



# PUBLIC NOTICE

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## COMMENTS REQUESTED ON ADDITIONAL INFORMATION SUBMITTED BY WORLDCOM RELATING TO ITS ACQUISITION OF INTERMEDIA

CC Docket No. 00-206

Comments: October 19, 2001

Reply Comments: November 2, 2001

We seek comment on additional information submitted by WorldCom, Inc. (WorldCom) on August 31<sup>1</sup> and September 12, 2001<sup>2</sup> relating to its acquisition of Intermedia Communications (Intermedia) as well as comment on whether changed circumstances require modifications to the conditions imposed in a January 17, 2001, Bureau-level Memorandum Opinion and Order. The order, which granted approval of the transfer of control of Commission authorizations and licenses from Intermedia to WorldCom,<sup>3</sup> conditioned approval on compliance with the terms of a Department of Justice "Hold Separate Stipulation and Order" (HSO), which among other things required WorldCom to hold separate all of the Intermedia assets excluding the Digex web-hosting business.<sup>4</sup> The HSO also "obligated Intermedia during the HSO period to continue to operate its business according to the business plan adopted in 1999, when conditions in the telecommunications industry were markedly different than they are today."<sup>5</sup>

<sup>1</sup> Letter from A. Richard Metzger, Jr., to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau, CC Docket No. 00-206 (Aug. 31, 2001) (WorldCom Aug. 31 Letter).

<sup>2</sup> WorldCom submitted two letters on September 12, one requesting Special Temporary Authority: Letter from A. Richard Metzger, Jr., to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau, CC Docket No. 00-206 (September 12, 2001) (WorldCom Request for Special Temporary Authority); the other, providing the additional information informally requested by Common Carrier Bureau Staff: Letter from A. Richard Metzger, Jr., to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau, CC Docket No. 00-206 (Sept. 12, 2001) (WorldCom Sept. 12 Response).

<sup>3</sup> See *In the Matter of Intermedia Communications, Inc., and WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, 101*, CC Docket No. 00-206, Memorandum Opinion and Order (rel. Jan. 17, 2001) (*WorldCom-Intermedia Order*). The Wireless, International and Common Carrier Bureaus jointly issued the *WorldCom-Intermedia Order*.

<sup>4</sup> *United States v. WorldCom, Inc. and Intermedia, Inc.*, Hold Separate Stipulation and Order (D.D.C.) Case No. 1:00CV02789(RWR).

<sup>5</sup> WorldCom Aug. 31 Letter at 2; WorldCom Request for Special Temporary Authority at 2.

According to WorldCom, the “competitive concern identified by the Department of Justice in its review of the WorldCom/Intermedia transaction was its potential effect on the competitive provision of the Internet backbone and access services.”<sup>6</sup> However, WorldCom claims the hold separate requirements “have impeded WorldCom’s ability to divest Intermedia’s Internet backbone and access business because they required potential purchasers also to acquire Intermedia’s competitive local exchange carrier . . . business, and prevented Intermedia’s management from revising the company’s business plan in a manner that would permit them to put [the Internet backbone business] on a path to profitability.”<sup>7</sup>

Therefore, WorldCom, Intermedia and the Department of Justice filed a “Joint Motion to Modify the Hold Separate Stipulation and Order” with the United States District Court for the District of Columbia on August 28, 2001, and the court granted the parties’ motion on the same day.<sup>8</sup> Worldcom contends “the modifications to the HSO are modest and are intended to ensure that the purpose of the [Department of Justice] Final Judgment are accomplished in a timely fashion.”<sup>9</sup> Moreover, WorldCom states that the court-approved modifications do “not require any action by the Commission, since the original HSO expressly permitted the Department of Justice to approve a divestiture of less than all of Intermedia’s assets.”<sup>10</sup> In the event the Commission disagreed with this assessment, WorldCom submitted a request for Special Temporary Authority on September 12, 2001 to permit it to absorb the Intermedia local and long distance telecommunications assets immediately. This request was granted on September 14, 2001.

However, to facilitate the Bureaus’ prompt review of this issue, WorldCom also submitted additional information “regarding the activities of WorldCom and Intermedia in local telecommunications markets” should the Bureaus conclude revisions to the *WorldCom-Intermedia Order* are necessary to reflect the recent action by the court.<sup>11</sup> The additional information pertains to the competitive impact of absorbing the Intermedia local and long distance telecommunications business.<sup>12</sup> In the filings, WorldCom states that, “as demonstrated in their application, the Intermedia and WorldCom shares of the local telecommunications business are, by any measure, *de minimis* and, consequently, their combination cannot raise any plausible competitive concerns.”<sup>13</sup>

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<sup>6</sup> WorldCom Aug. 31 Letter at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *United States of America v. WorldCom, Inc. Intermedia Communications, Inc.*, Joint Motion to Modify Hold Separate Stipulation and Order, United States District Court for the District of Columbia, (D.D.C.) Civ. Case No. 1:00CV02789 (RWR) (Aug. 28, 2001).

<sup>9</sup> WorldCom Aug. 31 Letter at 1. WorldCom and Intermedia have stated that the Department of Justice Final Judgment has not changed. The principle modifications to the Hold Separate Order would: (1) “limit the assets to be held separate to Intermedia’s stand-alone Internet backbone business unit, IBI; (2) require the appointment of a trustee, selected by the Department of Justice and approved by the court, to hold separate and manage IBI; (3) provide the trustee with sufficient flexibility to operate IBI rationally under today’s marketplace conditions, in order to improve the unit’s profitability and, as a result its marketability. *Id.* at 2-3.

<sup>10</sup> See WorldCom Aug. 31 Letter; WorldCom Request for Special Temporary Authority at 1.

<sup>11</sup> WorldCom Request for Special Temporary Authority at 2.

<sup>12</sup> See WorldCom Sept 12 Response.

<sup>13</sup> WorldCom Sept. 12 Response at 1; *see also* WorldCom Request For Special Temporary Authority at 3;

**Interested parties may file comments regarding the attached *ex parte* filings no later than October 19, 2001. Interested parties may file reply comments no later than November 2, 2001. All filings regarding the attached *ex parte* filings should reference the Common Carrier Bureau docket number assigned to this proceeding, CC Docket No. 00-206.**

Comments may be filed using the Commission's Electronic Comments Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/efcs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments for each docket number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [efcs@fcc.gov](mailto:efcs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Oppositions or responses to these comments may be filed no later than **44 days after this Public Notice is published** with the Secretary, Federal Communications Commission, at 445 12<sup>th</sup> Street, SW, TW-A325, Washington, DC 20554. All pleadings are to reference **CC Docket No. 00-206**. Parties choosing to file by paper must file an original and two copies of each pleading with the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. One additional copy each should be sent to Janice Myles, Common Carrier Bureau, Policy & Program Planning Division, Federal Communications Commission, Room 5-C327, 445 12<sup>th</sup> Street, SW, Washington, DC 20554; and James Bird, Office of General Counsel, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 8-C818, Washington, D.C. 20554. One copy of all pleadings should also be sent to the Commission's duplicating contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554. Comment filings will be available for public inspection during normal business hours in the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. Copies of these filings and the filings submitted in connection with the initial transfer proceeding, as well as any filings submitted in response to this public notice, may be reviewed via Internet at <http://www.fcc.gov/transaction/timelines.html>. Copies also may be purchased from Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Common Carrier Bureau contact: Henry L. Thaggert (202) 418-7941

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and *In re Applications of Intermedia Communications, Inc., and WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, 101, CC Docket No. 00-206 (filed Oct. 23, 2000) (Application) at 7-14.*