

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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Application of))
))
WorldCom, Inc.))
)) Case No. TM-2004-0146
For Grant of any Authority Necessary for))
Restructuring and Certain Related Intra-Corporate))
Transactions Undertaken to Consummate))
WorldCom's Plan of Reorganization))
Under Chapter 11 of the Federal Bankruptcy Code))
_____)

MEMORANDUM REGARDING QUESTION OF JURISDICTION

Comes Now WorldCom, Inc. ("WorldCom"), by its undersigned counsel, and on behalf of its subsidiary Missouri competitive telecommunications companies identified in the Application filed herein, pursuant to the Commission's September 22, 2003 Order Directing Response to Question of Jurisdiction, provides its Memorandum Regarding Jurisdiction.

WorldCom respectfully suggests that the question of jurisdiction is not presently before the Commission. By stipulation made in the context of its bankruptcy proceeding, WorldCom agreed to submit its Application and the State of Missouri agreed to process it expeditiously.

By letter dated July 7, 2003, WorldCom updated the Commission on the status of its bankruptcy proceeding, and advised the Commission that WorldCom's Plan of Reorganization (POR or the Plan) included language indicating WorldCom's belief that state commissions were preempted from reviewing various transactions in the Plan pending before the federal Bankruptcy Court. Included in those transactions were the

mergers and dissolutions of several of WorldCom's existing operating subsidiaries and holding company subsidiaries that are described in the Application (the "Mergers and CLEC Consolidation").

With California taking the lead, some states - including Missouri acting through its Attorney General - raised a limited objection to WorldCom's POR.¹ These states' (the "Objecting States") objections were driven by concerns about WorldCom's assertion of the legal doctrine of express preemption in its Plan. WorldCom began discussions with those states immediately upon learning of their concerns, and as a result reached a Stipulation with those states regarding the preemption issues.

Under the terms of this Stipulation (a copy of which is attached to the Application), and once it is approved by the Bankruptcy Court, those states will withdraw their objections. Further, WorldCom agreed, among other things, to remove references to express preemption from the Plan,² but the states agreed that WorldCom could retain language that the Debtors may seek to preempt state review of the Mergers and CLEC Consolidation under the doctrine of implied preemption before the Bankruptcy Court.³

¹ The California Department of Justice and the California PUC; State of Montana; State of Hawaii, Department of Taxation; Paul G. Summers, Attorney General and Reporter on behalf of the Tennessee Regulatory Authority; State of Minnesota, Department of Commerce and Office of the Attorney General; State of Vermont; State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General; State of Missouri, Jeremiah W. Nixon Attorney General; State of Illinois, Lisa Madigan, Attorney General of the State of Illinois on behalf of the People of the State of Illinois; State of South Dakota; State of Oregon; Public Utilities Commission of Texas and the State of Arkansas.

² Because of the agreement not to pursue express preemption at this time, WorldCom will not explain the issue in detail. But for the Commission's general understanding, the contention was that Sections 525 and 1123 of the Bankruptcy Code by their terms preempted state review of the transactions in question that are part of the Plan.

³ Because the Stipulation calls for WorldCom to present arguments regarding implied preemption to the Bankruptcy Court, it will not explain the issue in detail. But for the Commission's general understanding, under the doctrine of implied preemption, regulatory review of the Mergers and CLEC Consolidation would be impliedly preempted because it "stands as an obstacle to the accomplishment and execution of the

WorldCom agreed to file for either exemption or approval of the transactions with the public utilities commissions of the Objecting States, and those states agreed to expedite consideration of the filings to be made by WorldCom. In the event that any or all of the state commissions of the Objecting States have not approved the applications or exempted the transactions from otherwise applicable approval requirements by November 19, 2003, or in the event circumstances transpire which, in WorldCom's sole discretion, cause the rendering of a final decision by that date to be unlikely, WorldCom will have the right to reassert express preemption, in addition to its continuing right to assert implied preemption, and bring the matter before the Bankruptcy Court. WorldCom is required to give fourteen (14) days written notice to the Objecting States if it reasserts express preemption.

Thus, under the Stipulation, WorldCom recognized this Commission's jurisdiction over the Mergers and CLEC Consolidation "to the extent provided under state law, and to the extent not preempted by operation of the United States Bankruptcy Code."

(Stipulation, para. 1). The State of Missouri asserted that "to the extent the Mergers and

full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *International Paper Co. v. Ouellette*, 479 U.S. 481, 491-92 (1987); *Perez v. Campbell*, 402 U.S. 637, 652 (1971).

The Ninth Circuit has held that state laws impairing a debtor's ability to reorganize in bankruptcy are more likely to be impliedly preempted if they are intended to further an economic purpose rather than one related to health or safety. *In re Baker & Drake, Inc.*, 35 F.3d 1348, 1353-55 (9th Cir. 1994). State laws conferring discretion on the state PUC to review utility transactions are generally economic in nature. They concern mergers, acquisitions or changes of control in utilities, restructuring activities that are at the core of the right to reorganize in bankruptcy. The Bankruptcy Court is similarly required to apply economic criteria in determining whether to approve a reorganization plan in the first place. If the states were permitted to reconsider the economic balance already struck by bankruptcy law and the Bankruptcy Court's application of that law, this would undermine the "whole complex, reticulated bankruptcy process." *MSR Exploration, Ltd.*, 74 F.3d at 914; *see also id.* ("[T]he highly complex laws needed to constitute the bankruptcy courts and regulate the rights of debtors and creditors . . . underscore the need to jealously guard the bankruptcy process from even slight incursions."). In light of that process, it is "very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process." *Id.*

CLEC Consolidation ... are covered by state law and regulation ... no preemption applies." (Id., para. 4). As indicated above, WorldCom agreed not to pursue arguments of express preemption for a period of time, and further agreed that if it disagreed with a state as to implied preemption it would present the issue to the Bankruptcy Court. (Id., para. 4). WorldCom agreed to file applications for approval or exemption with the Objecting States, including this Commission, by September 19, 2003. (Id., para. 5). The State of Missouri - and the other Objecting States - agreed to use "best efforts" to process the such an application "expeditiously". (Id., para. 6). For all parties to obtain the benefits of the Stipulation, the states need to approve the applications by November 19, 2003. (Id., para. 7).

WorldCom submitted its Application herein in accordance with the Stipulation on September 19, 2003. Further, in accordance with the Stipulation, WorldCom requested expedited approval of the Application by November 19, 2003.

As indicated, in the Stipulation the State of Missouri agreed to use "best efforts" to process the Application "expeditiously". (Stipulation, para. 6).

At this point, under the terms of the Stipulation, the Commission's jurisdiction is not in question. The Commission need not address the question of whether its jurisdiction is preempted by bankruptcy law. By stipulation any such issue is to be addressed - if at all - by the Bankruptcy Court. Instead, the Commission needs only to process the Application expeditiously per the Stipulation and either grant approval or find that no approval is required.

The transactions proposed in WorldCom's reorganization plan are not the type of transactions that raise any significant regulatory concern. They amount to little more

than a name change, a change in the place of incorporation, the transfer of ownership from one large and diverse group of shareholders to another, and a rationalization of WorldCom legal entities that creates no changes in the retail rates or terms of service. Nothing in the Plan of Reorganization triggers any compelling state interest in review.

The Plan should not raise any substantive regulatory concerns for this Commission. The proposed restructuring will be seamless and transparent to customers. The proposed restructuring does not involve any health or safety concerns. It does not raise any competitive concerns, as no merger, consolidation, or acquisition involving another carrier or service provider is part of the Plan of Reorganization. It does not change the rates charged to customers. And after WorldCom restructures, the Commission will continue to have regulatory oversight over all of the same activities that it currently oversees, and the regulated companies will comply with all applicable regulatory requirements in Missouri.

WHEREFORE, WorldCom requests the Commission to accept these Comments pursuant to its Order Directing Response to Question of Jurisdiction and expeditiously proceed to grant the relief requested in the Application, in accordance with the Stipulation.

Dated: September 26, 2003

Respectfully submitted,

**WORLD.COM, INC., for itself and on
behalf of its Missouri operating
subsidiaries**

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ITS COUNSEL

Certificate of Service

A true and correct copy of the foregoing was served upon the following parties on this 26th day of September, 2003, by placing same in the U.S. Mail, postage paid.

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