

Hearing Date: November 19, 2003
Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**AFFIDAVIT OF DAWN LANDRY IN RESPONSE TO DEBTOR'S
OPPOSITION TO, AND IN FURTHER SUPPORT OF,
MOTION OF DALEEN SOLUTIONS, INC.
FOR RELIEF FROM THE AUTOMATIC STAY UNDER
SECTION 362 OF THE BANKRUPTCY CODE**

STATE OF TEXAS)
) ss.:
COUNTY OF FORT BEND)

DAWN LANDRY, being duly sworn, deposes and says:

1. I am a Vice President and General Counsel of Daleen Solutions, Inc. ("Daleen") and, as such, I am familiar with the facts set forth herein. I submit this affidavit in support of the motion (the "Motion") dated November 18, 2002 for relief from the automatic stay to allow Daleen to exercise its right not to renew the Billing Agreement (as hereinafter defined) and in response to the objection ("Objection") to the Motion filed by Allegiance Telecom Company Worldwide (the "Debtor").

2. On or about June 1, 2001, the Debtor and Abiliti Solutions, Inc. ("Abiliti") entered into a Master Agreement (the "Master Agreement"), pursuant to which, among other things, Abiliti granted to the Debtor a non-exclusive, non-transferable license to use communications

software known as NetworkStrategies and Event Processing that provides billing and information management functions. The Master Agreement was assigned by Abiliti to Daleen on December 20, 2002. A copy of the Master Agreement, with Schedules, was annexed to the Motion as Exhibit A.

3. Schedule B-2 to the Master Agreement is a BillingCentral Renewal Agreement (the "Billing Agreement") pursuant to which Daleen provides billing services to the Debtor, all as more specifically set forth in the Billing Agreement.¹

4. Paragraph 1.1 of the Billing Agreement provides that the initial term of the Billing Agreement shall be for a period from the "Effective Date" of May 1, 2001 to December 31, 2003 (i.e., over a two and a half year period), to be automatically renewed for successive twelve (12) month periods "unless either party gives written notice to the other at least sixty (60) days prior to the end of the then current Term of its election not to renew this [Billing] Agreement."

5. On October 30, 2003, Daleen exercised its right not to renew the Billing Agreement by sending written notice (the "Notice of Non-Renewal") to the Debtor in accordance with Paragraph 1.1 of the Billing Agreement. A copy of the Notice of Non-Renewal was annexed to the Motion as Exhibit B.

¹ The Debtor correctly states that it made payments to Daleen on its pre-petition claim pursuant to this Court's Critical Vendor Order, but such payments constituted approximately 65%, not 87%, of Daleen's pre-petition claim. Moreover, while not relevant to Daleen's decision to send the Notice of Non-Renewal, it should be noted that the Debtor has defaulted under the Billing Agreement since the Petition Date, notwithstanding the Debtor's statement to the contrary in its Objection. [See Objection, ¶4, at 2.] Specifically, the Debtor has withheld a portion of payments due since the Petition Date totaling approximately \$32,000, not counting approximately \$525,000 that will be due on December 4, 2003.

6. Immediately subsequent to the filing of this Motion, on October 31, 2003, Daleen sent a second notice of non-renewal to the Debtor, a copy of which is annexed hereto as Exhibit A, along with the fax confirmation sheet showing a successful transmittal on October 31, 2003.

7. It was only after significant deliberation that Daleen made its decision not to renew the Billing Agreement. While the Debtor is a significant source of revenue for Daleen,² continuation of the Billing Agreement under its current terms would not be in the best interests of Daleen's business because it cannot predict future revenue under the agreement with any certainty.

8. The Billing Agreement fails to provide for a minimum processing fee or a long term commitment. Section 2.2(b) of the Billing Agreement provides for a minimum processing charge from January 1, 2002 to December 31, 2002, but does not include a minimum processing charge during 2003 or any renewal term. Section 1.2 of the Billing Agreement provides that the agreement can be terminated by the Debtor, as licensee, at any time after December 31, 2002, by giving at least ninety (90) days written notice to Daleen. The lack of minimum monthly processing charges and a right to terminate in the last year are terms that are highly unusual in an agreement of this type. In fact, all of Daleen's other contracts with its outsourcing customers include long term commitments (usually 3 years) and minimum monthly processing fees for the entire term. Daleen accepted these terms of the Billing Agreement knowing that they would be applicable for only one year before the expiration of the initial term, at which time the agreement contemplated nonrenewal if either party sought to renegotiate.

