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WC Docket # 04-13

HOGAN & HARTSON
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December 31, 2003

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VIA HAND DELIVERY

MELLON DEC 31 2003

FILE STAMP COPY

Federal Communications Commission
Wireline Competition Bureau
P.O. Box 358145
Pittsburgh, PA 15251-5145

WC Docket No.

Federal Communications Commission
International Bureau – Telecommunications
P.O. Box 358115
Pittsburgh, PA 15251-5115

Re: **Joint Application of Allegiance Telecom, Inc., and Qwest Communications International Inc. for Consent to Assignment of Assets Under Section 214**

Dear Sirs/Madams:

Enclosed for filing pursuant to section 1.51(c)(1) and Part 63 of the Commission's rules is an original and eight copies of the Joint Application for Consent to Assignment of Assets of Allegiance Telecom, Inc. and Qwest Communications International Inc.

Also enclosed pursuant to sections 1.1105(2)(b), 1.1107(2)(e), and 1.1110 of the Commission's rules is a completed FCC Form 159 and a single credit card payment of $1,720 to cover the two $860 fees associated with this filing.

Kindly date-stamp the additional copy of this letter and return it to the awaiting messenger. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

Yaron Dori

Yaron Dori

Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCKBOX # 358145/358115	SPECIAL USE ONLY FCC USE ONLY

SECTION A – PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Qwest Communications Corporation	(3) TOTAL AMOUNT PAID (U S Dollars and cents) $1,720.00
(4) STREET ADDRESS LINE NO 1 1801 California Street	
(5) STREET ADDRESS LINE NO 2 49th Floor	
(6) CITY Denver	(7) STATE CO — (8) ZIP CODE 80202
(9) DAYTIME TELEPHONE NUMBER (include area code) 303-672-2975	(10) COUNTRY CODE (if not in U S A)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN) 0003-6059-53	(12) FCC USE ONLY

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME	
(14) STREET ADDRESS LINE NO 1	
(15) STREET ADDRESS LINE NO 2	
(16) CITY	(17) STATE — (18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)	(20) COUNTRY CODE (if not in U S A)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)	(22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) $860.00	(27A) TOTAL FEE $860.00	FCC USE ONLY
(28A) FCC CODE 1 Domestic	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE CUT	(25B) QUANTITY 1
(26B) FEE DUE FOR (PTC) $860.00	(27B) TOTAL FEE $860.00	FCC USE ONLY
(28B) FCC CODE 1 International	(29B) FCC CODE 2	

SECTION D – CERTIFICATION

CERTIFICATION STATEMENT

I,____________________, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief

SIGNATURE ____________________ DATE __________

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD____ VISA____ AMEX____ DISCOVER____

ACCOUNT NUMBER____________________ EXPIRATION DATE __________

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described

SIGNATURE____________________ DATE__________

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Allegiance Telecom, Inc., Debtor-in-Possession, Assignor and Qwest Communications International Inc., Assignee Joint Application for Consent to Assignment of Assets under Section 214 of the Communications Act of 1934, as Amended	)))))))))))))	File No. ________

JOINT APPLICATION FOR CONSENT TO ASSIGNMENT OF ASSETS

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December 31, 2003

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Allegiance Telecom, Inc., Debtor-in-Possession, Assignor	)	
	)	
and	)	File No. ____________
	)	
Qwest Communications International Inc., Assignee	)	
	)	
Joint Application for Consent to Assignment of Assets under Section 214 of the Communications Act of 1934, as Amended	)	

JOINT APPLICATION FOR CONSENT TO ASSIGNMENT OF ASSETS

By this Joint Application and pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Part 63 of the Commission's Rules, Allegiance Telecom, Inc., Debtor-in-Possession ("ATI") and Qwest Communications International Inc. ("QCII") [1] hereby seek the Commission's consent to the assignment from Allegiance to Qwest of substantially all of the assets

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1 This Application pertains to ATI and its operating subsidiaries listed in Exhibit A hereto (collectively referred to as "Allegiance") and QCII and its operating subsidiaries, Qwest Communications Corporation ("QCC") and Qwest Corporation ("QC," and, together with QCII and QCC, "Qwest"). Allegiance and Qwest are referred to collectively as the "Applicants." Schedules of the relevant federal operating authorizations held by Allegiance and Qwest are found in Exhibits A and B, respectively.

