

**Objection Deadline: August 19, 2004 at 5:00 p.m.**  
**Hearing Date: August 24, 2004 at 10:00 a.m.**

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Noteholders

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
: Case No. 02-13533 (AJG)  
WORLDCOM, INC. et al., :  
: (Jointly Administered)  
Debtor. :  
: :  
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**APPLICATION OF THE AD HOC COMMITTEE OF WORLDCOM NOTEHOLDERS  
PURSUANT TO 11 U.S.C. § 503(b)(3)(D) AND (b)(4) FOR ALLOWANCE OF  
ADMINISTRATIVE EXPENSES INCURRED IN MAKING A SUBSTANTIAL  
CONTRIBUTION IN THESE CASES**

The Ad Hoc Committee of WorldCom Noteholders (the “Ad Hoc Committee”),  
by and through its counsel, Milbank, Tweed, Hadley & McCloy LLP (“Milbank”), hereby  
submits its application (the “Application”) for an order pursuant to Bankruptcy Code sections  
503(b)(3)(D) and 503(b)(4) allowing as an administrative expense the Milbank legal fees and  
expenses that were incurred by the Ad Hoc Committee in connection with the Ad Hoc  
Committee’s substantial contribution to the negotiation, formulation, confirmation and ultimate  
consummation of the chapter 11 plan (the “Plan”) of the above-captioned debtors (collectively,  
the “Debtors”).

## I.

### INTRODUCTION

The size, complexity, contentiousness and controversy surrounding the Debtors and their chapter 11 cases are amply reflected in the record in these cases and in the attendant press coverage. Needless to say, the Debtors' ability to emerge from bankruptcy under what proved to be a largely consensual plan required the extraordinary efforts and leadership of not only the Debtors, but also a number of key constituents. In its findings of fact in connection with confirmation of the Plan, the Court expressly acknowledged the extensive involvement and contributions of certain of those constituents:

“The Plan is the result of extensive good faith, arm’s-length negotiations among the Debtors, the Committee, the Ad Hoc Committee of Intermedia Holders, the Ad Hoc Committee of MCIC Senior Noteholders, *the Ad Hoc Committee of WorldCom Noteholders*, the Ad Hoc Bank Committee, the MatlinPatterson Investors and other economic parties in interest. . . . The support of the Plan by each of these key constituencies with divergent interests and the Committee reflects their acknowledgment that the Plan provides fundamental fairness to creditors and equity interest holders. It is indisputable that the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code.”

Findings of Fact and Conclusions of Law (1) Approving (i) Substantive Consolidation and (ii) The Settlements Under Debtors' Modified Second Amended Joint Plan of Reorganization, Dated October 21, 2003, And (2) Confirming Debtors' Modified Second Amended Joint Plan of Reorganization, Dated October 21, 2003 at p. 99 (emphasis added).

In addition, the very workings of the Plan required the participation and consent of certain key constituents, including the Ad Hoc Committee. For example, section 11.01 of the Plan provided that, as a condition to effectiveness of the Plan, certain documents that were critical to implementation of the Plan – the New Notes Indenture, the Reorganized WorldCom Certificate of Incorporation and by-laws and the New Management Restricted Stock Plan – all had to be in form and substance reasonably acceptable to a few key parties – the Ad Hoc Committee among them.

Thus, the key role in the Plan formulation, negotiation, confirmation and consummation process that was played by the Ad Hoc Committee is evidenced very clearly in both the Court’s findings from the confirmation hearing and in critical Plan provisions and Plan-related documents themselves. In short, throughout the extensive, contentious and very difficult and time-consuming Plan process, the Ad Hoc Committee, represented by Milbank, took on the very important role of “lead negotiator” on all Plan-related issues to advocate the positions for the benefit of holders of the largest group of claims in these cases – the WorldCom Note Claims, which were allowed under the Plan in an amount of just under \$25 million. The Ad Hoc Committee submits that its efforts in this regard yielded a “substantial contribution” in these cases, warranting allowance of the Milbank’s fees and costs as an administrative expense in these cases pursuant to Bankruptcy Code sections 503(b)(3)(D) and 503(b)(4).

