

PREFATORY NOTES

- On July 21, 2002, Defendant WorldCom, Inc. (“WorldCom”), filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. The bankruptcy case is on-going. Therefore, this action is stayed as to WorldCom unless and until such time as the stay is lifted or relief from the stay is granted by the bankruptcy court. At this time, Plaintiffs are not prosecuting this action vis-à-vis WorldCom.
- On December 5, 2002, the Court entered an order staying proceedings against Defendant Scott D. Sullivan, subject to limited exceptions described in that order. Accordingly, Plaintiffs are prosecuting this action vis-à-vis Defendant Sullivan only to the extent permitted by the Court’s December 5, 2002 order.
- At such time as the stays may be modified to permit further prosecution of this action against Defendants WorldCom and/or Sullivan, Plaintiffs will so notify the Court and will proceed against Defendants WorldCom and/or Sullivan.
- On June 17, 2003, the Court granted in part motions to dismiss certain claims and defendants. Without waiving their rights to seek reconsideration of such order or review of such order on appeal, Plaintiffs have omitted from this Third Amended Consolidated Master Class Action Complaint certain of the claims and parties the Court ordered dismissed. Based on the limited documentary discovery that Plaintiffs have now received, however, Plaintiffs include in this Third Amended Consolidated Master Class Action Complaint additional allegations with respect to the fiduciary status and function of various parties that Plaintiffs believe address the Court’s reasoning for ordering dismissal of certain claims and Defendants, and therefore include in this Third Amended Consolidated Master Class Action Complaint certain claims against certain Defendants that the Court had ordered dismissed.
- All allegations contained herein are based on the investigation of counsel, except for allegations pertaining to the named Plaintiffs, which are based on personal knowledge. As of the date of this Third Amended Consolidated Master Class Action Complaint, Plaintiffs have received only limited materials from Defendants in response to formal or informal discovery requests. As a result, it is likely that once the discovery process proceeds further, the roles of additional parties in the wrongdoing outlined below will be revealed and the wrongdoing itself will become further defined. In that event, Plaintiffs will seek leave to amend this complaint to add new parties and/or new claims against those parties and/or existing parties.

Plaintiffs Stephen Vivien, Gail M. Grenier and John T. Alexander, as participants in the WorldCom 401(k) Salary Savings Plan (the “Plan”), allege the following for their Consolidated Amended Complaint:¹

NATURE OF THE ACTION

1. Plaintiffs bring this action pursuant to Sections 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act (“ERISA”) (29 U.S.C. § 1132(a)(2) and (a)(3)). Each Plaintiff is or was a participant in the Plan within the meaning of § 3(7) of ERISA, 29 U.S.C. § 1002(7).

2. The claims set forth herein are for breach of fiduciary duty or co-fiduciary duty under ERISA. The Defendants are claimed to have breached their fiduciary duties to Plaintiffs and the other participants and beneficiaries of the Plan in violation of ERISA § 404 (29 U.S.C. § 1104) in a variety of ways, especially in connection with the Plan’s acquisition and holding of WorldCom stock. Pursuant to ERISA § 409 (29 U.S.C. § 1109) the Defendants are obliged to make good to the Plan the losses resulting from the breaches of fiduciary duty. These losses have yet to be calculated, but they will run to hundreds of millions of dollars. Under ERISA § 409, Plaintiffs are also entitled to other appropriate equitable relief to redress the violations described herein.

3. Because their claims are for Plan-wide relief and apply to the participants and beneficiaries as a whole, and because ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes

¹ Plaintiff Stephen Vivien filed his initial complaint in the Northern District of California on March 18, 2002, and amended that complaint on May 3, 2002, and on September 16, 2002. Plaintiff Gail M. Grenier filed her initial complaint in the Southern District of New York on June 21, 2002. Plaintiff John T. Alexander filed his initial complaint in the Southern District of New York on July 15, 2002. On September 18, 2002, the Court consolidated the WorldCom ERISA cases before it. On October 8, 2002, the Judicial Panel on Multi-District Litigation transferred to this Court the Vivien action as well as other WorldCom ERISA cases proceeding in other Districts. On November 18, 2002, the Court appointed the undersigned lead counsel on behalf of Plaintiffs in the consolidated MDL actions. This Third Amended Consolidated Master Complaint, together with any amendment hereof, is intended to serve as the amended complaint for the named Plaintiffs, as well as the master complaint for all of the actions that have been consolidated for all pretrial purposes.

Plan participants such as Plaintiffs to sue for losses suffered by the Plan as a result of breaches of fiduciary duty, and for other appropriate relief, Plaintiffs bring this action on behalf of themselves and the class of all the participants and beneficiaries of the Plan for whose individual accounts the Plan held shares of stock of WorldCom during the relevant period. In addition, under § 502(a)(3) of ERISA (29 U.S.C. § 1132(a)(3)), Plaintiffs seek other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief. Insofar as any Defendant is sued alternatively as a knowing participant in a breach of fiduciary duty for equitable relief, Plaintiffs proceed pursuant to § 502(a)(3) of ERISA (29 U.S.C. § 1132(a)(3)).

4. The relevant period for purposes of the claims set forth in this Complaint is the period commencing with the first date on which any Defendant knew, or, in the reasonable exercise of his or her fiduciary duties should have known, that investment in WorldCom stock under the Plan was inappropriate or imprudent, or that continued offering of WorldCom stock as a Plan investment alternative was inappropriate or imprudent. Such date is no later than September 14, 1998. The period from that date to the present is referred to herein as the “Class Period.”

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and the specific jurisdictional statute for claims of this type, ERISA § 502(e)(1) (29 U.S.C. § 1132(e)(1)). The Court has personal jurisdiction over Defendants pursuant to Fed. R. Civ. P. 4(k).

6. Venue is properly laid in this district pursuant to ERISA § 502(e)(2) (29 U.S.C. § 1132(e)(2)) because the Plan was administered in this District, some or all of the fiduciary breaches for which relief is sought occurred in this District, and one or more of the Defendants

may be found in this District. Venue is also proper in this district under 28 U.S.C. §1391(b) and (c) because one or more of the Defendants resides in this District.

PARTIES

Plaintiffs

7. Plaintiff STEPHEN VIVIEN is, and at all relevant times has been, a participant as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Plan or its predecessor, the MCI Communications Corporation ESOP and 401(k) Plan (the “MCI Plan”). Mr. Vivien resides in San Carlos, California.

8. Plaintiff GAIL M. GRENIER is, and at all relevant times has been, a participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Plan. Ms. Grenier resides in Colorado Springs, Colorado.

9. Plaintiff JOHN T. ALEXANDER was a participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Plan through November, 2002. Mr. Alexander resides in Overland Park, Kansas.

Defendants

10. Defendant WorldCom, Inc. (“WorldCom”) is a provider of telecommunications services. Its corporate headquarters are located at 500 Clinton Center Drive, Clinton, Mississippi. WorldCom was a sponsor of the Plan and was the Plan Administrator, Investment Fiduciary and named fiduciary within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). At all relevant times, WorldCom has been the administrator of the Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), because it has been so designated in the governing plan instruments or because of its status as Plan Sponsor. At all relevant times, WorldCom was designated by the Plan as the Investment Fiduciary. At all relevant times, by reason of its

positions as Plan administrator, named fiduciary, and/or Investment Fiduciary, and/or by reason of its actions, defendant WorldCom was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan.

11. Defendant Bernard J. Ebbers ("Ebbers") was President, Chief Executive Officer and a Director of WorldCom at all relevant times until approximately April 29, 2002, when he was forced to resign from the Company. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Ebbers therefore was an appointing fiduciary with the duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions. Further, on information and belief, at all relevant times, by reason of his actions, Ebbers was a fiduciary of the plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan. In addition, Ebbers exercised fiduciary authority through authoring and/or signing communications to Plan participants, including Summary Plan Descriptions and information incorporated by reference therein, including, without limitation, the prospectus included in WorldCom's Form S-8 Registration Statements pertaining to the Plan and the WorldCom stock issued or sold thereto.

12. Defendant Scott D. Sullivan ("Sullivan") was Chief Financial Officer and a Director of WorldCom at all relevant times until June 25, 2002, when he was terminated by the Company. Between April 30, 2002 and June 25, 2002, he also served as Executive Vice President. On August 1, 2002, Sullivan was arrested by the Federal Bureau of Investigation ("FBI") and charged in a criminal complaint dated July 31, 2002 (No. 02 Mag. 1511 (S.D.N.Y.), the "Criminal Complaint") with seven felonies, namely, conspiracy to commit securities fraud, securities fraud, and five false filings with the SEC. On August 28, 2002, a federal grand jury empanelled in this District returned an indictment (No. 02 Crim. 1144 (S.D.N.Y.), the "Indictment"), which charged Sullivan and former WorldCom Director of General Accounting, Buford Yates, Jr., with seven felonies, namely, conspiracy to commit securities fraud, securities fraud and five counts of false filings with the SEC. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Sullivan therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions. Further, on information and belief, at all relevant times, by reason of his actions, Sullivan was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan. In addition, Sullivan exercised fiduciary authority through authoring and/or signing communications to Plan participants, including Summary Plan Descriptions and information incorporated by reference therein, including, without limitation, the prospectus included in

WorldCom's Form S-8 Registration Statements pertaining to the Plan and the WorldCom stock issued or sold thereto.

13. Defendant Bert C. Roberts, Jr. ("Roberts") was at all relevant times a director of WorldCom and Chairman of the Board. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Roberts therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions. In addition, Roberts exercised discretionary authority and discretionary control with respect to the MCI Plan by serving on the Pension Investment Committee thereof during the Class Period and during a period when a portion of the assets of the MCI Plan was invested in WorldCom stock.

14. Defendant John W. Sidgmore ("Sidgmore") was at all relevant times a director of WorldCom and Vice-Chairman of the Board. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Sidgmore therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

15. Defendant Dennis W. Sickle ("Sickle") was WorldCom's Senior Vice President, Human Resources. On information and belief, at all relevant times, by reason of his actions, Sickle was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of

the Plan. In addition, Sickle exercised fiduciary authority through authoring and/or signing communications to Plan participants, including Summary Plan Descriptions and information incorporated by reference therein, including, without limitation, the prospectus included in WorldCom's Form S-8 Registration Statements pertaining to the Plan and the WorldCom stock issued or sold thereto. Additional allegations regarding Sickle's fiduciary status and functions are set forth in Paragraph 44 below.

16. Defendant James C. Allen ("Allen") was at all relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Allen therefore had an appointing fiduciary's duty to monitor WorldCom's performance of its duties to the Plan, including its duties as Plan Administrator and Investment Fiduciary.