used by Allegiance in the provision of domestic interstate and international telecommunications services. [2]

I. INTRODUCTION AND SUMMARY

This Joint Application marks a major event in the development of telecommunications competition in the United States. Qwest already operates a nationwide fiber optic network. Through this proposed transaction (or "transaction"), Qwest will dramatically expand its ability to compete for local exchange service across the country, linking new consumers to its network and accelerating its ability to bring new broadband services to the public. The transaction combines the resources and experience of Qwest and Allegiance to create a new competitive force in the U.S. telecommunications marketplace.

The proposed transaction also will promote one of the fundamental objectives of the Telecommunications Act of 1996 and national telecommunications policy: the widespread competitive expansion of a Bell Operating Company ("BOC") into the local service territories of other ILECs, including other BOCs. The transaction will increase the competitive alternatives available to customers by

2 Section 63 04(b) of the Rules, 47 C.F.R § 63 04(b), permits the consolidation of applications for consent to the assignment of assets used in connection with the provisioning of both domestic and international telecommunications services. Pursuant to Section 63.12(c) of the Rules, 47 C.F.R. § 63 12(c), Applicants request streamlined processing of the international portion of this Joint Application. Qwest is not a foreign carrier in any country, is not affiliated with any foreign carriers, is not affiliated with a dominant U.S. carrier whose international switched or private line services Qwest seeks to resell, and does not seek Commission authorization to provide switched basic services over private lines to a country for which the Commission has not previously authorized such service Applicants understand that the domestic portion of the Joint Application may not qualify for streamlined processing under 47 C.F.R. § 63 03. However, in light of the public interest benefits of consummating the proposed transaction as quickly as possible, Applicants request that the Commission grant streamlined processing to the domestic portion of this Joint Application or, in the alternative, expedite its review and approval of the proposed transaction. We note that this Joint Application is subject to the permit-but-disclose *ex parte* rules, 47 C.F.R 1.1206(a)(5), because no Title III licenses are implicated by this transaction.

combining, among other things, Qwest's state-of-the-art, nationwide fiber optic network with Allegiance's widespread local presence and extensive operations support systems ("OSS") for sales and provisioning. The combination of Allegiance and Qwest also will permit the expansion of Allegiance's local exchange business outside the Qwest 14-state region while ensuring continuity of service to Allegiance's existing customers.

More specifically, through this transaction Qwest will acquire Allegiance's local network facilities such as switches, collocation, and transport equipment, thereby expanding its out-of-region local exchange footprint into 31 additional local exchange markets. Qwest also will greatly increase the number of its network points of presence ("POPs"). Qwest will gain personnel with significant experience in competitive entry strategies, as well as additional OSS capabilities to support the expansion of facilities-based local exchange service across the country. Qwest also will acquire Allegiance's customer contracts and assume responsibility for the balance of those contract terms.

The vast majority of the Allegiance assets that Qwest proposes to acquire are located outside Qwest's incumbent local service areas. Allegiance operates in 36 metropolitan areas, 31 of which are outside the 14-state region in which Qwest operates as an ILEC and include the territories of each of the other regional Bell Operating Companies ("RBOCs"). Nearly 90 percent of Allegiance's revenues come from these out-of-region operations. The strong public interest benefits that will accrue from combining Qwest's and Allegiance's resources in these territories, and the increased competition that will result from the transaction, are indisputable.

A small portion of the Allegiance business to be acquired is within the Qwest ILEC region, but this will not adversely affect competition or raise any other issue under Section 214. As discussed more fully below, Allegiance is primarily focused on serving small and medium-sized enterprises. Allegiance provides local exchange services in only five Qwest in-region metropolitan areas: Denver, Minneapolis, Phoenix, Portland, and Seattle. [3] Competition for business customers in these five cities is particularly intense. Numerous CLECs operate in each of those markets. Meanwhile, CLECs collectively have acquired a substantial share of business customers in each of these cities. Additional CLECs also may enter these markets. Significantly, Qwest's provision of the wholesale inputs needed by CLECs is regulated under the Act and state utilities laws.

