

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In re)
ALLEGIANCE TELECOM, INC.,)
-----))

Kirkland & Ellis
153 East 53rd Street
New York, New York
Thursday, February 12, 2004

B E F O R E:

MICHAEL KRAMER,
Greenhill & Co. LLC
TIM HADDOCK
RYAN TAYLOR
JON HENES, Esq.
MARK TRESNOWSKI

Reported by:
Robert X. Shaw, CSR
CSR NO. 817
JOB NO. 20139

1
2

A P P E A R A N C E S:

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KIRKLAND & ELLIS
Attorneys for Allegiance
153 East 53rd Street
New York, New York 10022
BY: MATTHEW CANTOR, ESQ.
MICHAEL FRISHBERG, ESQ.
JON HENES, ESQ.
LISA LAUKITIS, ESQ.

AKIN GUMP
Attorneys for Creditors Committee
590 Madison Avenue
New York, New York 10022
BY: IRA DIZENGOFF, ESQ.
PHILIP DUBLIN, ESQ.
COLIN M. ADAMS, ESQ.
ERICA McGRADY, ESQ.

1
2
3
4
5
6
7

A P P E A R A N C E S (Cont'd):
PAUL HASTINGS
Attorneys for Prepetition Lenders
600 Peachtree Street, NE Ste. 2400
Atlanta, Ga. 30308
BY: JESSE H. AUSTIN, III, ESQ.

8 LESLIE PLASKON, ESQ.

9 KRISTINE SHRYOCK, ESQ.

10

11 WEIL GOTSHAL & MANGES, ESQS.

12 Attorneys for Qwest

13 767 Fifth Avenue

14 New York, New York 10153

15 BY: PAUL BASTA, ESQ.

16 HOWARD CHATZINOFF, ESQ.

17

18 SIDLEY AUSTIN BROWN & WOOD

19 Attorneys for KMC

20 787 7th Avenue

21 New York, New York 10019

22 BY: JOEL RANDLEMAN, ESQ.

23

24

25

□

4

1

2

A P P E A R A N C E S (Cont'd):

3

4

BROWN RUDNICK BERLACK ISRAELS, LLP

5

Attorneys for XO

6

One Financial Center.

7

Boston, Ma. 02111.

8

BY: STEVEN D. POHL, ESQ.

9

ROBERT MURRAY, ESQ.

10

11

ALSO PRESENT:

12 BAREND PENNINGS
13 TOM LORD
14 HOWARD CHATZ
15 ROBERT MURRAY
16 CARL GRIVNER
17 KEITH MEISTER
18 MAX AZAHAM
19 TOM GILLETTE
20 JEFF TERRY
21 TED PETO
22 BILL GARRAHAN

23
24
25

□

5

1

2

A P P E A R A N C E S (Cont'd):

3

4

ALSO PRESENT:

5

CARLYN TAYLOR

6

GREG BRANN

7

CARL JENKINS

8

DAVE TRUCANO

9

CHRIS NICHOLLS

10

ANNA OSTROVSKY

11

DAVID TRUCANO

12

CHRISTOPHER R. LEE

13

STEPHEN J. TOY

14

15

16

17
18
19
20
21
22
23
24
25

□

6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

(Time noted: 10:30 a.m.)

MR. KRAMER: We are going off the record for this session.

(Approximately 30 people present in the room)

(Discussion off the record.)

MR. KRAMER: All right. We will take a recess at this time.

(Time noted: 11:05 a.m.)

(Recess).

(Time noted: 1:30 p.m.)

MR. HENES: I am JON HENES of Kirkland Ellis, and I am representing Allegiance Telecom.

Mike Kramer, Greenhill, also, as you know representing Allegiance sitting next to me.

I want to thank you for your patience this morning. As you all know,

21 we had significant discussions with all
22 of the relevant parties, Qwest, XO, the
23 creditors committee and the lenders. And
24 we are here today to conduct an auction
25 under the bankruptcy courts order that

7

1
2 was entered on January 15, 2004, pursuant
3 to which Qwest is the stalking horse
4 bidder. We received one qualified bid
5 that was from XO Communications and Mike
6 Kramer will take you through more details
7 on the specifics in you a few minutes.

8 We based, on all of the
9 conversations that we have had this
10 morning, we reached agreement, that means
11 XO Communications, Qwest, the committee,
12 the lenders and the debtors, that XO is a
13 qualified bidder and their bid is a
14 qualified bid. We have agreed that the
15 Qwest notes will be valued at par, we
16 have agreed that the XO stock will be
17 valued at fair market value.

18 We, as the auction goes on, and more
19 securities are offered, we reserve our
20 rights to revalue those securities.

21 And Mike will go through more detail
22 on that.

23 Just for process, we want to make
24 sure that we have a clean record, so we
25 need to be cognizant of the court

1

2

reporter trying to take down a lot and that means we can only have one person speaking at once. Everybody that wants to speak, rails their hand and wait for me to call on you, especially you Ira.

3

4

5

6

7

Once I recognize, you, state your name, state your name and who you are with, for the record and you will get your question. Okay.

8

9

10

11

At this point I will turn it over to Mike that will take you through the ground rules for today, and take you through some changes, since the bidding procedures --.

12

13

14

15

16

MR. KRAMER: All right. Thank you. Let me go through. As I look through the room, it appears that we have obviously representatives of Qwest, XO, the official committee, unsecured creditors committee and the bank creditors committee as well as their respective advisers.

17

18

19

20

21

22

23

24

I would ask two questions. Is there many anybody who is not with those

25

1

2

parties in the audience and is there any

3 members of the press that are in the
4 audience?

5 MR. RANDLEMAN: I am from Sidley
6 Austin Brown & Wood.

7 MR. KRAMER: You represent?

8 MR. RANDLEMAN: KMC.

9 MR. KRAMER: All right. Thank you.
10 Anybody else?

11 (Pause.)

12 MR. KRAMER: All right.

13 Pursuant to the bid procedures we
14 are here today to auction off the primary
15 assets of Allegiance. As John indicated
16 we do have one qualifying bid. What I
17 would like to do is have each of Qwest
18 and XO go on the record and answer or
19 confirm a few statements that I will
20 make. In order to do that what I would
21 ask is that each entity designate one
22 person to answer the questions.

23 The questions that I have are first,
24 to both Qwest and XO, you should have
25 received a package of documents from us

□

10

1 earlier this morning. Those documents
2 included what we call the option
3 guidelines, the option revision and
4 valuation table. Copies of each of Qwest
5 and XO's asset purchase agreement, the
6 copy of the transition services

8 agreement, and you each should have
9 received a copy of your own schedule of
10 key contract assumption and rejections.

11 what I would like to do is ask each
12 of you to confirm one, that you received
13 that information, and two, with respect
14 to the, your own asset purchase
15 agreement, the transition services
16 agreement, and the schedule of key
17 contracts, that is the latest version of
18 the contract and that is the appropriate
19 contract to be working off of.

20 With that I would first go to Qwest.

21 MR. BASTA: Paul Basta from Weil
22 Gotshal, on behalf of Qwest. That is
23 correct. As I mentioned to you in the
24 room we have not, the documents look like
25 they are the right documents, we have in

□

11

1
2 turn pages to compare.

3 But, based upon our review they seem
4 appropriate.

5 MR. KRAMER: Thank you. XO?

6 MR. POHL: Stephen Pohl, on behalf
7 of XO. Everything you said is accurate.
8 With respect to the transition services
9 agreement, I suggest we really haven't
10 had a whole lot of time to go through
11 with that in detail. With respect to the

12 a schedule of assumed contracts and
13 rejected contracts, yes we have that and
14 as you know we are spending some time
15 with, on the MFN contract.

16 MR. KRAMER: Okay. Moving forward,
17 again another question for both of you,
18 or a statement. I would like to have
19 people acknowledge that both of you
20 understand that at the end of this
21 auction when I or a representative of the
22 debtor stand up here and close the
23 auction, that that is the end of the
24 auction and the auction bidding will be
25 completed at that point in time.

12

1
2 So, again could I have the
3 representative of Qwest.

4 MR. BASTA: Paul Basta, that is
5 right. That is correct.

6 MR. POHL: Steve Pohl, that is
7 understood.

8 MR. KRAMER: Great. Specifically
9 with respect to Qwest, I would ask them
10 to confirm a couple of things on the
11 record.

12 First of all, with respect to
13 antitrust situations, I would like the
14 representative of Qwest to go on the
15 record and confirm that those, the
16 antitrust issues have been resolved as

17 discussed with Mark Tresnowski, the
18 general counsel of Allegiance; and that
19 is completed.

20 MR. BASTA: Well --

21 MR. KRAMER: I will go through all
22 4.

23 MR. BASTA: All right.

24 MR. KRAMER: Second, we would like
25 you to confirm that there is an agreement
□

13

1
2 with the debtors that is final and
3 complete, with respect to Qwest providing
4 for the reimbursement of any costs
5 associated or in conjunction with any DOJ
6 investigation and appropriate
7 indemnification.

8 And third, that you have agreed to
9 modify the time line as was included in
10 your package. And 4, that any securities
11 issued in conjunction with this deal, if
12 you are the winner, will be fully
13 registered and freely tradable unless
14 otherwise stated.

15 MR. DUNN: Ken Dunn, deputy general
16 counsel on behalf of Qwest.

17 I can confirm that all antitrust
18 issues have been resolved, through the
19 negotiation of a consent decree, which
20 has been reviewed by counsel for

21 Allegiance.

22 Secondly, we have reached agreement
23 also on indemnification, indemnification
24 of Allegiance with respect to any cost
25 they might incur in connection with the

14

1
2 antitrust investigation.

3 Paul Basta will respond to the other
4 two issues.

5 MR. BASTA: Yes. With respect to
6 the 1145 issues, this is to confirm our
7 prior conversations with we believe the
8 securities will be exempt under 1145.
9 And to the extent a conclusion is reached
10 that they are not exempt under 1145, they
11 will be registered and the company has
12 agreed also to cooperate with respect to
13 any modifications or structuring that
14 could be done to ensure that those are,
15 get 1145 protection.

16 A PARTICIPANT: Also the time line.

17 MR. BASTA: The time line is
18 accurate.

19 The requested modification would be
20 within reasonable limits.

21 MR. KRAMER: Okay. One last
22 modification to the agreement that I
23 would like to have Qwest confirm is with
24 respect to section 6.3(e), that Qwest has
25 agreed that if they delay the rejections

0

1

2 of any executory contracts beyond the
3 closing date, under the APA, such party
4 will be responsible for all carrying
5 costs associated with each such contract
6 as if it were a non-transferred asset
7 covered under the management agreement.

8

MR. BASTA: That is accurate.

9

MR. KRAMER: Thank you. With
10 respect to XO, again I will go through a
11 couple of items that we would like to
12 have confirmed on the record. And first
13 I will start with the same modification
14 to section 6.3(e). I can repeat that or
15 --

10

11

12

13

14

15

16

MR. POHL: You do not need to, that
17 is confirmed.

17

18

MR. KRAMER: The second would be to
19 the extent that you are selected the
20 winner at this auction, any securities
21 issued in conjunction with this deal will
22 be fully registered and freely tradable
23 unless specifically stated otherwise.

19

20

21

22

23

24

MR. POHL: That is correct. We
25 intend to use the 1145 exemption and if

25

0

1

2

that doesn't work --

3 MR. KRAMER: If a shareholder vote
4 is required in order to implement your
5 deal, you will covenant to seek that
6 approval and Icahn Associates and/or
7 affiliates will provide a proxy to vote
8 for that agreed upon transaction?

9 MR. POHL: That is accurate.

10 MR. KRAMER: Also I would like you
11 to confirm with respect to schedule 6.26,
12 that XO is not an ILEC and will sell at,
13 sell PRIs and COLO space at rates as
14 scheduled on, as provided for in the
15 transition service agreement and not at
16 the ILEC transfer tariff rates?

17 MR. POHL: That is correct.

18 MR. DUNN: Ken Dunn with Qwest.

19 will the issues you just went
20 through be memorialized in some way
21 specifically with respect to the proxy
22 that Icahn will provide who will hold
23 that proxy, and what conditions it will
24 be reportable?

25 MR. HENES: Yes.

17

1

2 MR. KRAMER: Yes.

3 MR. DUNN: Similar. I suggest that
4 similar to what we provide with respect
5 to the indemnification.

6 MR. POHL: We will work out
7 something with the company and it will be

8

--

9

10

11

12

13

14

Steve Pohl. We will work out something with Allegiance and we will anticipate that it will make its way either in the asset purchase agreement or the document executed in connection with it.

15

16

17

18

19

20

21

22

MR. KRAMER: All right. With all that said, we have thoroughly reviewed each of the contracts. And based upon our review and analysis of each of the contracts, we have concluded that the XO contract and transaction currently provides the estate with the highest bid by a margin of 16.8 million dollars.

23

24

25

Therefore, we will open the bidding first to Qwest. The minimum bid increment for the first round is five

□

18

1

2

3

4

million dollars, therefore the minimum required bid increase to Qwest is 21.8 million.

5

6

7

8

9

10

11

When taking into consideration the 13 million dollars in aggregate for the break up fee and expense reimbursement, this translates into a minimum required increase in their purchase price of 8.8 million dollars to Qwest to move on to the next round.

12 With that said, if there is no
13 questions, what we would ask each party
14 to, or each group to do is return back to
15 their conference rooms and we will wait
16 for Qwest.

17 MR. HENES: One last thing before we
18 go. The guidelines that were sent out,
19 those are guidelines to help us with the
20 auction and try to keep everything under
21 control. But if there are issues with
22 that, the bidding procedure order is what
23 governs.

24 MR. KRAMER: Okay. Thank you.

25 MR. POHL: One second. Off the

□

19

1

2

record.

3

MR. KRAMER: Off the record.

4

(Discussion off the record.)

5

MR. POHL: The last thing you just

6

said, Steve Pohl for --

7

The last thing you said about the

8

bidding procedures, were you referring to

9

the court order or what you disseminated

10

last night?

11

MR. KRAMER: The guidelines.

12

MR. POHL: The guide lines of last

13

night.

14

MR. HENES: The guidelines submitted

15

last night will be to help the process,

16

to be as efficient as possible, however

17 if there are issues the bidding
18 procedures order signed by the court is
19 what governs.

20 MR. POHL: We will reserve the
21 right, as I am sure others will, to
22 challenge any of the bidding procedures
23 in the order to the extent that they are
24 ambiguous.

25 MR. HENES: Ambiguities. The

20

1

bidding procedures order is what rules.

2

3

MR. POHL: I understand it governs
4 it.

4

5

MR. KRAMER: Okay. Can we go off
6 the record. Off the record.

6

7

(Discussion off the record.)

8

MR. KRAMER: We will go back on the
9 record.

9

10

After that long delay, Qwest has
11 returned with an incremental bid of \$10
12 million additional in the same
13 convertible notes that they have
14 previously provided, which does exceed
15 the 8.8 million dollars of incremental.

11

12

13

14

15

16

So, the bid now goes to XO.

17

MR. POHL: We would like --

18

First, tell us what our next bid
19 should be to qualify.

19

20

MR. KRAMER: That's what we are

21 trying to calculate right now.

22 MR. HENES: Off the record.

23 (Discussion off the record.)

24 MR. KRAMER: Back on the record.

25 MR. HADDOCK: Qwest bids an

□

21

1

2 incremental \$10 million, and that makes
3 the delta between the two bids now 6.2
4 million dollars higher.

5 The Qwest bid now is \$6.2 million
6 higher than the XO bid and the minimum
7 over bid beyond that would be an
8 additional five million dollars, so the
9 next bid to XO will be \$11.2 million.

10 MR. BASTA: The break up fee, fee
11 and the expenses reimbursement.

12 MR. HADDOCK: That is included.

13 MR. HENES: Off the record.

14 MR. MEISTER: Keith Meister.

15 For the benefit of both bidders, can
16 you guys prepare a schedule so that we
17 don't have to go through this each time.

18 MR. POHL: Including the math on the
19 16.8, because we had some preliminary
20 sheets, we would like the final sheet.

21 MR. HADDOCK: Fair enough.

22 MR. HENES: Off the record.

23 (Discussion off the record.)

24 MR. HENES: Let's make sure that
25 everybody is comfortable.

1

2

MR. MEISTER: We would like to see
the breakdown, on a white board or a
piece of paper.

3

4

5

MR. KRAMER: Off the record.

6

(Recess.)

7

MR. KRAMER: On the record.

8

9

MR. HADDOCK: Again, the incremental
bid for Qwest was \$10 million, raising
their total bid in excess of the current
XO bid to a level of \$6.2 million higher,
inclusive of the \$5 million minimum bid
increment beyond that, the next bid of XO
\$11.2 million.

10

11

12

13

14

15

A PARTICIPANT: On top of.

16

17

MR. KRAMER: On top of the previous
bid.

18

MR. HADDOCK: On top --

19

A PARTICIPANT: 411.

20

MR. HADDOCK: Paul.

21

MR. HENES: Give them the actual
bid.

22

23

MR. HADDOCK: We will go off the
record.

24

25

(Discussion off the record.)

1

2

MR. HADDOCK: Can everybody see the

3 board?

4 A PARTICIPANT: I can't read it.

5 MR. HADDOCK: We will go down to
6 Qwest, line by line, cash, 300 for both,
7 Qwest is \$90 million note, XO has no
8 note. Qwest has no stock, XO has 111
9 million dollars of stock. Subtotal is
10 390 for Qwest, 411 for XO, minus the
11 deduction for the 626 provision for Qwest
12 of \$1 million, takes Qwest to a net of
13 389, minus the \$5.2 million reduction for
14 the contract rejection from XO's part,
15 takes it from 411, minus 5.2 to 405.8.

16 Qwest bid , their incremental, their
17 expense reimbursement and break up fee of
18 \$13 million, plus \$10 million additional
19 of notes, for a total bid of \$412
20 million, versus XO's current bid of
21 405.8, a delta 6.2, inclusive of the
22 minimum bid increment of \$5 million, the
23 next bid to XO is \$11.2 million.

24 A PARTICIPANT: What's the number
25 that they need to bid, that XO needs to

24

1
2 bid?

3 MR. HADDOCK: 417.

4 A PARTICIPANT: It is actually not,
5 I think it is 422.

6 A PARTICIPANT: We have to add --

7 MR. MEISTER: We have to add five to
Page 20

8 the current bid, which would be 4, 17 --

9 11.2 plus 405 would be our bid, 418.

