

**Smithwick & Belendiuk
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016**

DOCKET FILE COPY ORIGINAL

RECEIVED

02-215

FEB 19 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hand Delivery

**Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002**

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

FEB 19 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re application of)
)
WORLDCOM, INC , and its Subsidiaries as)
DEBTOR IN POSSESSION)
Transferor)
)
AND)
)
MCI, INC., and its Subsidiaries)
Transferee)
)
For consent to transfer of control of licenses and)
authorizations held by WorldCom in bankruptcy)

WC Docket 02-215

To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO
CONSOLIDATED APPLICATION FOR REVIEW

Margaret F. Snyder, by her attorneys, hereby replies to the Oppositions filed February 4, 2004, by WorldCom, Inc ("WorldCom"), BellSouth Telecommunications, Inc ("BellSouth"), Verizon and SBC Communications, Inc. ("SBC") that opposed Ms Snyder's application for review of the three related letter decisions ("Decisions"), DA 03-3844¹, 3845² and 3846³, released December 19, 2003, whereby the Wireless Telecommunications Bureau ("WTB") dismissed Ms Snyder's Fourth and Sixth Supplements to her Petition for Deny concluding that settlement agreement between

¹ Letter Decision concerning BellSouth Corporation ("BellSouth").

² Letter Decision concerning Verizon

³ Letter Decision concerning SBC Telecommunications, Inc. ("SBC")

FILED
FEB 19 2004

014

WorldCom and BellSouth, Verizon and SBC did not violate Section 1.935 of the Commission's rules.⁴ None of the Oppositions addresses the concerns Ms. Snyder raised. Consequently, the Commission should review the action taken by the WTB under delegated authority and deny the licenses, authorizations, and certifications of WorldCom.

As set forth in her Consolidated Application for Review, on October 15, 2003, Ms. Snyder filed a Fourth Supplement to her Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc. She also made a request to inspect documents. On November 4, 2003, the WTB issued a *Protective Order*, which enabled Ms. Snyder's counsel to review the settlement agreements. On December 1, 2003, Ms. Snyder filed a Sixth Supplement. Ms. Snyder alleged that WorldCom abused the Commission's processes by inducing BellSouth, Verizon and SBC to withhold information from the FCC and requested the WTB to investigate whether the settlement agreements with BellSouth, Verizon and SBC violate Section 1.935 of the Commission's Rules. Ms. Snyder demonstrated that the settlement agreements contain provisions whereby BellSouth, Verizon and SBC agreed not to assert oppositions to the above-referenced applications in return for monetary consideration. Ms. Snyder has argued that those agreements required prior Commission approval.

Not surprisingly, the parties, in their Oppositions, argue that the Consolidated Application for Review should be denied, characterizing each arrangement as a "bona fide business settlement."⁵ For example, Verizon argues that Section 1.935 does not

⁴ This Consolidated Reply is timely filed within 10 days (adding three days for mailed service) of the date the Oppositions were filed (See Section 1.115(d)).

⁵ Verizon Opposition, p. 1.

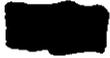
apply because Verizon never withdrew any pending filing, nor did it refrain from submitting any threatened filing, involving WorldCom. What Verizon fails to mention is that its settlement agreement specifically bars it from filing any petition concerning WorldCom in the above captioned proceeding. The relevant question for the purposes of Section 1.935 is not whether Verizon filed a petition to deny, but rather was there an agreement in place that prevented it from doing so? The answer to this question is that Verizon was legally barred from filing any petition in the above reference proceeding. The second question is was Verizon compensated for agreeing not to participate in this proceeding? Here again the answer is yes. Verizon received a significant payment for its promise not to file against Worldcom. Clearly, Verizon violated Section 1.935 of the Commission's rules. SBC and BellSouth whose settlement agreement contain identical provisions and who also were compensated for their silence, likewise violated Section 1.935 of the Commission's rules.

The Affidavit of Mary Jo Peed, General Counsel of BellSouth, includes the following statement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SBC's November 13, 2003, publicly filed letter, states that the Settlement Agreement provides for a "substantial monetary recovery on SBC's claims." This, according to SBC "may be misconstrued by other creditors of WorldCom." Clearly, BellSouth and SBC received substantial monetary consideration for their agreement not to oppose Worldcom's transfer of licenses and authorizations. While other creditors received less than full value for their claims, BellSouth received [REDACTED]

 amount of its pre-bankruptcy petition claims. Each party made the same agreement requiring it to withhold filing any petitions opposing WorldCom. Likewise, each party was well compensated for its cooperation and silence.

BellSouth, Verizon and SBC all received payments, in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or some other pleading against WorldCom's applications. The settlement agreements were belatedly filed with the Commission, after the Bankruptcy Court approved them. There is no provision in any of the settlement agreements requiring prior approval of the FCC as required by Section 1.935 of the Commission's Rules. The plain language of Section 1.935 of the Rules requires the agreements to be filed with the Commission, and Commission approval of them. However, they were not. It is absurd to believe that WorldCom did not pay BellSouth, Verizon and SBC an illegal premium above what other legitimate creditors could expect to receive in return for BellSouth, Verizon and SBC's promises not to disclose information to the FCC, not to file a petition to deny or otherwise not to interfere in WorldCom's attempts to transfer its licenses. Faced with this overwhelming evidence of violation, the WTB found that "there is insufficient evidence to conclude that [BellSouth, Verizon and SBC] made the type of threat covered by Section 1.935 and therefore, the agreement is not covered by the rule." This was plainly error and must be reversed on review.

For the reasons stated herein, the Commission should review the action of the WTB, reverse it, and designate WorldCom's applications for evidentiary hearing.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "Arthur V. Belendiuk", written over a horizontal line.

Gary S. Smithwick
Arthur V. Belendiuk
Counsel to Margaret F. Snyder

Smithwick & Belendiuk, P C
5028 Wisconsin Avenue, N W , # 301
Washington, D C 20016
(202) 363-4050

February 19, 2004

CERTIFICATE OF SERVICE

I, Sherry Schunemann, do hereby certify that a copy of the foregoing
"Consolidated Reply to Oppositions to Consolidated Application for Review" was mailed
by First Class U S. Mail, postage prepaid, this 19th day of February, 2004, to the
following.

Dennis W. Guard, Esquire
1133 Nineteenth Street, N.W.
Washington, D C. 20036
Counsel for WorldCom, Inc.

Howard J. Barr, Esquire*
Womble, Carlyle, Sandridge & Rice, PLLC
1401 Eye Street, N W., Seventh Floor
Washington, D C. 20005
*Counsel for Office of Communication of the
United Church of Christ, Inc.*

Stephen L. Earnest, Esquire*
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375
Counsel for BellSouth Telecommunications, Inc.

Ann H. Rakestraw, Esquire*
1515 North Courthouse Road
Suite 500
Arlington, Virginia 22201-2909
Counsel for Verizon

James Lamoureux, Esquire*
1401 Eye Street, N.W , Suite 400
Washington, D.C. 20005
Counsel for SBC Communications, Inc.


Sherry Schunemann

*Redacted Copy Only