

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

**ORDER DEEMING UTILITIES ADEQUATELY ASSURED OF
FUTURE PERFORMANCE AND ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “Motion”), dated May 14, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order (a) prohibiting the Utility Companies¹ from altering, refusing or discontinuing any Utility Services, or discriminating against the Debtors, (b) until further order of this Court or an agreement between any Utility Company and Debtors, deeming the Utility Companies adequately assured of future payment within the meaning of section 366 of the Bankruptcy Code by their entitlement to an administrative expense claim and (c) establishing a procedure for determining requests by Utility Companies for additional assurances of future payment beyond those set forth in the Motion; and it appearing that the Debtors’ proposed method of furnishing the Utility Companies with adequate assurance of payment of postpetition Utility Services satisfies the requirements of section 366(b) of the Bankruptcy Code; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and it appearing that due and proper

¹ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion.

notice of this Motion has been given under the circumstances; and after due deliberation and cause appearing therefor; it is

ORDERED that, the Motion is granted; and it is further

ORDERED that, absent any further order of this Court, all Utility Companies that provide Utility Services to the Debtors, including, but not limited to, those listed on Exhibit "A" annexed to the Motion, may not alter, refuse or discontinue service to, or discriminate against, the Debtors, including any Utility Companies that sent a notice of disconnection to the Debtors prior to the Commencement Date; and it is further

ORDERED that, the Debtors shall pay on a timely basis, in accordance with prepetition practices, all undisputed invoices with respect to postpetition Utility Services rendered by such Utility Companies; and it is further

ORDERED that, under section 503(b)(1)(A) of the Bankruptcy Code, any valid unpaid utility charges that accrue postpetition constitute actual and necessary expenses of preserving the Debtors' estates, entitling the Utility Company to which those utility charges are owed to an administrative expense priority claim under section 507(a)(1) of the Bankruptcy Code; and it is further

ORDERED that, with respect to any Utility Company that may have inadvertently been omitted from Exhibit "A" to the Motion, the Debtors retain the right to amend and/or supplement Exhibit "A" to the Motion to include such omitted Utility Company without further order of the Court; and it is further

ORDERED that the Debtors shall serve this Order on (a) each of the Utility Companies listed on Exhibit "A" to the Motion by first-class mail within five (5) business days of entry of this Order and (b) each of the Utility Companies listed on any subsequently filed

supplement to Exhibit “A” to the Motion by first-class mail within five (5) business days from the date of filing such supplement; and it is further

ORDERED that, this Order is without prejudice to the rights of any Utility Company to request in writing within twenty-five (25) days of the date hereof additional assurances in the form of deposits or other security (the “Additional Assurances Request”); and it is further

ORDERED that any Utility Company that does not timely request additional assurance shall be prohibited from altering, refusing or discontinuing service to, or discriminating against, the Debtors and shall be deemed to have been granted adequate assurance under section 366 of the Bankruptcy Code; and it is further

ORDERED that, if a Utility Company makes a timely Additional Assurances Request that the Debtors believe is reasonable, the Debtors are authorized to comply with such Additional Assurances Request without a further order of the Court; and it is further

ORDERED that, if a Utility Company makes a timely Additional Assurances Request that the Debtors believe is unreasonable, the Debtors shall file a motion for determination of adequate assurance of payment and set such motion for a hearing (the “Determination Hearing”), provided, however, in the event the Debtors do not file such a motion for a Determination Hearing within fifteen (15) business days from the date of receipt of a timely Additional Assurances Request by a Utility Company, and the Debtors have not agreed to provide such Utilities Company with additional adequate assurance above that which is provided by this order, then such Utility Company may file such a motion for a Determination Hearing; and it is further

ORDERED that each Utility Company that makes a timely Additional Assurances Request, shall be deemed to have adequate assurance of payment pursuant to this Order unless or until this Court enters a final order to the contrary in connection with the Determination Hearing or otherwise with respect to that Utility Company's Additional Assurances Request; and it is further

ORDERED that, pending the outcome of any such Determination Hearing and any further order related thereto, the requesting Utility Company shall be prohibited from (a) altering, refusing or discontinuing service to, or discriminating against, the Debtors due to unpaid charges for prepetition services or (b) demanding adequate assurance; and it is further

ORDERED that the Debtors and the Utility Companies that are both creditors to, and debtors of, the Debtors, shall negotiate in good faith to establish procedures for the mutual setoff of payments for prepetition services (the "Prepetition Procedures") and for the mutual setoff of payments for postpetition services (the "Postpetition Procedures"); provided, however, the relief requested in the order shall not be deemed to grant any Utility Company the right to setoff postpetition amounts owing to the Debtors against prepetition amounts such Utility Company is owed by the Debtors or to eliminate the requirement of mutuality in order to assert a right of setoff; provided, further, however, that, to the extent the Debtors and a Utility Company are unable to agree upon either the Prepetition Procedures or the Postpetition Procedures, the Debtors or such Utility Company may seek further relief from this Court to resolve such dispute; and it is further

ORDERED that nothing herein shall prejudice the Debtors' right to assert that an entity is not a Utility Company as contemplated in the Motion and in section 366 of the Bankruptcy Code; and it is further

ORDERED that, nothing in this Order nor any action taken by the Debtors in furtherance of the implementation thereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that, the Debtors are authorized to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: New York, New York
May 15, 2003

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE