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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION OF THE DEBTORS FOR  
ENTRY OF AN ORDER, PURSUANT TO  
SECTION 107(b) OF THE BANKRUPTCY CODE AND  
RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE, AUTHORIZING (A) THE DEBTORS TO FILE  
UNDER SEAL CERTAIN STIPULATIONS WITH BELLSOUTH  
TELECOMMUNICATIONS, INC., SBC TELECOMMUNICATIONS, INC.  
AND CERTAIN OPERATING COMPANY SUBSIDIARIES OF VERIZON  
COMMUNICATIONS INC. AND (B) THE COURT TO CONDUCT AN  
IN CAMERA HEARING TO CONSIDER APPROVAL OF SUCH STIPULATIONS**

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

Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and  
debtors in possession (collectively, the “Debtors”), respectfully represent:

## **Introduction**

1. On May 14, 2003, each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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

3. On April 22, 2004, the Debtors filed (a) the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, dated April 22, 2004 (as amended, the “Plan”), and (b) the Debtors’ Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (as amended, the “Disclosure Statement”) which relates to the Plan.

4. On April 22, 2004, this Court entered an Order (the “Disclosure Statement Order”) approving, among other things, the Disclosure Statement and the voting procedures with respect to acceptance or rejection of the Plan. The Disclosure Statement Order provides in relevant part that if the Debtors have served and filed, prior to the Voting Deadline (as defined in the Plan), an objection to the amount of a claim, such claim shall be temporarily allowed for voting purposes in the amount of \$1.00 without prejudice to the right of the holder of such claim

to seek allowance of such claim for voting purposes in a different amount by filing a motion pursuant to Bankruptcy Rule 3018(a).

### **Jurisdiction**

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

### **Debtors' Objections to Claims**

6. The Debtors have filed several objections to claims (collectively, the "Claims Objections") asserted in these chapter 11 cases, including, among others, (a) the Debtors' first objection to certain proofs of claim, dated April 6, 2004 (the "First Omnibus Objection"); (b) the Debtors' fourth objection to certain proofs of claim, dated May 27, 2004 (the "Fourth Objection"); (c) the Debtors' fifth objection to certain proofs of claim, dated May 27, 2004 (the "Fifth Objection") and (d) the Debtors' sixth objection to certain proofs of claims, dated May 28, 2004 (the "Sixth Objection").

7. The First Omnibus Objection and Sixth Objection seek to disallow certain of claims (collectively, the "SBC Claims") of SBC Telecommunications, Inc. ("SBC") with respect to which SBC has filed proofs of claims in these chapter 11 cases. The Fourth Objection seeks to disallow certain claims (the "BellSouth Claims") of BellSouth Telecommunications, Inc. ("BellSouth") with respect to which BellSouth has filed proofs of claims in these chapter 11 cases. The Fifth Objection seeks to disallow certain claims (the "Verizon Claims") of certain operating company subsidiaries of Verizon Communications Inc. (collectively, "Verizon") with respect to which Verizon has filed proofs of claims in these chapter 11 cases.

**Motions Pursuant to Bankruptcy Rule 3018 Seeking to Allow  
the SBC Claims, the BellSouth Claims and the Verizon Claims for Plan Voting Purposes**

8. On May 13, 2004, SBC, on behalf of certain of its operating telephone companies, including Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, Southwestern Bell Telephone, L.P. and Wisconsin Bell, Inc., filed its motion (as supplemented on June 1, 2004, the “SBC 3018 Motion”), pursuant to Bankruptcy Rule 3018 for temporary allowance of the SBC Claims, which are the subject of the respective Claims Objections, for purposes of voting on the Plan.

9. On May 21, 2004, BellSouth Telecommunications, Inc. filed its motion (as supplemented on May 25, 2004, the “BellSouth 3018 Motion”), pursuant to Bankruptcy Rule 3018 for temporary allowance of the BellSouth Claims, which are the subject of the respective Claims Objection, for purposes of voting on the Plan.

10. On May 21, 2004, Verizon filed its motion (the “Verizon 3018 Motion,” and together with the SBC 3018 Motion and the BellSouth 3018 Motion, the “3018 Motions”), pursuant to Bankruptcy Rule 3018 for temporary allowance of the Verizon Claims, which are the subject of the respective Claims Objection by the Debtors, temporarily allowed for purposes of voting on the Plan.

11. On May 28, 2004, the Debtors filed their respective responses to the 3018 Motions requesting the Court to disallow the SBC Claims, the BellSouth Claims and the Verizon Claims for Plan voting purposes and deny the 3018 Motions. On June 2, 2004, this Court held a hearing to consider the 3018 Motions, which hearing was adjourned to provide the parties with an opportunity to resolve their disputes.

### **Settlements with Verizon, SBC and BellSouth**

12. On June 1, 2004, Verizon, SBC and BellSouth (collectively, the “Settling ILECs”) and KMC Telecom XI LLC filed a joint objection of the Trade Creditor Group (the “Trade Creditor Group Objection”) to confirmation of the Plan. In addition, on June 1, 2004, the Settling ILECs filed a supplemental objection to the Plan (the “Supplemental ILECs Objection”). The Debtors received seven (7) additional objections (collectively, the “Remaining Objections”) to the confirmation of the Plan.

13. The Debtors have been negotiating throughout these chapter 11 cases with each of the Settling ILECs regarding the resolution of their claims and reached a resolution thereof, as set forth below.

14. Subsequent to the Court considering the relief requested herein, the Debtors expect to file three (3) stipulations (collectively, the “Stipulations”) resolving their respective disputes with the Settling ILECs, including the complete resolution of (a) the Claims Objections, as they relate to the SBC Claims, the Verizon Claims and the BellSouth Claims; (b) the 3018 Motions, (c) the Trade Creditor Objection, as it relates to the Settling ILECs, and (d) the Supplemental ILECs Objection. Consistent with the prevailing practice in these chapter 11 cases with respect to other documents, which have been filed under seal, complete copies of the Stipulations will be submitted to the Court under seal and provided solely to the U.S. Trustee, attorneys for the Creditors Committee, attorneys for the Debtors’ prepetition senior lenders (the “Prepetition Lenders”) and attorneys to the Settling ILECs.

15. Notably and relevant to this Motion, the Stipulations contain confidential information regarding the terms of the respective settlements.

### **Relief Requested**

16. By this Motion, the Debtors request entry of an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, for authorization (a) to file under seal the Stipulations in order to protect the confidential information contained therein and (b) to have the Court conduct an in camera hearing to consider approval of the Stipulations. In that regard, the Debtors respectfully request that the Court (a) grant them leave to file the Stipulations under seal, (b) order that the contents of the Stipulations remain confidential and (c) authorize that the Stipulations be served on and made available only to the U.S. Trustee, attorneys for the Creditors Committee, attorneys for the Prepetition Lenders and attorneys to the Settling ILECs, and not otherwise be made available to the general public or any parties in interest in these chapter 11 cases. The Debtors further request that the Court conduct an in camera hearing to consider the approval of the Stipulations with only (a) representatives from the Debtors, the Settling ILECs and the U.S. Trustee and (b) respective attorneys for the Debtors, the Settling ILECS, the Creditors Committee and the Prepetition Lenders in attendance.

### **Basis For Relief**

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

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

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

11 U.S.C. § 107(b).

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

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

Fed. R. Bankr. P. 9018.

19. Based upon these provisions, courts have limited access to filed documents where parties have demonstrated good cause. See, e.g., In re Epic Assoc. V, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985); In re Nunn, 49 B.R. 963, 964-65 (Bankr. E.D. Va. 1985). “In limited circumstances, courts must deny access to judicial documents - generally where open inspection may be used as a vehicle for improper purpose.” Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994) (citing Nixon v. Warner Comm’n, Inc., 435 U.S. 589, 597 (1978)). Once it is established that the information sought to be protected fits in any of the categories in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting interested party and has no discretion to deny the application.” Id.

20. Similarly, section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, permit the court to protect confidential information by holding in camera proceedings.<sup>1</sup> See, In re Farmland Indus., Inc., 290 B.R. 364, 369-370 (Bankr. W.D. Mo. 2003).

**Cause Exists to File the Stipulations Under Seal and to Conduct an *In Camera* Hearing to Consider Approval of the Stipulations**

21. The Debtors submit that good cause exists for the Court to grant them leave to file the Stipulations under seal and to authorize conducting an in camera hearing to consider the approval of the Stipulations.

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<sup>1</sup> An in camera proceeding is a proceeding held in a place not open to the public. Black’s Law Dictionary (6th ed. 1990).

22. Specifically, the Debtors are in the process of conducting multiple negotiations with certain of the parties that filed the Remaining Objections. The legal issues raised by certain of such parties in their respective Remaining Objections are closely related to the legal issues raised by the Settling ILECs in the Trade Creditor Objection and in the Supplemental ILECs Objection. The Stipulations contemplate resolution and withdrawal of the Trade Creditor Objection, as it relates to the Settling ILECs, and the Supplemental ILECs Objection. Importantly, the Trade Creditor Objection still remains pending as it relates to KMC. If the contents of the Stipulations is disclosed to the public, including parties that filed the Remaining Objections, these parties could utilize the confidential terms of the settlements set forth in the Stipulations to their unfair advantage and create undue pressure on the Debtors in their negotiations regarding a potential consensual resolution of the Remaining Objections. Thus, unless the Stipulations are filed under seal and an in camera hearing is conducted to consider the approval of the Stipulations, the Debtors' position in their negotiations will be severely undermined. Accordingly, the Debtors submit that the filing of the Stipulations under seal and conducting an in camera hearing to consider the approval of the Stipulations is in the best interests of their estates.

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

23. Because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.



**Notice**

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

**No Prior Request**

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

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

Dated: New York, New York  
June 4, 2004

Respectfully submitted,

/s/ Jonathan S. Henes

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Co-Bankruptcy Counsel for Debtors and Debtors  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

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**ORDER, PURSUANT TO  
SECTION 107(b) OF THE BANKRUPTCY CODE AND  
RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE, AUTHORIZING (A) THE DEBTORS TO FILE  
UNDER SEAL CERTAIN STIPULATIONS WITH BELLSOUTH  
TELECOMMUNICATIONS, INC., SBC TELECOMMUNICATIONS, INC.  
AND CERTAIN OPERATING COMPANY SUBSIDIARIES OF VERIZON  
COMMUNICATIONS INC. AND (B) THE COURT TO CONDUCT AN  
IN CAMERA HEARING TO CONSIDER APPROVAL OF SUCH STIPULATIONS**

Upon consideration of the motion (the “Motion”), dated June 4, 2004, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an order, pursuant to section 107(b) of the Bankruptcy Code<sup>1</sup> and Bankruptcy Rule 9018, authorizing the Debtors to file under seal the Stipulations and the Court to conduct an in camera hearing to consider approval of the Stipulations, as more fully set forth in the Motion; and it appearing that this Court has jurisdiction to consider and determine the Motion as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interest of the Debtors’ estates and creditors; and it appearing that no notice of the Motion need be provided; and after due deliberation and sufficient cause appearing therefor; it is

ORDERED that the Motion is granted; and it is further

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

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

ORDERED that the contents of the Stipulations shall remain confidential, shall be served on and made available only to the U.S. Trustee, attorneys for the Creditors Committee, attorneys for the Prepetition Lenders and attorneys to the Settling ILECs, and shall not be made available to the general public or any other parties in interest in these chapter 11 cases; and it is further

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

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

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

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

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UNITED STATES BANKRUPTCY JUDGE