17. Defendant Judith Areen ("Areen") was at all relevant times a director of WorldCom and a member of the Audit Committee. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Areen therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

18. Defendant Carl J. Aycock ("Aycock") was at all relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Aycock therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

19. Defendant Max E. Bobbitt ("Bobbitt") was at all relevant times a director of WorldCom and a member of the Audit Committee. As described in Paragraph 34 below,

WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Bobbitt therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

20. Defendant Francesco Galesi ("Galesi") was at all relevant times a director of WorldCom and a member of the Audit Committee. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Galesi therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

21. Defendant Stiles A. Kellett, Jr. ("Kellett") was at all relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Kellett therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

22. Defendant Gordon S. Macklin ("Macklin") was at all relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom's Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Macklin therefore had an appointing fiduciary's duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions. In addition, Macklin exercised discretionary authority and discretionary control with respect to the MCI Plan by serving on the Pension Investment Committee thereof during the Class Period and during a period when a portion of the assets of the MCI Plan was invested in WorldCom stock.

23. Defendant Clifford L. Alexander (“Alexander”) was at relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom’s Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Alexander therefore had an appointing fiduciary’s duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

24. Defendant John A. Porter (“Porter”) was at relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom’s Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Porter therefore had an appointing fiduciary’s duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

25. Defendant Lawrence C. Tucker (“Tucker”) was at relevant times a director of WorldCom. As described in Paragraph 34 below, WorldCom’s Board of Directors from time to time appointed Plan fiduciaries. As a director of WorldCom, Tucker therefore had an appointing fiduciary’s duty to monitor the performance of fiduciary functions by those persons appointed by the Board of Directors to perform fiduciary functions.

26. Defendant Dona Miller (“Miller”) was WorldCom’s Employee Benefits Director at all relevant times. In that capacity, Miller exercised day to day authority with respect to the Plan, including, without limitation, by interfacing with representatives of Merrill Lynch and giving directions to Merrill Lynch as the Plan’s Trustee. Miller was at all times authorized to act on behalf of the Plan. Miller, in fact, transacted business on behalf of the Plan. On information and belief, at all relevant times, by reason of her actions, Defendant Miller was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that she exercised discretionary authority or discretionary control respecting management of the Plan, exercised

authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan.

Additional allegations regarding Miller's fiduciary status and functions are set forth in Paragraph 45 below.

27. Defendant Pamela Titus ("Titus") was WorldCom's Senior Manager for Strategic Benefits at all relevant times. In that capacity, Titus exercised day to day authority with respect to the Plan, including, without limitation, by interfacing with representatives of Merrill Lynch and giving directions to Merrill Lynch as the Plan's Trustee. Titus was at all times authorized to act on behalf of the Plan. Titus, in fact, transacted business on behalf of the Plan. On information and belief, at all relevant times, by reason of her actions, Defendant Titus was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that she exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan. Additional allegations regarding Titus's fiduciary status and functions are set forth in Paragraph 46 below.

28. Defendant Ray Helms ("Helms") was WorldCom's Senior Manager of Benefits Finance and Pension Administration at relevant times. In that capacity, Helms exercised day to day authority with respect to the Plan, including, without limitation, by interfacing with representatives of Andersen, LLP, the Plan's auditor. On information and belief, at all relevant times, by reason of his actions, defendant Helms was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control

respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan.

29. Defendant Stephanie Scott ("Scott") was WorldCom's Vice-President for Financial Reporting at relevant times. In that capacity, Scott exercised day to day authority with respect to the Plan, including, without limitation, by interfacing with representatives of Andersen, LLP, the Plan's auditor. On information and belief, at all relevant times, by reason of her actions, Defendant Scott was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that she exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan.

30. Defendant Sandra Faircloth ("Faircloth") was the Senior Manager 401(k) Operations and Compliance with respect to the MCI Plan at relevant times. In that capacity, Faircloth exercised day to day authority with respect to the MCI Plan during the time that the MCI Plan held WorldCom stock, including, without limitation, by interfacing with representatives of Andersen, LLP, the MCI Plan's auditor. On information and belief, at all relevant times, by reason of her actions, Defendant Faircloth was a fiduciary of the MCI Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that she exercised discretionary authority or discretionary control respecting management of the MCI Plan, exercised authority or control respecting management or disposition of the MCI Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the MCI Plan.

31. Defendant Merrill Lynch Trust Co. of America ("Merrill Lynch") was at all relevant times the Plan Trustee within the meaning of ERISA § 403(a), 29 U.S.C. § 1103(a), because

Merrill Lynch is named in the trust instrument pertaining to the Plan entered into by WorldCom and Merrill Lynch dated October 10, 1994. On information and belief, at all relevant times, Merrill Lynch was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it exercised authority or control respecting management or disposition of Plan assets. On information and belief, at all relevant times, Merrill Lynch was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), because it rendered investment advice for a fee or other compensation, directly or indirectly, with respect to WorldCom stock or other assets of the Plan or had authority or responsibility to do so. Additional allegations regarding Merrill Lynch's fiduciary status and functions are set forth in Paragraphs 110 through 112 below.

32. This Amended Complaint refers to the following groups of Defendants:

- The "Officer Defendants," who are Defendants Ebbers, Sullivan, and Sickle;
- The "Other Individual Defendants," who are Defendants Miller, Helms, Faircloth, Scott, Roberts, Macklin and Titus;
- The "Director Defendants," who are Defendants Ebbers, Sullivan, Roberts, Sidgmore, Allen, Areen, Aycock, Bobbitt, Porter, Galesi, Kellett, Macklin, Alexander, and Tucker;
- The "WorldCom Defendants," who are all Defendants other than Defendant Merrill Lynch; and
- The "Investment Fiduciary Defendants," who are all Defendants other than the Director Defendants.

SUBSTANTIVE ALLEGATIONS PERTAINING TO THE PLAN

33. The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A) (29 U.S.C. § 1002(2)(A)). Further, it is an "eligible individual account plan" within the meaning of ERISA § 407(d)(3) (29 U.S.C. § 1107(d)(3)) and also a "qualified cash or deferred arrangement" within the meaning of I.R.C. § 401(k) (26 U.S.C. § 401(k)). While the Plan is not a party to this action, pursuant to ERISA, the relief requested in this action is for the benefit of the Plan.

34. From time to time, WorldCom's Board of Directors appointed Plan fiduciaries. For example, on September 26, 1994, the Board appointed Defendant Merrill Lynch as Plan Trustee. On information and belief, at all relevant times, WorldCom's Board of Directors had the power and authority to remove and replace the fiduciaries it appointed. As the officials responsible for the appointment and/or removal of Plan fiduciaries, the members of the WorldCom Board of Directors held and exercised discretionary authority and control with respect to the management of the Plan and the administration of the Plan, and therefore were fiduciaries with respect to the Plan. As such, WorldCom's directors, including the Director Defendants, functioned as appointing ERISA fiduciaries and owed a fiduciary duty with respect to the selection and retention of those appointees. 29 C.F.R. § 2509.75-8, at D-4. Among other things, this fiduciary duty required that the Director Defendants at reasonable intervals review the performance by the appointed fiduciaries in such a manner as to reasonably ensure that the appointed fiduciaries performed in compliance with the terms of the Plan and statutory standards and in satisfaction of the needs of the Plan. 29 C.F.R. § 2509.75-8 at FR-17. On information and belief, neither the Director Defendants nor any other WorldCom directors ever took steps to monitor or review the performance by the appointed fiduciaries of their fiduciary duties. In addition, WorldCom's directors were obligated to provide to these fiduciary appointees information possessed by the directors that was necessary for the appointees to effectively discharge their fiduciary obligations. The Director Defendants failed to fulfill this obligation, including by providing to the appointees false and misleading information included in Form S-8 registration statements for dissemination to Plan participants.

35. From the year 2000 to the present several other 401(k) retirement plans were merged into the Plan. These predecessor plans include, but are not limited to, the MCI Plan, the IDB

Communications Group, Inc. 401(k) Savings and Retirement Plan, the Western Union International, Inc. 401(k) Plan for Collectively Bargained Employees, and the SkyTel Communications, Inc. Section 401(k) Employee Retirement Plan (collectively “Predecessor Plans”). As used in this Complaint, the term “Plan” includes each of the Predecessor Plans from and after the time they merged into the WorldCom 401(k) Salary Savings Plan.

36. On information and belief, at all relevant times, the Plan has been a “defined contribution” or “individual account” plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the Plan has provided for individual accounts for each participant and for benefits based solely upon the amounts contributed to the participants’ account and any plan income, expenses, gains, losses, and forfeitures from other accounts which may be allocated to such participants’ accounts.

37. At all relevant times, the Plan’s fiduciaries have provided a number of different funds in which participants’ Plan account balances may be invested, including a money market fund, a bond fund, a variety of equity funds, and one or more WorldCom stock funds.

38. On information and belief, at all relevant times, the Plan’s participants directed that assets of the Plan attributable to their salary deferral contributions to the Plan (and any matching contributions that WorldCom made) be invested by the Plan’s fiduciaries among the investment options that the Plan’s fiduciaries made available in the Plan. At all relevant times, all shares of WorldCom stock in the Plan were owned by the Plan’s Trustee on behalf of the Plan.

39. Under the Plan, participants are entitled to elect to defer a portion of their compensation for investment in the Plan, and WorldCom makes a matching contribution with respect to amounts so deferred by participants.

40. The Plan imposes certain duties on the Plan Administrator and the Investment

Fiduciary. The duties of the Plan Administrator include:

- To make appropriate rules and regulations for the efficient administration of the Plan.
- To prepare and distribute to Participants information necessary for the proper administrator of the Plan.
- To appoint, retain and remove the auditors for the Plan.

See Section 14.03 of the Plan.

41. The duties and powers of the Investment Fiduciary include:

- Establishing and changing the investment alternatives among which Participants may direct the investment of their accounts.
- Reviewing the status of the investment policy and the selection and performance of the investment alternatives offered under the Plan no less often than annually.
- Appointing, retaining or removing one or more investment managers who shall have the power to manage, acquire or dispose of Plan assets.

See Section 14.05 of the Plan.

42. Section 14.02 of the Plan permitted WorldCom to appoint individuals to carry out the duties of the Plan Administrator and the Investment Fiduciary, and provided that if WorldCom did not do so, the officers of WorldCom were authorized to carry out those duties on behalf of WorldCom.

43. On information and belief, the Officer Defendants and the Other Individual Defendants were appointed to carry out and/or exercised the duties of the Plan Administrator or the Investment Fiduciary. Accordingly, each of the Officer Defendants and the Other Individual Defendants was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he or she exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of

the Plan's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan.

