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

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JUN 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of	)	
MCI Communications Corporation	)	
to WorldCom, Inc.	)	

COMMENTS OF AT&T CORP. ON MCI'S JUNE 3, 1998 EX PARTE

Introduction and Summary

MCI Communications Corporation's ("MCI's") proposed divestiture does not materially alter or alleviate the competitive concerns raised with respect to the WorldCom/MCI merger. While MCI is proposing to sell to Cable and Wireless ("C&W") all of its U.S. domestic internet equipment, as well as its peering agreements and contracts with Internet Service Providers ("ISPs"), the assets that give rise to the competitive concerns, namely that portion of its Internet business relating to retail customers and content providers, will remain with MCI and be a part of the merged WorldCom/MCI entity.

Moreover MCI's proposed divestiture is structured in a manner that would minimize the ability of C&W to use these assets to effectively compete with the merged entity. Critical employees and intellectual property are not being transferred and the Internet customers that are being transferred are likely to migrate back to WorldCom/MCI.

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List A B C D E

Finally, divestiture without an agreement by both the merging parties and the entity acquiring the divested assets to permit fair and non-discriminatory interconnection with their backbone networks will not prevent the potential anticompetitive effects of this merger. For the foregoing reasons, the proposed remedy to the anticompetitive effects of this merger should not be found sufficient to overcome the concerns raised.

I. THE PROPOSED DIVESTITURE WILL NOT ELIMINATE THE POTENTIAL ANTICOMPETITIVE EFFECTS OF THE MERGER

The proposed divestiture by MCI to C&W will be ineffective in curing the potential anticompetitive effects of this merger for at least two reasons. First, MCI is proposing to sell only its less profitable wholesale ISP customers together with physical assets which would be largely redundant. The competitively significant portion of the overlapping business, namely the retail customers and content providers, will remain with MCI and be a part of the merged WorldCom/MCI entity. Second, WorldCom/MCI has structured this transaction in a manner that assures that C&W will not be able to use the assets it has acquired to compete effectively with the merged WorldCom/MCI in its core Internet business. Significantly, MCI excluded from the bidding for the divested assets potential buyers like AT&T who do have the ability to use the divested assets more effectively to compete with the merged entity.

A. The Proposed Divestiture Does Not Involve the Competitively Significant Assets

It has been argued in this proceeding that the proposed merger of MCI and WorldCom will enable the parties to create or strengthen a dominant position in the

Internet backbone market.[1] Because the value of Internet services lies in the ability to communicate with others, the value of an Internet backbone network increases with the total number of users who join the network (i.e., the "network effect"). Market power in the posited Internet backbone market would therefore exist not simply by virtue of ownership of the underlying assets constituting the network, but primarily by virtue of the number of customers utilizing that network. Those customers include content providers whose content is linked to the network, end users, and retail customers wishing to access such content.

The proposed divestiture of part of MCI's Internet backbone business to C&W will not effectively eliminate the potential anticompetitive effects resulting from the merger of MCI and WorldCom. Specifically, the proposed divestiture eliminates an overlap in physical assets, but the divested assets are likely to be redundant in a merged WorldCom/MCI. The proposed divestiture also allows MCI to shed the less profitable wholesale ISP customers.[2] The proposed divestiture does not reduce the merged entity's control over the retail and content provider customer base through which market power would be derived in the Internet backbone business, because the predominant content and usage remains on the WorldCom/MCI network.

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1 E.g., Petition to Deny of GTE Services Corporation and its Affiliated Telecommunications Companies, filed January 5, 1998, at 46.

2 See, the article appended hereto as Exhibit A.

B. The Partial Divestiture to Cable & Wireless Was Designed to Minimize the Anticompetitive Threat Posed by the Acquiror

1. The Divested Internet Business Will Not Establish C&W as an Effective Internet Competitor

C&W will not be able to operate a competitively meaningful Internet business because the selective shedding of assets by MCI leaves MCI's highly desirable retail customer base with the merged entity and C&W has expressly covenanted not to compete for those retail customers.[3] C&W will also be acquiring only a small fraction (probably not more than 25 percent) of the number of employees required to operate an Internet business, with many of the highly skilled Internet related employees remaining with the merged entity. In addition, the proposed divestiture does not include other important assets such as intellectual property and a commercial customer sales force necessary for C&W to compete effectively with the merged WorldCom/MCI.

Indeed as a result of the proposed leasing arrangements,[4] the merged WorldCom/MCI entity will continue to benefit financially from the divested wholesale customer base. Moreover, the revenue and traffic guarantee arrangements,[5] without the transfer of the retail customer base, makes C&W utterly dependent upon WorldCom/MCI. The withdrawal of that subsidy after two years will further undermine the viability of the C&W Internet business.[6]

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3 MCI's Ex Parte filing at 8.

4 Id. at 6.

5 Id. at 7-8.

6 Wholesale customers might also "bleed back" to MCI after being transferred to C&W because they need connectivity to content providers in the retail base (i.e., because of the network effect described above). The wholesale market "chases"

2. MCI Excluded Eligible Buyers To Avoid Effective Competition

Not only did MCI seek to minimize competitive threats by carefully selecting which assets to sell, it also appears to have sought to minimize competitive threats by carefully selecting to whom the selected assets would be sold. In selling the divested assets, MCI excluded parties that could more effectively use MCI's divested Internet assets to compete with the merged WorldCom/MCI entity. For example, as reported in the press,[7] MCI excluded AT&T from the bidding process, although AT&T satisfied all three criteria set forth in MCI's Ex Parte filing.[8] That is, first, AT&T has the unquestionable ability to operate the backbone, retain and attract customers, and continue the business as a healthy, growing enterprise. Second, statistics from, e.g., Boardwatch[9] make it eminently clear that AT&T as a buyer would not create any "significant concentration questions;" thus AT&T could not have been identified by the DOJ as one of the "certain major facilities-based providers of Internet backbone services" which would raise "regulatory issues."[10] Finally, AT&T clearly is financially viable and would have met the financial requirements of purchasing such a business.

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the retail market in order to gain direct connectivity to influential content providers resident in the WorldCom-MCI retail customer base. MCI's non-compete covenant would not preclude such customer migration.

7 E.g., The New York Times, May 19, 1998, p. D1, "MCI Said to Be Soliciting Bids for a Division."

8 MCI's Ex Parte filing at 4-5.

9 Boardwatch Directory (July/August 1997).

10 MCI's Ex Parte filing at 4.

II. DIVESTMENT MUST BE CONDITIONED ON FAIR AND NON-DISCRIMINATORY ACCESS TO THE RETAINED AND DIVESTED INTERNET BACKBONE NETWORKS

Given the significant positions in the Internet business that MCI would enjoy when merged with WorldCom, other ISPs would find it even more critical to have direct private peering relationships with the merged entity. Even before the merger however, MCI reportedly has been unwilling to privately peer with other than the largest ISPs, and the merger will only exacerbate that unwillingness to privately peer.[11] This conclusion is supported by the fact that MCI is assigning its 40 peering relationships (almost all of which are public peering relationships) to C&W, which will effectively negate current connectivity to MCI's retail base once MCI migrates its retail and content provider base to a consolidated WorldCom/MCI backbone.

Both MCI/WorldCom and the buyer of the divested Internet business should therefore be required, as a condition for approval of the merger, to privately peer on a fair and nondiscriminatory basis with all domestic commercial ISPs, that is ISPs whose primary Internet business is providing access and value added transport based services, and who have a meshed national Internet backbone network providing reasonable average minimum traffic volumes. In order to insure fair and nondiscriminatory interconnections, both the merging parties and the acquiror of the divested assets should agree to certain minimum private peering requirements such as: (i) a minimum number of locations at

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11 Wall Street Journal, May 20, 1998, p. B10, "Level 3 Assails the WorldCom-MCI Deal." See also, Wall Street Journal, June 8, 1998 "Manager's Journal, How to Strengthen the Internet's Backbone."

which private peering interconnections should be established, (ii) minimum size of interconnection (e.g., DS-3 circuit or higher) (iii) fair and nondiscriminatory allocation of costs and fees; (iv) implementation of the initial private peering interconnections and all upgrades in a nondiscriminatory manner, in accordance with generally accepted engineering practices for the industry and within a reasonable period of time; and (v) no restrictions imposed on the right to publicize private peering arrangements.

Conclusion

For the foregoing reasons, the proposed divestiture of assets and sale to C&W is not adequate to cure the potential anticompetitive effects of this merger. At a minimum, the Commission should require a sale of the entire internet business of MCI and require the private peering conditions set forth herein.

Respectfully submitted,

AT&T Corp.

By

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June 11, 1998

Exhibit A

Inter@ctive Week June 1, 1998

Resellers: MCI Network Constrained

By Randy Barrett and Louis Trager
10:30 AM EDT

MCI Communications Corp. is no longer providing high-speed circuits to most Internet access resellers, according to several affected providers.

The group of wholesale customers is the key constituency MCI agreed to sell last week to Cable & Wireless PLC, along with its entire Internet backbone, for $625 million in cash. But for Internet backbone companies that resell MCI Internet services, the status of MCI's network is very much in question.

Dave Rand, chief technical officer of AboveNet Communications Inc. in San Jose, tried to buy three 45-million-bit-per-second DS-3 circuits from MCI two months ago but was told a "provisioning committee" had to approve the order. The request was recently turned down with no explanation. Rand was told he could wait an indeterminate amount of time for a smaller 21-megabit circuit.

"We requested capacity in any U.S. city," said Rand, who already has several MCI DS-3 lines. "There was no problem two years ago."

Geoff Williams, manager of Internet engineering at Electric Lightwave Inc. in Vancouver, Wash., was equally frustrated in his attempts to buy a DS-3 circuit from MCI in Los Angeles. "ELI has been having a lot of difficulty getting delivery of [DS-3] ports from MCI on the West Coast," he said.

A consensus is growing among Internet resellers that MCI is either low on access ports to connect new high-speed lines or is nearing capacity on its network - since there appears to be no shortage of DS-3 circuits for corporate customers, which are often combined two or four on a single port because they generally don't use all their allocated bandwidth.

Adding ports costs about $15,000 apiece for hardware, but that capital expenditure can be quickly recovered. A single, full DS-3 circuit generates $20,000 to $70,000 per month in revenue, experts said.

Fred Briggs, chief engineering officer at MCI, denied there are capacity problems with the core 622-megabit-per-second network. "We continue to provide DS-3 service for anybody looking for it," he said.

But that wasn't the case even a year ago when PSINet Inc. was unsuccessful in ordering circuits from MCI. "They wouldn't, or couldn't, deliver. They've got a totally constrained backbone," said Pete Wills, chief operating officer of PSINet.

The questions of network availability came out as MCI agreed to sell the Internet backbone, engineering staff and 1,300 Internet service provider (ISP) customers to Cable & Wireless, pending the close of the WorldCom Inc.-MCI merger.

Richard Yalen, chief executive officer of Cable & Wireless Inc. - the U.S. company - said he is aware of some constraints on the MCI network and that it appears to be a port availability problem. "I don't see it as a major issue," he said, adding that Cable & Wireless has aggressive buildout plans to solve any bandwidth holdups.

Under last week's deal, MCI will divest its Internet backbone - 15,000 ports and 40 peering relationships as well as all routers and switches to run the network. MCI will continue to provide the leased lines for the network and rent back the backbone services from Cable & Wireless to serve its corporate customers. MCI also agreed to a two-year noncompete clause for the 1,300 ISP customers being transferred in the deal.

Cable & Wireless' backbone is currently a bit player on the U.S. wholesale scene, with 42 points of presence and several hundred customers. The MCI backbone will bring an additional 450 points of presence and $220 million in revenue.

MCI and WorldCom have been under pressure from European regulators to divest major Internet assets to win approval of their megamerger.

MCI can be reached at www.mci.com

AboveNet can be reached at www.above.net

PSINet can be reached at www.psi.net

Cable & Wireless can be reached at www.cwplc.com

WorldCom can be reached at www.wcom.com

E-mail Randy Barrett and Louis Trager

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 11th day of June, 1998, a copy of the foregoing "Comments of AT&T Corp. on MCI's JUNE 3, 1998 Ex Parte" was sent by U.S. first class mail, postage prepaid upon the following parties:

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