

Decision 01-02-040 February 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In Re Request of

MCI WORLDCOM, INC. AND SPRINT CORPORATION for Approval to Transfer Control of Sprint Corporation's California Operating Subsidiaries to MCI WORLDCOM, INC.

Application 99-12-012
(Filed December 10, 1999)

O P I N I O N

A. Summary

In this decision, we grant the motion of MCI WorldCom, Inc. (WorldCom) and Sprint Corporation (Sprint) (collectively, Applicants) to withdraw their merger application. There is no need for this Commission to rule on the merits of a merger that did not occur. However, in view of the time and effort that the parties expended on developing a record in this proceeding, we take steps to preserve that record for other proceedings, to provide for future use of confidential documents produced in this case (while preserving, as appropriate, their confidentiality), and to ensure that this record is made part of any future merger application of either Applicant.

We do not evaluate or make determinations based on this record. Nonetheless, as discussed herein, the Commission may open an Investigation into Applicants' actions, if other proceedings do not address the issues The

Utility Reform Network (TURN) and the Greenlining Institute/Latino Issues Forum (Greenlining/LIF) (collectively, Intervenors) raise here.

B. Background

Applicants announced their planned merger in late 1999, and filed this application – as well as applications in other states, with the Federal Communications Commission (FCC), with the European Union and with the United States Department of Justice – soon after the announcement. Applicants claimed the merger would enhance their ability to compete with incumbent local exchange carriers (ILECs), enable them to offer consumers one stop shopping for a range of telecommunications services, and enhance their ability to compete in the broadband market.

WorldCom and Sprint called off their planned merger on July 13, 2000, after the United States Attorney General sued in federal court to block the merger¹ and the European Union voted to reject it.² The announcement came just two weeks after this Commission had held and completed a 13-day evidentiary hearing on the merger.

There is no evidence that Applicants' decision to terminate the merger was based on anything revealed in proceedings before this Commission. Nonetheless, the parties spent considerable time developing a record related to Applicants' products, services and pricing, especially for low volume callers; handling of customer complaints; and outreach and business in low income

¹ *United States of America v. WorldCom, Inc. and Sprint Corp.*, Case Number 1:00CV10526.

² In a somewhat puzzling move, WorldCom appealed the European Union's decision in September 2000.

communities. Based on that record, TURN³ and Greenlining/LIF⁴ have asked us to find Applicants in violation of law in this decision. For several procedural

³ TURN asks the Commission to “order applicants to bring their business practices into conformity with both the law and their representations to this Commission, as follows:

Oral marketers for WorldCom and Sprint should disclose long distance options with no (or low) monthly fees or minimums whenever customer usage profiles suggest that such options might be appropriate for the customer.

Sprint should discontinue any training which directs employees to decline to offer services to customers whose usage does not meet a desired level.

WorldCom and Sprint should disclose on their websites their long distance options with no (or low) monthly fees or minimums as prominently as they disclose all other options.

In its "fulfillment kit," WorldCom should disclose and detail all rates and charges equally prominently.

Response of The Utility Reform Network to Applicants' Motion to Withdraw, filed August 18, 2000 (TURN Response).

⁴ Greenlining/LIF ask the Commission to make findings related to the allegations that WorldCom:

intentionally turned away from serving the broader public immediately after promising the opposite, and instead engaged in continued de facto redlining against low-income and minority communities;

violated its promises in the 1998 merger approval by failing to take any steps to make a facilities-based entry into the residential market or make its high speed data network available to low-income and minority communities;

failed to promote, and in effect hid, the existence of its Family Assist Plan -- after promising in the 1998 proceeding to make this product available to low-income consumers -- so that those who most needed it would remain unaware of its existence;

Footnote continued on next page

reasons, we do not do so here. Nonetheless, we are sufficiently concerned with what we have learned to take several steps to make the record here available in other proceedings, and, if necessary, open an Investigation into Applicants' practices.

Because a merger inquiry often examines, among other things, the applicants' past business practices in an attempt to predict how they will operate as a combined entity in the future, the evidence adduced is often relevant to more than just the proposed transaction. Such is the case here: the record contains much information relevant to whether Applicants operate in the public interest. We do not wish to squander that record nor have Intervenors' efforts in developing it go unrewarded. Nor do we feel we can ignore the evidence before us to the extent it raises questions about whether Applicants fully disclose their prices, adequately serve low income and low volume customers, and deliver appropriate customer service. After all, both Sprint and WorldCom will continue business operations in California despite the merger's termination.

failed in its commitment to be beneficial to all California customers by largely ignoring non-English speaking customers in its marketing efforts and, more importantly, in its customer service; and

allowed its zeal for profits and growth to lead it into marketing abuses which triggered both federal and state prosecutions in the last year alone, despite its 1998 commitments to quality service. WorldCom proposed in this proceeding several remedial measures, which need to be memorialized and strengthened.

Response of Greenlining Institute and Latino Issues Forum to Motion of MCI WorldCom and Sprint to Withdraw Merger Application, filed August 18, 2000 (Greenlining/LIF Response).

C. Discussion

1. Commission Authority To Act

Applicants assert we would violate their due process rights if we took any steps to address the evidence adduced in this proceeding. They state that the merger is dead, the proceeding is moot, and the case should be dismissed summarily.

Were we early in the case, Applicants might be correct that a summary dismissal is all that is warranted. However, even where a case is mooted by circumstances, we can – and occasionally do – assert our authority to enforce the law by deciding issues of continuing importance or preserving the record for future proceedings.⁵ Such a stance is not confined to this Commission: a court may properly resolve a moot point if it presents “an issue of continuing public interest that is likely to recur in other cases [S]uch resolution is particularly appropriate when it is likely to affect the future rights of the parties before [the court].”⁶ Likewise, a court may rule on “a question which is of broad public

⁵ See, e.g., D.92-04-027, 43 CPUC2d 639, 640-41 (1992) (concurring opinion) (Commission is free to act on “vital questions of general interest,” even when underlying application dismissed); D.94-05-024, 54 CPUC2d 456 (imposing conditions on future merger when merger application withdrawn).

⁶ See, e.g., *In Re William M.* (1970) 3 Cal. 3d 16, 23 (“[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot”); *Johnson v. Hamilton* (1975) 15 Cal. 3d 461, 465 (a case is not mooted from the fact alone that the issue in the case is of no further immediate interest to the person raising it if the case poses an issue of broad public interest that is likely to recur); *Lundquist v. Reusser* (1994) 7 Cal. 4th 1193, 1202 n.8 (same); *Daly v. Superior Court* (1977) 19 Cal. 3d 132, 141 (same).

interest, is likely to recur, and should receive uniform resolution throughout the state” even if the specific controversy before it has been rendered moot.⁷

Our authority to make decisions even after a particular issue – such as Applicants’ merger – becomes moot is based on our independent obligation to enforce the law regardless of whether an outside complainant brings forward a claim.⁸ In this sense, we are not simply a court which only adjudicates controversies that outside parties bring to it, with no law enforcement obligations.

Moreover, Applicants’ motives in withdrawing the merger application are not relevant to whether we should take steps to preserve the record for future proceedings. Thus, we need not address Greenlining/LIF’s arguments that Applicants should have withdrawn the application before the end of hearings, or moved for suspension of this proceeding pending their negotiations with the U.S. Justice Department and the European Union. Even if it was entirely appropriate for Applicants to wait to seek withdrawal of their application until after the hearings concluded, we still retain power to pass on matters that came up during those hearings.

Thus, we have authority to rule on matters of continuing policy interest even if the underlying controversy has been mooted. Whether we choose to

⁷ *Ramirez v. Brown* (1973) 9 Cal. 3d 199, 203.

⁸ See, e.g., Cal. Pub. Util. Code §§ 451 (Commission has power to ensure that telephone service is “adequate, efficient, just and reasonable . . . [so as to promote public] safety, health, comfort and convenience”) & 701 (Commission authorized to do all things which are necessary and convenient in the exercise of the Commission’s power and jurisdiction); California Constitution Article XII (establishing Public Utilities Commission and providing the constitutional basis for regulation of public utilities).

exercise this authority is a different matter. For the reasons we recite here, we choose not to find Applicants in violation of law in this decision, but set up several other means of redressing Intervenors' claims.

2. Use of Documents in Record in Future Proceedings

Intervenors seek to have the Commission allow for the future use of confidential documents contained in the hearing record. During the course of discovery, Applicants requested, and Intervenors signed, a Non-Disclosure and Protective Agreement (Confidentiality Agreement or Agreement) governing the treatment of documents Applicants produced in discovery. The Agreement provided, in pertinent part, that "Any Confidential Information produced, revealed, or disclosed by the producing party in this Proceeding shall be used exclusively for purposes of participating in this proceeding and shall not otherwise be used or disclosed for any other purpose."⁹ The Administrative Law Judge (ALJ) did not issue a ruling adopting the contents of the Agreement; the Agreement was strictly a private matter among the parties. Thus, the Agreement in no way binds the Commission.

Applicants are concerned that if we allow Intervenors to use confidential documents from this proceeding in future cases, we will be allowing Intervenors to abrogate the Confidentiality Agreement. However, the Commission possesses its own authority – not hampered by the Agreement – to receive in evidence in a proceeding documents from prior proceedings that are "on file in the public record." Applicants concede that Rule 72 confers such power on the

⁹ Agreement, ¶ 2. The Agreement appears as Exhibit A to *Applicants' Reply Memorandum Regarding Motion To Withdraw*, filed August 28, 2000 (Applicants' Reply).

Commission: “Rule 72 . . . allows the Commission to accept into evidence documents on file as public records, without the need for the actual production of the document as an exhibit.”¹⁰ Commission General Order (GO) 66-C clarifies that a document received in evidence under seal is still a “public record”; it is simply a “public record not open to inspection.”¹¹ Applicants likewise concede this point: “[T]he record in this proceeding might be a public record (some of which is maintained under seal and not available for public inspection). . . .”¹²

Thus, Rule 72 empowers the Commission to order evidence from prior proceedings to be included in the record of a later proceeding. Therefore, there is nothing preventing the Commission from ordering the entire record of this proceeding – including documents under seal – to be available for use in future proceedings.

Those documents marked Confidential shall bear the same designation in other proceedings, and shall be kept under seal unless and until the presiding officer in a later proceeding rules that they are no longer deserving of protection. Thus, none of Applicants’ confidential documents will be made available for public inspection without action to remove the confidentiality designation.

So that parties in future proceedings are aware of our desire that the Commission invoke Rule 72, we will order that Applicants disclose the existence of the record here, and of this decision, in future proceedings initiated within two years of the effective date of this decision. Specifically, Applicants shall

¹⁰ Applicants’ Reply at 13.

¹¹ GO 66-C, Section 2.

¹² Applicants’ Reply at 14.

make such disclosure in any future proceeding in which they seek Commission approval of a transaction under § 854 or are alleged to be in violation of law because of failure accurately to disclose prices, to provide adequate customer service, to serve low volume or low income customers or communities, or adequately to train customer service employees. In close cases, Applicants should err on the side of disclosure.¹³

If an Intervenor bound by the Confidentiality Agreement initiates a case before the Commission and desires to introduce confidential documents from this proceeding into the record, that Intervenor need simply bring this decision to the attention of the presiding officer in that proceeding. It will then be within the presiding officer's discretion to receive such documents into evidence pursuant to Rule 72 – and that presiding officer will not be constrained by the Confidentiality Agreement.

We do not believe this arrangement will cause any of the problems Applicants posit. They assert that parties in the future will resist discovery to avoid producing sensitive documents for fear the documents will be used against them in later cases. However, we are entering this order in view of the particular circumstances of this case. Not every case will involve issues of continuing interest to the Commission even after the underlying transaction becomes moot. Indeed, we suspect this will be an unusual occurrence.

¹³ We made a similar order in D.99-04-048, 1999 Cal. PUC Lexis 185 (Pacific Bell to identify prior action in future proceedings). Applicants agree that such an order is proper: “[T]he most that D.99-04-048 could stand for is that the Commission could establish requirements for a future merger application by Applicants.” Applicants’ Response at 7. *See also* D.94-05-024, 54 CPUC2d 456, which Applicants characterize as standing for the same proposition. Applicants’ Response at 10.

Nor, in our view, will parties conduct fishing expeditions in hopes of finding documents of questionable relevance to the case at hand but perhaps germane to later cases. We do not believe Intervenors have the resources to waste on such exercises, or on Applicants' other feared activity: "introduc[ing] into the record massive numbers of documents simply so those documents would be available in subsequent unrelated proceedings."¹⁴ It is not clear what an Intervenor's incentive would be to engage in such activity, given that the Intervenor could obtain the discovery just as easily in the "subsequent unrelated proceedings."

3. Pending Superior Court Case

It may well be that another proceeding will resolve the complaints TURN and Greenlining/LIF raise with regard to WorldCom. On July 20, 2000, this Commission, along with the California Attorney General, filed a civil complaint in San Francisco Superior Court alleging violations of law by WorldCom in connection with its telecommunications services in California.¹⁵ There is substantial overlap between the Civil Case and the allegations Intervenors make here.

For example, both the Civil Case and this proceeding involve allegations that WorldCom does not adequately disclose its long distance rates. The Civil Case complaint, as amended on September 29, 2000, alleges as its first cause of action untrue or misleading statements related to WorldCom's "five

¹⁴ *Id.*

¹⁵ *People v. WorldCom, Inc.* (Case No. 313730, San Francisco Superior Court, filed July 20, 2000) (Civil Case).

cents everyday” calling plans. Plaintiffs allege there, as does TURN here, that WorldCom fails to disclose other aspects of its rates, such as flat plan fees and minimum calling requirements.¹⁶ There, as here, such failure is alleged to violate Public Utilities Code § 2896. Similarly, both the Civil Case and Greenlining/LIF allege problems with continued billing after service termination, slamming, and misleading advertising of “dial-around” services.¹⁷

While there is not absolute overlap between the Civil Case and the TURN/Greenlining/LIF allegations, we would prefer to let the Civil Case run its course so as to avoid duplication of effort and any risk that findings we make here will prejudice or otherwise affect the outcome of the Civil Case. In order to prevent any applicable statute of limitations from running pending the outcome of the Civil Case, we will toll these statutes as outlined in Condition 4D below.

The Commission is an active party to the Civil Case. The existence of the case establishes that we are not, as TURN claims, “ignor[ing] the record and allow[ing] applicants to continue to harm consumers.”¹⁸ The Commission retains clear authority to investigate and address the allegations TURN and Greenlining/LIF make should the Civil Case not resolve them. Furthermore, the pleadings and transcripts of this proceeding are public records available to

¹⁶ Compare Civil Case, First Amended Complaint for Civil Penalties, Injunction and Equitable Relief (First Amended Complaint), ¶ 7(A) with TURN Response, § 2(A), (C) and (D).

¹⁷ Compare Civil Case, First Amended Complaint, ¶¶ 7(C), 10(M)(2) & 12 with Greenlining Response § 5(a).

¹⁸ TURN Response at 9.

counsel for this Commission in the Civil Case. They may, if they see fit, allege additional violations of law in court.

WorldCom concedes that the Civil Case is a more appropriate place to adjudicate these overlapping matters.¹⁹ In view of this concession, the Commission will resist any attempt by WorldCom to convince the Superior Court to dismiss certain claims in the Civil Case on the ground this Commission has primary jurisdiction over them. WorldCom cannot have it both ways.

Finally, to the extent issues or legal theories raised in this case do not overlap with the Civil Case — for example, where the allegations relate only to Sprint — the parties are free to pursue those issues in complaints before this Commission. Consistent with Rule 72 and our order here, they may ask the presiding officer in those cases to admit evidence used in this proceeding without breaching their Confidentiality Agreement with Applicants, provided the requirements of Rule 72 are met in those cases. We note, however, that Applicants bore the burden of proof in this proceeding, while a complainant would bear the burden in a complaint proceeding. Thus, parties in subsequent cases may have to adduce additional proof to meet that burden, since they did not bear that burden here. We will leave that decision to the next case.

4. Summary of Conditions on Withdrawal

We agree with Intervenors that this record should not be squandered or their efforts in developing it unrewarded. Therefore, we impose several conditions on our decision granting Applicants' motion for withdrawal:

¹⁹ Applicants' Reply at 10-11: "[T]he Commission has chosen a forum in which to present and resolve the advertising, billing, and switching practices at issue in the Civil [Case]. Conducting a duplicative proceeding creates the risk of conflicting outcomes."

- A. So that parties in future proceeding are aware of our desire that the Commission invoke Rule 72, we will order that Applicants disclose the existence of the record here, and of this decision, in future proceedings initiated within two years of the effective date of this decision. Specifically, Applicants shall make such disclosure in any future proceeding in which they seek Commission approval of a transaction under § 854 or are alleged to be in violation of law because of failure accurately to disclose prices, to provide adequate customer service, to serve low volume or low income customers or communities, or adequately to train customer service employees. In close cases, Applicants should err on the side of disclosure.
- B. Pursuant to Rule 72, the record of this proceeding shall be available in any complaint or enforcement case brought in the future, provided the requirements of Rule 72 are met as to that case – namely, that such record shall be competent, relevant, and material to the case. If Intervenors (or any other signatory to the Agreement referenced in footnote 9) seek to use information deemed Confidential in a future proceeding, they shall either present such information under seal, or they shall bring a motion in the subsequent proceeding(s) requesting that the confidentiality designation be removed. In accordance with Commission practice related to Commission-ordered protective orders, documents or other information deemed Confidential in this record shall retain such designation two years from the effective date of this decision, unless the Commission, a Commissioner, or an ALJ rules otherwise.²⁰ If Applicants believe that further protection of Confidential information is needed after two years, they may file a motion stating the justification for further extending the confidentiality protection for the information. In no event shall Applicants file such motion later than 30 days before the two-year period elapses. In other words, Applicants shall file such motion no later than one year and eleven months after the effective date of this decision. The motion shall make the following showing as to each document or piece of information for which Applicants desire continued confidentiality protection:

²⁰ See D.97-06-110, 73 CPUC2d 337 (1997).

- (1) There exists an overriding interest that overcomes the right of public access to the record;
 - (2) The overriding interest supports sealing the record;
 - (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
 - (4) The proposed sealing is narrowly tailored; and
 - (5) No less restrictive means exist to achieve the overriding interest.²¹
- C. Nothing in this decision shall preclude any party already deemed eligible for intervenor compensation from seeking such compensation in this proceeding, or, to the extent this proceeding's record is used in other proceedings, in those other proceedings, provided there is no duplicate compensation.
- D. It may be appropriate for the Commission to open an Investigation into the practices of Applicants as alleged by Intervenors. The record of this proceeding shall be available in that proceeding. Because of the pendency of the Civil Case and the possibility that Intervenors' allegations about WorldCom may be resolved in that proceeding, to which this Commission is a party, we will not commence the Investigation at this time. We will toll the running of any statute of limitations relating to any claim reasonably related to this proceeding that the Commission might raise in such an Investigation, or that the Commission's Consumer Services Division or other enforcement division might bring, until entry of a final judgment in the Civil Case. We will not toll the statute of limitations

