

EX PARTE OR LATE FILED

ORIGINAL

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

RECEIVED

JUL 24 1998

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 97-211

ORIGINAL

**MCI'S OPPOSITION TO GTE'S MOTION
FOR EXPEDITED CONSIDERATION OF GTE'S MOTION
FOR ESTABLISHMENT OF A PROCEDURAL SCHEDULE
AND PRODUCTION OF RELATED MATERIALS**

MCI Communications Corp. ("MCI") opposes the motion filed by GTE on July 22, 1998, for expedited consideration of GTE's June 17, 1998, motion for establishment of a procedural schedule for review of the divestiture of MCI's Internet business. Both of GTE's motions are simply stratagems intended to delay Commission approval of MCI's merger with WorldCom, Inc. ("WorldCom").

GTE's arguments amount to a claim that Cable & Wireless plc ("C&W") did not negotiate a good deal when it bought MCI's Internet business. Of course, GTE's purported concerns are backed by nothing (except an implacable desire to delay and defeat the merger), and C&W's assessment is backed by \$1.75 billion in cash. GTE does not dispute that C&W is a successful and sophisticated telecommunications company experienced in negotiating acquisitions. GTE offers nothing to suggest that through ignorance or incompetence, C&W's acquisition was based on anything other than sound

No. of Copies rec'd 015
List ABCDE

business judgment. Nor is it remotely plausible that the Department of Justice (and the European Commission), which reviewed and approved the details of the divestiture, completely missed gaping loopholes that render worthless the business that C&W is acquiring.

The chimerical suspicions conjured up by GTE are easily refuted:

- GTE insinuates that MCI and WorldCom may have taken steps since the C&W deal was reached to market WorldCom's Internet services to MCI's Internet customers. Motion at 3. This intimation presupposes, without foundation and contrary to fact, (1) that MCI and WorldCom exchanged customer lists prior to regulatory approvals and closing and (2) that C&W negotiated an agreement that allows MCI to emasculate it through conduct outside the ordinary course of business.
- With touching solicitude for its competitor, GTE wonders whether C&W failed to negotiate an adequate term for use of the MCI brand name. GTE Motion at 3. GTE offers nothing to suggest that C&W needs to use the name for any length of time — or that C&W wants to do so instead of building on its own identity as a leading global telecommunications company. Of course, with its “heads I win, tails you lose” approach, GTE would doubtless argue that C&W is not sufficiently independent if it contracted to use the name for a longer period than it did.
- GTE incomprehensibly argues that “[w]hile MCI assertedly will transfer ‘all’ of its system’s physical assets to C&W, these assets have not been identified with adequate specificity.” *Id.* “Some” or “most” or “almost all” may lack sufficient specificity, but “all” does not. If “all” these assets are not enough for a viable Internet business, then apparently MCI’s Internet operation would not have added much to WorldCom’s Internet business either.
- GTE demands more information about the details of various leases and other provisions of the agreement. *Id.* at 3-4. MCI has already fully addressed this argument. Reply Comments of MCI Concerning Divestiture of Its Internet Business, at 12-14 (filed July 15, 1998). C&W had the incentive and ability to negotiate an agreement that preserves its independence, and it did so, not least of all by maintaining its right to put all the traffic onto its own existing backbone.

- GTE wants the Commission to make its own determination about which MCI employees C&W needs to supplement its own workforce. *Id.* at 4. It is hard to imagine a role less appropriate for the Commission than to serve as a supervisory human resources department for C&W, or less necessary given C&W's ability to look out for itself.
- GTE inconsistently argues that the "fire-sale pricing" of MCI's Internet business may indicate that the divestiture was incomplete. *Id.*¹ MCI's entire Internet business is in fact being divested, and the \$1.75 billion price is a fair price consistent with the price paid in the last two years for other Internet businesses, including GTE's purchase of BBN. To the extent that MCI was forced to sell its Internet business in less than optimal circumstances, that would explain why the price was lower than it otherwise might have been. If C&W got a good deal, C&W will only be better able to compete against MCI WorldCom — and GTE.

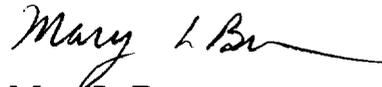
No further proceedings are necessary. The Commission received comments from GTE and others concerning MCI's initial agreement with C&W involving the sale of MCI's backbone business. The subsequent agreement with C&W changed the initial agreement only in ways that addressed concerns raised in the initial round of comments by GTE and others — primarily to include in the divestiture contracts with retail customers and to increase the number of employees transferred to C&W. Notably, GTE does not even acknowledge the explanation in MCI's July 15 Reply Comments (at 16) of why more than enough information has been disclosed to evaluate the divestiture: all material terms have been announced; C&W is acknowledged to be a credible buyer with every incentive and the ability to protect its own interests; DOJ comprehensively reviewed the

¹ GTE's passion for disclosure does not extend to its alleged estimate that MCI's Internet business is worth \$4-7 billion. *Ibid.*

sufficiency and details of the divestiture; and disclosure of competitively sensitive information to competitors like GTE raises significant concerns.

The Commission has given interested parties a fair opportunity to comment, and the extensive record already contains ample information to permit the Commission to discharge its responsibility to make an informed assessment of the public interest. The matter is ripe for decision.

Respectfully submitted,



Mary L. Brown
Larry A. Blosser
MCI COMMUNICATIONS
CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 872-1600

Anthony C. Epstein
JENNER & BLOCK
601 Thirteenth Street, N.W.
Twelfth Floor
Washington, D.C. 20005
(202) 639-6000

July 24, 1998

CERTIFICATE OF SERVICE

I, Vivian I. Lee, hereby certify that on July 24, 1998 copies of the foregoing MCI's Opposition to GTE's Motion for Expedited Consideration of GTE's Motion for Establishment of a Procedural Schedule and Production of Related Materials was sent by first class mail, postage prepaid, to the following:

Chairman William E. Kennard*
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Michael Powell*
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Magalie Roman Salas*
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

John T. Nakahata, Chief of Staff*
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Kathryn C. Brown, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Regina M. Keeney, Chief*
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

Daniel B. Phythyon, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

Thomas C. Power*
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

James Casserly*
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Kyle Dixon*
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Paul Gallant*
Office of Commissioner Tristani
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Kevin Martin*
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Lawrence Strickling*
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 658
Washington, D.C. 20554

Rebecca L. Dorch*
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 650-F
Washington, D.C. 20554

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

International Reference Room*
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 102
Washington, D.C. 20554

Wireless Reference Room*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5608
Washington, D.C. 20554

International Transcription Services, Inc.*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Richard E. Wiley
R. Michael Senkowski
Jeffrey S. Linder
Robert J. Butler
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Michelle Carey *
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
WILKES, ARTIS, HEDRICK & LANE,
Chartered
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

John Thorne
Sarah Deutsch
Robert H. Griffen
Attorneys for Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

William B. Barfield
Jonathan Banks
BELLSOUTH CORPORATION
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

George Kohl
Senior Executive Director, Research and
Development
Communications Workers of America
501 Third Street, N.W.
Washington, D.C. 20001-2797

John J. Sweeney
President
American Federation of Labor and Congress
of Industrial Organizations
815 16th Street, N.W.
Washington, D.C. 20006

Janice Mathis
General Counsel
Rainbow/PUSH Coalition
Thurmond, Mathis & Patrick
1127 W. Hancock Avenue
Athens, GA 30603

David Honig
West Coast Valet Service
3636 16th Street, N.W., #B-366
Washington, D.C. 20010

Matthew R. Lee, Esq.
Executive Director
Inner City Press/Community on the Move &
Inner City Public Interest Law Project
1919 Washington Avenue
Bronx, NY 10457

Andrew Jay Schwartzman
Gigi B. Sohn
Joseph S. Paykel
Media Access Project
Suite 400
1707 L Street, N.W.
Washington, D.C. 20036

Thomas A. Hart, Jr.
M. Tamber Christian
Amy E. Weissman
Shook, Hardy & Bacon L.L.P
801 Pennsylvania Avenue, N.w..
Washington, D.C. 20004

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Robert Gnaizda
Itzel D. Berrio
The Greenlining Institute
785 Market Street, 3rd Floor
San Francisco, CA 94103

Susan E. Brown
Latino Issues Forum
785 Market Street, 3rd Floor
San Francisco, CA 94103

Charles Helein
Helein & Associates
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Sue Ashdown
Coalition of Utah Independent Internet
Service Providers
Xmission
51 E. 400 S. Suite 200
Salt Lake City, UT 84111

James Love
Consumer Project on Technology
P.O. Box 19367
Washington, DC 20036

Barbara O'Connor
Donald Vial
Maureen Lewis
The Alliance for Public Technology
901 Fifteenth St., N.W., Suite 230
Washington, DC 20005

Melissa Waksman *
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Kent Nilsson, Deputy Chief *
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 235
Washington, D.C. 20554

Office of the Chief *
Network Services Division
Federal Communications Commission
2000 M Street, N.W.
Room 235
Washington, D.C. 20554

Anna M. Gomez, Deputy Chief *
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 235
Washington, D.C. 20554

Greg Cooke *
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 235
Washington, D.C. 20554

Alan Y. Naftalin
Gregory C. Staple
R. Edward Price
KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mitchell Lazarus
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Mark C. Rosenblum
Aryeh S. Friedman
AT&T Corporation
295 North Maple Avenue
Room 3252G3
Basking Ridge, NJ 07920

Terrence J. Ferguson
Lovel 3 Communications, Inc.
3555 Farnam Street
Omaha, Nebraska 68131

Kathleen McManus Trafford
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

Eric J. Wittenberg
NetSet Internet Services, Inc.
3966 Brown Park Drive, Suite E
Hilliard, Ohio 43206

Deborah Howard
Internet Service Providers Consortium
c/o Lockridge, Grindal, Mauen &
Holstein, P.L.L.P.
100 Washington Avenue South
Suite 2200
Minneapolis, Minnesota 55401

Rodney L. Joyce
Shook, Hardy & Bacon L.L.P.
801 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

David Koch
Fiber Network Solutions, Inc.
6800 Lauffer Road
Columbus, Ohio 43231

David Holub
100 Apartment B Edgewood Avenue
San Francisco, California 94117

*** HAND DELIVERED ***



Vivian I. Lee