HEARING DATE AND TIME: December 16, 2002 at 5:00 p.m.
OBJECTION DEADLINE: December 13, 2002 at 12:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case No.**
WORLDCOM, INC., et al.,	:	**02-13533 (AJG)**
	:	
	:	**(Jointly Administered)**
Debtors.	:	

DEBTORS' MOTION PURSUANT TO SECTIONS 363 AND 105 OF THE BANKRUPTCY CODE FOR AN ORDER AUTHORIZING THE EMPLOYMENT OF MICHAEL D. CAPELLAS AS PRESIDENT, CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF THE BOARD OF DIRECTORS OF THE DEBTORS

TO THE HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE:

WorldCom, Inc. ("WorldCom") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent:

Preliminary Statement

1. The Debtors have undertaken an extensive search for a new chief executive officer ("CEO") to succeed John W. Sidgmore, who has acted as interim CEO following the resignation of Bernard J. Ebbers in April 2002. After identifying 25 potential prospects and narrowing that number through a screening and interview process, the Debtors, WorldCom's board of directors and the official committee of unsecured

creditors in these cases (the "Creditors' Committee"), have unanimously selected Michael D. Capellas as the new President and CEO of WorldCom and have agreed upon the compensation arrangements proposed below as eminently reasonable.

2. As this Court is aware, certain orders entered in SEC v. WorldCom, Inc. currently pending in the District Court before Judge Rakoff (the "Securities Litigation") require that any compensation paid by WorldCom must be approved by a corporate monitor (the "Corporate Monitor") appointed in that case. The Corporate Monitor has engaged in discussions with WorldCom, representatives of the Creditors' Committee, and Mr. Capellas (or his counsel) regarding the terms of his compensation. As of the filing of this motion, the Corporate Monitor has not approved the proposed compensation arrangements for Mr. Capellas. However, in the interests of time and to be in a position to employ a new CEO as quickly as possible in order to help facilitate WorldCom's timely emergence from chapter 11, the Debtors are submitting this motion. The Debtors hope to continue discussions with the Corporate Monitor to obtain approval of the proposed compensation arrangements, and it is likely that the arrangements will be substantially similar to the terms proposed herein. Judge Rakoff has scheduled a joint hearing before the District Court and the Bankruptcy Court to consider the arrangements on December 16, 2002, at 5 p.m.

Background

3. On July 21, 2002 (the "Commencement Date") and November 8, 2002, WorldCom, Inc. and certain of its direct and indirect subsidiaries commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By Orders dated July 22, 2002 and November 12, 2002, the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The

Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 29, 2002, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the Creditors' Committee.

4. WorldCom, one of the Debtors in the above captioned cases, together with approximately 200 direct and indirect domestic subsidiaries and 200 non-debtor foreign affiliates (collectively, the "Company"), is one of the world's preeminent global communications companies that provides a broad range of communication services in over 200 countries on six continents. Through its core communications services business, which includes voice, data, Internet and international services, the Company carries more data over its networks than any other entity. The Company is also the second largest carrier of consumer and small business long distance telecommunications services in the United States, provides a broad range of retail and wholesale communications services, including long distance voice and data communications, consumer local voice communications, wireless messaging and voice services, private line services and dial-up Internet access services.

5. For the year ended December 31, 2001, WorldCom recorded revenue of more than $30 billion.[1] As of March 31, 2002, WorldCom's books and records reflected liabilities totaling approximately $41 billion. As of June 30, 2002, WorldCom employed more than 63,900 individuals, of which approximately 57,700 were full-time employees and approximately 6,200 were part-time employees.

[1] The amounts in this paragraph are stated on a consolidated basis, including Debtors and non-debtor domestic subsidiaries only. WorldCom, Inc. has announced its intention to restate the financial statements for 2000, 2001 and the first quarter of 2002.

Jurisdiction

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. § § 1408 and 1409.

Employment Of Michael D. Capellas

7. By this Motion, the Debtors seek authorization, pursuant to sections 363 and 105 of the Bankruptcy Code to employ Michael D. Capellas as WorldCom's CEO and President and chairman of its board of directors ("Chairman") on the terms set forth in the Term Sheet, described more fully in paragraph 11 below and annexed hereto as Exhibit A.

8. In furtherance of its goal of hiring the best candidate for the position, in September 2002, the Debtors hired the search firm SpencerStuart ("SpencerStuart"), the largest privately-owned executive search firm, which has 46 years of experience identifying leadership and management talent. WorldCom, together with SpencerStuart and the Creditors' Committee, identified three business sectors to target for potential candidates – the technology, telecom and industrial sectors. See the Declaration of Dennis C. Carey, Vice Chairman of Spencer Stuart (the "Carey Declaration"), annexed hereto as Exhibit B. From these three industries, 25 prospective candidates emerged, 17 of whom were deemed unsuitable by the Company or declined interest. Id. Thereafter, the current CEO of WorldCom, the Search Committee of WorldCom's board of directors and the Search Subcommittee of the Creditors' Committee (the "Search Committees") interviewed the eight remaining candidates. After a multiple-stage screening process which included follow-up interviews, referencing and thorough due diligence of the candidates, and involved the Creditors' Committee, WorldCom's board of directors and

the Corporate Monitor, the Debtors and the Search Committees, the Company has determined that Michael D. Capellas is the most qualified person to assume the role of CEO of WorldCom. This determination is supported wholeheartedly by the Creditors' Committee. The Company and the Creditors' Committee chose Mr. Capellas because among other reasons described below, he (i) is a world-recognized business leader with an impeccable reputation for integrity, honesty and dedication, (ii) had the best turnaround and integration experience, (iii) has the most passion for the job, (iv) has a unique skill set combining technology and customer issues and services, and (v) has the best understanding of the cultural and governance issues facing WorldCom.

Mr. Capellas' Qualifications

9. The Debtors have selected Mr. Capellas as their CEO, Chairman and President because of his diverse experience, extensive knowledge and leadership capabilities. Mr. Capellas received his B.B.A. in Business Administration from Kent State University in 1976. Since that time he has been a senior executive at a variety of companies. Recently, Mr. Capellas was the CEO and Chairman of the Board of Compaq Computer Corporation ("Compaq"), where he integrated Compaq's numerous acquisitions and then led the company in its merger with Hewlett-Packard Company to complete the largest merger in history in the technology field. Subsequent to the merger, Mr. Capellas served as the President of Hewlett-Packard Company.

10. Mr. Capellas has held a variety of information and technology services management roles over the prior fifteen years. In particular, Mr. Capellas has particular expertise in information technology, e-commerce, software, solutions and supply chain management and services. He has amassed a solid reputation for being a

leader who blends strategic insight, operational expertise, technical, financial and marketing skills. The Debtors believe that Mr. Capellas is well qualified to assist the Debtors on the matters for which he is to be engaged.

Mr. Capellas' Duties and Responsibilites

11. The Debtors and the Creditors' Committee have negotiated Terms and Conditions of Employment (the "Term Sheet")[2] with Mr. Capellas which sets forth the terms and conditions of Mr. Capellas' retention as WorldCom's new CEO, President and Chairman, through December 31, 2005. The Debtors and Mr. Capellas will enter into an employment agreement (the "Employment Agreement") on terms substantially identical to the terms provided by the Term Sheet.

12. In his roles as CEO, President and Chairman, Mr. Capellas' duties and responsibilities will include all the duties and responsibilities commensurate with those roles, and at least the following business objectives:

- Retaining existing customers and revenue base while developing new business and recruiting new personnel for leadership positions;
- Specific increased levels of EBITDA, positive net income or other measures of financial performance;
- Retaining existing customers and revenue base while developing new business and retaining and recruiting personnel for key leadership positions.

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[2] Please refer to the attached Term Sheet for all pertinent terms of Mr. Capellas' retention as the information set forth herein is intended to only provide a summary of such information.

- Successfully exiting from bankruptcy protection at the earliest possible time, consistent with the best interests of the Company and its stakeholders and implementing a revised business model to sharply reduce operating costs and generate sustainable levels of profitability.

Mr. Capellas' Compensation

13. The Term Sheet provides that Mr. Capellas will be compensated for his services as follows:

- Mr. Capellas will have an initial annual base salary of $1,500,000;
- A pro rata bonus equal to 100% of base salary will be guaranteed for the remainder of calendar year 2002 and for WorldCom's 2003 fiscal year. For WorldCom's 2004 and 2005 fiscal years and any fiscal years during any subsequent annual extensions of the Employment Agreement, there shall not be any minimum guaranteed bonus. However, Mr. Capellas will have the opportunity to earn a bonus of 100% of base salary for performance at target levels to be established by WorldCom's board of directors and with smaller or greater bonus opportunities for performance below or above target levels.
- A signing bonus of $2.0 million, payable within 10 days of Mr. Capellas' first date of employment or the approval hereof by the Bankruptcy Court. This bonus is subject to repayment to WorldCom in full in the event that Mr. Capellas is terminated for

Cause (as defined in the Term Sheet) or on a pro rata basis if Mr. Capellas resigns without Good Reason (as defined in the Term Sheet) during the initial term of employment by the Company.

14. Additionally, Mr. Capellas will be entitled to an initial equity award of restricted stock of the reorganized Company with a value of $18 million at the date of emergence. The initial equity award will vest ratably over a period of three years with vesting service measured from December 31, 2002. In addition, Mr. Capellas will be entitled to receive grants of stock options upon the Company's emergence from chapter 11in such amounts as the board may determine. [3]

15. For each full calendar year following the calendar year in which the Company emerges from bankruptcy, Mr. Capellas shall be eligible at the targeted performance levels to receive an annual equity award valued at two times the sum of base salary plus target annual bonus based upon achievement of performance objectives set for each such year by the board of directors, with such award to be granted based upon the applicable year. Such equity awards shall consist of such mix of restricted stock or stock options as the board of directors may determine, and shall vest ratably over a period to be determined by the board of not less than three years.

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[3] The Creditors' Committee, the Debtors and Mr. Capellas had previously agreed to a term sheet that included the following additional compensation: an initial grant of stock options having a value of at least $8 million and a non-guaranteed target award of $12 million. The initial options would have had an initial term of ten years, an exercise price per share equal to the fair market value of a share of common stock of the Company as of the date of grant and have vested ratably over a period of three years. However, in the interest of time and to resolve certain of the issues raised by the Corporate Monitor, Mr. Capellas has agreed not to establish any minimum or target amount for stock options to be granted upon the Company's emergence from Chapter 11 and to accept the judgment of WorldCom's board as to an award at that time.

16. If Mr. Capellas' employment is terminated by the Company not for Cause (as defined in the Term Sheet) or by Mr. Capellas for Good Reason (as defined in the term sheet), Mr. Capellas will receive a lump sum payment within 30 days after termination of employment equal to three times the sum of Mr. Capellas' base salary and guaranteed or target annual bonus. Mr. Capellas will also be entitled to continued health coverage at employee rates for 18 months following termination of employment. Also, Mr. Capellas' restricted stock and options (if and when awarded) become fully vested and the options become exercisable, as described in the Term Sheet.

17. The Debtors will also reimburse Mr. Capellas for all transaction costs and moving expenses associated with relocation and for all reasonable legal fees at standard hourly rates incident to entering into the Employment Agreement.

18. Upon termination of employment for any reason other than expiration of the Employment Agreement, Mr. Capellas agrees to a one-year non-compete and non-solicitation of employees provision.

19. The Debtors and the Creditors' Committee believe that Mr. Capellas' compensation is fair and reasonable for the services which he will provide and is commensurate with, if not lower than, the compensation packages received by other chief executives of companies the size of the Debtors. Attached hereto as Exhibit C is a chart reflecting the compensation packages paid to executives at other companies, which reflects that Mr. Capellas' compensation package is comfortably within the range of compensation paid for executives of companies comparable in size and complexity to WorldCom. Indeed, Mr. Capellas' compensation appears to be below the mid-range value of similarly situated executives and is well below the compensation levels that

would have been required by the other two candidates of the final three contenders. **See** Carey Affidavit. The Creditors' Committee has also retained a compensation expert who believes that the compensation package described herein is well within the range of reasonableness. On information and belief, the expert report of the Creditors' Committee's compensation expert will be available for review by the Court.

