Objection Deadline: August 15, 2003
Hearing Date: August 19, 2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

(A) MOTION OF COMMERCE SQUARE PARTNERS ~ PHILADELPHIA PLAZA, L.P., PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE FOR AN ORDER REQUIRING IMMEDIATE ASSUMPTION OR REJECTION OF LEASE AND (B) REQUEST FOR IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO SECTION 503(a) OF THE BANKRUPTCY CODE

Commerce Square Partners~Philadelphia Plaza, L.P., ("Commerce") (formerly known as "Maguire/Thomas Partners~Philadelphia Plaza Associates"), a creditor and landlord of one of the above-captioned debtors and debtors-in-possession, Shared Technologies Allegiance, Inc. (the "Debtor"), by and through its undersigned counsel hereby requests that this Court enter an order directing the Debtor to immediately (a) assume or reject that certain lease of non-residential real property between Commerce and the Debtor (the "Lease") and (b) pay, as an administrative expense of the Debtor's estate, all post-petition amounts owed to Commerce under the Lease; and in support hereof, respectfully represents as follows:

Background

1. On May 14, 2003, (the "Petition Date") the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. Since the Petition Date, the Debtor has continued to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(a) and (b).

4. On July 1, 1987, Commerce and Realcom Communications Corporation ("Realcom") entered into a lease agreement as amended of certain property located at One Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103 (the "Premises"). The lease agreement was subsequently amended three (3) times. A true and correct copy of the lease and the subsequent amendments (collectively the "Lease") is attached hereto as Exhibit "A."[1]

5. On July 16, 2002, pursuant to an Assumption and Assignment of the Lease ("Assignment"), Realcom assigned the Lease to the Debtor. A true and correct copy of the Assignment is attached hereto as Exhibit "B."[2]

6. Pursuant to the Lease, the Debtor has the obligation to, inter alia, pay base rent and additional rent (collectively referred to as "Rent") for the Premises. The Debtor is obligated to pay Rent on the first day of each calendar month during the term of the Lease.

7. During the Chapter 11 case, the Debtor has failed to pay Commerce the Rent as required under the Lease. Commerce has not received post-petition Rent from the Debtor for June, July and August 2003. As of the date of this Motion, post-petition obligations totaling $29,252.31 plus interest have been incurred by the Debtor. The arrearage is comprised of $16,747.50 of base rent and $12,504.81 of additional rents, including certain operating expenses

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[1] A copy of the Lease is attached only to the copies filed with the Court and served on Kirkland & Ellis, the United States Trustee and Counsel for the Official Committee of Unsecured Creditors. A copy of the Lease will be provided to parties in interest upon request.

[2] A copy of the Assignment is attached only to the copies filed with the Court and served on Kirkland & Ellis, the United States Trustee and Counsel for the Official Committee of Unsecured Creditors. A copy of the Assignment will be provided to parties in interest upon request.

and real estate taxes. Moreover, with each day that passes, the Debtor's overall financial obligations to Commerce increase.

8. On June 19, 2003, the Debtors filed a motion for an order pursuant to Section 365(d)(4) of the Bankruptcy Code extending the time within which to assume or reject unexpired leases of non-residential property. The Lease was one of the unexpired leases for which the Debtors requested an extension.

9. On July 2, 2003, the Court granted the Debtors' motion extending the time in which the Debtors may assume or reject the unexpired leases to January 14, 2004. However, the Order provides that it is entered without prejudice to any lessor of an unexpired lease to move the Court for an earlier date by which the Debtors must assume or reject an unexpired lease in accordance with 365 (d)(4) of the Bankruptcy Code.

Relief Requested

10. By the Motion, Commerce seeks entry of an order directing the Debtor to immediately (a) assume or reject the Lease and (b) pay, as an administrative expense of the Debtor's estate, all post-petition amounts owed to Commerce under the Lease.

Assumption or Rejection of Lease

11. Pursuant to Section 365(d)(4) of the Bankruptcy Code, a trustee or debtor may assume or reject an unexpired lease of non-residential real property at any time within sixty (60) days after the filing of a petition (the "365(d)(4) Period"). 11 U.S.C. § 365(d)(4). If a trustee or debtor does not assume or reject the unexpired lease, or move for cause within such sixty (60) days, for an extension of the 365(d)(4) Period any such unexpired lease of non-residential real property will be deemed rejected. Id.

12. Upon the request of any party to a lease of non-residential real property the Court may order a trustee or debtor to determine within a specified period of time whether to assume or reject any unexpired lease.

13. Once a party in interest to a contract or lease moves to compel assumption or rejection of a lease, the time within which the debtor has to decide whether to assume or reject the contract or lease is left to the discretion of the Court. E.g. In re Teligent, Inc., 268 B.R. 723, 738 (Bankr. S.D.N.Y. 2001); In re Monroe Well Services, Inc., 83 B.R. 317, 323 (Bankr. E.D.Pa. 1988); In re Dunne's Casino Hotel, 63 B.R. 939, 949 (D.N.J. 1986).

14. Commerce submits the Debtor should be required to assume or reject the Lease at this time.

Payment of Post-Petition Obligations

15. Section 365(d)(3) of the Bankruptcy Code provides in relevant part:

> The trustee shall timely perform all the obligations of the debtor, except those specified in 365(b)(2), arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding Section 503(b)(1) of this title . . .

11 U.S.C. §365(a)(3).

16. Section 365(d)(3) gives a landlord the right to make a claim for post-petition rent without meeting the requirements of Section 503(b)(1) of the Bankruptcy Code. "Thus, unlike other administrative expense claims, these claims are allowed in the full amount of rent or other charges due under the lease without a showing by the landlord that amounts owed are reasonable or of a benefit to the estate." In re Microvideo Learning Sys. Inc., 227 B.R. 602, 604 (Bankr. S.D.N.Y. 2000). Accordingly, Section 365(d)(3) requires that a debtor in possession or trustee timely perform all obligations under a lease, including, without limitation rent accruing between the petition date and the lease rejection date on a timely basis. 11 U.S.C. 365(d)(3).

17. A landlord's administrative expense claim is to be measured at the reasonable value of the leased premises, which is presumed to be the amount, stipulated in the lease. See, e.g., In re Dant and Russell Inc. (Burlington Northern R&R Co. v. Dant and Russell Inc.), 853 F.2d 700-707 (9th Cir. 1988); Farber v. Wards Co., 825 F.2d 684, 689-690 (2d Cir. 1987).

18. As set forth herein the Debtor has not performed the Debtor's obligations under the Lease post-petition. As of the date of this Motion, the Debtor owed $29,252.31 post-petition plus interest to Commerce.

19. The Debtor should be ordered to pay Commerce the post-petition amounts currently owed under the Lease, including, but not limited to rent, electricity, late charges and attorneys fees as administrative expense of a Debtor's bankruptcy estate immediately and going forward on a current basis. As one court has noted, "[t]o hold otherwise would be to permit the entity to victimize those who attempt to fulfill the purpose of rehabilitation by doing business with the Chapter 11 Debtor." Fonderehe v. Flint Hills Foods, Inc. (In re Isis Food, Inc.), 27 B.R. 156, 158 (W.D. Mo. 1982); see also In re Photopromotions Associates Inc., 881 F.2d 6, 9 (2d Cir. 1989).

20. The Debtor should also be required to perform all of its obligations under the Lease until such time as this Court enters an Order approving the Debtor's rejection, assumption, or assumption and assignment of the Lease.

Waiver of Memorandum of Law

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

Prior Request

22. No prior motion for the relief requested herein has been made to this or any other Court.

Notice

23. A complete copy of this Motion and proposed Order has been served by hand delivery, facsimile, or overnight mail on (a) counsel to the Debtor, (b) the United States Trustee, and (c) counsel to the Creditors' Committee. Commerce submits that no other or further notice is required.

WHEREFORE, Commerce respectfully requests that this Court enter an order: (a) compelling the Debtor to assume or reject the Lease immediately, (b) ordering the Debtor to pay $29,252.31, plus all post-petition interest accrued on such rents immediately, (c) ordering the Debtor to timely pay all other post-petition rental obligations as they come due (d) ordering the Debtors to pay all attorneys fees incurred in connection with this Motion; and (e) granting such further and other relief as is just.

Dated: August 4, 2003

/s/ Perry K. DeLay

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