

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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COMMISSION  
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In re:

ADVANCED TELECOMMUNICATION  
NETWORK, INC.,

Chapter 11

Case No. 6:03-bk-00299-KSJ

Debtor.

**MOTION TO APPROVE COMPROMISE  
OF CONTROVERSY BETWEEN ADVANCED  
TELECOMMUNICATION NETWORK, INC. AND STACY ALLEN**

**NOTICE OF OPPORTUNITY TO  
OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within twenty-one (21) days from the date set forth on the proof of service attached to this paper plus an additional three days for service. If you object to the relief requested in this paper, you must file your response with the Clerk of the Court at the George C. Young Courthouse, 400 W. Washington Street, Suite 5100, Orlando, Florida 32801, and serve a copy on the movant's attorney, Russel M. Blain, Esquire, STICHTER, RIEDEL, BLAIN & POSTLER, P.A., 110 E. MADISON STREET, SUITE 200, TAMPA, FLORIDA 33602 within the time allowed.

If you file and serve a response within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Advanced Telecommunication Network, Inc. ("ATN"), as the reorganized debtor, files this Motion to Approve Compromise of Controversy with Stacy Allen and states:

**Background**

1. ATN filed a voluntary Chapter 11 petition on January 10, 2003.

2. The Reorganized Debtor filed its Amended Plan of Reorganization Submitted by Advanced Telecommunication Network, Inc., dated March 11, 2004 (Doc. No. 153) (the “Plan”). On June 22, 2004, the Court entered its Order Confirming Amended Plan of Reorganization submitted by Advanced Telecommunication Network, Inc. (Doc. No. 215) (the “Confirmation Order”).

3. ATN filed an adversary case against Stacy Allen in 2010. (Adv. Case No. 10-ap-00177.)

4. On March 3, 2013, Stacy Allen filed a Chapter 11 voluntary petition in the United States Bankruptcy Court for the District of New Jersey, Case No. 13-14348-JNP (the “New Jersey Bankruptcy Court”).

5. ATN and Stacy Allen have been engaged in active litigation until the present time.

6. The parties have reached a settlement of their dispute, and have determined that the compromise set forth herein is in the best interest of their respective estates. The terms of the settlement are set forth in the Main Settlement Agreement (the “Settlement Agreement”), dated as of February 2, 2016, by and between ATN and Damian Freeman, on the one hand, and Daniel W. Allen, David D. Allen, and Stacy M. Allen, on the other hand. A copy of the Settlement Agreement is attached hereto as Exhibit “A”, and incorporated in full by reference. To the extent of a conflict between the Motion and the description of the settlement terms and the Settlement Agreement, the Settlement Agreement shall control.<sup>1</sup>

7. As part of the settlement, Stacy Allen has arranged for a waiver of privileges,

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<sup>1</sup> The Settlement Agreement provides that it is first subject to approval by this court, and that Stacy Allen will then seek approval in the New Jersey Bankruptcy Court after this court’s approval. (Settlement Agreement, ¶ 1.)

including those held by herself, her husband Daniel Allen, his brother David Allen, and related parties, that will allow ATN to obtain valuable evidence in Adversary Consolidated Case Number 6:05-ap-00006-KSJ.

8. The Settlement Agreement is in the best interest of the creditors, ATN and ATN's estate because (i) Daniel Allen and David Allen filed bankruptcy and have received a discharge; (ii) Stacy Allen has few remaining assets, and is seeking a bankruptcy discharge and plan that would pay out the value which remains in her estate over many years; (iii) Daniel, David and Stacy Allen each are waiving all of their claims of privilege relating to the complete files of their attorneys, including the attorneys that ATN is actively litigating against, and (iv) ATN's resources are better spent against solvent defendants with a waiver of the privileges described above. In short, after years of chasing the Allens, in one form or another for twenty-two years (since 1994), ATN has recovered nothing and the only real hope of a recovery on the litigation claims for the creditors of ATN lies with related litigation against the attorneys who orchestrated the dissipation of the Allens' assets.

#### **APPLICABLE LAW**

9. Pursuant to Federal Rule of Bankruptcy Rule 9019(a), approval of a compromise settlement is within the sound discretion of this Court. *In re Foster Mortg. Corp.*, 68 F.3d 914, 917 (5<sup>th</sup> Cir. 1995); *In re American Reserve Corp.*, 841 F.2d 159, 162 (7<sup>th</sup> Cir. 1987); *In re Walsh Construction, Inc.*, 669 F. 2d 1325, 1328 (9<sup>th</sup> Cir. 1992). The standard for approval of a compromise settlement is whether the proposed settlement is "fair and equitable" and "in the best interest of the estate." *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Thus, "when a bankruptcy court decides whether to approve or disapprove a proposed settlement, it

must consider:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*In re Justice Oaks II, Ltd.*, 898 F. 2d 1544, 1549 (11<sup>th</sup> Cir. 1990). Moreover, to approve a compromise, the Court need not determine which party would ultimately prevail, but only that the matter was open to reasonable doubt. *Id.*

10. Here, the probability of success and difficulties in collection favor a settlement. First, each of the Allens are in bankruptcy or have received a discharge and have little assets left after the expenditure of the funds in the offshore trust designed by their attorneys. Second, after 22 years of active litigation, as the Court is aware, the underlying litigation is quite complex. Finally, the Settlement Agreement favors the paramount interest of the creditors because it furthers ATN's pursuit of the estate's far most valuable asset, Adversary Case Number 6:05-ap-00006-KSJ.

11. The Reorganized Debtor requests that as part of the order granting this motion the Court retain jurisdiction to interpret and enforce the Settlement Agreement.

**WHEREFORE**, ATN requests that this Court enter an order that (i) grants this

motion to compromise controversy; (ii) authorizes the parties to consummate the settlement; and (iii) grants such additional relief as the Court deems appropriate.

/s/ Daniel R. Fogarty  
Russell M. Blain (FBN 0236314)  
Daniel R. Fogarty (FBN 0017532)  
Stichter, Riedel, Blain & Postler, P.A.  
110 East Madison Street, Suite 200  
Tampa, Florida 33602  
dfogarty@srbp.com  
(813) 229-0144 – Phone  
(813) 229-1811 – Fax  
Attorneys for Reorganized Debtor

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of February, 2016, a true and correct copy of the foregoing **MOTION TO APPROVE COMPROMISE OF CONTROVERSY** was forwarded by CM/ECF, U.S. Mail and/or e-mail to:

All creditors and parties in interest shown on attached matrix

/s/ Daniel R. Fogarty  
Attorney

## THE MAIN SETTLEMENT AGREEMENT

Advanced Telecommunication Network, Inc. ("ATN") and Damian Freeman ("Freeman") on the one hand, and Daniel W. Allen, David D. Allen and Stacy M. Allen (the "Allens") on the other hand, enter into this main settlement agreement ("this Agreement") on the date of the last signature below.

NOW, THEREFORE, for good and valuable consideration exchanged herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The United States Bankruptcy Court for the Middle District of Florida, Orlando Division, Case No. 6:03-bk-00299-KSJ (the "Orlando Bankruptcy Court"), is presiding over ATN's bankruptcy case and related adversary proceedings. The United States Bankruptcy Court for the District of New Jersey, Case No. 13-14348-JNP (the "New Jersey Bankruptcy Court") is presiding over Stacy Allen's bankruptcy case and related adversary proceedings. Pursuant to Section 349(b)(2), a dismissal of Stacy Allen's case automatically vacates ATN's Section 550 judgment against her. Therefore, the parties agree that ATN must have this Agreement approved by the Orlando Bankruptcy Court before Stacy Allen requests that the New Jersey Bankruptcy Court either, (i) dismiss her case or, (ii) approve this Agreement and dismiss her case (Stacy's Motions"). ATN agrees to file a motion with the Orlando Bankruptcy Court requesting approval of this Agreement within two (2) business days of its execution ("ATN's Motion"). Stacy Allen agrees to join ATN's Motion. Stacy Allen agrees to file Stacy's Motions within two (2) days of the approval of ATN's Motion. ATN agrees to join in Stacy's Motions.. Stacy Allen will request that Stacy's Motions be heard on an expedited basis because the parties understand that ATN needs the Evidence for upcoming depositions. Accordingly, this Agreement shall become effective after both (i) the approval of ATN's Motion and, (ii) the earlier of the dismissal of



Stacy Allen's bankruptcy case, or the approval of this Agreement by the New Jersey Bankruptcy Court (the "Effective Date"). Regardless of any other settlements, compromises or other change in current circumstances, the parties must, in good faith, pursue the approval of this Agreement by the Orlando and New Jersey Bankruptcy Courts.

2. Each of the parties to this Agreement agrees to all of the terms and conditions of this Agreement in their personal and individual capacity. Further, each party agrees to all of the terms and conditions of this Agreement in any and all of their representative capacities ("in a Representative Capacity"). The term in a Representative Capacity as used herein is intended by the parties to be given the broadest possible meaning.

3. Without limiting the foregoing, the parties intend to include within the meaning of the phrase, in a Representative Capacity, the following non-exclusive list:

- a. For and on behalf of any corporation, partnership, estate, trust or other entity, as an authorized or *de facto* officer, agent, partner, trustee, person in control, or other representative;
- b. As a public officer, personal representative, guardian or other representative, in the capacity recited in any instrument;
- c. As an attorney-in-fact for a principal; or
- d. In any other capacity as an authorized or *de facto* representative of another.

4. It is explicitly understood that after (i) the Effective Date, and (ii) all of the fully executed documents described in paragraph 7 are delivered into escrow, and certified as such by the escrow agent, the following releases below shall become effective and irrevocable under any circumstances. To the fullest extent permitted under applicable law, in consideration for the obligations of the parties set forth under this Agreement, ATN and Freeman each individually and in a Representative Capacity on the one hand, and the Allens each individually and in a Representative Capacity on the other hand, on each of their own behalves and on behalf of every



party's past and present officers, directors, members, partners, employees and agents ("Their Past and Present Agents"), hereby unconditionally release every other party and Their Past and Present Agents from any and all agreements, claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, choses in action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, from the beginning of time to the present day with the sole exception of the rights and obligations arising from this Agreement.

5. **Notwithstanding anything to the contrary contained in this Agreement or its Exhibits, no portion of this Agreement or its exhibits, including the releases above, is intended by the parties to release or otherwise benefit in any way whatsoever any law firm or attorney who ever represented the Allens.**

6. The escrow instructions to complete the actions required under this Agreement are as follows: David Klauder, or the law firm with which he is associated, shall serve as escrow agent under this Agreement.

7. Within two (2) business days of the Effective Date, Daniel and Stacy Allen shall cause to be fully signed and delivered into escrow all of the following:

- a. The **Joint Notice to Flaster**, attached hereto as **Exhibit A**; and
- b. **The Ancillary Settlement Agreement**, attached hereto as **Exhibit B**.

8. In a certified writing, the escrow agent shall notify counsel for ATN within two (2) business days of the escrow agent's receipt of the fully signed documents described in paragraph 7. Within two (2) business days of such certified notice, but not before the Effective Date, ATN will cause to be filed the following:



- a. A Rule 41(a)(1)(A)(ii) "stipulation of dismissal signed by all parties who have appeared" with prejudice of any and all adversary proceedings and claims against any of the Allens in any venue, including but not limited to, ATN's adversary proceeding(s) against the Allens now pending in the Orlando Bankruptcy Court (This document will be timely prepared by counsel for the Allens for signature by ATN and related parties); and
- b. A Termination of Lis Pendens asserted by ATN or any of its affiliates on Stacy Allen's property located at 18 East Aberdeen Road, Ocean City, NJ 08226. (This document will be timely prepared by counsel for the Allens for signature by ATN and related parties); and
- c. A Notice of withdrawal with prejudice of ATN's Proof of Claim in Stacy Allen's bankruptcy case now pending in the United States Bankruptcy Court for the District of New Jersey with a stipulated proposed order to the Bankruptcy Court approving such claim withdrawal with prejudice. (These documents will be timely prepared by counsel for the Allens for signature by ATN and related parties.)

9. ATN, its affiliates and Freeman agree to fully and timely cooperate with Daniel and Stacy Allen and to take any and all actions reasonably necessary or helpful to give full, timely, and complete effect to all of the actions intended under paragraph 8. This cooperation shall include an obligation to sign and deliver to counsel for the Allens any documents prepared by counsel for the Allens that are intended to remove any lien, encumbrance or claim of any kind asserted by ATN, or any of its affiliates, on or against any of Stacy Allen's property.



10. Within two (2) business days of the satisfaction of ATN's obligations set forth in paragraph 8, the escrow agent shall deliver to ATN's counsel all of the documents referenced in paragraph 7. In addition, the Allens will cause a copy of the work-product documents referenced in the Joint Notice to Flaster to be delivered to counsel for ATN within five (5) days of their receipt. Upon request by ATN at any time after ATN has satisfied its obligations set forth in paragraph 8, the Allens agree to (i) promptly execute an assignment to ATN, and (ii) cause Daniel Allen, Jr., Rachael Allen, and Lindsay Allen to execute an assignment to ATN which conveys any and all property interests in any work-product documents that are not protected by the special carve out described in paragraph 11.

