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Hearing Date: June 2, 2004 at 10:00 a.m.  
Objection Date: May 28, 2004 at 12:00 p.m.

*COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.*

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

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

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION  
PURSUANT TO RULE 3018(a) FOR ORDER TEMPORARILY ALLOWING  
CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT  
DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION**

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

COMES NOW BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, and hereby files this its Motion Pursuant to Rule 3018(a) for Order Temporarily Allowing Claims for Purposes of Voting to Accept or Reject Debtors' Second Amended Joint Plan of Reorganization (the "Motion") and in support hereof, respectfully shows the Court as follows:

## **Procedural Background**

1. On May 14, 2003 (the “Petition Date”), Allegiance Telecom, Inc., et al. (the “Debtors”), each filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtors have continued to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. On or about May 28, 2003, an Official Committee of Unsecured Creditors was appointed in these cases.

3. BellSouth provides various telecommunications services to the Debtors including completing the Debtors’ customers’ long distance calls (known as “access” service) and providing wholesale and retail communications services to the Debtors.

4. BellSouth filed a proof of claim for pre-petition amounts due and owing in the amount of at least \$1,301,325.19, plus additional unliquidated amounts (the “BellSouth Claim”).

5. Throughout this case, the Debtors have rejected a number of BellSouth circuits and abandoned certain collocation sites, resulting in additional damages to BellSouth.

6. BellSouth has an additional damages rejection claim in the amount of approximately \$27,160.00 (the “Rejection Damages Claim”) and a collocation abandonment damages claim in the amount of approximately \$6,959.00 (the “Collocation Abandonment Claim”). BellSouth seeks to have such claims temporarily allowed for voting purposes.

7. On or about April 22, 2004, the Debtors filed the Second Amended Disclosure Statement and the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code.

8. Also on or about April 22, 2004, the Court entered an Order (I) Approving the Disclosure Statement; (II) Establishing a Record Date; (III) Approving Solicitation Packages and Procedures for Distribution Thereof; (IV) Approving Forms of Ballots and Establishing Procedures for Voting on the Plan; and (V) Establishing Notice and Objection Procedures for Confirmation of the Plan (the "Order Approving the Disclosure Statement").

9. The Order Approving the Disclosure Statement provides, in paragraph 10(c): "if a claim is listed as contingent, unliquidated or disputed in the Schedules and a proof of claim has been filed with respect to such claim, the claim shall be temporarily allowed for voting purposes in the amount of \$1.00."

10. The Order Approving the Disclosure Statement further provides in paragraph 10(k) that:

if a claim relates to rejection damages under an executory contract or unexpired lease that has not been rejected as of the Voting Deadline, to the extent such claim is known to be based on rejection damages, such claim shall be temporarily disallowed by the Court for voting purposes and, to the extent such claim is solely for rejection damages, such Ballot shall not be counted as having voted for or against the Plan.

11. Federal Rule of Bankruptcy Procedure 3018(a) provides, in pertinent part: "Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court

deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a).

12. Courts have held that Rule 3018(a) gives courts broad discretion to permit a disputed claim to be voted. See, e.g., In re Marin Town Center, 142 B.R. 374, 379 (N.D. Cal. 1992); In re Gardinier, Inc., 55 B.R. 601, 604 (Bankr. M.D. Fla. 1985).

13. While neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure provide any guidance as to the standard to be applied in determining temporary allowance of a claim, courts have held that “the principal considerations when estimating a claim to be an ‘accommodation to the underlying purposes of the Code.’” Stone Hedge Props. V. Phoenix Capital Corp. (In re Stone Hedge Props.), 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995); see also In re Ralph Lauren Womenswear, Inc., 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996) (“Neither the Code nor the Rules prescribe any method for estimating a claim, and it is therefore committed to the reasonable discretion of the court, which should employ whatever method is best suited to the circumstances of the case.”) (internal citation omitted).

14. In In re Gardinier, Inc., 55 B.R. 601 (Bankr. M.D. Fla. 1985), the court discussed such discretion:

[O]ne can easily visualize a situation where it would be grossly unfair and unjust to disenfranchise any claim or interest just because the debtor interposed an objection to the allowance of the claim or interest. This is true especially in situations when the objection appears to be frivolous and without basis, and, because of time restraints, the court is not in the position to consider the objection on its merits prior to the confirmation hearing. This urgency, in turn, would not permit extensive hearings on objections to claims prior to the bar date fixed by the court

for voting. To achieve justice, some discretion must be left to the court to deal with the problem just described.

Id. at 604.

15. In this case, the Debtors have not set forth colorable grounds upon which to reduce BellSouth claims for purposes of voting to accept or reject the Plan. BellSouth filed a timely proof of claim in this case for unpaid services provided to the Debtors pre-petition. BellSouth also has a Rejection Damages Claim and a Collocation Abandonment Claim, all of which should be allowed in their full amounts for purposes of voting to accept or to reject the Plan.

### **Conclusion**

**Wherefore**, BellSouth requests that this Court enter an Order temporarily allowing (a) BellSouth's Claim in the amount of \$1,301,325.19; (b) BellSouth's Rejection Damages Claim in the amount of \$27,160.00; and (c) BellSouth's Collocation Abandonment Claim in the amount of \$6,959.00 for purposes of voting to accept or reject the Debtors' Amended Plan and grant such other such relief that is just and proper.

Dated: May 21, 2004

Respectfully submitted,

/s/ Paul M. Rosenblatt

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 21, 2004, a true and correct copy of the following:

**BellSouth Telecommunications, Inc.'s Motion Pursuant to Rule 3018(a) for Order Temporarily Allowing Claims for Purposes of Voting to Accept or Reject Debtors' Second Amended Joint Plan of Reorganization**

was transmitted via facsimile to the parties listed below:

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DATED this 21st day of May, 2004.  
Atlanta, Georgia

/s/ Paul M. Rosenblatt

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