

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER, PURSUANT TO (A)
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE,
APPROVING THE CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL
RELEASE, DATED FEBRUARY 27, 2004, AMONG LEVEL 3 COMMUNICATIONS,
LLC AND THE DEBTORS; (B) SECTION 363 OF THE BANKRUPTCY CODE
AUTHORIZING THE TRANSFER, AS A PART OF SUCH SETTLEMENT, OF
CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES,
AND (C) SECTION 365 OF THE BANKRUPTCY CODE, APPROVING AND
AUTHORIZING, AS A PART OF SUCH SETTLEMENT, THE ASSUMPTION AND
ASSIGNMENT OF AN EXECUTORY CONTRACT**

Upon consideration of the motion (the “Motion”), dated March 5, 2004, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries, as debtors in possession (collectively, the “Debtors”), seeking entry of an order, pursuant to Bankruptcy Rule 9019 and section 363 and 365 of the Bankruptcy Code for (a) approval of the Settlement Agreement¹, (b) authorization of the transfer of the Buy Out Assets, free and clear of liens, interests, claims and encumbrances, as a part of such settlement and (c) authorization of the assumption and assignment of the KMC Agreement, as a part of such settlement, all 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 due and proper notice of the Motion having been given; and the Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted

¹ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion and the Settlement Agreement.

herein; and it further appearing that the relief requested in the Motion is within the Debtors' sound business judgment; and it further appearing that (a) the Settlement Agreement is fair, reasonable and in the best interests of the Debtors, their estates, creditors and other parties in interest; and the Court having determined that the Settlement Agreement was entered into in good faith and is a result of arms-length negotiations; (b) the decision to convey the Buy Out Assets to Level 3 is a product of the Debtors' sound business judgment, and is an essential and integral component of the Settlement Agreement; and (c) the assumption and assignment of the KMC Agreement is based upon the Debtors' sound business judgment and is necessary and in the best interests of the Debtors, their estates, creditors and other parties in interest, and is an essential and integral component of the Settlement Agreement; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Settlement Agreement, each of its terms, provisions, and conditions and the compromise and settlement evidenced thereby, is authorized and approved pursuant to Bankruptcy Rule 9019 and sections 363 and 365 of the Bankruptcy Code; and it is further

ORDERED that the conveyance of the Buy Out Assets to Level 3, free and clear of all liens, interest, claims and encumbrances, is authorized and approved pursuant to Section 363 of the Bankruptcy Code; and it is further

ORDERED that effective on, but not before, the Early Funding Date (or the Option Exercise Date, if applicable), the assumption of the KMC Agreement by the Debtors and the assignment of the KMC Agreement to Level 3, shall be authorized and approved, pursuant to Section 365 of the Bankruptcy Code; provided, however, that nothing in this Order shall

preclude the Debtors from hereafter seeking to reject the KMC Agreement (a prerequisite to which shall be the Debtors obtaining the prior written consent of Level 3 to do so) at any time prior to assuming and assigning the KMC Agreement to Level 3; and it is further

ORDERED that the Debtors are authorized and directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations and transactions contemplated therein; and it is further

ORDERED, that that the Debtors are authorized and directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to convey the Buy Out Assets to Level 3, free and clear of all liens, claims and encumbrances; and it is further

ORDERED that that the Debtors are authorized and directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to assume and assign the KMC Agreement to Level 3; and it is further,²

ORDERED that the assumption and assignment of the KMC Agreement to Level 3 shall not release or waive any rights or claims that Allegiance may have against KMC under the KMC Agreement, including, without limitation, performance warranty breaches, if any, under the KMC Agreement, and that (except with respect to claims respecting backhaul latency or non-delivery of ports relating to period of time prior to the assumption and assignment of the KMC Agreement, as set forth in Section 3(d) of the Settlement Agreement) such rights and

² To the extent that, in the future, the Debtors determine in their sound business judgment to reject the KMC Agreement, with the prior written consent of Level 3 to do so and subject to this Court's approval at that time, then this decretal paragraph shall not have any force and effect.

claims shall be preserved for Level 3, and Level 3 shall be free to enforce all rights and claims against KMC (even if such rights or claims relate to periods of time prior to the assignment of the KMC Agreement to Level 3); and it is further

ORDERED that Level 3 is directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order; and it is further

ORDERED that XO is directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order; and it is further

ORDERED that (a) any chapter 11 plan that is confirmed by the Court and related orders entered by this Court in these chapter 11 cases, (b) the sale, assignment, transfer or other disposition of any assets of the Debtors, (c) compromises with other parties in interest, and (d) conversion or dismissal of the Debtors' chapter 11 case shall have no effect on this Order or the terms or transactions contemplated by the Settlement Agreement and that the terms of this Order shall be deemed incorporated, where appropriate, into any plan of reorganization and related Orders of this Court, including without limitation any confirmation Order, and as more fully set forth in Section 11 of the Settlement Agreement; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order, and as expressly set forth in the Settlement Agreement.

Dated: New York, New York
_____, 2004

UNITED STATES BANKRUPTCY JUDGE