²¹ Cal. Rules of Court, Rule 243.1(d), effective January 1, 2001. These rules are available on the Internet at <http://www/courtinfo.ca.gov/rules/amendments/jan2001.pdf>. While these rules are not expressly applicable to this Commission, they reflect a common-sense approach to the determination of whether records should be filed under seal. Applicants may argue other factors warranting confidentiality they desire, but it should focus on the foregoing list.

with regard to a privately initiated complaint since Intervenors are free to bring a complaint at this time.

D. TURN's Motion to Unseal Documents

After Applicants filed their motion for withdrawal, TURN sought an order unsealing certain documents in the record of this proceeding.²² Because Applicants have met their burden of demonstrating that the documents should remain confidential, the motion is denied.

The documents at issue are the following:

- (1) three pages from a training document discussing Sprint's marketing prices for customers with low usage (Ex. C-502, SCA 2001231-1233)
- (2) tables showing aggregate calculations of average revenue per minute (ARPM) paid by WorldCom customers (Ex. C-11 (Hall), Tables 1-4; Exs. C-514, C-517, C-518, C-525, C-535; and Ex. C-62 (Nedohon).

TURN alleges the Sprint documents show Sprint does not market to low volume customers, and that the WorldCom documents rebut WorldCom's public assertions that price reductions outpace access charge reductions.

Applicants oppose TURN's motion on the grounds that the documents remain confidential.²³ They claim the documents are protected from disclosure by the trade secret privilege, are not shared with competitors, are developed only after the expenditure of significant time and resources, and are not available even

²² *Motion of The Utility Reform Network for An Order Finding That Certain Documents Do Not Warrant Confidential Treatment* (filed September 29, 2000).

²³ *Applicants' Opposition to TURN's Motion for an Order Finding That Certain Documents Do Not Warrant Confidential Treatment* (filed October 12, 2000).

to Applicants' own employees in some cases. They assert they will suffer competitive harm from the documents' disclosure.

Applicants have adequately demonstrated the need for the documents to remain confidential. TURN's motion is denied without prejudice to its right to renew the motion in future proceedings.

E. Administrative Law Judge Rulings

We affirm the ALJ's rulings entered during the pendency of the proceeding, as follows:

1. Early in the proceeding, Applicants sought a determination that their proposed merger was exempt from the requirements of Public Utilities Code Section 854(b) and (c). The assigned Administrative Law Judge denied that motion on February 7, 2000. We affirm that ruling.
2. Applicants also sought a determination that this Commission lacked jurisdiction to decide whether the merger would have adverse consequences on the Internet backbone market. The assigned Commissioner and ALJ ruled on April 13, 2000 in their Scoping Memo that the Commission possessed such jurisdiction and that the merger's effects on the backbone market were within the scope of this proceeding. We also affirm this ruling.
3. Finally, the ALJ also made a series of discovery rulings during the course of the proceeding, which she summarized in an omnibus discovery ruling dated August 10, 2000. We affirm this ruling.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Applicants and Greenlining/LIF filed comments on January 25, 2001, and Applicants and TURN filed reply comments on January 30, 2001. We have made a few changes in light of the comments. First, we have modified the provision regarding how long information deemed Confidential in the record of this proceeding may retain such designation.

Rather than have the designation expire automatically two years from the effective date of this decision, if Applicants believe that further protection of Confidential information is needed after two years, they may then file a motion stating the justification for further extending the confidentiality protection for the information.

We have also clarified that any records or information from this proceeding used in future proceedings pursuant to our Rule 72 order shall meet the requirements of Rule 72 in that proceeding. That is, as to the future proceeding(s), such records or information shall be competent, relevant, and material.

We agree with Greenlining/LIF that certain evidence whose contents Applicants agreed to and stipulated to introduce should be made a part of the record of this proceeding. That evidence consists of the following items, and shall be admitted as part of Exhibit C-701.