² Revenue from the Debtor for the first nine months of 2003 was 41.52% of Daleen's total revenue.

9. Daleen's parent, Daleen Technologies, Inc. ("Daleen Technologies"), is a publicly traded company with disclosure requirements and an obligation to maximize value for its shareholders. Through SEC filings, the marketplace is familiar with the expiration of the Billing Agreement on December 31, 2003 and the uncertainty of the relationship beyond that date. This has caused Daleen problems with obtaining new customers, renewing old customers, and securing financing from lenders, all of whom are concerned with Daleen's continued viability in the event that the Debtor ceases utilizing Daleen's billing services, whether by termination or otherwise.

10. Since the Debtor is such a significant portion of Daleen's business, it is crucial that Daleen be able to predict future revenues with some certainty. Moreover, Daleen has long term decisions to make in connection with its expenditures, including decisions with respect to two real property leases that are set to expire within the next year. Certainty regarding the Billing Agreement is necessary to allow it to make these decisions.

11. As set forth above, the Billing Agreement provides for an initial term of approximately 2 ½ years to allow each party an opportunity to reevaluate and/or seek to renegotiate the contract terms. While Daleen would like to continue to provide services to the Debtor, it believes that to do so under the current terms of the Billing Agreement would not be in its best interests. Therefore, on October 30, 2003 and October 31, 2003, Daleen exercised its right not to renew the Billing Agreement.

12. As set forth in the Motion, Daleen has attempted to contact the Debtor to re-negotiate the Billing Agreement on terms mutually acceptable to the parties.³ Unfortunately, Daleen's attempts have been unsuccessful. Accordingly, Daleen served notices of non-renewal on October 30, 2003 and October 31, 2003.

/s/
Dawn Landry

Sworn to before me this
18th day of November, 2003

Wasi Shamsi
NOTARY PUBLIC



³ Contrary to the statements set forth in paragraph 13 of the Debtor's Objection, the Debtor never sought to negotiate with Daleen regarding an early renewal of the Billing Agreement and did not seek to re-negotiate the terms of the agreement until after the filing of Daleen's Motion.

EXHIBIT "A"



October 31, 2003

Mr. Clay Myers
Allegiance Telecom Company Worldwide
9201 N. Central Expressway
Dallas, Texas 75231

Via Fax No. (469) 259-9107
& Federal Express

Re: Notice of Election not to renew BillingCentral Agreement

Dear Clay:

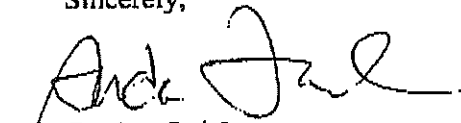
This letter is to inform you that Daleen filed today its Motion of Daleen Solutions, Inc. for Relief From the Automatic Stay Under Section 362 of the Bankruptcy Code. A copy of the Motion is enclosed for your information.

Although Daleen believes its Notice of Election Not to Renew delivered on October 30, 2003 does not violate the automatic stay, we are nonetheless sending this letter subsequent to filing the Motion as Daleen's second Notice of Election Not to Renew pursuant to the current terms of the BillingCentral Agreement, Schedule B-2 to the Master Agreement between Allegiance Telecom Company Worldwide and Daleen Solutions, Inc. dated June 1, 2001. On December 31, 2003, the Master Agreement and all Schedules will expire.

As I have indicated many times, I would like to meet with you as soon as possible to discuss appropriate terms for a new contract.

I look forward to meeting with you at your earliest convenience.

Sincerely,


Gordon Quick
President and CEO

Hearing Date: November 13, 2003
Time: 10:00 a.m.

