

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**PROOF OF CLAIM**



In re  
**ALLEGIANCE TELECOM INC, et al,  
DEBTORS**

Case Number  
**03-13057 (RDD)**

**FILED**  
**U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK**  
**ALLEGIANCE TELECOM, INC**  
**03-13057 (RDD)**  
**2095**

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if this address differs from the address on the envelope sent to you by the court.

**Name of Creditor and Address**

03805890013408

MCFADDEN BRIAN A  
2855 PINECREEK DR  
#A117  
COSTA MESA CA 92626

Creditor Telephone Number **(714) 546-5461**

CREDITOR TAX ID #  
**SSN 611-34-8565**

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here  replaces or amends a previously filed claim dated \_\_\_\_\_ if this claim

**1 BASIS FOR CLAIM**

Goods sold  Personal injury/wrongful death  Retiree benefits as defined in 11 U.S.C. § 1114(a)

Services performed  Taxes  Wages, salaries, and compensation (Fill out below)

Money loaned  Other (describe briefly below)

Your social security number **611-34-8565**

Unpaid compensation for services performed from **4/26/02** to **7/5/02**  
(date) (date)

**2 DATE DEBT WAS INCURRED** **4/26/02 - 7/5/02** **3 IF COURT JUDGMENT, DATE OBTAINED**

**4 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED** \$ **82,851.00** (unsecured) **PRIORITY?** (secured) \$ **1,555.95** (unsecured priority) \$ **98,410.95** (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

**5 SECURED CLAIM**

Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral

Real Estate  
 Motor Vehicle  
 Other \_\_\_\_\_

Value of collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim above if any: \$ \_\_\_\_\_

**6 UNSECURED PRIORITY CLAIM**

Check this box if you have an unsecured priority claim.

Specify the priority of the claim

Wages, salaries, or commissions (up to \$4,650) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3)

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4)

Up to \$2,100\* of deposits toward purchase, lease, or rental of property or services for personal family or household use. 11 U.S.C. § 507(a)(6)

Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7)

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8)

Other: Specify applicable paragraph of 11 U.S.C. § 507(a) \_\_\_\_\_

Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

**7 CREDITS** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

**8 SUPPORTING DOCUMENTS** Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS if the documents are not available, explain. If the documents are voluminous, attach a summary.

**9 DATE-STAMPED COPY** To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 5:00 p.m., November 26, 2003, Prevailing Eastern Time.

**BY MAIL TO:** United States Bankruptcy Court, Southern District of New York, Allegiance Claims Docketing Center, Bowling Green Station, P.O. Box 95, New York, NY 10274-0095

**BY HAND OR OVERNIGHT DELIVERY TO:** United States Bankruptcy Court, Southern District of New York, Allegiance Claims Docketing Center, One Bowling Green, Room 534, New York, NY 10004-1408

**THIS SPACE FOR COURT USE ONLY**

RECD  
DEC 03 2003  
BMC

CLAIMS PROCESSING CENTER  
USPO STATION

DATE SIGNED  
**11/23/03**

SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

**Brian Mcfadden**  
**BRIAN MCFADDEN**

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

**See Other Side For Instructions**



Direct any correspondence to  
LABOR COMMISSIONER, STATE OF CALIFORNIA  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
28 Civic Center Plaza, Room 625  
Santa Ana, CA 92701  
Tel (714) 558-4910 Fax (714) 558-4728



PLAINTIFF BRIAN A MCFADDEN  
2855 PINECREEK DRIVE #A-117  
COSTA MESA, CA 92626

DEFENDANT ALLEGIANCE TELECOM, INC. A DELAWARE CORPORATION  
9201 N CENTRAL EXPRESSWAY  
DALLAS, TX 75231

State Case Number  
18-52889 BB

NOTICE OF HEARING-PLAINTIFF

NOTICE' A hearing will be held before the Labor Commissioner of the State of California as follows

PLACE: 28 Civic Center Plaza, Room 625, Santa Ana, CA 92701

DATE Wednesday, September 24, 2003

TIME. 1.30 PM

or as soon thereafter as the matter can be heard, upon the complaint filed herein, a copy of which is attached and hereby served upon you This hearing will be held pursuant to Labor Code Sections 98 et seq

**TO THE PLAINTIFF:**

- 1 Any correspondence regarding the scheduled hearing in this matter should be directed to the Office of the Labor Commissioner shown above
- 2 Failure to attend the scheduled hearing will result in the dismissal of your complaint
- 3 You may, but need not be, represented by counsel You have the right to have a representative present at the hearing It is not necessary that the representative be an attorney
- 4 You will be given the opportunity at the scheduled hearing to present any relevant evidence, to call witnesses and to cross-examine witnesses testifying against you Application for the issuance of subpoenas to compel the attendance of necessary witnesses and the production of books and documents can be made to the Office of the Labor Commissioner A copy of the rules of practice and procedures governing these hearings is available at any office of the Labor Commissioner
- 5 If you have any reason to believe that the person or corporation named as the defendant in this Notice of Hearing is not correct you are urged to contact the Office of the Labor Commissioner

DATED June 10, 2003

James Jackson

Hearing Officer

<b>LABOR COMMISSION, STATE OF CALIFORNIA</b> DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF LABOR STANDARDS ENFORCEMENT		DATE FILED 1/7/2003
		DISTRICT OFFICE 18
		TAKEN BY 063
<b>PLAINTIFF</b> BRIAN A MCFADDEN		
<b>DEFENDANT</b> ALLEGIANCE TELECOM, INC A DELAWARE CORPORATION		<b>DOES I THROUGH V, Defendant(s)</b>
<b>CASE NO</b> <b>18- 52889      BB</b>	<b>COMPLAINT</b>	

PLAINTIFF ALLEGES

1 He was \_\_\_\_\_ employed by the defendant named above to perform personal services as SALESMAN  
2 for the period 10-15-01 to 7-5-02  
3 in the County of ORANGE, California, under the terms of a written agreement, at the  
promised rate of compensation of  
\$673.07 PER WEEK PLUS COMMISSIONS AS SCHEDULED

4 that there is due, owing and payable from the defendant to the plaintiff an amount as and for wages, penalties and/or other demands for compensation

- a as shown in attached Exhibit A, incorporated herein,
- b as set out below

UNPAID WAGES, COMMISSIONS, 4-26-02 TO 6-28-02 (SEE ATTACHED EXHIBIT "A")  
AMOUNT CLAIMED \$1,555.95

- c And also alleging additional wages accrued pursuant to Labor Code Sec 203 as a penalty of \$276.17 per day for an indeterminate number of days not to exceed thirty days
- d And also alleging additional wages accrued pursuant to Labor Code Section 203.1, as a penalty of \_\_\_\_\_ per day for issuance of an insufficient payroll check for an indeterminate number of days not to exceed thirty days

**Interest pursuant to Labor Code Section 98.1 and/or 2802**

PLAINTIFF CERTIFIES THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF

Executed at SANTA ANA, County of ORANGE, California

Dated February 28, 2003  
DATE OF SIGNATURE

  
Signature of Plaintiff



FOR OFFICE USE ONLY - NO ESCRIBA EN ESTA SECCION		
Taken by	Wage Adjudication	
Date filed	Action	SIC Number

**INITIAL REPORT OR CLAIM  
 REPORTE INICIAL O RECLAMO**

PLEASE PRINT ALL INFORMATION / POR FAVOR ESCRIBA CON LETRA DE MOLDE TODA LA INFORMACION

Your name / Su nombre <b>BRIAN A MCFADDEN</b>	Interpreter needed / Interprete requerido <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Social Security Number / No de Seguro Social <b>611-34-8565</b>	Date of birth / Fecha de nacimiento <b>3/23/75</b>
Your address - Number and street apartment or space no / Su domicilio - No y calle apartamento o no de espacio <b>2855 PINECREEK DR #A-117</b>	Home phone no / Teléfono casa <b>(714) 546-5461</b>	Work phone no / current / No de telefono de su trabajo actual <b>( ) SAME</b>	
City State Zip Code / Ciudad Zona Postal <b>COSTA MESA, CA 92626</b>	California Driver's License No / CA ID Number / No de Licencia de Conducir o Identificacion de California <b>A9561516</b>		

**AGAINST / EN CONTRA**

Name of business / Nombre del negocio <b>ALLECIANCE TELECOM, INC</b>	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Sole owner <input type="checkbox"/> Partnership <input type="checkbox"/> LLC LLP <input type="checkbox"/> Bankruptev <input type="checkbox"/> Business sold <input type="checkbox"/> Business closed	<input type="checkbox"/> Sociedad anonima <input type="checkbox"/> Proprietario <input type="checkbox"/> Sociedad <input type="checkbox"/> LLC LLP <input type="checkbox"/> Bancarrota <input type="checkbox"/> Negocio vendido <input type="checkbox"/> Negocio cerrado	
Address of business City State Zip Code / Direccion del negocio Ciudad Zona Postal <b>9201 N CENTRAL EXPRESSWAY, DALLAS, TX, 75231</b>			
Name of person in charge / Nombre de la persona a cargo <b>SEAN PIKE</b>	Telephone no / No de telefono <b>(214) 261-7100</b>	Type of business / Tipo de negocio <b>TELECOMMUNICATION SVCS</b>	No of employees / No de empleados <b>~4,140</b>
Type of work performed / Ocupacion tipo de trabajo hecho <b>SALES OF LOCAL &amp; LONG DISTANCE PHONE SVCS</b>	Date of hire / Fecha de empleo <b>10/15/01</b>	Public Works Project? / Proyecto de Obras Publicas? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Was your job union? / Pertenecia Ud a un sindicato? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Location where work performed Number and Street City County Zip Code / Lugar donde trabajo No de Calle Ciudad Condado Zona Postal <b>4675 MACARTHUR CT. STE 200, NEWPORT BEACH, CA 92660</b>			

**WAGES - CONDITIONS OF EMPLOYMENT / SUELDO - CONDICIONES DE EMPLEO**

Rate of pay per hour day week or month or piece rate (specify) / Tasa de pago por hora dia semana mes o por pieza (especifique) <b>\$ 673.07 / WEEK SALARY + COMMISSION</b>	Total hours worked / Total de horas trabajadas By day <b>8</b> By week <b>40</b>	Paid Overtime? / Le pagaban el sobretiempo? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are you still working for this employer? / Aun sigue trabajando para este patron? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Discharged / Despedido <input checked="" type="checkbox"/> Quit / Renuncie	On what date? / En que fecha? <b>7/15/02</b>
If quit did you give 72 hours notice? / Si renuncio dio Ud 72 horas de aviso? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Have you asked for your wages? / Ha solicitado su sueldo? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Were you paid at time of discharge? / Le pagaron cuando lo despidieron? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
How were you paid? / Como le pagaban? <input checked="" type="checkbox"/> By check / con cheque <input type="checkbox"/> In cash / en efectivo	Given a deduction slip? / Le dieron un talon de deducciones? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Did you keep a record of hours worked? / Tiene record de las horas trabajadas? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**GROSS WAGES CLAIMED / GANANCIAS EN BRUTO RECLAMADAS**

From (date) / De (Fecha) <b>6/1/02</b> mo / dte / yr	To (date) / A (Fecha) <b>7/15/02</b> mo / dte / yr	Number of hours days weeks or months (Specify vacation commission expenses overtime) / No de horas dias semanas o meses reclamados (Especifique vacaciones comision gastos sobretiempo) <b>UNPAID COMMISSION ON 72 LINES / UNDERPAID ON 59 LINES</b>
At the rate of per hour day week or month (specify) / Al pago de por hora dia semana o mes (especifique) <b>\$ 10.35 OR \$17.25/LINE</b>	Gross amount claimed / Cantidad en bruto reclamada <b>\$ 2,473.65</b>	
Brief explanation of issues (use additional sheet if necessary) / Breve explicacion de los hechos (use papel adicional si es necesario) <b>I WAS NOT PAID FOR SALES I MADE THE COMPANY CLAIMS</b>	Less amount paid / Menos la cantidad recibida <b>\$ 890.70</b>	
<b>I AM NOT OWED COMMISSIONS ON THESE SALES BECAUSE THE SERVICE WAS INSTALLED AFTER I HAD LEFT THE CO</b>	Amount claimed / Cantidad o saldo reclamado <b>\$ 1,555.95</b>	

I hereby certify that this is a true statement to the best of my knowledge  
 Por el presente que esta es una declaracion veridica conforme a mi conocimiento

