

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
In re )

) Chapter 11 Cases

)  
Allegiance Telecom, Inc., et al., )

) Case No. 03-13057(RDD)

)  
Debtors. )  
\_\_\_\_\_)

) Jointly Administered

**AFFIDAVIT OF THOMAS JONES IN SUPPORT OF  
APPLICATION TO EMPLOY AND RETAIN  
WILLKIE FARR & GALLAGHER AS PROFESSIONALS UTILIZED IN  
THE ORDINARY COURSE OF THE DEBTORS' BUSINESSES**

STATE OF NEW YORK )

) ss:

COUNTY OF NEW YORK )

THOMAS JONES, being duly sworn, deposes and says:

1. I am a member of Willkie Farr & Gallagher ("WF&G"), which maintains an office for the practice of law at 1875 K Street NW, Washington, D.C. 20006. I am an attorney-at-law, duly admitted and in good standing to practice in the District of Columbia. I submit this affidavit in connection with the application of Allegiance Telecom, Inc. and its direct and indirect subsidiaries (collectively, the "Debtors"), in the above-captioned case, to retain WF&G as counsel to the Debtors as Professionals Utilized in the Ordinary Course of Business. Except as otherwise indicated and except for facts that are matters of public record, all facts set forth in the Affidavit are based on my personal knowledge.

2. On May 14, 2003, the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court (the "Chapter 11 Cases"). The

Debtors requested and this Court ordered the joint administration of the Chapter 11 Cases pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

3. The Debtors have requested that WF&G provide legal services to the Debtors, and WF&G has consented to provide such legal services pursuant to the requirements of this Court's Interim Order Pursuant to Sections 105(a), 327, 328, 330 and 363(c) of the Bankruptcy Code Authorizing Employment of Professionals Utilized in the Ordinary Course of Business, dated May 15, 2003 (the "Order"). A copy of the Order has been appended to this Affidavit as Appendix A. This Affidavit is being submitted in support of our retention to provide legal services and in accordance with the requirements of the Order and General Order M-242 of this Court.

4. WF&G will represent the Debtors as their Federal Communications Commission ("FCC") regulatory counsel, in the best interest of the estate, and does not hold any interest adverse to the Debtors or to the estate with respect to the matters on which WF&G is to be employed except as may be indicated in this Affidavit and as agreed to by waiver of the Debtors.

5. WF&G may have performed services in the past and may perform services in the future in matters unrelated to these Chapter 11 Cases, for persons that are or may be parties in interest in the Chapter 11 Cases. All interests which may be potentially adverse to the Debtors' interest have been specifically identified and waiver of such interests has been agreed to by all such parties. I have described below the WF&G non-FCC regulatory counsel client relationships with creditors and competitors of the Debtors, all of which are unrelated to the matters on which WF&G is to be employed as Professionals in the Ordinary Course of Business, for which WF&G has obtained waivers. In addition, I have also described below the client relationship where WF&G serves as FCC regulatory counsel to a competitor of the Debtors on matters unrelated to

the matter on which WF&G is to be employed as Professionals in the Ordinary Course of Business and for which I have obtained a waiver from the competitor client and the Debtors.

6. WF&G's Non-FCC Representation of Certain Creditors and Competitors of the Debtors.

(i) Level 3 Communications, Inc. and various of its affiliates (collectively, "Level 3") are creditors and significant customers of the Debtors. WF&G has represented Level 3 with respect a wide range of matters, including certain corporate matters that may in the future relate to the Debtors. In addition, in February, 2003, Level 3 acquired substantially all of the assets of Genuity, Inc. and certain of its affiliates (collectively, "Genuity"), including the right to cause the assignment of various executory contracts to which Genuity is a party. Genuity may be a significant creditor of the Debtors, and may have significant contractual relationships with the Debtors under agreements which may be, or have been, assigned to Level 3. WF&G intends to continue to represent Level 3 and its affiliates regarding these and possibly other matters that may in the future relate to the Debtors, and has obtained waivers from Level 3 and the Debtors for that representation. WF&G does not and will not represent Level 3 in any matters adverse to the Debtors or to the estate with respect to the matters on which WF&G is to be employed as Professionals in the Ordinary Course of Business.

(ii) 360networks Corporation, 360networks (USA) inc., and various of their affiliates (collectively, "360") are competitors of the Debtors. Since 1997, WF&G has represented 360 with respect to a wide range of matters. WF&G intends to continue to represent 360, and has obtained a waiver from the Debtors for that representation to the extent it pertains to the Debtors. WF&G does not and will not represent 360 in any matter adverse to the Debtors or to the estate with respect to the matters on which WF&G is employed as Professionals in the Ordinary Course of Business.

7. WF&G's FCC Representation of Certain Competitors or Potential Competitors of the Debtors.

(i) Time Warner Telecom, Inc. ("Time Warner") is a competitor of the Debtors. WF&G has represented Time Warner as FCC regulatory counsel. WF&G has previously obtained waivers from both Time Warner and Debtors related to that representation. WF&G intends to continue to represent Time Warner under the terms of those waivers. WF&G does not and will not represent Time Warner in any matter adverse to the Debtors or to the estate with respect to the matters on which WF&G is employed as Professionals in the Ordinary Course of Business.

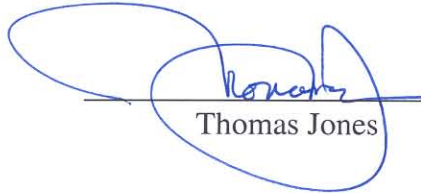
(ii) WF&G represents a wide range of other clients as FCC regulatory counsel. It is possible that such representations will force WF&G to obtain a waiver from other clients and the Debtors in the future. WF&G will closely monitor all of its client relationships and will seek waivers from its other clients and Debtors as required.

8. Neither I nor any principal of or professional employed by WF&G has agreed to share or will share any portion of the compensation to be received from the Debtors with any person other than the principals and regular employees of WF&G.

9. Within 90 days prior to filing the Chapter 11 Cases, the Debtors paid a total of \$160,233.97 to WF&G for prepetition services.

10. WF&G agrees to be bound by the Order, including the provisions for compensation and expense reimbursement.

11. At any time during the period of its employment, if WF&G should discover any facts bearing on the matters described herein, WF&G will supplement the information contained in this Affidavit.



Thomas Jones

Sworn to and subscribed before me this  
12<sup>th</sup> day of June 2003.



Notary Public

Ann M. Staron  
Notary Public, District of Columbia  
My Commission Expires April 30, 2008

## APPENDIX A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**INTERIM ORDER PURSUANT TO SECTIONS 105(a), 327, 328, 330  
AND 363(c) OF THE BANKRUPTCY CODE AUTHORIZING EMPLOYMENT  
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

Upon the application (the “Application”), dated May 14, 2003, of Allegiance Telecom, Inc. and its direct and indirect subsidiaries (collectively, the “Debtors”), for entry of an order, pursuant to sections 105(a), 327, 328, 330 and 363(c) of the Bankruptcy Code,<sup>1</sup> approving the Debtors retention of certain Ordinary Course Professionals and the implementation of certain procedures for monthly compensation of such Ordinary Course Professionals, as more fully set forth in the Application; and the Court having jurisdiction to consider and determine the Application as a core proceeding in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Application is necessary and in the best interests of the Debtors, their estates and their creditors; and due notice of the Application having been given and it appearing that no other or further notice need be given; and sufficient cause appearing therefore; it is

ORDERED that the Application is granted on an interim basis; and it is further

ORDERED that the Debtors’ retention and payment, at their election, of the Ordinary Course Professionals listed on Exhibit “A” to the Application, without the need to file

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

individual retention or interim or final fee applications for each Ordinary Course Professional, except as set forth below, is approved; and it is further

ORDERED that each law firm retained as an Ordinary Course Professional retained shall file with the Court, within the later of (a) thirty (30) days of entry of this Order, and (b) the date of the law firm's engagement by the Debtors in these chapter 11 cases, an affidavit pursuant to section 327(e) of the Bankruptcy Code setting forth that such law firm does not represent or hold any interest adverse to the Debtors or to their respective estates in respect of the matters on which such law firm is retained. The affidavit shall be filed with the Court in accordance with General Order M-242, which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov); and it is further

ORDERED that the Debtors are hereby authorized to supplement the list of the Ordinary Course Professionals from time to time, if additional Ordinary Course Professionals are to be employed, and the Debtors shall file each supplemental list with the Court and serve it on (a) the U.S. Trustee, (b) attorneys for the Prepetition Lenders and (c) attorneys for a statutory creditors' committee, when and if appointed. If no objections are filed to such supplemental list within ten (10) days after service thereof, the same shall be deemed approved by this Court and all professionals listed thereon shall be deemed to be the Ordinary Course Professionals within the purview of this Order without the necessity of a hearing; and it is further

ORDERED that the Debtors are hereby authorized, but not required, to make periodic payments for postpetition compensation and reimbursement of postpetition expenses to each of the Ordinary Course Professionals in the manner customarily made by the Debtors prior to the commencement of these chapter 11 cases in the full amount billed by any such Ordinary Course Professional, upon receipt therefrom of reasonably detailed invoices indicating the nature

of the professional services rendered and the disbursements actually incurred, and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' rights to dispute any such invoices); provided, however, that subject to further order of the Court, if any Ordinary Course Professional's fees and disbursements exceed (a) a total of \$30,000 per month or (b) \$500,000 in the aggregate in the Debtors' chapter 11 cases, then the payment to such Ordinary Course Professional for such excess amounts shall be subject to the prior approval of this Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, orders of this Court and the Fee Guidelines; and it is further

ORDERED that on or before the last day of each month, the Debtors shall serve upon the attorneys for the Ad Hoc Committee or after a statutory creditors' committee is appointed, upon the attorneys for such statutory creditors' committee, on a confidential basis, a statement of the following: (i) the name of each Ordinary Course Professional during the preceding month, and the aggregate amounts paid as compensation for services rendered and as reimbursement of expenses incurred by each Ordinary Course Professional and (ii) a list of any additional Ordinary Course Professionals that are retained or utilized by the Debtors after the Commencement Date and who are not listed on the Exhibit "A" to the Application; and it is further

ORDERED that the final hearing on the Application shall be held on June 13, 2003 at 10:00 a.m., prevailing Eastern Time, at the United States Bankruptcy Court, Room 610, United States Customs House, One Bowling Green Plaza, New York, New York 10004; and it is further

ORDERED that any objections to the relief requested by the application on a final basis must be filed with the Court, One Bowling Green, New York, New York 10004-1408, with a copy to Chambers, by no later than June 11, 2003 at 4:00 p.m. and served upon Kirkland &

Ellis, attorneys for the Debtors, Citigroup Center, 153 East 53<sup>rd</sup> Street, New York, New York, 10022-4611, Attention: Jonathan S. Henes, Esq. so as to be actually received by such filing deadline; and it is further

ORDERED that any objections to the Application must be filed with the Court in accordance with General Order of the United States Bankruptcy Court for the Southern District of New York M-242, which order can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov); and it is further

ORDERED that this Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court; and it is further

ORDERED that notice of the Application as provided therein shall be deemed good and sufficient notice of such Application.

Dated: New York, New York  
May 15, 2003

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE