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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

PRESENTMENT DATE: 10/31/03
AT: 12 NOON

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In re: : Chapter 11
: Case No. 03-13057 (RDD)
ALLEGIANCE TELECOM, INC., *et al.*, : (Jointly Administered)
: Debtors. :
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**DEBTORS' MOTION FOR (I) APPROVAL OF THE STIPULATION
AND ORDER ESTABLISHING PROCEDURES FOR ADEQUATE ASSURANCE
OF FUTURE PAYMENT TO VERIZON COMMUNICATIONS INC. AND
ITS OPERATING TELEPHONE SUBSIDIARIES PURSUANT TO SECTION 366
OF THE BANKRUPTCY CODE AND (II) ENTRY OF AN ORDER AUTHORIZING
THE FILING OF THE STIPULATION UNDER SEAL PURSUANT TO SECTION
107(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9018**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Allegiance Telecom, Inc. ("Allegiance") and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), by their co-counsel, Togut, Segal & Segal LLP, make this motion (the "Motion") for (i) approval of the Stipulation and Order (the "Stipulation"), pursuant to section 366 of title 11 of the United States Code (the "Bankruptcy Code"), establishing procedures for adequate assurance of future payment to Verizon Communications Inc. and its Operating Telephone Subsidiaries (collectively, "Verizon") and (ii) entry of an order authorizing the filing of the Stipulation under seal pursuant to section 107(b) of the

Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and respectfully state that:

SUMMARY OF THE RELIEF REQUESTED

1. By this Motion, the Debtors seek approval of the Stipulation, which resolves Verizon’s demands, pursuant to section 366(b) of the Bankruptcy Code, for additional adequate assurances of payment. Among other things, the Stipulation fixes a post-petition payment cycle for Verizon charges incurred by the Debtors, establishes a dispute resolution procedure and timeline, establishes notice and remedy provisions upon a default by the Debtors and gives Verizon access to certain financial information on a confidential basis.

2. Due to the sensitive and proprietary nature of certain of the Stipulation’s provisions, the Debtors are requesting authority to file the Stipulation under seal to avoid potential adverse consequences that might ensue if other utility service providers and competitors obtained the specific terms of the Stipulation. The Debtors respectfully request that the Court authorize them to file, and direct the Clerk of the Court to maintain, the Stipulation under seal and to deny access to such information without further order of this Court. In addition, the Debtors request that the Court instruct the Limited Notice Parties (defined below), once served with the Stipulation, to maintain the Stipulation in confidence.

INTRODUCTION

3. On May 14, 2003 (the "Filing Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these chapter 11 cases. On May 28, 2003, the United States Trustee for the Southern District of New York appointed a statutory committee of unsecured creditors (the "Committee") in these cases.

JURISDICTION

5. This Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

ALLEGIANCE'S BUSINESS

6. 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.

7. As of June 30, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States. As of June 30, 2003, the Debtors employed approximately 3,350 people, of which approximately 91 employees were covered by collective bargaining agreements.

**THE UTILITIES ORDER AND VERIZON'S
DEMAND FOR ADEQUATE ASSURANCE**

8. On May 15, 2003, this Court entered the Order Deeming Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Utilities Order"). The Utilities Order, among other things, (i) directs the Debtors' utility service providers (collectively, the "Utilities") to provide postpetition service to the Debtors without postpetition deposits or prepayments, (ii) provides the Utilities with administrative expense priority claims under section 503(b) of the Bankruptcy Code for utility charges that accrue postpetition, and (iii) establishes a procedure by which the Utilities may request additional assurances of future payment.

9. Following entry of the Utilities Order, Verizon requested additional adequate assurances of payment from the Debtors pursuant to section 366(b) of the Bankruptcy Code, which included, among other things, the payment of security deposits and/or an agreement by the Debtors to make prepayments for utility

services. After receipt of Verizon's adequate assurance demands, the Debtors entered into good faith, arms-length negotiations with Verizon.

10. On June 10, 2003, Verizon filed its motion in support of its demands for additional adequate assurances (the "Verizon Motion"). On June 20, 2003, the Debtors filed an objection to the Verizon Motion. Just prior to the hearing to consider the Verizon Motion, the parties reached an agreement in principle and, at a hearing before the Court held *in camera*, the parties outlined the terms of the settlement. The terms of the settlement as outlined at the *in camera* hearing are embodied in the Stipulation.

11. The Stipulation provides Verizon with, among other things, a fixed payment cycle for post-petition service charges, true-up mechanisms, default and termination provisions on notice to the Debtors and the Committee and with the approval of the Court, and access to certain financial information on a confidential basis.

RELIEF REQUESTED

12. By this Motion, the Debtors respectfully request that the Court (i) approve and "so order" the Stipulation and (ii) enter an order, substantially in the form annexed hereto as Exhibit "1," authorizing the Debtors to file the Stipulation under seal, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

BASIS FOR THE RELIEF REQUESTED

A. The Stipulation Should be Approved

13. The Debtors submit that the Stipulation is supported by compelling business and economic reasons, represents a fair and reasonable settlement and is in the best interests of the Debtors' estates. Verizon is the Debtors' largest utility service provider; any interruption in service would be extremely detrimental to the Debtors' estates. The Stipulation resolves Verizon's section 366 demand for additional adequate assurance of payment without further litigation and costs to the estates.

14. Accordingly, the Debtors believe that the terms of the Stipulation are fair and reasonable, appropriate in light of the relevant factors and should be approved.

**B. The Stipulation Should be Filed with
and Maintained by the Clerk of the Court Under Seal**

15. Due to the sensitive nature of the commercial information contained in the Stipulation, the Debtors are requesting authority to file the Stipulation under seal.

16. Pursuant to 107(b) of the Bankruptcy Code, the Court may authorize the Debtors to file the Stipulation under seal. Section 107(b) provides, in part:

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).

17. Bankruptcy Rule 9018 sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal under section 107(b). Bankruptcy Rule 9018 reads, in part:

On motion or 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.

18. Once the court determines an interested party is seeking protection of information that falls within one of the categories enumerated in section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. Id. at 28. In Orion, the Second Circuit affirmed the bankruptcy court’s order that a licensing agreement remain sealed because the release of any information pertaining to the licensing agreement would adversely affect Orion’s ability to negotiate favorable promotional agreements, thereby giving Orion’s competitors an unfair advantage. Id. In affirming the order of protection, the Second Circuit noted that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public. Id. at 27 (citing In re Orion Pictures Corp., 1993 U.S. Dist. LEXIS 111734, at *2 (S.D.N.Y. August 25, 1993)). The Second Circuit further noted that, under this exception, an interested party has to show only that the information it wishes to seal is “‘confidential’ and ‘commercial’ in nature.” Id. at 27.

19. The Stipulation contains confidential and commercial information regarding, among other things, payment terms, notice, cure, and default provisions, all as agreed to by the Debtors and Verizon. The telecommunications industry is highly competitive and most of the Debtors' utility service providers are direct competitors of the Debtors. If the information contained in the Stipulation is disclosed pursuant to a public filing, the Debtors' competitors (*i.e.*, the other Utilities) would gain access to specific confidential and commercial information related to the Debtors' business relationship with Verizon. Access to information contained in the Stipulation would not only give the Debtors' competitors an unfair advantage, it would undermine the Debtors' ability to successfully negotiate with other Utilities regarding their section 366 demands.

20. Moreover, the Stipulation provides that the information contained therein shall remain confidential and not disclosed to the public. Filing the Stipulation under seal is warranted under the applicable standards of Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 and is in the best interest of the estates.

21. The Debtors, therefore, respectfully request that the Court authorize the Debtors to file, and direct the Clerk of the Court to maintain, the Stipulation under seal and to deny access to such information without further order of this Court.

NOTICE

22. Notice of this Motion has been provided to: (a) the United States Trustee, (b) counsel for the Committee, (c) counsel for the pre-petition lenders, and (d) all parties that have filed a request for notices. The Debtors submit that no further notice is required.

23. The Debtors have provided a copy of the Stipulation to the Court and have served a copy upon: (i) the United States Trustee, (ii) counsel for the Committee, and (iii) counsel for the Debtors' pre-petition lenders (collectively, the "Limited Notice Parties"). The Debtors request that the Court instruct the Limited Notice Parties to maintain the Stipulation in confidence unless and until the Court orders otherwise. To the extent that a client of, or a person represented by, a Limited Notice Party is (i) a competitor of the Debtors, and/or (ii) a utility service provider, the Debtors request the Court instruct such Limited Notice Party not to share or disclose the Stipulation with such client, unless and until the Court instructs otherwise.

WAIVER OF MEMORANDUM OF LAW

24. Given the nature of the relief requested in this Motion and because the statutory and case law precedents are cited herein, the Debtors respectfully request that this Court dispense with and waive the requirement for submission of a memorandum of law contained in SDNY Local Bankruptcy Rule 9013-1(b). The Debtors reserve the right to file a memorandum of law in reply to any objections or responses to this Motion.

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

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and grant such other further relief as may be just and proper.

Dated: New York, New York
October 24, 2003

ALLEGIANCE TELECOM, INC., et al.,
Debtors and Debtors-in-Possession,
By their Co-Bankruptcy Attorneys,
TOGUT, SEGAL & SEGAL LLP,
By:

/s/ Frank Oswald
FRANK A. OSWALD (FAO-1223)
A Member of the Firm
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
: Case No. 03-13057 (RDD)
ALLEGIANCE TELECOM, INC., *et al.*, : (Jointly Administered)
: Debtors. :
-----X

**ORDER, PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9018, AUTHORIZING THE
DEBTORS TO FILE THE STIPULATION AND ORDER ESTABLISHING
PROCEDURES FOR ADEQUATE ASSURANCE OF FUTURE PAYMENT
TO VERIZON COMMUNICATIONS INC. AND ITS OPERATING
TELEPHONE SUBSIDIARIES SETTLEMENT AGREEMENT UNDER SEAL**

Upon the motion dated October 23, 2003 (the "Motion") of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), by their co-bankruptcy counsel, Togut, Segal & Segal LLP, for (i) approval of the Stipulation and Order (the "Stipulation"), pursuant to section 366 of title 11 of the United States Code (the "Bankruptcy Code"), establishing procedures for adequate assurance of future payment to Verizon Communications Inc. and its Operating Telephone Subsidiaries (collectively, "Verizon") and (ii) an order authorizing the filing of the Stipulation under seal pursuant to section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and due and sufficient notice of the Motion having been provided; and after due deliberation and good and sufficient cause appearing therefor, it is hereby

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

ORDERED, that the Stipulation shall remain under seal and shall not be disclosed or released to any third party except the Limited Notice Parties (as defined in the Motion), unless and until the Court directs and orders otherwise; and it is further

ORDERED, that the Limited Notice Parties shall maintain the Stipulation in confidence, unless and until the Court orders otherwise; and it is further

ORDERED, that to the extent that a client of, or a person represented by, a Limited Notice Party is (i) a competitor of the Debtors, and/or (ii) a utility service provider, such Limited Notice Party shall not to share or disclose the Stipulation with such client, unless and until the Court instructs otherwise.

Dated: New York, New York
October __, 2003

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

TOGUT, SEGAL & SEGAL LLP
Co-Bankruptcy Attorneys for the
Debtors and Debtors-in-Possession
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Gerard DiConza (GD-0890)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

PRESENTMENT DATE: 10/31/03
AT: 12 NOON

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In re: : Chapter 11
: Case No. 03-13057 (RDD)
:
ALLEGIANCE TELECOM, INC., *et al.*, : (Jointly Administered)
:
Debtors. :
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**NOTICE OF PRESENTMENT OF (I) STIPULATION AND ORDER
ESTABLISHING PROCEDURES FOR ADEQUATE ASSURANCE OF FUTURE
PAYMENT TO VERIZON COMMUNICATIONS INC. AND ITS OPERATING
TELEPHONE SUBSIDIARIES PURSUANT TO SECTION 366 OF THE
BANKRUPTCY CODE AND (II) ORDER AUTHORIZING THE FILING
OF THE STIPULATION UNDER SEAL PURSUANT TO SECTION 107(b)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9018**

PLEASE TAKE NOTICE that upon the annexed motion dated October 24, 2003 (the "Motion"), Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), by their undersigned co-counsel, Togut, Segal & Segal LLP, will present for approval and signature (i) the Stipulation and Order (the "Stipulation"), pursuant to section 366 of title 11 of the United States Code (the "Bankruptcy Code"), establishing procedures for adequate assurance of future payment to Verizon Communications Inc. and its Operating Telephone Subsidiaries (collectively, "Verizon") and (ii) the order (the "Order") authorizing the filing of the Stipulation under seal pursuant to section 107(b)

of the Bankruptcy Code and Bankruptcy Rule 9018, to the Honorable Robert D. Drain, United States Bankruptcy Court, One Bowling Green, New York, New York 10004, Chambers 632, on October 31, 2003 (the "Presentment Date") at 12:00 noon.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion, the Stipulation and/or the Order must be filed with the Bankruptcy Court in accordance with General Order M-182, which order can be found on www.nysb.uscourts.gov, by registered users of the Bankruptcy Court's electronic filing system and, by all other parties in interest, on a 3.5 inch disk in Portable Document Format (PDF), Wordperfect, or any other Windows-based word processing format, with a hard-copy delivered to Bankruptcy Judge Drain's Chambers, Room 610, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, and served upon (i) Togut, Segal & Segal LLP, One Penn Plaza, New York, New York 10119, Attn: Frank A. Oswald, Esq., and (ii) Wilmer, Cutler & Pickering, 399 Park Avenue, New York, New York 10022, Attn: Philip D. Anker, Esq., so as to be received no later than 11:00 a.m. on the Presentment Date. Unless objections are timely received, there will not be a hearing, and the Stipulation and the Order may be signed on the Presentment Date.

Dated: New York, New York
October 24, 2003

ALLEGIANCE TELECOM, INC., *et al.*,
Debtors and Debtors-in-Possession,
By their Co-Bankruptcy Attorneys,
TOGUT, SEGAL & SEGAL LLP,
By:

/s/ Frank Oswald
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