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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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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, (A) AUTHORIZING THE DEBTORS TO FILE UNDER SEAL THE  
SETTLEMENT AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY L.P.  
AND (B) FOR AUTHORIZATION TO CONDUCT AN IN CAMERA HEARING ON THE  
MOTION FOR AN ORDER, PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE,  
AUTHORIZING THE DEBTORS TO REJECT THE SETTLEMENT AGREEMENT WITH  
SPRINT COMMUNICATIONS L.P.**

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

**Introduction**

1. On May 14, 2003 (the “Commencement Date”), the Debtors each 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 sections 1107(a) and 1108 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.

### **An Overview of Allegiance’s Business**

4. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (i.e., national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;
- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

5. As of the Commencement Date, Allegiance served more than 100,000 business customers in major markets throughout the United States. As of the Commencement Date, Allegiance employed approximately 3,560 people, of which approximately 97 employees are covered by collective bargaining agreements.

6. As of the Commencement Date, the Debtors had approximately \$245 million of cash. As of March 31, 2003, the Debtors' consolidated books and records reflected assets totaling approximately \$1.349 billion and liabilities totaling approximately \$1.424 billion. For the three months ending March 31, 2003, the Debtors, on a consolidated basis, reported revenues of approximately \$204.58 million, net losses from operations of approximately \$91.036 million and net losses of approximately \$120.084 million.

### **Settlement Agreement**

7. Subsequent to the Court considering the relief requested herein, the Debtors intend to file a motion, pursuant to section 365(a) of the Bankruptcy Code (the "Rejection Motion"), seeking authorization to reject that certain Settlement Agreement and General Release, dated as of September 21, 2000, by and between Allegiance Telecom, Inc. and Sprint Communications Company L.P. (the "Settlement Agreement"). Contemporaneously with the filing of this Motion, a complete copy of the Settlement Agreement has been submitted to the Court under seal and, subsequent to the Court considering the relief requested herein (and to the extent such relief is granted), will be provided to the U.S. Trustee and attorneys for the Creditors Committee and the Debtors' prepetition lenders (the "Prepetition Lenders").

8. Pursuant to the Settlement Agreement, the Debtors provide certain telecommunications services to Sprint Communications Company L.P. ("Sprint") at prices lower than the Debtors' tariffed rates for such services to the extent that Sprint meets certain volume requirements. As more fully set forth in the Rejection Motion, the Debtors have determined that the rejection of the Settlement Agreement is in the best interests of the Debtors, their estates and creditors, and all parties in interest.

9. The Settlement Agreement contains, among other things, highly sensitive and confidential commercial information regarding the pricing of the services provided by the Debtors to Sprint and access to this information by the Debtors' customers and competitors could adversely impact the Debtors.

**Relief Requested**

10. 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 under seal the Settlement Agreement in order to protect the confidential and proprietary commercial information contained therein and (b) to conduct an in camera hearing on the Rejection Motion. The Debtors respectfully request that the Court grant them leave to file the Settlement Agreement under seal and order that the contents of the Settlement Agreement remain confidential and shall be served on and made available only to the U.S. Trustee and the attorneys for the Creditors Committee and the Prepetition Lenders, and shall not otherwise be made available to the general public or any parties in interest in these chapter 11 cases, including any members of the Creditors Committee or the individual Prepetition Lenders. The Debtors further request authorization for the Court to conduct an in camera hearing on the Rejection Motion with only representatives from the Debtors, Sprint and the U.S. Trustee, and the attorneys for the Creditors Committee and the Prepetition Lenders in attendance.

**Basis For Relief**

11. 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).

12. 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.

13. 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.

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

**Cause Exists to File the Settlement Agreement Under Seal  
and to Conduct an In Camera Hearing on the Rejection Motion**

15. The Debtors submit that good cause exists for the Court to grant them leave to file the Settlement Agreement under seal and to authorize conducting an in camera hearing on the Rejection Motion. First, the Settlement Agreement contains highly sensitive and confidential commercial information regarding the pricing of the services provided by the Debtors to Sprint. If this information is disclosed to the public, the Debtors’ customers and competitors would gain access to specific confidential commercial information related to the Debtors’ business relationship with Sprint. Second, the Settlement Agreement specifically states that the terms set forth therein are confidential and must not be disclosed to the public. Thus, unless the Settlement Agreement is filed under seal and an in camera hearing is conducted on the Rejection Motion, the Debtors will be in violation of their obligations under the Settlement Agreement and the competitive position of the Debtors will be severely undermined because

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

their competitors and customers could utilize confidential pricing and other commercial information to create undue pressure on the Debtors' in future negotiations. Accordingly, the Debtors submit that the filing of the Settlement Agreement under seal and conducting an in camera hearing on the Rejection Motion is in the best interests of their estates.

**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.

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  
June 27, 2003

Respectfully submitted,

/s/ Jonathan S. Henes  
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