

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

In re: Applications of)
WorldCom, Inc. and its Subsidiaries,)
As Debtor in Possession,)
Assignor)
AND)
WorldCom, Inc. and its Subsidiaries)
Assignee)
For Consent to Assign Commission)
Licenses)
_____)

WC Docket No. 02-215

**OPPOSITION OF VERIZON TO MARGARET F. SNYDER'S PETITION TO DENY
TRANSFER OF LICENSES, AUTHORIZATIONS, AND CERTIFICATIONS OF
WORLD COM, INC., AND MOTION TO DISCLOSE DOCUMENTS**

The Petition to Deny should be denied for at least two reasons. First, the settlement agreement between Verizon¹ and WorldCom, Inc. ("WorldCom") involved nothing more than payment on accounts receivable for the provision of actual business services, and thus is not subject to Rule 1.935, the Commission's so-called "greenmail" rule. Second, the settlement fails to implicate Rule 1.935 for the additional reason that Verizon never withdrew any pending filing, nor did it refrain from submitting any threatened filing, involving WorldCom. In addition, the Motion to Disclose should be denied; interested parties already have had the opportunity to

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

review the settlement agreement, and there is no reason to second-guess the prior determinations of this Commission and of the Bankruptcy Court that non-disclosure furthers the public interest.

Verizon's bona fide business settlement with WorldCom is outside the scope of Rule 1.935. *See* 47 C.F.R. § 1.935 (2003). Verizon received payment from WorldCom to discharge the latter's outstanding debts, not in exchange for any promise not to oppose the license transfers attendant upon WorldCom's reorganization. WorldCom's payment thus was not in consideration of any pledge of future conduct from Verizon. Rather, it was payment for legitimate business services performed in the past. Indeed, WorldCom still would have had a legal obligation to pay all amounts it owed under all of its contracts with Verizon that it wanted to continue and assume. *See* 11 U.S.C. § 365 (2000).

That WorldCom's payment constitutes a discharge of previous debts, rather than an effort to pay "hush money,"² further is indicated by the Bankruptcy Court's finding of fact that the Verizon-WorldCom settlement advanced the public interest. According to the Court: "The settlement is fair and reasonable under the circumstances and in no way unjustly enriches any of the Parties. In addition, such settlement is in the best interest of the Debtors, their estates and creditors."³ A federal judge's determination that the settlement – including the challenged payment – furthers the interests of the public certainly trumps any unsupported allegations to the

² *Sixth Supplement to Petition to Deny*, at 8.

³ *Order Approving Settlement And Compromise Of Certain Matters With Verizon Communications, Inc., In re: WorldCom, Inc.*, Chapter 11 Case No. 02-13533 (AJG), at 2 (Bank. S.D.N.Y. July 29, 2003).

contrary by Snyder and her counsel. Furthermore, the Commission should not, and indeed is without authority to, second-guess this determination.⁴

The bona fide business nature of the settlement between Verizon and WorldCom is confirmed by the fact that the Verizon did not simply receive payment *from* WorldCom; it also made payment *to* WorldCom. In other words, WorldCom's payment to Verizon was, in part, in exchange for Verizon's payment to WorldCom. Snyder and her counsel even concede this point, as indeed they must. *See Motion to Disclose*, at 4.

Moreover, the Commission *itself* entered into a similar agreement with WorldCom. The Commission and WorldCom entered into a settlement agreement for the payment of accounts allegedly due to the Commission for auction licenses. *See Motion to Disclose*, at 4. This was no different than Verizon's business decision to enter into a settlement agreement with WorldCom for monies it was owed for the provision of telecommunications services. If the Commission lawfully can enter into bona fide repayment arrangements with WorldCom, so too can Verizon.

In addition to its bona fide business purpose, the settlement is outside the scope of Rule 1.935 because Verizon neither withdrew any pending filing in opposition to a license transfer application filed by WorldCom, nor did it refrain from submitting any threatened such filing. Rule 1.935 *only* prohibits payments "in exchange for" (1) withdrawing a filed pleading or (2) deciding not to file a threatened pleading. Verizon has done neither. It has not withdrawn a pending filing in opposition to a WorldCom license transfer application. Nor has it refrained from filing any opposition papers that it threatened to file against WorldCom. In fact, in the

⁴ *Cf. FCC v. NextWave Pers. Comm., Inc.*, 537 U.S. 293 (2003) (invalidating the Commission's exercise of regulatory authority over a license for failure to pay a debt found to be dischargeable in bankruptcy).

specific proceeding at issue in the settlement agreement – WorldCom’s Application To Assign And/Or Transfer Control Of Licenses And Authorizations (WC Docket No. 02-215) – Verizon never even filed comments, much less withdrew a filed objection or declined to file a threatened opposition.

Reading Rule 1.935 as Snyder urges would produce absurd results that would impose a significant burden on this Commission’s resources, as well as on those of regulated entities. If Rule 1.935 is deemed to require that an entity obtain Commission approval every time it “refrain[s] from filing [a] petition[],”⁵ telecommunications providers will have time to do little else besides filing petitions seeking permission to not file petitions – and the Commission will have time to do little else besides review them. The better reading of Rule 1.935 is that Commission approval is necessary *only* where an entity previously has filed an opposition or specifically threatened to do so. Again, neither has taken place here.