Prompt Commission action on this application is important because Allegiance currently is operating under the protection of the United States Bankruptcy Code (the "Bankruptcy Code") and Allegiance is limited in its ability to expand its services or its geographic reach. The proposed transaction represents the culmination of a nearly eight month-long process undertaken by Allegiance to reorganize its operations while ensuring that its customers receive uninterrupted service. Qwest already is authorized to provide interstate and international

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3 Allegiance's operations in Seattle and Portland encompass the local exchange territory of both Qwest and Verizon (former GTE service areas).

telecommunications services under Section 214, and its financial, managerial and technical resources are a matter of record before the Commission.

In short, approval of the proposed transaction will serve the public interest by enhancing competition throughout the country for bundled local, long distance and data services. It will promote the policies underlying the Bankruptcy Code by facilitating the orderly discharge by Allegiance of its obligations to its creditors. Finally, it will ensure that the existing customers of Allegiance continue to receive high quality services pursuant to their current contracts.

II. INFORMATION REGARDING THE APPLICANTS AND THE PROPOSED TRANSACTION

The following information is provided pursuant to Sections 63.04 and 63.18 of the Commission's Rules, 47 C.F.R. §§ 63.04, 63.18. [4]

A. The Applicants

1. Allegiance

ATI is a publicly traded corporation organized under the laws of the State of Delaware with its principal office located at 9201 North Central Expressway, Dallas, Texas 75231. ATI's common stock is traded on the Over the Counter Bulletin Board under the symbol "ALGXQ.OB." Through the subsidiaries listed in Exhibit A, Allegiance provides 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 in 36 metropolitan areas in 24 states and the District of

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[4] Information is provided in response to those subsections of the Rules that are applicable to this Joint Application

Columbia. [5] Allegiance provides services primarily through the use of its own switches and routing equipment, leased transport facilities, fiber optic networks, and local loops obtained from ILECs.

Allegiance offers its customers a variety of services, including:

- local, long distance and international 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 collocation services;
- integrated local/long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line; and
- wholesale services to other regional and national service providers, including equipment collocation, managed modem ports and Internet protocol traffic aggregation.

As of September 30, 2003, Allegiance served more than 100,000 business customers and employed approximately 2,912 people.

On May 14, 2003, ATI and each of its operating subsidiaries listed in Exhibit A commenced cases under chapter 11 of the Bankruptcy Code. [6] No trustee or examiner has been appointed in the chapter 11 cases, and Allegiance is authorized to operate its businesses and manage its properties as debtor-in-

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5 Those metropolitan areas are Atlanta, Austin, Baltimore, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Fort Lauderdale, Fort Worth, Houston, Long Island, Los Angeles, Miami, Minneapolis/St. Paul, New York, 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, NY.

6 *In re Allegiance Telecom, Inc., et al.*, Chap. 11 Case Nos. 03-13057-rdd, *et seq.* (Bankr. S.D.N Y., filed May 14, 2003). The bankruptcy cases of ATI and its subsidiaries have been consolidated for procedural purposes and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As debtor-in-possession, Allegiance has retained possession of its property and businesses during the reorganization process, and there have been no significant changes in its management as a result of the chapter 11 cases. [7]

In furtherance of its reorganization under chapter 11, on December 18, 2003, Allegiance and Qwest executed an Asset Purchase Agreement pursuant to which Qwest will acquire substantially all of Allegiance's telecommunications assets and operations. [8] The salient terms and conditions of the Agreement are summarized in Section II.B below. As required by the Agreement, on December 18, 2003, Allegiance filed a motion asking the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") to issue an order establishing an auction for the sale of Allegiance's assets under Section 363 of the Bankruptcy Code, designating Qwest as the "stalking horse" bidder, and setting a date by which the auction would conclude and the winning bidder be confirmed by the Bankruptcy Court. Allegiance has asked the Bankruptcy Court to require other interested

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7 On May 20, 2003, Allegiance Telecom International, Inc. notified the FCC of the *pro forma* assignment of its international Section 214 authorization to Allegiance Telecom International, Inc., Debtor-in-Possession, and of the *pro forma* transfer of control of that authorization from ATI to Allegiance Telecom Inc., Debtor-in-Possession. The Commission approved the assignment and transfer of control on October 1, 2003. *See Public Notice,* FCC File No. ITC-ASG-2003520-00346, International Authorizations Granted, DA No 03-3021 (rel. Oct. 2, 2003). In preparing this Application, ATI became aware that it did not notify the Commission that its subsidiary, Coast to Coast Telecommunications Inc., which is a debtor in Allegiance's chapter 11 cases, also holds an international Section 214 authorization (File No. 95-309) Accordingly, ATI now respectfully requests that the Commission approve *nunc pro tunc* the *pro forma* assignment of Coast to Coast Telecommunications Inc.'s international Section 214 authority to Coast to Coast Telecommunications Inc., Debtor-in-Possession.

8 Asset Purchase Agreement by and among Allegiance Telecom, Inc. and the other sellers Named Herein, jointly and severally as Sellers, and Qwest Communications International, Inc as Buyer, dated December 18, 2003 (the "Agreement") A copy of the Agreement is attached hereto as Exhibit C

bidders to submit their bids by February 9, 2004. If a qualified bid is submitted, Allegiance has requested that an auction for Allegiance's assets be held on or about February 12, 2004. Allegiance has requested a hearing on or about February 17, 2004, to confirm the winning bidder. Assuming Qwest is the successful bidder, Allegiance expects that substantially all of its telecommunications operations would be transferred to Qwest and that Allegiance would no longer offer telecommunication services. ATI will retain its customer premises equipment sales and maintenance business and certain other assets that are outside the jurisdiction of the Commission.

2. Qwest

Qwest is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Denver, Colorado 80202. The company's stock is publicly traded on the New York Stock Exchange under the symbol "Q." [9]

Qwest provides voice, video and data services throughout the United States, with approximately 16.5 million residential and business access lines in its core 14-state local service territory. [10] Qwest's broadband network spans more than 180,000 miles across the U.S. and globally. Qwest, through QCC and QC, is authorized to provide interstate and international telecommunications services

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9 Information regarding persons or entities that directly or indirectly own ten percent or more of the equity of Qwest is attached hereto as Exhibit D.

10 The 14 states in Qwest's incumbent local service territory are Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming

under Section 214. *See* Exhibit B. Qwest, through one or more of its affiliates, also provides various forms of telecommunications services in all states nationwide and in the District of Columbia. For purposes of Sections 63.18(i)-(m) of the Rules, 47 C.F.R. §§ 63.18(i)-(m), Qwest certifies that it is not a foreign carrier under the Commission's rules in any country, and that it is not affiliated with a foreign carrier. Qwest further certifies pursuant to Section 63.18(n) of the Rules, 47 C.F.R. § 63.18(n), that it will not accept special concessions from such a carrier.

B. Description of the Transaction

On December 18, 2003, Qwest and Allegiance entered into the Agreement, pursuant to which Qwest agreed to acquire substantially all of the assets of Allegiance used in connection with the provision of local exchange and long distance voice services, broadband and other data services, and wholesale services (the "Allegiance Services"). [11] In addition, Allegiance will transfer substantially all of its existing customers for these services to Qwest. Upon receipt of required regulatory approvals and closing of the transaction, Qwest will assume responsibility for the provision of telecommunications services to Allegiance Services customers.

In consideration for Allegiance's assets, Qwest will deliver to Allegiance (1) $300 million in cash; (2) convertible notes in the amount of $90 million; and (3) the assumption by Qwest of certain preexisting liabilities of

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11 Certain assets related to Allegiance's customer premises equipment sales and maintenance business are not being sold to Qwest. Those assets are described in the Agreement.

Allegiance.[12] The boards of directors of Qwest and Allegiance have approved or ratified the Agreement, and Allegiance has requested approval of the Agreement from the Bankruptcy Court. In the Agreement, Qwest stated that it intends to make offers of employment to substantially all of Allegiance's current employees. Closing under the Agreement is contingent upon approval by the Bankruptcy Court and receipt of certain governmental approvals and satisfaction of certain other conditions.

All of the Allegiance Services customers, assets and facilities located outside the Qwest service territory will be assigned to QCC. Allegiance Services customers, assets and facilities located within the Qwest local service region will be divided between QCC and QC in order to maintain Qwest's compliance with Section 272 of the Telecommunications Act.[13]

Qwest and Allegiance will, in accordance with applicable Federal and state requirements, notify all affected customers in writing of the proposed

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12 The consideration to be paid by Qwest may be adjusted at closing as provided in the Agreement. To the extent there are any inconsistencies between the description of the Agreement contained herein and the actual terms and conditions of the Agreement, the terms of the Agreement control.

13 If and to the extent the Applicants have not obtained all required approvals and consents prior to the conclusion of the proceedings before the Bankruptcy Court, Qwest has agreed to provide certain management and related services to Allegiance on an interim basis in order to ensure that Allegiance will be able to provide continuous service to its existing customers until such approvals or consents are received. Any such services would be provided by Qwest on Allegiance's behalf and subject to Allegiance's ultimate direction and control in a manner consistent with applicable law and regulation. A copy of the form of Management Agreement pursuant to which such services would be provided is attached as Exhibit I to the Asset Purchase Agreement (which is Exhibit C to this Joint Application). Allegiance may enter into one or more interim agreements with Qwest affiliates as necessary in order to ensure compliance with Section 272 and other applicable regulatory requirements.

transfer.[14] Qwest will honor the contracts currently in effect for existing Allegiance Services customers. Following consummation of the transaction, Qwest also will continue to comply with all Commission Rules, including Sections 63.21, 63.22, and 63.23, as appropriate.

The Agreement provides that Allegiance or Qwest may terminate the proposed transaction if it does not close by August 18, 2004. However, consummation of the transaction as soon as possible following the entry of the Bankruptcy Court's sale order is essential in order to eliminate the continuing uncertainty caused by Allegiance's bankruptcy and to ensure a smooth transition of Allegiance Services customers to Qwest. Applicants therefore request that the Commission approve this Application promptly so that the parties may consummate the proposed transaction as soon as possible after the entry of a sale order by the Bankruptcy Court.

As noted above, Qwest previously has been found to possess the requisite financial, managerial and technical qualifications to operate as a provider of interstate and international telecommunications services. *See* Exhibit B. Qwest also previously has been authorized to provide intrastate local, interexchange and other services in all of the states in which Allegiance provides such service. Because Qwest already possesses these requisite authorizations, this Application does not request the Commission's approval to assign Allegiance's Section 214 authorizations to Qwest.

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[14] A form of customer notice will be submitted to the Commission in accordance with the Rules.

C. **Designated Contacts**

Copies of all correspondence, notices, inquiries and orders should be sent to the following:

For Qwest:	For Allegiance:
Melissa Newman Vice President Federal Regulatory Qwest 607 14th Street, N.W., Suite 950 Washington, D.C. 20005 Phone: (202) 429-3120 Fax: (202) 293-0561 Melissa.Newman@qwest.com John Morabito Vice President Federal Regulatory and Legislative Affairs Qwest 607 14th Street, N.W., Suite 950 Washington, D.C. 20005 Phone: (202) 429-3110 Fax: (202) 293-0561 John.Morabito@qwest.com Andrew Crain Associate General Counsel Qwest Services Corporation 1801 California, 38th Floor Denver, CO 80202 Tel: (303) 672-2926 Fax: (303) 295-7069 Andrew Crain@qwest.com Daphne Butler Senior Attorney Qwest Services Corporation 1801 California Street Denver, CO 80202 Phone: (303) 672-1763 Fax: (303) 295-6973 Daphne.Butler@qwest.com	Kevin M. Joseph Senior Vice President; Government and External Affairs Allegiance Telecom, Inc. 1919 M Street, N.W., Suite 420 Washington, D.C. 20036 Phone: (202) 464-1789 Fax: (202) 464-1780 Kevin.Joseph@algx.com Mark A. Stachiw Senior Vice President and General Counsel - Allegiance Telecom Company Worldwide Allegiance Telecom, Inc. 9201 North Central Expressway Dallas, Texas 75231 Phone: (469) 259-2099 Fax: (469) 259-9122 Mark.Stachiw@algx.com

For Qwest:	For Allegiance:
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III. THE TRANSACTION IS IN THE PUBLIC INTEREST

The proposed transaction will serve the public interest. Allegiance's chapter 11 cases and its current financial position effectively preclude Allegiance from expanding its business. Qwest's acquisition of the Allegiance Services assets and customers will permit the expansion of this business going forward while ensuring that Allegiance's customers continue to receive high-quality service without interruption.

The combination of Allegiance's assets with Qwest's existing nationwide telecommunications network also will promote competition in the marketplace for local, long distance, international and data services by dramatically increasing Qwest's out-of-region presence. Indeed, the transaction will promote one of the fundamental objectives of the Telecommunications Act and national telecommunications policy by effectuating the widespread competitive expansion of Qwest, an RBOC, into the local service territories of other ILECs, including each of the other RBOCs. Finally, the transaction will not adversely affect competition in the five in-region markets where Allegiance and Qwest currently have overlapping operations because Allegiance is only one of many competitors in those markets.

A. The Proposed Transaction Will Ensure Continued Service to Allegiance's Customers

Founded in 1997, Allegiance today provides facilities-based services to over 100,000 customers in 36 major metropolitan areas throughout the United States. Despite its growth, however, Allegiance ultimately was unable to avoid the structural and financial problems affecting the competitive telecommunications market and was required to seek protection under chapter 11 of the Bankruptcy Code in May of 2003.

Following the commencement of its chapter 11 cases, Allegiance undertook various efforts to restructure its operations. The proposed transaction is the result of those efforts, and Allegiance believes that it represents a favorable option for the Allegiance Services customers and other interested parties in the bankruptcy proceeding. Commission approval of the transaction will serve the public interest by ensuring that existing Allegiance Services customers will enjoy the benefits of a planned transition to a new carrier that will avoid any disruption or discontinuance of service and the risks and inconvenience associated with customer migrations.

B. The Proposed Transaction Will Enhance Competition in the U.S. Telecommunications Marketplace

Qwest possesses the financial, managerial and technical qualifications to assume control of the assets of Allegiance. As noted above, Qwest provides voice, video and data services throughout the United States, with over 47,000 employees, and serves more than 16.5 million access lines in its 14-state local service territory. In the year ended December 31, 2002, Qwest reported operating revenues in excess of $15 billion. Each member of Qwest's senior management team is a telecommunications industry veteran with substantial experience in providing quality service at just and reasonable rates to consumers. Qwest customers transmit over 240 million calls across Qwest's network daily. Qwest also owns and maintains its own nationwide fiber optic network, which can be used to provide, among other things, advanced services to end users. Qwest therefore possesses the requisite technical expertise to integrate Allegiance's facilities with Qwest's own operations.

The proposed transaction will promote competition in the marketplace for local, long distance, international and data services by dramatically increasing Qwest's out-of-region presence. Allegiance today provides customers with a suite of local, long distance and international voice, data and Internet services in 36 local markets across the United States, 31 of which are outside the Qwest local exchange service territory. As a result of this transaction, Qwest will greatly expand its POPs throughout the nation. In addition, Qwest will gain personnel with significant experience in competitive entry strategies, as well as additional OSS capabilities to support its out-of-region sales and provisioning efforts. These assets, combined with Qwest's existing nationwide fiber optic network, will enable Qwest to scale its out-of-region operations, provide a further basis for growth, and increase Qwest's competitive presence in out-of-region markets. This combination of growth and cost savings will enable Qwest to expand its delivery of reliable and innovative service offerings outside its local service territory at competitive rates.

Qwest's expanded access to local network facilities in key U.S. metropolitan areas will help support its delivery of innovative enterprise communications services and products, including broadband data and Voice over Internet Protocol (VoIP) services. Consequently, and precisely because Qwest and Allegiance possess interrelated core capabilities and facilities, the transaction will result in increased customer choice and the availability of greater competitive options. Meanwhile, the transaction will serve the public interest by ensuring service continuity for Allegiance's existing customers as Allegiance moves its bankruptcy process toward completion and it winds up its telecommunications operations.

The fact that a small part of Allegiance's business is located within Qwest's incumbent local service territory does not detract from the public interest benefits of this transaction. The vast majority of Allegiance's business is located outside the Qwest region – 88 percent of its revenues come from out-of-region customers. Allegiance provides service primarily to small and medium-sized enterprise customers, and in only five metropolitan areas within Qwest's incumbent local service territory: Denver, Minneapolis, Phoenix, Portland, and Seattle. In Portland and Seattle, Qwest serves as an ILEC in only part of the metropolitan area. Verizon (formerly GTE) serves the remainder of those two metropolitan areas.

Allegiance serves customers in both the Qwest and Verizon territories in Portland and Seattle.

Qwest is still a new entrant in the provision of interLATA voice and data services within its in-region states, having been precluded from offering such services until it obtained interLATA authority. This authority became effective in early 2003 in nine of Qwest's in-region states; the final state approval (for Arizona) was not granted until December 2003. The grant of interLATA authority throughout Qwest's region, together with the acquisition of the Allegiance Services assets and customers, will accelerate Qwest's ability to fulfill an original goal of its merger with U S WEST – *to compete through a nationwide footprint.* Although QCC will assume Allegiance's interLATA service obligations, it will do so in competition with other carriers with much larger market share, including AT&T, MCI and Sprint.

Pursuant to the Agreement, QC will assume responsibility for providing local services under existing Allegiance customer contracts in-region. However, this aspect of the transaction does not present any public interest concerns. QC faces particularly vigorous competition from CLECs in each of the five overlap areas. Based on E-911 records for business lines, at least 11 CLECs (not including Allegiance) provide competitive local services to business customers in each of the five in-region metropolitan areas where Allegiance provides service. This figure does not include CLECs that rely solely on UNE-P or resale, nor does it include wireless carriers, which increasingly provide a competitive alternative for small and medium-sized business customers. [15] In addition, dozens – and in at least two cases, well over 100 – CLECs are authorized to offer local exchange service to business customers in the five in-region states. [16]

Importantly, the customer contracts subject to this transaction are limited in duration. Many Allegiance Services customers either have completed their initial contract terms – and thus are provided service on a month-to-month basis – or are subject to one- to two-year service contracts. All of these customers will be able to choose another carrier, if they desire, as their contract terms expire. Until the contract terms expire, Qwest will honor the terms and conditions of the Allegiance contracts.

Moreover, competitive alternatives in the five overlap areas are not limited to those CLECs currently operating, or authorized to operate, there. The inputs required to provide competitive local exchange service are relatively easy to obtain, and entry barriers are low. Although Allegiance is a facilities-based provider, it owns no unique assets – that is, assets that are not already duplicated, or that could not easily be duplicated, by other carriers. Allegiance owns equipment

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15 The use of E-911 records to determine the number of CLECs offering competitive local exchange service likely understates the number of such CLECs, because the E-911 records for lines served through resale and UNE-P are listed in the E-911 database as Qwest lines.

16 *See, e.g.*, www.cc state az.us/utility/utility_list/CLEC_list.pdf (63 CLECs in Arizona); www.dora state.co us/puc/jurisdiction/TelecomRegulatory.pdf (87 CLECs in Colorado); www.puc state or.us/ (182 CLECs in Oregon); www.wutc.wa.gov/webdocs nsf/ 0492664a7ba7ed8b88256406006bf2ca/02988b5ef432459d8825644a005b21b0?OpenDocument (149 CLECs in Washington). The Minnesota PUC's website does not provide the number of CLECs authorized to provide service in that state. *See* www.puc state.mn.us/about/utility_ providers htm#telecom. However, Qwest previously has demonstrated that at least 74 CLECs actively provide service in Minnesota. *See In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services to Minnesota*, WC Docket No. 03-90, Declaration of David L. Teitzel at Exh. DLT-MN-3, filed March 28, 2003.

(such as switches, routers, cross-connect equipment, and customer premises integrated access devices) that is standardized and readily available. State CLEC certification is easy to obtain.

Unbundled network elements and other wholesale inputs (such as access to databases, resale, transport, E911, directory listings, and OSS) are available from Qwest pursuant to the Telecommunications Act's local competition requirements. CLECs can adopt the Qwest standard interconnection agreement (the Statement of Generally Available Terms and Conditions, or SGAT) or can opt into other CLECs' interconnection agreements. In this respect, Qwest's OSS has been found fully to satisfy the requirements of Sections 251 and 271 of the Telecommunications Act, 47 U.S.C. §§ 251, 271. To date, 38 CLECs have been certified to use Qwest's Electronic Data Interface (EDI) to submit local service requests through Qwest's OSS.

Of critical importance, too, is the framework established by the Telecommunications Act for determining whether incumbents have opened their local networks to competitors and made available the wholesale inputs competitors need in order to provide competing local exchange service. As noted, Qwest has proven, in the context of its successful Section 271 applications in all 14 of the states in its service territory, that it satisfies every element of the competitive checklist. Furthermore, enforcement mechanisms are in place at both the federal and state levels to help ensure that Qwest will continue to adhere to the market opening requirements of Section 271. The Commission has placed a strong emphasis on these mechanisms, and has established six-month review proceedings to ensure that BOCs do not backslide after grant of their applications. [17] The state regulatory authorities in all 14 of Qwest's in-region states also have promulgated performance standards for services provided to CLECs and have established a system of economic consequences for failure to meet those standards (in the form of post-entry Performance Assurance Plans). [18]

On top of these safeguards, Qwest will continue to comply with the requirements of Section 272 of the Act so long as they are applicable. Qwest will structure its acquisition of the in-region Allegiance Services' assets and customer contracts to meet Section 272 requirements.

In sum, many CLECs today offer services in competition with Qwest and Allegiance and could readily expand their operations. Other competitors easily could join those ranks. Allegiance customers transferred to Qwest will have many choices. Thus, the significant public interest benefits of the proposed transaction

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17 *See, e.g.*, "Press Statement of Chairman Michael K. Powell, Watershed Moment for Telecom: No More Local Markets," December 3, 2003 (noting, upon grant of the final Section 271 application, that "[t]he FCC will be vigilant in ensuring that Bell companies continue to meet the competitive checklist").

18 *See, e.g., In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, *Memorandum Opinion and Order*, FCC 03-309 (rel. December 3, 2003), ¶¶ 51-54 ("we find that Arizona's . . . PAP provides assurance that the local market will remain open after Qwest receives Section 271 authorization in this state"); *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services to Minnesota*, WC Docket No. 03-90, *Memorandum Opinion and Order*, FCC 03-142 (rel. June 26, 2003), ¶¶ 69-72 (same); *In the Matter of Application by Qwest Communication International Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 03-11, *Memorandum Opinion and Order*, FCC 03-81 (rel. April 15, 2003) ¶¶ 119-123 (same); *In the Matter of Application by Qwest Communication International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, *Memorandum Opinion and Order*, FCC 02-332 (rel. December 23, 2003), ¶¶ 453-465 (same).

are not diminished by Qwest's acquisition, as part of a much larger transaction, of a small number of in-region assets and customers.

Finally, prompt grant of this Application will ensure that the Commission's processes comport with the policies underlying the bankruptcy laws. *See, e.g., WorldCom, Inc.*, Memorandum Opinion and Order, FCC 03-319 (Dec. 19, 2003) ¶ 29 ("It is the Commission's policy to support the goals of the bankruptcy laws and, where possible, to accommodate those goals with the goals inherent in the Communications Act . . . ."). *See also LaRose et al. v. FCC*, 254 F.2d 1145, 1147 n.2 (D.C. Cir. 1974) (Commission's interest in administrative finality outweighed by policies underlying bankruptcy laws, including public interest in recovery by innocent creditors).

IV. CONCLUSION

Rolling out high-speed access technologies and data services in an increasingly competitive market requires considerable resources and an aggressive, growth-oriented approach. The proposed transaction will combine Qwest's national network resources with Allegiance's local facilities footprint to produce a nimble, growth-oriented competitor, resulting in a significant competitive alternative for the provision of facilities-based telecommunications and other services throughout the United States.

Accordingly, for the reasons stated herein, this Application should be granted promptly so that Applicants can consummate the proposed transaction as soon as possible after the entry of a sale order by the Bankruptcy Court.

Respectfully submitted,

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