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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	
	:	Chapter 11 Case No.
Allegiance Telecom, Inc., <u>et al.</u> ,	:	03-13057 (RDD)
	:	
Debtors.	:	Jointly Administered
_____	X	

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER,  
PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE AND  
RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE,  
AUTHORIZING (A) THE DEBTORS TO FILE UNDER SEAL THE MASTER  
CARRIER AGREEMENT WITH AT&T CORPORATION AND THE SUMMARY  
OF PERTINENT TERMS THEREOF AND (B) THE COURT TO CONDUCT  
AN IN CAMERA HEARING ON THE MOTION FOR AN ORDER, PURSUANT TO  
SECTION 365(a) OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS  
TO REJECT THE MASTER CARRIER AGREEMENT WITH AT&T CORPORATION**

TO THE HONORABLE ROBERT D. DRAIN,  
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 May 14, 2003 (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the

Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

2. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, pursuant to sections 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Creditors Committee") in these chapter 11 cases.

### **Jurisdiction**

3. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 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**

4. 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.

5. As of the Commencement Date, Allegiance served more than 100,000 business customers in major markets throughout the United States. As of the Commencement Date, Allegiance employed approximately 3,560 people, of which approximately 97 employees were covered by collective bargaining agreements.

6. As of the Commencement Date, the Debtors had approximately \$245 million of cash. As of March 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.349 billion and liabilities totaling approximately \$1.424 billion. For the three months ending March 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$204.58 million and net losses of approximately \$120.084 million.

#### **Agreement with AT&T Corporation**

7. Subsequent to the Court considering the relief requested herein, the Debtors intend to file a motion, pursuant to section 365(a) of the Bankruptcy Code (the "Rejection Motion"), seeking authorization to reject that certain AT&T Master Carrier Agreement, dated as of October 7, 2002 (the "Agreement"), by and between Allegiance Telecom Company Worldwide ("ATCW") and AT&T Corporation ("AT&T"). Contemporaneously with the filing of this Motion, a (a) complete copy of the Agreement and (b) summary of pertinent terms thereof (the "Summary")<sup>1</sup> have been submitted to the Court under seal and, subsequent to the Court's consideration of the relief requested herein, will be provided solely to the U.S.

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<sup>1</sup> The Summary contains pertinent information regarding, among other things, the term of Agreement, the services provided under the Agreement, the rates for such services and the benefit to be realized from the rejection of the Agreement. To the extent that there are inconsistencies between the Summary and the terms of and conditions of the Agreement, the terms of the Agreement shall control.

Trustee, attorneys for the Creditors Committee and attorneys for the Debtors' prepetition lenders (the "Prepetition Lenders").<sup>2</sup>

8. Pursuant to the Agreement, ATCW has agreed to purchase certain long-distance telecommunications services from AT&T at prices that are presently higher than prevailing market rates. Under the Agreement, the Debtors are obligated to purchase a certain minimum annual amount of long-distance telecommunications services, which the Debtors resell to their end-user customers. The Debtors have entered into a new agreement with another telecommunications provider to purchase telecommunications services similar to those provided by AT&T *at prevailing market rates and without any minimum annual revenue commitment*. As set forth in more detail in the Rejection Motion, the Debtors have determined that rejecting the Agreement is in the best interests of the Debtors, their estates and creditors, and all parties in interest.

9. Notably and relevant to this Motion, the Agreement contains confidential information regarding the pricing of the services, the telecommunications needs of the Debtors and the telecommunications offerings of AT&T as well as other confidential commercial information.

### **Relief Requested**

10. By this Motion, the Debtors request entry of an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, for authorization (a) to file the Agreement and the Summary under seal in order to protect the confidential proprietary and commercial information contained therein and (b) to have the Court conduct an in camera hearing on the Rejection Motion. The Debtors respectfully request that the Court grant them leave to file the Agreement and the Summary under seal, order that the contents of the

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<sup>2</sup> The Debtors will also provide the Summary to AT&T and/or attorneys for AT&T.

Agreement remain confidential, and order that the Agreement and the Summary be served on and made available only to the U.S. Trustee, the attorneys for the Creditors Committee and attorneys for the Prepetition Lenders, and not otherwise be made available to the general public or any parties in interest in these chapter 11 cases, including any individual members of the Creditors Committee or the individual Prepetition Lenders. The Debtors further request that the Court conduct an in camera hearing on the Rejection Motion with only (a) representatives from the Debtors, AT&T and the U.S. Trustee and (b) attorneys for the Creditors Committee and the Prepetition Lenders in attendance.

### **Basis For Relief**

11. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may -

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b).

12. Bankruptcy Rule 9018 defines the procedure by which a party may move for relief under section 107(b) of the Bankruptcy Code:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018.

13. Based upon these provisions, courts have limited access to filed documents where parties have demonstrated good cause. See, e.g., In re Epic Assoc. V, 54 B.R.

445, 450 (Bankr. E.D. Va. 1985); In re Nunn, 49 B.R. 963, 964-65 (Bankr. E.D. Va. 1985). “In limited circumstances, courts must deny access to judicial documents - generally where open inspection may be used as a vehicle for improper purpose.” Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994) (citing Nixon v. Warner Comm’n, Inc., 435 U.S. 589, 597 (1978)). Once it is established that the information sought to be protected fits in any of the categories in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting interested party and has no discretion to deny the application.” Id. Commercial information need not rise to the level of confidentiality of a trade secret to be protected under section 107(b) of the Bankruptcy Code. Id. at 28.

14. Similarly, section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, permit the court to protect confidential information by holding in camera proceedings.<sup>3</sup> See In re Farmland Indus., Inc., 290 B.R. 364, 369-370 (Bankr. W.D. Mo. 2003).

**Cause Exists to File the Agreement Under Seal  
and to Conduct an In Camera Hearing on the Rejection Motion**

15. The Debtors submit that good cause exists for the Court to grant them leave to file the Agreement under seal and to authorize conducting an in camera hearing on the Rejection Motion. First, as noted above, the Agreement contains highly sensitive and confidential information about the pricing of the services, the telecommunications needs of the Debtors and the telecommunications offerings of AT&T. If this information is disclosed to the public, the Debtors’ customers and competitors would gain access to specific confidential commercial information related to the Debtors’ business relationship with AT&T. Second, the Agreement specifically states that certain terms set forth therein are confidential and must not be disclosed to third parties. Thus, unless the Agreement is filed under seal and an in camera

hearing is conducted on the Rejection Motion, the Debtors will be in violation of their obligations under the Agreement. In short, if the terms of the Agreement are disclosed, the competitive position of the Debtors will be severely undermined because their competitors and customers could utilize confidential pricing and other confidential commercial information to create undue pressure on the Debtors in future negotiations. Similarly, the Summary cannot be disclosed to the public because it contains certain confidential terms of the Agreement. Accordingly, the Debtors submit that the filing of the Agreement and the Summary under seal and conducting an in camera hearing on the Rejection Motion is in the best interests of their estates.

#### **Waiver of Memorandum of Law**

16. 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 Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

#### **Notice**

17. Pursuant to Bankruptcy Rule 9018, the Debtors submit that no notice need be provided.

#### **No Prior Request**

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

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<sup>3</sup> An in camera proceeding is a proceeding held in a place not open to the public. Black's Law Dictionary (6th ed. 1990).

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the relief requested herein and granting such other and further relief as may be just and proper.

Dated: New York, New York  
August 6, 2003

Respectfully submitted,

/s/ Matthew A. Cantor

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	X
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Allegiance Telecom, Inc., <u>et al.</u> ,	:	Chapter 11 Case No.
	:	03-13057 (RDD)
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Debtors.	:	Jointly Administered

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**ORDER, PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AUTHORIZING (A) THE DEBTORS TO FILE UNDER SEAL THE MASTER CARRIER AGREEMENT WITH AT&T CORPORATION AND THE SUMMARY OF PERTINENT TERMS THEREOF AND (B) THE COURT TO CONDUCT AN IN CAMERA HEARING ON THE MOTION FOR AN ORDER, PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO REJECT THE MASTER CARRIER AGREEMENT WITH AT&T CORPORATION**

Upon consideration of the motion (the “Motion”), dated August 6, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order, pursuant to section 107(b) of the Bankruptcy Code<sup>1</sup> and Bankruptcy Rule 9018, authorizing the Debtors to file under seal that certain AT&T Master Carrier Agreement, effective October 7, 2002, by and between Allegiance Telecom Company Worldwide and AT&T Corporation (“Agreement”), as well as the Summary, as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interest of the Debtors’ estates and creditors; and it appearing that no notice of the Motion need be provided; and after due deliberation and sufficient cause appearing therefor; it is

ORDERED that the Motion is granted; and it is further

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion.

ORDERED that, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors are authorized to file the Agreement and the Summary under seal; and it is further

ORDERED that the Agreement and the Summary shall remain confidential, shall be served on and made available only to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Prepetition Lenders, and shall not be made available to the general public or any parties in interest in these chapter 11 cases, including any individual members of the Creditors Committee or the individual Prepetition Lenders; provided that the Summary shall be also served on AT&T and/or attorneys for AT&T; and it is further

ORDERED that, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors have demonstrated good cause to conduct an in camera hearing on the Rejection Motion; and it is further

ORDERED that the in camera hearing shall be attended solely by (a) representatives from the Debtors, AT&T and the U.S. Trustee and (b) attorneys for the Creditors Committee and the Prepetition Lenders; and it is further

ORDERED that the parties attending or participating in the in camera hearing are prohibited from disclosing or providing to third parties any information revealed during the in camera hearing or set forth in the Agreement.

Dated: New York, New York  
\_\_\_\_\_, 2003

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UNITED STATES BANKRUPTCY JUDGE