

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Winstar Communications, L.L.C.	)	
Emergency Petition for Declaratory	)	WC Docket No. 02-80
Ruling Regarding ILEC Obligations	)	
To Continue to Provide Services	)	

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

For the most part, parties opposing Verizon’s Counter-Petition for Declaratory Ruling repeat arguments made by IDT Winstar in its reply to comments on its petition for declaratory ruling. SBC Communications Inc. (SBC) already has responded to those arguments, and demonstrated that Verizon’s request is consistent both with the Communications Act and long standing precedent that the Commission must, to the extent possible, minimize any inconsistency between Commission policy and that of federal bankruptcy law and protect innocent creditors (such as the ILECs here) under its public interest mandate. SBC will not repeat its response here, but submits these reply comments to address two points made by opponents to Verizon’s petition.

First, ASCENT contends that granting Verizon’s petition to declare that ILECs are not excepted from the benefits of section 365 of the Bankruptcy Code would improperly subordinate the Commission’s public interest authority to the workings of the Bankruptcy Code. ASCENT at 6-7. It argues that the Commission should require ILECs to allow CLECs acquiring customer accounts in bankruptcy proceedings to serve the acquired accounts using the facilities that had been used by the bankrupt carrier, and require CLECs to put the ILECs in “roughly the same monetary position as if the facilities had been ordered new — *i.e.*, by paying to the incumbent

LEC some reasonable portion of the non-recurring charges that would have been associated with installation of such new facilities.” *Id.* (noting that “[p]ayment of only a portion of the installation charge would be appropriate because the incumbent LECs would incur no installation costs”).

However, granting Verizon’s petition would not subordinate the Commission’s public interest authority to that of the Bankruptcy Code. As discussed in SBC’s Comments on Verizon’s Petition, both the Commission and courts have recognized that the public interest standard under the Communications Act includes protecting innocent creditors, like the ILECs here.<sup>1</sup>

In any event, adopting ASCENT’s interpretation would be flatly inconsistent with long-standing precedent that the Commission must harmonize Commission policy and that of Bankruptcy law to the extent possible. ASCENT’s reading of the Communications Act and the Commission’s rules would make a mockery of the ILECs’ rights under section 365 to a cure of outstanding debt on executory contracts, such as Old Winstar’s service arrangements with the ILECs, if a bankrupt debtor (or its successor) seeks to take the benefits of the contract. Nothing in the Communications Act, Bankruptcy Code, any legislative history, or case law suggests that Congress intended such a result. Absent clear expression of such intent, the Commission cannot construe its rules to require that CLECs and ILECs be treated differently from any other debtor or creditor in bankruptcy.<sup>2</sup> In particular, it cannot read them to permit a CLEC acquiring customer accounts in bankruptcy to circumvent an ILEC’s right to a cure by rejecting the ILEC’s

---

<sup>1</sup> SBC Comments on Verizon’s Petition for Declaratory Ruling at 5 (SBC Comments).

<sup>2</sup> *Id.* at 5.

executory service agreements with the bankrupt CLEC, but still taking the benefits of those agreements by using the facilities used by the bankrupt carrier to serve the acquired accounts.

Second, Z-Tel claims that ILECs “*are* different than ‘ordinary’ debtholders or parties to executory contracts — because they are incumbent LEC monopolists that the Communications Act imposes special duties upon,”<sup>3</sup> and suggests that ILECs as creditors therefore should have diminished rights in bankruptcy. In fact, the Bankruptcy Code suggests that Congress reached precisely the opposite conclusion. In section 366, for example, Congress afforded ILECs and other utilities additional protections not available to other creditors specifically because of their obligation to provide service without discrimination. If anything, the Bankruptcy Code suggests that ILECs should have more, not less, rights to a cure than other, so-called “ordinary creditors like banks and bondholders” because the ILECs had no choice but to enter into interconnection agreements and other service arrangements with bankrupt CLECs.<sup>4</sup> In any event, as discussed above and in SBC’s Comments, nothing in the Communications Act or the Bankruptcy Code supports the notion that Congress intended to modify the rights of ILECs as creditors or CLECs as debtors or purchasers of assets in bankruptcy.

---

<sup>3</sup> Z-Tel Comments at 3.

<sup>4</sup> Banks and bondholders can pick and choose to whom they want to extend credit, and can require debtors (including CLECs) to pay risk-adjusted premiums for such credit. ILECs have no such ability.

The Commission therefore should grant Verizon's Petition for Declaratory Ruling.

Respectfully submitted,

/s/ Christopher M. Heimann  
Christopher M. Heimann  
Gary L. Phillips  
Paul K. Mancini

SBC COMMUNICATIONS INC.  
1401 I Street, N.W., Suite 400  
Washington, DC 20005  
(202) 326-8909 – Tel. No.  
(202) 408-8745 – Fax No.

May 13, 2002

Its Attorneys

**CERTIFICATE OF SERVICE**

I, Daniel Wang, certify that a copy of the foregoing Reply Comments of SBC Communications Inc. was served on the parties below via courier, on this 17<sup>th</sup> of May 2002.

By: /s/ Daniel Wang  
Daniel Wang

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Matthew Brill  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Kyle Dixon  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dan Gonzalez  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jordan Goldstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Michelle Carey  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Gregory Cooke  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Carmell Weathers  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
[Cweather@fcc.gov](mailto:Cweather@fcc.gov)  
VIA EMAIL

Jeff Carlisle  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Jean L. Kiddoo  
Kathleen L. Greenan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Aimee Jimenez  
Sharon J. Devine  
Qwest Communications, Inc.  
1020 19<sup>th</sup> Street, NW  
Suite 700  
Washington, DC 20036  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

John H. Harwood II  
Wilmer, Cutler & Pickering  
2445 M Street, NW  
Washington, DC 20037  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Stephen T. Perkins  
Cavalier Telephone, LLC  
2134 West Laburnum Avenue  
Richmond, VA 23227-4342  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Michael Shortley  
Global Crossing, Ltd.  
1080 Pittsford-Victor Road  
Pittsford, NY 14534  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Peter Claudy  
M/C Venture Partners  
75 State Street, Suite 2500  
Boston, MA 02109  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Qualex International  
[qualexint@aol.com](mailto:qualexint@aol.com)  
VIA EMAIL

Philip L. Verveer  
Sue D. Blumenfeld  
Sophie Keefer  
Christi Shewman  
Wilkie, Farr & Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20036  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Teresa K. Gaugler  
ALTS  
88817<sup>th</sup> Street, NW  
Suite 900  
Washington, DC 20006  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

George N. Barclay  
Michael J. Ettner  
General Services Administration  
1800 F Street, NW, Room 4002  
Washington, DC 20405  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

John J. Greive  
Lighyear Holdings, Inc.  
1901 Eastpoint Parkway  
Louisville, Kentucky 40223  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Jonathan Banks  
William W. Jordan  
BellSouth Corporation  
1133 21<sup>st</sup> Street, N.W.  
Washington, DC 20036  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Carl Wolf Billek  
Winstar Communications, LLC  
520 Broad Street  
Newark, NJ 07102  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Thomas M. Koutsky  
Z-Tel Communications, Inc.  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Charles C. Hunter  
Hunter Communications Law Group  
1424 Sixteenth Street, NW  
Suite 105  
Washington, DC 20036  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID

Mary C. Albert  
Allegiance Telecom, Inc.  
1919 M Street, NW, Suite 420  
Washington, DC 20016  
VIA USPS FIRST CLASS MAIL POSTAGE  
PREPAID