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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**MOTION OF THE DEBTORS FOR AN ORDER
(A) PURSUANT TO RULE 9019 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE, APPROVING THAT CERTAIN
SETTLEMENT AGREEMENT, DATED AS OF DECEMBER 10, 2003,
WITH AT&T CORP., AND (B) PURSUANT TO SECTION 365 OF THE
BANKRUPTCY CODE, APPROVING AND AUTHORIZING THE ASSUMPTION
OF EXECUTORY CONTRACTS, AS AMENDED, WITH AT&T CORP.**

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”), each of the Debtors 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.

2. 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").

3. 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

4. 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

5. The Debtors are facilities-based national local exchange carriers that provide 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. The Debtors offer their 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 collocation 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.

6. As of September 30, 2003, Allegiance served more than 100,000 business customers in major markets throughout the United States. As of September 30, 2003, Allegiance employed approximately 2,912 people, of which approximately 98 employees were covered by collective bargaining agreements.

7. As of September 30, 2003, the Debtors had approximately \$284.1 million of unrestricted cash on hand. As of September 30, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.226 billion and liabilities totaling approximately \$1.455 billion. For the nine months ending September 30, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$589.4 million and net losses of approximately \$275.6 million.

Agreements with AT&T Corp.

8. The Debtors are parties to two (2) executory contracts with AT&T Corp., on behalf of itself and each of its subsidiaries (collectively, "AT&T"). Specifically, prior to the Commencement Date, the Debtors and AT&T entered into a certain Settlement and Switched Access Service Agreement, effective as of July 1, 2002 (the "Access Services Agreement"), under which the Debtors agreed to provide certain switched access telecommunications services to AT&T. Additionally, the parties entered into a certain AT&T Master Carrier Agreement, dated as of October 7, 2002 (the "LD Services Agreement" and, together with the Access Services Agreement, the "AT&T Agreements"), under which AT&T agreed to provide certain long distance telecommunications services to the Debtors.

9. On August 7, 2003, the Debtors filed their (a) Motion for an Order, Pursuant to Section 365(a) of the Bankruptcy Code, Authorizing the Debtors to Reject the Settlement and Switched Access Service Agreement with AT&T Corporation (the “Access Services Agreement Rejection Motion”)¹ and (b) 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 “LD Services Agreement Rejection Motion,” and, together with the Access Services Agreement Rejection Motion, the “Rejection Motions”).²

10. Prior to the filing of the Rejection Motions, the Debtors and AT&T entered into negotiations regarding the terms of the AT&T Agreements and the resolution of certain disputes related thereto. As a result of these negotiations and subsequent to the filing of the Rejection Motions, the parties were able to reach an agreement with respect to (a) an amendment of the AT&T Agreements, (b) the terms and conditions of the assumption of the AT&T Agreements, as modified by the AT&T Amendments (as defined below), and (c) a

¹ On August 6, 2003, the Debtors filed that certain Motion of the Debtors for Entry of an Order, Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, Authorizing (A) the Debtors to File Under Seal the Settlement and Switched Access Services Agreement with AT&T Corporation and the Summary of Pertinent Terms Thereof, and (B) the Court 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 Settlement and Switched Access Services Agreement with AT&T Corporation (the “Access Services Agreement Under Seal Motion”). On August 6, 2003, the Court entered an order granting the Access Services Agreement Under Seal Motion and authorizing the Debtors to, among other things, file the Access Services Agreement under seal and only serve it on the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Debtors’ prepetition secured lenders (the “Prepetition Lenders”) [Docket No. 297].

² On August 6, 2003, the Debtors filed that certain Motion of the Debtors for Entry of an Order, Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, Authorizing (A) the Debtors to File Under Seal the Master Carrier Agreement with AT&T Corporation and the Summary of Pertinent Terms Thereof and (B) the Court 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 “LD Services Agreement Under Seal Motion”). On August 6, 2003, the Court entered an order granting the LD Services Agreement Under Seal Motion and authorizing the Debtors to, among other things, file the LD Services Agreement under seal and only serve it on the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Prepetition Lenders [Docket No. 298].

settlement of all disputes among AT&T and the Debtors related to the AT&T Agreements for the period prior to August 6, 2003.

The Settlement Agreement

11. The Debtors and AT&T, subject to Court approval, have entered into that certain Settlement Agreement, dated as of December 10, 2003 (the “Settlement Agreement”),³ which is discussed below. In addition, the Debtors have agreed to assume the AT&T Agreements, as amended by the AT&T Amendments, contingent upon this Court’s approval of (a) the Settlement Agreement and (b) the assumption of both of the AT&T Agreements, as amended by the AT&T Amendments. The Settlement Agreement provides that, subject to Court approval, the Settlement Agreement and the AT&T Amendments shall be effective as of August 6, 2003.

12. Under the Settlement Agreement,⁴ the Debtors and AT&T have agreed to waive, release, and forever discharge each other and each other’s respective affiliates, and each other’s and respective affiliates’ officers, directors, employees, and agents from and against any claims, liabilities, and damages that the Debtors or AT&T may have against such released

³ On December 12, 2003, this Court entered that certain Order, Pursuant to Section 107(a) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, authorizing (A) to the Debtors to file Under Seal Certain Agreements with AT&T Corporation, and (B) the Court to conduct an In Camera hearing on Motion of the Debtors for an Order (A) Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving that certain Settlement Agreement, dated as of December 10, 2003, with AT&T Corporation, and (B) Pursuant to Section 365 of the Bankruptcy Code, approving and authorizing the Assumption of Executory Contracts, as Amended, 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 complete copy of the Settlement Agreement. Contemporaneously with the filing of this Motion, a copy of the Settlement Agreement has been provided to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Prepetition Lenders, subject to strict confidentiality and their agreement that the AT&T Amendments shall not be shared or discussed in any way whatsoever with any other party.

⁴ In the event of any inconsistency between the meaning of the terms used in the Settlement Agreement and the terms used in this Motion, the meaning of the terms used in the Settlement Agreement shall control.

parties, as applicable, relating to, arising out of, or in connection with, the Access Services Agreement and LD Services Agreement prior to August 6, 2003, except for any claims, liabilities, and damages relating to, arising out of, or in connection with the payment of the Pre-Petition LD Amounts (as defined below) and the Post-Petition Amounts (as defined below).

AT&T Amendments

13. With respect to the Access Services Agreement, the Debtors and AT&T have negotiated and agreed to enter into that certain Amendment No. 1 to the Access Services Agreement (the “Switched Access Amendment”). The Switched Access Amendment modifies the Access Services Agreement to provide for, among other things, an increase in rates paid by AT&T to the Debtors for switched access services provided by the Debtors and the imposition of certain network requirements on AT&T.

14. With respect to the LD Services Agreement, the Debtors and AT&T have negotiated and agreed to enter into an Amended and Restated AT&T Master Carrier Agreement which includes (a) that certain Supplemental Terms and Conditions Attachment to the LD Services Agreement and (b) that certain AT&T Network Connection Service Terms and Pricing Attachment to the LD Services Agreement (collectively, the “LD Amendments,” and, together with the Switched Access Amendment, the “AT&T Amendments”).⁵ The LD Amendments modify the LD Services Agreement to provide for, among other things, a reduction of the rates paid by the Debtors to AT&T to the current prevailing market rates, the elimination of certain commitments that were imposed on the Debtors under the LD Services Agreement and a

⁵ Pursuant to the Under Seal Order, the Debtors are authorized to file (and have filed) with this Court complete copies of the AT&T Amendments. Contemporaneously with the filing of this Motion, copies of the AT&T Amendments have been provided to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Prepetition Lenders, subject to strict confidentiality and their agreement that the AT&T Amendments shall not be shared or discussed in any way whatsoever with any other party.

reinstatement of a significant portion of a prepetition non-refundable prepayment credit to be applied by the Debtors for payment of services to be provided by AT&T.

Relief Requested⁶

15. By this Motion, the Debtors seek entry of an order (a) pursuant to Bankruptcy Rule 9019(a), approving the terms of the Settlement Agreement and (b) pursuant to section 365 of the Bankruptcy Code, authorizing and approving the assumption of the AT&T Agreements, as amended by the AT&T Amendments.

Basis for Relief Requested

Bankruptcy Rule 9019

16. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by [a debtor in possession] and after notice and a hearing, the court may approve a compromise and settlement.” Compromises and settlements are “a normal part of the process of reorganization.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citing Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)).

17. To approve a compromise and settlement under Bankruptcy Rule 9019, a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable and in the best interests of the debtor’s estate. See, e.g., In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), aff’d, 17 F.3d 600 (2d Cir. 1994) (citations omitted); In re Enron Corp., Case No. 02 Civ. 8489, 2003 WL 230838, *2 (S.D.N.Y. Jan. 31, 2003). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. Nellis v.

⁶ Pursuant to the Under Seal Order, the hearing on this Motion will be conducted in camera and attended solely by representatives from the Debtors, attorneys for the Debtors, AT&T, attorneys for AT&T, the U.S. Trustee, attorneys for the Creditors Committee, attorneys for the Prepetition Lenders and any other party in interest bound by a confidentiality agreement with respect to the subject matter of the hearing.

Shugrue, 165 B.R. 115, 122-123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. Id. at 122. The court may consider the opinions of the debtor in possession and its counsel that the settlement is fair and reasonable. Id.; see In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court “in light of the general public policy favoring settlements.” In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); Shugrue, 165 B.R. at 123 (“the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above”).

18. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983); see also Purofied Down Prods., 150 B.R. at 522 (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute]”).

19. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors:

- a. the probability of success in the litigation;
- b. the difficulties associated with collection;
- c. the complexity of the litigation, and the attendant expense, inconvenience and delay; and
- d. the paramount interests of creditors.

See Purofied Down Prods., 150 B.R. at 122 (citing Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1989)); Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp., 286 B.R. 236, 248 n.13 (S.D.N.Y. 2002), see also In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992).

20. “The ‘reasonableness’ of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not of fraud or collusion.” Ionosphere Clubs, 156 B.R. at 428.

Assumption of AT&T Agreements

21. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may . . . assume any executory contract . . . of the debtor.” 11 U.S.C. § 365(a).

22. Section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an executory contract of a debtor. This subsection provides:

- (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee —
 - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
 - (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract of lease, for any actual pecuniary loss to such party resulting from such default; and
 - (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

23. The standard to be applied by a court in determining whether an executory contract should be assumed is the “business judgment” test, which is premised on the debtor’s business judgment that the assumption would be beneficial to its estate. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996).

24. “More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartiality.” Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985) (citations omitted).

25. Some courts used the following factors in determining whether the “business judgment” standard in the context of an assumption of an executory contract is satisfied: (a) whether the contract or lease is profitable or advantageous to the debtor; and (b) whether the estate will be able to perform its contractual obligations under the contract. See In re National Sugar Refining Co., 26 B.R. 765, 767 (Bankr. S.D.N.Y. 1983); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

26. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection of an executory contract is in the best interests of the debtors, its creditors, and all parties in interest, the court should approve such assumption or rejection 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 Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

**The Settlement Agreement Should be Approved
Because it Falls Within the Range of Reasonableness**

27. In the instant case, the Settlement Agreement is fair and equitable, falls well within the range of reasonableness and enables the parties to avoid the costs of additional negotiations and potential litigation. Absent authorization to enter into the Settlement Agreement, the Debtors and AT&T would require judicial intervention to resolve their disputes arising under the AT&T Agreements. The undertaking of uncertain litigation would be an unnecessary drain on the resources of the Debtors' estates and would divert the attention of their management and legal personnel from their current global restructuring efforts.

28. On the other hand, the value accruing from the Settlement Agreement, including the elimination of potential negotiation and litigation costs and providing the Debtors with a significant prepayment credit, represents a substantial benefit to the Debtors' creditors and all parties in interest. In particular, the Settlement Agreement resolves the outstanding claims and issues between the Debtors and AT&T with respect to the Access Services Agreement and the LD Services Agreement, including the amount of cure amounts and prepetition claims, without the need for protracted and costly discovery and litigation. For the foregoing reasons, the Settlement Agreement should be approved pursuant Bankruptcy Rule 9019.

**Assumption of the AT&T Agreements is Supported by the
Debtors' Business Judgment and Should be Approved by the Court**

29. The assumption of the AT&T Agreements is in the best interests of the Debtors' estates. As set forth above, the AT&T Amendments require AT&T to pay increased rates to the Debtors for switched access services provided by the Debtors, impose certain network requirements on AT&T, reduce the rates paid by the Debtors, eliminate certain commitments of the Debtors and enable the Debtors to apply a significant portion of a prepetition non-refundable prepayment credit for payment of services to be provided to the

Debtors by AT&T. As a result, the AT&T Agreements, as amended by the AT&T Amendments, are beneficial to the Debtors' estates because, among other things, they will increase the Debtors' revenues, while decreasing their monthly administrative expense payments.

30. Notably, if the AT&T Agreements are not assumed, as amended, then the Debtors would reject the AT&T Agreements for the reasons set forth in the Rejection Motions. The rejection of the AT&T Agreements would result in significant rejection damage claims against the Debtors' estates.

Cure of Defaults Under the AT&T Agreements, as Amended by the AT&T Amendments

31. As set forth above, prior to the assumption of an executory contract, a debtor must cure outstanding defaults under such contract. In that regard, the Debtors and AT&T have agreed on the maximum amounts due and payable by (a) the Debtors under the LD Services Agreement and (b) by AT&T under the Access Services Agreement for the services rendered (i) on and from the Commencement Date through August 5, 2003 and (ii) prior to the Commencement Date, which amounts are set forth on Exhibits "C" and "D" to the Settlement Agreement, respectively.

32. The Settlement Agreement provides that, on or before December 31, 2003, the Debtors and AT&T will pay each other the undisputed portion of the outstanding amounts due and payable for services provided on and after the Commencement Date through August 5, 2003 under the Access Services Agreement and the LD Services Agreement, as applicable (the "Post-Petition Amounts"). The Settlement Agreement also provides that within ten (10) calendar days after entry by the Bankruptcy Court of orders approving the assumption of both of AT&T Agreements ("Bankruptcy Court Approval"), (a) the Debtors shall pay AT&T the undisputed portion of the outstanding amounts due and payable by the Debtors for the services provided by

AT&T prior to the Commencement Date (the “Pre-Petition LD Amounts”) and (b) AT&T shall pay the Debtors a certain pre-petition access payment in the amount set forth in Section 3.b of the Settlement Agreement (“Pre-Petition Access Payment”) in full satisfaction of all amounts due and payable by AT&T for the services provided prior to the Commencement Date (the “Pre-Petition Access Amounts”) and regardless of the respective amount of such Pre-Petition Access Amounts set forth on Exhibit “D” to the Settlement Agreement. In addition, AT&T has agreed that the Debtors will keep a significant portion of its prepetition non-refundable prepayment credit in the amount set forth in Section 3.c of the Settlement Agreement to be applied by the Debtors for payment for the services to be provided by AT&T under the LD Services Agreement, as amended by the LD Amendments.

33. The Settlement Agreement further provides that after court approval, both the Debtors and AT&T shall negotiate in good faith to resolve any disputed Pre-Petition LD Amounts and any disputed Post-Petition Amounts as expeditiously as possible. If the Debtors and AT&T are unable to resolve any such disputed Pre-Petition LD Amounts and disputed Post-Petition Amounts within sixty (60) calendar days after court approval, either the Debtors or AT&T may seek resolution of the disputed amounts by the Court. Once the Debtors and AT&T have resolved the disputed Pre-Petition LD Amounts and/or disputed Post-Petition Amounts and/or this Court has resolved such disputed amounts, the party owing any amount, which has been agreed upon or determined by the Court, shall pay such amount within ten (10) business days from the date of the determination of such amount by the parties or by the Court.

34. Once the disputes regarding the Pre-Petition LD Amounts owed by the Debtors to AT&T have been resolved, AT&T has agreed not to (a) file proofs of claims in the Debtors’ chapter 11 cases as to such Pre-Petition LD Amounts (or if it has filed such proofs of

claims it shall withdraw such proofs of claims with prejudice as to the disputed Pre-Petition LD Amounts paid), (b) vote in connection with any chapter 11 plan (unless AT&T has filed proofs of claims relating to disputed Pre-Petition LD Amounts that are not resolved prior to the vote on any such chapter 11 plan), (c) object to any chapter 11 plan filed in the Debtors' chapter 11 cases, and (d) receive any distribution in the Debtors' chapter 11 cases on account of any such disputed Pre-Petition LD Amounts resolved by the Debtors and AT&T in accordance with the Settlement Agreement.

35. Further, AT&T and the Debtors have agreed that, except for the payment of the Post-Petition Amounts, Pre-Petition LD Amounts and the Pre-Petition Access Payment, there are no other defaults under the AT&T Agreements that would prevent the assumption of the AT&T Agreements.

36. For the reasons stated above and in the exercise of their sound business judgment, the Debtors believe that the assumption of the AT&T Agreements, as amended by the AT&T Amendments, is in the best interests of the Debtors, their estates and creditors.

Waiver of Memorandum of Law

37. This Motion includes citations to the applicable authorities and does not raise any novel issues of law. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

Notice

38. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) attorneys for the Prepetition Lenders; (c) attorneys for the Creditors Committee; (d) attorneys for AT&T, and (e) all parties on the Master Service List established and maintained pursuant to that certain order establishing notice procedures in these chapter 11 cases, dated May 15, 2003. In

light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

39. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court enter an order (a) pursuant to Bankruptcy Rule 9019(a), approving the terms of the Settlement Agreement, (b) pursuant to section 365 of the Bankruptcy Code, authorizing and approving the assumption of the AT&T Agreements, as amended by the AT&T Amendments and (c) granting the Debtors such other and further relief as it deems just and proper.

Dated: New York, New York
December 12, 2003

Respectfully submitted,

/s/ Jonathan S. Henes
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