10 We are topping your bid by five
11 million dollars

12 MR. MEISTER: We have to increase
13 our bid --

14 A PARTICIPANT: Exactly.

15 A PARTICIPANT: In the left-hand
16 column, where's extra ten we put on the
17 table? Right there. Okay.

18 MR. HADDOCK: Right here.

19 MR. MEISTER: To the extent that you
20 guys put this on a piece of paper, that
21 will help.

22 MR. DUNN: We need to see it on a
23 piece of paper, and we will take a look
24 at it.

25 MR. MEISTER: All right.

25

1

2 MR. HENES: All right.

3 MR. DUNN: Would you let us know
4 what you think the next required bid is?

5 MR. HADDOCK: The next required bid
6 is 417.

7 MR. DUNN: 417 what?

8 A PARTICIPANT: The next bid is --

9 MR. KRAMER: There are two ways to
10 look at it. It is 417 or \$11.2 million
11 in additional consideration. Because we

12 have a deduct of 5.2 million off of their
13 original 411.

14 MS. TAYLOR: Carlyn Taylor with FTI.

15 The way it would go in the actual
16 APA would be 411 plus their bidding.

17 MR. KRAMER: Yes.

18 A PARTICIPANT: Unless there is
19 another change that creates value in
20 another way.

21 That is why you have to keep track
22 of how they are evaluating the bid every
23 time.

24 MR. HADDOCK: From here on out we
25 will keep going down the schedule.

26

1

2

MR. KRAMER: Any other questions?

3

XO, it is up to you.

4

MR. HENES: Off the record.

5

(Discussion off the record.)

6

MR. MEISTER: We will wait and go to

7

a room and evaluate and we will be back

8

later.

9

MR. KRAMER: Off the record.

10

(Time noted: 2:00 p.m.)

11

(Recess)

12

(Time noted: 2:40 p.m.)

13

MR. KRAMER: This will not be on the

14

record.

15

(Discussion off the record).

16

(Approximately 25 people in the
Page 22

17 room).
18 (Time noted: 3:09 p.m.)
19 MR. KRAMER: We will take a recess.
20 (Recess.)
21 (Time noted 8:56 p.m.)
22 MR. KRAMER: Back on the record.
23 (Hearing Exhibit A, XO Bid
24 Proposal , marked for identification as
25 of this date.)
□

27

1
2 MR. HENES: We have a new bid.
3 The new bid contemplates changing
4 the current asset purchase agreement. We
5 are going to attach as an exhibit to the
6 transcript -- you can pass that over to
7 the reporter -- this XO bid proposal,
8 that we will also pass out down to
9 everybody, which has the details of the
10 new proposal.
11 The basics are that XO has agreed
12 that it will purchase the assets of
13 Allegiance Telecom Inc., and Allegiance
14 Telecom companies worldwide and the stock
15 of all subsidiaries of a TCW Allegiance
16 Telecom worldwide other than the excluded
17 assets as defined in the asset purchase
18 agreement.
19 In addition to that, there has been
20 changes to the time line that is attached

21 as Exhibit J, which specifically are that
22 the disclosure statement and order needs
23 to be entered by April 16, 2004; plan
24 confirmation has to occur by June 4, 2004
25 and the effective date of the plan needs
□

28

1

2

to occur by June 30, 2004.

3

4

5

6

7

8

9

With respect to reps and warranties,
they will remain as of December 18th,
2003, with updating of schedules and the
bring downs of the reps and warranties at
what we are calling the change of
management control date, which I will
explain in a second.

10

11

12

13

14

15

16

The change in management control
date is after XO receives HSR and FCC
clearance, gives satisfaction of all of
the closing conditions as of that date
and the execution of a satisfactory
management agreement that permits XO to
start managing the assets.

17

18

19

20

21

Okay. There are more details in
this, as you can see, in looking at it.

what we have ascribed to this, we
have ascribed a value of \$23 million to
this package, this proposal.

22

23

24

25

In addition, XO has added to their
proposal a cash bid of \$11.2 million.

We currently now have an adjusted
purchase price for XO of \$440 million.

1

2

That means that Qwest needs to raise
its bid by \$33 million to be at \$445
million.

5

One second.

6

7

8

9

10

11

12

13

Another thing, to point out for the
record, under the bidding procedures
order with respect to the second highest
and best bid, there is a provision that
allows the debtors to elect after
consulting with the banks, and the
creditors' committee, to consummate a
sale with that second bidder.

14

15

16

17

18

We have consulted with the banks and
the committee and we are going to agree
that we will not, if XO is the second
bidder, we will not consummate a
transaction with XO.

19

Does anybody have any questions?

20

21

MR. BASTA: May I clarify the
record?

22

23

The bidding procedures also say that
Qwest can't be bound as a second bidder.

24

25

MR. KRAMER: Correct. I will let
the lawyers answer that.

1

2

MR. HENES: We understand that you

3 will not be bound as a second bidder, it
4 is understood for the record.

5 MR. AUSTIN: Jesse Austin,
6 representing the lending group.

7 To make sure I understand, the
8 components of the Qwest bid is now 311.2
9 million in cash -- excuse me, XO, 311.2
10 million in cash, 11 in stock and 23
11 million in ascribed value with the
12 contract adjustments.

13 MR. HENES: That is correct.

14 MR. KRAMER: We have a sheet with
15 respect to that.

16 MR. HADDOCK: There is an item here
17 as well.

18 MR. KRAMER: We have a sheet that we
19 are passing out.

20 MR. AUSTIN: I understand.

21 MR. HENES: Any other questions?

22 MS. TAYLOR: Carlyn Taylor. I
23 thought the contract changes were 18.
24 And can you just explain how you went
25 from the 18 to the 23?

31

1
2 MR. HENES: Yes. The reason for the
3 23 is that XO has agreed as soon as they
4 get the HSR approval, the FCC approval
5 and management agreement, to actually
6 take control of management, and that is
7 when the debtor's obligations, the

8 conditions and can terminate, we ascribe
9 additional value to that.

10 MS. TAYLOR: Five million,
11 basically?

12 MR. HENES: Yes.

13 A PARTICIPANT: What date do you
14 estimate that that will be?

15 MR. KRAMER: We don't know.

16 Unless there are no further
17 questions, the next bidding again goes to
18 Qwest, with a minimum bid of \$33 million.

19 A PARTICIPANT: Keeping the room
20 live, are you going to update the XO bid
21 on there?

22 MR. KRAMER: Sure.

23 MR. HENES: Any other questions?

24 No. We will go off the record.

25 (Pause).

□

32

1

2

MR. KRAMER: For everybody in the
3 room, Qwest has suggested that we
4 reconvene back here at 9:20.

5

(Time noted: 9:05 p.m.)

6

(Recess).

7

(Time noted: 10:20 p.m.)

8

MR. KRAMER: Back on the record.

9

would you mark this as Exhibit B,

10

for identification.

11

(Hearing Exhibit B, revised XO

12 Bid Proposal , marked for
13 identification as of this date.)

14 MR. KRAMER: Back on the record.

15 MR. HENES: All right. We received
16 a bid from Qwest, with respect to the XO
17 bid proposal, and we received a markup of
18 that, from Qwest, which is generally
19 clean-up changes, which we will pass
20 around.

21 Qwest does want to keep certain
22 covenants in the agreement after the
23 change of management control date, and
24 those covenants would only be
25 non-operating covenants that are within

33

1
2 the seller's control, the breach of which
3 would reasonably be expected to
4 materially adversely affect buyer's
5 acquisition of the acquired assets, or
6 the value of the acquired business.

7 In addition, and we are ascribing 23
8 million to this, which is Exhibit B to
9 the transcript.

10 And Qwest has also bid \$10 million
11 of convertible notes so the total value
12 received is \$445 million, and the next
13 bid for XO needs to be 450.

14 (Pause).

15 MR. HENES: Does anybody have any
16 questions?

17 MR. ICAHN: We are not sure what
18 they did. How do you get the 23?

19 MR. KRAMER: They took are same deal
20 and they made some modifications in terms
21 of some were clean up, they did leave in
22 some covenants with the caveat that Jon
23 spoke of that there would be no operating
24 covenants, it would only be things
25 subject to what they are totally in our

34

1
2 control, which would reasonably affect
3 the operations of the business.

4 MR. MEISTER: If XO wanted to adopt
5 the same language as Qwest, would we have
6 that right?

7 MR. KRAMER: Additionally the thing
8 that they did do, in paragraph 11,
9 paragraph 9, with respect to the ILEC
10 strategy, they eliminated the "subject
11 to" language relating to input and
12 communication and written notification.

13 So, any interaction with the ILEC
14 and the ILEC strategy would be at
15 Allegiance's sole right and control
16 without any interaction or effect on
17 Qwest.

18 MR. ICAHN: Qwest would not have any
19 interaction?

20 MR. KRAMER: Qwest would not have

21 any interaction, it would not have to be
22 communicated with -- they would not have,
23 they would not want, they don't have --
24 we do not have to get their written
25 approval or anything.

35

1

2

A PARTICIPANT: You can you tell us
what the Exhibit A references at the top?

3

4

MR. HENES: The XO bid proposal,
which had a black line in it, which we
can show you, and they agreed to your
change, which I believe was --

5

6

7

8

A PARTICIPANT: You have given us
this one on a full black line version as
opposed to the clean version that was put
on the record.

10

11

12

MR. HENES: Yes.

13

14

A PARTICIPANT: We got their last
set of changes after --

15

We added those.

16

17

A PARTICIPANT: I have a question.
I don't know, and if someone can
articulate what this means, would
reasonably be expected to materially
adversely affect the buyer's acquisition
of the acquired assets, the value of the
acquired business.

18

19

20

21

22

23

I kind of ask Qwest what that means.

24

And kind of give me a "for example"

25

so that everyone understands what this

1

2 is. This is not something that we knew
3 about beforehand. I want to understand
4 what it is and everyone will know that we
5 are talking about.

6

MR. BASTA: The no shop.

7

8 There is a covenant in it that says
9 that they will not solicit any other
10 proposals or shop the assets to anybody
11 else. So this is just to make clear that
12 in this interim period they won't do
that.

13

A PARTICIPANT: All right.

14

15 Can we just say that? I think the
16 terms here are kind of ambiguous. If
17 your goal is to talk about the no shop, I
understand what that is.

18

19 MR. BASTA: It is not just to talk
20 about the no shop, but to talk about
21 covenants that are within the control of
22 the company that if failed to perform
23 could have a negative impact, others
24 would be obligations and best efforts to
25 prosecute the plan, file the plan, file
the approval motions, those kinds of

□

1

2

things. And subject to a materially

3 adverse --

4 MR. ICAHN: We are prepared to make
5 another bid, but we would like to reserve
6 the right if we want to, and if we win we
7 could have this laterally; is that fair
8 enough?

9 MR. HENES: That is fair.

10 MR. ICAHN: We can have part of the
11 language or all of it, you know? Because
12 I don't think we want --

13 We may want some of this. But just
14 to short-circuit it, we are prepared to
15 make another bid.

16 As long as we can take that route,
17 we would rather go and study this for
18 another two hours.

19 MR. KRAMER: All right.

20 MR. CANTOR: No.

21 You can have the work product that
22 Qwest did, but you can't pick some of it,
23 the thing that qualifies the conditions,
24 like the things in it that are in there
25 that are good to us, you can't throw

□

38

1

2 those out and take the other stuff.

3 MR. ICAHN: That is fair. So, we
4 can have it all or none.

5 MR. CANTOR: All right.

6 MR. ICAHN: All right. Qwest is
7 445?

8 MR. HENES: Yes.

9 MR. ICAHN: All right. We will go
10 to 455.

11 MR. HENES: What's the
12 consideration?

13 MR. ICAHN: Stock.

14 MR. HENES: Okay.

15 (Pause).

16 MR. KRAMER: 460 to Qwest.

17 A PARTICIPANT: Qwest would like to
18 request a five minute recess.

19 A PARTICIPANT: On the last XO bid
20 the component was 311.2 in cash and 120
21 in stock, and 126.

22 MR. HENES: We will take a five
23 minute recess, we will go off the record.

24 MR. AUSTIN: Keep it to five
25 minutes?

□

39

1

2 A PARTICIPANT: Can we go through --

3 MR. HADDOCK: Your column here, this
4 is where we came in tonight.

5 This is the three things that you
6 did, right. The 23 for the letter
7 agreement, 10 of notes. It brings us to
8 445. This is where they were previously
9 and they stayed at 440.

10 They just increased here, 15 on
11 stock to go to 455 in total, you remained

12
13
14
15
16
17
18
19
20
21
22
23
24
25
□

at 445.
A PARTICIPANT: Less than 5.2?
MR. KRAMER: That is way over here.
MR. HADDOCK: This is the net, net.
A PARTICIPANT: They have to bid 460
to qualify?
MR. HADDOCK: That's correct.
A PARTICIPANT: All right. Fair
enough.
MR. HENES: We will take a recess at
this time.
(Time noted 1040 p.m.)
(Recess).
MR. KRAMER: Back on the record.

40

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

MR. GILLETTE: Qwest, 15 million
additional conversion. Tom Gillette.
MR. KRAMER: The bid from Qwest is
15 additional, 15 million additional in
the form of a convert discussed or a bid
of 460, 460. So the bid now is to XO at
465.
MR. ICAHN: What are we now?
MR. KRAMER: You are 455.
MR. ICAHN: Yes. We will put
another 15 in.
MR. HENES: Of stock?
MR. ICAHN: Of stock. That is 470.
(Pause).
MR. KRAMER: The bid is to Qwest for
Page 34

17 475.
18 MR. DUNN: Qwest would like a two
19 minute recess, please.
20 MR. KRAMER: Off the record.
21 (Discussion off the record.)
22 MR. KRAMER: Back on the record.
23 Let's get the Qwest bid.
24 MR. HENES: On the record.
25 MR. GILLETTE: Qwest, plus 15

41

1
2 million in converts. Notes.
3 MR. KRAMER: All right. The bid to
4 XO is 480.
5 MR. HENES: Off the record.
6 (Time noted: 10:55 p.m.)
7 (Recess)
8 (Time noted: 2:10 a.m.)
9 MR. KRAMER: Back on the record.
10 MR. HENES: On the record.
11 The current Qwest bid is 475, the
12 current XO bid is 470. The bids to XO
13 they need to get to 480.
14 MR. ICAHN: We are raising to
15 25,000,000.
16 MR. HENES: What's the currency?
17 MR. ICAHN: Stock. The stock value
18 at 7 5/8s.
19 MR. CANTOR: We are changing the
20 pricing structure on the XO stock, change

21 it from the five day average with the
22 collar, and to a fixed price, a fixed
23 number of shares, taking away a fair
24 amount of risk volatility. So it is
25 about 21,770,500 shares of XO stock,

□

42

1

2

valued at a fixed price of 7 5/8s a
share.

3

4

MR. POHL: How many shares?

5

MR. CANTOR: 21,770,500.

6

Again, it is a change in the pricing
structure and the parameters on the
stock, given to reevaluate.

7

8

9

MR. POHL: That price is fixed
through the rest of the auction?

10

11

MR. ICAHN: As per agreement.

12

MR. POHL: It is a condition of that
bid.

13

14

MR. CANTOR: I understand that all
of your future bids will be at 7 5/8s
with a fixed number of shares.

15

16

17

I can't guarantee for you anybody
else will accept that.

18

19

MR. POHL: It has to be conditioned
with the rest of the bidding procedure.

20

21

MR. ICAHN: That was part of the
condition that --

22

23

That was the condition I did it.
Otherwise I would stick with the average.

24

25

MR. POHL: That is why he went up

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

25.

MR. ICAHN: We went up 25 based on that and that was the condition, because I don't want to fight every time we do this and have Houlihan come in and start negotiating again.

MR. CANTOR: Since we are pretty much bidding with the creditors committee's money, I will ask the attorney for the creditor's committee to affirm that that is his understanding of how you are bidding.

MR. DIZENGOFF: It is my understanding of how they were bidding as acceptable with us.

MR. BASTA: I have several questions.

Michael, are you saying that irrespective of what bids and stock shares are issued in the future, that irrespective of what happens you will defer to the creditor committee's judgment?

I am asking you whether you are

1
2

exercising your judgment or whether we

3 should deal with the committee, because
4 you delegated your judgment to the
5 committee?

6 MR. CANTOR: The committee and the
7 company are both exercising their
8 independent judgment.

9 what we are trying to do here is to
10 ensure that the committee and the company
11 both agree on all of the steps going
12 forward, and we do. There is no
13 advocacy.

14 MR. BASTA: In terms of --

15 MR. DIZENGOFF: You and I have had
16 long discussions about this and we are in
17 agreement on this.

18 MR. BASTA: I want to make sure that
19 I understand the nature of the agreement.

20 The nature is that irrespective of
21 how many shares under this structure may
22 be issued in the future, that no volume
23 discount would be applied to it as a part
24 of this agreement?

25 MR. KRAMER: I don't think we

□

45

1

2 discussed volume discounts.

3 MR. BASTA: So, could someone then
4 again describe --

5 The nature of the agreement is that
6 XO can bid at 7 5/8s fixed share, and
7 that will be an accepted bid, but the

8 creditor's committee and the company can
9 still apply a volume discount if the
10 number of shares go; is that the nature
11 of the agreement?

12 MR. POHL: That is not the
13 agreement. 7 5/8s at the rest of the
14 auction.

15 MR. ICAHN: You had it correct.
16 There is no volume.

17 MR. BASTA: There is no volume
18 discount?

19 MR. ICAHN: There is no volume
20 discount. We can keep going with stock
21 and no volume discount.

22 MR. AUSTIN: What's the bid or the
23 value?

24 MR. ICAHN: 495.

25 MR. CANTOR: Off the record for a

□

46

1

2

second.

3

MR. BASTA: I object to going off
4 the record.

5

MR. CANTOR: All right. Object.

6

(The parties confer).

7

(Time noted: 2:20 a.m.)

8

MR. CANTOR: You were objecting to
9 us going off the record?

10

MR. BASTA: Now I object to you
11 going back on.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
□

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

(Laughter)

MR. CANTOR: To clarify the record, we heard the committee affirm a willingness to take the 7 5/8s without the volume discount.

And you, Paul, raised an issue which we the company agree, it would be prudent, notwithstanding where the committee is, to require some limitation on the amount of volume that they can bid at 7 5/8s.

So, what we would be requesting and I think is acceptable is that the company thinks it is comfortable to take the 7

47

5/8s price until we get to an amount of 30.6 percent of the total pro forma float of the XO stock, which is about how many shares --

MR. KRAMER: 60,000,000 shares, 30.6 percent of the total pro forma shares outstanding.

MR. CANTOR: Exactly.

Notwithstanding where the committee might be, in the exercise of our prudent judgment, we think that should be the limit.

MR. BASTA: I will ask some questions on the record to understand how you reached these judgments.

17 I would like to begin by asking you
18 what factors and information the estate
19 relied upon in deciding to purchase the
20 XO securities?

21 MR. CANTOR: Well --

22 MR. POHL: This is an auction, not a
23 deposition.

24 MR. CANTOR: We will wait for your
25 bid, but I don't think we are going into

□

48

1

2 that right now on the record.

3 MR. BASTA: Okay. In the start of
4 the auction you announced procedures and
5 then in the description to Qwest, you
6 indicated that the appropriate time you
7 thought a volume discount would be
8 appropriate with respect to the XO
9 shares; I was hoping that Michael could
10 state on the record in his opinion why he
11 believes that the deferring the volume
12 discount until 30.6 percent of the stock
13 has been issued, 60,000,000 shares, is
14 appropriate?

15 MR. CANTOR: I don't think we talked
16 about a discount, we talked about
17 retaining some discretion, as to the
18 number of securities.

19 MR. BASTA: That was not what was
20 represented to Qwest.

21 What was represented to Qwest was
22 that the company would consider a volume
23 discount as the number of shares of XO
24 stock increased.

25 And I am asking to understand the

49

1
2 analysis that was undertaken that this
3 is, this number of shares is the
4 appropriate time to kick it in?

5 MR. CANTOR: We have a transcript of
6 the auction here. And if you want to
7 litigate it, let me read the record back
8 to you so you will know what we said
9 because we were very careful with our
10 words and what we represented.

11 We said, we, as the auction goes on,
12 and more securities are offered, reserve
13 the right to revalue those securities.

14 MR. BASTA: I think that you are
15 right, I think that is probably what was
16 said on the record.

17 I think what was represented to us
18 might have been just represented in
19 discussion with us.

20 I would like to understand whether
21 the company has done an analysis of the
22 requirements for a shareholder vote, and
23 what legal requirements are required to
24 satisfy that?

25 MR. CANTOR: The shareholder vote
 Page 42

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for who?

MR. BASTA: For XO.

MR. CANTOR: What does it have to do with the bid?

MR. BASTA: The bidding procedures say that it cannot, bids in order to be qualified cannot be subject to shareholder approval.

They don't say that, they don't say that you have gotten shareholder approval, they can't be subject to shareholder approval.

And I would like to understand the technical requirements that were undertaken to comply with the obtaining shareholder approval and whether that can be done by proxy?

MR. CANTOR: This bid doesn't require a shareholder vote.

MR. BASTA: Does the agreement with respect to the future bids mean that if a bid that is submitted that would require a shareholder vote that would not be a qualifying bid?

1
2

MR. POHL: At the beginning of the

3 auction we already provided on the record
4 the vote of the Icahn affiliates that own
5 shares of XO that provides shareholder
6 approval. We already have shareholder
7 approval.

8 MR. BASTA: How was that shareholder
9 vote obtained? Under what --

10 MR. POHL: This is an auction and
11 not a time for you to question me or a
12 deposition. We will get it later. This
13 is the auction --

14 MR. BASTA: I don't think this has
15 been done fairly, and we will rereserve
16 all our rights.

17 MR. CANTOR: There are a variety of
18 answers to the question. You can reserve
19 your right as to the qualification.

20 MR. DUNN: The transcript you just
21 read from provided that the right to
22 revalue the stock, you retained the right
23 to revalue the stock depending upon the
24 volume issued.

25 I would like the record to reflect
□

52

1
2 that Qwest interprets that to mean that
3 if you issued, a great deal of stock was
4 issued, that the value might be reduced.

5 what seems to have happened is the
6 more stock that is issued the value goes
7 up.

8 MR. POHL: You can clarify the
9 record, I don't think the term volume was
10 used anywhere.

11 MR. CANTOR: I hear what you are
12 saying. In addition to there being more
13 securities issued, the entire pricing
14 structure has changed.

15 MR. DUNN: I just would like the
16 record to reflect that what was said to
17 us there, we interpret that to mean that
18 if a great number of shares were issued,
19 the judgment of the experts in the
20 company might indicate a lowering of the
21 price rather than what seems to be done
22 herewith, which is an increase in the
23 price.

24 MR. CANTOR: It also reflects that
25 this pricing structure has changed.

53

1
2 MR. DUNN: Obviously. Thank you.

3 MR. POHL: I am not sure it reflects
4 that there has been a decrease, because
5 the price at which the shares were going
6 to be valued was not determined yet,
7 because it was in the initial bid, the
8 five day average after the bid. So it
9 hasn't gone down.

10 MR. CANTOR: The record reflects
11 that, too.

12 MR. BASTA: Will Qwest be afforded
13 the opportunity the future price to
14 convert?

15 MR. CANTOR: Can you repeat that?

16 MR. BASTA: Will Qwest be provided
17 the opportunity to future price the
18 convert?

19 MR. CANTOR: What does that mean?

20 MR. GILLETTE: Tom Gillette.

21 You price this at a price higher
22 than what the stock closed today by 22
23 cents? Can we have our convert valued at
24 a price higher than we closed today?

25 MR. CANTOR: Do you want to break to

54

1

2

consider a bid?

3

4

We have gone through the day, and a
lot of the discussions about pricing and
the amount of the bid were done off the
record.

5

6

7

MR. BASTA: I do not mean to
interrupt.

8

9

But I will tell you what's different
between what's done now and between
what's done before.

10

11

12

Before every round, we reached an
agreement with respect to, you have
gotten a higher bid. Okay.

13

14

15

What you have done is sold the
auction procedures in exchange for a bid.

16

17 You have sold the auction procedures
18 meaning we are just going to set them in
19 the future, not change them in exchange
20 for getting in a bid today. That is
21 different. That is a different dynamic
22 than what we have had today.

23 MR. KRAMER: I think where we are at
24 is the bid is to Qwest at this point in
25 time.

55

1
2 The bid to Qwest is \$500 million,
3 which represents a \$25 million increase.

4 Let me finish.

5 Qwest can come forward with the type
6 of consideration or the form of
7 consideration that they believe meets
8 that or exceeds that, and we will review
9 that with you and give you our thoughts
10 and you can decide if you want to bid.

11 what, how much and in what form and
12 consideration you want to bid.

13 MR. GILLETTE: I would like to
14 confirm and make sure I understood what
15 you just said.

16 And I will ask again more
17 specifically and I would like an answer.

18 If you allowed XO to price their
19 security at a price that they have not
20 yet achieved, today's closing you have

21 had -- you have added 22 cents to it,
22 will our convert have the same privilege
23 of being priced at where we closed today,
24 plus 22 cents?

25 MR. KRAMER: The bid is to you.

56

1

2

Come to us and give us the form and
3 consideration. What I would say is that
4 the reason that the XO price was
5 increased was because they released
6 certain provisions that were associated
7 with that common stock.

8

9

10

11

12

13

The second thing I would say is,
your note that you are proposing doesn't
trade, so there is not a market value for
that security. So, I don't know how you
could even do the analysis that you are
talking about.

14

15

MR. GILLETTE: We understand your
answer. Okay.

16

17

18

19

20

21

22

23

24

25

MR. HENES: Off the record.

(Time noted: 2:30 a.m.)

(Recess.)

(Time noted: 3:00 a.m.)

MR. HENES: On the record.

MR. GILLETTE: 25,000,000 more in
converts.

MR. KRAMER: 25,000,000 more in
converts. We are at 500 million for
Qwest, and 495 to XO.

1

2

The bid to XO needs to be 505.

3

MR. ICAHN: Where are they now, 500?

4

All right. We will go to 525.

5

MR. GILLETTE: In currency? What

6

currency?

7

MR. ICAHN: Stock.

8

MR. HADDOCK: You go to 525?

9

MR. ICAHN: Yes.

10

MR. MEISTER: The incremental value

11

in stock at 7 5/8s.

12

MR. GILLETTE: We will take a

13

recess.

14

MR. HENES: Off the record.

15

(Time noted: 3:04 a.m.)

16

(Recess).

17

(Time noted: 4:25 a.m.)

18

MR. HENES: Back on the record.

19

We are back. We requested the 500,

20

the XO bid at 525. Qwest needs to hit

21

530.

22

MR. GILLETTE: Tom Gillette, Qwest.

23

We will increase our cash by \$15

24

million. We will increase the notes by

25

\$35 million, which will be represented by

1

2

7 million shares of Qwest priced at five

3 dollars.

4 MR. CANTOR: The notes.

5 MR. GILLETTE: The equity portion,
6 the equity will now be five dollar stock.
7 Equity, stock.

8 MR. HADDOCK: Changing it from notes
9 to stock.

10 MR. GILLETTE: Notes to stock, price
11 at five dollars, equivalent to \$35
12 million.

13 We expect that that will be the same
14 price that will prevail for the rest of
15 the bidding process. Sorry. We won't go
16 any higher than 30 percent of our
17 outstanding shares.

18 A PARTICIPANT: You went up
19 \$50,000,000.

20 MR. GILLETTE: Yes.

21 MR. CANTOR: The total cash is now
22 315 million, the notes are 165 million.
23 And \$35 million of stock at five dollars,
24 for a total bid of \$550 million. The bid
25 will go to XO at 555.

□

59

1

2 MR. POHL: The debtor accepted that
3 valuation?

4 MR. CANTOR: Yes.

5 MR. ICAHN: You accepted the
6 valuation of the stock?

7 MR. KRAMER: Yes.
Page 50

cc20139.txt

8 MR. ICAHN: Okay. We will go to
9 600, stock.

10 MR. HENES: 600 in stock.

11 MR. KRAMER: You are up 75.

12 MR. AUSTIN: Would you repeat the
13 components of that one.

14 MR. CANTOR: 311.2 million in cash.

15 A PARTICIPANT: 35.54.

16 MR. AUSTIN: Shares.

17 MR. HADDOCK: Seven million in
18 shares.

19 MR. HENES: They asked for the
20 components.

21 MR. CANTOR: The bid is now 600 to
22 XO, minimum bid is 605 to Qwest.

23 MR. GILLETTE: We will be back.

24 MR. HENES: Off the record.

25 (Time noted: 4:30 a.m.)

□

60

1

2 (Recess).

3 (Time noted: 4:45 a.m.)

4 MR. HENES: We are at 550. Qwest is
5 to bid at 605.

6 MR. GILLETTE: We will increase our
7 cash bid by 10 million. We will increase
8 our stock component by an additional 65
9 million. Total increase of 75 million.

10 MR. CANTOR: 625 to Qwest.

11 MR. AUSTIN: 65 stock on top of the

12 prior 35.

13 A PARTICIPANT: 100 in stock. 20
14 million shares. 20 million shares.

15 MR. HADDOCK: All right.

16 MR. KRAMER: The high bid is 625 to
17 Qwest. The next bid is minimum of 630 to
18 XO.

19 MR. ICAHN: We will go to 675,
20 stock.

21 MR. KRAMER: An additional 675
22 million in stock. 675 to XO. Minimum
23 bid of 680 to Qwest.

24 MR. GILLETTE: Okay. 45.38. we
25 will take a break.

61

1

2

MR. HENES: They are taking a
recess. Off the record.

3

4

(Time noted: 4:50 a.m.)

5

(Recess)

6

(Time noted: 5:00 a.m.)

7

MR. HENES: We are going to go on
the record. We have got XO at 675 plus
-- and Qwest would need to go to 680.

8

9

10 MR. BASTA: On behalf of Qwest, we
11 are done, no more bids. We reserve all
12 our rights with respect to the conduct of
13 the auction, and we would like the record
14 to reflect again that we have no
15 intention of being the second bidder.

16

MR. HENES: Thank you.
Page 52

cc20139.txt

17 MR. ICAHN: Thank you.
18 MR. HENES: Off the record.
19 The auction is closed at 675 for XO.
20 We will open the record back up just
21 to conclude.
22 MR. KRAMER: XO in their final bid,
23 the consideration is made up of 311.2
24 million in cash, shares of XO, 45.38
25 million, for a total value of \$675

62

1
2 million. And with that, we will close
3 the auction.

4 MR. MEISTER: For clarification
5 purposes, that 675 is as adjusted for
6 other things -- contractual issues.

7 MR. KRAMER: Right. Correct. The
8 auction is closed.

9 (Time noted: 5:05 a.m.)
10
11
12
13
14
15
16
17
18
19
20

21
22
23
24
25
□

63

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK.)

I, ROBERT X. SHAW, CSR, a Notary
Public within and for the State of New
York, do hereby certify:

That the above record is a true
record of the proceedings taken on
Februrary 12 and 13, 2004.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 13th day of February,
2004.

ROBERT X. SHAW, CSR
Page 54

cc20139.txt