44. Defendant Sickle exercised discretionary authority and control with respect to various aspects of the Plan, its management and assets, including the selection of Plan investment alternatives. Defendant Sickle acknowledged in writing his fiduciary status and obligations with respect to the Plan. Further, Defendant Sickle authorized specific changes to the investment options offered under the Plan, including the elimination of WorldCom stock as an investment option in July, 2002.

45. Defendant Miller exercised discretionary authority and control with respect to various aspects of the Plan, its management and assets, including the selection of Plan investment alternatives. Miller was actively involved in day to day management of the Plan, regularly interfaced with representatives of Defendant Merrill Lynch as well as with Defendants Sullivan, Titus and Sickle with respect to the Plan investment, management and administration, and regularly exercised discretion with respect to the Plan and its assets and management, including the selection and monitoring of Plan investment alternatives. In her fiduciary capacity, Defendant Miller met with representatives of Merrill Lynch for the purpose of reviewing Plan investments, sought guidance from Merrill Lynch with respect to Plan investments, and accepted Merrill Lynch's recommendations regarding Plan investments.

46. Defendant Titus exercised discretionary authority and control with respect to various aspects of the Plan, its management and assets, including the selection of Plan investment alternatives. Titus was actively involved in day to day management of the Plan, regularly interfaced with representatives of Defendant Merrill Lynch as well as with Defendants Miller, Sullivan and Sickle with respect to the Plan investment, management and administration, and

regularly exercised discretion with respect to the Plan and its assets and management, including the selection and monitoring of Plan investment alternatives. In her fiduciary capacity, Defendant Titus met with representatives of Merrill Lynch for the purpose of reviewing Plan investments, sought guidance from Merrill Lynch with respect to Plan investments, and accepted Merrill Lynch's recommendations regarding Plan investments.

47. The WorldCom Defendants failed to discharge their fiduciary duties. Despite the specific Plan directives, and the statutory duties imposed by ERISA, none of the Officer Defendants or Other Individual Defendant or WorldCom discharged their obligation to establish a prudent investment policy, to monitor or assess at any time or on an on-going basis the prudence or appropriateness of the Plan's investment in WorldCom stock or of the continuing offering of WorldCom stock as a Plan investment alternative, and to take appropriate steps in light of the imprudence of the Plan's investment in WorldCom stock and of the offering of WorldCom stock as a Plan investment alternative. The Director Defendants failed to monitor the performance by the Plan's fiduciaries of their duties, and failed to take appropriate steps to remedy the non-performance of fiduciary duties by the Plan fiduciaries.

48. Pursuant to the terms of the Plan and pursuant to their statutory obligations under ERISA, the WorldCom Defendants were obligated to disseminate information to Plan participants regarding WorldCom stock. Pursuant to these obligations, the WorldCom Defendants disseminated Summary Plan Descriptions ("SPDs"). The WorldCom Defendants chose to disclose information with respect to WorldCom stock in the SPDs by setting forth certain information in the SPDs and then incorporating by reference into the SPDs other information filed with the SEC, including information to be filed with the SEC in the future. The SPDs stated:

This Summary Plan Description is part of the registration statement and constitutes part of a prospectus of WorldCom, Inc. This Summary Plan Description does not contain all the information a Participant can find in the registration statement or the exhibits to the registration statement, which are incorporated by reference in this Summary Plan Description. A Participant can obtain the full registration statement from the SEC as indicated above, or from WorldCom, Inc.

The SEC allows WorldCom, Inc. to incorporate by reference the information WorldCom, Inc. files with the SEC. **This permits WorldCom, Inc. to disclose important information to a Participant by referring a Participant to these filed documents. The information incorporated by reference is an important part of the prospectus of which this Summary Plan Description is a part, and information that WorldCom, Inc. files later with the SEC will automatically update and supercede this information.**” (emphasis supplied)

49. The WorldCom Defendants were not obligated by ERISA or by the Plan to discharge their duty to provide information to participants through the mechanism of incorporation of SEC filings. For example, the WorldCom Defendants could have fulfilled this duty by setting forth sufficient and accurate information in the SPDs themselves, and updating such information as appropriate. The WorldCom Defendants chose, however, to adopt the mechanism of incorporation of SEC filings into the SPD. As described in more detail below, these fiduciary communications were materially incomplete, false and misleading.

50. On information and belief, at all relevant times, the Investment Fiduciary Defendants had the discretion to establish and change the investment alternatives among which the Plan participants could direct the investment of the Plan’s assets allocated to their accounts. On information and belief, at all relevant times, the Investment Fiduciary Defendants had the duty to review the Plan’s investment policies and the selection and performance of investment alternatives offered under the Plan. On information and belief, at no relevant time was there any provision in the governing instrument of the Plan that required that any assets of the Plan be invested in WorldCom stock. On information and belief, at no relevant time was there any provision in the governing instrument of the Plan that required that any WorldCom stock fund be

continued as an investment alternative, either for new funds (resulting from new contributions or the re-allocation of existing funds in individual accounts) or existing individual account balances.

51. On information and belief, at all relevant times, as one of their duties in administering the Plan, WorldCom, the Officer Defendants and the Other Individual Defendants had the duty and responsibility to distribute to the Plan participants information explaining the Plan.

52. On information and belief, as one of its duties as the Plan Administrator, WorldCom was required to elicit from itself as Plan sponsor, information necessary for the proper administration of the Plan.

53. At all relevant times, contributions were made to the Plan and allocated to Plaintiffs' accounts and the accounts of all Class members pursuant to salary deferral elections made by them and pursuant to matching contributions made by WorldCom. At all relevant times, a portion of the Plan's assets in Plaintiffs' accounts and all Class members' accounts were invested in one or more WorldCom stock funds maintained by the Plan, and the Plan purchased and owned WorldCom stock through the Trustee in order to effectuate those investments.

54. During the Class Period, as much as 60% of the Plan's assets were invested in WorldCom stock. In February, 2002, the Plan held over 45 million shares of WorldCom stock. Today, the WorldCom stock in the Plan is almost worthless.

55. During the relevant time period, while continuing to direct and/or allow further purchases of WorldCom stock by the Plan, officers and directors of WorldCom sold their personal holdings of WorldCom stock. These purchases included, but were not limited to the exercise by Defendant Sullivan of stock options and sale of shares for \$9,900,000 on August 1, 2000, and the sale by Defendant Ebbers of 3,000,000 shares on September 28, 2000 for

\$78,000,000.

56. The Investment Fiduciary Defendants were Plan fiduciaries responsible for the investment of Plan assets during the relevant period. WorldCom, the Officer Defendants and the Other Individual Defendants continued to direct that the Plan purchase and hold WorldCom stock for the Plan participants' accounts despite the fact that WorldCom, the Officer Defendants and the Other Individual Defendants knew, or should have known, that such investment was not a prudent investment of the Plan's assets, that WorldCom's financial results were overstated through various improper accounting practices, revenue recognition and sales practices, that WorldCom could not continue its previous significant revenue and earnings growth, and that WorldCom had made a series of misleading statements to the public and in government filings.

57. Further, WorldCom, the Officer Defendants and the Director Defendants made material misrepresentations to the Plan participants about WorldCom's financial results, including but not limited to incorporating into the Plan's Summary Plan Descriptions WorldCom's inaccurate reports to the Securities Exchange Commission.

58. Further, the Investment Fiduciary Defendants failed to assess or monitor the prudence or appropriateness of the Plan's investment in WorldCom stock and the prudence or appropriateness of continuing to offer WorldCom stock as a Plan investment alternative, including by failing to investigate, consider or review information regarding WorldCom that was available to them.

59. By reason of these acts, the Investment Fiduciary Defendants breached their fiduciary duties to the Plan and its participants, including those fiduciary duties set forth in ERISA § 404, 29 U.S.C. § 1104.

60. During the Class Period, the price of WorldCom stock dropped precipitously, causing

massive losses to the Plan and, consequently, to the Class members' Plan accounts. Pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a), WorldCom and its officers are personally liable to make good to the Plan the losses resulting from each such breach of fiduciary duty. Plaintiffs also seek equitable relief on behalf of the Plan and its participants.

CLASS ALLEGATIONS

61. Plaintiffs bring the Claims for Relief contained herein on behalf of themselves and as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of all members of a Class, defined as follows:

All Participants and beneficiaries in the WorldCom 401(k) Salary Savings Plan and its predecessor plans, including but not limited to, the MCI Communications Corporation ESOP and 401(k) Plan, the IDB Communications Group, Inc. 401(k) Savings and Retirement Plan, the Western Union International, Inc. 401(k) Plan for Collectively Bargained Employees, and the SkyTel Communications, Inc. Section 401(k) Employee Retirement Plan for whose individual accounts the Plan held shares of WorldCom stock at any time from September 14, 1998 to the present. Excluded from the Class are officers and directors of WorldCom, members of their immediate families, and the heirs, successors or assigns of any of the foregoing.

62. The requirements for maintaining this action as a class action under Fed. R. Civ. P. 23(a), (b)(1), and (b)(2) are satisfied in that:

(a) The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe that there were, during the relevant time period, tens of thousands of participants in the Plan, a substantial number of

whom had given instructions that some or all of their account balances in the Plan be invested in one or more WorldCom stock funds maintained by the Plan.

(b) There are questions of law and fact common to the Class, including the following: whether Defendants were fiduciaries of the Plan during the relevant time period; whether Defendants breached the fiduciary duties they owed to members of the Class by imprudently maintaining the WorldCom stock funds as investment options under the Plan; whether Defendants breached the fiduciary duties they owed to members of the Class by, *inter alia*, imprudently allowing and/or directing the Plan to purchase and hold WorldCom stock; whether the Plan and the Class members were injured by such breaches; whether Defendants must make the Plan whole for its losses pursuant to ERISA § 409, 29 U.S.C. §1109; and whether such losses should be allocated to Class members' individual Plan accounts.

(c) Plaintiffs are members of the Class and their claims are typical of the claims of the members of the Class, as Plaintiffs and all members of the Class sustained injury arising out of Defendants' wrongful conduct in breaching their fiduciary duties and violating ERISA as complained of herein.

(d) Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have no interests antagonistic to or in conflict with those of the other Class members. Plaintiffs are represented by attorneys who specialize in ERISA and class action litigation.

(e) Prosecution of separate actions by members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants.

Alternatively, adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to

protect their interests, particularly in light of the fact that Plaintiffs seek to obtain relief on behalf of the Plan as a whole.

(f) Defendants have acted and/or failed to act, on grounds generally applicable to the Class, thereby making appropriate monetary relief, final injunctive and other equitable relief with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS CONCERNING WORLDCOM

63. The demise of WorldCom is among the most spectacular and far-reaching corporate disasters in history. The tragedy, of staggering proportions in its own right, is compounded for Plan participants by an inescapable conclusion: wholly apart from the accounting manipulations and other corporate misdeeds that have become publicly known in 2002, from the outset of the Class Period, WorldCom was an imprudent and inappropriate investment alternative for the Plan because of the risk inherent in its business model, business practices and corporate structure. Indeed, while the scandalous revelations of recent months were not inevitable in 1998, anyone familiar with WorldCom's business model and circumstances at that time should have recognized that its combination of lack of appropriate controls or defined strategic plan, ultra-aggressive growth model, heavy debt, domineering CEO, passive Board of Directors, and compliant analysts created an environment of extreme instability and risk, one ripe for abuse of exactly the type that occurred. Whatever the merits of investment in such a company by a stock speculator or an investor with a broadly diversified portfolio, an ERISA plan had no business permitting participants to place their retirement savings – representing for many the largest portion of their personal wealth – in such a risk-laden stock.

WorldCom's Background

64. WorldCom began in the early 1980's under the name Long Distance Discount Services, Inc. It initially was a long-distance provider to Mississippi businesses and residents. In 1984, it had revenues of approximately \$1 million.

65. Defendant Ebbers became CEO in 1985. His background was in the motel business, and included no experience in telecommunications.

66. Under Mr. Ebbers, the company began to grow through acquiring other long-distance resellers. By 1989, as a result of these acquisitions, annual revenues had increased to approximately \$116 million.

67. The company continued its growth-through-acquisition strategy in the 1990's. By 1995, acquisitions had expanded the business internationally, and annual revenues exceeded \$3.9 billion. The company changed its name to WorldCom to reflect its broader focus.

68. With the Telecommunications Act of 1996, WorldCom dramatically changed its business from the long-distance reseller model it had followed up to that point. The Company made acquisitions that permitted it to move into the local telephone service and internet service markets. By the end of 1996, WorldCom reported revenues of approximately \$4.8 billion, but had amassed debt of \$4.8 billion by that time as well.

69. In 1997-98, WorldCom again significantly changed its business through massive acquisitions. These included acquisitions of large telecommunications companies in Mexico and Brazil, as well as local domestic telephone companies. These acquisitions, substantial as they were, were dwarfed by the WorldCom-MCI merger, which was, when it was announced, the largest merger in corporate history. The WorldCom-MCI deal was announced in late 1997, but not closed until September, 1998.

70. WorldCom continued its acquisition strategy in 1999, with the acquisition of Sky-Tel and the announced merger with Sprint. The Sprint transaction was ultimately abandoned after it met substantial regulatory resistance. In 2000, WorldCom acquired Intermedia Communications for \$5.8 billion in stock and the assumption of \$2.4 billion in debt.

71. By the end of 2001, WorldCom reported annual revenues in excess of \$35 billion, with debt of over \$30 billion.

72. WorldCom's stock was the fuel for its acquisition engine. WorldCom needed to keep its stock price at high levels to continue its phenomenal growth, and had to continue to locate acquisition and merger opportunities that would fuel its growth. By no later than the beginning of the Class Period, the WorldCom Defendants knew or should have known that there was a substantial risk that WorldCom would not be able to maintain its aggressive growth model.

Underlying and Undisclosed Difficulties

73. Despite WorldCom's continued growth through acquisitions, by no later than the conclusion of the MCI merger, numerous serious problems were or should have been obvious to the Defendants and should have been disclosed by them to Plan participants. The Defendants failed to disclose these problems to Plan participants, however. These problems included the following:

- (a) First, as noted in ¶ 72, it would be difficult for the Company to continue to locate opportunities for growth at the scale to which it had become accustomed.
- (b) Second, the Company never demonstrated an ability to successfully integrate its acquisitions and merger partners, nor did it articulate a comprehensive strategic plan. While WorldCom's executives made public statements about corporate strategy, they failed to articulate any general strategic plan for

WorldCom, nor did WorldCom have in place a strategic planning process.

(c) Third, the Company lacked appropriate auditing and other internal controls.

WorldCom failed to adopt an adequate internal audit plan, identify risk-rated auditable units within WorldCom, or provide for consistency in its internal auditing function. Further, the Board's Audit Committee failed to adequately oversee WorldCom's Audit Department. Additional financial control inadequacies are described in ¶¶ 104 through 109 below.

(d) Fourth, to finance its acquisition binge, WorldCom took on ever increasing debt loads, amassing over \$30 billion in debt by the end of 2001. This debt load made the company extremely vulnerable to the vagaries of the business cycle, economic downturns and dislocations in its industry.

(e) Fifth, WorldCom was led by Defendant Ebbers, a domineering CEO who by force of personality dominated the agenda, discussion and decisions of the Board of Directors. The Board of Directors passively acquiesced in Mr. Ebbers' wishes, including decisions to award Mr. Ebbers and other executives enormous compensation, rather than independently evaluating those decisions.

(f) Sixth, various Plan fiduciaries, including Defendants Ebbers and Sullivan, suffered from conflicts of interest. These arose out of, among other things, their amassing of personal fortunes dependent on the public price of WorldCom stock, and, in the case of Defendant Ebbers, borrowing over \$900 million secured by his WorldCom stock. The Officer Defendants and Director Defendants owned beneficially over 38 million shares of WorldCom stock. These conflicts of interest compromised their independence in evaluating the prudence or

appropriateness of the Plan's investment in WorldCom stock or of the continuing offering of WorldCom stock as a Plan investment alternative.

(g) Seventh, the public perception of WorldCom stock was greatly influenced by the public statements Salomon Smith Barney ("SSB") and its chief telecommunications analyst, Jack Grubman. While these statements were ostensibly "independent" statements of a disinterested stock analyst, in fact, because of SSB's relationship with WorldCom as the company's principal investment bank, SSB and Mr. Grubman were not independent at all. Mr. Grubman attended WorldCom's Board meetings as a "financial advisor" and he consulted with WorldCom personnel regarding their communications with other analysts. Further, SSB, Mr. Grubman, WorldCom and Defendant Ebbers personally had substantial business dealings. These dealings were very lucrative for SSB, Mr. Grubman and Defendant Ebbers, and each of them had a strong economic interest in maintaining the public stock price of WorldCom stock. WorldCom and Mr. Ebbers knew, of course, of the lack of independence of SSB and Mr. Grubman, and of the business dealings among SSB, Mr. Grubman, WorldCom and Mr. Ebbers, and they knew that to the extent Plan participants relied, directly or indirectly, on SSB's or Mr. Grubman's statements regarding WorldCom stock, that reliance was misplaced.

(h) Eighth, with each acquisition, WorldCom engaged in accounting manipulations – such as taking excessive reserves in connection with acquisitions which would provide an "earnings cushion" for operating shortfalls in the future, or attributing value to goodwill that could be held on the books for many years –

that seriously called into question the reliability of its financial reporting.

(i) Ninth, by May, 2000, WorldCom concluded that it was so vulnerable to defections by executives, that it established a retention program that offered executives substantial bonuses if they would stay with the Company through June, 2002. The total amount of the retention bonuses exceeded \$400 million, including \$10 million to each of Defendants Ebbers and Sullivan. This extraordinary step was an important indication of significant instability at WorldCom and Plan participants should have been timely informed of this bonus program and its implications for WorldCom's long-term prospects.

(j) Tenth, Defendant Ebbers substantial and growing personal debt, which would eventually reach over \$900 million, became an increasing problem for WorldCom during the Class Period. So serious was the situation, that WorldCom chose to provide Defendant Ebbers with over \$400 million in loans and guarantees. Because Defendant Ebbers' debt was collateralized by his WorldCom stock, he had an extraordinary personal incentive to maintain the public price of WorldCom stock.

74. These circumstances, and their potential to coalesce into a "perfect storm" that would destroy WorldCom, would have become apparent to any Plan fiduciary who had diligently investigated the single stock into which most of the Plan's assets were invested. Under the Plan, the Investment Fiduciary (WorldCom and the Officer Defendants and Other Individual Defendants discharging WorldCom's duties as Investment Fiduciary) was obligated to perform such an analysis, and to retain one or more advisors to assist in the acquisition or disposition of Plan assets. A thorough and impartial analysis of public information concerning WorldCom, the

telecommunications industry and economic factors generally would have concluded that continued investment in WorldCom stock posed inordinate risks for employees' retirement savings. Sadly, no such analysis was performed.

75. Instead, the WorldCom Defendants continued to reassure participants, through Summary Plan Descriptions and the securities filings incorporated therein, that WorldCom's financial reports were reliable, its prospects were bright, and their retirement savings were secure.

Active Securities Fraud

76. Commencing no later than 1999, WorldCom began to engage in active financial securities fraud that would rapidly expand to unprecedented dimensions. As WorldCom has admitted, the Company manipulated its earnings reports as early as 1999, when it overstated its pretax income by \$209 million and EBITDA by \$217 million. However, its 1999 manipulations were only a hint of what was to come.

77. In late 1999, WorldCom announced yet another blockbuster acquisition, this time a \$129 billion deal to acquire Sprint. The deal was scuttled by the Justice Department, however, and abandoned by WorldCom in mid-2000.

78. At the same time as the Sprint deal unraveled, WorldCom's revenues began to decline, and its costs, as a percentage of revenue, began to materially increase. Long-term fixed costs that had been incurred in the anticipation of continued rapid growth now become a corporate millstone. Many of these costs were so-called "line costs" – take or pay obligations owed to local phone companies. Under GAAP, these fees must be reported as an expense on a company's income statement. Prior to 2000, these payments, which constituted WorldCom's single biggest operating expense, had always been accounted for at WorldCom as expenses, and

reported as a separate line item on its income statements as part of WorldCom's operating expenses.

79. However, as detailed in the Grand Jury Indictment of Sullivan (the "Indictment") by no later than October 2000, Sullivan and other WorldCom senior officers were well aware that WorldCom's finances were deteriorating precipitously and that expenses were much higher than management's previous guidance to analysts.

80. To conceal the Company's true condition, WorldCom improperly released certain reserves held against operating expenses to reduce its line cost expenses. Specifically, at least by October 2000, at the direction of WorldCom senior management, WorldCom employees made fraudulent and false entries in the Company's general ledger reducing its line cost expenses and then, in amounts corresponding to the fraudulent and false line cost expense amounts, reduced various reserve accounts.

81. The Indictment describes the foregoing circumstances in detail. As alleged in the Indictment:

(a) In or about October 2000, after reviewing preliminary financial statements for the third quarter of 2000, Sullivan and other WorldCom executives determined that WorldCom's expenses as a percentage of revenue were too high to meet analysts' expectations and were substantially higher than management's previous "guidance" to professional securities analysts and members of the investing public.

(b) To meet analysts' expectations, Sullivan caused certain fraudulent book entries to be made in WorldCom's general ledger, which were designed to reduce WorldCom's reported line costs and thereby increase WorldCom's reported

earnings. These entries were credits to line cost expense accounts and corresponding debits to various reserve accounts.

(c) Sullivan knew that there was no justification in fact or under GAAP for these entries.

Indictment ¶21.

82. The aggregate effect of the fraudulent reduction in line cost expenses during the third and fourth quarters of 2000 was to inflate reported pretax earnings by \$1.235 billion.

83. In 2001, WorldCom modified its method of fraudulently inflating earnings. Unable to continue to fraudulently invade reserves to understate line costs, WorldCom now reclassified line costs as capital expenses. Through this scheme, WorldCom improperly capitalized line costs for the next five quarters, from the first quarter of 2001 through the first quarter of 2002. This resulted in an understatement of expenses, and inflation of current earnings and net worth. This fraudulent manipulation of earnings was directly contrary to GAAP.

84. As alleged in the Indictment:

(a) In or about April 2001, after reviewing WorldCom's preliminary financial statements for the first quarter of 2001, Sullivan and other WorldCom executives again determined that WorldCom's expenses as a percentage of revenue were too high to meet analysts' expectations. Sullivan and others agreed that it was no longer possible to disguise WorldCom's rising ratio of expenses to revenue by reducing various reserves on WorldCom's general ledger.

(b) Sullivan and others developed a scheme to hide WorldCom's increasing expenses by causing substantial portions of WorldCom's line costs to be transferred from current expense accounts into capital expenditure accounts. This

transfer would allow WorldCom to defer recognizing a substantial portion of its current operating expenses, thereby allowing WorldCom to report higher earnings.

(c) To implement this scheme, Sullivan caused employees of WorldCom's general accounting department to make various journal entries necessary to transfer certain line costs from expense accounts on WorldCom's general ledger to capital expenditure accounts on WorldCom's general ledger.

(d) As a result of these transfers, billions of dollars of WorldCom's current expenses were transferred from expenses on its income statement to assets on its balance sheet. Contrary to WorldCom's usual practices and prevailing accounting industry norms, no documentary support existed for any of these entries, which reclassified certain line costs as capital expenditures.

Indictment ¶¶23-25.

85. Documents produced to Congress in connection with its investigation also show that the fraud was intentional and deliberate. A June 26, 2002 email from WorldCom executive Steven Brabbs to WorldCom's internal auditors concerning certain events that took place in 2000, states:

(a) In March of 2000, Brabbs, who was then WorldCom's Director - International Finance & Controls, notified WorldCom executives and Andersen, LLP that the Company was fraudulently accounting for line cost expenses, but the transactions remained on the Company's books until the restatement. Specifically, after the International Division had closed its books and reported its results for the first quarter of 2000, a journal entry was made which reduced the International

Division's line cost expenses by \$33.6 million. Brabbs was disturbed by the change and did not know why it had occurred. After making a series of phone calls and emails, Brabbs stated, "we were told that the entry had been made on the basis of a directive from Scott Sullivan. Despite repeated requests, we were given no support or explanation for the entry."

(b) During April 2000, Brabbs and Andersen LLP's UK audit partner and senior manager reviewed at a "high level" the International Division's first quarter results. Brabbs noted the "obvious" increase in the margin trend and told the auditors that they should "request follow through in the United States to ensure appropriate accounting treatment was in place at the global consolidated level." The transfer was included in the report that Andersen U.K. sent to both Andersen, LLP and WorldCom executives.

(c) Brabbs then received an email from WorldCom senior vice president and controller Myers, who expressed anger at Brabbs for raising this issue with Andersen, LLP. Brabbs responded that "we had no support for it in International, and that it was appropriate therefore to request justification (or alternatively a corresponding and reversing entry) from the U.S."

(d) In the second quarter of 2000, senior finance executives in the United States told Brabbs they wanted to "push down" the fraudulent entry so that it would appear in International's accounting records and not in the records of the accounting department of the Company's headquarters in the United States. Brabbs refused, noting that he had no basis to make the adjustment. Nonetheless, Defendant Sullivan instructed Brabbs to make the entry. Brabbs tried to keep the

International Division's books clean by establishing a fictitious entity and placing the costs on the books of that sham company. Once again, these facts were known to WorldCom senior management, including Sullivan. According to Brabbs:

However, pressure was exerted and we were instructed to make the entry (the pressure we understood was from Scott's office specifically). Still uncomfortable, I said that I would not under any circumstances book the journal into one of our legal accounting company books and records. What we agreed to do was create a "management company" (NOT a legal entity) and post it there. This had the effect of maintaining the management accounting reported figures, but I was making it clear that I did not see it as a journal that I could support from a legal or US or local accounting perspective. This entry was made on 10 July 2000. The narrative reads "late adj as instructed by Scott Sullivan." It remains there today.

(e) Despite Brabbs' repeated raising of the issue during the latter half of 2000, WorldCom's senior finance management refused to discuss it with him, and simply referred back to the fact that the entry had been made at Sullivan's instruction.

86. Through the fraudulent conduct described in ¶¶ 80 through 85 above, WorldCom fraudulently transferred more than \$3.85 billion in line cost expenses to its capital accounts: \$3.055 billion in 2001, and \$797 million in the first quarter of 2002.

87. Through the fraudulent misclassification of line costs for 2000, WorldCom reported pretax earnings of \$1.6 billion, when the actual profit figure was only \$365 million. In 2001, by fraudulently reducing \$17.8 billion in actual line costs to \$14.7 billion, WorldCom reported pretax earnings of \$2.4 billion, when it actually experienced a loss of \$662 million. Similarly, in the first quarter of 2002, the Company fraudulently converted a loss of at least \$557 million into reported pretax income of \$240 million.

88. In a press release dated June 25, 2002, WorldCom announced that an internal audit had uncovered approximately \$3.8 billion in improperly reported earnings and that the Company would restate its financial statements for 2001 and the first quarter of 2002. The Company admitted that “certain transfers from line cost expenses to capital accounts during the period were not made in accordance with generally accepted accounting principles.” The release also announced that WorldCom had fired Defendant Sullivan and that Andersen, LLP had advised WorldCom that its audit report on the Company's 2001 financial statements and its review of the Company's first quarter 2002 financial statements could not be relied upon.

89. The reaction to this astonishing announcement of the largest earnings restatement in history was immediate. Defendants Ebbers and Sullivan were subpoenaed by the House of Representatives, but each of them declined to answer questions, citing their Fifth Amendment privilege against self-incrimination. Melvin Dick, the engagement partner at Andersen, LLP responsible for the WorldCom audit for the year 2001, claimed that, prior to June 2002, neither he nor any member of the Andersen team "had any inkling that these transfers had been made." (Less than one week later, Congress released the email that had been sent by Brabbs (see ¶ 85 above), which noted that Andersen, LLP had been informed in April 2000 that WorldCom was fraudulently transferring line costs.)

90. WorldCom filed with the SEC its Revised Statement Pursuant to Section 21(a)(1) of the Securities Exchange of 1934 on July 8, 2002, in which it admitted that certain line cost expenses were transferred to capital accounts in violation of GAAP. The Revised Statement broke down the improper capitalization of line costs by quarter as follows: \$771 million for the first quarter of 2001; \$610 million for the second quarter of 2001; \$743 million for the third quarter of 2001; \$931 million for the fourth quarter of 2001; and \$797 million for the first

quarter of 2002. WorldCom also disclosed \$217 million of improper earnings in 1999, an additional \$2.864 billion of improper earnings in 2000, an additional \$161 million of improper earnings in 2001, and an additional \$88 million of improper earnings in 2002.

91. On August 28, 2002, Sullivan was indicted on conspiracy, securities fraud, and false filing charges. Buford Yates, Jr., WorldCom's Director of General Accounting, was also charged as a defendant and co-conspirator in the Indictment. Myers and WorldCom employees Betty L. Vinson and Troy M. Normand were named as unindicted co-conspirators.

92. On September 26, 2002, Myers pled guilty to a three-count criminal Information charging conspiracy, securities fraud and making false filings with the SEC. On October 7, 2002, Yates became the second WorldCom executive to plead guilty to conspiracy and securities fraud, admitting that he followed Sullivan's instructions to falsify expenses and that these accounting manipulations had "no justification" other than to inflate WorldCom's earnings and deceive investors. On October 10, 2002, Vinson and Normand entered guilty pleas to charges of securities fraud and conspiracy to commit securities fraud.

Incomplete, False and Misleading Statements Made to Plan Participants

93. At all times during the Class Period, WorldCom, the Officer Defendants and the Other Individual Defendants were required by ERISA to provide information to Plan participants with respect to WorldCom stock. These Defendants chose to provide this information in the form of Summary Plan Descriptions ("SPDs") which stated that they were part of a prospectus provided by WorldCom to Plan participants, and which incorporated by reference, as the balance of the prospectus, the Form S-8 registration statements filed with the SEC. Incorporated by reference into the Form S-8 prospectuses were the Company's periodic reports filed with the SEC. The SPDs specifically informed participants that the important information was to be

communicated to them through this mechanism, and it referred participants to the balance of the Form S-8 prospectus and the SEC filings. As a result, through the SPD and its incorporation of the Form S-8 prospectuses, the Form S-8 prospectuses were communications with the Plan participants with respect to their selection of investment alternatives under the Plan, as were the Company's periodic SEC filings. Each of the Officer Defendants and the Director Defendants signed one or more of the relevant Form S-8 registration statements.

94. The SPDs, Form S-8 prospectuses, and periodic SEC filings incorporated therein and communicated to participants were materially incomplete, false and misleading throughout the Class Period. Rather than informing Plan participants of the incomplete, false and misleading nature of these materials, the Officer Defendants, the Other Individual Defendants and WorldCom specifically, through the SPDs, referred Plan participants to the incomplete, false and misleading materials filed with the SEC and informed Plan participants that the materials contained "important information." The materials were incomplete, false and misleading in numerous regards, including the following:

(a) Plan participants were not informed of the increasing risk associated with investment in WorldCom stock (including the risks described in ¶ 73), or that, no later than the beginning of the Class Period, WorldCom stock was an imprudent investment for participants' retirement savings.

