

Brian T. Hanlon, Esq. (BH 4212)  
Palm Beach County Tax Collector  
301 N Olive Avenue, Third Floor (33401)  
Post Office Box 3715  
West Palm Beach, FL 33402-3715  
(561) 355-2142

Sale Hearing Date: February 19, 2004 at 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)  
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**PALM BEACH COUNTY TAX COLLECTOR'S  
OBJECTION TO SALE OF ASSETS OF DEBTOR**

John K. Clark, Tax Collector, Palm Beach County ("Clark"), files this objection to the sale of substantially all of Debtors' assets free and clear of liens, and states as follows:

**SUMMARY OF OBJECTION**

1. The Debtors seek Court approval to strip Clark's exclusive remedy of enforcement of *in rem*, first priority statutory tax liens available pursuant to state law (Florida Statutes ch. 197.122(1) and 192.053) and replace this position with a lien on "proceeds of sale." The Debtors have rejected a prior lease of a Palm Beach County location resulting in the removal of approximately \$300,000 worth of tangible personal property from Palm Beach County, Florida. The Debtors' request seeks Court approval to assume/reject undetermined leases and to approve a sale of undetermined property free and clear of liens. Fundamental due process precludes the granting of this relief.

**FLORIDA TANGIBLE PERSONAL PROPERTY TAX FACTS**

2. The Debtors filed 2003 tangible personal property tax returns on seven accounts for property located at seven different locations within Palm Beach County, Florida. Previously

in this case, the Debtors, without notice to Clark, closed one location, rejected the lease, and disbursed the property without payment of the taxes assessed thereon. See Docket No. 20, paragraph 35 on page 14, indicating “The Debtors no longer occupy and have removed all of their personal property from the locations covered by the Unoccupied Leases.” Florida law clearly provides for tax liens on any other property located within Palm Beach County.

3. The outstanding gross tax obligation to Clark is \$23,487.13. Interest will begin to accrue on April 1, 2004. This tax amount is for 2003 taxes that became due and payable on November 1, 2003. The taxes are secured by statutory first liens superior to any other liens. See Florida Statute ch. 197.122(1) and 192.053. By operation of state law, liens for the 2004 tangible personal property taxes attached to the Palm Beach County, Florida assets on January 1, 2004. The liquidated amount of these taxes will not be established until the tax roll is certified in accordance with Florida law. Generally, in Palm Beach County, this occurs in late October. The taxes are first due and payable on November 1, 2004.

4. In addition, Florida law requires the filing of sworn tangible personal property tax returns with the Property Appraiser annually. The 2004 tangible personal property tax returns are due on or before March 31, 2004. The 2004 returns have not yet been filed for the Debtors’ operating locations within Palm Beach County, Florida.

#### **REQUEST FOR ADEQUATE ASSURANCE/PROTECTION**

5. Clark requests adequate assurance that the 2004 tangible personal property tax returns shall be timely filed in accordance with Florida law. In addition, the proposed sale fails to disclose the locations and/or assets that are subject to the sale. Clark requests that the Order provide that the statutory liens of the Palm Beach County Tax Collector imposed on the tangible personal property pursuant to Florida Statute ch. 197.122(1) and 192.053 remain in full force and

effect on the property assessed and that no substantive effect on Clark's state rights, including the assertion of the defense of sovereign immunity, be adjudicated. Thus, Clark requests that any Order entered specifically exclude any relief from being entered against the Palm Beach County Tax Collector or against the liens currently existing on the tangible personal property located in Palm Beach County, Florida pending further Order of the Court and without prejudice to the assertion of any and all defenses to claims, including but not limited to sovereign immunity.

WHEREFORE, premises considered, Clark requests that the Court order the Debtors to pay these taxes at closing as an assumed liability in conformance with the proposed Purchase and Sale Agreement or, alternatively, that the Court order the full amount of taxes, plus monthly interest, be placed into a separate escrow account, pending adjudication of any objections the Debtors may have to paying these taxes. Alternatively, that the Order approving the sale provide for an exception relative to Clark and the Palm Beach County tangible property involved and the liens thereon. Clark further requests payment of attorneys' fees pursuant to Florida Statutes ch. 197.332 in the event taxes are not paid before they become delinquent, and for such other relief the Court deems proper.

Respectfully submitted,  
Brian T. Hanlon, Esquire  
Office of the Tax Collector  
301 N Olive Avenue, Third Floor (33401)  
Post Office Box 3715  
West Palm Beach, FL 33402  
Telephone: (561) 355-2142  
Attorney for Tax Collector  
*Motion to Appear Pro Hac Vice pending*

By:           /s/ BH4212            
Brian T. Hanlon (BH 4212)  
Fla. Bar No. 962562

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the *Palm Beach County Tax Collector's Objection to Sale of Assets of Debtor* has been furnished, by United States mail, postage prepaid, this 17th day of February, 2004, to: **Kirkland & Ellis, LLP**, Attorneys for Debtors, Attn: Matthew A. Cantor, Esq. and Jonathan S. Henes, Esq., 153 E 53rd Street, New York, NY 10022-4675; **United States Trustee**, Attn: Pamela J. Lustrin, Esq., 33 Whitehall Street, 21st Floor, New York, NY 10004; **Paul, Hastings, Janofsky & Walker, LLP**, Attorneys for Agent for Debtors' Prepetition Lenders, Attn: Jesse Austin, III, Esq., 600 Peachtree Street Northeast, 24th Floor, Atlanta, GA 30308; **Akin Gump Strauss Hauer Feld, LLP**, Attorneys for Statutory Committee of Unsecured Creditors, Attn: Ira S. Dizengoff, Esq., 590 Madison Avenue, New York, NY 10022; and **Weil, Gotshal & Manges, LLP**, Attorneys for Buyer, Attn: Paul M. Basta, Esq., 767 Fifth Avenue, New York, NY 10153.

/s/ BH 4212  
Brian T. Hanlon (BH 4212)