20. Additionally, WorldCom and the Creditors' Committee believe that Mr. Capellas' compensation is reasonable given the circumstances of this case. It was difficult to attract qualified executives given the numerous process challenges here, including, (i) the fact that several constituencies were involved in the search process, which gave rise to the high potential for leaks amidst the intense media scrutiny surrounding the search; (ii) WorldCom's bankruptcy, paired with the uncertainty surrounding WorldCom's financial situation; (iii) WorldCom's corporate image problems; and (iv) the lack of clarity regarding WorldCom's governance structure and the scope of the CEO's authority. See ; the Carey Declaration; the Declaration of Stewart Reifler, partner in the law firm Vedder, Price, Kaufman and Kammholz, annexed hereto as Exhibit D; the Declaration of Michael Kam, member of the law firm Weil, Gotshal & Manges LLP, annexed hereto as Exhibit E.

Basis for Relief Requested

21. Section 105(a) of the Bankruptcy Code provides in pertinent part that "[t]he court may issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides in part that a debtor-in-possession "after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the

estate." 11 U.S.C. § 363(b). Under applicable case law, in this and other circuits, if a debtors' proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on part of the debtor, such use should be approved. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.) 722 F.2d 1063, 1070 (2nd Cir. 1983); In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D. Del. 1991) (courts have applied the "sound business purpose" test to evaluate motions brought pursuant to section 363(b)); Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to debtor's conduct").

22. The retention of corporate officers is proper under section 363 of the Bankruptcy Code. Numerous courts have authorized retention of officers utilizing this provision of the Bankruptcy Code. See In re ICG Comm., Inc. (Case No. 00-4238) (PJW) (Bankr. D. Del. Feb. 26, 2001) (retention of consultants); In re Laidlaw USA, Inc. (Case No. 01-14099) (Bankr. W.D.N.Y. Sug. 21 2001); In re Imperial Home Decor Group, Inc. (Case No. 00-19) (MFW) (Bankr. D. Del. June 14, 2000) (retention of chief executive officer); In re Clothestime, Inc., (SA95-22533-JW) (Bankr. C.D. Cal. Feb. 13, 1997) (retention of vice president).

23. The Debtors submit that the employment of Mr. Capellas on terms consistent with the Term Sheet not only is based on a reasonable business judgment, but

is clearly in the best interest of the Debtors' estates and creditors. The terms of Mr. Capellas' employment, including his compensation package, are the result of substantial arms' length negotiations between Mr. Capellas, the Creditors' Committee, and WorldCom. The Term Sheet has the overwhelming support of the Creditors' Committee, which represents the very parties who will bear the direct cost of the compensation package proposed.

The Relief Requested is Urgent and Should Be Granted

24. The Debtors face an urgent need to retain a permanent CEO to, among other things, stabilize the Company and reassure customers and employees of the health of WorldCom on a going-forward basis. The hiring of Mr. Capellas is a critical step to prevent customer defections. Additionally, the appointment of Mr. Capellas as CEO will help the Company move forward with its business plan and emerge successfully from chapter 11 in a timely fashion. Thus, it is imperative that the Motion be granted. The Debtors and their creditors will be harmed the longer that the Company does not have a permanent CEO. The Creditors' Committee has consented to this motion being heard on an emergency basis and support the relief requested.

Memorandum of Law

25. This Motion includes citations to the applicable authorities and does not raise any novel issues of law. Accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

Notice

26. Notice of this Motion has been provided in accordance with the Case Management Order dated July 29, 2002. The Debtors submit that no other or further notice need be provided.

27. No previous motion or application for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other or further relief as is just.

Dated: New York, New York
December 9, 2002

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