1. "Stipulation re California Construction Projects," and
2. "Confidential – Lawyers Only; Worldcom's response to the ALJ's bench request of June 9"

In a filing dated February 5, 2001, WorldCom agreed that the Exhibit should be admitted:

WorldCom and Greenlining agreed to the content of the two documents prior to Applicants' motion to withdraw their application. Because related information has already been marked as a confidential exhibit (see Confidential Exhibit C-

701), it would be appropriate for these two documents to be included within that confidential exhibit.²⁴

We do not believe any of the other issues commenters raise warrant changes. Greenlining/LIF repeat allegations from their briefs. While we believe their claims are beyond the scope of this order, they are free to file a complaint or seek any other remedy they see fit as to those claims. We reject the other changes Applicants propose as unnecessary, inconsistent with facts or law, or a rehash of prior requests.

Findings of Fact

1. The WorldCom-Sprint merger has been called off, so there is no reason for us to rule on whether the merger is in the public interest.
2. The parties in the proceeding dedicated a great deal of time and effort to developing a record in this proceeding.
3. The record in this proceeding contains evidence related to Applicants' products, services and pricing, especially for low volume callers; handling of customer complaints; and outreach and business in low income communities.
4. A merger inquiry often examines, among other things, the applicants' past business practices in an attempt to predict how they will operate as a combined entity in the future.
5. Both Sprint and WorldCom will continue business operations in California despite the merger's termination.
6. The Commission is not a signatory to the Confidentiality Agreement several parties signed during the course of this proceeding.

²⁴ *Applicants' Response to Administrative Law Judge's Request of February 1, 2001*, filed February 5, 2001, at 2.

7. Allowing for future use of confidential documents produced in this proceeding will not have the negative impacts Applicants posit. The confidential nature of the documents will be preserved unless and until the presiding officer in another proceeding orders otherwise.

8. A pending Superior Court case brought against WorldCom by this Commission and the California Attorney General (Civil Case) raises issues similar to those Intervenors raise here. It is prudent to avoid duplication and inconsistent resolution by allowing the Civil Case to run its course.

9. If the Civil Case does not resolve the claims Intervenors raise against WorldCom, the Commission may institute an Investigation into Applicants' practices.

10. Intervenors are free to initiate complaints related to the allegations they make here, and to seek compensation related to their efforts in this case.

11. It is appropriate to toll the running of any statute of limitation relating to any claim reasonably related to this proceeding that the Commission might raise in an Investigation or that the Commission's Consumer Services Division or other enforcement division might bring, until entry of a final judgment in the Civil Case.

12. WorldCom and Greenlining agreed to the content of the documents entitled "Stipulation re California Construction Projects" and "Confidential – Lawyers Only; WorldCom's response to the ALJ's bench request of June 9. . . ."

Conclusions of Law

1. Applicants' motion to withdraw their merger application should be granted.

2. The Commission has authority to resolve a moot point if it presents an issue of continuing public interest that is likely to recur in other cases.

3. The Commission is free to act on vital questions of general interest even when the underlying application is dismissed.

4. The Commission may impose conditions on future applications even when the present application is withdrawn.

5. The Commission has an independent obligation to enforce the law regardless of whether an outside complainant brings forward a claim. In this sense, the Commission is different from a court, which only adjudicates controversies that outside parties bring to it, with no law enforcement obligations.

6. Commission Rule 72 empowers the Commission to order the use of a proceeding record in future proceedings, provided the requirements of Rule 72 are met in the future proceeding(s).

7. Applicants' motives in withdrawing their merger application are not relevant to whether the Commission has authority to adjudicate the matters Intervenors allege.

8. Documents introduced into evidence under seal are public records not open to inspection.

9. Documents or other information deemed Confidential in this record should retain such designation for two years from the effective date of this decision, unless the Commission, a Commissioner, or an ALJ rules otherwise.

10. If Applicants believe that further protection of Confidential information is needed after two years, they may file a motion stating the justification for further extending the confidentiality protection for the information.

11. TURN's motion for an order finding that certain documents do not warrant confidential treatment should be denied.

12. The ALJ's rulings in this case on the applicability of Public Utilities Code Section 854(b) and (c) to the merger, on our jurisdiction over the Internet backbone market, and on discovery should be affirmed.

O R D E R

IT IS ORDERED that:

1. The motion of MCI WorldCom, Inc. and Sprint Corporation to withdraw their merger application is granted.

2. So that parties in future proceeding are aware of our desire that the Commission invoke Rule 72, Applicants shall disclose the existence of the record here, and of this decision, in future proceedings initiated within two years of the effective date of this decision. Specifically, Applicants shall make such disclosure in any future proceeding in which they seek Commission approval of a transaction under § 854 or are alleged to be in violation of law because of failure accurately to disclose prices, to provide adequate customer service, to serve low volume or low income customers or communities, or adequately to train customer service employees. In close cases, Applicants shall err on the side of disclosure.

3. Pursuant to Rule 72, the record of this proceeding shall be available in any complaint or enforcement case brought in the future, provided the requirements of Rule 72 that the record be competent, relevant and material are met as to that case. If The Utility Reform Network (TURN) and the Greenlining Institute/Latino Issues Forum (collectively, Intervenors) (or any other signatory to the Agreement referenced in footnote 9) seek to use information deemed Confidential in a future proceeding, they shall either present such information under seal, or they shall bring a motion in the subsequent proceeding(s)

requesting that the confidentiality designation be removed. In accordance with Commission practice related to Commission-ordered protective orders, documents or other information deemed Confidential in this record shall retain such designation for two years from the effective date of this decision, unless the Commission, a Commissioner, or an Administrative Law Judge (ALJ) rules otherwise. If Applicants believe that further protection of Confidential information is needed after two years, they may file a motion stating the justification for further extending the confidentiality protection for the information. In no event shall Applicants file such motion later than 30 days before the two-year period elapses. In other words, Applicants shall file such motion no later than one year and eleven months after the effective date of this decision. The motion shall make the following showing as to each document or piece of information for which Applicants desire continued confidentiality protection:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

4. Nothing in this decision shall preclude any party already deemed eligible for intervenor compensation from seeking such compensation in this proceeding or, to the extent this proceeding's record is used in other proceedings, in those other proceedings, provided there is no duplicate compensation.

5. It may be appropriate for the Commission to open an Investigation into the practices of Applicants as alleged by Intervenors. The record of this proceeding shall be available in that proceeding. Because of the pendency of *People v. Worldcom, Inc.* (Case No. 313730, San Francisco Superior Court, filed July 20, 2000) (Civil Case) and the possibility that Intervenors' allegations about WorldCom may be resolved in that proceeding, to which this Commission is a party, we will not commence the Investigation at this time. We will toll the running of any statute of limitations relating to any claim reasonably related to this proceeding that the Commission might raise in such an Investigation, or that the Commission's Consumer Services Division or other enforcement division might bring. Such tolling of the statute(s) of limitations shall continue until entry of a final judgment in the Civil Case. We will not toll the statute of limitations with regard to a privately initiated complaint since Intervenors are free to bring a complaint at this time.

6. TURN's Motion for an Order Finding That Certain Documents Do Not Warrant Confidential Treatment is denied without prejudice.

7. The ALJ's rulings on the applicability of Public Utilities Code § 854(a) and (b) to this proceeding, the Commission's jurisdiction over the Internet backbone, and discovery are affirmed.

8. The documents identified herein as part of Exhibit C-701 shall be admitted in evidence in the record of this proceeding.

9. Subject to the conditions imposed above with respect to the preservation of this record for future use, this proceeding is closed.

This order is effective today.

Dated February 8, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners