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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

In re	X	
	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-_____ ()
	:	
Debtors.	:	Jointly Administered
	X	

**APPLICATION OF THE DEBTORS FOR AN ORDER
 AUTHORIZING AND APPROVING THE RETENTION OF
 BANKRUPTCY MANAGEMENT CORPORATION AS NOTICE,
 CLAIMS AND BALLOTING AGENT FOR THE DEBTORS PURSUANT TO
 28 U.S.C. § 156(c) AND RULE 5075-1 OF THE LOCAL BANKRUPTCY RULES**

TO THE HONORABLE 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 the date hereof (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Simultaneously with the filing of their petitions and this Application, the Debtors requested an

order for the joint administration of their chapter 11 cases pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Jurisdiction

2. This Court has subject matter jurisdiction to consider and determine this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 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

3. Allegiance is a facilities-based national local exchange carrier that provides 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. Allegiance offers its 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 colocation 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.

4. Allegiance serves more than 100,000 business customers in 36 markets.

Allegiance employs approximately 3,560 people, of which approximately 97 employees are covered by collective bargaining agreements.

5. As of the Commencement Date, the Debtors have approximately \$245 million of cash. As of December 31, 2002, the Debtors' consolidated books and records reflected assets totaling approximately \$1.441 billion and liabilities totaling approximately \$1.397 billion. For the three months ending December 31, 2002, the Debtors, on a consolidated basis, reported revenues of approximately \$204.91 million, EBITDA (i.e., earnings before interest, taxes, depreciation, amortization, non-cash deferred compensation expense and non-cash goodwill impairment charges) of approximately negative \$34 million and net losses of approximately \$120 million.

**Allegiance is Critical to Promoting Sustainable
Competition in the Local Telecommunication Marketplace**

The Telecommunications Act of 1996

6. In February of 1996, Congress enacted the Telecommunications Act of 1996 (the "Telecom Act"), with the stated purpose of:

promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

H.R. REP No. 104-204(I), 104th Cong. 1st Sess. 1995 (July 24, 1995), reprinted in 1996 U.S.C.C.A.N. 10, **10. In that regard, the Telecom Act required Incumbent Local Exchange Carriers, including the Regional Bell Operating Companies ("ILECs") – i.e., existing telecommunications monopolies – to allow newly created Competitive Local Exchange Carriers ("CLECs") to (a) interconnect with the ILECs, (b) access portions of the ILEC network and (c) collocate their equipment in ILEC facilities all at forward-looking cost based rates. In addition, CLECs were permitted to purchase ILEC services at wholesale prices and resell them to customers at retail prices.

7. The enactment of the Telecom Act spurred entrepreneurs to start hundreds of new businesses to compete in the local telecommunications marketplace. During the late 1990s, investors recognized the growth opportunity inherent in the opening of a competitive local telecommunications marketplace and invested billions of dollars in equity and debt capital into a multitude of telecommunications companies primed to provide competing services to American consumers.

8. Funded with significant amounts of investment capital, two types of CLECs emerged. The first type of CLECs were “resellers”. Specifically, “reseller” CLECs purchased telecommunications services from ILECs at a discount and resold the services to customers at a higher price. Thus, these CLECs simply offered consumers the same services supplied by ILECs - generally at lower prices. To be successful with this low margin business model, “reseller” CLECs invested their capital in sales and marketing efforts designed to acquire a substantial customer-base and attendant market-share in a relatively short period of time and ahead of their many competitors. However, because resellers were providing the identical services as the ILECs (with no differentiation) and were attempting to build a large market share in a highly competitive market, this business model was flawed and many in the telecommunications industry believe that the “resale” business will fail.

9. The second type of CLECs were “facilities-based” CLECs. These CLECs invested significant sums of money to build their own proprietary infrastructure and network in order to effectively compete with the ILECs. Specifically, facilities-based CLECs combined elements of an ILEC’s network with their own to provide consumers with true differentiated services. As Michael Powell stated in his partial dissent to the FCC’s 2003 Triennial Review:

Facilities -based competition means a competitor can offer real differentiated service to consumers Facilities-based competitors own

more of their own network and control more of their costs, thereby offering consumers real potential for lower prices. Facilities-based competitors offer greater rewards for the economy – buying more equipment from other suppliers . . . and creating more jobs. . . . And, facilities providers create vital redundant networks that can serve own nation if other facilities are damaged by those hostile to our way of life.

F.C.C., 2003 Triennial Review - Open Meeting, Separate Statement of Chairman Michael R.

Powell, dissenting in part (February 20, 2003) (transcript available at

www.fcc.gov/web/cpd/triennial_review/). Allegiance is such a facilities-based CLEC with a nationwide network and a facility-based business strategy.

The Allegiance Nationwide Network – Servicing 36 Metropolitan Areas

10. In 1997, a management team of industry veterans launched Allegiance and focused on building a reliable nationwide network based on proven technologies, a nationwide direct sales force primarily focused on the small to medium sized business enterprise and information processing systems to support its operations. Allegiance was one of the first major local exchange carriers to open markets utilizing the “smart build” strategy. This strategy allowed a more rapid ramp-up in operations than the traditional competitive local exchange model in which extensive networks were built, including fiber networks, prior to the generation of significant revenues. In contrast, Allegiance’s initial network build-out simply required (a) deploying digital switching platforms with local and long distance capability and (b) leasing transport facilities from the incumbent local exchange carriers and other competitive local exchange carriers to connect its switches with its transmission equipment colocated in the incumbent local exchange carrier’s central offices. Once traffic volume justified further “success-based” investment, Allegiance leased dark fiber or built specific network segments. This strategy offered two major economic benefits. First, it enabled Allegiance to enter new markets with alacrity and reduce up-front capital requirements for entering individual markets

prior to revenue generation. Second, in contrast to the traditional competitive local exchange carriers that generally built their networks in highly concentrated downtown areas due to the high cost of constructing fiber networks, Allegiance's business model enabled it to provide services to customers in downtown areas as well as the more geographically dispersed, less competitive areas of its targeted markets.

11. Allegiance's initial business plan proposed entering into 24 of the largest metropolitan areas in the United States. Subsequently, management expanded its business plan to (a) increase the total number of target markets to 36, (b) increase its service area, i.e., its colocation "footprint" in its original 24 markets, and (c) acquire long-term rights to use dark fiber rings to replace network elements leased by the Debtors from the incumbent local exchange carriers.

12. In addition to internal growth, Allegiance's business plan included growth through strategic acquisitions. For example, in December 2001, Allegiance acquired certain assets of Intermedia Business Internet (the "Intermedia Acquisition"). The Intermedia Acquisition enabled Allegiance to (a) become a Tier 1 Internet access provider, (b) provide large quantities of data transmitted at high-speeds over the Internet to and from a customer's premises, (c) efficiently exchange traffic with other Internet backbone providers giving Allegiance greater control over its Internet access, and (d) leverage its local service presence to provide additional services to its target market. In June 2003, Allegiance acquired certain assets of Shared Technologies (the "Shared Technologies Acquisition"). The Shared Technologies Acquisition (a) added customer premises equipment sales, installation and maintenance to Allegiance's portfolio of integrated products and services, (b) strategically enhanced Allegiance's target

market of small to medium size business enterprises, and (c) allowed Allegiance to provide a complete communications solution to business customers.

13. As of the date hereof, Allegiance provides its telecommunications services in major metropolitan areas across the United States, including the following 36 markets: Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Fort Lauderdale, Fort Worth, Houston, Long Island, Los Angeles, Miami, Minneapolis/St. Paul, New York City, Northern New Jersey, Oakland, Ontario/Riverside, CA, Orange County, Philadelphia, Phoenix, Pittsburgh, Portland, Sacramento, St. Louis, San Antonio, San Diego, San Francisco, San Jose, Seattle, Tampa, Washington, D.C., West Palm Beach/Boca Raton and White Plains. Allegiance is colocated in 849 central offices and has a Tier 1 Internet backbone.

The FCC Recognizes the Importance of Allegiance

14. Federal policy recognizes the importance of facilities-based CLECs and Allegiance is the model. In that regard, the Federal Communications Commission (the “FCC”) recently published its latest rules for local competition in the *FCC Triennial Review*. In reviewing these rules, a Kaufman Bros. Equity Research Report, dated March 4, 2003, stated that “*Allegiance is the blueprint for local competition proposed by the FCC.*” In addition, Kevin J. Martin, Commissioner of the FCC has noted:

Allegiance has focused on building a business that adheres to the letter of the Telecom Act while leveraging the entrepreneurial spirit of the law, as well. Today, Allegiance stands as a model of what Congress intended in 1996, and what we hope to achieve in the years ahead – new entrants that have the opportunity to continue to invest in infrastructure, bring innovation and offer new service offerings to consumers in local markets that are open to fair and robust competition.

Kevin J. Martin, Commissioner, F.C.C., Address to the Telecommunications Law Conference and the Texas Chapter of the Federal Communications Bar Association (March 7, 2002)

(transcript available at www.fcc.gov/Speeches/Martin/2002/spkjm203.html).

15. Thus, it is clear that Allegiance, by focusing on an intelligent – well thought out business model – building its own network and offering its consumers innovative services, is an integral player in the telecommunications marketplace and a model for the nation’s policy of promoting sustainable facilities-based competition in the local telecommunications arena. With an appropriate capital structure and a reduction in unnecessary costs, Allegiance believes it will be one of the most successful telecommunications companies in the United States.

Capital Structure of the Debtors

Capital Stock

16. Allegiance Telecom, Inc. has two classes of authorized stock: (a) 750,000,000 shares of common stock, with par value of \$0.01 per share and (b) 1,000,000 shares of preferred stock, with par value of \$0.01 per share. As of December 31, 2002, Allegiance Telecom, Inc. had (i) 124,830,110 shares of common stock issued and outstanding, with 295 registered holders and at least 20,000 beneficial owners, and (ii) no shares of preferred stock outstanding. Allegiance Telecom, Inc.’s common stock is publicly traded on the Nasdaq National Market under the symbol “ALGX.”

17. Allegiance Telecom, Inc. owns 100% of the capital stock of Allegiance Telecom Company Worldwide (“ATCW”), and ATCW directly or indirectly owns 100% of the capital stock of each of the other Debtors.

Prepetition Notes

18. In 1998, Allegiance Telecom, Inc. issued two series of notes: (i) 11 3/4% Senior Discount Notes with a face value of \$445 million, due on February 15, 2008 (the “Senior Discount Notes”) and (ii) 12 7/8% Senior Notes with a face value of \$205 million, due on May 15, 2008 (the “Senior Notes”). The Senior Discount Notes were issued under that certain

Indenture, dated as of February 3, 1998, between Allegiance Telecom, Inc. and The Bank of New York, as Indenture Trustee. The Senior Notes were issued under that certain Indenture, dated as of July 7, 1998, between Allegiance Telecom, Inc. and The Bank of New York, as Indenture Trustee. Neither the Senior Discount Notes nor the Senior Notes are secured by any assets of the Debtors or guaranteed by any of the Debtors.

Prepetition Credit Agreement

19. Prior to the Commencement Date, ATCW entered into that certain Credit and Guaranty Agreement, dated as of February 15, 2000, as amended as of November 27, 2002 (the “Prepetition Credit Agreement”), among ATCW, as borrower; all of the other Debtors, as guarantors; Goldman Sachs Credit Partners L.P. (“Goldman Sachs”), as syndication agent and sole lead arranger; General Electric Capital Corporation (“GECC”) (as successor to Toronto Dominion (Texas), Inc.), as administrative agent, BankBoston, N.A. (“BankBoston”) and Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”), as co-documentation agents; Goldman Sachs, GECC, BankBoston, Morgan Stanley, certain managing agents, and lenders party thereto from time to time (collectively, the “Prepetition Lenders”). As of the Commencement Date, the amount outstanding under the Prepetition Credit Agreement was approximately \$465.3 million. The Debtors have pledged substantially all of their assets as collateral under the Prepetition Credit Agreement, including (a) the capital stock of ATCW and (b) substantially all of the assets of ATCW and its direct and indirect subsidiaries, including the capital stock owned by ATCW in each of its Debtor subsidiaries. As of the Commencement Date, there were 27 Prepetition Lenders under the Prepetition Credit Agreement.

Events Leading to Chapter 11 Filing

20. The distressed economic environment in the United States that followed the economic boom of the late 1990s has had a global and adverse impact on the

telecommunications industry. In the late 1990s, in an effort to finance operations and build their networks, telecommunications companies borrowed significant amounts of money from lenders and the public through the issuance of debt. The resulting significant indebtedness incurred by telecommunications companies, combined with poor economic conditions required many companies, including the Debtors, to focus on reducing their debt either through out of court restructurings or the chapter 11 process.

21. Many of Debtors' existing and potential customers have experienced their own financial difficulties, thereby decreasing customer demand for existing and new services. The financial difficulties of the Debtors' customers has led to non-payment, partial payment, or slow payment of bills for services provided by the Debtors. The financial instability of other companies in the telecommunications industry has adversely affected the willingness of potential customers to move their telecommunications services to the Debtors. In addition, certain of the Debtors' suppliers have requested deposits, letters of credit, or other types of security. Moreover, telecommunications carriers that owe reciprocal and/or intercarrier compensation to the Debtors have either refused to pay or failed to pay in a timely manner for the services provided by the Debtors.

22. As a consequence of the foregoing, the Debtors' business operations were adversely impacted and, due to revenue trends and continuing negative EBITDA, the Debtors determined that their current level of indebtedness needed to be significantly reduced. Thus, in order to maximize the long-term wealth generating capacity of their business operations, the Debtors, among other things, (a) established a special restructuring committee of the Board of Directors of Allegiance Telecom, Inc., (b) retained restructuring advisors, and (c) commenced extensive negotiations with their senior lenders and bondholders, as detailed below.

Negotiations with the Prepetition Lenders and the Ad Hoc Committee of Bondholders

23. The Debtors, in the exercise of their sound business judgment - and in recognition of the distressed economic environment and the need for the Debtors' businesses to focus on profitability instead of high revenue growth - determined that a meaningful de-leveraging of their capital structure was crucial for the preservation and maximization of the value of their businesses. In that regard, the Debtors, in conjunction with their financial advisors and the Board of Directors of Allegiance Telecom, Inc., commenced the process of determining the appropriate capital structure for their business operations. After determining the appropriate capital structure, the Debtors commenced negotiations with the Prepetition Lenders and the Ad Hoc Committee (as defined below) to effectuate a restructuring transaction.

24. In October of 2002, Allegiance began negotiations with its Prepetition Lenders regarding a potential restructuring of its long-term debt. On November 27, 2003, Allegiance and its Prepetition Lenders entered into that certain First Amendment to the Prepetition Credit Agreement (the "Amendment"). Pursuant to the Amendment, the Debtors obtained a moratorium on their financial covenants through April 30, 2003. In exchange for the Amendment, Allegiance agreed, among other things, (a) that an event of default would occur on April 30, 2003 unless it reduced its long term debt to a level not to exceed \$645 million, and (b) to repay \$15 million to the Prepetition Lenders on account of debt owed under the Prepetition Credit Agreement. During the latter part of 2002 and to meet covenants under the Amendment, the Debtors significantly lowered their capital expenditures, reduced headcount, substantially decreased growth, eliminated less profitable products and services, and continued to optimize their existing network assets.

25. After entering into the Amendment, the Debtors commenced negotiations with the Prepetition Lenders to consummate a permanent restructuring. In connection with the

negotiations regarding the permanent restructuring, the Debtors commenced negotiations with an *ad hoc* committee of noteholders, which is comprised of certain holders of the Senior Notes and the Senior Discount Notes (the “Ad Hoc Committee”).

26. The Debtors, the Prepetition Lenders and the Ad Hoc Committee were not able to reach an agreement concerning the permanent restructuring prior to the April 30 deadline. On April 29, 2003, in order to avoid the occurrence of certain events of default under the Prepetition Credit Agreement, the Debtors and the Prepetition Lenders entered into a forbearance agreement (the “Forbearance Agreement”), which expires on May 15, 2003. The Forbearance Agreement provided for, among other things, a pay down of \$5 million of principal owed under the Prepetition Credit Agreement.

27. After entering into the Forbearance Agreement, the Debtors continued their negotiations with the Prepetition Lenders and the Ad Hoc Committee. However, the parties were unable to reach an agreement prior to the expiration of the term of the Forbearance Agreement. Consequently, the Debtors, in the exercise of their prudent business judgment, determined that it was in the best interests of all of their stakeholders and for the maximization of the value of their businesses to commence these chapter 11 cases and consummate a restructuring of their indebtedness under the auspices of this Court.

Relief Requested

28. Pursuant to 28 U.S.C. § 156(c) and rule 5075-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”), the Debtors seek to retain Bankruptcy Management Corporation (“BMC”), as notice, claims and balloting agent for the Debtors, on the terms and conditions of the retention agreement between the Debtors and BMC, dated May 13, 2003 (the “Retention Agreement”), a copy of which is annexed hereto as Exhibit “A.”

Applicable Authority

29. Section 156(c) of title 28 of the United States Code provides, in relevant part, as follows:

(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate . . .

28 U.S.C. §156(c).

In addition, Local Bankruptcy Rule 5075-1(a) provides, in relevant part, as follows:

The Court may direct, subject to supervision of the Clerk, the use of agents either on or off the Court's premises to file Court records, either by paper or electronic means, to issue notices, to maintain case dockets, to maintain Judges' calendars, and to maintain and disseminate other administrative information where the costs of such facilities or services are paid for by the estate.

The Debtors' Need for a Notice, Claims and Balloting Agent

30. The Debtors have approximately 7500 creditors (exclusive of approximately 5000 current and former employees, some of whom have claims against the Debtors' estates) as well as the holders of the Debtors' approximately 125 million shares of common stock, who may require notice of various matters and, in particular, the commencement of these chapter 11 cases. Upon information and belief, it would be highly burdensome for the Office of the Clerk (the "Clerk's Office") to provide notice of the bankruptcy filing and other notices to all creditors, or to docket and maintain effectively the proofs of claim that may be filed in these chapter 11 cases.

31. The Debtors respectfully submit that the most effective and efficient manner of noticing these creditors and interested parties of the filing of these chapter 11 cases, and to transmit, receive, docket, maintain and photocopy claims, is for the Debtors to engage an

independent third party to act as the Debtors' notice and claims agent. The Debtors have been informed that the Clerk's Office prefers an outside notice and claims agent in cases of this size.¹

32. The Debtors believe that BMC is well-qualified to serve in this capacity. BMC is one of the country's leading bankruptcy consulting firms and has expertise and substantial experience in the matters for which it is to be engaged. As set forth in the affidavit of Tinamarie Feil, dated May 13, 2003, a copy of which is annexed hereto as Exhibit "B," BMC has performed substantially identical services for debtors in other large chapter 11 cases, including most recently, the cases of In re Am. Commercial Lines LLC, Ch. 11 Case No 03-90305 (BHL) (Bankr. S.D. Ind. Jan. 31, 2003); In re Conseco, Inc., Ch. 11 Case No 02 B 49672 (CAD) (Bankr. N.D. Ill. Jan. 14, 2003); In re Grumman-Olson Indus., Inc., Ch. 11 Case No 02-16131 (SMB) (Bankr. S.D.N.Y. Dec. 9, 2002), and In re Farmland Indus., Inc., Ch. 11 Case No 02-50557 (JWV) (Bankr. W.D. Miss. May 31, 2002).

Services to be Provided

33. At the request of the Debtors or the Clerk's Office, BMC will provide various services as the notice, claims and balloting agent to the Debtors in these chapter 11 cases, including, without limitation:

- (a) preparing and serving required notices in these chapter 11 cases, which may include:
 - (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors pursuant to section 341(a) of the Bankruptcy Code;
 - (ii) notice of bar date and proof of claim form to all potential claimants;

¹ Amended General Order 192 of this Court provides, in relevant part, if a debtor is "filing a petition with one thousand (1,000) or more creditors and equity securityholders, to immediately contact the Clerk of the Court to determine if 28 U.S.C. § 156(c) is applicable."

- (iii) notice of any hearings on a disclosure statement and confirmation of a plan of reorganization; and
 - (iv) other miscellaneous notices to any entities, as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- (b) after the mailing of a particular notice, filing with the Clerk's Office a certificate or affidavit of service that includes a copy of the notice involved, an alphabetical list of persons to whom the notice was mailed and the date and manner of mailing;
 - (c) assist the Debtors with the preparation of their schedule of assets and liabilities, schedule of executory contracts and unexpired leases and statements of financial affairs;
 - (d) receiving and recording proofs of claim in the form of an official claims register;
 - (e) recording all transfers of claims pursuant to Bankruptcy Rule 3001(e) and providing notice of such transfers as required by Bankruptcy Rule 3001(e);
 - (f) complying with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
 - (g) promptly complying with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
 - (h) providing such other claims processing, noticing, balloting, and related administrative or data management services as may be requested by the Debtors from time to time.

Agreement for Services

34. Subject to this Court's approval, the Debtors have retained BMC to provide the services set forth above pursuant to the terms of the Retention Agreement. The Debtors may utilize services offered by BMC, such as: (a) providing other notices that will be required as these chapter 11 cases progress; and (b) providing such other administrative services that may be requested by the Debtors as contemplated in the Retention Agreement.

35. BMC seeks to have payment of compensation for services rendered, without further order of this Court, upon its submission to the Debtors of invoices that summarize such services and necessarily incurred expenses in reasonable detail. BMC received an advance payment retainer of \$20,000.00 against which BMC will draw its prepetition fees and costs from the retainer and any unused portion of the retainer will be applied against postpetition fees and expenses.

36. BMC acknowledges that it will perform its duties if it is retained in these chapter 11 cases regardless of payment and to the extent that BMC requires redress, it will seek appropriate relief from the Court.

37. In the event that BMC's services are terminated, BMC shall perform its duties until the occurrence of a complete transition with the Clerk's Office or any successor notice and claims agent.

Best Interests of the Estates

38. The Debtors believe that compensation provided under the Retention Agreement for BMC is reasonable and appropriate for services of this nature, and is consistent with the compensation arrangement charged by BMC in other cases in which it has been retained to perform similar services. The Debtors need to employ a notice and claims agent with proven competence, and believe that BMC so qualifies. It is therefore respectfully submitted that the retention of BMC is in the best interests of the Debtors, their estates and their creditors, as well as the Clerk's Office.

Waiver of Memorandum of Law

39. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Application pursuant to the Local Bankruptcy Rule 9013-1(b).

Notice

40. Notice of this Application has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) attorneys for the Prepetition Lenders; and (c) attorneys for the Ad Hoc Committee. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

41. No prior Application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors request entry of an order, pursuant to 28 U.S.C. §156(c) and Local Bankruptcy Rule 5075-1, substantially in the form attached hereto: (i) authorizing and approving the retention of, and appointing BMC as notice, claims and balloting agent and (ii) granting such other and further relief as is just and proper.

Dated: New York, New York
May 14, 2003

BY: /s/ Mark B. Tresnowski
Name: Mark B. Tresnowski
Title: Executive Vice President,
General Counsel and Secretary