(b) Commencing at least with WorldCom's Form 10-Q for the quarter ending March 31, 1999 (the "1Q 1999 Form 10-Q"), filed with the SEC on May 17, 1999, WorldCom systematically overstated earnings and understated expenses, through the mechanisms described above in ¶¶ 76 through 87. Each of the Company's quarterly reports on Form 10-Q and Annual Reports on Form 10-K

from and after the 1Q 1999 Form 10-Q materially misstated the Company's earnings. Examples of specific misstatements include:

- The Company's quarterly report on Form 10-Q for the 3rd quarter of 2000 overstated earnings through the improper reduction of line costs in the amount of \$828 million, with the improper reduction of reserves to mask the reduced line costs.
- The Company's annual report on Form 10-K for 2000 included additional misstatements beyond those contained in the 3rd quarter and prior 10-Qs by including another \$407 million in line charges improperly reduced in the Company's financial statements for the fourth quarter of 2000, and again improperly reducing reserves to mask the reduction in line costs. Incredibly, the Form 10-K affirmatively stated:

“Line costs as a percentage of revenues for 2000 decreased to 38.4% as compared to 40.1% reported for the prior year. The overall improvement is a result of increased data and dedicated Internet traffic over WorldCom-owned facilities, which positively affected line costs as a percentage of revenues by approximately one and one half percentage points.”

- The Company's quarterly report on Form 10-Q for the first quarter of 2001 materially overstated earnings by improperly classifying \$771 million in line costs as capital expenses.
- The Company's quarterly report on Form 10-Q for the second quarter of 2001 materially overstated earnings by improperly classifying \$506 million in line costs as capital expenses.
- The Company's quarterly report on Form 10-Q for the third quarter of 2001 materially overstated earnings by improperly classifying \$743 million in line costs as capital expenses.
- In total, the Company's misstated earnings in SEC filings during the Class Period are over \$7 billion, as follows: 1999 – \$209 million; 2000 – \$3.257 billion; 2001 – \$3.382 billion; 2002 (first quarter) – \$835 million.

(c) Plan participants were not informed that WorldCom and its corporate officers failed to discharge their obligation under the Plan to create a prudent investment policy, to monitor that policy and the performance of Plan investment alternatives

or to monitor the on-going prudence of offering WorldCom stock as a Plan investment alternative.

(d) Plan participants were not informed that certain of the Plan fiduciaries, including Defendants Ebbers and Sullivan, suffered from conflicts of interest between their personal interests and their responsibilities as fiduciaries.

(e) Plan participants were not informed of numerous other business and financial practices that resulted in overstated earnings and improper revenue recognition, including:

- Failing to timely record write-offs for doubtful accounts;
- Failing to properly reserve for doubtful accounts;
- Intentionally misrepresenting service rates and features to customers resulting in a higher incidence of customers who refused to pay, and consequently, a higher number of uncollectible accounts;
- “Slamming” or switching service to WorldCom without authorization;
- Refusing to cancel customer accounts and recognizing revenue from accounts which had been canceled months before;
- “Double-billing” or setting up multiple accounts for the same service and recognizing twice the revenue for one account;
- Deeply discounting services at the end of financial quarters and failing to properly account for the renegotiated contract price;
- Deliberately understating expenses; and
- Back-dating contracts to increase quarterly revenue and meet analysts’ estimates.

95. Instead of receiving complete and accurate information, Plan participants received incomplete and materially false and misleading information through the SPD and the materials incorporated therein.

WorldCom's Violations of GAAP

96. On June 25, 2002, WorldCom announced that it intended to restate its financial statements for 2001 and the first quarter of 2002 because “certain transfers from line cost expenses to capital accounts during this period were not made in accordance with [GAAP].” By this announcement, WorldCom admitted that \$3.8 billion in line-cost operating expenses, that should have been expensed as incurred, were in fact capitalized as assets, thereby overstating WorldCom’s earnings and its cash flows from operations. This misclassification violated fundamental principles of GAAP, including FASB Statement of Concepts (“Concepts”) Nos. 5, 6, 25 and 85. WorldCom’s decision to restate prior earnings is, under GAAP, an admission that those prior earnings were erroneous and therefore false and misleading.

97. SEC Regulations require that financial statements filed with the SEC, including those to which Plan participants were referred through the SPDs, conform to GAAP requirements. Financial statements that are not prepared in conformity with GAAP are presumed to be misleading or inaccurate. 17 C.F.R. § 210.401(a)(1). The Company’s financial statements referred to above, and the SEC filings in which they were contained and to which Plan participants were referred by the SPDs, were false and misleading for the reasons alleged herein and because they constituted an extreme departure from GAAP by violating the following GAAP concepts and principles, among the many other principles identified above:

- (a) the concept that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions (FASB Statement of Financial Accounting Concepts No. 1);

- (b) the concept that financial reporting should provide information about an enterprise's financial performance during a period (FASB Statement of Financial Accounting Concepts No. 1);
- (c) the concept that financial reporting should be reliable in that it represents what it purports to represent (FASB Statement of Financial Accounting Concepts No. 2);
- (d) the concept of completeness, which means that nothing material is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions (FASB Statement of Financial Accounting Concepts No. 2);
- (e) the concept that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered (FASB Statement of Financial Accounting Concepts No. 2);
- (f) the principle that if no accrual is made for a loss contingency, then disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred (FASB Statement of Financial Accounting Concepts No. 5);
- (g) the principle that contingencies and other uncertainties that affect the fairness of presentation of financial data at an interim date shall be disclosed in interim reports in the same manner required for annual reports (APN Opinion No. 28);

- (h) the principle that disclosures of contingencies shall be repeated in interim and annual reports until the contingencies have been removed, resolved, or have become immaterial (APB Opinion No. 28);
- (i) the principle that management should provide commentary relating to the effects of significant events upon the interim financial results (APB Opinion No. 28); and
- (j) the concept that an expense or loss is required to be recognized if it becomes evident that previously recognized future economic benefits of an asset have been reduced or eliminated, or that a liability has been incurred or increased, without associated economic benefits (FASB Statement of Financial Accounting Concepts No. 5).

98. In addition, in connection with its acquisitions, WorldCom consistently recorded excessive “one-time” write-offs and established excessive reserves. Such reserves were artificially inflated and were then used to secretly increase reported operating earnings in later quarters by drawing down on and reducing/reversing those reserves. This deceptive practice was successfully hidden because users of the financial statements often expect an acquiring company legitimately to establish and record reserves in connection with major acquisitions. Further, because such items are seen as non-recurring, they normally do not have a negative impact on the trading price of the acquirer’s securities. Thus, WorldCom created and recorded excessive, unduly large write-offs of reserves each time it did an acquisition without any adverse impact on the price of its securities. The Company would then invade these excessive reserves (which were inflated to begin with) in later quarters, not for the purposes for which they had been ostensibly established, but instead to mask line costs and other expenses. This accounting

manipulation and material omission gave a misleading impression of the strength of WorldCom's operations and its ongoing earnings power by artificially inflating its reported results.

99. WorldCom also inflated its earnings by improperly misclassifying assets in connection with acquisitions. For example, in connection with the MCI merger, WorldCom reduced the book value of MCI's property, plant, and equipment ("PP&E") by \$3.4 billion to \$10.7 billion from the pre-acquisition balance of \$14.1 billion. Goodwill was commensurately increased by the \$3.4 billion reduction in PP&E. This manipulation inflated WorldCom's earnings during the period from 1999 to 2001 since goodwill is amortized over a longer period than the average of 4.3 years for PP&E. Thus, the shorter-lived PP&E assets were converted into significantly longer-lived assets, artificially inflating WorldCom's subsequently reported earnings. This manipulation increased WorldCom's 1999, 2000 and 2001 annual pre-tax earnings by \$695 million by reducing the Company's reported annual amortization/depreciation expense by that amount.

100. WorldCom's financial statements were also false and misleading throughout the Class Period due to its failure to record impairment in the value of goodwill on its balance sheet. WorldCom disclosed in its Form 10-Q for the first quarter 2002 that, based on preliminary analysis, it planned to reduce goodwill by \$15 to \$20 billion. The Company's management attributed the reduction to adoption of SFAS No. 142, which became effective in fiscal years after December 31, 1991.

101. However, the true amount of the required write-down was \$50 billion, as the Company admitted in August 2002, when it disclosed that write-down of its goodwill and other intangibles would be taken. Indeed, the excuse given by WorldCom management in the first

quarter 2002 Form 10-Q – that the goodwill write-down resulted from a change in accounting standards – was itself false and misleading. In actuality, the conditions that required the write-down existed well before SFAS No. 142 became effective, and the full \$50 billion write-down was required under the long-standing SFAS No. 121.

102. By failing to periodically review and write down goodwill and intangible assets, on a timely basis and in appropriate amounts, WorldCom breached a duty imposed by GAAP as set forth in FASB Statement of Standards No. 121, ¶¶ 5 and 6, which requires the reevaluation of values of assets upon the occurrence of events or changes in circumstances that indicate that the recoverability of the carrying amount of an asset should be assessed, including:

- (a) a significant decrease in the market value of an asset;
- (b) a significant change in the extent or manner in which an asset is used or a significant physical change in an asset;
- (c) a significant adverse change in legal factors or in the business climate that could affect the value of an asset or an adverse action or assessment by a regulator;
- (d) an accumulation of costs significantly in excess of the amount originally expected to acquire or construct an asset; and
- (e) a current period operating or cash flow loss combined with a history of operating or cash flow losses associated with an asset used for the purpose of producing revenue.

103. Widely publicized problems in the telecommunications industry and in WorldCom's acquired business should have indicated to the WorldCom Defendants long before August, 2002, that WorldCom's goodwill and other intangibles were being carried at values that were materially inflated and not supportable by any acceptable accounting practices. However,

the WorldCom Defendants failed to monitor the Plan's investment in WorldCom, and thereby failed to discover that WorldCom did not review the value of WorldCom's goodwill and intangibles on any sort of periodic basis, or appropriately adjust and write down the carrying value of the Company's goodwill and intangibles.

WorldCom's Lack of Controls

104. On August 29, 2002, The Washington Post published an article entitled "Fast and Loose at WorldCom - Lack of Controls, Pressure to Grow Set Stage for Financial Deceptions." The article was based on a review of thousands of pages of previously undisclosed documents that the Post had obtained, along with interviews with former employees and people familiar with WorldCom's operations. According to the article:

(a) In the years before WorldCom announced the restatement, WorldCom was plagued by loose business practices, inadequate financial disclosure, and "widespread internal chicanery and corruption." Among other things, WorldCom booked orders for services or equipment even if they were not provided, so that departments could meet their revenue targets. Further, employees routinely falsified sales in order to boost their commissions.

(b) In early 2002, WorldCom announced that it had fired a number of employees in its Pentagon City, Virginia office for improperly booking sales to inflate their commissions. Although the Company denied that this was a widespread problem, the minutes of a June 6, 2001 meeting of the Company's Audit Committee belie this assertion. At that meeting, Cooper (who ultimately revealed the line cost fraud) reported that numerous "accounts that moved from one billing system to another resulted in commission overpayments." In all, "292 accounts had been

moved over a year's period," resulting in overpayment of commissions of \$930,000. Moreover, according to one former WorldCom employee, Senior Vice President for Sales Deborah Surette ("Surette") told the internal audit staff that the scam involved "many more employees, including a vice president, and significantly more money."

(c) In May 2001, an employee faxed an anonymous note to Surette and Chief Operating Officer Ron Beaumont identifying several instances of improper billing by a manager in order to inflate commissions. The employee wrote that "[t]here are a lot more instances of things like this going on. Just ask around and you will find out." Similarly, on February 20, 2002, an employee told an internal auditor that two network circuits were billed and recorded even though the customer never got access to the circuits and the order was later cancelled. According to the email, which was sent to Cooper, Sullivan and Ebbers, this occurred "because Ms. Surette needed MonRev [monthly revenue] credit."

105. The documents obtained by The Washington Post also showed that, in October 2000 – only days before the Company was set to announce its results for the 2000 third quarter – a small group of WorldCom executives, including then Vice-Chairman John Sidgmore, was well aware that WorldCom's business was eroding rapidly and discussed various accounting maneuvers that would help prop up the Company's bottom line. Summarizing an email exchange over two days that began on Oct. 21, the article stated:

Sullivan told then-Vice Chairman Sidgmore that the company was in a "really scary" situation of escalating costs and declining revenue growth in certain key areas. Just two months earlier, Sullivan had sold stock worth \$18 million.

He told Sidgmore, for instance, that revenue from one of the company's biggest customers, America Online, was growing by only 1 percent, in part because its Internet traffic growth had slowed and much of the data was being carried on lines leased, not owned, by WorldCom.

"Wow! I had no idea that the revenue growth had deteriorated that much," Sidgmore wrote back, adding that "it's going to take some pretty fancy explaining."

Sullivan agreed, telling Sidgmore he would be making some accounting changes that would result in better margins for certain parts of the business. Sullivan said he would be taking two sources of revenue totaling about \$225 million - in one case certain fees and in another case some equipment sales - and reclassifying them as cost reductions.

106. Systems to control costs were either absent or ineffective. For example, the sales division was not responsible for how much it cost to bring in business. According to a 2001 internal audit report, "groups purchase new equipment without verifying whether the equipment is already in inventory. The purchasing system does not require that inventory be checked. . . . In December 2000, \$10 million in new equipment purchases was processed without inventory review. A sample of these purchases indicated unnecessary spending of \$2 million to \$3 million . . . on fiber patch cords alone."

107. These problems were exacerbated by WorldCom having become, by 2000, a conglomeration of the more than 60 telecommunications companies it had acquired. Internal documents and current and former WorldCom employees confirm how poorly WorldCom had integrated these companies, doing little if anything to integrate them to eliminate overlapping costs. As Tony Minert explained in an email to Myers and Yates on July 20, 2000, "there seems to be no regard for cost. This will continue in the future until we make people accountable for their actions."

108. WorldCom's internal audit function was chronically overworked and underpaid. Internal audit staffing was half the size of peer telecommunications company internal audit departments, and WorldCom's average cost per auditor was \$87,000 compared to the peer group average of \$161,000. Further, there was little substantive interaction between the internal audit group and Andersen, LLP, the outside auditor.

109. WorldCom has since announced that it expects to write-off all existing goodwill and other intangible assets, which had been recorded as \$50.6 billion, which means that WorldCom's assets were wildly overstated during the Class Period. The Company is also reevaluating the carrying value of existing property, plant and equipment as to possible impairment of historic values previously reported.

SUBSTANTIVE ALLEGATIONS PERTAINING TO MERRILL LYNCH

110. On information and belief, at all relevant times, Defendant Merrill Lynch undertook ongoing independent analysis and rating of the WorldCom stock and Merrill Lynch knew at relevant times that maintaining investments or making new investments of the Plan's assets in WorldCom stock was increasingly risky and possibly imprudent.

111. On information and belief, Defendant Merrill Lynch knew at relevant times, based on its own independent analysis, that maintaining investments or making new investments of Plan assets in WorldCom stock was increasingly risky and potentially imprudent but failed to inform the other fiduciaries of the Plan or participants in the Plan.

112. Merrill Lynch engaged in activities with respect to the Plan that went far beyond the specific duties of the Trustee as delineated in the Trust Agreement. Merrill Lynch in fact played an integral role in virtually all aspects of Plan administration, management and investment review. On information and belief, the other Investment Fiduciaries relied on Merrill

Lynch's financial and investment expertise in reviewing Plan investments. On information and belief, Defendant Merrill Lynch was asked to advise, and did advise, other fiduciaries of the Plan of the prudence of maintaining WorldCom stock in the Plan and continuing to offer WorldCom stock as a investment option in the Plan, but failed to inform other fiduciaries of the Plan that maintaining investments or making new investments of Plan assets in WorldCom stock was increasingly risky and imprudent, failed to advise other fiduciaries of the Plan to investigate the prudence of maintaining WorldCom stock as a Plan investment, and failed to undertake an investigation into the prudence of maintaining WorldCom stock as a Plan investment itself. Merrill Lynch also participated in the preparation and dissemination to Plan participants of information with respect to the Plan, including information with respect to WorldCom stock and the other investment alternatives available under the Plan.

FIRST CLAIM FOR RELIEF

Claim for Breach of Fiduciary Duty of Prudence Against All Investment Fiduciary Defendants

[ERISA §§ 404(a)(1), 409, 502(a)(2) and (3), 29 U.S.C. §§ 1104(a)(1), 1109, 1132(a)(2) and (3)]

113. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Third Amended Consolidated Master Class Action Complaint, as though fully set forth herein.

114. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, *inter alia*, that a plan fiduciary discharge his, her or its duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

115. The Investment Fiduciary Defendants' selection, monitoring, and continuation of the investment alternatives under the Plan were subject to the above-described fiduciary duties. By their acts and omissions, the Investment Fiduciary Defendants failed to act prudently by continuing WorldCom stock as an investment alternative under the Plan. The Investment Fiduciary Defendants thereby breached each of these fiduciary duties. WorldCom, the Officer Defendants, and the Other Individual Defendants were obligated to monitor and evaluate, among other things, information concerning the Company's structure, performance and prospects, including information made public by the Company. Had WorldCom, the Officer Defendants, and the Other Individual Defendants done so, they would have taken appropriate action, including one or more of the following: (i) eliminating the WorldCom stock as an investment option under the Plan; (ii) adopting an appropriate divestment policy with respect to WorldCom stock in the Plan; (iii) appointing an independent fiduciary to evaluate whether WorldCom Stock Fund should remain an investment option under the Plan and/or determine an appropriate strategy for divestment; (iv) adopting a policy for limiting the amount of WorldCom stock that could be held in the Plan; and/or (v) notifying the Secretary of Labor of the situation. However, WorldCom, the Officer Defendants, and the Other Individual Defendants failed to discharge their fiduciary obligations and instead continued to manage, direct, and approve investment of assets of the Plan in WorldCom stock and maintained the WorldCom Stock as an investment alternative. Thus, WorldCom, the Officer Defendants, and the Other Individual Defendants breached their fiduciary duties by failing to prudently invest the Plan's assets.

116. Because Defendant Merrill Lynch knew that continued investment and maintenance of WorldCom stock in the Plan was imprudent, Defendant Merrill Lynch was not entitled to follow the directions of the Plan's named fiduciary or named investment fiduciary that

it continue to invest in WorldCom stock. Because Defendant Merrill Lynch knew that continued investment and maintenance of WorldCom stock in the Plan was imprudent, Defendant Merrill Lynch failed to act with the care, skill, prudence, and diligence required of it as a fiduciary of the Plan when it allowed continued investment in and maintenance of WorldCom stock in the Plan and continued to follow directions to invest Plan assets in WorldCom stock.

117. Because Defendant Merrill Lynch undertook to advise other fiduciaries of the Plan of the prudence of maintaining WorldCom stock as an investment in the Plan but failed to inform other fiduciaries of the Plan that maintaining existing investments or making new investments of Plan assets in WorldCom stock was increasingly risky and imprudent, Defendant Merrill Lynch failed to act with the care, skill, prudence, and diligence required of it as a fiduciary of the Plan and is liable for breaches of fiduciary duties by its co-fiduciaries because by its failure to comply with its own fiduciary duties it enabled other fiduciaries of the Plan to commit breaches of their fiduciary duties.

118. Because Defendant Merrill Lynch undertook to advise other fiduciaries of the Plan of the prudence of maintaining WorldCom stock as an investment in the Plan but failed to advise other fiduciaries of the Plan to investigate the prudence of maintaining WorldCom stock as a Plan investment and failed to undertake an investigation into the prudence of maintaining WorldCom stock as a Plan investment itself, Defendant Merrill Lynch failed to act with the care, skill, prudence, and diligence required of it as a fiduciary of the Plan and is liable for breaches of fiduciary duties by its co-fiduciary because, by its failure to comply with its own fiduciary duties, it enabled other fiduciaries of the Plan to commit breaches of their fiduciary duties.

119. Each of the Defendants who (i) participated knowingly in or undertook to conceal an act or omission described in this Claim of another fiduciary, knowing such act or omission is

a breach, or (ii) by failing to discharge his, her, or its duties, enabled another fiduciary to commit a breach described in this Claim, or (iii) had knowledge of the breach of fiduciary duty described in this Claim and failed to make reasonable efforts to remedy such breach, was also a co-fiduciary liable for the breaches committed by each other fiduciary under ERISA § 405, 29 U.S.C. § 1105. As discovery progresses in these cases, Plaintiffs will seek leave to amend this Complaint to identify the specific Defendants with co-fiduciary liability as described in this paragraph.

120. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach and to restore to the plan any profits the fiduciary made through use of the plan's assets. ERISA §409 further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate, including removal of the fiduciary.

121. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant to bring a suit for relief under ERISA § 409.

122. As a consequence of the Investment Fiduciary Defendants' breaches of fiduciary duty, the Plan suffered losses. These losses resulted in reductions in the value of the Plan accounts of plaintiffs and the Class members. If the Investment Fiduciary Defendants had discharged their fiduciary duties to prudently invest the Plan's assets, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary and co-fiduciary duties alleged herein, the Plan, and indirectly Plaintiffs and the other Class members, lost hundreds of millions of dollars.

123. As a further consequence of their breaches of fiduciary duty, defendants Ebbers and Sullivan profited through the sale of WorldCom stock. Pursuant to ERISA § 409, these defendants are liable to disgorge such profits.

124. In addition, Defendants Ebbers and Sullivan and, on information and belief, the other Officer Defendants, were unjustly enriched by their breaches of fiduciary duty.

125. The Plan is entitled to the imposition of a constructive trust on any amount by which any Officer Defendant was unjustly enriched through his breach of fiduciary duty, to equitable restitution, and to other appropriate equitable monetary relief to redress the breaches of fiduciary duty by the Investment Fiduciary Defendants described in this Claim.

126. Notwithstanding the ostensible direction of investments in WorldCom stock by the Plan's participants, the Investment Fiduciary Defendants are responsible for the Plan's purchases and retention of WorldCom stock during the relevant time. The Investment Fiduciary Defendants are not entitled to the protections of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B), because the Plan's participants did not exercise independent control over their accounts by reason of the facts that the WorldCom Defendants subjected them to improper influence with respect to the Plan's investments in WorldCom stock and the WorldCom Defendants failed to provide participants with complete and accurate information with respect to WorldCom stock and instead provided false and misleading information. By law, the Plan's purchases of WorldCom stock are deemed to have been made at the direction of the Investment Fiduciary Defendants.

127. By directing the Plan's purchases and retention of WorldCom Stock, the Investment Fiduciary Defendants breached each of the fiduciary duties set forth above.

SECOND CLAIM FOR RELIEF

**Claim for Breach of Fiduciary Duty To Monitor Plan Fiduciaries and to Provide
Information to Plan Fiduciaries
Against All Director Defendants**
[ERISA §§ 404(a)(1), 409, and 502(a)(2) and (3), 29 U.S.C. §§ 1104(a)(1), 1109, and 1132(a)(2) and
(3)]

128. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Third Amended Consolidated Master Class Action Complaint as if set forth fully herein.

129. At all relevant times, the Director Defendants were and acted as fiduciaries, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), with respect to the Plan to the extent that they were charged with, responsible for, and/or otherwise assumed, the duty of selecting, monitoring, and, when and if necessary, removing other fiduciaries. Director Defendants Aycock, Bobbitt, Ebberts, Galesi, Kellett and Porter did in fact appoint one or more Plan fiduciaries, and, on information and belief, such Director Defendants did in fact terminate the appointment of one or more Plan fiduciaries. Whether or not the Board of Directors made appointments other than those in which Defendants Aycock, Bobbitt, Ebberts, Galesi, Kellett and Porter participated, all of the other Director Defendants, as successors to those members of the Board who participated in appointments, had the duty to monitor all appointments previously made by the Board.

130. A fiduciary's duties of loyalty and prudence entail a duty to conduct an independent investigation into, and to monitor, the merits of the investment alternatives in the Plan, including employer securities, to ensure that each investment is suitable. Thus, in connection with their duties to monitor the Plan's other fiduciaries, the Director Defendants were responsible for monitoring the performance of those fiduciaries whom they appointed in these regards.

131. As fiduciaries with knowledge that Plan assets were being invested in WorldCom

stock by investing fiduciaries, the Director Defendants also had an affirmative duty to disclose to the Investment Fiduciary and other investing fiduciaries such material facts about the financial condition of the Company that the Director Defendants knew or should have known the Investment Fiduciary and other investing fiduciaries needed in order to make sufficiently-informed decisions, based on accurate information, concerning those investments.

132. The Director Defendants breached the fiduciary and co-fiduciary duties they owed to Plan participants by:

- failing to adequately monitor the performance by appointed fiduciaries of their fiduciary obligations, including, without limitation, the fiduciaries' investment of the Plan's assets;
- failing to adequately monitor the Plan's other fiduciaries' implementation of the terms of the Plan, including but not limited to the investment of the Plan's assets, the establishment of an investment policy, and the ongoing monitoring of that policy and the Plan's investments;
- failing to disclose to the Investment Fiduciary and the other investing fiduciaries material facts concerning the financial condition of WorldCom that they knew or should have known were material to prudent investment decisions concerning the use of WorldCom stock in the Plan;
- failing to remove fiduciaries whom they knew or should have known were not qualified to loyally and prudently manage the Plan's assets or whom did not adequately fulfill their fiduciary responsibilities;
- failing to ensure that the appointed fiduciaries followed adequate procedures and kept adequate records with respect to the Plan;

- knowingly participating in the investing fiduciaries' breaches by knowingly accepting the benefits of those breaches, both personally and on behalf of the Company; and
- failing to remedy those fiduciaries' breaches, having knowledge of them.

133. If the Director Defendants had at all times carried out their fiduciary duties to monitor the Plan's fiduciaries, including discharging those engaged in breaches of fiduciaries duties and those with conflicts of interest (and replacing the discharged fiduciaries with qualified fiduciaries), the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiffs and the other class members, lost millions of dollars.

134. Each of the Director Defendants who (i) participated knowingly in or undertook to conceal an act or omission of another fiduciary, knowing such act or omission is a breach, or (ii) by failing to discharge his, her, or its duties, enabled another fiduciary to commit a breach, or (iii) had knowledge of the breach of fiduciary duty and failed to make reasonable efforts to remedy such breach, was also a co-fiduciary liable for the breaches committed by each other fiduciary under ERISA § 405, 29 U.S.C. § 1105. As discovery progresses in these cases, Plaintiffs will seek leave to amend this Complaint to identify the specific Defendants with co-fiduciary liability as described in this paragraph.

THIRD CLAIM FOR RELIEF

Claim for Breach of Fiduciary Duty By Providing Incomplete and Misleading Information Against WorldCom, the Officer Defendants and the Other Individual Defendants and Merrill Lynch
[ERISA §§ 404(a)(1), 409, and 502(a)(2) and (3), 29 U.S.C. §§ 1104(a)(1), 1109, and 1132(a)(2) and (3)]

135. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Third Amended Consolidated Master Class Action Complaint as though fully set forth herein.

136. By making material misrepresentations to the Plan's participants in their capacity as Plan fiduciaries, WorldCom, the Officer Defendants, the Other Individual Defendants and Merrill Lynch breached their fiduciary duties to act solely in the interests of the participants and to act prudently.

137. Moreover, ERISA fiduciaries have a duty to speak truthfully, to not mislead participants and to disclose truthful information on their own initiative when participants need such information to exercise their rights under the plan.

138. In a plan with various funds available for investment, this duty to inform and disclose also includes: (1) the duty to provide to plan participants material information of which the fiduciary has or should have knowledge that is sufficient to advise the average plan participant of the risks associated with investing in any particular fund; and (2) the duty to refrain from material misrepresentations.

139. WorldCom, the Officer Defendants, the Other Individual Defendants and Merrill Lynch breached their fiduciary and co-fiduciary duties by failing to provide participants and beneficiaries with complete and accurate information regarding WorldCom stock, by transmitting incomplete, false and misleading communications to Plan participants, and by misleading

participants and beneficiaries regarding the soundness of WorldCom stock, and the prudence of investing their retirement benefits in WorldCom stock.

140. WorldCom's, the Officer Defendants', the Other Individual Defendants' and Merrill Lynch's breaches of fiduciary duties caused or is presumed to have caused participants in the Plan to continue to make and to maintain substantial investments of their Plan accounts in the WorldCom stock at a time when these Defendants knew or should have known that it was not a prudent investment option.

141. Each of the Defendants who (i) participated knowingly in or undertook to conceal an act or omission described in this Claim of another fiduciary, knowing such act or omission is a breach, or (ii) by failing to discharge his, her or its duties enabled another fiduciary to commit a breach described in this Claim, or (iii) had knowledge of the breach of fiduciary duty described in this Claim and failed to make reasonable efforts to remedy such breach, was also a co-fiduciary liable for the breaches committed by each other fiduciary under ERISA § 405, 29 U.S.C. § 1105. As discovery progresses in these cases, Plaintiffs will seek leave to amend this Complaint to identify the specific Defendants with co-fiduciary liability as described in this paragraph.

142. In addition, Defendants Ebbers and Sullivan and, on information and belief, the other Officer Defendants, were unjustly enriched by their breaches of fiduciary duty.

143. The Plan is entitled to the imposition of a constructive trust on any amount by which any Officer Defendant was unjustly enriched through his breach of fiduciary duty, to equitable restitution, and to other appropriate equitable monetary relief to redress the breaches of fiduciary duty by WorldCom, the Officer Defendants, the Other Individual Defendants and Merrill Lynch described in this Claim.

144. Plaintiffs and the Class members relied upon and/or are presumed to have relied upon the WorldCom Defendants' and Merrill Lynch's material misrepresentations by directing that the Plan purchase WorldCom stock, which reliance was to the detriment of Plaintiffs, the Class members, and the Plan because the Plan purchased WorldCom stock and incurred losses on those investments, which losses resulted in reductions in the value of the Plan accounts of Plaintiffs and the Class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

- A. Certify this action as a class action pursuant to Fed. R. Civ. P. 23;
- B. Declare that the Defendants, and each of them, have breached their ERISA fiduciary duties to the Plan's participants and beneficiaries;
- C. Declare that the Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);
- D. Issue an order compelling the Defendants to make good to the Plan all losses to the Plan resulting from these breaches, including lost return on investments that would have resulted from prudent and diversified investment of the Plan's assets, and to restore to the Plan all profits the defendants made through use of the Plan's assets;
- E. Impose a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of a breach of fiduciary duty;
- F. Order equitable restitution and other appropriate equitable monetary relief against the Defendants;

G. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the Defendants from any positions of trust with respect to the Plan and the appointment of independent fiduciaries to administer the Plan;

H. Enjoin Defendants, and each of them, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

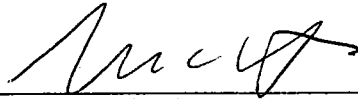
I. Order the Defendants or their successor fiduciaries to allocate the Plan's recoveries to the accounts of all Plan participants who had any portion of their account balances invested in any WorldCom stock fund maintained by the Plan in proportion to the accounts' losses attributable to the decline in WorldCom stock prices;

J. Award Plaintiffs their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or the Common Fund doctrine and other applicable law; and

K. Award such other and further relief as the Court deems equitable and just.

Dated: September 12, 2003

Respectfully Submitted By



Keller Rohrback, LLP
Lynn Lincoln Sarko
Gary A. Gotto
Ron Kilgard
Erin M. Riley
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
206-623-1900 (Seattle)
602-248-0088 (Phoenix)
Lead Counsel for ERISA Plaintiffs

Jeffrey Lewis
Lewis & Feinberg, P.C.
436 14th Street Suite 1505
Oakland, California 94612
(510) 839-6824
Steering Committee Member for ERISA Litigation

Edwin J. Mills
Stull, Stull & Brody
6 East 45th Street
New York, New York 10017
(212) 687-7230
Local Counsel for ERISA Litigation