Kirkpatrick & Lockhart LLP
Counsel for Daleen Solutions, Inc.
599 Lexington Avenue
New York, NY 10022
(212) 536-3900
Jeffrey N. Rich, Esq. (JNR-7183)
Elizabeth H. Singer, Esq. (EHS-2373)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**NOTICE OF MOTION OF DALEEN SOLUTIONS, INC.
FOR RELIEF FROM THE AUTOMATIC STAY UNDER
SECTION 362 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that upon the annexed motion dated October 31, 2003 (the "Motion") of Daleen Solutions, Inc. ("Daleen"), the undersigned will move before the Honorable Robert D. Drain, United States Bankruptcy Judge, on the 13th day of November, 2003, in Court Room 610 at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 at 10:00 a.m. or as soon thereafter as counsel can be heard, for the entry of an order granting Daleen relief from the automatic stay, pursuant to 11 U.S.C. §362(d)(1) and Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedures ("Bankruptcy Rules"), to allow Daleen to exercise its right not to renew the Billing Agreement (as defined in the Motion) with the Debtor, together with such

other and further relief as may be just.

PLEASE TAKE FURTHER NOTICE, that objections to the Motion, if any, must be made in writing and shall set forth the basis of the objection in the form prescribed by the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure, and shall be served upon (i) Kirkpatrick & Lockhart LLP, counsel for Daleen, 599 Lexington Avenue, New York, New York 10020, Attention: Jeffrey N. Rich, Esq.; (ii) Kirkland & Ellis LLP, counsel for the Debtor, Citigroup Center, 153 E. 53rd Street, New York, NY 10022-4675, Attn: Jonathan S. Henes, Esq.; (iii) Akin, Gump, Strauss, Hauer & Feld, LLP, counsel for the Creditors' Committee, 590 Madison Avenue, New York, NY 10022, Attn: Ira S. Dizengoff, Esq.; and (iv) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Pamela Lustrin, Esq.; and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's case filing system and by all other parties in interest on a 3.5 inch disk preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format, with a hard copy to

the Chambers of the Honorable Robert D. Drain, together with proof of service thereof, so as to be received and filed no later than November 10, 2003 at 4:00 p.m.

Dated: New York, New York
October 31, 2003

Kirkpatrick & Lockhart LLP
Counsel for Daleen Solutions, Inc.
599 Lexington Avenue
New York, New York 10022
(212) 536-3900

By: s/ Jeffrey N. Rich
Jeffrey N. Rich (JNR-7183)
A Partner of the Firm

To: Counsel for the Debtor
Counsel for the Creditors' Committee
Counsel for General Electric Capital Corporation
The U.S. Trustee
All those filing requests for notice under Bankruptcy Rule 2002

Hearing Date: November 13, 2003
Time: 10:00 a.m.

Kirkpatrick & Lockhart LLP
Counsel for Daleen Solutions, Inc.
599 Lexington Avenue
New York, NY 10022
(212) 536-3900
Jeffrey N. Rich, Esq. (JNR-7183)
Elizabeth H. Singer, Esq. (EHS-2373)

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Allegiance Telecom, Inc., <u>et al.</u> ,	: Case No. 03-13057 (RDD)
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**MOTION OF DALEEN SOLUTIONS, INC.
FOR RELIEF FROM THE AUTOMATIC STAY UNDER
SECTION 362 OF THE BANKRUPTCY CODE**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Daleen Solutions, Inc. ("Daleen"), a licensor and billing services supplier of Allegiance Telecom Company Worldwide (the "Debtor"), one of the debtors in the above captioned jointly administered cases, by its attorneys, Kirkpatrick & Lockhart LLP, as and for its motion ("Motion") for relief from the automatic stay, pursuant to 11 U.S.C. §362(d)(1) and Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedures ("Bankruptcy Rules"), to allow Daleen to exercise its right not to renew the Billing Agreement (as hereinafter defined), respectfully represents as follows:

Background

1. On May 14, 2003 (the "Petition Date"), the Debtor and each of the other jointly administered debtors in the above captioned cases (collectively, the "Debtors") filed voluntary petitions seeking relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101, et seq. (the "Bankruptcy Code"). The Debtors' cases are being jointly administered for procedural purposes only. Upon information and belief, the Debtors are continuing in the possession of their properties and the management of their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

2. On or about May 28, 2003, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code. Upon information and belief, no trustee or examiner has been appointed in these chapter 11 cases.

