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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Hearing Date: October 29, 2002
In re: : Time: 10:00 a.m.
: :
: :
WORLD.COM, INC., et al., : Chapter 11
: Case No. 02-13533 (AJG)
: :
Debtors. :
: (Jointly Administered)
-----x

MOTION OF H. CARL McCALL, COMPTROLLER OF THE STATE
OF NEW YORK, AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE
AND LOCAL RETIREMENT SYSTEMS AND AS TRUSTEE OF THE NEW
YORK STATE COMMON RETIREMENT FUND FOR A LIMITED
MODIFICATION OF THE AUTOMATIC STAY

TO THE HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

Pursuant to 11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001, H. Carl McCall, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Trustee of the New York State Common Retirement Fund (the “NYSCRF”), the Court-appointed Lead Plaintiff in the securities class action captioned In re WorldCom, Inc. Securities Litigation, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.), respectfully moves for a limited modification of the automatic stay as to debtor WorldCom, Inc. (“WorldCom” or the “Debtor”) to permit the NYSCRF to obtain from WorldCom the following materials: (1) a copy of all documents and materials WorldCom has produced or provided, in connection with any inquiries or investigations relating to the Company’s accounting practices or business affairs, to any of the following: (a) any committee of the Legislative branch of the United States Government, (b) the Executive branch of the United States Government (including but not limited to the United States Department of Justice and the Securities and Exchange Commission) or (c) Wilmer Cutler & Pickering in connection with its representation of the Special Investigative Committee of WorldCom’s Board of Directors; and (2) copies of all transcripts of witness interviews or depositions in WorldCom’s possession, custody or control that were taken or conducted in connection with (a) said inquiries or investigations by any of the foregoing governmental bodies, or (b) said inquiry or investigation conducted by Wilmer Cutler & Pickering.

The grounds for this motion, which are set forth in detail below, are that modifying the stay in the manner requested would impose virtually no additional burden upon the Debtor, who has already

gathered and produced the materials which the NYSCRF seeks, and would further the interests of judicial economy by enabling the securities action to proceed expeditiously. Further, given the massive accounting fraud that WorldCom has acknowledged occurred, requiring WorldCom to produce the aforementioned documents is clearly in the interests of justice.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. The predicate for the relief requested is §362(d) of the Bankruptcy Code and Rules 4001 and 9014 of the Bankruptcy Rules.

BACKGROUND

2. Commencing on July 21, 2002, the Debtor and substantially all of its active U.S. subsidiaries filed voluntary petitions for reorganization pursuant to Chapter 11 of the United States Bankruptcy Code. The NYSCRF is a creditor, equity holder and party-in-interest in the bankruptcy case by virtue of the fact that it lost more than \$300 million as a result of its purchases of WorldCom common stock and debt securities. On August 15, 2002, The Honorable Denise L. Cote, United States District Judge, appointed the NYSCRF lead plaintiff in the consolidated securities class action captioned In re WorldCom, Inc. Sec. Litig., Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.).

3. The securities class action, and WorldCom's bankruptcy filing, were occasioned by what has been exposed as the largest accounting fraud in history. Specifically, on June 25, 2002, WorldCom announced that it had overstated income during 2001 and the first quarter of 2002 by more than \$3.85 billion, and, as a result, would be forced to restate its financial statements for those periods.

Subsequently, on August 8, 2002, WorldCom announced that it had improperly recorded an additional \$3.3 billion in income between 1999 and the first quarter of 2002, and that the restatement would now include the financial statements for 2000. Then, on September 19, 2002, The Wall Street Journal reported that WorldCom was preparing to increase the size of the restatement by another \$2 billion. In total, WorldCom has to date reversed more than \$9 billion in income. As The Wall Street Journal reported on September 19, “[t]he expected additional restatements underscore the magnitude of what was already the largest accounting fraud ever.” The disclosures this summer led to the indictments of former Chief Financial Officer Scott D. Sullivan and former Director of General Accounting Buford D. Yates for securities fraud and conspiracy, and spurred a host of federal and state investigations into the fraud, as set forth below.

4. To date, the NYSCRF is aware of the following governmental investigations and/or inquiries into the fraud at WorldCom. In each such investigation, WorldCom has been asked to, and has produced, documents relating to the fraud:

a. On June 26, 2002, the SEC filed a civil complaint against WorldCom, charging it with fraud. On July 1, 2002, WorldCom announced that it had delivered a detailed explanation of the facts and circumstances underlying the June 25 announcement. On July 8, 2002, WorldCom announced that it had provided a revised explanation to the SEC, along with certain exhibits.

b. On June 27, 2002, the House Committee on Energy and Commerce (the “E & C Committee”) issued subpoenas to WorldCom requesting, inter alia: all records relating to WorldCom’s recent internal audit; all documents concerning communications with the SEC since 1997 concerning its accounting principles and practices; the minutes for all meetings of WorldCom’s audit

committee since 1997; all board minutes concerning accounting principles and practices; all records relating to Sullivan and Myers and the internal audit; all records since 1997 relating to WorldCom's accounting treatment of operating costs/capital expenses; records concerning WorldCom's accounting policy on capacity swaps; and the report requested by the SEC detailing the "circumstances and specifics" of the disclosed accounting issues. By July 19, 2002, these documents, which included "reports, e-mails and memoranda" were produced by the Debtor and reviewed, leading to the expression of "grave concern" by the E & C Committee. The E & C Committee further requested that WorldCom produce by August 2, 2002: all records from Troy Normand's desk and computer files relating to issues raised by Normand during a June 24, 2002 interview with Cynthia Cooper (Normand was an employee in WorldCom's General Accounting Department who was allegedly a co-conspirator in the fraud); all records relating to Mr. Normand's communication of his concerns about WorldCom's "over accruals for line costs" to any WorldCom employee; and all records from Betty Vinson's desk (Vinson is another WorldCom employee charged with being a co-conspirator) relating to the posting of prepaid capacity entries.

c. On June 27, 2002, the House Committee on Financial Services (the "FS Committee") announced that it would hold hearings into the WorldCom matter beginning July 8, 2002, and issued subpoenas to WorldCom executives. The witnesses included, among others, former Chief Executive Officer Bernard J. Ebbers and Sullivan. On July 23, 2002, the FS Committee requested that WorldCom produce by August 6, 2002 documents including, inter alia: all communications between any employee of WorldCom's auditor, Arthur Andersen LLP, and any WorldCom director or officer since January 1, 2000; a list of all meetings of the WorldCom board attended by Salomon Smith Barney

analyst Jack Grubman, since January 1, 1996, the subject matter of each meeting and who extended the invitation; all records concerning Salomon IPOs; all correspondence between any WorldCom officer or director and Grubman and/or Robert Waldman, another Salomon employee, since January 1, 1996; documents regarding a \$408 million promissory note issued to Ebbers; documents concerning over-billing by WorldCom as a means of inflating revenue; and documents providing a basis for the 2002 first quarter Form 10-Q \$15-20 billion write-down.

5. On information and belief, WorldCom has maintained a complete set of all documents that have been provided in these investigations, and can easily provide a copy of these documents to the NYSCRF with minimal burden.

6. Further, on June 24, 2002, the WorldCom Board of Directors commenced an investigation relating to certain capital expenditure accounting issues and other matters. On July 21, 2002, the Board appointed a Special Investigative Committee to oversee the independent internal investigation relating to such matters. The investigation is being conducted by the law firm of Wilmer, Cutler & Pickering.

7. The NYSCRF is aware that, in the securities and ERISA actions relating to the highly-publicized fraud at Enron, lead plaintiffs in both those actions made applications to the Court similar to the one made here by the NYSCRF, i.e., for a limited modification of the automatic stay to allow Enron to produce to plaintiffs documents that it had already provided to the federal government in connection with Enron-related investigations. On February 25, 2002, the Court granted the motion filed by the ERISA plaintiffs in Enron, and on May 22, 2002, the Court granted the motion filed by the lead plaintiff in the Enron securities class action. See Exhibits A and B. In addition, the Court ordered Enron to

produce copies of all transcripts of witness interviews taken or conducted by Wilmer, Cutler & Pickering in connection with its representation of the Special Investigative Committee of Enron's Board of Directors. See Exhibit B.

8. The NYSCRF anticipates that, as was the case in Enron, the Debtor may interpose an objection based on the stay of discovery set forth in the Private Securities Litigation Reform Act of 1995 (the "PSRLA"). Although the NYSCRF does not believe that the discovery stay applies in the circumstances of this case, assuming such an objection is raised, the NYSCRF will move before Judge Cote, who is presiding over the securities action, for an order lifting the PSLRA discovery stay so as to allow WorldCom to produce the documents requested herein. The NYSCRF notes that, in Enron, after the Court granted plaintiffs relief from the automatic stay, lead plaintiff in the securities action made a similar motion in the District Court, which the Court granted. See Exhibit C.

9. Pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b), because there are no novel issues of law presented, the NYSCRF requests that the Court waive the requirement that the NYSCRF file a memorandum in support of this Motion.

CONCLUSION

WHEREFORE, the NYSCRF respectfully requests entry of an Order modifying the automatic stay to the limited extent set forth herein, and granting such other relief as the Court deems just and proper.

Dated: October 2, 2002

Respectfully submitted,

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