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Hearing Date: August 19, 2003 at 10:00 a.m.
Objection Deadline: August 14, 2003 at 4:00 p.m.

Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
_____	X	

**MOTION FOR AN ORDER, PURSUANT TO SECTION 365(a)
OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO
REJECT THE MASTER CARRIER AGREEMENT WITH AT&T CORPORATION**

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 were 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 and net losses of approximately \$120.084 million.

Agreement with AT&T Corporation

7. Allegiance Telecom Company Worldwide ("ATCW"), one of the Debtors in these chapter 11 cases, is a party to that certain AT&T Master Carrier Agreement, dated as of October 7, 2002 (the "Agreement"), by and between ATCW and AT&T Corporation ("AT&T").¹ ATCW entered into the Agreement in connection with the resolution of a certain dispute between AT&T and the Debtors (the "Dispute"). The Dispute arose because AT&T had challenged the Debtors' tariffed switched access rates (the "Tariffed Rates") for switched access telecommunications services.

¹ On August 6, 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 Under Seal the Agreement with AT&T Corporation and the Summary of Pertinent Terms Thereof 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 Master Carrier Agreement with AT&T Corporation (the "Under Seal Order"). Pursuant to the Under Seal Order, the Debtors are authorized to file (and have filed) with this Court a (a) complete copy of the Agreement and (b) summary of pertinent terms of the Agreement (the "Summary"), under seal due to certain confidential commercial information contained therein. Contemporaneously with the filing of this Motion, the Agreement and the Summary have been provided to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Debtors' prepetition lenders (the "Prepetition Lenders"), subject to strict confidentiality and their agreement that the Agreement, the terms thereof and the Summary shall not be shared or discussed in any way whatsoever with any other party. The Summary has been also provided to AT&T and/or attorneys for AT&T.

8. As a result, despite the Debtors continuing to provide switched access telecommunications services to AT&T, AT&T withheld certain payments for outstanding interstate and intrastate access charges. In March 2000, Allegiance Telecom, Inc. filed a lawsuit (the “Action”) against AT&T in the District Court for the District of Columbia requesting that AT&T pay the Debtors for outstanding interstate and intrastate access charges. As noted above, ATCW and AT&T entered into the Agreement in connection with the resolution of the Dispute and the Action.²

9. Pursuant to the Agreement, ATCW has agreed to purchase certain long-distance telecommunications services from AT&T at prices that are presently higher than prevailing market rates. Under the Agreement, the Debtors are obligated to purchase a certain minimum annual amount of long distance (toll and toll free) telecommunications services, which the Debtors resell to their end-user customers, and AT&T is obligated to provide such services to the Debtors.³ The Debtors have entered into a new agreement with another telecommunications provider to purchase telecommunications services similar to those provided by AT&T *at prevailing market rates and without any minimum annual revenue commitment*. As part of establishing the new service arrangement, the Debtors will need at least ninety (90) days to reroute their traffic to the new telecommunications provider.

Relief Requested

10. 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

² In connection with the resolution of the Dispute, the Debtors also entered into that certain Settlement and Switched Access Service Agreement, dated as of July 1, 2002 (the “Settlement Agreement”), by and between Allegiance Telecom, Inc. and each of its direct and indirect subsidiaries and AT&T, on behalf of itself and each of its subsidiaries. Contemporaneously with the filing of this Motion, the Debtors filed a motion for an order, pursuant to section 365(a) of the Bankruptcy Code, authorizing the Debtors to reject the Settlement Agreement.

the Agreement as of the earlier of (a) ninety (90) days from the entry of an order authorizing and approving the rejection of the Agreement and (b) the date on which the Debtors provide AT&T with written notice that the rerouting of the Debtors' traffic has been completed and the Debtors no longer need AT&T's services, which date shall be no later than October 31, 2003.

Basis for Relief

11. 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).

12. Upon finding that a debtor has exercised its sound business judgment in determining that rejection of an agreement is in the best interests of the debtor, its creditors, and all parties in interest, a court should approve the rejection thereof 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).

³ The term of the agreement and the detailed description of services purchased by the Debtors are provided in the Summary. See footnote 1. To the extent that there are inconsistencies between the Summary and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

13. In an effort to maximize the value of their estates, the Debtors have determined, in their sound business judgment, that the Agreement is burdensome to their estates, and, therefore should be rejected. In that regard, the rates charged under the Agreement are substantially higher than the prevailing market rates and the Debtors' new service arrangement with an alternative telecommunications provider will enable the Debtors to realize substantial monthly savings.⁴ In addition, because the rates under the Agreement are above market, the Debtors are at a disadvantage vis-à-vis their competitors in their attempts to resell the services. Once the new service arrangement is implemented, the Debtors will be able to (a) meet new and existing competitive offers in the market, thereby increasing the Debtors' revenue, and (b) improve their profit margins on existing service offerings. Accordingly, the rejection of the Agreement (with the attendant reduction of the rates paid by the Debtors under the Agreement to the prevailing market rates) will provide a direct and immediate economic benefit to the Debtors' estates.⁵ Thus, approval of the relief requested herein is in the best interests of the Debtors, their estates and creditors and should be granted.

Waiver of Memorandum of Law

14. 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.

⁴ The information about the rates charged under the Agreement and the market rates is provided in the Summary. See footnote 1.

⁵ The specific amount of the economic benefit to be realized by the Debtors from the rejection of the Agreement is provided in the Summary. See footnote 1.

Notice

15. This Notice has been provided to (a) the U.S. Trustee; (b) attorneys for AT&T; (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.

No Prior Request

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

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

Dated: New York, New York
August 6, 2003

Respectfully submitted,

/s/ Matthew A. Cantor

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EXHIBIT A

AT&T Master Carrier Agreement, dated as of October 7, 2002

(filed under seal)

EXHIBIT B

Summary of the pertinent terms of the that certain
AT&T Master Carrier Agreement, dated as of October 7, 2002

(filed under seal)