

**PRESENTMENT DATE AND TIME: November 18,2003, at 12:00 noon**  
**OBJECTION DEADLINE: November 18, 2003, at 11:30 a.m.**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
: :  
**ALLEGIANCE TELECOM, INC., et al.,** : Case No. 03-13057 (RDD)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**SECOND 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 Second 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 11<sup>th</sup>, day of November, 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”)<sup>1</sup>.

C. On or about September 5, 2003, this Court entered an Agreed Order approving a certain Stipulation (the “First Stipulation”) by and among Level 3 and Allegiance Regarding

Certain Asserted Offsets, Reservations of Right, and Related Matters (Docket. No. 399), which First Stipulation is incorporated herein by reference and remains in full force and effect.

D. 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 was obligated to pay Allegiance a Purchase Price installment in the amount of \$25,000,000 on or about November 1, 2003 (the "November Installment Debt").

E. 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 November Installment Debt. In addition to the Performance Warranty Claims, Level 3 has asserted certain claims relating to purported Debtor failures to deliver certain Ports by reason of "Force Majeure Events" under the INSPA in the amount of \$506,688.00 (the "Initial Delivery Claims"), and also certain claims relating to Debtors' alleged failure to deliver Ports and in respect of Backhaul Services since July 15, 2003 in the amount of \$88,560 (the "Additional Delivery Claims") (the Performance Warranty Claims, the Initial Delivery Claims and the Additional Delivery Claims, are referred to hereinafter collectively, as the "Subject INSPA Claims"). Allegiance, among other things, (i) does not acknowledge the existence or validity of the Subject INSPA Claims, or any other claims Level 3 may assert under the INSPA, (ii) disputes all of the foregoing assertions and claims of Level 3, and (iii) disputes the calculations made, if any, by Level 3 related to the Subject INSPA Claims.

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<sup>1</sup> To the extent that any term herein is initially capitalized, it shall have the meaning set forth in the INSPA unless otherwise defined expressly herein.

F. 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 Second Stipulation and Agreed Order.

**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 Second 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 November 1, 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 November 1, 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 Initial Delivery Claims, and the Additional 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 Initial Delivery Claims and the Additional 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 INSPA, 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 Initial Delivery Claims and the Additional 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, the Initial Delivery Claims and the Additional 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” (as that term is defined in the First Stipulation) or the November Installment Debt; provided, further, however, that acceptance of payment under the First Stipulation, hereunder, or Level 3’s continued withholding of the Initial and Additional Delivery Claims amounts, shall not be deemed an admission by the Debtors that Level 3 has any rights or remedies to withhold the Initial or Additional Delivery Claims, or that the Debtors have breached any of their obligations under the INSPA.

3. Nothing contained in this Second 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 November 3, 2003, Level 3 paid Allegiance \$13,882,808.00. One (1) business day after the entry of the Agreed Order approving this Second Stipulation, if as of such day the Agreed Order is effective and unappealed, Level 3 shall pay Allegiance \$11,028,632.00.

5. The First Stipulation and this Second Stipulation represent the entire agreement of the parties hereto as to its subject matter, but do not constitute a resolution of any issues by and among Level 3, Allegiance and the other Debtors. This Second Stipulation may not

be modified or amended except by written agreement of the parties and approval of the Bankruptcy Court.

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

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

**LEVEL 3 COMMUNICATIONS, LLC**

By: /s/ Edward J. LoBello  
Michael B. Schaedle, Esquire  
or Edward J. LoBello, Esquire,  
each one of its counsel

**ALLEGIANCE TELECOM COMPANY  
WORLDWIDE AND AFFILIATED DEBTORS**

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

The foregoing Second Stipulation, 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 November, 2003, New York, New York.

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