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Attorneys for Debtors and Debtors in Possession
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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**RESPONSE TO WORLDCOM’S REPLY
TO DEBTORS’ OBJECTION TO PROVISIONAL MOTION OF
WORLDCOM, INC. AND ITS DEBTOR AFFILIATES FOR RELIEF FROM
THE AUTOMATIC STAY WITH RESPECT TO CERTAIN LETTER OF CREDIT**

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, the “Debtors”), hereby respond to WorldCom’s (“WorldCom”) Reply to Debtors’ Objection to Motion of WorldCom, Inc. and Its Debtor Affiliates for Relief From the Automatic Stay With Respect to Certain Letter of Credit (the “WorldCom Reply”), respectfully represent:

Preliminary Statement

1. The issue before the Court is simple and discrete: does WorldCom have the right to draw against the LOC. The simple answer is no.

2. On or about April 15, 2003, *prior to the Commencement Date*, the Debtors and WorldCom entered into the Settlement Agreement. Pursuant to the Settlement Agreement, the Debtors, among other things, (a) made a payment to WorldCom and (b) caused JP Morgan to issue the LOC. Notably, the Settlement Agreement also provided that *it was not effective until the bankruptcy court in the WorldCom Bankruptcy Case entered an order approving it.*¹

3. As of the Commencement Date, the bankruptcy court in the WorldCom Bankruptcy Case had not entered an order approving the Settlement Agreement. Nonetheless, after the Commencement Date, WorldCom continued pursuing the approval of the Settlement Agreement and, on May 29, 2003 (*more than two weeks after the Commencement Date*), the bankruptcy court in the WorldCom Bankruptcy Case entered an order approving the Settlement Agreement.²

4. Both WorldCom's acts and the entry of the order were violations of the automatic stay. As a result, the order approving the Settlement Agreement is "void and without vitality".³ Accordingly, the Settlement Agreement is also without effect.

5. Under these circumstances, and for the reasons set forth in the Objection, and Exhibit A to the Response, the Debtors submit that the Settlement Agreement is not effective and, as such, WorldCom is not entitled to draw against the LOC.

¹ Indeed, at the hearing to approve the Settlement Agreement, WorldCom acknowledged the "[t]he agreements were actually entered into prior to filing the motion and the approval of this Court is a *condition subsequent* to those agreements."

² This order contained findings, facts and conclusions of law.

³ See In re Best Payphones, Inc., 279 B.R. 92, 97 (Bankr. S.D.N.Y. 2002) ("Any proceedings or actions described in section 362(a)(1) [of the Bankruptcy Code] are void and without vitality if they occur after the automatic stay takes effect. . . .") (quoting Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 527 (2d. Cir. 1994).

Response

6. Rather than burden the Court with pages upon pages responding to WorldCom's Reply, the Debtors' have prepared a chart annexed hereto as Exhibit A that addresses the points made in WorldCom's Reply.

7. WHEREFORE, the Debtors respectfully request that (a) the Court deny the relief sought in the Lift Stay Motion and (b) grant the Debtors such other and further relief as is just.

Dated: New York, New York
February 3, 2004

Respectfully submitted,

/s/ Jonathan S. Henes
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