Signed

*Brian McFadden*

Date

**1/1/03**



Back

## Gross Monthly Installs for Brian A. McFadden: June 2002

Data is current as of 2/24/2003 5 25 7 PM

Rep	Order #	Sold	Quantity	Customer
Brian A McFadden	1381568	05/13/2002	43	CREATIVE DESIGN CONSULTANTS
Brian A McFadden	1388297	05/15/2002	10	STOLL ENGINE COMPANY 5
Brian A McFadden	1381578	05/13/2002	8	CREATIVE DESIGN CONSULTANTS
Brian A McFadden	1388275	05/15/2002	7	STOLL ENGINE COMPANY 6
Brian A McFadden	1388345	05/15/2002	6	STOLL ENGINE COMPANY 7
Brian A McFadden	1348300	04/30/2002	4	KENICHI BABA DDS
Brian A McFadden	1438282	06/05/2002	4	CALIBER SALES & MARKETING
Brian A McFadden	1340802	04/26/2002	3	MIYOHARA INTERNATIONAL
Brian A McFadden	1384834	05/14/2002	1	FURNISHINGS DIRECT
Brian A McFadden	1449401	06/11/2002	1	PACIFIC COAST PATIO
Brian A McFadden	1414940	05/28/2002	1	MESA UPHOLSTERY
Brian A McFadden	1421670	05/30/2002	1	STOLL ENGINE COMPANY
<b>Total lines installed</b>				<b>89</b>

**ADDENDUM A**

The following is a copy of a letter I mailed out in an attempt to resolve this dispute with the Commissions Director. It outlines in detail the reasoning behind my claim.

December 18, 2002

Sean Pike  
Allegiance Telecom  
9201 N Central Expressway  
Dallas TX, 75231

Sean,

My recent emails sent to your attention have gone unreturned so I have decided to make one last attempt to contact you as a courtesy before filing my complaint with Labor Board. I have two matters regarding unpaid commissions that I need to bring to your attention.

1. I believe I was underpaid in my June commissions. My commission criteria, as stated in my most recent revision of the comp plan, states I am to be paid \$4.50/line for all UNE lines and \$3.00/line for all InterLata accounts with a 130% accelerator if I achieve quota.

-UNES  $\$4.50 + 1.3(\$4.50) = 2.3 \times \$4.50 = \$10.35/\text{line}$

-UNES w/Lg Dist  $\$4.50 + \$3.00 = \$7.50/\text{line}$   
 $\$7.50 + 1.3(\$7.50) = 2.3 \times \$7.50 = \$17.25/\text{line}$

I achieved quota in both the months of May and June so if my calculations are correct I was owed the following:

**JUNE COMMISSIONS:**

<u>OWED</u>	Local & Long Dist Accounts	Local Only Accounts	Total
Rate:	\$17.25	\$10.35	NA
Lines Installed	82	7	89
Amount:	\$1414.5	\$72.45	<b>\$1,486.95</b>

<u>PAID</u>	Local & Long Dist Accounts	Local Only Accounts	Total
Rate:	\$10.35	\$6.00	NA
Lines Installed:	82	7	89
Amount	\$848.70	\$42.00	<b>\$890.70</b>

**AMOUNT DUE** **\$569.25**

2 I also need to be paid front end commission for the 71 lines I sold which installed after my final day at Allegiance (7/15) I realise you informed me that it was now company policy to only pay reps for accounts which install before they leave the company This policy went into effect, when the new comp plan was implemented on the first of May, 2001 The problem is, nowhere does the contract (see "Addendum B" attached) state that reps would no longer be paid front end commissions on each every account he or she sold As a matter of fact, the statement "Commissions will not be paid if the MAM is no longer an employee of the Company," made under Note#3 under "Second Month Revenue Commissions" and "Residual Revenue Payments" appears nowhere in the "Product Installation Commissions" section Since this change was made without disclosure to the representatives it is neither fair nor legal for the commission to be withheld The accounts which installed after my last day with the company are as follows

Local & Long Dist	Local Only	# of Lines	Rate/line	Amount Due
7/05 Creative Design	-	26	\$17 25	<del>-\$448 50</del>
6/28 Fetal Fotos	-	4	\$17 25	\$69 00
EtherWan	-	5	\$17 25	<del>\$86 25</del>
-	Doug Hartman Inc	37	\$10 35	<del>-\$382 95</del>

<b>AMOUNT DUE</b>	<b>\$986 70</b>
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<b>TOTAL BALANCE:</b>	<b>\$1,555.95</b>
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I hope we can settle this matter without getting the Department of Labor involved My attorney informs me that if they rule in my favor, which she predicts, given the facts of the case, it is possible that they will order Allegiance to pay post-resignation commissions to all reps who have left Allegiance since May Please let me know before Friday December 27<sup>th</sup> if you are willing to settle this matter informally I look forward to hearing from you

Sincerely,



Brian A McFadden



# Earnings Statement



ALLEGIANCE TELECOM  
 9201 NORTH CENTRAL EXPRESSWAY  
 DALLAS TX 75231

Period Ending 07/12/2002  
 Pay Date 07/12/2002

Taxable Marital Status Single  
 Exemptions/Allowances  
 Federal 0 Tax Blocked  
 CA 0

**BRIAN A MCFADDEN**  
 2775 MESA VERDE DR E  
 #M201  
 COSTA MESA, CA 92626

Social Security Number 611 34 8565

Earnings	rate	hours	this period	year to date
Regular	1346 15	80 00	1,346 15	18 792 25
Auto Allowance			115 39	1 615 46
Commission				14 379 05
<b>Gross Pay</b>			<b>\$1,461 54</b>	34 786 76

Other Benefits and Information	this period	total to date
Git	0 06	0 96
Stock		1 348 05

Deductions	Statutory		
	Social Security Tax	-87 51	2,113 29
	Medicare Tax	20 47	494 24
	CA State Income Tax	-51 62	1,424 98
	CA SUI/SDI Tax	-12 70	306 76
	Federal Income Tax		1 159 63
	<b>Other *</b>		
	Checking 1	-1 239 07	27 237 43
	Dental	-2 77*	38 78
	Flex Medical	-25 00*	350 00
	Medical	-22 40*	313 60
	Stock Purchase		1,348 05
	<b>Net Pay</b>	<b>\$0 00</b>	

\* Excluded from federal taxable wages

Your federal taxable wages this period are  
 \$1,411 37

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

ALLEGIANCE TELECOM  
 9201 NORTH CENTRAL EXPRESSWAY  
 DALLAS TX 75231

Advice number 0000280912  
 Pay date 07/12/2002

Deposited to the account of	account number	transit ABA	amount
BRIAN A MCFADDEN	0870022213	1210 0035	\$1 239 07

THIS IS NOT A CHECK

VOID AFTER 180 DAYS

**NON-NEGOTIABLE**

# Earnings Statement



ALLEGIANCE TELECOM  
 9201 NORTH CENTRAL EXPRESSWAY  
 DALLAS TX 75231

Period Ending 06/27/2002  
 Pay Date 06/27/2002

Taxable Marital Status Single  
 Exemptions/Allowances  
 Federal 0 Tax Blocked  
 CA 0

**BRIAN A MCFADDEN**  
 2775 MESA VERDE DR E  
 #M201  
 COSTA MESA, CA 92626

Social Security Number 611 34 8565

<u>Earnings</u>	rate	hours	this period	year to date
Commission			736 05	14 379 05
Regular				16,099 95
Auto Allowance				1 384 68
<b>Gross Pay</b>			<b>\$736 05</b>	31,863 68

<u>Other Benefits and Information</u>	this period	total to date
Gil		0 84
Stock		1 213 43

<u>Deductions</u>	Statutory		
	Social Security Tax	-45 63	1 938 27
	Medicare Tax	-10 68	453 31
	CA State Income Tax	12 21	1 321 74
	CA SUI/SDI Tax	-6 62	281 35
	Federal Income Tax		1 159 63
	<b>Other</b>		
	Checking 1	-587 30	24 893 91
	Stock Purchase	-73 61	1 213 43
	Dental		33 24
	Flex Medical		300 00
	Medical		268 80
	<b>Net Pay</b>	<b>\$0.00</b>	

Your federal taxable wages this period are \$736 05

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

ALLEGIANCE TELECOM  
 9201 NORTH CENTRAL EXPRESSWAY  
 DALLAS TX 75231

Advice number 00000260202  
 Pay date 06/27/2002

Deposited to the account of **BRIAN A MCFADDEN**

account number	transit ABA	amount
0870022213	1210 0035	\$587 30

**THIS IS NOT A CHECK**

VOID AFTER 180 DAYS

**NON-NEGOTIABLE**

**COMMISSION CRITERIA  
MAJOR ACCOUNT MANAGER  
(Effective 5/1/02)**

Allegiance Telecom, Inc, on behalf of itself and its subsidiaries, (the Company') has established the following criteria for bonus/ commission payments for the position of Major Account Manager ("MAM'), with an Effective Date of May 1, 2002 for all sales keyed into Consolidated Order Entry (COE) beginning on May 1, 2002. The bonus/commission plans are comprised of three discreet elements Product Installation Commissions, Second Month Revenue Commissions, and Residual Revenue Commissions.

"Back-End" commissions will continue to be paid under the compensation plan effective January 1, 2002 for sales entered in to COE prior to May 1, 2002, and Cut Over by July 31, 2002. Any products Cut Over after July 31, 2002 will be paid under the terms of this Plan.

**MONTHLY NET SALES QUOTA = 100 Lines (in COE)**

<b>PRODUCT INSTALLED</b>	<b>PRODUCT INSTALLATION COMMISSIONS<sup>1</sup> BASE COMMISSION RATE PER INSTALLED LINE/UNIT<sup>1</sup></b>
UNEs, Resale, UNE-P	\$4.50 Per Line
Data Line (Dedicated Internet Access Multi - Megabit Access)	\$12.00 Per Line
IAD, TCO Line (Voice or Data), PRI, Voice T1	\$8.00 Per Line
InterLata PIC (Available Plans) <sup>2</sup>	\$3.00 Per Line
Commission on IAD/TCO/Dedicated Access Install Fee of \$899.00	\$200.00 Per Unit
Commission on IAD/TCO/Dedicated Access Install Fee of \$499.00	\$100.00 Per Unit
Accelerator <sup>4</sup>	130%
Accelerator Threshold (Net Lines Sold) <sup>4</sup>	101 Lines

**Notes**

- 1 "Product Installation Commissions" will be paid at the end of the month following confirmation is received that the commissionable products/services have been placed in service "Cut Over". In other words, Product Installation Commissions will be paid one month in arrears - for example, if the Cut-Over occurs on September 1, 2002, the Product Installation Commission will be paid on October 31, 2002. Such Cut Over shall be determined by tracking the customer order via TBS, COE or other methods that the Company determines are most appropriate. The Company's determination shall be final.
- 2 Payment for the InterLata PICs for any applicable Interlata Plan shall require that the Customer sign up for any applicable minimum monthly Interlata Toll billing charges and/or minimum term associated with the Commitment Plans.
- 3 In cases where a MAM is reassigned to a different selling position (AE, NAM or Senior NAM), the commission rate, if any, will be based on position that the individual is in as of the first day of the month for which the commissions are being calculated.
- 4 MAM's may qualify for a "Accelerator" in a month, if the net lines sold are at or above the Accelerator Threshold for the month that the commissionable products/services are installed. For example, if a MAM has 10 Lines of TCO installed in June, and achieves net

## CONFIDENTIAL INFORMATION

sales of 101 lines or greater in June, then the Accelerator would apply. The commission rate per TCO line installed in June would be calculated as Base Commission Rate x (1 + Accelerator). In other words, \$8.00 x 2.3 or \$18.40 per installed line.

### **SECOND MONTH REVENUE COMMISSIONS**

MAMs will be eligible to receive thirty three percent (33%) of the Commissionable Revenue generated from the Second Invoice Cycle.

#### Notes

- 1 A MAM shall be eligible for Commissionable Revenue for each service when the MAM is identified as the salesperson for a service as reflected in the Company's billing system(s), or by other methods that the company determines are most appropriate.
- 2 Commissionable Revenue excludes all taxes, surcharges, fees, credits, reimbursements and discounts.
- 3 Second Month Revenue Commissions will not be paid where the customer account that the revenue is associated with is not in good standing (e.g., is in collections), or if the MAM is no longer an employee of the Company.
- 4 In cases where an MAM is reassigned to a different selling position (AE, NAM or Senior NAM), the commission rate, if any, will be based on position that the individual is in as of the first day of the month for which the commissions are being calculated.
- 5 Second Month Revenue Commissions will be paid at the end of the month following the close of the second invoice cycle. For example, commissionable revenues invoiced in the month of June would be paid at the end of the month of July.

### **RESIDUAL REVENUE PAYMENTS**

MAM's will be eligible to receive One Percent (1%) of the commissionable revenue beginning with the fourth invoice cycle.

#### Notes

- 1 A MAM shall be eligible for Commissionable Revenue for each service when the MAM is identified as the salesperson for a service as reflected in the Company's billing system(s), or by other methods that the company determines are most appropriate.
- 2 Commissionable Revenue excludes all taxes, surcharges, fees, credits, reimbursements and discounts.
- 3 Residual Revenue Commissions will not be paid where the customer account that the revenue is associated with is not in good standing (e.g., is in collections), or if the MAM is no longer an employee of the Company.
- 4 In cases where a MAM is reassigned to a different selling position (AE, NAM or Senior NAM), the commission rate, if any, will be based on position that the individual is in as of the first day of the month for which the commissions are being calculated.
- 5 Residual Revenue Commissions will be paid at the end of the month following the close of the fourth invoice cycle, and each subsequent cycle. For example, commissionable revenues invoiced in the month of June would be paid in the month of July.
- 6 In the event that an employee transfers to another position (other than AE, MAM, NAM or Sr. NAM), such employee waives any and all rights to Residual Revenue Commissions.
- 7 In the event that an employee's employment is terminated for any reason, all rights to Residual Compensation are immediately forfeit.

**COMPENSATION PLAN OVERVIEW**

The purpose of this Compensation Plan is to provide the sales employees with an incentive for achieving the Company's sales and product line objectives. The Compensation Plan is composed of two elements: base salary and commission.

**RESPONSIBILITIES**

- 1 The Employee understands and agrees that the duties and responsibilities of the Employee required by his/her position with the Company (including the territory or territories in which the Employee is required to sell products) are wholly within the discretion of the Company and may be modified, or new duties and responsibilities imposed by the Company, at any time, without notice or the consent of the Employee.
- 2 The Employee understands and agrees that he/she will faithfully devote all his/her efforts and entire time during normal business hours to advance the interest of the Company. The Employee further understands and agrees that he/she has a fiduciary duty of loyalty to the Company and that he/she will take no action which in any way harms the business, business interests, or reputation of the Company.
- 3 During the existence of the employment relationship between the Company and the Employee, the Employee agrees that he/she will not directly or indirectly engage in competition with the Company at any time and the Employee further agrees that he/she will not on his/her own behalf, or as another's agent, employee, partner, shareholder, or otherwise, engage in any of the same or similar duties and/or responsibilities required by the Employee's position at the Company, other than as an Employee for the Company pursuant to this Compensation Plan.
- 4 The Employee understands and agrees that any information, funds, or property received by the Employee during his/her employment with the Company shall become the sole property of the Company. Accordingly, the Employee understands and agrees that he/she shall immediately turn over all information, funds, or property that come into his/her possession during his/her employment with the Company. The Employee understands and agrees that breach of this covenant may result in immediate termination, without notice.
- 5 The Employee understands and agrees that he/she shall not have any authority to negotiate prices or enter into any agreements on behalf of the Company. An appropriate manager or supervisor must approve all prices and agreements.

**COMPENSATION**

- 6 The Company agrees to pay the Employee a bi-weekly salary, less statutory payroll deductions, payable in accordance with the Company's then-existing regular payroll practices and procedures. In addition, the Company agrees to pay the Employee commissions as stated herein, including the attached Commission Guidelines. Based on the Company's current payroll practices and procedures, all salary is paid bi-weekly (26 times per year) and all commissions are paid monthly, a month in arrears (12 times per year). The Employee understands and agrees such compensation is fair and adequate compensation for his/her services.
- 7 Commission Commission payments are an additional incentive for meeting and exceeding incremental sales goals. Commissions will be based on the products that the Employee sells to the customer.

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- 8 Auto Allowance Employee may be required, as a condition of employment, to have a suitable automobile (and auto insurance as required by law) available at all times during normal business hours. If an auto allowance is authorized, Employee will be paid a monthly "auto allowance" of \$250.00 for all expenses incurred in connection with the use of the vehicle for business purposes.
- 9 Quota Monthly and annual quotas will be established for the Employee, but may be adjusted by the Company as new products become available. The Employee sales quota performance will be measured using number of lines sold and the specific products sold to customers.
- 10 Performance Appraisal All commissioned sales personnel are scheduled for performance reviews in accordance with the Company's salary planning and quota attainment procedures. This merit review is currently conducted every January.
- 11 The Employee understands and agrees that commissions for any sales shall not be earned or payable until valid Customer orders are placed in service as stated herein. The Employee further understands and agrees that any monies paid by the Company in excess of the commissions actually earned are not compensation. Rather, these monies shall be considered monies advanced to the Employee and must be repaid to the Company upon request. Moreover, by signing below, the Employee agrees and authorizes the Company to deduct any such advances from his/her salary and/or commission checks.
- 12 The Employee understands and agrees that his/her compensation and the Company's Compensation Plans are subject to modification upon prior written notice at the sole discretion of the Company, without the consent of the Employee, and that neither these compensation provisions nor the Company's Compensation Plan in any way constitutes an agreement to employ the Employee for any definite period of time.
- 13 The Company and the Employee acknowledge and agree that the Company shall reimburse the Employee for any reasonable expenses that the Employee may incur in the performance of his/her duties and obligations as set forth in the Company's expense reimbursement policies. Any expense reimbursements under this provision are contingent upon the Employee's submission of receipts or other acceptable documentation to the Company to verify such expenses. By signing below, the Employee authorizes the Company to deduct any unreasonable expenses, excess expenses, or non-reimbursable expenses from his/her salary and/or commission checks.

**TERMINATION**

- 14 The Employee acknowledges and agrees that he/she is an "at-will" employee. The Employee understands and agrees that the Company may terminate his/her employment at any time, without notice, for any reason, with or without cause, including but not limited to, any of the following reasons:
- a. The Employee becomes physically or mentally disabled as defined by 29 C.F.R. Sec. 1630.2(g)(1), and cannot perform the essential functions of the his/her position, with reasonable accommodation,
  - b. The Company determines, in good faith, that the Employee's job performance is unsatisfactory,
  - c. The Employee violates any provision of the Company's policies,
  - d. The Employee is convicted of a felony, or a misdemeanor involving moral turpitude,
  - e. The Employee engages in misconduct in the course and scope of his/her employment with the Company including, but not limited to, "slamming", "cramming", indecency, immorality, insubordination, excessive tardiness or

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- f absenteeism, dishonesty, harassment of employees or customers, abuse of alcohol or controlled substances, or disorderly conduct, or Disloyalty

15 The Employee understands and agrees that, in the event of termination of employment, for whatever reason, whether at the insistence of the Employee or the Company, the Employee will return to the Company within seventy-two (72) hours of the time when notice of termination is communicated by either party, or sooner if requested by the Company, all equipment, property, literature, documents, data, information, order forms, memoranda, correspondence, customer and prospective customer lists, customer's orders, contracts and fee agreements, advertisements, company or customer profiles, manuals, activity reports, reference materials, records, cards, or notes acquired, compiled, or coming into the Employee's knowledge, possession, or control in connection with his/her activities as an employee of the Company, as well as all machines, parts, equipment, or other materials received from the Company, or from any of its customers, agents, or suppliers, in connection with such activities. By signing below, the Employee authorizes the Company to deduct the replacement cost of any materials from any sums due and owing from the Company if the Employee fails to return such materials to the Company.

**CHOICE OF LAW**

16 Both parties understand and agree that the law of Texas, excluding its conflict of laws provisions, will govern the validity, interpretation, and effect of this Compensation Plan, as well as any other disputes arising out of or relating to the employment of the Employee by the Company.

**INDEMNIFICATION**

17 The Employee understands and agrees that if he/she was formerly employed by a competitor of the Company, the Employee acknowledges and agrees that he/she is not in possession of any documents or other materials pertaining to his/her prior employer and is not in violation of any agreement or covenant executed by the Employee and any prior employer. In the event that a prior employer of the Employee files suit or institutes any other legal proceeding against the Company, the Employee, or both, for any reason arising out of the Employee's prior employment with the prior employer, the Employee agrees to indemnify the Company for all judgments, settlement payments, assessments, fines, damages, costs and expenses, including attorneys' fees, which the Company may incur as a result of such suit or legal proceeding.

**PRIOR PLANS SUPERSEDED**

18 Both parties understand and agree that this Compensation Plan constitutes the complete and entire agreement between the parties concerning the subject matter, that no previous Compensation Plan, either oral or written, shall have any effect on its terms or provisions, and that all Compensation Plans, either oral or written, are expressly superseded and revoked by this Compensation Plan.