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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**AFFIDAVIT OF ALBERT TOGUT IN SUPPORT OF
APPLICATION SEEKING ENTRY OF AN ORDER AUTHORIZING
THE EMPLOYMENT AND RETENTION OF TOGUT, SEGAL & SEGAL LLP
AS ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION**

Albert Togut, being duly sworn, hereby deposes and says:

1. I am the senior member of Togut, Segal & Segal LLP ("TS&S"), One Penn Plaza, New York, New York 10119. I am admitted to practice in the Southern District of New York and the Eastern District of New York.

2. I submit this Affidavit in support of the application (the "Application") of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), to retain TS&S, as their

attorneys in the above-captioned chapter 11 cases, at their normal hourly rates in effect from time to time and in accordance with their normal reimbursement policies, in compliance with sections 328(a), 329 and 504 of title 11 of the United States Code (the “Bankruptcy Code”), and to provide disclosure required under rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Unless otherwise stated in this affidavit, I have personal knowledge of the facts set forth herein. To the extent any information disclosed herein requires amendment or modification upon TS&S’s completion of further review or as additional party-in-interest information becomes available to it, a supplemental affidavit will be filed with the Court reflecting such amended or modified information.

Disinterestedness of Professionals

3. Based on the conflicts search conducted to date by TS&S and described herein, to the best of my knowledge, neither TS&S, nor any partner, including myself, counsel or associate thereof, insofar as I have been able to ascertain, has any connection with the Debtors, their creditors or any other parties in interest, or their respective attorneys and accountants, nor with the United States Trustee for the Southern District of New York (the “United States Trustee”) or any person employed by the United States Trustee, except as disclosed herein.

4. TS&S is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the

Bankruptcy Code, in that TS&S, its partners, counsel and associates, except as disclosed herein:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not investment bankers for any outstanding security of the Debtors;
- c. have not been, within three years before the date of the filing of these chapter 11 cases, (i) investment bankers for a security of the Debtors or (ii) an attorney for such an investment banker in connection with the offer, sale or issuance of a security of the Debtors;
- d. are not and were not, within two years before the date of filing of these chapter 11 cases, a director, officer or employee of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph; and
- e. do not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors or an investment banker specified in subparagraph (b) or (c) of this paragraph, or for any other reason.

5. I am not related, and to the best of my knowledge, no attorney at TS&S is related, to any United States Bankruptcy Judge in the Southern District of New York or to the United States Trustee or any employee thereof.

6. Pursuant to section 327(c) of the Bankruptcy Code, TS&S is not disqualified from acting as the Debtors' counsel merely because it represents creditors, equity security holders, and/or other parties in interest in matters unrelated to these chapter 11 cases.

7. TS&S will periodically review its files during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, TS&S will use its reasonable efforts to identify any such further developments and will promptly file a supplemental affidavit as required by Bankruptcy Rule 2014(a).

8. As of the Commencement Date, TS&S was not owed any amounts by the Debtors for legal services rendered prior to the Commencement Date.

**TS&S's Connections With Parties In Interest
In Matters Unrelated To These Chapter 11 Cases**

9. TS&S and certain of its partners, counsel, and associates may have in the past represented, and may likely in the future will represent parties in interest of the Debtors in connection with matters unrelated to the Debtors and these chapter 11 cases. Annexed hereto as Exhibit "1" is, to the best of TS&S's knowledge, a list of the parties in interest provided by the Debtors. TS&S has reviewed that list for any connection it may have to the entities listed on Exhibit "1" annexed hereto and has found none except as more particularly described in paragraphs 10 and 11 below. The information listed on Exhibit "1" may change or be modified during the pendency of these chapter 11 cases. TS&S will update this affidavit when necessary if it becomes aware of material information.

10. TS&S represents Litigation, LLC, a special purpose entity that was created as an entity to hold and pursue avoidance claims in the post-confirmation cases

of Jacom Computer Services, Inc., (“Jacom”) *et al.*, Case No. 00-402719, *et seq.* (CB). Bank of America, which is one of the Debtors’ secured lenders, is the sole shareholder of Litigation, LLC. However, pursuant to the terms of the Plan of Reorganization in the Jacom case, it is not likely that there will ever be a shareholders’ equity in Litigation LLC in favor of Bank of America.

11. TS&S also serves as bankruptcy co-counsel to the Debtors in Enron Corp., *et al.*, Case Nos. 01-16034, *et seq.* (AJG). TS&S, on behalf of Enron Corp., has commenced adversary proceeding no. 02-03436 (AJG) against Bank of America to recover approximately \$123 million alleged to have been improperly seized from one of Enron’s bank accounts. That action is pending before Bankruptcy Judge Gonzales.

12. Although no conflict of interest exists between TS&S and Bank of America in its capacity as a secured lender of the Debtors, TS&S has determined to make these disclosures.

Services To Be Rendered

13. The professional services that TS&S will render to the Debtors during these chapter 11 cases may include, but shall not be limited to, the following:

- a. advise the Debtors regarding their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- b. attend meetings and negotiate with representatives of creditors and other parties in interest;
- c. take all necessary action to protect and preserve the Debtors’ estates, including prosecuting actions on the Debtors’ behalf,

defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning litigation in which the Debtors are involved, including, but not limited to, objections to claims filed against the estates;

- d. prepare on the Debtors' behalf all motions, applications, answers, orders, reports and papers necessary to the administration of the estates;
- e. negotiate and prepare on behalf of the Debtors a plan of reorganization and all related documents;
- f. represent the Debtors in obtaining postpetition loans;
- g. advise the Debtors in with any potential sale of assets;
- h. appear before this Court and any appellate courts and protect the interests of the Debtors' estates before these Courts;
- i. consult with the Debtors regarding tax matters; and
- j. perform all other necessary legal services and provide all other necessary legal advice to the Debtors in connection with these chapter 11 cases.

Professional Compensation

14. TS&S received a \$100,000 retainer from the Debtors. TS&S has applied the retainer to services rendered and expenses incurred prior to the date of the filing of the Debtors' Chapter 11 petition (the "Petition Date"). A precise disclosure of the application of the prepetition retainer and the amounts held by TS&S as of the Petition Date will be supplied in TS&S' first interim fee application for its postpetition services and expenses.

15. Subject to annual adjustment in January, in accordance with the firm's billing practices, the rates to be charged by TS&S for services to be rendered to the

Debtors shall be the same rates charged to other clients, which are currently in the range of \$550 to \$675 per hour for partners, and \$100 to \$470 per hour for paralegals and associates. TS&S intends to apply for compensation for professional services rendered in connection with these chapter 11 cases, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), further Orders of this Court, and guidelines established by the United States Trustee on an hourly basis, plus reimbursement of actual and necessary expenses and other charges that TS&S incurs.

16. It is TS&S's policy to charge its clients for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, photocopying, witness fees, travel expenses, certain necessary secretarial and other overtime expenses, filing and recordation fees, long distance telephone calls, postage, express mail and messenger charges, computerized legal research charges and other computer services, expenses for "working meals" and telecopier charges. TS&S will charge the Debtors for these expenses in a manner and at rates consistent with those it generally charges its other clients and in accordance with the Local Rules. TS&S believes that it is fairer to charge these expenses to the particular client on whose behalf they are incurred rather than to increase its hourly rates and spread these expenses amongst all of its clients.

17. No promises have been received by TS&S nor by any partner, counsel or associate thereof as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code. TS&S has no agreement with any other entity to share with such entity any compensation received by TS&S in connection with these chapter 11 cases.

18. TS&S further states pursuant to Bankruptcy Rule 2016(b) that it has not shared, nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, counsel and associates of TS&S or (b) any compensation another person or party has received or may receive.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Albert Togut
Albert Togut (AT-9759)

Subscribed and sworn to before me on
this 14th day of May, 2003
in New York, New York.

/s/ Scott E. Ratner
Notary Public
My Commission Expires: 3/9/06