Not only is Verizon’s settlement agreement entirely lawful, but the sensitive data it contains should remain confidential. The federal courts – like the Commission and the Bankruptcy Court in this matter – agree that delicate commercial and financial data ought not to be released to the general public.⁶ Here, the Commission in its Protective Orders has *twice* weighed the equities and concluded that the public interest favors non-disclosure of WorldCom’s settlement agreements, explaining that: “The Commission will take action to avoid unnecessary

⁵ *Fourth Supplement to Petition to Deny*, at 2.

⁶ *See, e.g., Critical Mass Energy Project v. NRC*, 975 F.2d 871, 872 (D.C. Cir. 1992) (holding that, where “the information sought is given to the Government voluntarily, it will be treated as confidential under [FOIA] Exemption 4 if it is of a kind that the provider would not customarily make available to the public”); *cf.* 47 C.F.R. § 0.457(d)(2) (2003) (instructing that “materials will not be made routinely available for public inspection” if they “contain trade secrets or commercial, financial or technical data which customarily would be guarded from competitors”).

disclosure of information that might put its regulates at a competitive disadvantage.”⁷ There is no need to reconsider those conclusions. Nor is there any reason to look behind the Bankruptcy Court’s similar determination that the public interest favors the settlement agreement, including the non-disclosure requirement.⁸

Respecting the non-disclosure requirement would not deny the Commission or any parties access to the information they need to decide or comment upon WorldCom’s transfer application. Both the Commission and lawyers for Snyder remain entirely free under the Protective Orders to review the terms of the agreement, a right that Snyder’s counsel apparently already has exercised. That the Orders impose no disadvantage on interested parties is evidenced by the fact that Snyder has filed a Petition to Deny, presumably based on her counsel’s review of the settlement agreement. Moreover, the general terms of the settlement already have been made public, and no showing has been made that the general public has any interest in seeing the specific confidential terms.

Because Verizon’s settlement agreement with WorldCom does not implicate Rule 1.935, and because there is no reason for this Commission to depart from its prior conclusions that the public interest favors non-disclosure or to second-guess that same determination by the

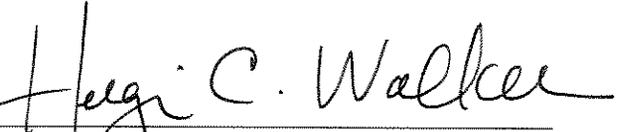
⁷ *Order Modifying Protective Order*, WC Docket No. 02-215 ¶ 6 (Nov. 21, 2003) (internal quotation marks omitted); *see also Protective Order*, WC Docket No. 02-215 ¶ 5 (Nov. 4, 2003) (ordering that “neither a Confidential Document nor information derived therefrom . . . may be disclosed by a reviewing party to any person other than the Commission or its staff”).

⁸ *Order Approving Settlement And Compromise Of Certain Matters With Verizon Communications, Inc., In re: WorldCom, Inc.*, Chapter 11 Case No. 02-13533 (AJG), at 2 (Bank. S.D.N.Y. July 29, 2003) (“The settlement is fair and reasonable under the circumstances and in no way unjustly enriches any of the Parties. In addition, such settlement is in the best interest of the Debtors, their estates and creditors.”).

Bankruptcy Court, the Commission should deny Snyder's Petition to Deny and Motion to Disclose.

Respectfully submitted,

WILEY REIN & FIELDING LLP

By: 

Helgi C. Walker
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

Michael E. Glover
Edward Shakin
Ann H. Rakestraw
VERIZON
1515 N. Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3174

Of Counsel

Dated: December 11, 2003

Attorneys for the Verizon telephone
companies

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of December, 2003, copies of the foregoing were sent by electronic mail to the parties listed below.

/S/

Jennifer L. Hoh
703-351-3063

Gary S. Smithwick
Arthur V. Belendiuk
Smithwick & Belendiuk
Counsel to Margaret F. Snyder
5028 Wisconsin Ave., NW
Suite 301
Washington, DC 20016
abelendiuk@fccworld.com

Howard J. Barr
Womble Carlyle Sandridge & Rice
Counsel for UCC
1401 Eye Street, NW
7th Floor
Washington DC 2005
hbarr@wcsr.com

Richard Arsenault
Wireless telecommunications Bureau
FCC 445 12th Street, SW
Washington, DC 20554
rarsenau@fcc.gov

Stephen L. Earnest
BellSouth
675 West Peachtree Street, NE
Suite 4300
Atlanta, GA 30375
stephen.earnest@bellsouth.com

Qualex International
qualexint@aol.com

Jim Lamoureux
SBC Communications
1401 Eye Street, NW
Suite 400
Washington, DC 20005
jlamour@momail.sbc.com

Dennis W. Guard
Richard S. Whitt
Counsel for MCI
1133 19th Street, NW
Washington, DC 20036
dennis.guard@mci.com