard & Zukin Capital ("Houlihan") as Financial Advisor, Nunc Pro Tunc to June 3, 2003 (the "Houlihan Application").

9. The CTA Application and Houlihan Application (collectively, the "Applications") detail the services to be provided by CTA and Houlihan (collectively, the "Applicants") to the Committee as follows:

CTA Application

Houlihan Application

a. analyze the Debtors' telecommunications operations, serve delivery and technological capabilities, each as it applies to the Debtors' current financial condition and its prospects for the Debtors' future performance

evaluating the assets and liabilities of the Debtors

¹ An Amended Final Order Authorizing the Use of Cash Collateral by Consent was subsequently entered by the Court on June 26, 2003 to correct a typographical error in the Final Order.

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| b. | conduct a detail review of the Debtors’ recent financial performance, business plan, marketing plan, revenue forecasts, capital program, management and competitive environment | analyzing and reviewing the financial and operating statements of the Debtors |
| c. | review and advise the Committee with respect to operating cash flow risks and opportunities. CTA will review current network architecture and lease arrangements, market channel and product profitability, regulatory matters as they affect current and future operations. CTA will evaluate the potential free cash flow generators and associated timing | analyzing the business plans and forecasts of the Debtors |
| d. | assist and advise the Committee in connection with the Debtors’ current contracts, both from a market level evaluation, and overall usefulness of such contracts in a restructured company | providing such specific valuation or other financial analyses as the Committee may require in connection with the case |
| e. | provide input and overall evaluation of the Debtors’ revised financial plan to be included in the Debtors’ plan of reorganization | preparation, analysis and explanation of the Plan to various constituencies |
| f. | assist and advise the Committee in the preparation and negotiation of any plan of reorganization proposed by the Debtors or developed by the Committee and other creditor constituencies of the Debtors; and | assessing the financial issues and options concerning various transactions (collectively, “Transactions”) involving the Company including, but not limited to, (a) the sale of any assets of the Debtors, either in whole or in part, and (b) the Debtors’ plan(s) of reorganization or any other plan(s) of reorganization (the “Plan”) |
| g. | provide such other advice and assistance as may be reasonably requested by the Committee from time to time | providing such other financial advisory services as Houlihan Lokey, the Committee and/or Committee Counsel may, from time to time agree in writing and which are consistent with Houlihan Lokey’s capabilities |
| h. | | helping with the claim resolution process and distributions relating thereto |
| i. | | providing testimony in court on behalf of the Committee, if necessary or reasonably requested by the Committee; and |

j. evaluating all aspects of debtor-in-possession financing (if any), cash collateral usage and adequate protection therefore and any exit financing in connection with any plan of reorganization and any budgets relating thereto

10. Both the CTA Application and the Houlihan Application seek nunc pro tunc authorization to June 3, 2003 and there is no scheduled termination date.

11. The CTA Application seeks a flat monthly fee in the amount of \$125,000 and the Houlihan Application seeks a flat monthly fee in the amount of \$150,000. Thus, if both applications are approved, the estate would be incurring additional flat monthly expenses in the amount of \$275,000 for the Committee's financial / industry advisors.

12. Furthermore, if this Court approves employment of the Applicants pending the final hearing scheduled for September 15, 2003, the Debtors and the estate will have incurred from June 3, 2003 through the final hearing date expenses of over \$1,100,000 pursuant to the flat monthly fee arrangements requested.

II.

LIMITED OBJECTION

13. The Agent opposes the CTA Application and the Houlihan Application as follows:

- The services of the Applicants are essentially duplicative and two financial advisors to the Committee are not needed.
- If this Court allows both CTA and Houlihan to be employed by the Committee, the services to be provided need to be narrowly tailored, compensation should be structured at hourly rates and any award should be subject to further Court review under sections 327(a) and 330(a) of the Bankruptcy Code.

- Alternatively, if this Court allows both CTA and Houlihan to be employed by the Committee with a flat monthly fee arrangement, the combined flat monthly fee for both CTA and Houlihan should be no more than \$150,000.

III.

ARGUMENT AND CITATION OF AUTHORITIES

14. While the Agent has no opposition to the Committee retaining a financial advisor, the Agent strongly opposes the employment of two advisors.

15. Even if the Applicants agreed to revise, coordinate and delineate certain of their proposed services, it is inevitable that there will be duplication of effort related to the Applicants in the beginning as they endeavor to understand the basic financial structure of the Debtors, its relationships with its creditors, material contracts, business plan and business operations. The estate should not be charged for such duplicative efforts. To employ a financial advisor with specific telecom experience is understandable and encouraged by the Agent, however, it is impossible to believe that Applicants can work in tandem without significant overlap since neither of the Applicants' services are specifically focused on one particular area.

16. Furthermore, as stated in paragraph 6 of the the Houlihan Application, Houlihan “. . . has provided financial and advisory investment banking services to over 100 telecommunication and mediate companies . . .” If the Committee has selected an advisor to perform financial services and the advisor has provided the same services to over 100 other companies in the same industry, it seems that the Committee will need to

provide evidence to the Court and creditors why CTA with similar experience in the telecommunication industry is also necessary in the Cases.

17. In paragraph 5 of the Houlihan Application, the Committee asserts that “Houlihan Lokey’s broad experience would best serve the interests of the Committee” while in paragraph 5 of the CTA Application, the Committee asserts that “. . . CTA’s depth of industry experience with telecommunications companies best serves the interests of the Committee”. Also in paragraph 5 of the CTA Application, the Committee asserts that “[T]he Committee has carefully tailored the scope and compensation of CTA’s retention so that (i) the work performed by CTA will not be duplicative of the work performed by any other professionals retained by the Committee in these cases and (ii) the Debtors’ estates do not incur unnecessary costs as a result of the Committee’s retention of both Houlihan Lokey and CTA”. In paragraph 5 of the Houlihan Application, the Committee asserts “[T]he Committee has carefully tailored the scope and compensation of Houlihan’s retention so that (i) the work performed by Houlihan will not be duplicative of the work performed by any other professionals retained by the Committee in these cases and (ii) the Debtors’ estates do not incur unnecessary costs as a result of the Committee’s retention of both Houlihan Lokey and CTA.” However, other than the express wording of the services to be provided, the Agent does not see that the services are tailored to avoid duplication and further, there is no mechanism for a creditor to specifically review each hourly entry to ensure there is no duplication and unnecessary cost to the estate.

18. As shown by paragraph 9 of the Objection, the CTA Application and Houlihan Application clearly overlap on most of the services to be provided. For example, CTA will “assist and advise the Committee in the preparation and negotiation of any plan of reorganization” and Houlihan will engage in “preparation, analysis and explanation of the Plan to various constituencies”. As reflected in paragraph 9, the Applicants will perform substantially the same services, with the exception that Houlihan will also provide additional services related to testimony, cash collateral issues and claims analysis.

19. While the Committee has the right to select an advisor, this Court retains discretion to disapprove of the proposed applicant based upon the facts and circumstances of the case. *See In re Harold & Williams Dev. Co.*, 977 F.2d 906, 910 (4th Cir. 1992) (“[T]he discretion of the bankruptcy court must be exercised in a way that it believes best serves the objectives of the bankruptcy system. Among the ultimate considerations for the bankruptcy courts in making these decisions must be the protection of the interest of the bankruptcy estate and its creditors, and the efficient, expeditious and economical resolution of the bankruptcy proceeding.”) and *Bank Brussels Lambert v. Coan (In re AroChem Corp.)*, 176 F.3d 610, 621 (2nd Cir. 1999).

20. The fact that the Applicants will be performing nearly identical services and receiving flat monthly fees, is not in the best interest of the estates.

21. Courts further have held that it is within the a court’s discretion to disallow employment of a professional based upon an unreasonable rate of compensation. *See In re Kurtzman*, 200 B.R. 538 (S.D.N.Y. 1998). While the Agent does not object to

either of the Applicants' compensation separately, taken together, the aggregate monthly fee of \$275,000 is unreasonable.

22. If this Court is inclined to allow the retention of both Applicants, then the compensation must be approved on an hourly basis with full detail in quarters of an hour in order to supporting each of the Applicants services so that the Agent, as well as other creditors, may be able to review and object to the duplicate efforts. In furtherance of this type of detailed review, the Applicants should be employed under section 327 of the Bankruptcy Code to allow the creditors the ability to seek disgorgement and disallowance of the fees.

23. Both Applicants seeks to be retained as a professional to the Committee under section 328(a) of the Bankruptcy Code. Section 328(a) states:

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment *if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions. (emphasis added).*

Since each Applicant has a monthly fee, if this Court grants employment under section 328(a), as opposed to section 327(a), then the monthly fees will be deemed allowed unless the standard that the “terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” can be proved. Section 328(a) of the Bankruptcy Code. As reflected in

paragraph 9 of this Objection, it is clear from the face of the CTA Application and Houlihan Application that certain services are duplicative. Therefore applying the Section 328(a) standard, Applicants' flat monthly fees will not be subject to reduction based upon duplication of services or applying the reasonable standard for actual and necessary services that benefited the estate contained in section 330 of the Bankruptcy Code.

24. In *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13 (Bankr. S.D.N.Y. 1991), the Court specifically examined the role and compensation of investment bankers and financial advisors in connection with chapter 11 cases. The Drexel court developed a set of criteria that must be disclosed in an application to enable the court to determine the reasonableness of the applicant's compensation as follows:

- a presentation of the scope and complexity of the assignment, its anticipated duration, expected results, required resources;
- a description of the extent to which highly specialized skills may be needed and the extent to which such professional has them or may be able to obtain them;
- a statement of the professional's projected salary, billing rate and prevailing fees for comparable services;
- a copy of the actual retention agreement between the investment banker or advisor must be attached to the retention application;
- a description by the party retaining the professional of the process by which the financial banker or advisor has been selected; and
- a statement in the application explaining how the investment banker or advisor will eliminate, or at least reduce, the duplication of effort among armies of professionals.

Id., 133 B.R. 13, 26. Although the CTA Application and the Houlihan Application have supporting affidavits and copies of their retention agreement, both Applicants lack a presentation of the scope and duration of the assignment, do not describe the Committee's selection process and do not state CTA's or Houlihan's respective

professionals' projected salary, billing rates and prevailing fees for comparable services in other chapter 11 cases. More importantly, the Applications are devoid of any statement on why the two financial advisors are needed in the context of the Cases. Without this information, the Court should deny the CTA Application and Houlihan Application or in the alternative allow employment of Applicants on modified compensation terms, with tailored and limited services, under section 327(a) of the Bankruptcy Code to allow a reasonableness standard review of the services to be rendered to the Committee.

IV.

WAIVER OF MEMORANDUM OF LAW

25. This Objection includes citations to applicable authorities, and does not raise any novel issues of law. Accordingly, the Agent respectfully requests that this Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

26. No application for the relief requested herein has been presented to this or any other court.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the Agent requests that this Court (i) deny the CTA Application or the Houlihan Application based upon the current terms and conditions, and (ii) grant the Agent such other and further relief as is just and proper.

Dated: New York, New York
July 25, 2003

Respectfully submitted,

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