Hearing Date and Time: July 29, 2003 at 10:00 a.m.

Ira S. Dizengoff (ID-9980)
Philip C. Dublin (PD-4919)
AKIN GUMP STRAUSS HAUER & FELD LLP
590 Madison Avenue
New York, NY 10022
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)

Proposed Counsel to the Official Committee of Unsecured
Creditors of Allegiance Telecom, Inc., et al.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ALLEGIANCE TELECOM, INC., et al.,	:	Case No. 03-13057(RDD)
Debtors.	:	

RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALLEGIANCE TELECOM, INC., ET AL., TO 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

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

The Official Committee of Unsecured Creditors (the "Committee") of Allegiance Telecom, Inc., et al. (collectively, the "Debtors"), by its undersigned proposed counsel, hereby responds (the "Response") to General Electric Capital Corporation's ("GECC") 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

("CTA"), as Industry and Technology Advisor and (II) Houlihan Lokey Howard & Zukin Capital ("Houlihan Lokey"), as Financial Advisor (the "Limited Objection").[1] In support of this Response, the Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. Relying on unsubstantiated, bald assertions of what it perceives to be duplication of effort and above-market compensation structures, GECC, through its Limited Objection, seeks to prevent the Committee – the appointed fiduciary representatives for the unsecured creditor constituency which will bear the burden of every penny spent in connection with these cases – from obtaining the professional assistance it deems necessary to acquit its fiduciary duty to the Debtors' unsecured creditors. GECC, the agent for secured creditors (which are expected to be receive a full recovery on their claims), cannot substitute its judgment for that of the members of the Committee. Such a result would be inequitable and contrary to Congress' intent when it promulgated section 1103 of the Bankruptcy Code authorizing official creditor committees to "select and authorize the employment of one or more attorneys, accountants, or other agents, to represent or perform services for such committee."[2]

2. Here, the Committee, in careful exercise of its judgment after interviewing several firms, concluded that it needed the immediate services of both an investment banking firm with significant capital market experience, and a sophisticated operations firm with a substantial telecommunications background. The entire expense to the Debtors' estates as a result of the Committee's determinations to retain Houlihan Lokey and CTA will be borne by unsecured creditors and that very constituency's fiduciary representative is entitled to the best professional

---

[1] GECC asserts to have filed the Limited Objection for itself and certain other lenders. GECC, however, fails to disclose the identity of such "other lenders."

[2] 11 U.S.C. § 1103(a) (emphasis added).

representation needed to acquit its responsibilities. Thus, the Committee concluded to retain Houlihan Lokey and CTA.

3. The advisory services to be provided by Houlihan Lokey and CTA are discreet and independent from each other and ultimately will be complementary in assisting the Committee in analyzing the Debtors' business operations, financial results and reorganization efforts. Specifically, CTA brings significant telecommunications operating experience and industry knowledge to the analysis of the Debtors' over 850 collocation sites and 1.4 million access lines spread over 36 geographic markets. Houlihan Lokey will provide the Committee with valuation analyses and related financial advisory services to assist the Committee in formulating a solution to the Debtors' insolvency and balance sheet. Together, CTA and Houlihan Lokey will be of paramount importance to the Committee in executing its statutorily mandated and fiduciary duties.

4. In connection with this engagement, Houlihan Lokey and CTA agreed to (i) reduce their customary monthly fees, and (ii) completely forgo any success fee. Despite these concessions, GECC, with no evidence or support, suggests that Houlihan Lokey and CTA (a) seek above-market fees and (b) should not be retained pursuant to section 328(a) of the Bankruptcy Code. These objections are meritless and should be overruled.

BACKGROUND

5. On May 14, 2003 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

6. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On May 28, 2003, the Office of the United States Trustee for the Southern District of New York appointed the Committee pursuant to Bankruptcy Code section 1102.

8. In December 2002, an ad hoc committee (the "Ad Hoc Committee") of certain unaffiliated holders of the 12? % Senior Notes due 2008 and the 11¾ % Senior Discount Notes due 2008 (collectively, the "Notes") issued by Allegiance Telecom, Inc., one of the above captioned Debtors, was formed for the purpose of negotiating a consensual restructuring of certain of the Debtors' debt obligations.[3] The Ad Hoc Committee retained both Houlihan Lokey and CTA to advise it with respect to the financial and business challenges facing the Debtors. At the time of their retention by the Ad Hoc Committee, the fee structures for both Houlihan Lokey and CTA were extensively negotiated among the Ad Hoc Committee, Houlihan Lokey and CTA. In response to the Ad Hoc Committee's concerns about expenses, both advisors agreed to reduce their customary monthly fees and to forgo any success fee in connection with these cases. Upon the formation of the Committee, the Ad Hoc Committee released CTA and Houlihan Lokey and ceased to exist.

9. Both Houlihan Lokey and CTA have been providing services to creditors in these cases since February 2003. During this time, Houlihan Lokey has become familiar with the financial obstacles facing the Debtors' restructuring efforts, and CTA has acquainted itself with the Debtors' operational composition.

10. Between May 28 and June 3, 2003, the Committee interviewed a number of financial advisory and other restructuring consulting firms. During the interview process, the Committee received detailed information with respect to the scope of services to be provided by such professionals and their proposed fee structures. Ultimately, the Committee decided to

[3] LC Capital Master Fund, Ltd., Loeb Partners Corp., and Romulus Holdings were members of the Ad Hoc Committee and are now members of the Committee.

retain both Houlihan Lokey and CTA, based primarily on (i) the complex nature of the issues surrounding these cases, (ii) their familiarity with the Debtors' financial and business operations, respectively and (iii) their agreements to continue to provide professional services to the Committee at the reduced rates previously agreed upon with the Ad Hoc Committee.

11. Pursuant to the fee structure negotiated with the Ad Hoc Committee and, subsequent thereto, the Committee, Houlihan Lokey will be entitled to receive the following compensation:

(a) $150,000 monthly fee; and,

(b) the reimbursement of all reasonable and actual out of pocket expenses.

12. Pursuant to the fee structure negotiated with the Ad Hoc Committee and, subsequent thereto, the Committee, CTA will be entitled to receive the following compensation:

a) $125,000 monthly fee; and

b) the reimbursement of all reasonable and actual out of pocket expenses.

13. On July 11, 2003, the Committee filed the Application of the Official Committee of Unsecured Creditors of Allegiance Telecom, Inc., et al. for an Order Authorizing the Retention of Houlihan Lokey Howard & Zukin Capital, as Financial Advisor, Nunc Pro Tunc to June 3, 2003 (the "Houlihan Lokey Application"). Also on July 11, 2003, the Committee filed the Application of the Official Committee of Unsecured Creditors of Allegiance Telecom, Inc., et al. for an Order Authorizing the Retention of Communication Technology Advisors, LLC, as Industry and Technology Advisor, Nunc Pro Tunc to June 3, 2003 (the "CTA Application" and, together with the Houlihan Lokey Application, the "Applications"). The Applications set forth the proposed terms of Houlihan Lokey's and CTA's engagements by the Committee, and detail the scope of the services to be provided by each firm.

14. Pursuant to the Houlihan Lokey Application, the Committee seeks to retain Houlihan Lokey to perform the following services (each as more detailed herein):

- Evaluate the assets and liabilities of the Debtors;
- Analyze and review the financial and operating statements of the Debtors;
- Analyze the business plans and forecasts of the Debtors;
- Evaluate 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;
- Provide such specific valuation or other financial analyses as the Committee may require in connection with the case;
- Help with the claim resolution process and distributions relating thereto;
- Assess the financial issues and options concerning various transactions involving the Debtors including, but not limited to, the sale of any assets of the Debtors (either in whole or in part) and/or the Debtors' plan(s) of reorganization or any other plan(s) of reorganization (the "Plan");
- Prepare, analyze and explain the Plan to various constituencies;
- Provide testimony in court on behalf of the Committee, if necessary or as reasonably requested by the Committee; and
- Provide such other financial advisory services as Houlihan Lokey, the Committee and/or counsel to the Committee may, from time to time agree in writing and which are consistent with Houlihan Lokey's capabilities.

