

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

Upon consideration of the motion of Daleen Solutions, Inc. (“Daleen”) for relief from the automatic stay under section 362 of title 11 of the United States Code (the “Bankruptcy Code”), dated October 31, 2003 (the “Motion”), filed in the chapter 11 cases of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”); and an objection having been filed with this Court by the Debtors on November 14, 2003 (the “Debtors’ Objection”); and a joinder to the Debtors’ Objection having been filed with this Court by the statutory committee of unsecured creditors appointed in these chapter 11 cases on November 14, 2003; and a joinder to the Debtors’ Objection having been filed with this Court by the Debtors’ prepetition senior lenders on November 17, 2003; and a response to the Debtors’ Objection having been filed with this Court by Daleen on November 18, 2003; and a hearing (the “Hearing”) to consider the Motion having been held on November 19, 2003; and it appearing that this Court has jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion having been given; and upon the record of the contested proceedings at the Hearing at which all interested parties, including Daleen and the Debtors, had an opportunity to be heard;

and the Court having found,¹ for the reasons set forth by the Court on the record at the Hearing, that the Billing Agreement (as defined in the Motion) is an executory contract that, by its terms, is automatically renewed unless a party to the Billing Agreement affirmatively acts to bar such renewal and that such contract is property of the Debtors' estates within the meaning of section 541 of the Bankruptcy Code; and the Court having further found that Daleen violated section 362(a)(3) of the Bankruptcy Code by sending the Notice of Non-Renewal (as defined in the Motion) and by sending any other notices attempting to exercise Daleen's rights under section 1.1 of the Billing Agreement to terminate the Billing Agreement; and the Court having further found that the Notice of Non-Renewal and any other notices attempting to exercise Daleen's rights under section 1.1 of the Billing Agreement are void *ab initio* as a violation of the automatic stay under section 362(a) of the Bankruptcy Code; and the Court having further found that Daleen failed to make an initial showing that "cause" exists to lift the automatic stay under section 362(d)(1) of the Bankruptcy Code (see Sonnax Indus., Inc. v. Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1285 (2d. Cir. 1990)); and the Court having further found that the existence of a "termination-at-will" clause in an executory contract does not in and of itself constitute "cause" to lift the automatic stay under section 362(d)(1) of the Bankruptcy Code; and, having considered the relevant factors set forth in Sonnax, the Court having further found that on the present record Daleen has not established "cause" to lift the automatic stay under section 362(d)(1) of the Bankruptcy Code or for the grant of any other relief requested in the Motion; and after due deliberation and sufficient cause appearing therefor, it is hereby

¹ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052.

ORDERED that the Motion is denied for the reasons set forth above and on the record at the Hearing; provided, however, that nothing in this Order prevents (x) Daleen from filing a motion seeking (a) relief from the automatic stay on grounds other than the grounds set forth in the Motion, (b) retroactive relief from the automatic stay, and/or (c) to compel the Debtors to assume or reject the Billing Agreement, or (y) the Debtors and other parties in interest from opposing any such request for relief; and it is further

ORDERED that the automatic stay invoked by the commencement of the Debtors' chapter 11 cases pursuant to section 362(a) of the Bankruptcy Code, remains in effect with respect to the Billing Agreement and/or the Master Agreement (as defined in the Motion); and it is further

ORDERED that the Notice of Non-Renewal and any other notices attempting to exercise Daleen's rights under section 1.1 of the Billing Agreement without first obtaining relief from the automatic stay are void *ab initio* and do not have any effect on the Billing Agreement and/or the Master Agreement.

Dated: New York, New York
November 25, 2003

/s/ ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE