

ATTACHMENT 4

Outside Connection Letter To Judge Gonzalez

U.S. BANKRUPTCY COURT

Judge Gonzalez
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, N.Y. 10004-1408

Re: Outside Connection v. MCI Worldcom and
New York State Dept. of Correctional Svcs.,
Adversary Proceeding No. 02/8092A, Case
No. 02/13533

Dear Judge Gonzalez:

I write in order to bring to the Court's attention a new fact that is relevant to the pending motion of Outside Connection ("OC") to dismiss its lawsuit for damages against the above defendants without prejudice so that the FCC may consider whether the defendants' blocking of the OC service violates FCC regulatory policy. As the Court knows, OC filed a petition with the FCC on March 19, 2003 requesting a declaratory ruling that the defendants' actions violate FCC policy. A copy of that petition was introduced into evidence in this case at yesterday's oral argument on the OC motion for dismissal without prejudice. Today, the FCC issued a Public Notice inviting comments on the OC petition by April 16, 2003 and reply comments by April 28, 2003. A copy of this Public Notice is enclosed.

The FCC's decision to invite comment on OC's petition indicates that the agency considers the arguments raised by OC in the petition to be serious since the FCC invites comment only on petitions for declaratory ruling that it believes it may be interested in deciding. By stating that the FCC "may" issue a declaratory ruling in response to a petition but that it is not required to do so, both FCC rules and the Administrative Procedure Act make plain that the agency has broad discretion to ignore petitions for declaratory ruling.¹ As a result, the FCC rarely issues a declaratory ruling in response to a petition without first inviting comment from interested parties, and it invites comment only on those petitions on which it believes it may be interested in ruling.

Respectfully submitted,

Salvatore S. Russo

¹ See FCC Rule 1.2, 47 C.F.R. §1.2, stating that the FCC "may" issue a declaratory ruling but imposing no obligation on the agency to do so upon the filing of a petition requesting that it do so. See also Section 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), providing that an agency may issue a declaratory order "in its sound discretion. . . ."

Piper Rudnick, LLP
Monica McCabe, Esq.
Attorney for Defendant MCI WorldCom
1251 Avenue of the Americas
New York, N.Y. 10020-1104
(212) 835-6164

Attorney General of the State of N.Y.
Steven Schulman, Esq.
Attorney for Defendant DOCS
120 Broadway – 24th Floor
New York, N.Y. 10271
(212) 416-8654