

**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: November 21, 2003

Released: November 21, 2003

By the Chief, Commercial Wireless Division:

ORDER

1. This Order modifies the *Protective Order* issued by the Commercial Wireless Division in this proceeding on November 4, 2003.¹

2. On November 6, 2003, Arthur V. Belendiuk, counsel for Margaret F. Snyder,² filed an executed Acknowledgement of Confidentiality pursuant to the *Protective Order*, which permits restricted use of certain documents filed in this proceeding by BellSouth Telecommunications, Inc., SBC Telecommunications, Inc. (SBC), Verizon, and WorldCom, Inc. (WorldCom), for which each requested confidential treatment.³

3. On November 13, 2003, SBC filed an objection to disclosure of two documents that it filed in this proceeding for which it requested confidential treatment—a settlement agreement with WorldCom, dated July 25, 2003 (the “SBC Settlement Agreement” or “Settlement Agreement”), and a

¹ 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).

² Ms. Snyder filed a Petition to Deny in this proceeding on August 7, 2003.

³ See *Protective Order*.

declaration by John H. Atterbury, dated October 3, 2003 (the “Atterbury Declaration”).⁴ Alternatively, SBC requests that we modify the *Protective Order* to permit Mr. Belendiuk to review, but not copy, these documents.⁵ For the reasons stated below, we grant SBC’s alternative request.

4. SBC states that the Settlement Agreement contains highly sensitive commercial information, which reflects the resolution of a series of complex and sensitive claims between the parties.⁶ SBC argues that inadvertent public disclosure of the Settlement Agreement could provide existing and potential competitors with competitively sensitive information.⁷ SBC further notes that WorldCom successfully confirmed its bankruptcy cases on October 31, 2003, and that as part of the Settlement Agreement, SBC waived its rights to oppose the confirmation process.⁸ SBC states that if the Settlement Agreement were publicly disclosed, SBC could be subject to a collateral attack by WorldCom creditors that could delay or prevent SBC’s receipt of settlement funds.⁹

5. On November 19, 2003, Arthur V. Belendiuk, on behalf of Margaret F. Snyder, filed a Reply to SBC’s Objection.¹⁰ Mr. Belendiuk states that he requires unrestricted access to the Settlement Agreement to prepare a supplement to Ms. Snyder’s Petition to Deny and file a Motion to disclose the Settlement Agreement in this proceeding.¹¹ Mr. Belendiuk also argues that the ability to review the Settlement Agreement—without being able to quote from it or review it when necessary—would be unduly burdensome.¹²

6. The Commission will take action to avoid “unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”¹³ For example, in the Ameritech/SBC Merger, the former Common Carrier Bureau issued a protective order, which allowed parties to designate certain

⁴ Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (filed Nov. 13, 2003) (SBC Objection). *See also* Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Oct. 3, 2003) (Request for Confidential Treatment.).

⁵ SBC Objection at 1.

⁶ *Id.* at 2. Each page of the Settlement Agreement and the Atterbury Declaration contains the following legend: “Contains confidential commercial information pursuant to the FOIA and 47 CFR § 459 and protected by the Trade Secrets Act, 18 USC § 1905. Do not disclose or release to the public.”

⁷ SBC Objection at 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ Letter from Arthur V. Belendiuk, counsel to Margaret F. Snyder, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 19, 2003).

¹¹ *Id.* at 2.

¹² *Id.*

¹³ In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd. 24,816, 24,822 ¶ 8 (1998).

highly sensitive confidential documents as “Copying Prohibited.”¹⁴ We also note that courts have recognized that settlement agreements may constitute privileged information under Exemption 4 of the Freedom of Information Act.¹⁵

7. We agree with SBC that the Settlement Agreement and the Atterbury Declaration, which is derived from the Settlement Agreement, contain confidential financial and commercial information, and that SBC has a *bona fide* interest in ensuring that these documents are not disseminated publicly. We therefore find that the potential for administrative inconvenience cited by Mr. Belendiuk does not outweigh SBC’s interest in protecting the confidentiality of these documents and modify the *Protective Order* below to prohibit copying of these documents.

8. Accordingly, the *Protective Order* (DA 03-3545) is modified as follows. Mr. Belendiuk is prohibited from copying the SBC Settlement Agreement and the Atterbury Declaration. Mr. Belendiuk may review the SBC Settlement Agreement and the Atterbury Declaration at the Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554, by contacting Richard Arsenault of the Wireless Telecommunications Bureau, 202-418-0920, richard.arsenault@fcc.gov. Mr. Belendiuk may take notes regarding the SBC Settlement Agreement and the Atterbury Declaration. Mr. Belendiuk may quote text from these documents in any filing by Margaret F. Snyder in this proceeding, but only if such filing is made under seal in accordance with the provisions of paragraph 10 of the *Protective Order*. Any information derived from either the SBC Settlement Agreement or the Atterbury Declaration shall be used only in accordance with the terms of the *Protective Order* as modified by this Order.¹⁶

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

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief
Commercial Wireless Division

¹⁴ See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 215 Authorizations from Ameritech Corp., Transferor to SBC Communications Inc., Transferee, *Order Adopting Protective Order*, 13 FCC Rcd. 21,724 (CCB rel. Oct. 2, 1998) (Exhibit A, Protective Order at ¶12).

¹⁵ See SBC Objection at 2 (citing *M/A-Com Information Systems, Inc. v. U.S. Dep’t of Health and Human Svcs.*, 656 F. Supp. 691 (D.D.C. 1986)).

¹⁶ This Order also applies to any individual with whom Mr. Belendiuk may disclose such information to in accordance with the provisions of paragraph 6 of the *Protective Order*.