

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

**ORDER, PURSUANT TO (A)
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE,
APPROVING THE AMENDED AND RESTATED CONFIDENTIAL SETTLEMENT
AGREEMENT AND MUTUAL RELEASE, DATED FEBRUARY 27, 2004,
AMONG LEVEL 3 COMMUNICATIONS, LLC, THE DEBTORS AND
XO COMMUNICATIONS, INC.; (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 9019¹ and section 363 and 365 of the Bankruptcy Code for (a) approval of the Settlement Agreement, (b) authorization of the transfer of the Buy-Out Assets, free and clear of liens, interests, claims and encumbrances with such liens, interests, claims, and encumbrances, if any (collectively, the “Liens”), to attach to the proceeds of the settlement approved by this order, 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 KMC having filed its Limited Objection to the Motion, dated March 22, 2004 (the “KMC Limited Objection”); and the

¹ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Motion and the Amended and Restated Settlement Agreement (as defined below).

Debtors having filed that certain Notice of Amendment of that Certain Confidential Settlement Agreement and Mutual Release, Dated February 27, 2004, Among Level 3 Communications, LLC, the Debtors and XO Communications, Inc. (as modified, the “Amended and Restated Settlement Agreement”); and Level 3 having filed its Reply to the KMC Limited Objection, dated March 25, 2004; and the KMC Objection having been resolved on the basis set forth on the record and as reflected herein; 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 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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, to the extent applicable, the application of Bankruptcy Rule 6004(g) is waived; 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 and shall in any event be effective no later than the date of conveyance of the Buy-Out Assets; and it is further

ORDERED that to the extent KMC prevails with respect to the Colocation Reservation, as defined below, the Infrastructure Interconnection Agreement dated as of the date of the KMC Agreement (the "Colocation Agreement") shall be deemed to have been assumed by the Debtors simultaneously with its assumption of the KMC Agreement; 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 Amended and Restated 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; 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,

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 Amended and Restated Settlement Agreement) such rights and 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 the Debtors shall deposit the amount of \$1,447,598 in escrow to secure payment of any cure amounts which may be due to KMC with respect to assumption of the KMC Agreement; and it is further

ORDERED that all rights of the Debtors and KMC with respect to determination of cure amount are otherwise reserved except that the Debtors shall follow the dispute resolution

procedures of the KMC Agreement with respect to any disputes as to cure amount; 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Settlement Agreement; and it is further

ORDERED that, notwithstanding anything else contained herein or in the Amended and Restated Settlement Agreement, KMC reserves the right to contend (the “Colocation Reservation”) that the KMC Agreement should be deemed a single agreement or otherwise treated under applicable law such that the KMC Agreement may not be assumed unless the Colocation Agreement is assumed as well, and the Debtors and other parties in interest reserve the right to dispute KMC’s position on that issue; 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, including the Colocation Reservation, and as expressly set forth in the Settlement Agreement.

Dated: New York, New York
March 31, 2004

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE