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Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER ADOPTING PROTECTIVE ORDER

Adopted: June 5, 1998

Released: June 5, 1998

By the Chief, Common Carrier Bureau:

1. On April 21, 1998, the Common Carrier Bureau (Bureau) directed WorldCom, Inc. (WorldCom) and MCI Communications Corporation (MCI) to submit further information to the Commission for consideration in connection with the above-captioned application.¹ Specifically, the Bureau requested materials filed by WorldCom and MCI with the Department of Justice (Department) in response to a Civil Investigative Demand issued pursuant to the Antitrust Civil Process Act and in connection with the Department's pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act.²

2. WorldCom and MCI filed a proposed protective order with the Bureau on April 27, 1998, claiming that the documents requested by the Commission contained confidential and proprietary information. On April 29, 1998, the Bureau issued a public notice requesting comments on the proposed protective order by May 7, 1998, and reply comments by May 13, 1998.³ After reviewing the filings received during this comment period, the Bureau hereby enters the attached protective order (Appendix A) to insure that the confidential and

¹ Letter from Carol E. Matthey, Division Chief, Policy and Program Planning Division, FCC to Andrew D. Lipman, Swidler & Berlin, Counsel for WorldCom, and Anthony C. Epstein, Jenner & Block, Counsel for MCI (Apr. 21, 1998).

² See *id.*

³ *Commission Seeks Comment on Proposed Protective Order Filed by WorldCom and MCI*, Public Notice, DA 98-820 (rel. Apr. 29, 1998).

proprietary documents submitted by WorldCom and MCI are afforded adequate protection. The protective order adopted herein applies to any confidential documents provided by WorldCom and MCI in this proceeding.

3. According to the WorldCom and MCI, the requested documents are exempt from mandatory disclosure under the Freedom of Information Act (FOIA) and the Commission's implementing rules because they involve "trade secrets and commercial or financial information" that "would not customarily be released to the public."⁴ The public disclosure of this information, they assert, would be "competitively harmful" to WorldCom and MCI.⁵ Additionally, the WorldCom and MCI state that many of these documents were also filed with the Department pursuant to statutory procedures that provide for strict confidential treatment of such documents, including exemption from disclosure under FOIA, and provide for disclosure of such documents only under specifically defined circumstances, none of which is present here.⁶

4. Six parties to the proceeding filed comments regarding WorldCom and MCI's proposed protective order.⁷ Commenters generally assert that the provision in paragraph 3 of the proposed protective order limiting access to the documents subject to the protective order to the parties' outside counsel is too restrictive and contrary to Commission precedent.⁸ They request that the Commission revise the proposed protective order to allow both outside counsel and in-house counsel access to confidential information.⁹ Commenters also assert that

⁴ Letter from Andrew D. Lipman, Counsel for WorldCom, and Anthony C. Epstein, Counsel for MCI, to Magalie Roman Salas, Secretary, FCC at 2 (Apr. 27, 1998).

⁵ *Id.*

⁶ *Id.* at 1 (citing 15 U.S.C. §§ 18(h), 1313(c)(3), 1314(g)).

⁷ Bell Atlantic, BellSouth, Communications Workers Association (CWA), GTE, Simply Internet, and Sprint.

⁸ Bell Atlantic Comments at 1-3; BellSouth Comments at 2-3; CWA Comments at 1-3; GTE Comments at 2-3; Simply Internet Comments at 1-2; Sprint Comments 1-5.

⁹ Bell Atlantic and BellSouth propose allowing "in-house counsel who are actively engaged in the conduct of this proceeding" to have access to confidential information. *See* Bell Atlantic Comments at 2; BellSouth Comments at 2. CWA proposes allowing the "counsel for the participants" to have access to confidential information. CWA Comments at 1-2. GTE proposes allowing "outside counsel of record, in-house counsel who are actively engaged in the conduct of this proceeding, or counsel otherwise assisting the parties in this proceeding, who are actively engaged in the conduct of this proceeding" to have access to confidential information. GTE Comments at 3. Sprint proposes making confidential information available to all in-house counsel who sign the protective order. Sprint Comments at 3.

we should allow in-house economists and regulatory analysts,¹⁰ "individuals on [in-house] staff who have the expertise necessary to review and understand these materials,"¹¹ and staff for public interest groups or labor unions¹² access to the confidential information. In response, WorldCom and MCI defend restricting access to outside counsel maintaining that this merger proceeding involves extremely sensitive competitive information and it could suffer significant competitive and irreparable damage if this information were exploited by competitors in their business decisions and operations.¹³

5. We are persuaded by commenters' concerns that the proposed protective order, by limiting access to confidential documents to outside counsel of record and, thereby, excluding in-house counsel, is too restrictive. At the same time, we recognize, as WorldCom and MCI point out, that commenters are seeking access to highly sensitive, vital competitive information, including customer names, usage patterns, locations, and traffic volumes.¹⁴ As such, we find that it would not be appropriate to allow access to *all* in-house counsel who are actively engaged in the conduct of the proceeding, as suggested by some of the commenters. Rather, we limit access to outside counsel of record and to those in-house counsel who are actively engaged in the conduct of this proceeding, provided they are not involved in "competitive decision-making." This "competitive decision-making" standard has been adopted by federal courts in determining whether to permit in-house counsel access to confidential information. Consistent with these federal court cases, we define "competitive decision-making" as counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor.¹⁵ We find that this limitation appropriately balances the potential competitive harms that WorldCom

¹⁰ BellSouth Comments at 3.

¹¹ Simply Internet Comments at 2.

¹² CWA Comments at 2-3.

¹³ WorldCom and MCI Reply Comments at 1-2.

¹⁴ *Id.* at 2.

¹⁵ See, e.g., *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984) (noting that the "competitive decision-making" is a shorthand for a counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions . . . made in light of similar or corresponding information about a competitor); see also *Brown Bag Software v. Symantec Corp.* 960 F.2d 1465, 1470 (9th Cir. 1992), *cert. denied* 506 U.S. 869 (1992) (defining "competitive decision-making" as advising on decisions about pricing or design made in light of similar or corresponding information about a competitor).

and MCI allege could ensue if sensitive information regarding its future business plans were disclosed to its competitors, and the need for parties to have access to the information provided to the Commission in this proceeding. We decline, however, to allow in-house economists, analysts, or other in-house staff access to confidential information. We also decline to allow staff for public interest groups and labor unions that are not represented by either outside or in-house counsel, access to confidential information. We find that there is a greater risk of inadvertent disclosure by such individuals that is not justified given the sensitive nature of the information at issue. Accordingly, we modify paragraph 3 and other relevant paragraphs of the protective order to reflect our decision.

6. By declining to restrict access to confidential material to outside counsel, we are not, as WorldCom and MCI describe, "overturn[ing]" the "precedent" established in the *TCI/Primestar Protective Order*.¹⁶ As WorldCom and MCI recognize, the decision of what type of access to permit for reviewing confidential material is a "balancing judgment, and there are costs on both sides of the equation."¹⁷ This decision must be made based on the circumstances presented in the instant proceeding and, in particular, on the counsel's relationship to the party seeking access. Further, we note that protective orders adopted in other merger proceedings have permitted in-house counsel to review confidential documents.¹⁸ We have evaluated the arguments made by the commenters and have attempted to craft a protective order which takes into account both the parties' intended use of in-house counsel and WorldCom and MCI's need to protect confidential business information from competitors. The limitation we have imposed on the type of in-house counsel that may have access to the confidential materials should significantly reduce the potential of anti-competitive harm. Moreover, as Sprint asserts, under the terms of the protective order, parties will be required to identify to WorldCom and MCI the in-house counsel who are seeking access to the confidential documents five days prior to the review of such documents. We find, therefore, that the protective order contains sufficient safeguards to protect against the abuse of confidential information.

7. WorldCom and MCI assert that allowing in-house counsel access to confidential information would require them to "create a wall in the middle of their minds,"

¹⁶ WorldCom and MCI Reply Comments at 5 (citing *TCI Satellite Entertainment, Inc. and Primestar, Inc.*, File No. 91-SAT-TC-97, Order Adopting Protective Order, Appendix A, DA 98-695 (Intern'l Bur. rel. Apr. 10, 1998) (*TCI/Primestar Protective Order*)).

¹⁷ *Id.* at 4.

¹⁸ See *AT&T and Craig O. McCaw, Applications for Consent and Transfer of Control of Radio Licenses*, 9 FCC Rcd 2613 (1994) (*AT&T/McCaw Protective Order*); Application of Bell Atlantic Corp. and NYNEX Corp. for Consent to Transfer Control of Licenses and Authorizations, Modified Protective Order, ND-L-96-10 (Com. Car. Bur. Dec. 5, 1996) (*BA/NYNEX Modified Protective Order*).

separating the confidential information they have reviewed from their daily contact with their employers. They further assert that this is a "metaphysical compartmentalization [that] is beyond the power of any human being."¹⁹ As mentioned above, in the protective orders adopted in the AT&T/McCaw and BA/NYNEX²⁰ merger proceedings, we permitted in-house counsel access to similar types of confidential information.²¹ Notably, WorldCom and MCI do not contend that the in-house counsel in those merger proceedings did not abide by the terms of the protective order or that the applicants were harmed by the release of confidential information to in-house counsel. Moreover, by significantly limiting the type of in-house counsel that may inspect confidential documents, we have attempted to mitigate this concern. Based on the record submitted in this proceeding, therefore, we find that limiting access to outside counsel only, as was done in the *TCI/Primestar Protective Order*, is unnecessary to protect against the anti-competitive use of the confidential information. Rather, we find that limiting access to outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, addresses the concerns of all commenters.²²

8. We also delete language in paragraph 3 of the proposed protective order that limits review to outside consultants or experts "who are not employed by or affiliated in any way with any competitor of any Submitting Party." We agree with BellSouth that the phrase "affiliated in any way," is undefined²³ and could lead to unnecessary disputes. Contrary to WorldCom and MCI's assertion, the proposed language did not appear in the *TCI/Primestar Protective Order*.²⁴ It was proposed by TCI and Primestar, but deleted from the final,

¹⁹ *Id.* at 3.

²⁰ We note that in the Bell Atlantic/NYNEX merger order, we rejected Bell Atlantic/NYNEX's proposal that we limit access to confidential information to outside counsel. See Letter from Kathleen B. Levitz, Deputy Chief, Common Carrier Bureau, FCC, to David Carpenter and Richard Klinger, Sidley & Austin and Richard G. Taranto, Fair & Taranto at 3 (Dec. 4, 1996).

²¹ See *AT&T/McCaw Protective Order*, 9 FCC Rcd at 2614; *BA/NYNEX Modified Protective Order* at 2.

²² We note, for example, that WorldCom and MCI express concern specifically about in-house counsel who are involved in "day-to-day business decision-making" having access to confidential information. WorldCom and MCI Reply Comments at 3. As explained above, we have addressed this situation with the modification made to paragraph 3 of the proposed protective order.

²³ BellSouth Comments at 3-4. BellSouth urges the Commission to incorporate the language from the section 271 protective orders and *AT&T/McCaw Protective Order* that allows consultation with "outside consultants or experts retained to render professional services in this proceeding." We believe that the deletion of the language in the proposed protective order to which BellSouth objects addresses BellSouth's concerns.

²⁴ WorldCom and MCI Reply Comments at 4. See *TCI/Primestar Protective Order*, Appendix A at 3.

adopted protective order. We find that the provisions in paragraph 3 that restrict access to confidential information to outside consultants or experts that are not involved in the analysis underlying the business decisions and do not participate directly in the business decisions of any competitor of WorldCom and MCI, adequately address WorldCom and MCI's concerns.

9. We agree with CWA and Simply Internet that the protective order should allow parties to object to confidential classification of particular documents.²⁵ Accordingly, we have modified paragraph 2 of the proposed protective order to clarify that the Commission reserves its authority pursuant to sections 0.459 and 0.461 of its rules to determine, either *sua sponte* or by petition, that a document for which confidential treatment is sought is not entitled to such treatment. Although WorldCom and MCI assert that such a modification is unnecessary and that resolution of classification disputes would "consume the Commission's time and harass [WorldCom and MCI],"²⁶ we find that this modification is permissible under our rules and consistent with Commission precedent.²⁷

10. We also decline to adopt Bell Atlantic's proposal that we delete paragraph 5 of the proposed protective order, which provides WorldCom and MCI an opportunity to object to the disclosure of confidential documents within three days of receiving a copy of the executed "Acknowledgment of Confidentiality" attached to the protective order.²⁸ Allowing WorldCom and MCI an opportunity to object to the disclosure of confidential information is commonplace and has been permitted in the *BA/NYNEX*, the *AT&T/McCaw*, the *TCI/Primestar Protective Orders*²⁹ as well as in the protective orders used in section 271 proceedings.³⁰ Bell Atlantic provides no reason why the Commission should deviate from well-established Commission precedent in this proceeding.

²⁵ CWA Comments at 3; Simply Internet Comments at 2.

²⁶ WorldCom and MCI Reply Comments at 8.

²⁷ See *AT&T/McCaw Protective Order*, 9 FCC Rcd at 2614; *BA/NYNEX Modified Protective Order* at 3; *Ameritech Protective Order*, 12 FCC Rcd at 6652; *SBC Protective Order*, 12 FCC Rcd at 6159.

²⁸ Bell Atlantic Comments at 3.

²⁹ See *BA/NYNEX Modified Protective Order* at 2; *AT&T/McCaw Protective Order*, 9 FCC Rcd at 2614; *TCI/Primestar Protective Order*, Appendix A at 7.

³⁰ See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Protective Order, 12 FCC Rcd 6650, 6651-52 (1997) (*Ameritech Protective Order*); *Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Protective Order, 12 FCC Rcd 6157, 6159 (1997) (*SBC Protective Order*). We will refer to these orders collectively as the "section 271 protective orders."

11. Similarly, we are not persuaded by BellSouth's contention that WorldCom and MCI should be required, pursuant to paragraph 5 of the proposed protective order, to permit access to confidential documents despite its objection, if the Commission alone so rules.³¹ We find that the language permitting WorldCom and MCI to withhold the production of certain documents from parties seeking access until the objection is resolved by the Commission and any court of competent jurisdiction is appropriate because it merely acknowledges the fact that WorldCom and MCI have the right to pursue administrative and judicial remedies. Moreover, section 0.459(g) of the Commission's rules contemplates the pursuit of such remedies.³² While the provisions of paragraph 5 may result in some delay, the sensitive nature of the materials at issue warrants a procedure by which WorldCom and MCI may raise an objection to providing a particular document that will be ruled upon by a neutral third party. Moreover, we do not believe that it is the interest of WorldCom and MCI to protract unnecessarily this proceeding by raising frivolous objections to the production of certain documents, in light of the remedies available to them under the protective order if confidential information is used in any manner precluded by the order. In addition, although prior protective orders may not have explicitly provided for judicial review of a Commission ruling on a request for confidentiality, such a right was implicitly acknowledged in the section 271 protective orders through the reference to section 0.459 of the Commission's rules.³³

12. We decline to delete the provisions in paragraph 7 of the proposed protective order that require parties to segregate physically those portions of a pleading containing or disclosing confidential information and to place these portions under the cover of a separate letter, as Bell Atlantic recommends.³⁴ We disagree with Bell Atlantic's contention that these provisions will "prevent commenters from writing coherent comments," simply because the support for an assertion in a brief will appear in a physically segregated, separately covered appendix to the pleading.³⁵ Rather, the procedures set forth in paragraph 7 of the proposed protective order are essential to preserving the confidentiality of the protected information and should not prevent any "competent counsel from making an effective presentation of their

³¹ BellSouth Comments at 4.

³² 47 C.F.R. § 0.459(g) (allowing person submitting confidentiality request to seek judicial stay of Commission ruling denying request for confidentiality).

³³ See, e.g., *Ameritech Protective Order*, 12 FCC Rcd at 6652; *SBC Protective Order*, 12 FCC Rcd at 6158.

³⁴ Bell Atlantic Comments at 4.

³⁵ *Id.*

client's case."³⁶ Moreover, we note that similar procedures were adopted in the section 271 protective orders³⁷ and in the recent *TCI/Primestar Protective Order*.³⁸

13. We reject BellSouth's suggestion to strike paragraph 8 of the proposed protective order which contains an "anti-waiver" provision.³⁹ The only argument BellSouth offers for deleting this provision is its contention that the section 271 protective orders and the *AT&T/McCaw Protective Order* did not contain a similar provision. We do not find the absence of such a provision in the protective orders cited by BellSouth to be sufficient cause for deleting it in this instance. Rather, we find that this provision is an appropriate means of protecting against an inadvertent waiver of privilege or confidential treatment. Moreover, we note that the recent *TCI/Primestar Protective Order* contains this same anti-waiver provision as does the Commission's proposed "model protective order."⁴⁰ We modify this provision, however, by adding the following language to subpart (c): "as long as the Submitting Party takes prompt remedial action." This language is included to ensure that only information that is accidentally disclosed is immune from public disclosure. For example, if WorldCom and MCI decline to take prompt remedial action after what appears to be an inadvertent disclosure, this may be evidence that such disclosure was not, in fact, accidental.

14. We also decline to adopt BellSouth's suggestion to revise paragraph 10 of the proposed protective order in order to allow counsel to make "specific" disclosure of the confidential information in discussions with clients, instead of prohibiting any type of disclosure whatsoever.⁴¹ We agree with WorldCom and MCI that the line between "specific" and "non-specific" disclosure is not clear and that drawing such a distinction may create a loophole that allows greater disclosure than contemplated by the terms of the protective order. In addition, we agree that such a loophole would be of particular concern in view of the

³⁶ WorldCom and MCI Reply Comments at 7.

³⁷ See, e.g., *Ameritech Protective Order*, 12 FCC Rcd at 6652 ("Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted.").

³⁸ *TCI/Primestar Protective Order*, Appendix A at 7-8 ("Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings.").

³⁹ BellSouth Comments at 4.

⁴⁰ *TCI/Primestar Protective Order*, Appendix A at 8; *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd 12406, 12442 (1996).

⁴¹ BellSouth Comments at 3.

sensitive nature of the materials at issue.⁴² Again, we are not persuaded by BellSouth's argument that we should adopt the standard from earlier protective orders. In the prior protective orders to which BellSouth cites, the Commission did not limit access to the protected material in the manner that we do here. As explained above, we limit access to confidential documents to a narrow group of counsel in order to reduce the potential for anti-competitive harm to WorldCom and MCI. Given this limitation that we have imposed with respect to access to documents, we find that a similarly strict standard is warranted with respect to disclosure of confidential information.

15. We agree with GTE and CWA's concerns and comments regarding the limitations the proposed protective order places on the use of confidential materials in paragraph 11.⁴³ We have, therefore, added language to paragraph 11 of the proposed protective order that permits parties to use confidential documents submitted in this proceeding in connection with communications and submissions to the Department of Justice as they pertain to the Department's review of the antitrust aspects of the proposed merger between WorldCom and MCI. As GTE and CWA state, the Department initially requested the material at issue and is familiar with its content.⁴⁴

16. We reject Bell Atlantic's proposed modification to paragraph 13 that would allow copies of confidential documents to be returned within 120 days of the conclusion of this proceeding and the certification of compliance to be delivered within 150 days of the conclusion of this proceedings, or the conclusion of any appeals and additional proceedings, whichever is later. At the same time, however, we agree with Bell Atlantic that the language in paragraph 13 of the proposed protective order may prevent parties from using the full record on appeal or in later proceedings. To address this concern, we modify the provision to clarify that confidential documents must be returned two weeks after the conclusion of this proceeding "which includes any administrative or judicial review." We note that this two-week time period was used in the section 271 protective orders as well as in the *TCI/Primestar Protective Order*.

17. Although BellSouth objects to the "Acknowledgment of Confidentiality" in Appendix B on the grounds that it adds "unnecessary restrictions to the Commission's standards,"⁴⁵ it offers no support for this assertion other than the fact that the proposed

⁴² WorldCom and MCI Reply Comments at 7.

⁴³ CWA Comments at 3; GTE Comments at 3.

⁴⁴ *Id.*

⁴⁵ BellSouth Comments at 4.

acknowledgment limits access to outside counsel. As explained above, we have modified the proposed protective order to permit disclosure of confidential materials to outside counsel of record and those in-house counsel who are actively engaged in the conduct of this proceeding, provided that they are not involved in competitive decision-making. As such, we have modified the acknowledgment form accordingly.

18. We have made, *inter alia*, the following additional substantive changes to the protective order proposed by WorldCom and MCI. We have deleted paragraph 6 of the proposed protective order, and replaced it with the following language: "If any person requests disclosure of stamped confidential documents outside the terms of this protective order, such requests will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules." This language makes clear that the protective order cannot and does not supersede applicable provisions of FOIA. We also have clarified paragraph 9 of the proposed protective order to state that the duty to provide WorldCom and MCI the opportunity to object to the order of a court or another agency to produce the confidential documents shall be subject to the independent authority of that entity to order otherwise. Moreover, we have deleted the last few lines of paragraph 11 of the proposed protective order which describe some of the sanctions the Commission could impose if the protective order is violated. We find such a description to be unnecessary given the fact that the proposed order already states that the Commission retains its full authority to fashion appropriate sanctions for any violation.

19. We decline Simply Internet's request to establish an additional pleading cycle to allow interested parties to comment on the new information that will be made available subject to this protective order. Rather, interested persons wishing to comment on any aspect of the materials made available by WorldCom and MCI under protective order may do so through the Commission's *ex parte* process.⁴⁶

20. Finally, we reject, at this time, GTE's recommendation that the Commission expand its document request to include other documents submitted by WorldCom and MCI to the Department. It is within the Commission's sole discretion to determine what information is necessary to conduct its review of the proposed merger. Moreover, we agree with WorldCom and MCI that GTE's request to expand the scope of the document request is outside the scope of the instant order.

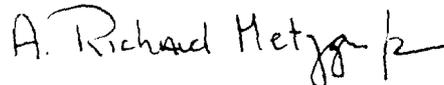
21. WorldCom and MCI shall make available for review the documents subject to this protective order at the offices of WorldCom's outside counsel, Swidler & Berlin, Chartered, 3000 K Street, NW, Suite 3000, Washington, DC 20007-5116. Parties reviewing

⁴⁶ See 47 C.F.R. § 1.1200 *et seq.*

these documents will be provided the following alternatives: 1) parties will be provided adequate opportunity to inspect the documents on site; 2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents; or 3) parties may request a complete set of the documents at cost, allowing two days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such request at the time they submit the Acknowledgment of Confidentiality. This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referenced in paragraph 5 of the protective order. All documents that are removed from the Swidler & Berlin offices will bear an original confidential stamp and must be returned in accordance with the terms of the protective order.

22. Any party seeking access to confidential documents subject to this protective order shall request access pursuant to paragraph 5 of the protective order. Commission staff may begin their examination of the confidential documents submitted in response to the April 21, 1998 information request on June 9, 1998.

FEDERAL COMMUNICATIONS COMMISSION



A. Richard Metzger, Jr.
Chief, Common Carrier Bureau

APPENDIX A**PROTECTIVE ORDER**

1. On April 21, 1998, the Common Carrier Bureau directed WorldCom, Inc. and MCI Communications Corporation (individually or collectively, the "Submitting Party") to submit further information to the Federal Communications Commission (Commission) for consideration in connection with the above-captioned proceeding. Because these documents, as well any documents that the Commission may request from WorldCom and MCI in the future, may contain confidential and proprietary information, the Bureau hereby enters this Protective Order to insure that the documents considered by the Submitting Party to be confidential and proprietary are afforded protection. This Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

2. Non-Disclosure of Stamped Confidential Documents. Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Order, neither a Stamped Confidential Document nor the contents thereof may be disclosed by a reviewing party to any person. A "Stamped Confidential Document" shall mean any document that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 97-211 before the Federal Communications Commission" to signify that it contains information that the Submitting Party believes should be subject to protection under FOIA and the Commission's implementing rules unless the Commission determines, sua sponte or by petition, pursuant to sections 0.459 or 0.461 of its rules that any such document is not entitled to confidential treatment. For purposes of this order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by a party or another person.

3. Permissible Disclosure. Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this order, such counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably

necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and who are not involved in the analysis underlying the business decisions and who do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of these functions. The Submitting Party shall make available for review the Stamped Confidential Documents at the offices of WorldCom's outside counsel, Swidler & Berlin, Chartered, 3000 K Street, NW, Suite 300, Washington, DC 20007-5116.

4. Access to Confidential Documents. Counsel described in paragraph 3 shall have the obligation to ensure that access to Stamped Confidential Documents is strictly limited as prescribed in this order. Such counsel shall further have the obligation to ensure (i) that Stamped Confidential Documents are used only as provided in this order; and (ii) that Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 7.

5. Procedures for Obtaining Access to Confidential Documents. In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person seeking such access shall execute the Acknowledgment of Confidentiality attached to this Protective Order and provide a copy of the executed Acknowledgment of Confidentiality to the Commission and to each Submitting Party so that it is received by each Submitting Party five business days prior to such person's reviewing or having access to any such Stamped Confidential Documents. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Confidential Documents to any such persons. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents.

6. Requests for Additional Disclosure. If any person requests disclosure of Stamped Confidential Documents outside the terms of this protective order, such requests will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

7. Use of Confidential Information. Counsel described in paragraph 3 may, in any documents that they file in this proceeding, reference information found in Stamped Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, CC Docket No. 97-211"; and

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and each Submitting Party. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff.

8. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course

thereof, relying generally on examination of Stamped Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or Confidential Information.

11. Violations of Protective Order. Persons obtaining access to Stamped Confidential Documents or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Parties will be permitted to use these materials in connection with communications and submissions to the Department of Justice as they pertain to that agency's review of the antitrust aspects of the proposed merger of WorldCom and MCI. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order.

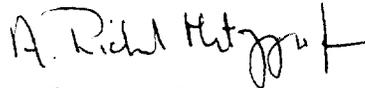
12. Prohibited Copying. If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to counsel for the Submitting Party.

13. Termination of Proceeding. The provisions of this order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be returned to the Submitting Party. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 3) may retain, under the continuing strictures of this order, two copies of pleadings containing confidential information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Party not more than three weeks after conclusion of this proceeding.

14. Authority. This Order is issued pursuant to Sections 4(i), 214(a), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a),

and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION



A. Richard Metzger, Jr.
Chief, Common Carrier Bureau

APPENDIX B

ACKNOWLEDGMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by this Order and that I shall not disclose or use documents or information designated as "CONFIDENTIAL INFORMATION" or any information gained therefrom except as allowed by the Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel to a party or other person described in paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the order.

Executed at _____ this ____ day of _____, 1998.

Signature

Title