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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	X
	:	
Allegiance Telecom, Inc., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Hearing Date: February 19, 2004 at 10:00 a.m.
	X	Objection Deadline: February 17, 2004 at 4:00 p.m.

GENERAL ELECTRIC CAPITAL CORPORATION'S LIMITED OBJECTION TO DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 1146(c) OF THE BANKRUPTCY CODE: (A) (I) FIXING THE TIME, DATE AND PLACE FOR THE BIDDING PROCEDURES HEARING AND (II) APPROVING THE NO-SHOP PROVISIONS SET FORTH IN THE ASSET PURCHASE AGREEMENT; (B) (I) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (II) APPROVING THE FORM AND MANNER OF NOTICES, (III) APPROVING THE ASSET PURCHASE AGREEMENT WITH QWEST COMMUNICATIONS INTERNATIONAL INC. SUBJECT TO HIGHER AND BETTER OFFERS AND (IV) SETTING A SALE APPROVAL HEARING DATE; AND (C) (I) APPROVING THE SALE TO QWEST COMMUNICATIONS INTERNATIONAL INC. FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (III)
GRANTING RELATED RELIEF**

COMES NOW, General Electric Capital Corporation as Agent for itself and certain other lenders (the “Agent”) and files this limited objection (the “Objection”) to the Debtors’ Motion For Orders Pursuant To Sections 105(A), 363, 365 And 1146(C) Of The Bankruptcy Code: (A) (I) Fixing The Time, Date And Place For The Bidding Procedures Hearing And (II) Approving The No-Shop Provisions Set Forth In The Asset Purchase Agreement; (B) (I) Establishing Bidding Procedures And Bid Protections In Connection With The Sale Of Substantially All Of The Assets Of The Debtors, (II) Approving The Form And Manner Of Notices, (III) Approving The Asset Purchase Agreement With Qwest Communications International Inc. Subject To Higher And Better Offers And (IV) Setting A Sale Approval Hearing Date; And (C) (I) Approving The Sale To Qwest Communications International Inc. Free And Clear Of All Liens, Claims And Encumbrances, (II) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases And (Iii) Granting Related Relief (the “Motion”). The Agent respectfully represents as follows:

INTRODUCTION

1. Debtors entered into that certain Credit and Guaranty Agreement dated as of February 15, 2000 (as amended, restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement”) and related loan documents thereto (the “Prepetition Loan Documents”), between and among Allegiance Telecom Company Worldwide (the “Borrower”), Allegiance Telecom, Inc. (the “Company,” and other

Debtor subsidiaries of the Company (together with the Company, the “Guarantors”), the Agent and Lenders party thereto from time to time (the “Lenders”).

2. Pursuant to the Prepetition Credit Agreement and Prepetition Loan Documents, the Agent, on behalf of the Lenders, asserts a first priority security interest in substantially all of the Debtors’ assets, including the collateral to be sold pursuant to the Debtors’ Motion.

3. The Debtors filed voluntary petitions for relief on May 14, 2003 (the “Petition Date”).

4. As of November 21, 2003, the Borrower and Guarantors were indebted to the Lenders under the Prepetition Credit Agreement with the principal balance due and owing under the revolving credit facilities in the amount of \$332,815,964.53, plus interest, fees, costs and expenses, and the principal balance due and owing under the delayed draw term loans of the Prepetition Credit Agreement is \$145,011,086.47, plus interest, fees, costs and expenses (the “Obligations”).

5. The Debtors obtained use of the Lenders’ cash collateral on a final basis pursuant to the Final Order Authorizing the Use of Cash Collateral by Consent entered on June 23, 2003 (the “Final Order”).¹

6. On or about December 18, 2003, the Debtors filed the Motion which sought among other things approval of a sale to the highest and best bidder at an auction

¹ An Amended Final Order Authorizing the Use of Cash Collateral by Consent was subsequently entered by the Court on June 26, 2003 to correct a typographical error in the Final Order.

and approval of the Qwest Communications International, Inc. (“Qwest”) asset purchase agreement dated as of December 18, 2003 (the “Qwest APA”)

7. The Qwest APA contained the express authorization for the Debtors to file a motion seeking to remit at least \$100,000,000 to the Lenders to pay down the Obligations. *See* Section 6.11(l) of the Qwest APA. This provision was not changed in XO Communications, Inc. (“XO”) competing asset purchase agreement (the “XO APA”). *See* Section 6.11 (l) of the XO APA. The Debtors expressly negotiated for this provision in the Qwest APA, which was supported by the Lenders, to reduce the negative arbitrage upon the estate while still retaining sufficient cash on hand pending the closing to administer the estate and preserve the assets.

8. The Lenders are entitled to adequate protection pursuant to the terms of the Final Order which includes the payment of all interest at the non-default rate during the pendency of the bankruptcy case. The principal amount of the Obligations is \$477,827,051.00. The Obligations are comprised of a delayed draw term loan, and two revolving loans. Each of the three loans are subject to different interest rates depending on the current LIBOR contract. As of the filing of this Objection, the following interest rates were in place:

Type of Loan	Principal Balance of Loan	Current Interest Rate	Daily Interest Calculation
Delayed Draw Term Loan	\$145,011,086.47	4.68%	\$22,879.53
Revolver Loan I	\$182,815,964.53	5.58%	\$28,844.30
Revolver Loan II	\$150,000,000.00	5.75%	\$23,833.33

9. Based upon this information, the projected interest carry cost to the estate is approximately \$75,557.16 per day or \$2,266,714.70 per month.

10. The Debtors' February 6, 2004 report reflected current cash on hand in the amount of \$263,465,249. The Company's opening cash balance on the Petition Date was approximately \$247,742,720. Therefore, in the span of the nine months of the Debtors' bankruptcy, the Debtors have experienced limited losses and have at all times had well over \$160,000,000 to conduct and operate their businesses as going concerns.

LIMITED OBJECTION

11. The Agent objects to the Debtors' Motion to the extent that (i) upon entry of the sale order, the Lenders do not receive the Debtors' excess cash on hand in the estimated amount of \$100,000,000 and (ii) that the approval to close the sale is not expressly conditioned upon the Lenders receiving the balance of the Obligations in full in cash at the closing of the transaction.

ARGUMENT AND CITATION OF AUTHORITIES

12. Under Section 363(f) of the Bankruptcy Code, the trustee may sell property free and clear of any interest in such property if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;²
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

² The consent required under Section 363(f)(2) is the consent to a sale free of liens or interests. *See* COLLIER ON BANKRUPTCY ¶ 363.06.

In order for a property to be sold free and clear of liens, one of the above requirements must be met.

13. In this instance, the Agent and Lenders do not consent to the sale unless the net sale proceeds are remitted to the Agent to be applied to the Obligations.

14. Pursuant to Section 363(e) of the Bankruptcy Code “[s]ales by the debtor, even sales in the ordinary course of business, can be prohibited or made subject to conditions upon request by a secured creditor if necessary to provide that creditor with adequate protection.” *See In re United Puerto Rican Food Corp.*, 41 B.R. 565, 571 (Bankr. E.D.N.Y. 1984).

15. The proposed sale is outside the ordinary course of business and in fact represents a sale of substantially all of the Lenders’ collateral. In order to be adequately protected pending the closing of the sale, the Lenders are entitled to receive the excess cash on the Debtors’ balance sheet in the estimated amount of \$100,000,000.

16. The proposed payment of \$100,000,000 upon entry of the sale order would immediately generate a cash savings of approximately 21% in interest carry costs to the estate. The cash savings would enable the Debtors to provide additional consideration to ultimately be distributed to the unsecured creditors of the Debtors’ estates. Further, the Debtors could retain over \$163,465,249 in cash to continue to conduct their day to day operations pending confirmation of their cases or consummation of the sale transaction.

17. If the Court grants the Motion then there is no business purpose in the Debtors continuing to retain over \$263,000,000 in cash for its operations. The express

terms of the Qwest APA and the XO APA allow this cash payment to be made to the Lenders and therefore would not disrupt the sale process.

18. Bankruptcy courts may authorize the sale of property free of liens without the consent of the lienholder so long as the liens attach to the proceeds of such sales. *See COLLIER ON BANKRUPTCY* ¶ 363.06. A secured creditor is entitled to receive its collateral or proceeds derived from the liquidation of its collateral. *See In re M. Paoella & Sons, Inc.*, 161 B.R. 107, 124 (E.D. Pa. 1993).

19. The Lenders further object to the extent that the Court authorizes the sale, but does not provide for the payment in cash to the Lenders upon the closing. The XO APA contemplates a closing no later than June 30, 2004. To the extent that the XO sale transaction is consummated at an earlier date than the effective date of a plan of reorganization, the Lenders should receive the cash payment recognized by the sale of their collateral.

20. Courts have held that payment to senior secured lenders upon the closing of a sale is appropriate if certain conditions are met. *See In re Loral Space & Com. Ltd., et al.*, Case No. 03-41710 (RDD) (S.D.N.Y. October 30, 2003) (order finding that payment of sale proceeds at closing was appropriate to obtain the Lenders' consent to the sale, to adequately protect the Lenders' liens in the cash proceeds of their collateral and to eliminate the substantial ongoing interest accruals).

21. The payment of the remaining Obligations would enable the Debtors to stop all continuing interest costs which would save the estate approximately \$2,200,000 in interest payments each month. The interest savings would directly impact the Debtors

ability to provide for additional consideration to the other classes under a plan of reorganization.

22. In connection with the Prepetition Loan Documents, the Agent, on behalf of the Lenders, was granted a security interest in substantially all of the Debtors' assets. Therefore, the reduction in assets without a corresponding satisfaction of the Obligations unnecessarily impairs the Lenders' position.

23. As the undisputed secured creditor in the Debtors' assets, the Agent is requesting that its interests in the collateral be protected by conditioning the sale of such collateral upon its security interest being transferred and attached to the proceeds from such sale and that the net sale proceeds be remitted to the Agent at the closing for application to the Obligations owed by the Debtors.

24. The Agent has not received a completely executed copy of the XO APA, including all disclosure schedules, exhibits and other referenced documents or the full transcript of the auction and expressly reserves the right to further supplement and augment this Objection to the Motion.

WAIVER OF MEMORANDUM OF LAW

25. This Objection includes citations to applicable authorities, and does not raise any novel issues of law. Accordingly, the Agent respectfully requests that this 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.

26. No application for the relief requested herein has been presented to this or any other court.

CONCLUSION

27. WHEREFORE, for all the foregoing reasons, the Agent respectfully requests that any order entered approving the sale (i) provide for payment of at least \$100,000,000 to the Lenders for application to the Obligations and (ii) provide for the payment in full of the remaining Obligations at the closing of any sale and (iii) grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 17, 2004

Respectfully submitted,

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By: _____/S

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