## **II.**

### **JURISDICTION**

This Court has original and exclusive jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §

157(b). As set forth above, the statutory predicates for the relief sought herein are Bankruptcy Code sections 503(b)(3)(D) and 503(b)(4).

### **III.**

#### **APPLICATION**

By this Application, the Ad Hoc Committee seeks (a) allowance of reasonable compensation for actual and necessary professional services rendered by Milbank, as counsel for the Ad Hoc Committee, during the cases, and (b) reimbursement of actual, reasonable and necessary expenses incurred by Milbank in connection with its rendition of those professional services.

Specifically, Milbank seeks approval and allowance of \$1,403,269.25 as the amount of actual, reasonable and necessary fees for legal services rendered by Milbank from the commencement of Milbank's engagement by the Ad Hoc Committee in November of 2002 through the Plan effective date, and \$177,070.78 in reimbursement of actual, reasonable and necessary expenses incurred in connection with the rendition of such services, for a total of \$1,580,340.03.

Milbank rendered all services for which compensation is sought solely in connection with these cases, in furtherance of the interests and at the instruction of the Ad Hoc Committee. Milbank initially was contacted and formally engaged by Cerberus Capital Management, L.P. ("Cerberus"). The only other creditor that formally executed an engagement letter with Milbank was GSC Partners (NJ), Inc. ("GSCP"). GSCP subsequently resigned from the Ad Hoc Group concurrent with its resignation from the Official Committee of Unsecured Creditors. During the course of the Plan process, however, Cerberus and, from time to time, Milbank, have communicated to varying degrees with other holders of WorldCom senior notes in

formulating and advancing the positions of the Ad Hoc Committee.

Milbank maintains written records of time expended in the rendition of the professional services to its clients. These records are maintained in the ordinary course of Milbank's practice. For the convenience of the Court and parties in interest, attached hereto as Exhibit "A" is a summary, setting forth the name of each attorney and paraprofessional that provided more than twenty-five (25) hours of services to the Ad Hoc Committee during these cases and for whose work on these cases compensation is sought, the aggregate of the time expended by each such attorney and paraprofessional, and a calculation of the total fees by professional that are included in the total amount of compensation requested. The compensation requested by Milbank is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11 of the United States Code. Further, attached hereto as Exhibit "B" is a summary of the total fees charged and expenses incurred by Milbank on a monthly basis from November 2002, the commencement of Milbank's engagement by the Ad Hoc Committee, through April 2004 when the Plan became effective.

#### IV.

#### ARGUMENT

The Ad Hoc Committee's participation in the Plan process, as representatives of the largest group of creditors in the cases, was critical to the Debtors' ability to emerge from bankruptcy. Evidencing the Ad Hoc Committee's substantial contribution to these cases are the Court's findings of the Ad Hoc Committee's participation in the "extensive good faith, arm's-length negotiations" that gave rise to the Plan, as well as the express Plan provisions requiring the Ad Hoc Committee's satisfaction with and approval of various critical Plan-related documents. The Ad Hoc Committee therefore submits that its reasonable compensation of

Milbank, whose services made it possible for the Ad Hoc Committee to effectively advocate the positions that yielded the evident “substantial contribution”, are entitled to allowance and payment by the Debtors as administrative expenses under on 503(b)(3)(D) and (b)(4)..

Section 503(b)(3)(D) of the Bankruptcy Code permits a court to allow, as administrative expenses, the actual and necessary expenses incurred by a creditor, indenture trustee, equity security holder or committee (other than an official committee) who makes a “substantial contribution” to a chapter 11 case. Section 503(b)(4), in turn, allows for reimbursement of reasonable compensation for services rendered, and for reimbursement of actual and necessary expenses incurred, by an attorney of any such entity. See, e.g., In re McLean Indus., Inc., 88 B.R. 36, 39 (Bankr. S.D.N.Y. 1988).

