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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of WorldCom, Inc. and)
MCI Communications Corporation)
for Transfer of Control of)
MCI Communications Corporation to)
WorldCom, Inc.)

CC Docket No. 97-211

To: The Commission

RENEWED MOTION TO DISMISS

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SUMMARY

Despite three chances to provide a clear, unambiguous assessment of their proposed merger, WorldCom and MCI have failed to offer the Commission and Petitioners in this proceeding the basic information required by the *Bell Atlantic/NYNEX Order*. From a public interest showing that leaves the origins of \$23 billion in synergies all but unexplained to market definitions that are of the Applicants' own creation, WorldCom and MCI have never provided the essential bedrock for analysis of their proposed combination. Considering their repeated failures to comply with Commission mandates, and the grave threat their merger poses to the public interest, the applications for transfer of MCI to WorldCom should be dismissed.

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The undersigned coalition of entities (“Coalition”) herewith submits its renewed motion to dismiss the above captioned applications of WorldCom, Inc. (“WorldCom”) and MCI Communications Corporation (“MCI”)(collectively, the “Applicants”) for transfers of control of MCI to WorldCom.¹ The Applicants’ burden to supply information consistent with the Commission’s *Bell Atlantic/NYNEX Order*² was clear from the outset of these proceedings. Despite being offered three opportunities to comply, WorldCom and MCI have submitted tomes of argumentation, yet failed to satisfy their burden of proof. They have ignored the *Bell Atlantic/NYNEX Order*’s public interest criteria, claiming that they simply do not apply to this

¹ On January 5, 1998, GTE Service Corporation (“GTE”) submitted a motion to dismiss the applications of WorldCom and MCI for transfers of control of MCI to WorldCom. On January 27, 1998, WorldCom and MCI submitted their Joint Opposition to GTE’s motion to dismiss. To date, the Commission has not acted on GTE’s motion.

² See, *NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 (rel. Aug. 14, 1997) (“*Bell Atlantic/NYNEX Order*”).

merger. They have cut from whole cloth market definitions that serve their own goals but bear little resemblance to those outlined in long-established precedent. And while the Applicants apparently believe that the sheer volume of their response can be a tonic for the substantive requirements of Commission mandates,³ this thinly veiled disregard for agency request can no longer be countenanced. It's time to say it's three strikes and you're out. The applications of WorldCom and MCI should be summarily dismissed.

I. THE APPLICANTS HAVE FAILED TO SHOW THAT THEIR MERGER WILL BENEFIT THE PUBLIC INTEREST

The *Bell Atlantic/NYNEX Order* requires applicants to discuss in detail the pro-competitive benefits of their proposed merger and demonstrate that it will promote rather than retard competition.⁴ Among the pro-competitive benefits that have been described by the Commission are “any efficiencies arising from the transaction if such efficiencies are achievable only as a result of the merger, are sufficiently likely and verifiable, and are not the result of anticompetitive reductions in output or increases in price.”⁵ But while the Applicants have for months touted alleged multibillion dollar synergies, efficiencies, and economies as the cornerstone of their public interest claims, they have sidestepped their responsibility to offer supporting evidence for them. Now they wrongly contend that they need not provide any substantiation at all.⁶ More than simply raising doubts as to the reality of their \$23 billion

³ *Id.*

⁴ *Id.* at ¶ 157.

⁵ *Id.* at ¶ 158

⁶ *See* Second Joint Reply of WorldCom and MCI at 97.

promises, the Applicants' sleight of hand also underscores their general failure to comply with the *Bell Atlantic/NYNEX Order's* disclosure requirements and warrants the dismissal of their applications.

A. Applicants' Assertions That They Need Not Substantiate Their Public Interest Claims Are Unfounded

The *Bell Atlantic/NYNEX Order* states that where public interest claims include purported synergies and efficiencies, the Commission will not accept those that are "vague, speculative and cannot be verified by reasonable means."⁷ However, after refusing to provide the details necessary to buttress their multibillion dollar assertions in their first two submissions in this proceeding, the Applicants now claim in their Second Joint Reply that the Commission's recent decision in *ARDIS/AMSC* saves them from having to do more than speculate about the origins of the synergies their proposed merger might produce.⁸ WorldCom and MCI suggest that this "precedent for non-dominant carriers [is] equally applicable here," and that the "Applicants have certainly provided adequate information to confirm that the expected efficiencies are 'sufficiently likely' to occur and are reasonably verifiable."⁹ To support this contention, the Applicants rely on a decision in which the merger applicants made *no* synergies or efficiencies claims, where the primary public interest benefits were the tongue-in-groove nature of the applicants' network geography and the provision of cutting-edge services, and where the Commission emphasized that the applicants nevertheless bore the burden of proving "both that the merger specific

⁷ *Bell Atlantic/NYNEX Order* at 20063, ¶ 158.

⁸ Second Joint Reply at 97.

⁹ *Id.*

efficiencies will occur, and that they sufficiently offset any harm to competition.”¹⁰

ARDIS/AMSC is neither a shield nor an excuse for the Applicants’ failure to provide a detailed description of the facts and figures that form the underpinnings of their efficiencies claims. If anything, it highlights the abject failure of WorldCom and MCI to meet their burden of proof. This failure warrants dismissal of their applications.

B. The Applicants’ Claims of Synergies and Efficiencies Remain a \$23 Billion Mystery Wrapped in a 500-Page Enigma

1. The Patel Affidavit Fails to Substantiate WorldCom and MCI’s Claims

Despite their unsupported contention that they need not support their claims, the Applicants nevertheless supply the affidavit of a company insider who relies on rhetoric rather than arithmetic to demonstrate how WorldCom and MCI will achieve their purported efficiencies. It is not surprising that Sunit Patel, the WorldCom treasurer, has confidence in the undocumented proclamations of a “team of WorldCom and MCI analysts” on whose forecasts he bases his opinions.¹¹ Unfortunately, just as in the past, the calculations and abstracts in which he places such confidence fail to materialize. Indeed, among the more than 500 pages of “supporting” documents submitted by the applicants in this proceeding, there is nothing to suggest that these purported synergies will occur, that they will occur “but for” the merger, or that their achievement would in any way benefit anyone other than the Applicants. Nor do these facts emerge in the Securities and Exchange Commission filings which Mr. Patel references in his affidavit. As has been discussed earlier by petitioners in this proceeding, the estimates and

¹⁰ *ARDIS/AMSC* at ¶68.

¹¹ Patel Affidavit at 1.

conclusions on which Mr. Patel and others have relied were merely the conclusory statements of WorldCom's financial advisors; those estimates and conclusion rest on data that were neither "examined, reviewed or compiled by independent accountants"¹² nor "prepared with a view toward compliance with general accounting principles."¹³ WorldCom and MCI have never advanced other information beyond these unsupported claims. Without such evidence to demonstrate the veracity of their monumental assertions, the statements of WorldCom and MCI remain precisely the type of vague, speculative and unverifiable claims that the *Bell Atlantic/NYNEX Order* specifically cautioned against.

While there can be no doubt that the proposed merger of WorldCom and MCI will provide substantial benefits to the corporations, it is the benefit to the public that must be of concern to the Commission. Through the gamesmanship of the Applicants, however, that examination has been made all but impossible. Despite three opportunities to clearly demonstrate through reasoned analysis the origins and consequences of their claimed synergies and efficiencies, there is no more evidence on the table than existed before WorldCom's first application was filed some six months ago. This is not a war of attrition, where stonewalling might be a virtue. The repeated refusal of WorldCom and MCI to provide the essential and required bedrock of their public interest claims requires that their applications now be dismissed.

¹² WorldCom, Inc. S-4, at 41.

¹³ *Id.*

2. The Patel Affidavit Overstates the Positive and Eliminates the Negatives

Further evidence of the Applicants' failure to meet the *Bell Atlantic/NYNEX Order's* requirement that they substantiate their claims of synergies and efficiencies can be found in the complete absence of any potential costs to the proposed merger of WorldCom and MCI. Indeed, the Applicants would have the Commission believe that there will be no costs associated with assimilating two very different networks, operations, and support systems. These costs, however, have been made clear elsewhere – not only by independent analysts, but by principals of the Applicants as well. The failure of WorldCom and MCI to acknowledge these costs further demonstrates their lack of candor and their complete failure to satisfy the requirement that they fully document their public interest claims.

Even in the absence of data from WorldCom and MCI in these proceedings, the statements of their principals indicate that there is great concern. As noted by WorldCom's Chief Operating Officer, John Sidgmore: "You're merging thousands of employees, multiple infrastructures, multiple operating systems, multiple billing systems, and different cultures. There's a lot of risk."¹⁴ In an earlier interview, these "risks" were quantified by Mr. Sidgmore as manifesting themselves in the likelihood that the companies will have difficulty in achieving cost savings in the integration of their Internet networks.¹⁵ The petitioners suggest that in combining

¹⁴ Dawn Bushaus, "Fit to Be Tried" (March 1998), available at <http://www.teledotcom/0398/features/tdc0398worldcom.html>.

¹⁵ Throughout this proceeding, the petitioners have demonstrated a series of costs and obstacles that will be encountered by the Applicants as they attempt to integrate their networks from local and long distance to the Internet. These documented roadblocks have either been ignored by the Applicants or dismissed without being disproven.

the second and fourth largest long distance systems and expanding local networks – each of which has support systems that are independent and unique to the companies – there will inevitably be costs associated with their integration. However, nowhere have these costs been accounted for in Mr. Patel’s estimates of the synergies and efficiencies the proposed merger is supposed to realize.

The absence of such analysis, in the face of acknowledgments outside the confines of the Commission proceedings, again indicates not only a lack of candor, but the clear failure of WorldCom and MCI to accurately and completely document the origins of their public interest claims.¹⁶ Until there is a full, realistic accounting of the synergies and efficiencies claimed by WorldCom and MCI, it is impossible for the Commission to determine whether the proposed merger of the Applicants is actually in the public interest.

C. The “Local” Origins of the Applicants’ Public Interest Benefits Are A Fallacy

Aside from their undocumented, pie-in-the-sky estimates of synergies and efficiencies, the only other accompanying public interest benefit claimed by the Applicants is that their proposed merger would allegedly act as a catalyst for competition in the local exchange market. However, looking beyond the catch phrases and slogans, it is clear that no such benefits would accrue from their combination. Indeed, if WorldCom and MCI were permitted to merge it would do little more than shrink the pool of potential competitors, creating a business-only local phone system that would offer benefits to those who need them the least – Fortune 500 companies – while ignoring those for whom competitive pricing would mean the most – small business and

¹⁶ “WorldCom’s Sidgmore Sizer Up the Deal,” Network World, Nov. 17, 1997, available at <<http://www.infusion.com/news/1117sidgmore.html>>.

residential customers. The true effect of their combination would not be to benefit the public, but only to contribute to the merged entity's bottom line.

There is little doubt, and indeed that Applicants have never denied, that the combination of their local phone enterprises would reduce the number of competitors by eliminating one of the two strongest recent entrants to the local phone marketplace. While WorldCom and MCI emphasize that bigger is better, they have never demonstrated that either company would not have been equally as strong a competitor or that buildout of their local systems will occur in a manner that would not have otherwise taken place in the absence of the merger. The existence of significant overlaps in their local fiber networks, and the aggressive activities of the individual companies before their proposed merger was contemplated, indicate that there would be no advantage gained by the public through the combination of WorldCom and MCI local facilities.

Moreover, WorldCom's so-called commitment to residential service – the hallmark of their public interest claims – rings hollow when the contradictory and conflicting statements of the company's principals during the months leading up to their proposed merger and, indeed, since then are compared:

- “Not AT&T, not MFS or anyone else, is going to build local telephone facilities to residential customers. Nobody ever will, in my opinion.”
-- Bernard Ebbers, *Washington Post*, June 1, 1997.
- “We don't play in residential.”
-- Ron Vidal, *WorldCom vice-president for new ventures*, *Baltimore Sun*, April 6, 1997.
- “[O]ur focus is primarily on business customers.”
-- Bernard Ebbers, *Mississippi Business Journal*, May 12, 1997.

- “[O]ur strategy is not in the consumer business. It’s very difficult for us to find a way to make economic sense out of the advertising budgets, the customer service budgets, etc., required to be in the consumer business.”
-- *John Sidgmore, stating that MCI would jettison its 20 million residential long-distance customers and focus solely on more profitable business customers. Washington Post, October 3, 1997.*
- WorldCom’s “religious focus is on the business customer . . . [i]t is a jihad . . . [t]his other market is something new.”
--*John Sidgmore, “clarifying” his remarks that MCI would jettison its 20 million residential customers, Washington Post October 4, 1997.*
- “WorldCom, Inc. today confirmed that it intends to continue to serve all of MCI’s customers – residential and business, long distance and local, once the merger is complete. WorldCom will not abandon MCI’s residential long distance customers.”
-- *WorldCom press release, Oct. 3, 1997.*
- “Asked if he hopes to ‘supplant’ AT&T as long distance market leader, Mr. Ebbers quipped: ‘I wouldn’t want to supplant them [because] I’d have their type of earnings then.’”
-- *Telco Competition Report, Oct. 9, 1997.*
- “We will look at the residential market as long as it does not hurt our stock price.”
-- *Bernard Ebbers, Business Week, Oct. 13, 1997.*
- MCI will proceed “with the only business that makes sense” – providing facilities based service to business customers. “Spending money on resale, or where [unbundled] network elements are overpriced, is not an investment. It’s throwing money down a rathole.”
-- *Timothy F. Price remarks at the National Press Club, January 22, 1998.*
- “MCI WorldCom intends to be the leading local service competitor for both residential and business customers of all sizes across the country. . . .But investment will flow and intent can be fulfilled only where real business opportunities exist.”
-- *Bernard Ebbers, Bert Roberts, joint letter to FCC Chairman William Kennard, January 26, 1998.*

- “The merged company will have every incentive to offer them a total package, including local and long distance services, as fast as regulatory and economic conditions permit.”
-- *Joint Reply p. 19-20, January 26, 1998.*

Ranging from unequivocal commitment to unabashed rejection, WorldCom and MCI officials have flip-flopped more times than an Olympic gymnast when it comes to residential service. As has already been shown by several of the petitioners, there is every reason to believe that these companies will never expand their services to residential customers and will likely reduce those services which they currently provide.¹⁷ This has also been the conclusion reached by independent analysts on Wall Street.¹⁸ Sifting through the morass of conflicting statements and the Applicants’ all-too-clear self interest, it is evident that the proclamations of WorldCom and MCI are little more than puffery. Therefore their claims of a public interest benefit as the standard bearer for local competition are untenable.

II. THE APPLICANTS’ ANALYSIS OF MARKETS AFFECTED BY THEIR MERGER IS BASED ON MARKET DEFINITIONS OF THEIR OWN CREATION

In their self-styled attempt to comply with the requirements of the *Bell Atlantic/NYNEX Order*, the Applicants have crafted their responses in a manner that either completely ignores the market definitions set by Commission precedent or lack the data necessary to engage in a substantive competitive review of the proposed merger. Before approving a proposed transfer of control, the Commission is required by Sections 214(a) and 310(d) of the Communications Act

¹⁷ See generally, *Petitions to Deny and Replies of Communication Workers of America, GTE Service Corporation.*

¹⁸ Merrill Lynch In-depth Report, *United States Telecommunications/Services*, at 2, Feb. 4, 1998.

to consider “the effects of the transfer on competition.”¹⁹ The Commission has concluded that when evaluating a merger’s public interest and competitive effects the applicants are required to provide detailed information regarding, among other things: (1) the definition of product markets; (2) the definition of geographic markets; (3) the identity of significant actual or potential competitors; and (4) a determination of whether there are public interest benefits that enhance competition and therefore outweigh any anti-competitive effects.²⁰ Just as WorldCom and MCI bear the burden to meet the public interest standard, as discussed above, the Commission places upon applicants the duty to provide an analysis that establishes “the relevant [product and geographic] markets.”²¹

WorldCom and MCI, however, have misinterpreted their charge: rather than follow established precedent, they have created their own definition for the relevant product and geographic markets. Their analysis, however, requires that their applications be dismissed. Whether in their assessment of long-distance, international service or effects in the Internet market, WorldCom and MCI have fudged, misled or failed to recognize the path to a straightforward analysis. Instead, they have asked the Commission and petitioners to accept their

¹⁹ *Pittencrieff Communications, Inc. and Nextel Communications, Inc., Memorandum Opinion and Order*, CWD No. 97-22, DA 97-2260 at ¶ 8 (rel. Oct. 24, 1997).

²⁰ These guidelines were crafted from the Commission’s decisions regarding three 1997 mergers. See *Pacific Telesis Group and SBC Communications, Inc. Memorandum Opinion and Order*, Rpt. No. LB-96-32, FCC 97-28 (rel. Jan. 31, 1997); *NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 (rel. Aug. 14, 1997); *MCI Communications Corp. and British Telecommunications PLC, Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302 (rel. Sept. 24, 1997).

²¹ *Bell Atlantic/NYNEX Order* at ¶ 49.

rose-colored world – forsaking market reality, elementary economics and all notions of common sense. Considering their repeated failure to address the *Bell Atlantic/NYNEX Order's* requirement for a meaningful review of the proposed merger's competitive effects, the applications of WorldCom and MCI should be summarily dismissed.

Long Distance. Petitioners in this proceeding have repeatedly demonstrated that there are separate markets for the provision of retail and wholesale long distance services²² – a view which has been recognized by the Commission in its review of the long distance market's structure.²³ The Applicants ignore this established structure, deciding for themselves that long distance services – wholesale and retail – are an all-in-one marketplace. They apparently conclude that conceding the existence of a separate wholesale market would raise too many competitive concerns for their proposed merger and, therefore, create a market definition that suits their needs.

International. Similarly, in the international market the Applicants' decision to meld private line and IMTS service into a single market amalgam refuses to recognize that they are distinct products that serve two distinct purposes and are used by consumers in very different ways. Akin to this is WorldCom and MCI's decision to determine that the entire globe is a single geographic market for these products, while ignoring the route-specific template which has characterized the Commission's previous analysis of the international market.

²² See GTE Service Corporation's Comments on WorldCom/MCI's Joint Reply to Petitions to Deny, at 12.

²³ See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995)(Commission consideration of solely retail market in weighing competitive concerns).

Internet. Artificial realities may be a central concept for those who surf the Internet, but WorldCom and MCI now ask the Commission and petitioners in this proceeding to indulge in the artificial concept that the Internet encompasses not just every web site, Internet service provider, users, and all related Internet products, but also everything from video games and paperback books to chess sets and anything else that might conceivably distract the average Web cruiser. While this is an apt demonstration of the type of creativity the Internet is hoped to inspire, it does nothing to mute the reality that by any other measure, the Internet “backbone” is distinct from other Internet related services. Equally as real is the fact that a combined WorldCom and MCI would control more than 50 percent of this market.

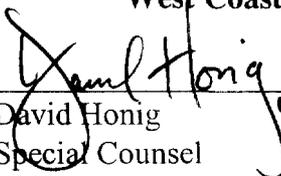
III. CONCLUSION

The Applicants have offered not even cosmetic conformance with the Commission's test for evaluating the long lasting and potentially damaging effects of mergers in the telecommunications context. By substituting their own definitions of product and geographic markets while ignoring those either conceived in Commission precedent or dictated by the simple application of common sense, WorldCom and MCI have said simply "our way or the highway." It is time to accept their challenge, show them the door, and require them to start from scratch – this time by the rules. For all of the foregoing reasons, the Commissions should dismiss the applications for transfer of WorldCom and MCI.

Respectfully submitted,

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