

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)

Attorneys for Debtors and Debtors in Possession

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

MOTION PURSUANT TO BANKRUPTCY RULE 9006(b)
FOR ORDER EXTENDING THE DEBTORS' TIME TO
FILE NOTICES OF REMOVAL OF RELATED PROCEEDINGS

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 Bankruptcy Code (the "Bankruptcy Code"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 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.

Background

3. 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 their 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.

4. 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 were covered by collective bargaining agreements.

5. 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 and net losses of approximately \$120.084 million.

Jurisdiction

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

Removal

7. Section 1452 of title 28, United States Code provides for the removal of actions related to bankruptcy cases. Specifically, section 1452 provides in pertinent part:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise. . . .

28 U.S.C. § 1452.

8. Bankruptcy Rule 9027 sets forth the time periods for the filing of notices to remove claims or causes of action. Specifically, Bankruptcy Rule 9027 provides in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

9. The time within which the Debtors must file motions to remove any pending civil actions currently is set to expire on August 12, 2003.

10. By this Motion, the Debtors respectfully request issuance of an order, pursuant to Bankruptcy Rule 9006(b), extending the Debtors' time under Bankruptcy Rule 9027(a) to file notices of removal of civil actions and proceedings to which the Debtors are parties (the "Civil Actions") until the date an order is entered confirming a chapter 11 plan in the Debtors' chapter 11 cases.

11. Bankruptcy Rule 9006 permits the court to extend the period to remove actions provided by Bankruptcy Rule 9027. Specifically, Bankruptcy Rule 9006 provides in pertinent part:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

12. It is well-settled this Court is authorized to enlarge the removal period provided under 28 U.S.C. § 1452 and Bankruptcy Rule 9027. See Pacor, Inc. v. Higgins, 743 F.2d 984, 996 n.17 (3d Cir. 1984), overruled on other grounds by Things Remembered, Inc. v. Petrarca,

516 U.S. 124, 134-35, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995) (holding the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is "clear"); Caperton v. A.T. Massey Coal Co., Inc., 251 B.R. 322, 325 (S.D.W. Va. 2000); (Bankruptcy Rule 9006 provides authority to enlarge time periods for removing actions under Bankruptcy Rule 9027); In re Jandous Elec. Constr. Corp., 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (period in which to file motion to remove may be expanded pursuant to Bankruptcy Rule 9006); In re World Fin. Servs. Ctr., Inc., 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)); Raff v. Gordon, 58 B.R. 988, 990 (E.D. Pa. 1986) (an expansion of time to file notices of removal is authorized under the Bankruptcy Rules).

Cause Exists to Extend Removal Period

13. As stated above, the time within which the Debtors must file motions to remove the Civil Actions currently is set to expire on August 12, 2003. The Debtors are continuing to review their files and records to determine whether they should remove any claims or civil causes of action pending in state or federal court to which they might be a party. Because the Debtors are parties to approximately 83 lawsuits, and because the Debtors' key personnel and legal department are assessing these lawsuits while being actively involved in the Debtors' reorganization, the Debtors require additional time to consider filing notices of removal in the Civil Actions.

14. The Debtors believe the proposed time extension will provide sufficient additional time to allow them to consider, and make decisions concerning, the removal of the Civil Actions. Unless such enlargement is granted, the Debtors believe they will not have sufficient time to

consider the removal of the Civil Actions. Accordingly, the Debtors submit cause exists for the relief requested herein.

Waiver of Memorandum of Law

15. 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

16. Notice of this Motion has been provided to (i) the U.S. Trustee, (ii) attorneys for the Debtors' prepetition secured lenders, (iii) attorneys for the Creditors' Committee, (iv) the plaintiffs and defendants to the Civil Actions and (v) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

No Prior Request

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

WHEREFORE the Debtors respectfully request entry of an order (i) granting the relief requested herein and (ii) granting such other or further relief as is just and proper.

Dated: New York, New York
August 5, 2003

Respectfully submitted,

/s/ Matthew A. Cantor
Matthew A. Cantor (MC-7727)
Jonathan S. Henes (JH-1979)
KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Debtors and Debtors in Possession