From a macro level, the policy advanced by section 503(b)(4) is intended “to promote meaningful creditor participation in the reorganization process, but at the same time, discourage mushrooming administrative expenses.” In re Granite Partners, L.P., 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997); see also In re Best Products Co., Inc., 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994); In re Alert Holdings, Inc., 157 B.R. 753, 757 (Bankr. S.D.N.Y. 1993); In re United States Lines, Inc., 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989); In re Richton Int'l Corp., 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981).

In particular, the phrase "substantial contribution" has not been defined in the Bankruptcy Code. Its definition has been left to the discretion of the courts on a case by case basis. However, the almost universally accepted formulation of the test for "substantial contribution" recovery has been “actual and demonstrable benefit to the debtor’s estate, its creditors, and to the extent relevant, the debtor’s shareholders.” In re Granite Partners, L.P., 213 B.R. at 445 (citing In re McLean Indus. Inc., 88 B.R. at 38); In re Best Products Co., Inc., 173

B.R. at 865; In re Alert Holdings, Inc., 157 B.R. at 757; In re United States Lines, Inc., 103 B.R. at 429; see also In re Richton Int'l Corp., 15 B.R. at 856 (“the appropriate test of compensable services is whether they substantially contributed to the result.”). The applicant bears the burden of proving, by a preponderance of the evidence, that they have rendered a substantial contribution. In re Granite Partners, L.P., 213 B.R. at 447; In re Best Products Co., Inc., 173 B.R. at 865; In re Alert Holdings, Inc., 157 B.R. at 757; In re United States Lines, Inc., 103 B.R. at 429.

Compensable services, in general, take the “form of constructive contributions in key reorganizational aspects, when but for the role of the creditor, the movement towards final reorganization would have been substantially diminished.” In re United States Lines, Inc., 103 B.R. at 43 (quoting In re D.W.G.K. Restaurants, Inc., 84 B.R. 684, 689 (Bankr. S.D.Cal. 1988)). Compensable services are those that “foster and enhance, rather than retard or interrupt the progress of reorganization.” In re Richton Int'l Corp., 15 B.R. at 856; see also In re Granite Partners, L.P., 213 B.R. at 446; In re Best Products Co., Inc., 173 B.R. at 865; In re Alert Holdings, Inc., 157 B.R. at 757; In re United States Lines, Inc., 103 B.R. at 429.

Taking these policies and factors into account, it becomes clear that the Ad Hoc Committee’s “contribution” has been “substantial.” The Ad Hoc Committee was an active and vocal participant in virtually every aspect of what was a complex, contentious, multi-issue, multi-party Plan negotiation. Through the efforts and leadership of several key constituents, the Ad Hoc Committee among them, that negotiation ultimately resulted in a largely consensual Plan. In most situations where 503(b)(4) compensation has been awarded, the creditor either “took an active role in facilitating the negotiation and successful confirmation of the plan . . . [or] opposed an earlier plan, and as a result, the court ultimately confirmed a more favorable plan.”

In re Granite Partners, L.P., 213 B.R. at 446. The role the Ad Hoc Committee has played in this reorganization has certainly been valuable and is the type of creditor participation courts have found worthy of section 503(b)(4) compensation, as it fits squarely into the policies underlying that section.

## VI.

### **WAIVER OF MEMORANDUM OF LAW**

Since the Application raises no novel issues of law, the Ad Hoc Committee respectfully requests that the Court waive the requirement that the Ad Hoc Committee file a memorandum of law in support of this Application pursuant to Local Bankruptcy Rule 9013-1(b).

## VII.

### **NOTICE**

Pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(6) and the First Amended Case Management Order dated December 23, 2002, notice of this Application has been given to the Debtors, the Creditors' Committee, the United States Trustee, the Examiner and all parties identified in the First Amended Case Management Order or requesting notice in these cases. The Ad Hoc Committee submits that no other or further notice is required.

**VIII.**

**CONCLUSION**

**WHEREFORE**, the Ad Hoc Committee respectfully requests the Court to enter an order approving and allowing compensation in the amounts set forth herein and directing the Debtors to pay the foregoing fees and expenses in full.

DATED: July 19, 2004

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