

J.P. Morgan Chase Legal Department
One Chase Manhattan Plaza
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New York, NY 10005-1489
(212) 552-6925
James D. Greenhalgh, Esq. (JDG-6839)
Counsel for JPMorgan Chase Bank

Hearing Date: April 20, 2004
Time: 10:00 a.m.

Objection Deadline: April 15, 2004
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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: In re: : Chapter 11
: :
: **ALLEGIANCE TELECOM, INC.,** : Case No. 03-13057 (RDD)
: : Jointly Administered Lead Case
: Debtor. :
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: In re: : Chapter 11
: :
: **ALLEGIANCE TELECOM** :
: **COMPANY WORLDWIDE,** : Case No. 03-13064 (RDD)
: :
: Debtor. :
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NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE that upon the annexed Motion dated March 25, 2004 of J.P. Morgan Chase Legal Department, by James D. Greenhalgh, Assistant General Counsel, Secured Creditor JPMorgan Chase Bank will move this court on April 20, 2004 at 10:00 a.m. before the Honorable Robert D. Drain in Court Room 610 of the United States Bankruptcy Court, Southern District of New York, located at 1 Bowling Green, New York, New York, for an Order granting JPMorgan Chase Bank 's Motion for Relief from Automatic Stay with Respect to Collateral

Securing a Certain Letter of Credit, pursuant to 11 U.S.C. § 362 (d), and for such other and further relief as to this court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy Rule 9006-1(b), any answering papers shall be served so as to ensure actual receipt by the undersigned counsel at the address listed below, not later than three days before the return date set forth above.

Dated: New York, New York
March 29, 2004

J.P. MORGAN CHASE LEGAL
DEPARTMENT
Counsel for Secured Creditor
JPMorgan Chase Bank

By: _____
James D. Greenhalgh (JDG-6839)
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-and-

By: Elaine S. McAnelly (ESM-0181)
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-and-

By: Lee Kevin Deutsch (LKD-4130)
Assistant General Counsel
100 Duffy Avenue - Bldg 2
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(516) 934-2095

-and-

By: Andrew Keen (ANK-6527)
Assistant General Counsel
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SERVICE LIST

Counsel for Debtor

Togut , Segal & Segal LLP

One Penn Plaza

New York, NY 10119

Att'n: Frank A. Oswald, Esq.

Kirkland & Ellis LLP

Citigroup Center

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New York, NY 10022-4675

Att'n: Jonathan S. Henes, Esq.

Att'n: Matthew Allen Cantor, Esq.

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787 Seventh Avenue

New York, NY 10019-6099

Att'n: Lawrence Owen Kamin, Esq.

Counsel for Official Committee of Unsecured Creditors

Akin, Gump, Strauss, Hauer & Feld, LLP

590 Madison Avenue

New York, NY 10022

Att'n: Ira S. Dizengoff, Esq.

Counsel for United States Trustee

United States Trustee

33 Whitehall Street

21st Floor

New York, NY 10004

Att'n: Pamela Jean Lustrin, Esq.

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MOTION OF JPMORGAN CHASE BANK FOR RELIEF FROM AUTOMATIC STAY WITH RESPECT TO COLLATERAL SECURING A CERTAIN LETTER OF CREDIT

NOW COMES, JPMORGAN CHASE BANK ("JPMC Bank" or "Movant"), a secured creditor pursuant to § 362(d) of Title 11, United States Code ("11 U.S.C." or the "Bankruptcy Code"), and respectfully moves the Court for relief from the automatic stay to permit Movant to utilize certain collateral pledged to secure its claims against ALLEGIANCE TELECOM COMPANY WORLDWIDE ("ATCW" or "Debtor") for reimbursement or payment of certain obligations secured by the collateral. Movant would respectfully show the Court as follows:

1. On May 14, 2003 (the "Petition Date"), Allegiance Telecom, Inc. ("AT, Inc."), ATCW, the wholly-owned sole subsidiary of AT, Inc., and their other affiliates, filed for relief under

Chapter 11 of the Bankruptcy Code; and, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, AT, Inc., ATCW and their affiliates, are continuing in the management and possession of their properties as debtors-in-possession.

2. Prior to the filing of this chapter 11 case, on or about April 28, 2003, pursuant to Application and Agreement for Irrevocable Standby Letter of Credit dated April 7, 2003 (the "L/C Application") ATCW, as account party, established a letter of credit numbered D-236916 with JPMC Bank, as issuer, in favor of WorldCom, Inc. and All of its Affiliates And Subsidiaries, as beneficiaries (collectively, the "Beneficiary"), for drawings up to \$3,000,000.00, effective immediately and payable at JPMC Bank, c/o J.P. Morgan Treasury Services, 10420 Highland Manor Drive, Building 2, 4th Floor, Tampa, Florida 33610, Attention: Standby Letter of Credit Dept. (the "Letter of Credit" or "L/C"). A true and correct copy of the L/C Application is attached hereto as Exhibit A and incorporated herein by reference for all purposes.
3. The Letter of Credit provides that partial draws are permitted by the Beneficiary. The Letter of Credit also provides that it "automatically expires on April 30, 2005 without renewal," and for its duration it is secured by a Security Agreement - Pledge of Certificate of Deposit, which is dated April 25, 2003 and executed by ATCW, pledging collateral described as Certificate of Deposit No. 08806351357 in sum of \$3,000,000 issued or opened by JPMC Bank at its Texas offices on 4/25/03 with a maturity date of 4/25/04 (the "Collateral" or "Certificate of Deposit"). The Certificate of Deposit earns interest at the annual rate of 1.04% (the "1.04% CD Interest Rate"). True and correct copies of the Letter of Credit and the security agreement pledge are attached hereto as Exhibits B and C, respectively, and incorporated herein by reference for all purposes.

4. The Letter of Credit has not been revoked and on or about February 20, 2004, the Beneficiary presented a properly conforming partial drawing for the amount of \$1,404,295.77 (the “2/20/04 Drawing Letter”). Attached hereto as Exhibit D and incorporated herein by reference for all purposes is a true copy of the 2/20/04 Drawing Letter. Under the terms of the Letter of Credit, Movant was obligated to, and did pay the Beneficiary the sum of \$1,404,295.77 on or about February 24, 2004. Attached hereto as Exhibit E and incorporated herein by reference for all purposes is a true copy of Advice of Federal Funds Transfer dated February 24, 2004 to the Beneficiary concerning transfer of \$1,404,295.77 as “L/C payment under L/C D-236916.”
5. Due to the automatic stay prescribed by 11 U.S.C. § 362 (the “Automatic Stay”), Movant is unable to liquidate the Collateral in order to reimburse its payment of the Letter of Credit partial drawing and related obligations incurred by ATCW (i.e., interest accruing on the amount drawn and attorney’s fees related thereto) from proceeds of the Certificate of Deposit securing the Letter of Credit.
6. As provided under the Terms and Conditions for Standby Letter of Credit (paragraph 1. D.) set forth in the L/C Application, JPMC Bank is entitled to charge interest on any unreimbursed balance of the amount drawn under the Letter of Credit up to the maximum non-usurious rate permitted by law. Movant has agreed to limit its rate of interest to JPMC Bank’s Prime Rate plus one percent (“Prime + 1%”), which has accrued from February 24, 2004 when JPMC Bank’s Prime Rate was 4% per annum, and continues to accrue at the same rate (the “5% L/C Interest Rate”) on the amount of \$1,404,295.77 paid to the Beneficiary when it partially drew down on the Letter of Credit. The principal

amount due and owing as of this date remains \$1,404,295.77 and interest continues to accrue thereon at the 5% L/C Interest Rate.

7. As provided under the Terms and Conditions for Standby Letter of Credit (paragraph 11.) set forth in the L/C Application, JPMC Bank is entitled to reimbursement of “reasonable attorneys’ fees for legal services of every kind” incurred by Movant through the date of payment.
8. The Automatic Stay should be terminated as to the Collateral in order to allow Movant to reduce the Certificate of Deposit sufficiently to apply proceeds of the Collateral to (a) the Debtor’s current liquidated Letter of Credit obligation to JPMC Bank, consisting of (i) principal in sum of \$1,404,295.77, (ii) interest accruing thereon at the 5% L/C Interest Rate from February 24, 2004, and (iii) any reasonable attorney’s fees incurred by Movant through the date of payment, and to (b) immediately reimburse the principal amount of any future partial draws on the Letter of Credit prior to its above-mentioned expiry date of April 30, 2005.
9. Concerning attorneys’ fees incurred by Movant in regard to the Letter of Credit, legal fees charged to JPMC Bank by its Legal Department offices in Texas and New York aggregated \$4,339.50 from May 15, 2003 through February 29, 2004. Attached hereto as Exhibit F and incorporated herein by reference for all purposes is a true copy of J.P. Morgan Chase Legal Department’s Invoice dated March 26, 2004 for fees through February 29, 2004 in sum of \$4,339.50 related to Allegiance Telecom Company World Wide Standby Irrevocable Letter of Credit No. D-236916. To conserve the time of counsel and the court, as well as to conserve the remaining balance of the Certificate of Deposit, JPMC Bank requests this court to permit payment from the Collateral of its

attorneys' fees up to \$10,000 in regard to the Letter of Credit, including additional fees subsequent to February 29, 2004 related to the initial partial drawing thereunder, as may be approved as reasonable by the Debtor.

10. Upon information and belief, the Debtor does not dispute Movant's right to the relief requested in this Motion.
11. The Collateral is encumbered by JPMC Bank's security interest and not available or necessary for a reorganization of the Debtor because, among other reasons, the Certificate of Deposit, including its proceeds, remains and will continue to remain encumbered by JPMC Bank's security interest to secure the Letter of Credit in the event there may be further partial drawings by the Beneficiary on or before the L/C's above-mentioned expiry date of April 30, 2005.
12. Furthermore, it benefits ATCW to reduce the Certificate of Deposit and apply its proceeds to the liquidated Letter of Credit obligation due at this time because the 5% L/C Interest Rate accruing on ATCW's Letter of Credit indebtedness is well in excess of the 1.04% CD Interest Rate which ATCW is earning on the Certificate of Deposit.
13. For the reasons set forth above, the automatic stay should be terminated in regard to the Collateral consisting of the Letter of Credit and proceeds thereof.
14. As no novel issue of law is presented, Movant requests that the requirement of a memorandum of law under Local Bankruptcy Rule 9013-1(B) be waived.

WHEREFORE, Movant prays that this Court grant relief under § 362(d) of the Bankruptcy Code by terminating the automatic stay as to the Collateral and allowing Movant to reduce the Certificate of Deposit sufficiently to apply proceeds of the Collateral to (a) the Debtor's current liquidated Letter of Credit obligation to JPMC Bank, consisting of (i) principal

in sum of \$1,404,295.77, (ii) interest accrued at the 5% L/C Interest Rate from February 24, 2004 to the date of principal reimbursement, and (iii) any reasonable attorney's fees, not to exceed \$10,000, incurred by Movant through said date of reimbursement, and to (b) immediately reimburse the principal amount of any future partial draws on the Letter of Credit prior to its above-mentioned expiration date of April 30, 2005, and that this Court grant Movant such other and further relief, at law and in equity, as it deems just and proper.

Dated: New York, New York
March 29, 2004

J.P. MORGAN CHASE LEGAL
DEPARTMENT
Counsel for Secured Creditor
JPMorgan Chase Bank

By: _____
James D. Greenhalgh (JDG-6839)
Assistant General Counsel

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By: Elaine S. McAnelly (ESM-0181)
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By: Lee Kevin Deutsch (LKD-4130)
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In re:	:	Chapter 11
	:	
ALLEGIANCE TELECOM	:	
COMPANY WORLDWIDE,	:	Case No. 03-13064 (RDD)
	:	
Debtor.	:	

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

_____, being duly sworn, deposes and says, that deponent is not a party to the action, is over eighteen years of age and is employed by JPMorgan Chase Bank.

That on the ____ day of March 2004 deponent served the within:

NOTICE OF MOTION

and

**MOTION OF JPMORGAN CHASE BANK FOR RELIEF
FROM AUTOMATIC STAY WITH RESPECT TO
COLLATERAL SECURING A CERTAIN LETTER OF CREDIT**

upon the name(s) listed below by depositing a true copy of the same securely enclosed in a first class, postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service.

UPON: Togut , Segal & Segal LLP
One Penn Plaza
New York, NY 10119
Att'n: Frank A. Oswald, Esq.

Kirkland & Ellis LLP
Citigroup Center
153 E. 53rd Street
New York, NY 10022-4675
Att'n: Jonathan S. Henes, Esq.
Att'n: Matthew Allen Cantor, Esq.

Willkie Farr & Gallagher LLP
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New York, NY 10019-6099
Att'n: Lawrence Owen Kamin, Esq.

Akin, Gump, Strauss, Hauer & Feld, LLP
590 Madison Avenue
New York, NY 10022
Att'n: Ira S. Dizengoff, Esq.

United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004
Att'n: Pamela Jean Lustrin, Esq.

Sworn to before me this
____ day of March, 2004

Notary Public