15. Pursuant to the CTA Application, the Committee seeks to retain CTA to perform the following services (each as more detailed herein):

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

- conduct a detailed review of the Debtors' recent financial performance, business plan, marketing plan, revenue forecasts, capital program, management and competitive environment;

- 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;

- 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;

- provide input and overall evaluation of the Debtors' revised financial plan to be included in the Debtors' plan of reorganization;

- 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

- provide such other advice and assistance as may be reasonably requested by the Committee from time to time.

THE LIMITED OBJECTION

16. The Limited Objection asserts that (i) Houlihan Lokey and CTA's services are duplicative; (ii) the Committee's retention of co-advisors should be made pursuant to sections 327(a)[4] and 330(a) of the Bankruptcy Code as opposed to Bankruptcy Code section 328, and (iii) the fee structure proposed by Houlihan Lokey and CTA is not set at the market rate for such services. Each of these unfounded assertions is without merit and addressed below.

[4] The Committee fails to comprehend the applicability of Bankruptcy Code section 327(a), which governs the retention of professionals by a trustee or debtor in possession, to the Committee's retention of Houlihan Lokey and CTA and will not address such section in connection with this Response.

RESPONSE

I. An Official Committee Has the Right to Retain the Professionals of Its Choosing.

17. A creditors' committee, as the fiduciary representative of unsecured creditors, has the primary duty of advising unsecured creditors of their rights and the proper course of action in the debtor's bankruptcy case. See In re Caldor, Inc., 193 B.R. 165, 169-170 (Bankr. S.D.N.Y. 1996) (citations omitted). In furtherance of that duty, an official creditors committee may, among other things, (a) consult with the debtor in possession concerning case administration; (b) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan; and (c) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan. Id.; see also 11 U.S.C. § 1103.

18. "To that end, an official committee may 'select and authorize the employment ... of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.' Public policy favors permitting parties to retain professionals of their choice." Caldor, 193 B.R. at 170; In re Advisory Committee of Major Funding Corp., 109 F.3 219, 224 (5th Cir. 1997) (holding that a "creditors' committee not only has, with the court's approval, the power to employ attorneys, accountants, and other agents to represent or perform services for the committee, it has the duty to determine what assistance it requires in order to perform its duties, when such assistance is required, and to select those best qualified to render such assistance."); In re Brennan, 187 B.R. 135, 150 (Bankr. D.N.J. 1995) (holding that there is a presumption in favor of party's right to choose the accountant of its choice); see also In re Codesco, Inc., 18

B.R. 997, 99 (Bankr. S.D.N.Y. 1982) (holding that "[o]nly in the rarest cases should the trustee be deprived of the privilege" of selecting its own professional).

19. The retention of more than one non-legal consultant by official creditors' committees is not a unique concept. In fact, CTA has been engaged to act as industry and technology advisor for official creditors' committees in a number of cases where such committees have also retained a financial advisor. See, e.g., In re Focal Communications Corp.; In re Leap Wireless Int'l Inc.; In re Motient Corp.; In re Globix Corp.. Houlihan Lokey has also been engaged as a co-advisor in numerous cases with operation advisors as well as accountants. See, e.g, In re Harnischfeger Indus.; In re Loewen Group Int'l., In re WorldCom, Inc., In re Enron Corp.; In re Farmland Indus., Inc.; In re Pillowtex, Inc.; and In re Conseco, Inc..

20. Here, GECC seeks to limit the Committee's ability to select the professionals the Committee deems necessary to acquit its fiduciary duty on behalf of the Debtors' unsecured creditors. GECC's primary objection to the retention of Houlihan Lokey and CTA is that the services to be provided by these professionals will be duplicative.

21. Contrary to the position taken by GECC in the Limited Objection, the services being performed, and to be performed, by Houlihan Lokey and CTA, respectively, have not, and will not, unnecessarily or materially overlap. The following table provides further detail with respect to the distinct tasks that the Committee has engaged Houlihan Lokey and CTA, respectively, to perform.[5] As set forth below in broad general terms, Houlihan Lokey's primary focus is on financial restructuring, while CTA's primary focus is on operational restructuring, thereby complimenting one another.

[5] Although the following subject headings are consistent with the scope of engagement set forth in the Houlihan Lokey Application and CTA Application, respectively, as well as in Paragraphs 14 and 15 hereof, the subject headings have been re-ordered for comparative purposes.

<u>Houlihan Lokey</u>	**<u>CTA</u>**
<u>(a) Evaluating the assets and liabilities of the Debtors</u>;	**<u>(a) Analyze the Debtors' telecommunications operations, service delivery and technological capabilities, each as it applies to the Debtors' current financial condition and its prospects for the Debtors' future performance</u>;**
• Review and analyze the corporate structure of the Debtors, including (i) assets and liabilities, (ii) operations and potential value of the subsidiaries, and (iii) the flow of funds between Debtors and the corresponding impact on creditor recoveries.	• Evaluate the Debtors' Inter-city, Intra-city, and access networks. Review and provide recommendations on circuit leases, technical facilities, and collocation facilities.
• Track and analyze the Debtors' statements of financial affairs and schedules of assets and liabilities. Providing summaries and analyses of same to the Committee.	• Review the Debtors' current operational and business processes.
• Establish appropriate protocols with the Debtors' advisors regarding noticing the Committee on (i) executory contracts and lease rejections, (ii) executory contracts and lease assumptions, and (iii) settlement negotiations.	• Analyze the Debtors' service delivery methods, evaluating cost implications of each. • Fully understand all reduction in costs and increases in operating efficiencies proposed by debtors.
<u>(b) Analyzing and reviewing the financial and operating statements of the Debtors</u>;	**<u>(b) 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</u>;**
• Analyze the Debtors' financial statements, including, but not limited to, (i) external income statements, cash flow statements and balance sheets, (ii) internal financial reporting packages, (iii) the Debtors' business plan, and (iv) Greenhill & Co.'s modified business plan.	• Provide recommendations on appropriate restructuring initiatives designed to improve the operational performance in the Debtors' individual markets.
• Evaluate the Debtors' 13-week cash flow forecasts, including analyzing trends in cash receipts and cash disbursements. Provide summaries and analyses of same to the Committee.	• Review cost structure and profitability for each product or service offered by the Debtors, and provide recommendations on future financial performance. Evaluate and provide recommendations on Debtors' decisions regarding product rationalization.
• Understand the impact of financial and operating statements on valuation and creditor	• Evaluate current sales channels and provide recommendations for improvement or areas of

recoveries. • Evaluate, understand and explain to the Committee (and to other unsecured creditors on an unrestricted basis) the trends and facts associated with the Debtors' monthly operating reports.	focus. • Analyze critical vendor management processes, including the determination of critical vendors and the timing of payments. • Review accounts payable processes and customer collections processes. • Evaluate interconnect agreements and provide recommendations for network reconfigurations.
<u>(c) Analyzing the business plans and forecasts of the Debtors</u>;	**<u>(c) Conduct a detailed review of the Debtors' recent financial performance, business plan, marketing plan, revenue forecasts, capital program, management and competitive environment</u>;**
• With the operational assistance of CTA, develop alternative business plan scenarios for the purposes of assessing (i) debt capacity, (ii) liquidity needs, and (iii) restructuring alternatives.	• Fully understand the specific capital requirements in each business plan in the context of a return on capital objective, for both success based and growth capital. Provide recommendations on improvements and future needs.
• Understand the impact of business forecasts on valuation and creditor recoveries.	• Evaluate current and projected customer acquisition costs and churn rates, providing recommendations on areas of improvement.
• Evaluate the impact of key restructuring initiatives on the Debtors' estates and recoveries to creditors, including damage claims generated through executory contract rejections.	• Review and fully understand selling, general and administrative expenses, including professional fees, bad debt, billing, and headcount related expenses. Work with the Debtors to identify and implement reduction in cost initiatives.
• With the operational assistance of CTA, review and analyze the economics of the Debtors' business lines.	• Analyze the Debtors' revenue plan and sales team productivity projections and performance to date. • Understand competitive advantages, market penetration rates, market pricing of product suite.
	<u>(d) Provide input and overall evaluation of the Debtors' revised financial plan to be included in the Debtors' plan of reorganization</u>;
	• With the assistance of Houlihan Lokey, evaluate and understand the Debtors' revised financial plan including all key assumptions and drivers. • With the assistance of Houlihan Lokey, develop sensitivity analysis of the Debtors' revised financial plan.

