

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	Case No. 1:00CV02789 (RWR)
v.	)	
	)	
WORLDCOM, INC.,	)	
INTERMEDIA COMMUNICATIONS, INC.	)	
Defendants.	)	
_____	)	

MODIFIED HOLD SEPARATE STIPULATION AND ORDER

This matter came before the Court on the parties' Joint Motion to Modify Hold Separate Stipulation and Order. This Court, having considered the Motion and the memorandum in support thereof and being fully advised of its premise, hereby grants this Motion and modifies the Hold Separate Stipulation and Order, entered on May 30, 2001. It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

- A. "Acquirer" means the entity to whom defendants divest the IBI business.
- B. "WorldCom" means defendant WorldCom, Inc., a Georgia corporation with its headquarters in Clinton, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents

and employees.

C. "Intermedia" means defendant Intermedia Communications, Inc., a Delaware Corporation with its headquarters in Tampa, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

D. "Intermedia Business Internet" or "IBI business" means Intermedia's Internet backbone and access services business and includes:

1. All tangible assets that comprise Intermedia's Internet backbone and access services business, including research and development activities, all networking equipment and fixed assets, personal property, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the IBI business; all licenses, permits and authorizations issued by any governmental organization relating to the IBI business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the IBI business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the IBI business;

2. All intangible assets used in the development, production, servicing and sale of the IBI business, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials,

specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the IBI business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the IBI business, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure the prompt divestiture of Intermedia's assets for the purpose of preserving a viable competitor in the provision of Internet backbone and access services and to remedy the effects that the United States alleges would otherwise result from WorldCom's acquisition of Intermedia. The parties believe this goal can be best accomplished through this modification to the original Hold Separate Stipulation and Order. This Modified Hold Separate Stipulation and Order ensures, prior to such divestiture, that the IBI business remains an economically viable, and ongoing business concern that will remain independent and uninfluenced by WorldCom, and that competition is maintained during the pendency of the ordered divestiture .

III. JURISDICTION AND VENUE

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action, and venue of this action is proper in the United States District Court for the District of

Columbia. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. COMPLIANCE WITH THE FINAL JUDGMENT

A. Defendants shall continue to abide by and comply with the provisions of the Final Judgment, entered in this matter on June 27, 2001.

B. Defendants shall not take any steps in contravention of the original Hold Separate Stipulation and Order before the Court has entered this Modified Hold Separate Stipulation and Order.

C. This Modified Hold Separate Stipulation and Order shall apply with equal force and effect to any amended Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. Defendants represent that the divestiture ordered in the Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

E. The United States and defendants WorldCom and Intermedia, by their respective attorneys, have consented to the entry of this Modified Hold Separate Stipulation and Order without trial or adjudication of any issue of fact or law, and without this Modified Hold Separate Stipulation and Order constituting any evidence against or admission by any party regarding any issue of fact or law.

V. APPOINTMENT OF HOLD SEPARATE TRUSTEE

The United States will select and the Court will approve and appoint a Hold Separate Trustee to serve as manager of the IBI business from the time of his or her appointment until the IBI business is sold. This Modified Hold Separate Stipulation and Order shall not be interpreted to prevent the Hold Separate Trustee from becoming the divestiture trustee pursuant to Section V of the Final Judgment.

A. As soon as practicable, the United States will identify to defendants the individual or entity it proposes to select as the Hold Separate Trustee. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after plaintiff notifies defendants of the trustee's selection. Upon application of the United States, the Court shall approve and appoint a Hold Separate Trustee to manage the IBI business in anticipation of an expeditious sale of the IBI business.

B. Promptly after the appointment of the Hold Separate Trustee by the Court, defendants shall enter into a trustee agreement with the Hold Separate Trustee subject to the approval of the United States that will grant the rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Modified Hold Separate Stipulation and Order. The trustee agreement shall require the following:

1. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of defendants, on such terms and conditions as the United States approves with a fee arrangement that is reasonable in light of the person's experience and responsibilities;
2. The defendants shall indemnify the Hold Separate Trustee and hold him or

her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee;

3. When the United States approves the trustee agreement, the Hold Separate Trustee will assume all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Modified Hold Separate Stipulation and Order and consistent with the purposes of the Final Judgment;

4. The Hold Separate Trustee will assume the powers and responsibilities listed in Section V.C of this Modified Hold Separate Stipulation and Order;

5. Limitations shall be placed on the powers of the Hold Separate Trustee pursuant to Section V.D of this Modified Hold Separate Stipulation and Order.

