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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 THE AFFIDAVIT OF MARK TRESNOWSKI IN SUPPORT OF DEBTORS' RESPONSE TO MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALLEGIANCE TELECOM, INC., ET AL., FOR AN ORDER UNDER 11 U.S.C. § 105(a) COMPELLING THE DEBTORS TO TERMINATE CERTAIN SENIOR EXECUTIVES UNDER SEAL AND (B) THE COURT TO HEAR THE TESTIMONY OF MARK TRESNOWSKI *IN CAMERA*

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

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

Introduction

1. On May 14, 2003 (the "Commencement Date"), 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 business 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.

Jurisdiction

3. 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.

The Creditors Committee's Motion to Compel

4. On April 27, 2004, the Creditors Committee filed a motion (the "Motion"), requesting that the Court compel the Debtors to terminate two of its senior executives, Mr. Royce Holland, the Debtors' Chief Executive Officer or "CEO" and the Chairman of its board of directors, and Mr. Thomas Lord, the Debtors' Executive Vice President and Chief Financial Officer or "CFO."

5. Subsequent to the Court considering the relief requested herein, the Debtors intend to file a response to the Motion (the "Debtors' Response"). The assertions set forth in the Debtors' Response are supported by the Affidavit of Mark Tresnowski (the "Tresnowski Affidavit"), the Debtors' General Counsel and Executive Vice President.

6. Prior to the filing of the Debtors' Response, a complete copy of the Tresnowski Affidavit will be submitted to the Court under seal. Subsequent to the Court's

consideration of the relief requested herein (and to the extent such relief is granted) and contemporaneously with the filing of the Debtors' Response, the Tresnowski Affidavit will be provided solely to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Debtors' prepetition lenders (the "Prepetition Lenders").

7. The Tresnowski Affidavit contains sensitive and confidential information regarding the potential risks that the Debtors' estates could face if the employment of Messrs. Holland and Lord were terminated. Disclosure of the potential harm that would be associated with the termination of Messrs. Holland and Lord would give potential claimants a roadmap to the prosecution of claims against the Debtors' estates. Accordingly, to preserve and protect the value of the Debtors' estates, the Tresnowski Affidavit should be filed under seal.

Relief Requested

8. 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 the Tresnowski Affidavit under seal and (b) for the Court to hear the testimony of Mark Tresnowski (the "Tresnowski Testimony") in camera. In that regard, the Debtors respectfully request that the Court (a) grant them leave to file the Tresnowski Affidavit under seal, (b) order that the contents of the Tresnowski Affidavit remain confidential, and (c) order that the Tresnowski Affidavit be served on and made available only to the U.S. Trustee, attorneys for the Creditors Committee and attorneys for the Prepetition Lenders, 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 hear the Tresnowski Testimony in camera with only (a) representatives from the Debtors and the U.S. Trustee and (b) the respective attorneys for the Debtors, the Creditors Committee and the Prepetition Lenders in attendance.

Basis For Relief

9. 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).

10. 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.

11. 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.* Commercial information need not rise to the level of confidentiality of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

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

**Cause Exists to File the Tresnowski Affidavit
Under Seal and for the Tresnowski Testimony to be Given *In Camera***

13. The Debtors submit that good cause exists for the Court to grant them leave to file the Tresnowski Affidavit under seal and to authorize conducting the hearing with respect to the Tresnowski Testimony *in camera*.

14. The Tresnowski Affidavit discloses the Debtors’ reasonable assessment of the myriad of potential negative consequences of termination of Messrs. Holland and Lord. As set forth above, the Debtors believe that the disclosure of this information could provide claimants with a road map to prosecute claims against the Debtors’ estates. Therefore, in order to protect their estates and creditors, the Debtors request the Court’s authorization to seal the information disclosed in the Tresnowski Affidavit, as well as the information that could be revealed in the Tresnowski Testimony.

15. Accordingly, the Debtors submit that the filing of the Tresnowski Affidavit under seal and conducting an *in camera* hearing with respect to the Tresnowski Testimony is in the best interests of their estates, creditors and all parties in interest.

Waiver of Memorandum of Law

16. 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

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

No Prior Request

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

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

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
April 30, 2004

Respectfully submitted,

/s/ Jonathan S. Henes

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