

**HEARING DATE: June 7, 2004 at 10:00 a.m.**  
**OBJECTION DEADLINE: June 7, 2004 at 10:00 a.m.**

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Attorneys for Mellon HBV Alternative Strategies LLC, *et al.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X  
**In re:** : **Chapter 11**  
: :  
**ALLEGIANCE TELECOM, INC., *et al.*,** : **Case No. 03-13057 (RDD)**  
: :  
**Debtors.** : **(Jointly Administered)**  
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**To The Honorable Robert D. Drain  
United States Bankruptcy Judge**

**EMERGENCY MOTION OF MELLON HBV ALTERNATIVE  
STRATEGIES LLC, *ET AL.* FOR APPROVAL OF AMENDMENT OF TIMELY FILED  
BALLOT FOR VOTING IN FAVOR OF CONFIRMATION OF THE PLAN AND  
ELECTION OF TRUST INTERESTS IN LIEU OF CASH RECOVERY**

Mellon HBV Alternative Strategies LLC (“Mellon”) and Mellon HBV Master Multi-Strategy Fund LP, Mellon HBV Master Leveraged Multi-Strategy Fund LP, Mellon HBV Master Rediscovered Opportunities Fund LP, Lyxor/Mellon HBV Rediscovered Opportunities Fund Limited, Axis-RDO Limited, Distressed Recovery Master Fund, Ltd., and HFR DS Performance Master Trust (collectively, the “Mellon Funds”), by their undersigned counsel, hereby move the

Court for entry of an Order recognizing the Mellon Funds's timely filed Amended Master Ballot filed by the Mellon Funds's agent and nominee, Goldman Sachs & Co. ("Goldman Sachs"), as a timely and valid election to receive under the Plan ATLT "A" Trust Interests and ATLT "B" Trust Interests, in lieu of the Cash Recovery, on the following grounds:

### **Background**

1. The Mellon Funds hold claims for the 11 3/4 % Senior Discount Notes, due February 15, 2008 (the "Notes"), in the aggregate face amount of \$26,164,000. The Mellon Funds's nominee and agent for these Notes is Goldman Sachs.

2. The Debtors, Allegiance Telecom, Inc., *et al.* (collectively, the "Debtors"), have filed a Chapter 11 plan (the "Plan") that is scheduled to be the subject of a hearing on confirmation to begin on Monday, June 7, 2004 at 10:00 a.m. In connection with confirmation proceedings, the Debtors obtained Court approval of a disclosure statement and solicitation procedures, which among other things set June 1, 2004 at 5:00 p.m. (the "Voting Deadline") as the deadline for all ballots to be received by the Voting Agent, in order for the votes to be counted.

3. The Plan provides alternative distribution schemes for holders of Class 5 claims, of which the Mellon Funds are members. Specifically, Class 5 creditors, including the Mellon Funds, have an option of receiving (i) the Cash Recovery, (ii) the "ATLT 'A' Trust Interests", (iii) the "ATLT 'B' Trust Interests", or a combination of these options. As part of the solicitation process, the Voting Agent sent Master Ballot forms to brokers, banks and other nominees for their beneficial owners.

4. As part of the solicitation process, the Debtors sent solicitation packages to Goldman Sachs, not Mellon or the Mellon Funds. Goldman Sachs did not forward solicitation packages to Mellon or the Mellon Funds.

5. Instead, Goldman Sachs provided information on its website summarizing the options for voting and electing alternative distributions under the Debtors' Plan. This process required Mellon, as agent and advisor for the Mellon Funds, to advise Goldman Sachs electronically how the Mellon Funds wished to vote with respect to confirmation of the Plan, and what distribution scheme the Mellon Funds wanted to receive under the Plan. In the absence of any response by Goldman Sachs's customers within the time required for Goldman Sachs to file timely Master Ballots, Goldman Sachs voted to accept the Plan and did not elect any of the Trust Interests in lieu of a Cash Recovery. In other words, absent timely electronic instructions from Mellon and other customers, Goldman Sachs voted on behalf of the beneficial owners of the Notes to accept the Plan and, by not selecting the alternatives, the Cash Recovery.

6. Based on information currently available, it appears that Mellon did not provide Goldman Sachs with affirmative voting instructions prior to the time Goldman Sachs submitted a Master Ballot. As a result, prior to the Voting Deadline, Goldman Sachs properly filed a timely Master Ballot (the "Original Master Ballot") listing each of the Mellon Funds as voting to accept the Plan and not electing to receive interests in the ATLT Trusts in lieu of the Cash Recovery.

7. The Original Master Ballot did not, and does not, reflect the Mellon Funds's actual intention. In fact, Mellon intended to elect the ATLT "A" Trust Interests and the ATLT "B" Trust Interests in lieu of the Cash Recovery (the "Non-Cash Election") and so advised Goldman Sachs prior to the Voting Deadline.

#### **The Amended Master Ballot**

8. On June 1, 2004, Mellon discovered that the Original Master Ballot did not reflect Mellon's and the Mellon Funds's intent to elect the Non-Cash Election, and Mellon communicated with Goldman Sachs to correct this error. Pursuant to Mellon's request, on June 1, 2004, Goldman Sachs sent to the Voting Agent, to the attention of Rich Reilly, by

facsimile, an amended Master Ballot (the “Amended Master Ballot”) listing the Mellon Funds and their votes to accept the Plan and in favor of the Non-Cash Election. A copy of the Amended Master Ballot dated June 1, 2004 is attached hereto as Exhibit A. Because the Voting Agent is located on the West Coast, facsimile transmission was then the only means of filing the Amended Master Ballot that would have reached the Voting Agent prior to the Voting Deadline.

9. According to the date and time stamp on the cover sheet, the Amended Master Ballot was sent on June 1, 2004, at 4:46 p.m.; when the Voting Agent received it is not known. A representative of Goldman Sachs has just today advised Mellon that the time clock for Goldman Sachs’s facsimile transmissions on June 1, 2004 may have been incorrect. Mellon has no information about this, other than the fact that Mellon’s telephone communications with Goldman Sachs were prior to the Voting Deadline.

10. Subsequently, the Voting Agent advised Mellon that the Amended Master Ballot might be treated as untimely, and in that event the Mellon Funds would be deemed to have elected receipt of the Cash Recovery under the Plan. Since learning of that possibility, Mellon has attempted, through informal communications with or to representatives of the Debtors and the Official Committee of Unsecured Creditors ( the “Creditors’ Committee”), to confirm that the principal parties have no objection to the Amended Master Ballot and to the recognition of Mellon’s Non-Cash Election in the Amended Master Ballot.

11. Mellon believed that the Amended Master Ballot was received by Voting Agent prior to the Voting Deadline. If it was not, the Voting Agent in any event received the Amended Master Ballot shortly after the Voting Deadline. If any party argues against counting the Amended Master Ballot as a valid and effective Non-Cash Election because it was sent by facsimile and not by mail or courier, then it should be noted that the solicitation procedures do

not expressly prohibit use of facsimile to change a creditor's election for distributions under the Plan. Instead, the solicitation procedures simply provide the Debtors with the right not to count ballots sent by facsimile "for any purpose in determining whether the Plan has been accepted or rejected." See Order Approving the Disclosure Statement, etc. ¶6. This Emergency Motion asks not that the Amended Master Ballot be counted for determining whether the Plan has been accepted, as in both the Original Master Ballot and Amended Master Ballot the Mellon Funds voted to accept the Plan. Accordingly, the relief requested herein - - counting the Amended Master Ballot as a timely and valid election of the Non-Cash Election - - is not contrary to the solicitation procedures governing these proceedings.

12. As of the filing of this Emergency Motion, Mellon was not able to confirm this understanding of the treatment of the Amended Master Ballot. In these circumstances, Mellon has filed this Emergency Motion to ask this Court for what should be noncontroversial relief, namely recognizing the Amended Master Ballot as a valid exercise of Mellon's election for the Non-Cash Election.

### **Grounds for the Relief Requested**

13. There are multiple grounds for granting the relief requested in this Emergency Motion. First, as is commonplace in large Chapter 11 cases like this one, the solicitation procedures provide the Debtors with broad discretion to waive any alleged defects in any Ballot or Master Ballot at any time, whether before or after the Voting Deadline, and without notice. Whereas in this case the solicitation process is complicated by the multiple steps made necessary because the Debtors send the ballots to a broker or nominee and not directly to the beneficial holders of the Notes, it would be a very reasonable exercise of the Debtors' discretion to agree that the Amended Master Ballot will be counted as timely and valid elections of the Non-Cash

Election. If the Debtors confirm this before or during the confirmation hearing, then that alone is sufficient for the Court to enter the proposed Order accompanying this Motion.

14. In addition, Rule 3018(a) of the Federal Rules of Bankruptcy Procedure provides:

For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change ... an acceptance or rejection.

Mellon submits that the circumstances described in this Motion, and the accompanying Affidavit of Robert Beers in Support of Emergency Motion of Mellon HBV Alternative Strategies LLC, *et al.* for Approval of Amendment of Timely Filed Ballot for Voting in Favor of Confirmation of the Plan and Election of Trust Interests in Lieu of Cash Recovery (the “Beers Affidavit”) constitute cause within the meaning of Rule 3018(a) to permit Mellon to change their ballot to include the Non-Cash Election.

15. Compelling grounds in support of this Motion also are found in Rule 9006(b), which provides in relevant part:

when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

16. The leading case articulating the application of this excusable neglect standard is Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993). In Pioneer, the Supreme Court gave this standard a flexible interpretation, holding that the term “neglect” encompassed not only circumstances beyond the movant’s control but also simple, faultless omissions to act, and more commonly, omissions caused by carelessness. Pioneer, 507 U.S. at 387-388. The Court reasoned:

Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by

inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control. In overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of affected parties, guided by the overriding goal of ensuring the success of the reorganization.

Id. at 381.

17. The Court's decision under Rule 9006 and Pioneer to permit a late filing is an equitable one, which may take into account all of the relevant circumstances surrounding the party's failure to file timely. Id. at 395. These factors include, but are not limited to:

1. the adequacy of the notice;
2. the danger of prejudice to the debtor;
3. the length of the delay and its potential impact on judicial proceedings;
4. the reason for the delay, including whether it was within the reasonable control of the movant and taking into account the movant's sophistication; and
5. whether the movant acted in good faith.

Id. at 385; In re Hills Stores Co., 167 B.R. 348, 351 (Bankr. S.D.N.Y. 1994) (citations omitted).

18. In the present case, the relevant factors, taken together, weigh heavily in favor of granting this Motion and permitting the Amended Master Ballot to be deemed timely filed and effective. With respect to the first factor, Mellon and the Mellon Funds, based on currently available information, did not receive notice or the solicitation package from the Debtors. It received only electronic notification, in a summary way, from Goldman Sachs. Although Mellon is a sophisticated party, the cumbersome nature of the voting process, through a nominee like Goldman Sachs, coupled with the complexity of the ballot, creates fertile ground for confusion and error even by a sophisticated party

19. With respect to the second Pioneer factor, accepting the Amended Master Ballot as valid with respect to the Non-Cash Election will not prejudice the Debtors in any way. Indeed, Mellon is in favor of confirmation and its Non-Cash Election, if recognized, will require

the Debtors to pay less cash under the Plan, which should be advantageous to the Debtors.

Third, there was no real delay here. The Master Ballot, which was amended by the Amended Master Ballot, was timely filed before the Voting Deadline, and this Motion is being filed prior to confirmation, so that granting the relief requested herein will cause no delay in these proceedings. The alleged defect to be waived in this case concerns the Voting Agent's receipt of the Amended Master Ballot by facsimile. To the extent the Amended Master Ballot was not received by the Voting Agent until after the Voting Deadline, 5:00 p.m. Eastern Time, it was received less than one hour later. Accordingly, granting the relief requested will cause no delay in these proceedings.

20. As to the fourth Pioneer factor, the reason for the need to submit the Amended Master Ballot by facsimile was to avoid delay and to file it by the Voting Deadline. Regarding the last Pioneer factor, there should be no question that Mellon and the Mellon Funds have acted, and are acting, in good faith in seeking this relief.

21. It is noteworthy that Mellon and the Mellon Funds did properly file a timely ballot, through its nominee and agent, Goldman Sachs, and do not seek to change their votes in favor of confirmation. The modest relief requested herein, deeming the Amended Master Ballot to be a valid and timely election by the Mellon Funds of the Non-Cash Election, is of great significance to the Mellon Funds. The Mellon Funds are investment funds which are entrusted with the funds of a number of investors, largely comprised of pension funds, charitable endowments and tax-exempt institutions. Mellon believes that while the Non-Cash Election inherently presents greater risk to the Mellon Funds's recovery compared to the Cash Recovery, the recoveries under the Non-Cash Election are expected to be substantially larger than the Cash Recovery and the Mellon Funds wish to make this choice for the benefit of their investors.



22. In these circumstances, the Court should exercise its discretion under Rule 9006(b) and direct that the Amended Master Ballot be counted as a valid exercise by the Mellon Funds of the Non-Cash Election.

23. In further support of this Motion, Mellon has filed contemporaneously herewith the Beers Affidavit, a copy of which is attached hereto as Exhibit B.

**WHEREFORE**, Mellon and the Mellon Funds respectfully request this Court to grant this Emergency Motion to deem the Amended Master Ballot as a valid and effective election by each of the Mellon Funds for the Non-Cash Election under the Plan, and to grant such other and further relief as the nature of this cause may require.

Mellon HBV Alternative Strategies, LLC, for itself  
and each of the Mellon Funds

/s/ John J. Jerome

John J. Jerome (JJ-2413)  
SAUL EWING LLP  
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-- and --

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Attorneys for Mellon HBV Alternative Strategies  
LLC, *et al.*



180 Maiden Lane, 8<sup>th</sup> Floor | NEW YORK, NEW YORK 10038

**Facsimile Cover Sheet**

**TO:** Rich Reilly **PHONE:** 310-321-5555  
**FAX:** 310-640-8071

**FROM:** Kevin Kristoff **PHONE:** (212) 357-4889  
**FAX:** (212) 902-1431

**RE:** Allegiance Telecom - cusip 01747TAC6

**Number of pages including cover sheet: 8**

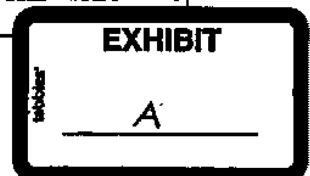
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**Message:**

Late election for Class 5 Unsecured Claims.

Thank you,  
Kevin Kristoff

THIS TRANSMISSION IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS COMMUNICATION IS NOT THE INTENDED RECIPIENT, OR ITS EMPLOYEE, OR AGENT RESPONSIBLE FOR DELIVERING THE COMMUNICATION TO THE INTENDED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL COMMUNICATION TO US AT THE ABOVE ADDRESS BY U.S. POSTAL SERVICE. THANK YOU.



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**MASTER BALLOT FOR ACCEPTING OR REJECTING THE DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**MASTER BALLOT FOR VOTING  
CLASS 5: ATI UNSECURED CLAIMS**

*(Claims of Holders of 11 3/4% Senior Discount Notes, Due February 15, 2008, CUSIP 01747TAC6)*

**YOUR MASTER BALLOT MUST BE RECEIVED BY THE VOTING AGENT, BY 5:00 P.M., PREVAILING EASTERN TIME, ON JUNE 1, 2004, THE VOTING DEADLINE, OR THE VOTES REPRESENTED BY YOUR MASTER BALLOT WILL NOT BE COUNTED.**

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), have filed the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated April 22, 2004, as the same may be amended from time to time (the "Plan"). The Plan is annexed as Exhibit A to the Debtors' Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code, dated April 22, 2004 (the "Disclosure Statement"). The Bankruptcy Court has approved the Disclosure Statement, which provides information to assist creditors in deciding how to vote on the Plan. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court.

This Master Ballot is to be used by you, as a broker, bank, or other nominee (or as their proxy holder or agent), for beneficial owners, as of April 23, 2004, of 11 3/4% Senior Discount Notes, due February 15, 2008 (the "Notes") to transmit the votes of such beneficial owners to accept or reject the Plan. Please take any action required to enable each beneficial owner to timely vote its Notes to accept or reject the Plan. Before you transmit such votes, please carefully review the Disclosure Statement and the voting procedures set forth below. If you do not have a copy of the Disclosure Statement, you may obtain such copy by contacting the Debtors' voting agent (the "Voting Agent"), Bankruptcy Management Corporation, at 1-888-909-0100 (toll free). **THIS MASTER BALLOT RELATES ONLY TO VOTES CAST FOR 11 3/4% SENIOR DISCOUNT NOTES.**

**NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL RENDER YOU OR ANY OTHER PERSON AN AGENT OF ANY OF THE DEBTORS OR THE VOTING AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE PLAN.**

**IMPORTANT**

**PLEASE READ AND FOLLOW THE ATTACHED INSTRUCTIONS CAREFULLY. COMPLETE, SIGN, AND DATE THIS MASTER BALLOT, AND RETURN IT SO THAT IT IS RECEIVED BY THE VOTING AGENT ON OR BEFORE THE VOTING DEADLINE OF 5:00 P.M., PREVAILING EASTERN TIME, ON JUNE 1, 2004. IF THIS MASTER BALLOT IS NOT COMPLETED, SIGNED, AND RECEIVED ON OR BEFORE THE VOTING DEADLINE AND THE VOTING DEADLINE IS NOT EXTENDED, THE VOTES TRANSMITTED BY THIS MASTER BALLOT WILL NOT BE COUNTED.**

You should review the Disclosure Statement and the Plan before you transmit votes. You or the beneficial owners of the Notes for whom you are the nominee may wish to seek legal advice concerning the Plan and the classification and treatment of the Note claims under the Plan. Such claims have been placed in Class 5 under the Plan. Holders of claims in more than one Class under the Plan will receive a Ballot for each Class in which such holders are entitled to vote, and the nominees or such holders will receive a Master Ballot for each Class in which such holders are entitled to vote.

If the Plan is confirmed by the Bankruptcy Court, it will be binding on you and the beneficial owners of the Notes for whom you are the nominee, whether or not such beneficial owners vote and whether or not any votes are transmitted by this Master Ballot.

Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Plan.

Item 1(a). Certification of Authority to Vote. The undersigned certifies that it (please check the applicable box):

- is a broker, bank, or other nominee for the beneficial owners of the aggregate principal amount of Notes listed in Item 2 below as of April 23, 2004, or is the registered holder of such securities; or
- is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a broker, bank, or other nominee or a beneficial owner that on April 23, 2004 was the registered holder of the aggregate principal amount of Notes listed on Item 2 below; or
- is acting under a proxy granted by a broker, bank, or other nominee for the beneficial owners (please attach a copy of the proxy to the Master Ballot).

and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the beneficial owners of the Notes listed in Item 2.

Item 1(b). Certification of Total Number of Beneficial Owners. The undersigned certifies that there were a total of \_\_\_\_\_ beneficial owners and the total of the aggregate principal amount of Notes held (who both voted and did not vote), as of April 23, 2004.

Item 2. Senior Discount Note Claims (Class 5) Vote on Plan - Number of Beneficial Owners. The undersigned certifies that the following beneficial owners of the Notes, as identified by their respective customer account numbers, were beneficial owners of the Notes on April 23, 2004 and have delivered to the undersigned, as nominee, properly executed Ballots casting votes as indicated and containing instructions for the casting of those votes on their behalf (indicate in the appropriate column the aggregate principal amount voted for each account, or attach such information to this Master Ballot in the form of the following table. For purposes of this Master Ballot, accrued or unamortized interest should not be included. Please note: Each beneficial owner must vote all his, her, or its Class 5 claims either to accept or reject the Plan, and may not split such vote.)

ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED.

Customer Name or Account Number for Each Beneficial Owner Notes	Face Amount of Notes		Elected to Receive the following ATLT Trust Interests in Lieu of the Cash Recovery
	To Accept (For) the Plan	To Reject (Against) the Plan	
1. 002-09316	\$ 1,469,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
2. 002-09315	\$ 12,546,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
3. 002-36195	\$ 744,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
4. 002-09946	\$ 1,212,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
5. 002-09317	\$ 1,484,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
6. 033-12060	\$ 1,545,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
7. 002-09318	\$ 7,164,000	\$	ATLT "A" Trust Interests <input checked="" type="checkbox"/> ATLT "B" Trust Interests <input checked="" type="checkbox"/>
8.	\$	\$	ATLT "A" Trust Interests <input type="checkbox"/> ATLT "B" Trust Interests <input type="checkbox"/>
9.	\$	\$	ATLT "A" Trust Interests <input type="checkbox"/> ATLT "B" Trust Interests <input type="checkbox"/>
10.	\$	\$	ATLT "A" Trust Interests <input type="checkbox"/> ATLT "B" Trust Interests <input type="checkbox"/>
<b>TOTALS</b>	<b>\$ 26,672,000</b>	<b>\$</b>	

**Item 3: Additional Ballots Submitted by Beneficial Owners.** The undersigned certifies that it has transcribed below the information, if any, provided in Item 4 of each Ballot received from a beneficial owner:

Your Customer Name or Account Number for Each Beneficial Owner of Notes	Transcribe From Item 4 of Beneficial Owner Ballot			
	Customer Account Number(s) (if applicable)	Bank, Broker or Other Nominee Through Which the Notes Are Held	Principal Amount of Notes Voted	Notes Issue (Maturity and Coupon or CUSIP number)
1.			\$	
2.			\$	
3.			\$	
4.			\$	
5.			\$	

A

Item 4: Certification. By signing this Master Ballot, the undersigned certifies that each beneficial owner of Notes listed in Item 2, above, has been provided with a copy of the Disclosure Statement, including the exhibits thereto, and acknowledges that the solicitation of votes for the Plan is subject to all the terms and conditions set forth in the Disclosure Statement.

Name of Broker, Bank or other Nominee:


Goldman Sachs & Co.  
(Print or Type)

Name of Proxy Holder or Agent for Broker,  
Bank or Other Nominee (if applicable):

(Print or Type)  
Social Security or Federal Tax I.D. No.: 13-5708880  
(If Applicable)

Signature:  SIGNATURE GUARANTEED  
MEDALLION GUARANTEED  
GOLDMAN SACHS & CO.

Print Name: [Signature]  
(UTC26) AUTHORIZED SIGNATURE X0000059

Title:  NYSE, INC. MEDALLION SIGNATURE PROGRAM

Street Address: GOLDMAN SACHS & CO.  
180 MAIDEN LANE  
NEW YORK, NY 10038

City, State, Zip Code: ATTN: REORG DEPT.  
8TH FLOOR

Telephone: (212) 357-4889

Date Completed: 6/1/04

**THIS MASTER BALLOT MUST BE RECEIVED BY THE VOTING AGENT, BEFORE 5:00 P.M., PREVAILING EASTERN TIME, ON JUNE 1, 2004, OR THE VOTES TRANSMITTED HEREBY WILL NOT BE COUNTED.**

**PLEASE NOTE: THE VOTING AGENT WILL NOT ACCEPT BALLOTS OR MASTER BALLOTS BY FACSIMILE TRANSMISSION OR ELECTRONIC MAIL.**

**ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**INSTRUCTIONS FOR COMPLETING THE MASTER BALLOT**

**VOTING DEADLINE/VOTING AGENT:**

The Voting Deadline is 5:00 p.m., prevailing Eastern time, on June 1, 2004, unless extended by the Debtors. To have the vote of your customers count, you must complete, sign, and return this Master Ballot so that it is received by the Voting Agent at the following address:

- (a) if by courier or hand delivery:  
 Allegiance Telecom, Inc. Ballot Processing Center  
 c/o Bankruptcy Management Corporation  
 1330 E. Franklin Avenue  
 El Segundo, CA 90245
- (b) if by mail:  
 Allegiance Telecom, Inc. Ballot Processing Center  
 c/o Bankruptcy Management Corporation  
 P.O. Box 909  
 El Segundo, CA 90245-0909

**HOW TO COMPLETE THE MASTER BALLOT:**

If you are both the registered owner and beneficial owner of any principal amount of the Notes and you wish to vote such Notes: You may complete, execute, and return to the Voting Agent a Ballot with respect to the Notes that you as beneficial owner wish to vote.

If you are transmitting the votes of any beneficial owners of Notes other than yourself, you may either:

- 1. Complete and execute the Ballot (other than Items 2, 3, 4 and 5) and deliver to the beneficial owner such "prevalidated" Ballot, along with the Disclosure Statement and other materials requested to be forwarded. The beneficial owner should complete Items 2, 3, 4 and 5 of that Ballot and return the completed Ballot to the Voting Agent so as to be received before the Voting Deadline:

**OR**

- 2. For any Ballots you do not "prevalidate":  
  
 Deliver the Ballot to the beneficial owner, along with the Disclosure Statement and other materials requested to be forwarded, and take the necessary actions to enable such beneficial owner to (i) complete and execute such Ballot voting to accept or reject the Plan and making applicable elections with respect to its claim(s), and (ii) return the completed, executed Ballot to you in sufficient time to enable you to complete the Master Ballot and deliver it to the Voting Agent before the Voting Deadline of 5:00 p.m., prevailing Eastern Time, on June 1, 2004; and

With respect to all Ballots returned to you, you must properly complete the Master Ballot, as follows:

- (a) Check the appropriate box in Item 1(a) on the Master Ballot and fill in the number of beneficial owners in Item 1(b) on the Master Ballot;
- (b) In Item 2 of this Master Ballot, indicate (a) the votes to accept or reject the Plan, as transmitted to you by the beneficial owners of the Notes and (b) whether the beneficial owner irrevocably elected to receive any of the ATLT Trust Interests in lieu of the Cash



Recovery. To identify such beneficial owners without disclosing their names, please use the customer account number assigned by you to each such beneficial owner, or if no such customer account number exists, please assign a number to each account (making sure to retain a separate list of each beneficial owner and the assigned number). **IMPORTANT: BENEFICIAL OWNERS MAY NOT SPLIT THEIR VOTES. EACH BENEFICIAL OWNER MUST VOTE ALL HIS, HER, OR ITS NOTES EITHER TO ACCEPT OR REJECT THE PLAN. IF ANY BENEFICIAL OWNER HAS ATTEMPTED TO SPLIT SUCH VOTE, PLEASE CONTACT THE VOTING AGENT IMMEDIATELY.** Any Ballot or Master Ballot which is validly executed but (i) which does not indicate acceptance or rejection of the Plan by the indicated beneficial owner, or (ii) indicates both an acceptance and rejection of the Plan by the indicated beneficial owner, will not be counted as to such beneficial owner;

- (c) Please note that Item 3 of this Master Ballot requests that you transcribe the information provided by each beneficial owner from Item 4 of each completed Ballot relating to the Notes voted;
- (d) Review the certification in Item 4 of the Master Ballot;
- (e) In Item 4, sign and date the Master Ballot, and provide the remaining information requested;
- (f) If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable Item of the Master Ballot to which you are responding;
- (g) Contact the Voting Agent to arrange for delivery of the completed Master Ballot to its offices; and
- (h) Deliver the completed, executed Master Ballot so as to be *received* by the Voting Agent before the Voting Deadline. For each completed, executed Ballot returned to you by a beneficial owner, either forward such Ballot (along with your Master Ballot) to the Voting Agent or retain such Ballot in your files for one year from the Voting Deadline.

**PLEASE NOTE:**

This Master Ballot is *not* a letter of transmittal and may *not* be used for any purpose other than to cast votes to accept or reject the Plan. Holders should not surrender, at this time, certificates representing their securities. Neither the Debtors nor the Voting Agent will accept delivery of any such certificates surrendered together with this Master Ballot. Surrender of securities for exchange may only be made by you, and will only be accepted pursuant to a letter of transmittal which will be furnished to you by the Debtors following confirmation of the Plan by the Bankruptcy Court.

No Ballot or Master Ballot shall constitute or be deemed a proof of claim or equity interest or an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

No fees, commissions, or other remuneration will be payable to any broker, bank, dealer, nominee, or other person for soliciting ballots accepting the Plan. The Debtors will, however, upon request, reimburse you for customary mailing and handling expenses incurred by you in forwarding the Ballots and other enclosed materials to the beneficial owners of the Notes held by you as a nominee or in a fiduciary capacity.

**IF YOU HAVE ANY QUESTIONS REGARDING THIS MASTER BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF THE MASTER BALLOT, BALLOTS, DISCLOSURE STATEMENT, OR OTHER RELATED MATERIALS, PLEASE CALL THE VOTING AGENT, BANKRUPTCY MANAGEMENT CORPORATION, AT 1-888-909-0100 (TOLL FREE).**

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Telephone: (410) 332-8672  
Facsimile: (410) 332-8107

Attorneys for Mellon HBV Alternative Strategies LLC, *et al.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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

**AFFIDAVIT OF ROBERT BEERS IN SUPPORT OF EMERGENCY MOTION OF  
MELLON HBV ALTERNATIVE STRATEGIES LLC, *ET AL.* FOR APPROVAL OF  
AMENDMENT OF TIMELY FILED BALLOT FOR VOTING IN FAVOR OF  
CONFIRMATION OF THE PLAN AND ELECTION OF TRUST  
INTERESTS IN LIEU OF CASH RECOVERY**

I, **ROBERT BEERS**, do hereby declare and affirm:

1. I have personal knowledge of the facts stated herein and am competent to testify as to these matters. I am over the age of eighteen (18).

2 I am the Head Trader and Portfolio Manager for Mellon HBV Alternative Strategies LLC, a Delaware limited liability company ("Mellon"). My office is at 200 Park Avenue, Suite 3300, New York, New York 10166.

1. Mellon is advisor to the investment funds named in the Emergency Motion in support of which this Affidavit is submitted; namely, Mellon HBV Master Multi-Strategy



Fund LP, Mellon HBV Master Leveraged Multi-Strategy Fund LP, Mellon HBV Master Rediscovered Opportunities Fund LP, Lyxor/Mellon HBV Rediscovered Opportunities Fund Limited, Axis-RDO Limited, Distressed Recovery Master Fund, Ltd., and HFR DS Performance Master Trust (collectively, the "Mellon Funds").

2. The Mellon Funds hold claims for the 11 3/4 % Senior Discount Notes, due February 15, 2008 (the "Notes"), in the aggregate face amount of \$26,164,000.

3. The Mellon Funds's nominee and agent for these Notes is Goldman Sachs & Co. ("Goldman Sachs").

4. The Debtors' proposed Chapter 11 plan (the "Plan") provides alternative distribution schemes for holders of Class 5 claims, of which the Mellon Funds are members. Specifically, under the Plan Class 5 creditors have an option of receiving (i) the Cash Recovery, (ii) the "ATLT 'A' Trust Interests", (iii) the "ATLT 'B' Trust Interests", or a combination of these options. As part of the solicitation process, the Voting Agent sent Master Ballot forms to brokers, banks and other nominees for their beneficial owners.

5. As part of the solicitation process, the Debtors sent solicitation packages to Goldman Sachs, not Mellon or the Mellon Funds. Goldman Sachs did not forward solicitation packages to Mellon or the Mellon Funds, as far as I know.

6. Instead, Goldman Sachs provided information on its website summarizing the options for voting and electing alternative distributions under the Plan. This process required Mellon, as agent and advisor for the Mellon Funds, to advise Goldman Sachs electronically how the Mellon Funds wished to vote with respect to confirmation of the Plan, and what distribution scheme the Mellon Funds wanted to receive under the Plan. In the absence of any response by Goldman Sachs's customers within the time required for Goldman Sachs to file timely Master

Ballots, Goldman Sachs voted to accept the Plan and did not elect any of the Trust Interests in lieu of a Cash Recovery. In other words, absent timely electronic instructions from Mellon and other customers, Goldman Sachs voted on behalf of the beneficial owners of the Notes to accept the Plan and, by not selecting the alternatives, the Cash Recovery.

7. Based on my personal inquiries to date, it appears that Mellon did not provide Goldman Sachs with affirmative voting instructions prior to the time Goldman Sachs submitted a Master Ballot. As a result, prior to the Voting Deadline, Goldman Sachs properly filed a timely Master Ballot (the "Original Master Ballot") listing each of the Mellon Funds as voting to accept the Plan and not electing to receive interests in the ATLT Trusts in lieu of the Cash Recovery.

8. The Original Master Ballot did not, and does not, reflect the Mellon Funds's actual intention. In fact, Mellon intended to elect the ATLT "A" Trust Interests and the ATLT "B" Trust Interests in lieu of the Cash Recovery (the "Non-Cash Election") and so advised Goldman Sachs prior to the Voting Deadline.

9. On June 1, 2004, Mellon discovered that the Original Master Ballot did not reflect Mellon's and the Mellon Funds's intent to elect the Non-Cash Election, and Mellon communicated with Goldman Sachs to correct this error. Pursuant to Mellon's request, on June 1, 2004, prior to the Voting Deadline, Mellon advised Goldman Sachs of the need to file an Amended Master Ballot. On June 1, 2004, Goldman Sachs sent to the Voting Agent, to the attention of Rich Reilly, by facsimile, an amended Master Ballot (the "Amended Master Ballot") listing the Mellon Funds and their votes to accept the Plan and in favor of the Non-Cash Election. A copy of the Amended Master Ballot dated June 1, 2004, with the accompanying fax cover sheet, is attached hereto as Exhibit A. The time stamp on this facsimile indicates it was sent at 4:46 p.m., which is before the Voting Deadline. However, I do not know when the

Voting Agent received it, and I learned just today that there is some question about the accuracy of Goldman Sachs's facsimile clock on June 1, 2004.

10. The Mellon Funds are investment funds entrusted with the funds of a number of investors, largely comprised of pension funds, charitable endowments and tax-exempt institutions.

11. While the Non-Cash Election inherently presents greater risk to the Mellon Funds's recovery compared to the Cash Recovery, the recoveries under the Non-Cash Election are expected to be substantially larger than the Cash Recovery.

12. Based on currently available information, I believe that the Non-Cash Election will ultimately result in recoveries by the Mellon Funds, in the aggregate, of approximately \$7 million more than the cash amount the Mellon Funds would receive under the Cash Recovery. The Mellon Funds wish to make this choice for the benefit of their investors.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Robert Beers  
Mellon HBV Alternative Strategies LLC  
200 Park Avenue  
Suite 3300  
New York, New York 10166

Dated: \_\_\_\_\_, 2004

STATE OF \_\_\_\_\_:  
: to wit:  
CITY/COUNTY OF \_\_\_\_\_:

I HEREBY CERTIFY that on the \_\_\_\_ day of June, 2004, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, personally appeared Robert Beers, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Affidavit, and acknowledged that he executed this Affidavit for the purposes stated in the document.

IN WITNESS WHEREOF, I set my hand and official seal.

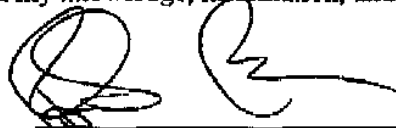
My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information, and belief.



---

Robert Beers  
Mellon HBV Alternative Strategies LLC  
200 Park Avenue  
Suite 3300  
New York, New York 10166

Dated: JUNE 4, 2004

STATE OF New York :  
: to wit:  
CITY/COUNTY OF New York :

I HEREBY CERTIFY that on the 16 day of June, 2004, before me, the subscriber, a Notary Public of the State of New York, personally appeared Robert Beers, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Affidavit, and acknowledged that he executed this Affidavit for the purposes stated in the document.

IN WITNESS WHEREOF, I set my hand and official seal.

My Commission Expires:

\_\_\_\_\_

  
Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

GENEVA BROWNE  
Notary Public, State of New York  
No. 24-4882368  
Qualified in Kings County  
Certified FREE in New York County  
Commission Expires Nov. 30, 2005



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Attorneys for Mellon HBV Alternative Strategies LLC, *et al.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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

**ORDER GRANTING EMERGENCY MOTION OF MELLON HBV ALTERNATIVE  
STRATEGIES LLC, *ET AL.* FOR APPROVAL OF AMENDMENT OF TIMELY FILED  
BALLOT FOR VOTING IN FAVOR OF CONFIRMATION OF THE PLAN AND  
ELECTION OF TRUST INTERESTS IN LIEU OF CASH RECOVERY**

This matter came before the Court pursuant to the Emergency Motion of Mellon HBV  
Alternative Strategies LLC, *et al.* for Approval of Amendment of Timely Filed Ballot for Voting

in Favor of Confirmation of the Plan and Election of Trust Interests in Lieu of Cash Recovery (the "Motion"). The Court having determined that cause exists for granting the relief requested for the reasons stated in the Motion and accompanying Affidavit of Robert Beers; it is hereby ORDERED:

1. The relief requested in the Motion is GRANTED;
2. The Amended Master Ballot (as defined in the Motion) shall be treated as timely and valid elections by the movants, Mellon HBV Alternative Strategies LLC, Mellon HBV Master Multi-Strategy Fund LP, Mellon HBV Master Leveraged Multi-Strategy Fund LP, Mellon HBV Master Rediscovered Opportunities Fund LP, Lyxor/Mellon HBV Rediscovered Opportunities Fund Limited, Axis-RDO Limited, Distressed Recovery Master Fund, Ltd., and HFR DS Performance Master Trust of the ATLT "A" Trust Interests and ATLT "B" Trust Interests, in lieu of the Cash Recovery, under the Debtors' Chapter 11 Plan.

Dated: New York, New York  
June \_\_\_\_\_, 2004

---

United States Bankruptcy Judge

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Attorneys for Mellon HBV Alternative Strategies LLP

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X  
**IN RE:** : **Chapter 11**  
: :  
**Allegiance Telecom, Inc., et al.,** : **Case No. 03-13057 (RDD)**  
: :  
**Debtors.** : **Jointly Administered**  
-----X

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of June, 2004, I caused service of the foregoing **Emergency Motion of Mellon HBV Alternative Strategies LLC, et al. for Approval of Amendment of Timely Filed Ballot for Voting in Favor of Confirmation of the Plan and Election of Trust Interests in Lieu of Cash Recovery** to be made upon each of the parties set forth on the attached service list in the manner indicated.

Dated: June 4, 2004

/s/ Irving E. Walker  
Irving E. Walker (IW-0952)  
SAUL EWING LLP  
100 South Charles Street, 15<sup>th</sup> Floor  
Baltimore, Maryland 21201  
Telephone: (410) 332-8672

Attorneys for Mellon HBV Alternative Strategies LLP

**AlegianceTelecom, Inc., et al.**  
**Service List**

**Via Email**

The Honorable Robert D. Drain  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, NY 10004

**Via Facsimile**

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Ira M. Levee, Esquire  
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Roseland, NJ 07068