C. The Hold Separate Trustee will have the following powers and responsibilities with respect to the IBI business:

1. Thirty (30) days after the Hold Separate Trustee has been approved by the Court, and every thirty (30) days thereafter until the termination of this order, the Hold Separate Trustee shall report in writing to the United States concerning the efforts to accomplish the purposes of this Modified Hold Separate Stipulation and Order and the Final Judgment. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the IBI

business is meeting (or exceeding) its projected goals as are reflected in existing or revised operating plans, budgets, projections or any other regularly prepared financial statements;

2. The Hold Separate Trustee shall have a duty to, consistent with the terms of this Modified Hold Separate Stipulation and Order and the Final Judgment, monitor the organization of the IBI business; control and operate the IBI business to ensure that the IBI business remains an ongoing, economically viable competitor in the provision of Internet backbone and access services; maintain the independence of the IBI business from WorldCom; manage the IBI business in order to maximize its value so as to permit its expeditious divestiture in a manner consistent with the Final Judgment; and assure defendants' compliance with their obligations pursuant to this Modified Hold Separate Stipulation and Order and the Final Judgment;

3. The Hold Separate Trustee will ensure that the IBI business shall be staffed with sufficient employees to maintain its viability and competitiveness. To the extent that any employees of the IBI business leave or have left the IBI business prior to the divestiture of the IBI business, the Hold Separate Trustee may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.

4. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

5. The Hold Separate Trustee and any consultants, accountants, attorneys, and any other persons retained by the trustee, shall have full and complete access to all personnel, books, records, documents and facilities of the IBI business or to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the IBI business. Defendants shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Defendants shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor defendants' compliance with this Modified Hold Separate Stipulation and Order and the Final Judgment or otherwise to perform his/her duties and responsibilities consistent with the terms of this Modified Hold Separate Stipulation and Order.

6. The Hold Separate Trustee will have the power to manage the IBI business in the ordinary course of business consistent with this Modified Hold Separate Stipulation and Order. Only with the prior written approval of the United States may the Hold Separate Trustee make any decision, take any action, or enter any transaction that is outside the ordinary course of business.

D. The following limitations shall apply to the Hold Separate Trustee:

1. The Hold Separate Trustee shall not be involved, in any way, in the operations of the other businesses of defendants during the term of this Modified Hold Separate Stipulation and Order;

2. The Hold Separate Trustee shall have no financial interests affected by

defendants' revenues, profits or profit margins, except that the Hold Separate Trustee's compensation for managing the IBI business may include economic incentives dependent on the financial performance of the IBI business provided that those incentives are consistent with the objectives of this Modified Hold Separate Stipulation and Order and the Final Judgment and are approved by the United States;

3. The Hold Separate Trustee shall be prohibited from performing any further work for WorldCom for two (2) years after the close of the divestiture.

E. Defendants, defendants' employees, and the Hold Separate Trustee will take all reasonable efforts to preserve the confidentiality of information that is material to the operation of either the IBI business or defendants' businesses.

1. The United States may require the Hold Separate Trustee and his agents and employees to sign an appropriate confidentiality agreement relating to materials belonging to and in the custody of the United States and information received in connection with performance of the Hold Separate Trustee's duties.

2. Defendants may require the Hold Separate Trustee and his agents and employees to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as Hold Separate Trustee to anyone other than the United States.

3. Defendants' personnel supplying services or products to the IBI business pursuant to Section VI.A must retain and maintain the confidentiality of any and all confidential information material to the IBI business. Except as permitted by this Modified Hold Separate

Stipulation and Order, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing the confidential information of the IBI business to or with any person whose employment involves any of defendants' businesses.

F. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Modified Hold Separate Stipulation and Order, if the Hold Separate Trustee resigns, or if for any other reason the Hold Separate Trustee ceases to serve in his or her capacity as Hold Separate Trustee, the United States may select and the Court may appoint a substitute Hold Separate Trustee in the same manner as provided in Paragraph V.A of this Order.

VI. DEFENDANTS' PROVISION OF SERVICES TO THE IBI BUSINESS

A. In connection with support services not included within the IBI business, defendants shall provide to the IBI business at no cost to IBI the following services and products from the Defendants:

1. Federal and state regulatory policy development and compliance;
2. Human resources administrative services;
3. Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
4. Preparation of tax returns;
5. Financial accounting and reporting services;
6. Audit services; and
7. Legal services.

B. If in the judgment of the Hold Separate Trustee, WorldCom fails to provide the

services listed in VI.A to the satisfaction of the Hold Separate Trustee, upon notification to WorldCom and approval by the United States, the Hold Separate Trustee may engage third parties unaffiliated with the defendants to provide those services for the IBI business, provided, however, that WorldCom may satisfy itself that the IBI business is in compliance with all applicable laws, rules, and regulations.

C. At the option of the Hold Separate Trustee, defendants may also provide other products and services, including but not limited to local access and backbone services, on an arms-length basis provided that IBI is not obligated to obtain any other service from defendants and may acquire such services from third parties unaffiliated with defendants.

VII. HOLD SEPARATE PROVISIONS

After this Modified Hold Separate Stipulation and Order is approved by the Court and until the divestiture required by the Final Judgment have been accomplished, except as otherwise approved in advance in writing by the United States:

A. Defendants and the Hold Separate Trustee shall preserve, maintain, and continue to support the IBI business as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Within twenty (20) days after the entry of the Modified Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Modified Hold Separate Stipulation and Order.

B. Defendants and the Hold Separate Trustee shall take all steps necessary to ensure that (1) the IBI business will be maintained and operated as independent, ongoing, economically

viable and active competitors in the market for Internet backbone and access services; (2) management of the IBI business will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under any of the IBI business will be kept separate and apart from Defendants' other operations.

C. The Hold Separate Trustee and Defendants shall use all reasonable efforts to increase revenues, profitability, and the competitive viability of the IBI business.

D. Defendants shall provide sufficient working capital and lines and sources of credit as deemed necessary by the Hold Separate Trustee to continue to maintain the IBI business as economically viable and competitive ongoing business, consistent with the requirements of this Modified Hold Separate Stipulation and Order.

E. The Hold Separate Trustee, with the Defendants' cooperation consistent with this Modified Hold Separate Stipulation and Order and the Final Judgment, shall take all steps necessary to manage the IBI business in order to maximize its revenue, profitability, and the competitive viability so as to permit its expeditious divestiture in a matter consistent with the Final Judgment including, without limitation by maintaining and adhering to normal repair and maintenance schedules for the assets of the IBI business.

F. Defendants shall not, except 1) as recommended by the Hold Separate Trustee and approved by the United States, or 2) as part of a divestiture approved by the United States in accordance with the terms of the Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the assets of the IBI business.

G. The Hold Separate Trustee, with the Defendants' cooperation consistent with this Modified Hold Separate Stipulation and Order and the Final Judgment, shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the IBI business.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the IBI business.

I. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

L. Except for support services employees involved in providing services to the IBI business pursuant to subparagraph VI.A, defendants shall not permit any other of its employees, officers, or directors to be involved in the operations of the IBI business.

M. Except as required by law in the course of 1) complying with this Modified Hold Separate Stipulation and Order or the Final Judgment; 2) overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the IBI business and the integrity of the IBI business financial controls; 3) defending legal claims, investigations or enforcement actions threatened or brought against the IBI business; or 4) obtaining legal advice, defendants' employees (excluding support services employees involved in providing support to the IBI business pursuant to subparagraph VI.A) shall not receive, or have

access to, or use or continue to use any material confidential information, not in the public domain, of the IBI business. Defendants may receive aggregate financial information relating to the IBI business to the extent necessary to allow defendants to prepare the defendants' consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

N. Defendants may offer a bonus or severance to employees included in the IBI business that continue their employment with the IBI business until the divestiture (in addition to any other bonus or severance to which the employees would otherwise be entitled).

O. This Modified Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the Final Judgment or until further order of the Court.

Done and Ordered this 29th day of August, 2001 in Washington, D.C.

_____/s/
United States District Judge

Approved as to form and
Substance:

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