3. Upon information and belief, the Debtors provide integrated telecommunications products and services to small and medium-sized business customers, large businesses, governmental entities, wholesale customers and other institutional users.

Jurisdiction and Venue

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory basis for the relief requested herein is section 362(d) of the Bankruptcy Code and Bankruptcy Rules 4001(a) and 9014.

Daleen's Agreements With The Debtor

6. On or about June 1, 2001, the Debtor and Abiliti Solutions, Inc. ("Abiliti") entered into a Master Agreement (the "Master Agreement"), pursuant to which, among other things, Abiliti licensed to the Debtor communications software known as NetworkStrategies and Event Processing that provides billing and information management functions. The Master Agreement was assigned by Abiliti to Daleen on December 20, 2002. A copy of the Master Agreement, with Schedules, is annexed hereto as Exhibit A.
7. Schedule B-2 to the Master Agreement is a BillingCentral Renewal Agreement (the "Billing Agreement") pursuant to which Daleen provides billing services to the Debtor, all as more specifically set forth in the Billing Agreement.
8. Paragraph 1.1 of the Billing Agreement provides that the initial term of the Billing Agreement shall be for a period from the "Effective Date" of May 1, 2001 to December 31, 2003 (i.e., over a two and a half year period), to be automatically renewed for successive twelve (12) month periods "unless either party gives written notice to the other at least sixty (60) days prior to the end of the then current Term of its election not to renew this [Billing] Agreement."
9. On October 30, 2003, Daleen exercised its right not to renew the Billing Agreement by sending written notice (the "Notice of Non-Renewal") to the Debtor in accordance with Paragraph 1.1 of the Billing Agreement. A copy of the Notice of Non-Renewal is annexed hereto as Exhibit B.

10. On October 30, 2003, upon learning of Daleen's intent to send the Notice of Non-Renewal, the Debtor sent a letter to Daleen, a copy of which is annexed hereto as Exhibit C, alleging that service of the Notice of Non-Renewal violated the automatic stay of section 362 of the Bankruptcy Code. Daleen disputes that service of the Notice of Non-Renewal violates the automatic stay since such notice does not have any impact on the Debtor's property until at least December 31, 2003, which is more than sixty days from the date hereof. In fact, from a business perspective, it would have been impractical for Daleen to have filed a motion prior to serving the Notice of Non-Renewal since Daleen was hoping to successfully resolve any differences with the Debtor and did not make its determination not to renew the Billing Agreement until the last moment possible. In order to have obtained stay relief prior to service of the Notice of Non-Renewal, Daleen would have had to file a motion a few weeks ago, at a time when it had not yet determined to exercise its right of non-renewal. Daleen now files this Motion so that it can obtain relief from the automatic stay prior to December 31, 2003, which is the effective date of the non-renewal of the Billing Agreement and the date upon which the Debtor's interests are arguably affected.

11. In its October 30th letter, the Debtor cites two cases that are inapposite to the instant facts. First, the Debtor cites Garnas v. American Family Mutual Insur. Co. (In re Garnas), 38 B.R. 221 (Bankr. N.D. 1984) for the proposition that non-renewal of a contract violates the automatic stay. In that case, the bankruptcy court held that the insurer's non-renewal of an insurance policy violated section 365(e)(1) of the Bankruptcy Code because the policy was of such a type that it would have been automatically renewed absent the debtor's bankruptcy filing. Id. at 223. That is not the case here since the Billing Agreement clearly provides for specialized services and an initial term of approximately 2 ½ years to allow each party an

opportunity to reevaluate and/or seek to renegotiate the contract terms. Moreover, there are numerous cases that disagree with Garnas and hold that an insurance company may properly elect not to renew a contract. See e.g., In re Heaven Sent, Ltd., 37 B.R. 597 (Bankr. E.D. Pa. 1984) (court refused to compel insurance company to renew insurance policies); In re Diamond & Gold Connection, Inc., 54 B.R. 917 (Bankr. D.Mass. 1985) (court found that it was without authority to order insurer to renew its policy with the debtor). Second, the Debtor cites In re Crysen/Montenay Energy Co., 902 F.2d 1098 (2d Cir. 1990) for the proposition that it is entitled to damages resulting from a stay violation. Not only does Daleen dispute that it violated the stay, but it also disputes that the Debtor could have suffered any damages as a result of the Notice of Non-Renewal since Daleen will continue to provide services to the Debtor through December 31, 2003 or such other time as ordered by this Court.

12. Immediately subsequent to the filing of this Motion, on October 31, 2003, Daleen will send a second notice of non-renewal to the Debtor but this second notice shall in no way be deemed a concession that the first notice violated the automatic stay in any way.

Relief Requested and Basis Therefor

13. By this motion, Daleen seeks relief from the automatic stay pursuant to section 362(d)(1) of the Bankruptcy Code, to the extent necessary, to exercise its right not to renew the Billing Agreement in accordance with the Notice of Non-Renewal and Paragraph 1.1 of the Billing Agreement.

14. Pursuant to section 362(d)(1) of the Bankruptcy Code, a party in interest is entitled to relief from the automatic stay "for cause, including a lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. §362(d)(1).

15. "Cause" in section 362(d)(1) of the Bankruptcy Code does not have a clear and limited definition, but rather is determined on a case-by-case basis. See In re Sonnax Indus., Inc., 907 F.2d 1280, 1286 (2d Cir. 1990); Manhattan King David Restaurant Inc. v. Levine, 163 B.R. 36, 40 (Bankr. S.D.N.Y. 1993).

16. In this case, cause exists to terminate the automatic stay to allow Daleen to exercise its right not to renew the Billing Agreement since the initial term of the Billing Agreement expires on December 31, 2003 and the option not to renew is exercisable by either party, without cause, so long as sixty days' notice is given.

17. It is well established that a party's rights under a contract are not expanded by the filing of a bankruptcy petition. In re M.J. & K. Co., Inc., 161 B.R. 586, 593 (Bankr. S.D.N.Y. 1993), citing Moody v. Amoco Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984), cert. denied 469 U.S. 982 (1984) ("section 541(a) provides that a debtor's estate consists of 'all legal or equitable interest of the debtor in property as of the commencement of a case.' Thus whatever rights a debtor has in property at the commencement of the case continue in bankruptcy- no more, no less.").

18. On the Petition Date, the Debtor's interest in the Billing Agreement was subject to the non-renewal option set forth in Paragraph 1.1 of the Billing Agreement. The Debtor's bankruptcy filing can not expand the term of Billing Agreement beyond the initial term when either party has the option not to renew the agreement. Since the Billing Agreement is, in essence, terminable at will, cause exists to grant Daleen relief from the automatic stay under section 362(d)(1) to exercise its option not to renew the Billing Agreement. See M.J. & K. Co., supra, 161 B.R. at 593-95 (cause existed to grant licensor of real property relief from the automatic stay to serve notice to quit upon debtor since real property license was terminable at

HP LaserJet 3100 Printer/Fax/Copier/Scanner	SEND CONFIRMATION REPORT for DALEEN SOLUTIONS 6362373010 Oct-31-03 4:26PM
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Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
283	10/31 4:24PM	2'43"	4892599107	Send.....	12/12	EC144	Completed.....

Total 2'43" Pages Sent: 12 Pages Printed: 0



To: Mr. Clay Myers	Phone:
Company: Allegiance Telecom	Fax: 489-259-8107
Date: Friday, 10/31/03	Time:
From: Gordon Quick	Number of Pages (including cover): 12 pages

Clay -
I just wanted you to have a heads
up on this.
I would hope we can sit down and
talk sooner rather than later.

Gordon

The information contained in this transmission may be confidential. It is intended only for the use of the individual or entity named above. If the sender of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this information may be strictly prohibited by law. If you have received this communication in error, please notify us immediately by telephone, e-mail and return the original message to us at the address address via the U.S. Mail Service. We will reimburse you for postage. Thank You.