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November 10, 2003

**By Hand**

The Honorable Denise L. Cote  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1040  
New York, New York 10007

Re: In re WorldCom, Inc. Securities Litigation, Master File No. 02 Civ. 3288 (DLC)  
(Issue: *E-Discovery from the Underwriter Defendants other than Salomon*)

Dear Judge Cote:

We are writing on behalf of Lead Plaintiff New York State Common Retirement Fund and Co-Lead Counsel Barrack, Rodos & Bacine to address briefly the few unresolved issues relating to the production of electronic documents ("e-discovery") by the Underwriter Defendants (other than Salomon) in response to our document requests. (E-discovery issues specifically pertaining to the Salomon Defendants are addressed in a separate letter which we are also submitting today.)

From the point when we first served the Underwriter Defendants with our document requests, we have naturally been asking that the Underwriter Defendants produce responsive, non-privileged electronic documents (such as e-mails among the bankers who worked on the Offerings). Although the Underwriter Defendants have yet to produce any electronic documents such as e-mails, we have engaged in numerous meet and confer sessions focused on resolving issues between the parties regarding e-discovery. By means of this process, we have managed to resolve many of the issues that previously separated the parties. Still, there are a handful of issues which remain unresolved. Although we hope that the parties will be able to resolve these remaining issues before the conference scheduled for this Thursday, we have outlined below the most significant issues still in dispute in case it is necessary for the Court to resolve these matters at the November 13 conference.

1. Completion Date for the Production of E-Mails. Notwithstanding our repeated requests, the Underwriter Defendants have refused to commit to a date by when their production of electronic documents will be complete (or even substantially complete). We have requested that the Underwriter Defendants complete their production by no later than December 15. That is more than two months after the Court-imposed deadline for substantial completion of the Defendants' document productions, and it is more than a month from now. Furthermore, if the Underwriter Defendants complete their e-discovery production by December 15, it would only give plaintiffs a month to review the electronic documents

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produced before the commencement of merit depositions of the Defendants (or shorter, if the 3500 material for the Sullivan trial is produced in December as expected). Accordingly, we respectfully submit that the Underwriter Defendants should be required to produce their e-discovery by no later than December 15.

2. Information Regarding the E-Mail Production. In the spirit of cooperation and in the interest of moving this process forward, Plaintiffs have expressed a willingness to reimburse the Underwriter Defendants for one-half of the costs of producing certain difficult-to-access e-mails (commonly referred to in relevant case law as "inaccessible" e-mails).<sup>1</sup> However, if plaintiffs are to reimburse the Underwriter Defendants at all with respect to this process, then we will need to be informed about what work is to be undertaken in this regard and, further, will need a reasonable opportunity to provide input regarding the process. The Underwriter Defendants, at least thus far, have not accepted this idea – and have, instead, insisted that plaintiffs commit to pay one half of the cost of producing these "inaccessible" e-mails (which could cost several hundred thousand dollars or more) without any further information. As we have informed the Underwriter Defendants, it is implausible for plaintiffs to be expected to pay a substantial bill (for which we do not even have a reasonable estimate) for the production of e-mails, unless we are provided with basic information about the process and a reasonable opportunity to provide input regarding that process. We respectfully request that the Underwriter Defendants be directed to provide us with cost information immediately.

\* \* \*

Again, our hope is that these and the few other remaining issues related to the production of e-mails by the Underwriter Defendants will be resolved prior to the conference this Thursday. If they are not resolved by then, we look forward to addressing these matters (and any other open issues pertaining to e-discovery) with the Court at that point.

Respectfully submitted,



Chad Johnson

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<sup>1</sup> Plaintiffs' proposal is reasonable, and indeed more generous, than required by relevant case law. See Zubulake v. UBS Warburg LLC, 216 F.R.D. 280, 289 (S.D.N.Y. 2003) (Plaintiff required to pay only twenty-five percent of costs associated with the production of e-mails that were considered relatively inaccessible).

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cc (by fax):

All Defendants' Counsel

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Jill Abrams (Counsel for GOALS plaintiffs)