

**PRESENTMENT DATE AND TIME: September 5, 2003 at 12:00 noon**  
**OBJECTION DEADLINE: September 5, 2003 at 11:30 a.m.**

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— and —

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

**ALLEGIANCE TELECOM, INC., et al.,**

Debtors.

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Chapter 11  
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Case No. 03-13057 (RDD)  
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(Jointly Administered)  
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**STIPULATION AND AGREED ORDER BY AND AMONG  
LEVEL 3 COMMUNICATIONS, LLC AND ALLEGIANCE  
TELECOM COMPANY WORLDWIDE  
REGARDING CERTAIN ASSERTED OFFSETS,  
RESERVATIONS OF RIGHT, AND RELATED MATTERS**

This Stipulation and Agreed Order by and among Level 3 Communications, LLC (“Level 3”) and Allegiance Telecom Company Worldwide (“Allegiance”) (collectively, Allegiance and its affiliated debtors are hereafter referred to as the “Debtors”) pursuant to §§105(a) and 363 of Title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “Bankruptcy Code”), each party acting by and through its counsel, is entered into as of this 29th day of August, 2003.

**RECITALS**

A. On May 14, 2003, (the “Filing Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Since that day, the Debtors have continued to operate as debtors in possession. On May 28, 2003, an Official Committee of Unsecured Creditors was appointed in the Debtors’ Chapter 11 cases.

B. On July 24, 2000, Level 3, by its predecessor in interest, Genuity Solutions, Inc., and Allegiance entered into that certain Integrated Network Solution Purchase Agreement, (collectively, with subsequent amendments, the “INSPA”).

C. Pursuant to the INSPA, Allegiance provides an integrated network solution for Level 3’s dial-up modem services business. Pursuant to the INSPA, subject to certain rights of offset and other rights and remedies, among other things, Level 3 is obligated to pay Allegiance a

Purchase Price<sup>1</sup> installment in the amount of \$25,000,000 on or about August 8, 2003 (the “August Installment Debt”).

D. Under the INSPA, Level 3 has asserted certain alleged breaches of Performance Warranties by the Debtors (the “Performance Warranty Claims”), which it claims as offsets in the nature of recoupment or otherwise against the August Installment Debt in the amount of \$12,664,775.00. In addition to the Performance Warranty Claims, Level 3 has asserted certain claims relating to purported Debtor failures to deliver certain Ports in the amount of \$506,688.00 (the “Delivery Claims”) (the Performance Warranty Claims and Delivery Claims, collectively, the “Subject INSPA Claims”). Allegiance, among other things, (i) does not acknowledge the existence of the Subject INSPA Claims, or any other claims Level 3 has asserted under the INSPA, (ii) disputes all of the foregoing assertions and claims of Level 3, and (iii) disputes the calculations made by Level 3 related to the Subject INSPA Claims.

E. In order to preserve both parties’ rights and remedies in connection with the INSPA and otherwise, to facilitate present payment of certain amounts, and without waiving any rights or remedies of either party, other than, as more fully set forth below, the waiver of the Debtors’ or any party’s putative right to claim on behalf of the Debtors’ estates that the payment of the Performance Warranty Claim amounts contemplated hereby constitutes a waiver by Level 3 of its alleged right to offset or recoupment for the Performance Warranty Claims, the parties have entered into this Stipulation and Agreed Order.

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

**WHEREFORE**, in consideration of the foregoing and intending to be legally bound and for other good and valuable consideration, the foregoing Recitals, forming a part of this Stipulation and Agreed Order, the parties hereto STIPULATE and AGREE as follows:

1. Each of the cumulative rights, remedies and claims of Level 3, if any, under and in respect of the INSPA, and under and in respect of all other documents, agreements, instruments, and tariffs, or otherwise by and among Level 3, Allegiance, any other Debtor, and otherwise, whether arising under applicable bankruptcy and non-bankruptcy law or in equity, including, without limitation, the Performance Warranty Claims, rights of recoupment, setoff, credit, counter-claim, defense, and offset, and whenever arising, including, without limitation, if such rights, remedies and claims arose prior to the Filing Date or prior to August 8, 2003, and such rights, remedies and claims, if any, are reserved in full hereby, such that, among other things, Level 3 may assert that it has a right to offset for breaches of Performance Warranties or other breaches under the INSPA for and in the amount of the Performance Warranty Claims by way of recoupment or otherwise against payments due by Level 3 under the INSPA after August 8, 2003, provided, however, that neither Allegiance, nor any other Debtor in accepting payments contemplated hereby shall be deemed to have waived any of its cumulative rights, remedies and claims under the INSPA and under and in respect of all documents, agreements, instruments and tariffs or otherwise between and/or in respect of Level 3 and such parties, if any, whenever arising, including, without limitation, in respect of the Subject INSPA Claims and as a part thereof the Delivery Claims.

2. Each of the cumulative rights of Allegiance, any other Debtors, and otherwise, if any, under and in respect of the INSPA and under and in respect of all documents, agreements, instruments and tariffs, or otherwise between Level 3, Allegiance, other Debtors and otherwise,

whenever arising, including, without limitation, the Subject INSPA Claims, and the portion thereof consisting of, the Delivery Claims, whether arising under applicable bankruptcy or non-bankruptcy law or in equity, are likewise reserved in full, such that, without limitation, Allegiance may contest the existence of the purported breaches of the Performance Warranties, failures to deliver Ports, the calculation of offsets for “Force Majeure Events” or other purported breaches or interpretations of the INSPA (including in respect of the Subject INSPA Claims, and the portion thereof consisting of, the Delivery Claims) and may likewise contest Level 3’s rights and claims to recoup or setoff for Performance Warranty Claims, the Subject INSPA Claims and as a part thereof Delivery Claims, or other purported INSPA breach claims against INSPA installment purchase price payments; provided, however, that in respect of Level 3 claims, rights or remedies in respect of the INSPA, if any, including, without limitation, recoupment/offset claims, neither Allegiance, another Debtor, nor an entity acting on behalf of the Debtors’ estates, may defend, contest, or counterclaim under the INSPA or applicable bankruptcy and non-bankruptcy law or in equity, that Level 3 is estopped or has impaired or waived any of its rights, remedies or claims under the INSPA or otherwise, if any, including, without limitation, its rights, if any, to offset or recoup claims for the Performance Warranty Claims, by having made the payments contemplated hereby in respect of the August Installment Debt; provided, further, however, that acceptance of payment of the Performance Warranty Claims or Level 3’s continued withholding of the Delivery Claims amounts shall not be deemed an admission by the Debtors that Level 3 has any rights or remedies to withhold the Delivery Claims, or that the Debtors have breached any of their obligations under the INSPA.

3. Nothing contained in this Stipulation and Agreed Order shall waive any rights, remedies or claims under the INSPA, under applicable bankruptcy law, under applicable non-

bankruptcy law or in equity of any party hereto or governed hereby to immediately pursue all reserved rights, remedies and claims against the other party, nor shall anything contained herein constitute an agreement to forbear from the exercise of such rights, remedies and claims.

4. On or about August 8, 2003, pursuant to the INSPA, Level 3 paid Allegiance \$11,828,537.00. One (1) business day after the entry of the Agreed Order approving this Stipulation, if as of such day the Agreed Order is effective and unappealed, Level 3 shall pay Allegiance \$12,664,775.00.

5. This Stipulation and Agreed Order represents the entire agreement of the parties hereto as to its subject matter, but does not constitute a resolution of any issues by and among Level 3, Allegiance and the other Debtors. This Stipulation and Agreed Order may not be modified or amended except by written agreement of the parties and approval of the Bankruptcy Court.

6. This Stipulation and Agreed Order may be executed in several counterparts, each of which shall be deemed to constitute the original Stipulation and Agreed Order fully enforceable against the other party as if each counterpart constituted the entire Stipulation and Agreed Order fully executed. This Stipulation and Agreed Order may be executed by counsel.

This Stipulation and Agreed Order is dated as of the first date written above.

**LEVEL 3 COMMUNICATIONS, LLC**

By: /s/ Michael Z Brownstein, Esquire  
Michael B. Schaedle, Esquire or  
Michael Z. Brownstein, Esquire, each one of  
its counsel

**ALLEGIANCE TELECOM COMPANY  
WORLDWIDE AND AFFILIATED DEBTORS**

By: /s/ Matthew A. Cantor, Esquire  
Matthew A. Cantor, Esquire or  
Jonathan S. Henes, Esquire, each one of  
its counsel

The foregoing Stipulation and Agreed Order, for cause, under as may be necessary 11 U.S.C. §§ 105(a) and 363, and otherwise applicable bankruptcy law and rules, in light of the Recitals contained in the Stipulation and as otherwise set forth and found, and upon any hearing on approval of the foregoing, upon due notice, is hereby ORDERED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2003, New York, New York

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Honorable Robert D. Drain,  
Judge, United States Bankruptcy Court