

Robert D. Towey (RT4631)  
Andrew Pincus (AP9295)  
**LOWENSTEIN SANDLER, PC**  
*Counsel to Lucent Technologies, Inc.*  
65 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 597-2500

Hearing Date: May 19, 2004 @ 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

ALLEGIANCE TELECOM, INC., *et al.*,

Debtors.

Chapter 11  
Case No. 03-13057 (RDD)

**RESPONSE OF LUCENT TECHNOLOGIES, INC.  
IN OPPOSITION TO DEBTORS' OBJECTION TO CLAIMS 2122 AND 2264**

Lucent Technologies, Inc. ("Lucent"), by its undersigned counsel, respectfully represents as follows:

**INTRODUCTION**

1. On April 6, 2004, Allegiance Telecom, Inc. and related debtors herein (collectively, the "Debtors") filed their first omnibus objection to certain proofs of claim, including a claim identified by number 2122 ("Proof of Claim No. 2122") and claim identified by number 2264 ("Proof of Claim No. 2264"), each of which was filed by Lucent prior to November 26, 2003, the last date fixed by the court for the filing of proofs of claim (the "Bar Date"). The stated basis for the Debtors' objection to Lucent's claims was that Lucent had failed to file the requisite documentation in support of its claims.

2. This document constitutes Lucent's response to the Debtors' objection.

**LUCENT CONSENTS TO THE EXPUNGEMENT OF PROOF OF CLAIM NO. 2122**

3. Proof of Claim No. 2122 represents a priority claim asserted by Lucent in the amount of \$4,000,000.00. At the time that Lucent filed that claim, it was unaware of the precise dollar amount of its claim, but desired to file its claim prior to the Bar Date. Accordingly, Lucent filed Proof of Claim No. 2122 in an estimated amount.

4. Proof of Claim No. 2264 represents a priority claim asserted by Lucent in the amount of \$9,314,451.00. That claim, however, is intended to replace and supersede Proof of Claim No. 2122. Lucent failed to note on Proof of Claim No. 2264 that it was intended to replace Proof of Claim No. 2122. Accordingly, to the extent that this Court and the Debtors recognize and acknowledge that Proof of Claim No. 2264 replaces and supersedes Proof of Claim No. 2122, Lucent has no objection to the entry of an order expunging Proof of Claim No. 2122.

**THE DEBTORS ARE FULLY AWARE OF THE BASIS FOR,  
AND ARE IN POSSESSION OF ALL DOCUMENTATION TO SUPPORT PROOF OF CLAIM NO. 2264**

5. Proof of Claim No. 2264, filed in the amount of \$9,314,451.00, seeks amounts owing by the Debtors to Lucent for state sales and use tax associated with goods and services provided by Lucent to the Debtors. The Debtors' obligation for such taxes is set forth in a General Purchase Agreement, dated March 28, 2003 ("GPA"), the form of which is annexed hereto as **Exhibit A**. Paragraph 6 of the GPA provides, in relevant part, that:

Except for taxes on Lucent's income, Customer shall pay all applicable taxes and related charges, including interest and penalties, that any governmental or taxing authority may impose upon the purchase, license, ownership, possession, use, operation or relocation of any Products, Software or Services that Lucent furnishes under this Agreement.

(See ¶ 6, GPA).

6. Lucent, as a seller and provider of goods and services, is assessed sales and use tax by each state in which it transacts business. Such tax is computed on the basis of the applicable tax rate, plus interest and penalties, if applicable. Lucent has computed the sales and use tax that it may be assessed based upon the sale of goods and services it provided to the Debtors under the GPA. Those amounts, together with potential interest and penalties, are set forth on a schedule annexed hereto as **Exhibit B**, broken down by state.

7. Each state listed on the schedule annexed hereto as **Exhibit B** is at a different stage with respect to its efforts to assess Lucent with applicable sales and use taxes. In most states, the appropriate department of revenue is in the midst of an audit to determine Lucent's sales and use tax liability. In at least one state -- Washington -- an audit has been completed and Lucent has been assessed a tax liability. A summary of the status of each state's efforts is annexed hereto as **Exhibit C**.

8. The Debtors have provided Lucent with purported tax exemption certificates allegedly applicable to sales and use taxes in the states of Arizona, Indiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Texas, and the District of Columbia. While Lucent intends to utilize these certificates to challenge any assessment imposed by a state for sales and use tax, state taxing authorities may raise one or more issues with respect to those exemption certificates, including:

- (a) The tax exemption certificates are merely unilateral assertions by the Debtors that the goods and/or services purchased by the Debtors are subject to an exemption. The applicable taxing authorities have provided no assurance of any such exemption, and many have already asserted that the exemptions sought are not binding (see **Exhibit C**).
- (b) There is not, in every case, an absolute match between the specific legal entity that provided the tax exemption certificate and the specific legal entity that purchased goods and/or services from Lucent.

(c) The Debtors have not provided tax exemption certificates for all states that may impose sales and use tax liability upon Lucent.

9. Under the terms of the GPA, the Debtors are required to pay all sales and use tax that any state may impose upon Lucent. To the extent that Lucent is assessed such tax liability and pays it on the Debtors' behalf, Lucent would be entitled to be subrogated to the claims held by the various state taxing authorities, and is entitled to contractual indemnification from the Debtors under the GPA.

10. The Debtors are in possession of the documents annexed hereto as **Exhibits A and B**. In fact, Oliver Struble, the Assistant Tax Director for Lucent, has been in active communication with Randall Olsen, the Tax Director for the Debtors, with respect to these very issues.

#### CONCLUSION

11. Based on the foregoing, there is no basis to expunge Proof of Claim No. 2264 for lack of supporting documentation. The Debtors' Objection should accordingly be denied.

Dated: May 10, 2004

**LOWENSTEIN SANDLER, PC**  
*Counsel to Lucent Technologies, Inc.*

By: /s/ Andrew Pincus  
Robert D. Towey (RT4631)  
Andrew Pincus (AP9295)  
65 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 597-2500

# EXHIBIT A



## General Purchase Agreement

This General Purchase Agreement (the "Agreement"), effective March 28, 2003 ("Effective Date"), is made between Allegiance Telecom Inc., a Delaware corporation with offices at 9201 N. Central Expressway, Dallas, TX 75231 ("Customer"), and Lucent Technologies Inc., a Delaware corporation with offices at 600 Mountain Ave., Murray Hill, NJ 07921 ("Lucent") (each a "Party" and collectively the "Parties").

In consideration of their mutual promises and undertakings, the Parties agree as follows:

1. **SCOPE:** This Agreement describes the terms and conditions under which Lucent shall sell, and Customer shall purchase, Products and Services and the right to use Licensed Materials during the Term. The Parties shall enter into one or more addenda or statements of work ("Addenda") to supplement or modify this Agreement for specific Products, Services, or Licensed Materials to be defined and more fully described in the respective Addendum. All references to the "Agreement" shall be deemed to include this document and its exhibit together with any and all Addenda and their attachments. Exhibit A contains the definitions of certain capitalized terms used in this Agreement. All Products, Licensed Materials, and Services furnished by Lucent to Customer under this Agreement shall be for Customer's own internal use in the United States only. Customer does not intend to purchase Products or Licensed Materials as stock in trade or inventory for resale to any third party.

2. **TERM:** This Agreement shall begin on the Effective Date and shall continue for a period of one year ("Initial Term"), and will automatically renew for two 1 year terms (each a "Renewal Term") on the day following the date following Initial Term and each anniversary thereof, unless either party gives written notice of its intention not to renew 60 days prior to the last day of the then-current term or the Agreement is earlier terminated as provided in "Termination" below or as mutually agreed in writing. The word Term as used in this Agreement includes the Initial Term and any Renewal Terms as defined herein. Termination or expiration of this Agreement shall not excuse a Party from performing obligations which have not been fully performed for any accepted Order.

3. **ORDERS:** All purchases under this Agreement shall be made by Orders issued by Customer from time to time subject to acceptance by Lucent. Lucent reserves the right to place any Order on hold, delay shipment, suspend performance, and/or reject any Order due to, but not limited to: (a) the breach or default by Customer of any of its obligations under this Agreement; or (b) Customer's insufficient credit limits as determined by Lucent; or (c) at

any time reasonable grounds for insecurity arise with respect to Customer's performance of its payment or other obligations under this Agreement. Orders that have been accepted by Lucent may not be canceled without the express written consent of Lucent. Each Order shall reference this Agreement and applicable Addendum, and shall be subject only to the terms and conditions of this Agreement and such Addendum. Terms and conditions contained in an Order which are inconsistent with this Agreement and the applicable Addendum, including any pre-printed terms and conditions on such Order, shall be ineffective and void. Customer shall send Orders to the address specified by Lucent.

4. **CHANGES TO ORDERS:** Customer may request changes to an Order ("Change Request") that Lucent has previously accepted. In response to a Change Request, Lucent will provide written quotations, including any changes to prices, license fees, shipment or completion dates. A Change Request will be treated as a separate Order subject to Lucent's change order process.

5. **CHANGES IN PRODUCTS OR SOFTWARE:** At any time prior to shipment, Lucent may make changes to Products or Software. Lucent may modify the drawings, documentation or Specifications for Products or Software or substitute Products or Software of later design. If such changes impact a Product's or Software's form, fit or function, under normal use as provided in the Specifications, Lucent shall notify Customer at least 30 days prior to the date the change takes effect. If Customer objects to the change, Customer shall notify Lucent within 30 days of the date of Lucent's notice. On receipt of Customer's notice, Lucent shall not fulfill any Orders in process with the modified Product or Software to which Customer objected and agrees to fulfill such Orders with the non-modified Product or Software provided such non-modified Product or Software is generally available.

6. **PRICES AND TAXES:** The applicable prices and charges for each Order shall be set forth in the appropriate Addendum or in a firm price quotation made by Lucent or, if not set forth in either of those, in Lucent's customer price lists in effect on the day Lucent receives the Order. All firm price quotes shall be deemed to incorporate this Agreement. Provided that the firm price quote is signed by an authorized representative of Lucent and Customer, any provisions of a firm price quote which conflict with this Agreement shall supersede the comparable provisions of this Agreement or applicable Addendum with respect to the Products, Licensed Materials and Services described in such quote. Lucent may adjust its prices and charges (other than those subject to a firm price quote) upon 30 days prior written

notice to Customer. If, however, Lucent's adjustment in price is due to changes in raw material prices, Lucent's price adjustment will be effective on the first day of the next calendar month. The prices and charges are based on Lucent's standard, published intervals for shipping, planning or completion, unless Lucent otherwise agrees in writing. Except for taxes on Lucent's income, Customer shall pay all applicable taxes and related charges, including interest and penalties, that any governmental or taxing authority may impose upon the purchase, license, ownership, possession, use, operation or relocation of any Products, Software or Services that Lucent furnishes under this Agreement.

7. TERMS OF PAYMENT: a. Payment for Products, Licensed Materials, and Services (including transportation charges and taxes, if applicable) will be due as follows:

(i) Each Order that includes installation Services shall be accompanied by advance payment of 80% of the total value of the Order. As soon as practicable following Lucent's notice that the installation Services have been completed, Lucent shall invoice Customer for the balance due under the Order.

(ii) Each Order for Products and/or Licensed Materials only shall be accompanied by advance payment of 100% of the value of the Order.

(iii) Except as provided in subsection (iv), each Order for Services other than installation Services shall be accompanied by advance payment of 80% of the total value of the Order. As soon as practicable following Lucent's notice that the Services have been completed, Lucent shall invoice Customer for the balance due under the Order.

(iv) Each Order for recurring Services (such as annual maintenance Services) shall be accompanied by advance payment in the amount mutually agreed in writing between Lucent and Customer. Lucent shall invoice Customer for the balance due under any such Order as mutually agreed.

b. Notwithstanding the above, if Lucent delivers Products or Licensed Materials to Customer or performs Services prior to receipt of advance payment, then Lucent may invoice Customer all amounts due (including transportation charges and taxes).

c. Within five (5) days after the invoice date, Customer shall pay all invoiced amounts for receipt by Lucent, or Customer shall advise Lucent of any billing discrepancies or disputes about the invoice and pay all undisputed amounts.

d. Customer shall pay all amounts due Lucent hereunder using electronic funds transfer ("EFT") whether amounts have been invoiced by Lucent or are due as

advance payments. EFT payments by Customer shall be made to the following account of Lucent or such other account as is subsequently designated by Lucent in writing and, concurrent with the EFT payment, Customer shall fax a copy of the remittance to Lucent's Manager Cash Operations at 404/673-4238.

Chase Manhattan Bank  
New York, New York  
Account Name: Lucent Technologies Inc.  
ACCT. 910144-9099  
ABA 021000021

e. Overdue payments (but not amounts disputed in good faith) shall be subject to a late payment charge of 1 ½% per month of the overdue amount (but not to exceed the maximum lawful rate). If Customer fails to make payments when due, Lucent reserves the right to change the payment terms hereunder. Customer will reimburse Lucent for reasonable attorneys' fees and other costs associated with collecting delinquent payments.

8. TITLE AND RISK OF LOSS: Title to Products only, and risk of loss and damage to Products and Licensed Materials, shall pass to Customer upon shipment. Lucent retains title to all Licensed Materials and all copies thereof.

9. ACCEPTANCE: Products and Licensed Materials for which installation by Lucent is not required will be deemed accepted upon shipment to Customer. For Products and Licensed Materials for which installation by Lucent is required, Lucent will provide Customer with a notice of completion when installation is complete and the Products and Licensed Materials comply with Specifications. Upon receipt of such notification, Customer shall have ten (10) days from such notice to verify that the Products and Licensed Materials comply with the Specifications. The Products and Licensed Materials will be deemed accepted unless Lucent receives written notification from Customer during the aforementioned time period that the Products and Licensed Materials do not conform to the Specifications. If Customer's actions cause a delay in Lucent's installation for a period of more than 15 days following delivery, Customer's acceptance will be deemed to occur 15 days after the date of delivery. Notwithstanding the foregoing, Customer's use of any part of the Products or Licensed Materials for any purpose whether or not revenue is generated, shall constitute acceptance of such Products or Licensed Materials for all relevant purposes of this Agreement. Acceptance of Services will be deemed to occur on completion.

10. GRANT OF LICENSE: a. Upon delivery of Licensed Materials and subject to the provisions of this Agreement, Lucent grants Customer a personal, nontransferable and nonexclusive license to use the Licensed Materials on or with the corresponding Product(s) (on which the Software

was loaded or designated by Lucent to be loaded) for Customer's own internal operations in the United States. If the Product(s) on which the Software was loaded or designated by Lucent to be loaded become inoperative, Customer may use the Software temporarily on a backup processor until the original processor is restored. Customer shall not reverse engineer, decompile or disassemble Software furnished as object code to generate corresponding source code, nor shall Customer sublicense or distribute the Software. Customer shall not copy Licensed Materials except for backup and archival purposes. Customer shall reproduce and include Lucent's (or its licensor's) copyright and proprietary notice on all such necessary copies of Licensed Materials. Customer shall maintain records of the number and location of all copies of Licensed Materials.

b. Lucent shall have the right to audit Customer's use of the Licensed Materials upon written notice to Customer and/or install self auditing software which may be activated and monitored remotely (an "Audit"). Customer agrees that Lucent may perform such Audit at any time during reasonable business hours and not less than quarterly and that Customer and its employees, agents and representatives will cooperate with Lucent and take such action to facilitate any such Audit promptly (in no case later than five business days) after Lucent's written request to perform an Audit, provided that such Audit does not disrupt Customer's normal business operations. Software provided to Customer under this Agreement may contain optional features which are separately licensed and priced. Customer understands and agrees that such optional features will not be activated without written authorization from Lucent and Customer's payment of the appropriate license fees. Customer agrees to notify Lucent within five business days from the date of Customer's knowledge that such features were activated. Customer agrees to pay Lucent the then current license fees charged by Lucent for the activated features identified as a result of Customer's notification or Audit.

c. If Customer's license is canceled or terminated, or when Customer no longer uses the Licensed Materials, Customer shall return or destroy the Licensed Materials and all copies and certify to Lucent that it has done so.

d. If the terms of this Agreement differ from the terms of any license agreement packaged or otherwise provided with the Software, the terms of the license agreement packaged or provided with such Software shall govern. Lucent's licensors shall be third-party beneficiaries of this Agreement with respect to their Licensed Materials.

11. WARRANTIES: a. Lucent warrants to Customer only that (i) during the Warranty Period, Products purchased hereunder and manufactured by Lucent (including those manufactured for Lucent by a contract manufacturer and based on a Lucent originated procurement specification) will be free from defects in material and workmanship and will conform to the Specifications for such Products; (ii)

during the Warranty Period, Software purchased hereunder and developed by Lucent will be free from those defects which materially affect performance in accordance with the Specifications; and (iii) at the time of performance, Services will be performed in a workmanlike manner and in accordance with good industry practice in the community in which Services are provided. With respect to Products or Software or partial assembly of Products furnished by Lucent but not manufactured by Lucent, Lucent hereby assigns to Customer, to the extent permitted, the warranties given to Lucent by its vendors of such items.

b. "Warranty Period" means the applicable period of time that a particular Product or Software is warranted as shown in an applicable Addendum (or, if not specified in the Addendum, Lucent's standard period of time). For a Product or Software, the Warranty Period begins on the date of shipment, unless Lucent installs, in which case the Warranty Period begins on the earlier of (i) the date Lucent completes installation or (ii) the 16<sup>th</sup> day after delivery, if customer schedules or delays installation by more than 15 days after delivery. The Warranty Period for any new Product repaired or replaced under this Section is the unexpired portion of the new Product warranty or three (3) months, whichever is longer.

c. If, under normal and proper use, a defect or non-conformity appears in a Product or Software during the applicable Warranty Period and Customer promptly notifies Lucent in writing during the Warranty Period of such defect or non-conformance, (using a web-based system if Lucent has made one available to Customer for defect reporting) and follows Lucent's instructions regarding return of such defective or non-conforming Product or Software, then Lucent will, at no charge to Customer, either (i) repair, replace or correct the same at its manufacturing or repair facility or (ii) if Lucent determines that it is unable or impractical to repair, replace or correct the Product or Software, provide a credit not to exceed the original purchase price or license fee. If Services performed by Lucent prove not to have been so performed, and Customer notifies Lucent to that effect within 10 business days commencing on the date of the performance of the Service giving rise to the claim then Lucent, at its option, either will correct any defects and deficiencies in the performance of the Services or render a full or prorated credit for the defective or non-conforming portion of the Services based on the original charge for the Services

d. No Product or Software will be accepted for repair or replacement without the written authorization of and in accordance with instructions from Lucent. Removal and reinstallation expenses as well as transportation expenses associated with returning such Product or Software to Lucent shall be borne by Customer. Lucent shall pay the costs of transportation of the repaired or replaced Product or Software to any United States



destination designated by Customer. If Lucent determines that any returned Product or Software is not defective, Customer shall pay Lucent's costs of handling, inspecting, testing and transportation and, if applicable, travel and living expenses. In repairing or replacing any Product, part of Product, or Software medium under this warranty, Lucent may use either new, remanufactured, reconditioned, refurbished or functionally equivalent Products, parts or Software media. Replaced Products or parts shall become Lucent's property. If Lucent ascertains that a Product is not readily returnable for repair, at its option, Lucent may elect to repair or replace the Product at Customer's site. Customer, at its expense, shall make the Products accessible for repair or replacement and shall restore the site after Lucent has completed its repairs or replacement.

e. Lucent makes no warranty with respect to defective conditions or non-conformities resulting from any of the following: Customer's modifications, misuse, neglect, accident or abuse; improper wiring, repairing, splicing, alteration, installation, storage or maintenance not performed by Lucent; use in a manner not in accordance with Lucent's or its contract manufacturer's Specifications, or operating instructions; failure of Customer to apply previously applicable Lucent-directed modifications or corrections; or items not manufactured by Lucent or purchased by Lucent pursuant to its procurement specifications. In addition, Lucent makes no warranty with respect to Products which were not purchased from Lucent under this Agreement or have had their serial numbers or month and year of manufacture removed or altered; with respect to expendable items, including, without limitation, fuses, light bulbs, motor brushes and the like; or with respect to defects related to Customer's data base errors. No warranty is made that Software will run uninterrupted or error free.

f. Warranty does not include: Lucent assisting in diagnostic efforts; access to Lucent's technical support web sites databases or tools; product integration; on-site assistance; or product documentation updates. These Services are available either during or after warranty at Lucent's published prices.

g. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GRANTED IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (WHETHER WRITTEN, ORAL, STATUTORY OR OTHERWISE), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LUCENT'S SOLE OBLIGATION HEREUNDER, SHALL BE TO REPAIR, REPLACE, CREDIT AS SET FORTH ABOVE.

12. INFRINGEMENT: a. In the event of any Infringement Claim, subject to the conditions and exceptions stated below, Lucent, at its expense, will defend Customer; will

reimburse Customer for any cost, expense or attorneys' fees incurred at Lucent's written request or authorization; and will indemnify Customer against any liability assessed against Customer in a final judgment.

b. If Customer's use is enjoined or in Lucent's opinion is likely to be enjoined or subject to an Infringement Claim, Lucent, at its expense and at its option, will replace such Product or Licensed Materials furnished pursuant to this Agreement with a suitable substitute free of any infringement; will modify them so that they will be free of the infringement; or will procure for Customer a license or other right to use them. If none of the foregoing options are practical, Lucent will remove the enjoined Product or Licensed Materials and refund to Customer any amounts paid to Lucent for them less a reasonable charge for any actual period of use by Customer. In no event, however, shall Lucent's liability hereunder exceed the amounts paid by Customer to Lucent to purchase the Product or the right to use the Licensed Materials which are the subject of the Infringement Claim.

c. Customer shall give Lucent prompt written notice of all Infringement Claims, and Lucent shall have full and complete authority to assume the sole defense of them, including appeals, and to settle same. Customer shall, upon Lucent's request and at Lucent's expense, furnish all information and assistance available to Customer and cooperate in every reasonable way to facilitate the defense and settlement of any Infringement Claim.

d. Lucent shall not be responsible or liable for any Infringement Claim to the extent that it: (i) arises from adherence to design modifications, specifications, drawings, or written instructions which Lucent is directed by Customer to follow; or (ii) arises from adherence to instructions to apply Customer's trademark, trade name or other company identification; or (iii) resides in a product or licensed materials which are not of Lucent's origin and which are furnished by Customer to Lucent for use under this Agreement; (iv) relates to a modification made by Customer of any Product or Licensed Materials; or (v) relates to uses of any Product or Licensed Materials provided by Lucent in combination with any other item not furnished directly by Lucent. In the foregoing cases numbered (i) through (v), Customer will defend and save Lucent harmless, subject to the same terms and conditions and exceptions stated above with respect to the Lucent's rights and obligations under this Section.

e. The liability of Lucent and Customer with respect to any and all claims, actions, proceedings or suits by third parties alleging infringement of patents, trademarks or copyrights or violation of trade secrets or proprietary rights because of, or in connection with, any Products or Licensed Materials furnished under this Agreement shall be limited to the specific undertakings in this Section.

13. CUSTOMER'S RESPONSIBILITIES: Customer will prepare all sites where Products and Software will be delivered and installed and where Services will be performed according to Lucent's site requirements, including but not limited to the removal and proper disposal of all asbestos or other hazardous materials. Customer shall allow Lucent's personnel access to the sites and to the Products and Software as necessary for Lucent to perform its obligations hereunder. Lucent's personnel shall comply with Customer's reasonable site and security regulations and procedures of which Lucent has received written notice sufficiently prior to arrival at the site. Customer will provide Lucent with such technical information, data, technical support and assistance as reasonably required by Lucent to fulfill its obligations hereunder. Customer will obtain all necessary and applicable governmental permits for installation, operation and maintenance of Products and Software furnished hereunder, except for applicable permits Lucent must have to conduct business in the ordinary course. Customer will fulfill the foregoing obligations without charge to Lucent. If Customer fails to prepare the sites or to provide the above-described permits, information, support or assistance, Lucent will be excused from performing its obligations until Customer provides what Lucent requires to perform. Customer shall reimburse Lucent for any costs and expenses reasonably incurred due to Customer's failure to prepare the sites or to provide any of such items.

14. USE OF CONFIDENTIAL INFORMATION: All Confidential Information shall belong to the Party disclosing it. The disclosing Party grants the receiving Party the right to use Confidential Information only for purposes expressly permitted in this Section. Lucent shall use Customer's Confidential Information only to perform Lucent's obligations under this Agreement. Customer shall use Lucent's Confidential Information only to order, evaluate, use, install, and maintain the Products, Licensed Materials, and Services furnished hereunder. The receiving Party (i) shall not reproduce or copy the disclosing Party's Confidential Information, in whole or in part, except as authorized in this Agreement or in writing by the disclosing Party; (ii) shall return or destroy the Confidential Information (including any full and partial copies) when no longer needed or when requested to do so by the disclosing Party; (iii) shall hold the Confidential Information in confidence; (iv) shall disclose Confidential Information only to those employees and independent contractors who have a need to know and use the Confidential Information for the permitted purposes, provided that the independent contractors have agreed in writing to maintain the confidentiality of the information and are not employees of any competitor of Lucent. The receiving Party shall provide the disclosing Party, at its request, with a copy of such writing. The foregoing restrictions and obligations shall not apply to information that the receiving Party can demonstrate: (a) was independently developed by or for the receiving Party

without reference to the disclosing Party's Confidential Information; (b) has become publicly known through acts not attributable to the receiving Party; (c) was in the receiving Party's possession or was known by the receiving Party at the time of disclosure; or (d) was received without restriction from another party.

15. CONFIDENTIALITY OF AGREEMENT: Notwithstanding the Section "Use of Confidential Information", each Party shall keep confidential all provisions of this Agreement and any Order except as reasonably necessary for a Party to perform and except as required by applicable laws or regulations. In the latter case, the Party required to disclose this Agreement or any Order shall promptly inform the other Party prior to disclosure and shall make all reasonable efforts to obtain a protective order or other confidential treatment and to limit disclosure only to those portions necessary to comply with the applicable law or regulation.

16. EXPORT: Customer acknowledges that the transfer and use of Products, Licensed Materials, and technical information and the performance of Services outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the Products, Licensed Materials, or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At Lucent's request, Customer shall sign written assurances and other export-related documents as may be required for Lucent to comply with U.S. export regulations.

17. PUBLICITY: Neither Party shall release or publish news releases, announcements, advertising or other publicity relating to the Products, Licensed Materials or Services under this Agreement or mentioning or implying the name, trademarks, logos, service marks or other identification of the other Party or its affiliates or their respective personnel without the prior review and written consent of the other Party.

18. CUSTOMER'S REMEDIES: Customer's exclusive remedies and the entire liability of Lucent and its affiliates and their respective employees, directors, officers, agents, and suppliers for any and all claims, losses, damages and expenses (including attorneys' fees) ("Losses") of Customer or any other person arising out of this Agreement or the use or performance of any Product, Licensed Materials, or Services, whether in an action for or arising out of breach of contract, tort, including negligence, indemnity, or strict liability, shall be as follows: (i) for Infringement Claims --the remedy set forth in the "Infringement" Section; (ii) for the non-performance of or defects in Products, Software, and Services --the remedy set forth in the "Warranty" Section; (iii) for failure to deliver Products, Software or Services within 30 days after the scheduled delivery date for causes not attributable to Customer or force majeure conditions --the right to cancel

the applicable Order without incurring any cancellation charges; (iv) for tangible property damage and personal injury caused by Lucent's acts or omissions --the amount of the proven direct damages; and (v) for everything other than as set forth above --the amount of the proven direct damages not to exceed the lesser of the price or fee of the applicable Product, Software or Service or \$100,000 per occurrence. Customer shall give Lucent prompt written notice of any claim. Any action or proceeding against Lucent must be brought within 24 months after the cause of action accrues. In no event shall Lucent's and its affiliates' liability for any individual Loss arising out of this Agreement or the use or performance of anything furnished hereunder exceed the applicable price, charge or fee for the Product, Software or Service paid by Customer under this Agreement giving rise to such Loss and in no event shall Lucent's and its affiliates' cumulative liability for all Losses arising out of this Agreement exceed the total amount of prices, charges and fees paid by Customer under this Agreement.

19. EXCLUSIONS FROM LIABILITY: Notwithstanding any other provision of this Agreement, Neither party nor their respective affiliates, employees, directors, officers, agents, and suppliers shall be liable to the other party for any incidental, indirect, consequential, or exemplary damages or for any lost profits, revenues, goodwill or savings arising out of this Agreement, or resulting from the use or performance of any Product, Licensed Materials, or Services, whether in an action for breach of contract, tort, including negligence, indemnity or strict liability. This Section shall survive failure of an exclusive or limited remedy.

20. TERMINATION: a. If either Party is in material breach of any term of this Agreement and such breach continues for 30 days (or for 10 days for breach of payment obligations or obligations under "Use of Confidential Information") after receiving notice from the other Party, then the non-breaching Party may terminate this Agreement and any outstanding Orders without any further obligation or liability except with respect to Products or Licensed Materials already shipped and Services already performed and except for any liability arising out of any breach occurring prior to such termination, including, without limitation, the Losses incurred by Lucent with respect to canceled Orders if it is the non-breaching Party. The non-breaching Party shall reasonably cooperate with the other Party to facilitate a remedy of a material breach within the applicable cure period.

b. The Parties acknowledge that their rights and obligations under this Agreement, except for rights or obligations relating to entering into and carrying out new Orders, shall survive the termination or expiration of this Agreement; provided that Customer's rights under "Grant of License" or "Use of Confidential Information" shall not survive if Customer's material breach of either of those Sections gave rise to the termination.

c. If Customer is in material breach of the terms of any other agreement between Lucent and Customer or any of Customer's subsidiaries or affiliates, and provided Lucent serves or has served notice of material breach under the terms of such other agreement(s) and Customer has failed to cure such breach, then Lucent, in its sole discretion, may consider such material breach as a material breach under this Agreement.

21. FORCE MAJEURE: Except for payment obligations, neither Party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, strike, embargo, explosion, earthquake, flood, war, water, the elements, labor dispute, government requirements, acts of God, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond a Party's reasonable control.

22. ASSIGNMENT:

(a) Except as provided in this Section, neither Party shall assign this Agreement or any right or interest, or delegate any work or obligation to be performed, under this Agreement without the other Party's prior written consent. Notwithstanding the above, either party may assign the Agreement in whole or in part, or any of its rights hereunder, to an Affiliate that is not a competitor of the other party upon providing advance written notice to the other party provided that no assignment hereunder shall relieve the assignor of any obligation or liability arising or accruing hereunder. Affiliate for purposes of this Section shall mean any corporation or entity that Controls, is Controlled by or is under common Control with a party. Control as used herein shall mean holding a majority ownership interest. Any attempted assignment in contravention of this Section shall be void and ineffective. Nothing shall preclude a Party from employing a subcontractor in carrying out its obligations under this Agreement. A Party's use of such subcontractor shall not release the Party from its obligations under this Agreement.

(b) Upon receipt and acceptance of an Order placed under this Agreement, Lucent shall provide Services to U.S. companies that are subsidiaries, divisions or affiliates, wholly-owned or controlled by Customer ("Customer-Related Companies ") Such Customer-Related Companies are as set forth in Exhibit B attached hereto. Additions to this list shall be subject to Lucent's prior written approval.

Customer agrees that Customer-Related Companies and any orders placed and accepted by Lucent from such companies will be bound by the same obligations and subject to the same limitations on liability as Customer under this Agreement.

Customer is responsible and liable for use (i) of the Information disclosed to or received by this Agreement by Customer-Related Companies and (ii) compliance with the terms of this Agreement, including but not limited to payment obligations, by Customer-Related Companies; therefore, Customer represents and warrants that it has the authority to bind the Customer-Related Companies to the terms of this Agreement.

23. NOTICES: Any notice required or permitted under this Agreement shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed telecopy addressed to the respective Party as follows:

To Lucent: Lucent Technologies Inc.,  
900 Northpoint Parkway  
Room 91S452  
Alpharetta, GA 30005  
Attention: Contract Manager, Telecopier: 678-297-6553.

To Customer:  
Allegiance Telecom  
9201 N. Central Expressway  
Dallas, TX 75231  
Att: Vice President of Engineering

Telecopier: 469-259-9071

With a copy to:  
Allegiance Telecom  
9201 N. Central Expressway  
Dallas, TX 75231  
Att: Legal  
Telecopier: 469-259-9120

A notice shall be effective when received as shown on the delivery receipt or on the telecopier's written confirmation. A Party may change its designated representative or address by giving notice to the other as provided above.

24. GENERAL: Each Party is an independent contractor and is not an agent of the other. This Agreement does not create an agency, partnership, joint venture, or similar business relationship. Neither Party shall require releases or waivers of any personal rights from representatives or employees of the other to visit the Party's premises, nor shall a Party plead such a release or waiver in any action or proceeding. If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect. If either Party fails to enforce any right or remedy available under this Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other Party.

25. CHOICE OF LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to New York's rules on conflicts of law and excluding the United Nations Convention on Contracts for the International Sale of Goods.

26. ENTIRE AGREEMENT: This Agreement, its Exhibits and Addendum Number 1 attached hereto, constitutes the entire agreement, and supersedes all prior oral and written understandings, between the parties regarding the subject matter hereof. Any modification or addition to this Agreement shall be in writing and signed by authorized representatives of both Parties. In case of any conflict between the provisions of this Agreement (including the Exhibits) and of an Addendum (including its attachments), the provisions of the Addendum shall take precedence.

In witness whereof, each Party has caused its authorized representative to sign this Agreement as of the Effective Date.

**Lucent Technologies Inc.**

**Allegiance Telecom, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A  
to General Purchase Agreement**

Definitions

“Confidential Information” means all nonpublic information in whatever form, including, without limitation, specifications, drawings, documentation, know-how, pricing, and Licensed Materials, which may be disclosed by either Party to the other Party and which bears a legend or notice regarding its proprietary or confidential nature or, if not in tangible form, which the disclosing Party describes as proprietary or confidential at the time of disclosure and subsequently send a written summary to the receiving Party within 30 days of disclosure.

“Infringement Claim” means a claim, action, proceeding or suit brought by a third party alleging an infringement of any United States patent, United States copyright or United States trademark, or a violation in the United States of any trade secret by reason of the use, in accordance with Lucent’s Specifications, of any Product manufactured by Lucent or Licensed Materials developed by Lucent and furnished under this Agreement.

“Licensed Materials” means Software and related user and technical documentation.

“Order” means a written (paper or electronic) purchase order issued by Customer to Lucent, which refers to this Agreement and the applicable Addendum and any firm price quotation and specifies (i) the quantity and type of Products, Licensed Materials and Services being ordered and their applicable prices, charges or fees; (ii) accurate “ship to” and “bill to” addresses; (iii) the requested delivery date consistent with Lucent’s standard interval between acceptance of an Order and delivery; and (iv) if Lucent is installing, the requested date of installation complete consistent with Lucent’s standard intervals. An electronic Order shall be effective despite the absence of Customer’s signature.

“Product” means equipment hardware, and parts thereof, but does not include Software whether or not such Software is part of firmware.

“Services” means engineering, installation, consulting or other services.

“Software” means the object code or machine-readable version of computer programs delivered by Lucent under this Agreement, excluding source code and all related development documents. Software may be delivered electronically or in a variety of media, including firmware, disks, or tape, but does not include such media. Software may include embedded third-party object code.

“Specifications” means Lucent’s or its vendor’s written technical specifications for a particular Product or Software furnished under this Agreement.

**Exhibit B  
to the General Purchase Agreement**

**List of Customer – Related Companies**

# EXHIBIT B



ALLEGIANCE										
ANALYSIS OF UNTAXED SALES										
PERIODS OPEN FOR AUDIT ACTIVITY AND POTENTIAL ASSESSMENTS OF SALES AND USE TAXES	ENGINEERING BILLINGS - UNTAXED	EQUIPMENT BILLINGS - UNTAXED	INSTALLATI ON BILLINGS - UNTAXED	SOFTWARE BILLINGS - UNTAXED	TRANSPORT ATION BILLINGS - UNTAXED	TOTAL OF UNTAXED BILLINGS	TAX RATE APPLIED TO CALCULATE POTENTIAL SALES/USE TAXES DUE ON UNTAXED BILLINGS	TOTAL POTENTIAL SALES AND USE TAXES DUE ON UNTAXED BILLINGS	POTENTIAL INTEREST (EST. 50% CUMULATIVE)	TOTAL POTENTIAL SALES AND USE TAXES PLUS INTEREST DUE
AZ 2/2000 FORWARD	\$354,360.00	\$1,635,373.00	\$338,199.00	\$3,068,722.00	\$94,659.00	\$5,491,313.00	6.00%	\$329,478.78	\$164,739.39	\$494,218.17
CA 2/96 FORWARD	\$0.00	\$1,283,383.00	\$0.00	\$14,028,990.00	\$0.00	\$15,312,373.00	8.25%	\$1,263,270.77	\$631,635.39	\$1,894,906.16
CO 2/96 FORWARD	\$471,997.00	\$17,850.00	\$0.00	\$1,184,831.00	\$0.00	\$1,674,678.00	7.00%	\$117,227.46	\$58,613.73	\$175,841.19
FL 2/96 FORWARD	\$752,330.00	\$23,764.00	\$15,492.00	\$3,653,739.00	\$124,013.00	\$4,569,338.00	6.00%	\$274,160.28	\$137,080.14	\$411,240.42
GA 2/96 FORWARD	\$19,058.00	\$585,720.00	\$266,428.00	\$3,977,257.00	\$52,815.00	\$4,901,278.00	6.00%	\$294,076.68	\$147,038.34	\$441,115.02
MA 2/96 FORWARD	\$264,041.00	\$14,652.00	\$0.00	\$1,668,234.00	\$58,709.00	\$2,005,636.00	5.00%	\$100,281.80	\$50,140.90	\$150,422.70
MD 2/2000 FORWARD	\$231,783.00	\$6,467,903.00	\$164,503.00	\$521,832.00	\$77,003.00	\$7,463,024.00	5.00%	\$373,151.20	\$186,575.60	\$559,726.80
MN 5/98 FORWARD	\$453,732.00	\$612,994.00	\$146,222.00	\$2,035,156.00	\$62,037.00	\$3,310,141.00	6.50%	\$215,159.17	\$107,579.58	\$322,738.75
MO 2/96 FORWARD	\$510,395.00	\$46,243.00	\$0.00	\$2,320,661.00	\$62,022.00	\$2,939,321.00	5.75%	\$169,010.96	\$84,505.48	\$253,516.44
NY 3/99 FORWARD	\$1,200,914.00	\$3,548,734.00	\$38,637.00	\$4,270,087.00	\$215,935.00	\$9,274,307.00	8.25%	\$765,130.33	\$382,565.16	\$1,147,695.49
PA 2/96 FORWARD	\$248,397.00	\$15,899.00	\$0.00	\$980,782.00	\$0.00	\$1,245,078.00	6.00%	\$74,704.68	\$37,352.34	\$112,057.02
TX 2/96 FORWARD	\$0.00	\$22,295,470.00	\$0.00	\$114,757.00	\$31,746.00	\$22,441,973.00	8.25%	\$1,851,462.77	\$925,731.39	\$2,777,194.16
WA 2/96 FORWARD	\$329,947.00	\$143,566.00	\$0.00	\$2,402,804.00	\$0.00	\$2,876,317.00	9.20%	\$264,621.16	\$132,310.58	\$396,931.75
	<b>\$4,836,954.00</b>	<b>\$36,691,551.00</b>	<b>\$969,481.00</b>	<b>\$40,227,852.00</b>	<b>\$778,939.00</b>	<b>\$83,504,777.00</b>		<b>\$6,091,736.04</b>	<b>\$3,045,868.02</b>	<b>\$9,137,604.06</b>

# EXHIBIT C

Lucent Technologies, Inc.  
Sales and Use Taxes Audit Status  
Allegiance Transactions

**Arizona**

The audit is in progress with the Department of Revenue. A block sample of 4 months is the basis for audit examination. The Department of Revenue has indicated that their position is that Lucent's software, construction services, and installation services should be subject to tax.

The Department of Revenue has also indicated that they generally perform a detail review on construction services and installation services to determine the extent that reality is altered by the rendering of these services which would provide for a taxability percentage.

Sales of these types of services to Allegiance will be subject to actual review and the expected assessment of taxes. Other types of untaxed sales with Allegiance were not selected by the block sample.

**California**

The audit is in progress with the Board of Equalization. A statistical sample is the basis for the audit examination. Several untaxed software transactions with Allegiance have been selected by the statistical sample.

The Board of Equalization has indicated that their position is that Lucent's software does not qualify for the custom software exemption and that California sales and use taxes are due on these types of transactions.

We are in process of gathering additional information and documentation to address all transactions sampled.

**Colorado**

We are scheduled for an audit. The Department of Revenue has indicated that they intend to conduct a statistical audit. No sample selected to date.

**Florida**

The audit is in progress with the Department of Revenue. A statistical sample is the basis for the audit examination. Several untaxed software and engineering transactions with Allegiance have been selected by the statistical sample.

The Department of Revenue has indicated that their position is that Lucent's software does not qualify as custom software and that Florida sales and use taxes are due on these types of transactions.

Also, AT&T Corp. Network Systems Division litigated the taxability of engineering services that was assessed on the prior audit cycle. An unfavorable decision was reached on that issue.

We are in process gathering additional information and documentation to address all transactions sampled.

### **Georgia**

The audit is in progress with the Department of Revenue. A statistical sample is the basis for the audit examination. Several untaxed software and engineering transactions with Allegiance have been selected by the statistical sample.

The Department of Revenue has indicated that their position is that Lucent's software does not qualify for the customer software exemption and that engineering services are part of the consideration paid by customers to acquire equipment and therefore is subject to sales and use taxes.

We are in process gathering additional information and documentation to address all transactions sampled.

### **Massachusetts**

We are scheduled for an audit. The Department of Revenue has indicated that they intend to conduct a statistical audit. No sample selected to date.

### **Maryland**

We are scheduled for an audit. The Department of Revenue has indicated that they intend to conduct a statistical audit. No sample selected to date.

### **Minnesota**

We are scheduled for an audit. The Department of Revenue has indicated that they intend to conduct a statistical audit. No sample selected to date.

In a prior audit by Minnesota, a sales and use tax deficiency was assessed on untaxed sales of software, engineering and installation services.

Minnesota has indicated that they intend to assess these transactions as well in the current audit cycle.

## **Missouri**

We are in the process of providing transaction level details to the Missouri Department of Revenue so that they can conduct a statistical sample.

Missouri has not indicated any areas of taxability issues to date.

## **New York**

The audit is in progress with the Department of Revenue. The Department is conducting an actual audit on untaxed sales transactions. All untaxed sales with Allegiance will be examined to determine proper tax treatment.

The audit is in the initial stages. We are in process of gathering additional information and documentation to address all untaxed transactions.

The Department of Revenue has not indicated any taxability issues to date

## **Pennsylvania**

The audit is in progress with the Department of Revenue. The audit is based on a statistical sample. No Allegiance transactions have been selected by the sample.

The Department of Revenue has indicated that there may be some taxability issues regarding untaxed sales of equipment and software. The Pennsylvania Department of Revenue takes the position that the public utility exemption is limited to certain types of telecommunication carriers, and that the type of transactions that qualify are limited as well.

We are in process gathering additional information and documentation to address all transactions sampled

## **Texas**

The audit is in progress with the Texas Comptroller audit division. The audit is based on a statistical sample. Several untaxed sales of equipment and software to Allegiance have been selected by the sample.

There is no tax exemptions based on particular uses of telecommunications equipment available to be claimed by customers. Also, Texas subjects all software to sales and use taxes. The only basis to exempt sales of equipment and software in Texas is the resale exemption.

We are in process gathering additional information and documentation to address all transactions sampled

## **Washington**

The audit has been completed. The Department of Revenue has assessed a Retail Sales Tax deficiency, interest and penalty on all untaxed sales of software and engineering services.

Untaxed sales of software and engineering services to Allegiance have been assessed.

Lucent has protested the assessment. We are in process of responding to the first set of interrogatories and requests for production of records made by Washington Board of Tax Appeals.