(d) 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;

- Evaluate various options to raise exit financing for the Debtors. Establish efficient protocol with the Debtors' advisors to maximize success and minimize delays in the process.
- Develop lists of potential acquirers of an equity stake in the Debtors. Assess the feasibility and the completeness of any financing process run by the Debtors and/or Greenhill.
- Assess the appropriateness of the 13-week cash flow budget and associated covenants.

(e) Providing such specific valuation or other financial analyses as the Committee may require in connection with the case;

- Develop valuation indications of the Debtors through a variety of approaches, including (i) the market multiple approach, (ii) the discounted cash flow approach, (iii) the transaction multiple approach (if appropriate), and (iv) the liquidation valuation approach.
- Evaluate the Debtors' ability to retain and utilize its significant tax attributes, including its ability to qualify for an (l)(5) exception or an (l)(6) exception. Assess the benefit of any such exception on the Debtors' business plan and long-term cash flow.
- Evaluate the Debtors' key employee retention plan (if one is ultimately proposed), including negotiating on behalf of the Committee with the Debtors. Analyzing the terms of the key employee retention plan vis-à-vis other Chapter 11 bankruptcies.

(e) 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;

- Review and provide recommendations on all capital leases, including dark fiber indefeasible right of use ("IRU") arrangements.
- Review and provide recommendations on the rejection or assumption of all real estate leases. Evaluate the future needs of each facility, current market valuation of leases, and associated costs for exiting leases.
- Evaluate equipment supplier and service contracts, providing recommendations on future needs and an evaluation of current rate structure compared to current market rates.
- Analyze impact on profitability of the Debtors' contract with Genuity.

(f) Provide such other advice and assistance as may be reasonably requested by the Committee from time to time; and

- Develop key metrics report, assessing the Debtors' operational effectiveness.
- Analyze the operational impact of certain acquisitions and/or divestitures.

(f) Helping with the claim resolution process and distributions relating thereto;	
• Develop a recovery model that implies recoveries to the estates' creditors. • Develop an appropriate negotiating framework to expedite the filing of a plan of reorganization by the Debtors. • If required, analyze the financial merits of various legal arguments (e.g., fraudulent conveyance and/or preferential transfers) and the impact on creditors.	
(g) Assessing the financial issues and options concerning various transactions including, but not limited to, (a) the sale of any assets of the Debtors and/or the Company, either in whole or in part, and (b) the Debtors' plan(s) of reorganization or any other plan(s) of reorganization;	**(g) 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.**
• Evaluate the Debtors' long-term financing needs through an analysis of the Debtors' long-term cash flow forecasts and implied debt capacity.	• Evaluate plan of reorganization for operational feasibility.
• Assess alternative plans of reorganization, and the feasibility of such alternative plans of reorganization.	• Provide synergy analysis of potential acquirers, including developing network expense and SGA cost saving forecasts.
• Develop lists of potential acquirers of the Debtors' assets. Assess the feasibility and the completeness of any sales process run by the Debtors and/or Greenhill.	• Develop operational impact assessment of any non-core asset sales.
• Evaluate the sale of any of the Debtors' non-core assets. Establish efficient protocol with the Debtors' advisors to maximize success and minimize delays in the process. • Develop lists of potential acquirers of the Debtors' non-core assets. Assess the feasibility and the completeness of any non-core asset sales process run by the Debtors and/or Greenhill.	
(h) Preparation, analysis and explanations of the plan to various constituencies; and	
• Review the valuation and liquidation analyses developed by the Debtors' advisors. • Evaluate any economic provisions contained	

in the plan.

- Summarize and communicate the material terms of the plan to the Committee and the various parties in interest.

<u>(i) Providing testimony in court on behalf of the Committee, if necessary or as reasonably requested by the Committee</u>.

- Provide expert valuation testimony with respect to plans of reorganization.
- Provide testimony, if necessary, on the various services outlined above.

22. As evidenced by the foregoing, the Committee and its professionals have clearly delineated the professional services to be provided by Houlihan Lokey and CTA to avoid any unnecessary duplication of effort. To further ensure that no unnecessary duplication of effort occurs, Akin Gump Strauss Hauer & Feld LLP, proposed counsel to the Committee, has been involved in coordinating which advisor will evaluate the applicable issues.

23. Clearly, the scope of Houlihan Lokey's and CTA's services, as described in the table above, are distinct and not duplicative, and the Committee will continue to monitor the services provided to avoid any unnecessary duplication of effort. Thus, the Limited Objection should be overruled.

II. Houlihan Lokey and CTA are Properly Compensated <u>Pursuant to Bankruptcy Code Section 328(a)</u>.

24. Section 328(a) of the Bankruptcy Code provides, in pertinent part, that "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 … 1103 of this title … <u>on any reasonable terms and conditions of employment</u>." 11 U.S.C. § 328(a) (emphasis added).

25. Bankruptcy Code Section 328(a) effects a significant departure from prior practice under the former Bankruptcy Act in which professionals were entitled to reasonable

compensation determined on a strictly quantum meruit basis. 3 Collier on Bankruptcy ¶ 328.02 at 328-4 (15th ed. Rev. 1996). The Bankruptcy Act approach, rejected by Congress, has been described as follows:

> As with fees of all other professionals rendering services in [Bankruptcy] Act cases, a concept described as the "spirit of economy" governed the award of trustee fees. This spirit was little more than a euphemism for unyielding and largely unprincipled judicial stinginess. Courts routinely slashed fees in the name of moderation and equity to the debtor and its creditors.

Hon. Randall J. Newsome, Compensation of Professionals, 2 CHAPTER 11 THEORY AND PRACTICE § 12.02 at 12:7-8 (1994).

26. By enacting the Bankruptcy Code, Congress replaced the "spirit of economy" approach with a market-rate approach for the retention of professionals. See 11 U.S.C. § 328(a). The House Report issued in support of the draft Bankruptcy Code specifically notes that the Bankruptcy Code overruled those "cases that require fees to be determined based on notions of conservation of the estate and economy of administration." See H.R. Rep. No. 95-595, at 330 (1977), reprinted in App. C Collier on Bankruptcy App. Pt. 4(d)(I) at App. Pt. 4-1459. The House Report provides as follows:

> If [those cases] were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service.

Id.

27. Similarly, courts have noted that the structure for compensating professionals under the former Bankruptcy Act drove "competent professionals away from bankruptcy." In re

Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 16 (Bankr. S.D.N.Y. 1991).[6] Thus, the relevant inquiry is not based on a before-the-fact assessment of the value of Houlihan Lokey and CTA's services. Rather, the proper inquiry under the Bankruptcy Code is whether the proposed fee structures reflect the market rate for the services that Houlihan Lokey and CTA will provide to the Committee.

28. Investment banking firms and other restructuring advisory firms do not typically charge their in-court or out-of-court clients on an hourly-rate basis, but instead typically charge on a monthly and transaction-fee basis. Thus, to attract well-qualified restructuring professionals to provide services to an official committee in a chapter 11 case, the firm must be provided with some assurance that it will receive compensation that is similar to what its out-of-court clients will pay. Therefore, proper application of section 328(a) in respect of the retention of restructuring professionals for an official creditors' committee promotes the Bankruptcy Code's policy of compensating professionals retained in bankruptcy cases on terms similar to those for which they are customarily retained in out-of-court matters. See, e.g., In re Cenargo Int'l, PLC, 294 B.R. 571, 596 (Bankr. S.D.N.Y. 2003).

29. In the instant case, the Committee, Houlihan Lokey and CTA analyzed the size and complexity of these cases and the work to be performed to agree upon fee structures that

[6] As noted by GECC in its Limited Objection, in Drexel, this Court adopted the criteria that must be disclosed to enable a court to determine the reasonableness of the compensation package proposed for financial and other advisory professionals to be retained in connection with chapter 11 cases. The Committee respectfully submits that it has satisfied each of these "Drexel Factors." Specifically, the Applications and this Response include: (i) a detailed description of the scope and complexity of Houlihan Lokey and CTA's engagement (See, Houlihan Lokey Application ¶ 7, CTA Application ¶ 7, Response ¶ 21); (ii) a description of the qualifications of both Houlihan Lokey and CTA (See, Houlihan Lokey Application ¶ 6, CTA Application ¶ 6); (iii) a statement of the fees requested by each of Houlihan Lokey and CTA, and the prevailing market rates for similar engagements (See, Houlihan Lokey Application ¶ 9, CTA Application ¶ 9, Response ¶ 30, Exhibits A, B and C); (iv) a copy of the engagement letters executed between the Committee and each of Houlihan Lokey and CTA (See, Houlihan Lokey Application - Exhibit A, CTA Application - Exhibit A); (v) a description of the process by which the Committee engaged both Houlihan Lokey and CTA (See, Response ¶ 10); and (vi) an explanation of how the efforts of Houlihan Lokey and CTA are not duplicative (See, Houlihan Lokey Application ¶ 5, CTA Application ¶ 5, Response ¶ 21).

would adequately compensate both Houlihan Lokey and CTA for their services and prevent an undue economic strain on these estates.

30. The compensation structures for Houlihan Lokey and CTA are not only consistent with the fees typically charged by Houlihan Lokey and CTA for advisory services to official creditors' committees in complex chapter 11 cases but, are in fact, far lower than the customary rates charged for similar restructuring engagements. These lower than normal fees reflect the arrangement deemed appropriate by the Committee, and agreed to by Houlihan Lokey and CTA, in light of the Committee's retention of co-advisors.

31. Houlihan Lokey and CTA will comply with this Court's applicable administrative orders, the Local Rules of this District and the Federal Rules of Bankruptcy Procedure, filing monthly fee statements and interim and final fee applications. Moreover, both Houlihan Lokey and CTA will maintain daily time records containing descriptions of the work performed by each of its professionals broken-down in half an hour increments. While the recordation of actual hours worked in such fee statements is not directly relevant to the flat monthly fee to be paid under the terms of either Houlihan Lokey or CTA's retention, the statements of hours will serve as an additional check on the services actually being rendered by Houlihan Lokey and CTA. As the representative of parties with primary pecuniary interest in both Houlihan Lokey and CTA's services and the expense of such services, the Committee will be monitoring these statements on a monthly basis.

CONCLUSION

For all the foregoing reasons, the Committee respectfully requests that this Court (i) overrule the Objection in its entirety, (ii) approve the retention and employment of Houlihan Lokey and CTA as advisors to the Committee pursuant to sections 328(a) and 1103(a) of the Bankruptcy Code, nunc pro tunc to June 3, 2003, and (iii) grant the Committee such other and further relief as the Court deems just, proper and equitable.

Dated: New York, New York
July 28, 2003

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Ira S. Dizengoff________________________

Ira S. Dizengoff (ID-9980)
Philip C. Dublin (PD-4919)
590 Madison Avenue
New York, New York 10022
(212) 872-1000

Proposed Counsel to the Official Committee
of Unsecured Creditors of Allegiance Telecom, Inc., et al.