EXHIBIT A

Motion of KMC Telecom XI LLC Pursuant to Bankruptcy Rule 9018, Section 105(a) of the Bankruptcy Code and Rule 60(b) of the Federal Rules of Civil Procedure to Vacate Order Pursuant To Section 107(B) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (A) Authorizing Level 3 Communications, LLC to File All Exhibits to the Motion for Recoupment and Relief from the Automatic Stay Under Seal, and (B) Scheduling an In Camera Hearing on The Motion, dated February 13, 2004

Hearing Date: February 25, 2004 at 10:00 a.m.
Objection Deadline: February 23, 2004 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re ALLEGIANCE TELECOM, INC., et al., Debtors.	Chapter 11 Case No. 03-13057 (RDD) (Jointly Administered)

MOTION OF KMC TELECOM XI LLC PURSUANT TO BANKRUPTCY RULE 9018, SECTION 105(a) OF THE BANKRUPTCY CODE RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE TO VACATE ORDER PURSUANT TO SECTION 107(b) OF THE BANKRUPTCY CODE AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) AUTHORIZING LEVEL 3 COMMUNICATIONS, LLC TO FILE ALL EXHIBITS TO THE MOTION FOR RECOUPMENT AND RELIEF FROM THE AUTOMATIC STAY UNDER SEAL, AND (B) SCHEDULING AN IN CAMERA HEARING ON THE MOTION

KMC Telecom XI LLC (collectively, "KMC"), party-in-interest in the above-captioned chapter 11 cases, hereby files a motion (the "KMC Motion") pursuant to Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 60(b) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable in these cases pursuant to Bankruptcy Rule

9024, for an order vacating as to KMC that certain Order Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (A) Authorizing Level 3 Communications, LLC ("Level 3") to File All Exhibits to the Motion for Recoupment and Relief from the Automatic Stay Under Seal, and (B) Scheduling an In Camera Hearing on the Motion, entered by this Court at Docket No. 919 on February 10, 2004 (the "Seal Order").

The gist of this Motion is quite simple.[1] On an *ex parte* basis, Level 3 obtained an order of this Court sealing the record with respect to its motion to take various actions with respect to its Integrated Network Solution Purchase Agreement with one of the Debtors (the "INSPA"). KMC has a unique and significant interest in the Level 3 Motion (as defined below), because it is a critical provider of the services which the Debtors use to support the INSPA with Level 3. Indeed, the INSPA is specifically referenced in the contract between KMC and the Debtors. As a result, adverse developments with respect to the INSPA could have a major impact on KMC and its contractual relationships with the Debtors. None of the other parties which will have access to the Level 3 Motion are in a position, or have the motivation, to protect KMC's interest. Accordingly, KMC should be granted full access to the Level 3 Motion on the same basis, and subject to the same confidentiality protections, as is being afforded to the other principal constituencies under the Stay Order.

In further support of the KMC Motion, KMC respectfully states as follows:

1. The Seal Order entered by this Court only three days ago was sought by Level 3 by Motion dated February 4, 2004, in connection with the concurrently-filed Motion of Level 3 Communications, LLC Seeking an Order Permitting Recoupment and Relief from the Automatic Stay, as May Be Necessary: (i) to Permit Recoupment and/or Setoff of Certain

[1] The discussion in this paragraph and in paragraphs 1 through 9 below are only for purposes of supporting the KMC Motion and may not be used for any other purpose, including, without limitation, as an admission against interest by KMC in these or any other proceedings, and KMC reserves all rights in connection therewith.

Claims; (ii) to Require the Parties to Proceed with the Dispute Resolution Procedures Set Forth in the Parties' Agreement; and (iii) for Certain Other Ancillary Relief (the "Level 3 Motion").

2. In requesting entry of the Seal Order on an *ex parte* basis and on an extraordinarily compressed time frame – given that the Level 3 Motion itself is not scheduled to be heard by this Court until March 18, 2004 – Level 3 did not afford KMC and other parties-in-interest a reasonable opportunity to be heard as to the appropriateness of allowing (i) the Level 3 Motion and the exhibits thereto to be filed under seal or on a redacted basis or (ii) the subsequent proceedings in connection with the Level 3 Motion to be held before this Court *in camera*, precluding the attendance or participation of anyone other than representatives of Level 3, the Debtors, counsel to the Debtors' prepetition secured lenders, the Office of the United States Trustee and counsel to the Official Committee of Unsecured Creditors (the "Committee").

3. Although this Court made a finding in the Seal Order that "no notice of the Motion [to file under seal and conduct *in camera* proceedings] need be provided," Seal Order, at p. 1, nowhere in its motion requesting the Seal Order did Level 3 disclose to this Court the special interest that KMC clearly has in the agreements and issues involved in the Level 3 Motion,[2] which are unique and distinct from the general interests of other creditors of the Debtors. That unique interest makes it essential that KMC be apprised of all of the contentions

[2] Level 3 undoubtedly is acutely aware of KMC's interest in these proceedings, as evidenced by other pleadings that Level 3 filed before this Court. See Objection of Level 3 Communications, LLC to Debtors' Preliminary Relief Sought in Respect of Motion for Orders Pursuant to Sections 105(a), 363, 365 and 1146(c) of the Bankruptcy Code: (A) (I) Fixing the Time, Date, and Place for the Bidding Procedures Hearing and (II) Approving the No-Shop Provisions Set Forth in the Asset Purchase Agreement with Qwest Communications International Inc.; and (B) (I) Establishing Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Assets of the Debtors, (II) Approving the Form and Manner of Notices, (III) Approving the Asset Purchase Agreement Subject to Higher and Better Offers and (IV) Setting a Sale Approval Hearing Date and Granting Related Relief, Docket No. 823, dated January 6, 2004, at ¶¶ 7, 10-11 (objecting to the lack of disclosure with the post-sale performance of "two executory contracts of substantial complexity" – the INSPA and the KMC Service Agreement, alleging that the Debtors' future plans in connection with post-sale performance of these contracts "might very well place the INSPA (or the KMC Agreement) in irremediable breach" and that "[f]or any auction to be conducted fairly and properly, the Debtors must provide each prospective bidder, Level 3, KMC, the Committee, and the Debtors' bank group with a detailed, post- Qwest transaction ATCW business plan…).

raised by the Level 3 Motion, and take such steps necessary to ensure that the disposition of the Level 3 Motion does not result in a situation that imperils KMC's related contract with the Debtors.

4. KMC's interest in the Level 3 Motion relates to the twin facts that (a) KMC is a dominant provider of the services that the Debtors need to perform under their contract with Level 3, and (b) if the contract between the Debtors and Level 3 is terminated, the Debtors would have no further need for their contract with KMC. This interrelationship is particularly acute because the Debtors plan to sell substantially all their assets to the prevailing highest bidder at the February 12 auction, whereas the contracts with KMC and Level 3 will be the only material agreements that are retained by the Debtors – making it all the more critical to KMC that the contract with Level 3 remain in full force and effect. More specifically, the Level 3 Motion relates to the dispute over the INSPA between Level 3 and Allegiance Telecom Company Worldwide ("ATCW"), one of the Debtors herein. Under the INSPA, ATCW provides a connection between internet service end users and the Level 3 network – rendering Level 3 one of ATCW's largest customers.[3] ATCW, in turn, is able to perform under its agreement with Level 3 because it has contracted with KMC, under a Primary Rate Interface Service Agreement dated February 11, 2002 (the "KMC Service Agreement"), to provide a large percentage of the circuits that ATCW requires to perform its obligations to Level 3. Thus, any changes in the INSPA resulting from the Level 3 Motion would undoubtedly impact KMC.

[3] See Preliminary Objection of Level 3 Communications, LLC to Debtors' Motion for Orders Pursuant to §§ 105(A), 363, 365 and 1146(C) of the Bankruptcy Code: (I) Approving a Certain Asset Purchase Agreement, Subject to Higher and Better Offers and Approving the Sale of Substantially All of the Debtors' Assets to Qwest Communications International, Inc. Free and Clear of All Liens, Claims and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief, Docket No. 907, filed by Level 3 on February 4, 2004. See also supra at n.2.

5. As a consequence of the foregoing, if the INSPA were to be rejected or otherwise terminated, ATCW would have no further interest in continuing its performance under the KMC Service Agreement, to the extreme detriment of KMC. The Level 3 Motion apparently asserts various breaches of the INSPA, creating the specter of a termination of the INSPA or the risk that someone would seek to blame KMC for any alleged performance failures by the Debtors under the INSPA. KMC would need, and has a right, to be heard with respect to such issues. Moreover, particularly given the complex nature of these agreements and the numerous permutations in how the Level 3 dispute might be resolved, none of the Debtors, the Committee, the prepetition secured lenders or the U.S. Trustee are in a position to protect the interests of KMC as to these disputes. As a matter of due process and under Bankruptcy Code §1109(b), therefore, KMC should be permitted to protect its interests, which cannot occur unless KMC is allowed to participate fully as to the Level 3 Motion, and is relieved from the barriers imposed by the *ex parte* Order as to filing under seal and *in camera* hearings.

6. This Court's authority to modify an order that it entered on an *ex parte* basis cannot be questioned. For example, section 105(a) of the Bankruptcy Code provides, in pertinent part, that the "court may issue an order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Federal Rule 60(b) provides, among other things, that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b).[4]

[4] Either standing alone or in tandem with Federal Rule 60(b), section 105(a) of the Bankruptcy Code provides the bankruptcy court with the core power and authority to modify and interpret its own orders. See Delta Air Lines, Inc. v. Pan Am Corp. (In re Pan Am Corp.), 162 B.R. 667, 672 (S.D.N.Y. 1993) (finding bankruptcy court could modify

7. Even more directly, Bankruptcy Rule 9018 is clear that, where, as here, "[i]f an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion." Accordingly, the Bankruptcy Rules contemplate precisely the type of motion that KMC is bringing herein. See In re Robert Landau Assocs., Inc., 50 B.R. 670, 674 (Bankr. S.D.N.Y. 1985) (noting that the "Bankruptcy Rules contemplate that where an order [obtained to protect confidential information under Rule 9018] is sought *ex parte*, there may be a challenge as to the propriety of its entry or reach.").

8. In sum, given the close relationship between the KMC and Level 3 agreements, KMC will be severely prejudiced and irreparably harmed if it is precluded, as Level 3 suggests should be the case, from defending its interests, which it alone is capable of doing. To the extent, however, that Level 3 demonstrates a legitimate interest in confidentiality vis-à-vis KMC (which is already conversant with many of the confidential aspects of the Level 3 arrangement, insofar as they implicate its own Service Agreement), KMC agrees to be bound by the provisions of the penultimate paragraph of the Seal Order, applicable to the other parties currently having "all access" rights – the Debtors, the U.S. Trustee, counsel to the Committee and counsel to the prepetition secured lenders, who are "prohibited from disclosing or providing to third parties any information revealed during the in camera hearing or set forth in the exhibits to the [Level 3] Motion" – to assure that there will be no misuse of confidential Level 3

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existing DIP orders pursuant to section 105(a) of the Bankruptcy Code and Federal Rule 60(b); remanding for such a determination); In re Grossot, 205 B.R. 341, 343 (Bankr. M.D. Fla. 1997) ("The bankruptcy court has the equitable power to correct, modify or vacate its own interlocutory orders") (citing Coggin v. Coggin (In re Coggin), 30 F.3d 1443, 1451 (11th Cir. 1994)); Am. Bank and Trust Co. of Pa. v. Lebanon Steel Foundry (In re Lebanon Steel Foundry), 48 B.R. 520, 523 (Bankr. M.D. Pa. 1985) ("The power of the bankruptcy court to reconsider and to modify its own orders is indisputable") (citing In re Pottasch Bros., Inc., 79 F.2d 613, 616 (2d Cir. 1935)). In turn, Rule 60(b) has been applied in bankruptcy cases to relieve a party-in-interest from the effects of an *ex parte* order. See, e.g., In re Tygart Indus., Inc., 139 B.R. 145, 146-47 (W.D. Pa. 1991) (vacating order disallowing claim entered *ex parte* due to creditor's counsel's inadvertent lack of awareness of previous order scheduling hearing on claims objection); In re Robert Landau Assocs., Inc., 50 B.R. at 677-78 (vacating *ex parte* confidentiality order).

information. (Notably, Level 3 has received access to confidential information as to the KMC Service Agreement under a separate confidentiality agreement, and there is no reason that the language from the Seal Order quoted above or a parallel confidentiality agreement would not suffice to allow KMC access to Level 3 confidential information.) To the extent that the language from the Seal Order is somehow deemed insufficient to address Level 3's legitimate confidentiality concerns, KMC would also be amenable to a reasonable confidentiality agreement or protective order.

9. KMC has approached both Level 3 and the Debtors and proposed that it be allowed to participate fully in the Level 3 Motion and related proceedings, subject to confidentiality considerations as discussed above. To date, although the matter is still under discussion, these parties have yet to agree to modify the Seal Order as to KMC. Accordingly KMC is compelled to seek such relief from this Court.

10. Because this Motion does not present any novel or difficult issues of law, KMC respectfully requests that the Court waive the requirement of submission of a memorandum of law pursuant to Local Bankruptcy Rule 9013.

WHEREFORE, KMC respectfully requests that this Court enter an Order substantially in the form annexed hereto (i) granting the KMC Motion and (ii) granting KMC such other and further relief as is just and proper under the circumstances.

Dated: New York, New York
February 13, 2004

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