

Presentment Date and Time: October 10, 2003 at 12:00 p.m.  
Objection Deadline: October 10, 2003 at 11:30 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

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**STIPULATION AND AGREED ORDER RESOLVING MOTION OF  
BP COMMERCE, LLC FOR RELIEF FROM AUTOMATIC STAY  
TO EXERCISE SETOFF RIGHTS AGAINST SECURITY  
DEPOSIT AND TO COMPEL PAYMENT OF POST-PETITION RENT**

This Stipulation and Agreed Order is entered into by and between Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession in the above captioned cases (the "Debtors") and BP Commerce, LLC ("BP Commerce").

WHEREAS, on May 14, 2003 (the "Commencement Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and commenced cases under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, prior to the Commencement Date, on or about June 22, 2000, Intermedia Communications, Inc. ("Intermedia") entered into a written lease agreement (the "Lease") with CC II Realty, Inc. (the original landlord) with respect to the premises located at 7601 Ora Glen Drive, Greenbelt, Maryland (the "Property"); and

WHEREAS, the Lease was assigned (the "Assignment") to the Debtors pursuant to an assignment agreement dated December 20, 2001, by Intermedia, as assignor, and ALGX Business Internet, Inc. ("ALGX"), as assignee; and

WHEREAS, at the time of the Assignment, Allegiance Telecom, Inc. executed a guarantee of all obligations of ALGX under the Lease; and

WHEREAS, pursuant to the terms of the Lease, BP Commerce holds a cash security deposit (the "Security Deposit") posted by the Debtors which was originally in the amount of \$1,158,000.10, but is currently in the amount of \$722,046.79 as a result of monthly draws against it, which were made pursuant to an agreement of the parties; and

WHEREAS, by motion filed with this Court on June 9, 2003, the Debtor sought to reject the Lease pursuant to section 365 of the Bankruptcy Code and to establish the effective date of rejection as the date upon which the Debtors provided BP Commerce notice that they had surrendered the Property, but, in any event, by no later than June 30, 2003; and

WHEREAS, on June 25, 2003, BP Commerce filed the Motion for Relief from Automatic Stay to Exercise Setoff Rights Against Security Deposit and to Compel Payment of Post-Petition Rent.

Now, therefore, it is hereby stipulated and agreed that:

1. The automatic stay arising pursuant to section 362 of the Bankruptcy Code shall be modified for the sole purpose of permitting BP Commerce to exercise its setoff rights against the Security Deposit.

2. Other than set forth in paragraph 1 hereof, all protections afforded by section 362 of the Bankruptcy Code shall remain in full force and effect.

3. Neither this Stipulation, nor any actions taken pursuant hereto, shall constitute evidence admissible against the parties in any action or proceeding other than one to enforce the terms of this Stipulation.

4. Within twenty days from the entry of the order approving this Stipulation, BP Commerce will pay the amount of \$15,000 to the Debtors from the Security Deposit.

5. BP Commerce will retain the remainder of the Security Deposit in complete and total satisfaction of its claims against the Debtors.

6. BP Commerce will withdraw all proofs of claim that it has previously filed in the Debtors' chapter 11 cases.

7. BP Commerce will release any and all claims it has or may have against the Debtors, their present and former parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, principals, officers, directors, employees, agents and attorneys, and their respective representatives, heirs, executors, personal representatives, administrators and assigns, and any and all persons, natural or corporate, in privity with them or acting in concert with them and the Debtors' estates, except to the extent of the Security Deposit.<sup>1</sup>

8. The parties hereto agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the parties. This Stipulation constitutes the entire agreement and understanding between the parties, is the final expression of that agreement, and supersedes all previous or contemporaneous oral or written representations, understandings or agreements. This Stipulation shall not be amended or

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<sup>1</sup> The release granted herein shall in no way impair the claim of BP Commerce against Worldcom, Inc. which executed a guarantee of Intermedia's obligations under the Lease prior to the Assignment to ALGX.

supplemented except by a writing executed by the parties hereto or their authorized representatives.

9. The Bankruptcy Court shall retain jurisdiction to interpret, enforce, and resolve any disputes arising under or related to this Stipulation.

10. Any motion or application brought before the Bankruptcy Court to resolve any dispute arising under or related to this Stipulation shall be brought on proper notice in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

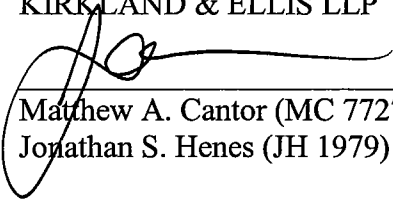
11. Each person who executes this Stipulation by or on behalf of each respective party warrants and represents that he has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such party.

12. This Court shall retain jurisdiction with respect to the interpretation and implementation of this Stipulation.

Dated: September \_\_, 2003

KIRKLAND & ELLIS LLP

By:

  
Matthew A. Cantor (MC 7727)  
Jonathan S. Henes (JH 1979)

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Baltimore, Maryland 21202  
Telephone: (410) 347-8700

Counsel to BP Commerce, Inc.

SO ORDERED

\_\_\_\_\_  
HON. ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

Dated: \_\_\_\_\_, 2003  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

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