11. Once ATN satisfies its obligations in paragraph 8, the Allens irrevocably waive, and shall disavow in every forum, any and all Privileges (as defined below) that arose in connection with any attorney-client relationship that any of the Allens have ever had from the beginning of time to the present date relating to any and all law firms and attorneys that ever represented the Allens in any manner or matter directly or indirectly related to (i) the Stock Purchase and Escrow Agreement dated on or about January 12, 1999 (the "Stock Purchase Agreement"), or (ii) any litigation associated with the Stock Purchase Agreement, or (iii) the collection, receipt, transfer, distribution, disposition, dissipation, secretion or protection of any monies paid pursuant to the Stock Purchase Agreement (the "Waiver of Privileges"). Notwithstanding the foregoing, as a special carve out, the Allens are preserving Privileges with the following law firms and attorneys:

- a. Adam S. Malamut and the law firm of Liebling Malamut, LLC;
- b. Bielli & Klauder, LLC;
- c. O'Kelly Ernst & Bielli, LLC; and
- d. Ciardi, Ciardi & Astin.

12. The Allens know of no joint defense, joint work or joint representation performed between any firm or lawyer listed in paragraph 11 and any firm or lawyer that is not listed in paragraph 11 ("Joint Work"). Once ATN satisfies its obligations in paragraph 8, to the extent that any Joint Work actually occurred, notwithstanding anything to the contrary herein contained, the Allens (i) waive any claim of Privilege associated with such Joint Work, and (ii) shall disavow any related Privilege in all forums.

13. The term "Privileges" as used herein is intended by the parties to be given the broadest possible meaning. Without limiting the foregoing, the parties intend to include within such meaning the privileges commonly and generally referred to in decisional law as the "attorney-client privilege" and the "work-product privilege." The parties acknowledge that such privileges are sometimes referred to by different labels in decisional law. It is the intent of the parties that regardless of their label, such privileges and every other type of privilege, confidentiality or right of privacy that has ever been recognized by any court under any state, federal, civil, or criminal law, shall be included within the definition of the term "Privileges" as used herein.

Without limiting any of the foregoing, the parties intend that any such privilege, confidentiality, or right of privacy is to be included within the definition of the term "Privileges" as used herein, whether they can be thought of as relating to, arising from, or governed by, a constitution, a statute, the common law, a rule of evidence, a rule of procedure, an ethical rule, a rule that regulates members of a bar, a regulation, or an agreement.

Without limiting any of the foregoing, to the extent that any other rule of law could possibly bar the disclosure of any documents, testimony or other information, such rule of law is intended by the parties to be included within the definition of the term "Privileges" as used in this



Agreement. Likewise, to the extent that any rule of law could possibly bar the admission of any documents, testimony or other information into evidence at any stage of any litigation, such rule of law is also intended by the parties to be included within the definition of the term "Privileges" as used in this Agreement.

14. It is explicitly understood that even though David Allen is a party and signatory to this Agreement, Daniel and Stacy Allen have made clear to ATN and Freeman that David Allen is not controlled in any way by Daniel or Stacy Allen and that any violation or failure to carry out any duties by David Allen of this Agreement is NOT cause for ATN or Freeman to bring suit against Daniel and/or Stacy Allen for breach of this Agreement. Daniel and Stacy Allen will use their best efforts to cause David Allen to carry out his duties required under this Agreement.

15. The Waiver of Privileges is intended to allow ATN to obtain all evidence that exists anywhere in any form that would assist ATN in proving its case against anyone liable for their acts directly or indirectly associated with (i) the Stock Purchase Agreement, or (ii) the collection, receipt, transfer, distribution, disposition, dissipation, secretion or protection of any monies paid pursuant to the Stock Purchase Agreement (the "Evidence"). To that end, Daniel and Stacy Allen agree to take any and all actions reasonably necessary or helpful to give full, timely, and complete effect to this Agreement, including that Daniel and Stacy Allen agree to appear voluntarily one time at trial in the Middle District of Florida, without subpoena, and to testify truthfully at deposition, hearing and trial (as may be necessary, and with travel expenses paid as provided for below) (the "Appearances"). The Allens agree to quickly perform all of their duties as defined in this Agreement when reasonably requested pursuant to this Agreement. It is explicitly understood that the content of Daniel or Stacy Allen's testimony cannot be used by anyone to challenge this Agreement.

16. If Daniel Allen is deceased or is unable to testify due to genuine incapacity, then his failure to travel to Florida to testify will not be considered a violation in any way of this Agreement.

17. It is the intent of the parties hereto that the Allens shall not be required to incur any out-of-pocket expenses themselves in carrying out the intent of this Agreement. Accordingly, whenever any of the Allens are asked in writing by ATN to take any action pursuant to this Agreement, ATN shall advance to the appropriate Allen party, all reasonable expenses, as permitted by and subject to applicable law, necessary to carry out such actions including but not limited to lost wages at a cost of \$200 per day should such action(s), including but not limited to testimony at trial or via deposition, be required during the work week.

18. The Allens hereby warrant that (i) they have not made, and will not make, any other agreement with anyone concerning the assertion or waiver of any Privileges, (ii) they have not made, and will not make, any other agreement with anyone concerning any other subject matter of this Agreement, and (iii) they are the only parties whose authority and signature is required to accomplish the intent of this Agreement. The parties agree that the warranty provided in this paragraph is the only warranty that any of the Allens are making to ATN and all other warranties of every kind are expressly disclaimed.

19. This Agreement and the Ancillary Settlement Agreement (the "Combined Agreements") contain the entire agreement between all of the parties to the Combined Agreements and they supersede, replace and cancel any and all prior agreements between any one or more of ATN, Freeman and his related companies and any of their affiliates on the one hand, and any one or more of Daniel W. Allen, David D. Allen, Stacy M. Allen, Daniel Allen, Jr., Rachael Allen, and Lindsay Allen and any of their related companies and any of their

affiliates on the other hand. The Combined Agreements are fully integrated and they fully incorporate the intent of the parties. Any prior or contemporaneous understandings between the parties are merged into the Combined Agreements. No representations or promises have been made or relied upon by the parties, whether oral or written, that are not expressly set forth in the Combined Agreements and neither party has made any promises, side deals or representations which are not expressly contained in this agreement in order to induce any party to enter into it.

20. All parties to this Agreement have sought counsel to decide whether or not to enter into this Agreement. Such counsel has advised all parties on all relevant matters, including but not limited to, the meaning, effect, and consequences of entering into this Agreement. After weighing all of the pros and cons of entering this Agreement, the parties have determined that it is in their respective and collective best interest to enter this Agreement. The parties therefore enter this Agreement freely and voluntarily after giving its effect thorough consideration and mature thought.

21. The parties acknowledge and agree that the only action or inaction by the Allens that will constitute a default under this Agreement is the failure to do any of the following:

- a. The delivery into escrow of documents as specified in paragraph 7.
- b. The delivery of the work-product documents referenced in the Joint Notice to Flaster once received in accordance with paragraph 10.
- c. The execution and delivery of any requested assignments described in paragraph 10.
- d. The disavowing of the waived Privileges in any and all forums ("Disavowing in all Forums").
- e. The performing of the actions reasonably necessary for ATN to acquire the Evidence, which the parties believe is limited to the signing of (i) additional authorizations, and (ii) authorizations to sue in the Allens' names at ATN's sole expense, and (iii) assignments of any of the Allen's property rights in their file held by their past or present attorneys, except those subject to the

special carve out described in paragraph 11, and (iv) notices (including but not limited to notices similar in format to the **Joint Notice to Flaster**, and (v) other consents as may be necessary to obtain the Evidence.


- f. The carrying out of the Appearances.
- g. The honoring of the warranties as specified in paragraph 18.

No other action or inaction by the Allens shall be considered a default under this Agreement. ATN agrees that if it believes the Allens are in default of any provision of this Agreement, ATN will provide the Allens at least ten (10) days' notice to cure such default before ATN applies to the Orlando Bankruptcy Court to enforce this Agreement. If the Allens cure the default(s) within such period, ATN shall not take further action against the Allens as a result of such cured default. Notwithstanding the foregoing, because it involves a court and possibly an empaneled jury, rather than just the parties, the Allens shall not have ten (10) days to cure the Appearances or any Disavowing in all Forums. Such defaults shall be immediately cured.

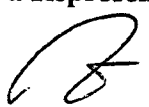
22. The parties will request that the United States Bankruptcy Court for the Middle District of Florida retain jurisdiction to enforce this Agreement.

23. The parties agree that this Agreement shall be governed by the laws of the State of New Jersey.

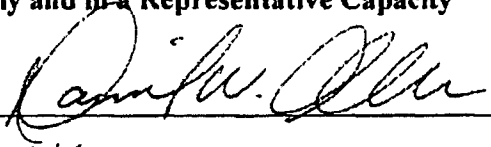
**ADVANCED TELECOMMUNICATION NETWORK, INC.**

By:   
As authorized Agent  
Date: Feb. 2nd 2016

**DAMIAN FREEMAN**  
Individually and in a Representative Capacity


Signature:   
Date: Feb. 2nd 2016

**DANIEL W. ALLEN**  
Individually and in a Representative Capacity

Signature: 

Date: 2/2/16

**STACY M. ALLEN**  
Individually and in a Representative Capacity

Signature: 

Date: 2/2/16

**DAVID D. ALLEN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DAVID KLAUDER, AS ESCROW AGENT**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**DANIEL W. ALLEN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**STACY M. ALLEN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DAVID D. ALLEN**  
Individually and in a Representative Capacity

Signature:  \_\_\_\_\_

Date: 2/2/2016

**DAVID KLAUDER, AS ESCROW AGENT**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DANIEL W. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**STACY M. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DAVID D. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DAVID KLAUDER, AS ESCROW AGENT**

Signature:  \_\_\_\_\_

Date: 2/2/16

# **EXHIBIT A**

**JOINT NOTICE TO FLASTER**

Please find any definitions of any capitalized terms defined in The Main Settlement Agreement and The Ancillary Settlement Agreement attached hereto.

All of the undersigned Allens hereby waive all Privileges.

All of the undersigned Allens hereby instruct Flaster and Peter Spigel to immediately (i) withdraw any assertions of any Privileges that have been claimed on behalf of any of the Allen parties, and (ii) refrain from asserting any Privileges in any context or forum whatsoever in the future.

All of the undersigned Allens also hereby instruct Flaster and Peter Spigel to immediately (i) withdraw any and all claims of any privilege that currently appear on any privilege log served upon ATN, and (ii) to refrain from making any further claims of privilege as to any document on such privilege log or any amended or supplemental privilege log.

All of the undersigned Allens further instruct Flaster and Peter Spigel to immediately deliver to ATN copies of all emails and other correspondence between any of the Allens and anyone previously or currently employed by or associated with Flaster, including all such emails or other correspondence that appear on any privilege log produced by Flaster, and in addition, any such emails or other correspondence that do not appear on any privilege log produced by Flaster.

All of the undersigned Allens hereby instruct Flaster and Peter Spigel to immediately deliver a copy of all work product documents to Daniel W. Allen that were ever made for the benefit of any one or more of the undersigned Allens by anyone at Flaster.

The delivery address for such documents is 18 East Aberdeen Road, Ocean City, NJ 08226..

Finally, the Allens acknowledge that applicable law provides that Flaster and Peter Spigel may reveal and use any privileged attorney-client communications between the Allens and Flaster or Peter Spigel and any work-product prepared by Flaster or Peter Spigel for the Allens, to mount a defense to any civil claim against Flaster or Peter Spigel.

**DANIEL W. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**STACY M. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DAVID D. ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DANIEL ALLEN, JR.**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**RACHEL ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**LINDSAY ALLEN**  
**Individually and in a Representative Capacity**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT B**

## THE ANCILLARY SETTLEMENT AGREEMENT

Advanced Telecommunication Network, Inc. ("ATN") and Damian Freeman ("Freeman") on the one hand, and Daniel Allen, Jr., Rachael Allen, and Lindsay Allen (the "Allens") on the other hand, enter into this ancillary settlement agreement ("this Agreement") on the date of the last signature below.

NOW, THEREFORE, for good and valuable consideration exchanged herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. This Agreement shall become effective once a fully executed copy is received by ATN from the escrow agent in the manner and order described in The Main Settlement Agreement dated February 2<sup>nd</sup> 2016.

2. Each of the parties to this Agreement agrees to all of the terms and conditions of this Agreement in their personal and individual capacity. Further, each party agrees to all of the terms and conditions of this Agreement in any and all of their representative capacities ("in a Representative Capacity"). The term in a Representative Capacity as used herein is intended by the parties to be given the broadest possible meaning.

3. Without limiting the foregoing, the parties intend to include within the meaning of the phrase, in a Representative Capacity, the following non-exclusive list:

- a. For and on behalf of any corporation, partnership, estate, trust or other entity, as an authorized or *de facto* officer, agent, partner, trustee, person in control, or other representative;
- b. As a public officer, personal representative, guardian or other representative, in the capacity recited in any instrument;
- c. As an attorney-in-fact for a principal; or
- d. In any other capacity as an authorized or *de facto* representative of another.

4. It is explicitly understood that once the releases in The Main Settlement Agreement become effective and irrevocable, then the following releases likewise become effective and irrevocable under any circumstances. To the fullest extent permitted under applicable law, in consideration for the obligations of the parties set forth under this Agreement, ATN and Freeman each individually and in a Representative Capacity on the one hand, and the Allens each individually and in a Representative Capacity on the other hand, on each of their own behalves and on behalf of every party's past and present officers, directors, members, partners, employees and agents ("Their Past and Present Agents"), hereby unconditionally release every other party and Their Past and Present Agents from any and all agreements, claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, choses in action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, from the beginning of time to the present day with the sole exception of the rights and obligations arising from this Agreement.

5. **Notwithstanding anything to the contrary contained in this Agreement or its Exhibits, no portion of this Agreement or its exhibits, including the releases above, is intended by the parties to release or otherwise benefit in any way whatsoever any law firm or attorney who ever represented the Allens.**

6. Upon request by ATN, the Allens agree to execute an assignment to ATN which conveys any and all property interests in any work-product documents that are not protected by the special carve out described in the paragraph immediately below as may be necessary to obtain the Evidence.



7. The Allens hereby irrevocably waive, and shall disavow in every forum, any and all Privileges (as defined below) that arose in connection with any attorney-client relationship that any of the Allens have ever had from the beginning of time to the present date relating to any and all law firms and attorneys that ever represented the Allens in any manner or matter directly or indirectly related to (i) the Stock Purchase and Escrow Agreement dated on or about January 12, 1999 (the "Stock Purchase Agreement"), or (ii) any litigation associated with the Stock Purchase Agreement, or (iii) the collection, receipt, transfer, distribution, disposition, dissipation, secretion or protection of any monies paid pursuant to the Stock Purchase Agreement (the "Waiver of Privileges"). Notwithstanding the foregoing, as a special carve out, the Allens are preserving Privileges with the following law firms and attorneys:

- a. Adam S. Malamut and the law firm of Liebling Malamut, LLC;
- b. Bielli & Klauder, LLC;
- c. O'Kelly Ernst & Bielli, LLC; and
- d. Ciardi, Ciardi & Astin.

8. The Allens know of no joint defense, joint work or joint representation performed between any firm or lawyer listed in the paragraph immediately above and any firm or lawyer that is not listed in the paragraph immediately above ("Joint Work"). To the extent that any Joint Work actually occurred, notwithstanding anything to the contrary herein contained, the Allens (i) waive any claim of Privilege associated with such Joint Work, and (ii) shall disavow any related Privilege in all forums.

9. The term "Privileges" as used herein is intended by the parties to be given the broadest possible meaning. Without limiting the foregoing, the parties intend to include within such meaning the privileges commonly and generally referred to in decisional law as the "attorney-client privilege" and the "work-product privilege." The parties acknowledge that such

privileges are sometimes referred to by different labels in decisional law. It is the intent of the parties that regardless of their label, such privileges and every other type of privilege, confidentiality or right of privacy that has ever been recognized by any court under any state, federal, civil, or criminal law, shall be included within the definition of the term "Privileges" as used herein.

Without limiting any of the foregoing, the parties intend that any such privilege, confidentiality, or right of privacy is to be included within the definition of the term "Privileges" as used herein, whether they can be thought of as relating to, arising from, or governed by, a constitution, a statute, the common law, a rule of evidence, a rule of procedure, an ethical rule, a rule that regulates members of a bar, a regulation, or an agreement.

Without limiting any of the foregoing, to the extent that any other rule of law could possibly bar the disclosure of any documents, testimony or other information, such rule of law is intended by the parties to be included within the definition of the term "Privileges" as used in this Agreement. Likewise, to the extent that any rule of law could possibly bar the admission of any documents, testimony or other information into evidence at any stage of any litigation, such rule of law is also intended by the parties to be included within the definition of the term "Privileges" as used in this Agreement.

10. The Waiver of Privileges is intended to allow ATN to obtain all evidence that exists anywhere in any form that would assist ATN in proving its case against anyone liable for their acts directly or indirectly associated with (i) the Stock Purchase Agreement, or (ii) the collection, receipt, transfer, distribution, disposition, dissipation, secretion or protection of any monies paid pursuant to the Stock Purchase Agreement (the "Evidence"). The Allens agree to

quickly perform all of their duties as defined in this Agreement when reasonably requested pursuant to this Agreement.

11. The Allens hereby warrant that (i) they have not made, and will not make, any other agreement with anyone concerning the assertion or waiver of any Privileges, (ii) they have not made, and will not make, any other agreement with anyone concerning any other subject matter of this Agreement, and (iii) they are the only parties whose authority and signature is required to accomplish the intent of this Agreement. The parties agree that the warranty provided in this paragraph is the only warranty that any of the Allens are making to ATN and all other warranties of every kind are expressly disclaimed.

12. This Agreement and The Main Settlement Agreement (the "Combined Agreements") contain the entire agreement between all of the parties to the Combined Agreements and they supersede, replace and cancel any and all prior agreements between any one or more of ATN, Freeman and his related companies and any of their affiliates on the one hand, and any one or more of Daniel W. Allen, David D. Allen, Stacy M. Allen, Daniel Allen, Jr., Rachael Allen, and Lindsay Allen and any of their related companies and any of their affiliates on the other hand. The Combined Agreements are fully integrated and they fully incorporate the intent of the parties. Any prior or contemporaneous understandings between the parties are merged into the Combined Agreements. No representations or promises have been made or relied upon by the parties, whether oral or written, that are not expressly set forth in the Combined Agreements and neither party has made any promises, side deals or representations which are not expressly contained in this agreement in order to induce any party to enter into it.

13. All parties to this Agreement have sought counsel to decide whether or not to enter into this Agreement. Such counsel has advised all parties on all relevant matters, including

but not limited to, the meaning, effect, and consequences of entering into this Agreement. After weighing all of the pros and cons of entering this Agreement, the parties have determined that it is in their respective and collective best interest to enter this Agreement. The parties therefore enter this Agreement freely and voluntarily after giving its effect thorough consideration and mature thought.

14. The parties acknowledge and agree that the only action or inaction by the Allens that will constitute a default under this Agreement is the failure to do any of the following:

- a. The execution and delivery of any requested assignments described in paragraph 6.
- b. The disavowing of the waived Privileges in any and all forums (“Disavowing in all Forums”).
- c. The performing of the actions reasonably necessary for ATN to acquire the Evidence, which the parties believe is limited to the signing of (i) additional authorizations, and (ii) authorizations to sue in the Allens’ names at ATN’s sole expense, and (iii) assignments of any of the Allen’s property rights in their file held by their past or present attorneys, except those subject to the special carve out described in paragraph 7, and (iv) notices (including but not limited to notices similar in format to the **Joint Notice to Flaster**, and (v) other consents as may be necessary to obtain the Evidence.
- d. The honoring of the warranties as specified in paragraph 11.

No other action or inaction by the Allens shall be considered a default under this Agreement. ATN agrees that if it believes the Allens are in default of any provision of this Agreement, ATN will provide the Allens at least ten (10) days’ notice to cure such default before ATN applies to the Orlando Bankruptcy Court to enforce this Agreement. If the Allens cure the default(s) within such period, ATN shall not take further action against the Allens as a result of such cured default. Notwithstanding the foregoing, because it involves a court and possibly an empaneled jury, rather than just the parties, the Allens shall not have ten (10) days to cure any Disavowing in all Forums. Such default shall be immediately cured.

15. The parties will request that the United States Bankruptcy Court for the Middle District of Florida retain jurisdiction to enforce this Agreement.

16. The parties agree that this Agreement shall be governed by the laws of the State of New Jersey.

**ADVANCED TELECOMMUNICATION NETWORK, INC.**

By: \_\_\_\_\_  
As authorized Agent

Date: \_\_\_\_\_

**DAMIAN FREEMAN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**DANIEL ALLEN, JR.**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**RACHEL ALLEN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**LINDSAY ALLEN**  
Individually and in a Representative Capacity

Signature: \_\_\_\_\_

Date: \_\_\_\_\_