

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WorldCom, Inc. and its Subsidiaries (debtors-in-)	
possession), Transferor,)	WC Docket No. 02-215
)	
and)	
)	
MCI, Inc., Transferee,)	
)	
Applications for Consent to Transfer and/or Assign)	
Authorizations and Licenses)	

Adopted: December 19, 2003

Released: December 19, 2003

By the Acting Deputy Chief, Mobility Division:

ORDER

1. This Order addresses the Motion to Disclose Documents filed by Margaret F. Snyder on December 1, 2003 in the above-captioned proceeding (Motion to Disclose).¹ For the reasons discussed below, we deny the Motion to Disclose.

2. Ms. Snyder contends that three settlement agreements, which are subject to a *Protective Order* in this proceeding,² should be available for public inspection.³ The agreements are between WorldCom, Inc. (WorldCom) and BellSouth Telecommunications, Inc. (BellSouth), Verizon Communications, Inc. (Verizon), and SBC Telecommunications, Inc. (SBC), respectively, and resolve numerous claims. WorldCom, BellSouth, SBC, and Verizon each filed oppositions to the Motion to

¹ Ms. Snyder filed a Petition to Deny in this proceeding on August 7, 2003. *See generally* Margaret F. Snyder, Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc., WC Docket No. 02-215 (filed Aug. 7, 2003).

² In the Matter of WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Authorizations and Licenses, WC Docket No. 02-215, *Protective Order*, DA 03-3545 (WTB, CWD rel. Nov. 4, 2003), *modified by Order*, DA 03-3745 (WTB, CWD rel. Nov. 21, 2003) (*Modified Protective Order*).

³ Motion to Disclose at 2.

Disclose and Ms. Snyder filed a Consolidated Reply.⁴

3. Ms. Snyder's Motion to Disclose seeks public disclosure of some, but not all, of the documents subject to the *Protective Order*, and therefore is effectively a petition for partial reconsideration of the *Protective Order*. We reject BellSouth's claim that Ms. Snyder should have filed a pleading formally captioned "petition for reconsideration."⁵ The fact that Ms. Snyder's pleading is captioned as a motion, rather than as a petition for reconsideration, does not limit our discretion to treat the motion as a petition for reconsideration. We also reject BellSouth's claim that the Motion to Disclose is time barred,⁶ and its claim that Ms. Snyder, who filed a Petition to Deny in this proceeding, lacks standing to seek public disclosure of the agreements.⁷

4. Ms. Snyder filed a Fourth Supplement to Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc. and Request to Inspect Documents on October 15, 2003 in this proceeding. The former Commercial Wireless Division of the Wireless Telecommunications Bureau (Bureau) granted Ms. Snyder's Request to Inspect Documents in full by issuing the *Protective Order*. The *Protective Order* was intended "to facilitate and expedite the review of Confidential Documents, while protecting commercial or financial information that may be privileged or confidential."⁸ Pursuant to the *Protective Order*, Ms. Snyder's counsel obtained copies of the BellSouth and Verizon agreements, and reviewed (but did not copy) the SBC agreement.⁹ Ms. Snyder's counsel also obtained and reviewed other documents pursuant to the *Protective Order*; Ms. Snyder does not seek public disclosure of those documents in her Motion to Disclose.

5. We apply the standards of Exemption 4 of the Freedom of Information Act (FOIA) to determine whether the settlement agreements were properly withheld from public inspection. FOIA Exemption 4 protects from public disclosure "trade secrets and commercial information or financial information obtained from a person [that is] privileged or confidential."¹⁰ We note that "the Commission generally has exercised its discretion to release publicly information falling within FOIA Exemption 4 only in very limited circumstances, such as where a party placed its financial condition at issue in a Commission proceeding, or where the Commission has identified a compelling public interest in

⁴ WorldCom Opposition (filed Dec. 8, 2003), BellSouth Opposition (filed Dec. 11, 2003), SBC Opposition (filed Dec. 10, 2003), Verizon Opposition (filed Dec. 11, 2003), and Consolidated Reply to Oppositions (filed Dec. 17, 2003).

⁵ BellSouth Opposition at 6.

⁶ *Id.* The *Protective Order* was released on November 4, 2003, and the Motion to Disclose was filed timely on December 1, 2003. See 47 C.F.R. §§ 1.106(f) and 1.4.

⁷ BellSouth Opposition at 6-7.

⁸ *Protective Order* at ¶ 4.

⁹ On November 13, 2003, SBC filed an objection to disclosure of its agreement with WorldCom and a related affidavit. Alternatively, SBC requested that we modify the *Protective Order* to permit Ms. Snyder's counsel to review, but not copy, these documents. On November 19, 2003, Ms. Snyder filed a Reply to SBC's objection. On November 21, 2003, the Bureau modified the *Protective Order* to permit Ms. Snyder's counsel to review, but not copy, these documents, which he did. See *Modified Protective Order*.

¹⁰ 5 U.S.C. § 552(b)(4).

disclosure.”¹¹ Courts also have recognized that settlement agreements may constitute privileged information under FOIA Exemption 4.¹²

6. In support of her Motion to Disclose, Ms. Snyder claims that in addition to her counsel, the public has a right to review the terms and conditions of the settlement agreements.¹³ We note that a summary of each agreement—including certain financial terms that Ms. Snyder states should be disclosed¹⁴—was filed publicly with the U.S. Bankruptcy Court for the Southern District of New York.¹⁵ The court found that each settlement agreement is “fair and reasonable and in no way unjustly enriches any of the Parties,” and approved each agreement.¹⁶ We also note that Ms. Snyder’s counsel cited financial data and certain provisions from each settlement agreement in the non-public versions of her Motion to Disclose and Sixth Supplement to Petition to Deny filed under seal in this proceeding.¹⁷

7. We have reviewed each settlement agreement and find that each contains competitively sensitive, highly confidential financial and commercial information that is not of the type customarily disclosed to the public. In fact, each agreement contains a confidentiality provision, which prohibits public disclosure of the terms of the agreement. In the *Modified Protective Order*, the Commercial Wireless Division found that the SBC settlement agreement and a supporting affidavit “contain confidential financial and commercial information, and that SBC has a *bona fide* interest in ensuring that these documents are not disseminated publicly.”¹⁸ The BellSouth and Verizon settlement agreements similarly contain confidential financial and commercial information, and the parties to these agreements also have a *bona fide* interest in ensuring that they are not disseminated publicly.

8. Because each settlement agreement contains information that would not normally be disclosed to the public, and because BellSouth, SBC, and Verizon voluntarily submitted the agreements to

¹¹ In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816, 24822, ¶ 8 (1998) (footnotes omitted) (*Confidentiality Report and Order*).

¹² See, e.g., *M/A-Com Information Systems, Inc. v. U.S. Dep’t of Health and Human Svcs.*, 656 F. Supp. 691 (D.D.C. 1986).

¹³ Motion to Disclose at 9.

¹⁴ Consolidated Reply at 6.

¹⁵ WorldCom filed separate motions with the court seeking approval of the agreements on July 18, 2003 (Verizon agreement), and on July 25, 2003 (BellSouth and SBC agreements), Chapter 11 Case No. 02-13533 (ALG).

¹⁶ *Order Approving Settlement And Compromise Of Certain Matters With Verizon Communications, Inc.*, United States Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 02-13533 (AJG) at 2 (July 29, 2003); *Order Approving Settlement And Compromise Of Certain Matters With SBC Communications, Inc.*, United States Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 02-13533 (AJG) at 2 (Aug. 5, 2003); *Order Approving Settlement And Compromise Of Certain Matters With BellSouth Telecommunications, Inc.*, United States Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 02-13533 (AJG) at 2 (Aug. 5, 2003).

¹⁷ Sixth Supplement to Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc (filed Dec. 1, 2003).

¹⁸ *Modified Protective Order* at ¶ 7.

the Commission at staff's request, the agreements are categorically protected from disclosure under *Critical Mass*.¹⁹ Ms. Snyder claims that *Critical Mass* is inapposite because the agreements were required to be submitted to the Commission under section 1.935 of the Commission's rules.²⁰ In separate rulings today, however, the Bureau finds that the agreements are not covered by section 1.935.²¹

9. Even if we were to conclude that the agreements were required to be submitted to the Commission, we find that public disclosure of the agreements is likely to impair the Commission's ability to obtain necessary information in the future and cause substantial competitive harm to BellSouth, SBC, and Verizon.²² We find that a party may be reluctant to provide Commission staff competitively sensitive data of the sort contained in each settlement agreement in the future, if such data is not subject to reasonable limitations on disclosure such as those contained in the *Protective Order*. Public disclosure of the settlement agreements, moreover, would reveal financial and other information and that could put the parties at a substantial competitive disadvantage. The agreements therefore are protected from disclosure.²³

10. Accordingly, for the reasons stated above, the Motion to Disclose Documents, filed by Margaret F. Snyder on December 1, 2003, is DENIED.

11. This Order is adopted pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Lloyd W. Coward
Acting Deputy Chief
Mobility Division

¹⁹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (*Critical Mass*).

²⁰ Consolidated Reply at 5.

²¹ See Letter from John Muleta, Chief, Wireless Telecommunications Bureau, to Arthur V. Belendiuk, counsel to Ms. Snyder, and Stephen L. Earnest, Regulatory Counsel, BellSouth Corporation, DA 03-3844 (rel. Dec. 19, 2003); Letter from John Muleta, Chief, Wireless Telecommunications Bureau, to Arthur V. Belendiuk, counsel to Ms. Snyder, and Ann H. Rakestraw, Assistant General Counsel, Verizon, DA 03-3845 (rel. Dec. 19, 2003); and Letter from John Muleta, Chief, Wireless Telecommunications Bureau, to Arthur V. Belendiuk, counsel to Ms. Snyder, and Jim Lamoureux, Senior Counsel, SBC Telecommunications, Inc., DA 03-3846 (rel. Dec. 19, 2003).

²² The Commission seeks to avoid "unnecessary disclosure of information that might put its regulatees at a competitive disadvantage." *Confidentiality Report and Order*, 13 FCC Rcd at 24822, ¶ 8.

²³ *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).