

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

In the Matter of)	
)	
Verizon Petition for Emergency Declaratory And Other Relief)	WC Docket No. 02-202
)	

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

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Introduction and Summary

Pursuant to the Commission’s Public Notice initiating this proceeding,¹ Global Crossing North America, Inc. (“Global Crossing”), on behalf of itself and its Commission-licensed subsidiaries and affiliates, submits these comments in response to Verizon’s petition for emergency declaratory and other relief.²

Verizon concocts an “emergency.” In fact, there is none. While it is true that a number of telecommunications carriers, including Global Crossing, have filed for bankruptcy protection and such filings have affected Verizon, that circumstance does not create an emergency. The consequences of which Verizon complains are normal incidents of bankruptcy filings and Verizon stands in no different position than any other unsecured creditor.

The Commission should deny Verizon’s petition for two independent reasons. *First*, Verizon’s petition is a mere decoy. It seeks to distract the Commission from the fundamental issues currently facing the industry. Access charges -- which typically comprise over sixty percent of a typical interexchange carrier’s operating expense --

¹ Public Notice DA 02-1859, *Wireline Competition Bureau Seeks Comment on Verizon Petition for Emergency Declaratory and Other Relief*, WC Dkt. 02-202 (July 31, 2002).

² Petition for Emergency Declaratory and Other Relief, WC Docket 02-202 (July 24, 2002) (“Verizon Petition”).

remain irrationally high. Although traffic sensitive rates have fallen as a result of the Commission's implementation of the CALLS proposal,³ it is time for the Commission to rationalize the entire structure of intercarrier compensation.⁴ In addition, the Commission must urgently address the continuing intransigence of the incumbent local exchange carriers ("ILECs") -- and the Regional Bell Operating Companies ("RBOCs"), in particular -- in refusing to obey the market-opening mandates of the Telecommunications Act of 1996 ("Telecom Act"). These are the issues that should be of paramount importance to the Commission, just as padding Verizon's wallet should not be.⁵

Second, on the merits, Verizon has made absolutely no case for the relief that it requests.

- The tariff revisions for which it seeks Commission *imprimatur* are unnecessary, anticompetitive, unreasonable and unenforceable, in any event.⁶
- The Commission has no valid role in instructing the Nation's Bankruptcy Courts as to the meaning of the Bankruptcy Code, as Verizon suggests.⁷ Congress has lodged that expertise with the Bankruptcy Courts, not the Commission. That Verizon is unhappy with the results that it has achieved in the Bankruptcy Courts provides scant reason for the Commission to embark upon the expedition that Verizon proposes.

³ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Dkts. 96-262, 94-1, 99-249, 96-45, *Sixth Report and Order in CC Dockets Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Red. 12962 (2000) ("CALLS Order").

⁴ *See Developing a Unified Intercarrier Compensation Regime*, CC Dkt. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Red. 9610 (2001) ("Intercarrier Compensation Notice").

⁵ Verizon takes a gratuitous swipe at the Commission's implementation of the Telecom Act. Verizon Petition at 1-2. While the Commission's efforts have not been perfect, perhaps a greater contribution to current industry conditions is the ILECs' unremitting refusal to open their protected markets to competition. *See Part I, infra*.

⁶ *See Verizon Petition, Part II*.

⁷ *See id.*, Parts II and III.

- The Commission's service discontinuance rules are not in need of overhaul and Verizon has presented no evidence to the contrary.⁸ Indeed, the only problems in customer base transitions from distressed competitive local exchange carriers ("CLECs") of which Global Crossing is aware have occurred when ILECs have simply refused to obey their unambiguous obligations under the Communications Act.

The Commission should summarily deny Verizon's petition.

Argument

I. VERIZON SEEKS TO DIVERT THE COMMISSION'S ATTENTION FROM FUNDAMENTAL ISSUES FACING THE TELECOMMUNICATIONS INDUSTRY.

The Commission should discard Verizon's plea for Commission-sanctioned enrichment in favor of addressing the more fundamental issues facing the industry. Access charges are still grossly inflated and the ILECs continue to engage in a pattern of massive resistance to the market-opening objectives embraced by the Telecom Act. If the Commission wishes to address current industry conditions, it should devote its resources to those issues, not to Verizon's sideshow. Indeed, it is the ILECs' continued resistance to opening their markets that, in part, led to these bankruptcies in the first place and Verizon should not be permitted to profit from these circumstances.

Although rates for traffic sensitive access elements have declined as a result of the Commission's implementation of the CALLS proposal,⁹ that action was only a first step. That interstate access charges – even at the CALLS levels – are far above economic cost is demonstrated by even a cursory comparison of interstate access rates to reciprocal compensation rates that govern the transport and termination of local traffic.¹⁰ A number

⁸ See *id.*, Part IV.

⁹ See CALLS Order, *supra*.

¹⁰ 47 U.S.C. § 251(b)(5).

of states, for example have adopted a bill-and-keep approach to reciprocal compensation.¹¹ In the vast majority of other jurisdictions, the rates for the transport and termination of local traffic are a fraction of current interstate access rates.¹²

Yet, there is no principled economic basis for this disparity. The same facilities are used to provide the same services, namely, the origination and termination of traffic between another carrier's point of presence and end-user premises through ILEC end offices and tandems.¹³

In addition, the Commission has granted a number of requests filed under section 271 of the Act permitting RBOC entry into the interexchange business. The Commission has also approved several significant mergers between major ILECs.

However, the Commission apparently has been reluctant to enforce, in any truly incentive-changing sense, the mandates of the Telecom Act or even prior Commission orders. To its credit, the Commission has, to date, levied fines or negotiated consent decrees that have resulted in the payment of millions of dollars by the RBOCs to the United States Treasury. Unfortunately, the RBOCs have simply treated these payments as a cost of doing business. There is absolutely no indication that monetary penalties

¹¹ The Commission, in fact, has proposed a similar regime to govern all intercarrier compensation. *See* Intercarrier Compensation Notice, *supra*.

¹² Intrastate access rates are typically even higher. While the Commission possesses no jurisdiction to regulate intrastate access rates, it can directly address the jurisdictional issue as to what traffic is subject to interstate or intrastate regulation. The newest game in which the ILECs are engaging is to up-end the application of percent interstate use ("PIU") factors arbitrarily to apply intrastate rates to a higher -- in some cases, dramatically higher -- percentage of an interexchange carrier's traffic. This is unquestionably a jurisdictional issue to be decided at the federal, not the state, level. *See Global Crossing Telecommunications, Inc. v. BellSouth Telecommunications, Inc.*, No. No. 1: 01-CV-2706, slip op. (N.D. Ga. May 31, 2002) (denying BellSouth motion to dismiss Global Crossing complaint for declaratory and injunctive relief on PIU issues).

¹³ It is noteworthy that the Telecom Act prescribes a cost-based methodology for determining rates for the transport and termination of traffic. 47 U.S.C. § 252(d)(2). Rates for access charges are not similarly constrained, at least to the same degree.

have affected the RBOCs' incentives at all. Indeed, Chairman Powel acknowledged as much in his recent appearance before the Senate Commerce Committee by requesting Congressional action to increase the level of fines for violations of the Communications Act.¹⁴

The time may well have come for the Commission to impose truly eye-opening sanctions. In its 271 Orders, for example, the Commission retained the right to revoke 271 authorizations in the appropriate circumstances. Repeated and willful violations of the Telecom Act and of prior Commission orders should provide those circumstances. If the Commission truly wishes to embrace the vision of the Telecom Act, the Commission must eliminate the monumental barriers to effective local competition that still exist -- namely, ILEC attitude and ILEC action.

These issues, not Verizon's petition, deserve the Commission's immediate attention.

II. VERIZON'S PETITION IS SUBSTANTIVELY WHOLLY WITHOUT MERIT.

Verizon requests that the Commission permit it to implement tariff revisions that would impose onerous security requirements, take actions to ensure that ILECs receive what they deem to be appropriate adequate assurance and cure payments and direct CLECs to "cooperate" with ILECs in transferring customer bases. The various forms of relief that Verizon requests are unnecessary, anticompetitive, unreasonable, unenforceable or some combination of the above. The Commission should summarily deny Verizon the relief that it seeks.

¹⁴ *Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Telecommunications*, Written Statement of Chairman Michael K. Powell

A. The Commission Should Decline To Sanction Verizon's Proposed Tariff Revisions.

Verizon – and now other major ILECs – want to impose stringent security requirements on the flimsiest of excuses. The provisions the ILECs seek to include in their interstate access tariffs are objectively unreasonable and unenforceable. The Commission should reject this aspect of Verizon's petition.

Imposing unnecessary security requirements as a result of a carrier having a below investment-grade credit rating is objectively unreasonable. Few, if any, interexchange carriers or CLECs carry investment-grade credit ratings. Permitting Verizon to impose significant security requirements on this basis would serve no purpose other than to permit Verizon to saddle its competitors with wasteful and unnecessary costs. This is blatantly anticompetitive.

Verizon is already able to require advance payment or security in the face of no or poor payment history.¹⁵ Verizon need only enforce its existing tariff provision adequately to protect itself. Verizon offers no reason why additional protection is necessary.

Moreover, the impact of Verizon's proposal is not simply a matter of posting a single deposit or prepayment. Rather, it potentially encumbers many hundreds of millions of unbudgeted dollars among the nation's interconnected telecommunications carriers and their "suppliers." Global Crossing, for instance, purchases access services from literally hundreds of domestic carriers. In the midst of a capital drought, adoption

before the Committee on Commerce, Science and Transportation, United States Senate at 16 (July 30, 2002).

¹⁵ See *Verizon Telephone Companies, Tariff F.C.C. No. 14*, § 2.4.1(A)(1); *Verizon Telephone Companies, Tariff F.C.C. No. 16*, § 2.4.1(A)(1).

of such a policy would inexorably lead to the next wave of industry bankruptcies. This is hardly an outcome that the Commission should encourage.

The second form of relief Verizon requests – the ability to impose additional security requirements as a result of the voluntary or involuntary filing for bankruptcy -- is simply unenforceable. Requests for deposits and other forms of post-petition security by utilities are governed by section 366 of the Bankruptcy Code. Section 366(b), in part, provides that:

On request of a party in interest and after notice and hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.¹⁶

Thus, the determination of what constitutes adequate post-petition assurance is ultimately a matter for the Bankruptcy Courts and not a requirement that may be unilaterally imposed by Verizon and other ILECs, regardless of what is contained in their access tariffs.

B. The Commission Should Decline Verizon's Invitation To Involve Itself in Subject Matters Well Beyond Its Traditional Areas of Expertise.

Verizon wants the Commission to intervene in bankruptcy proceedings to “support . . . the right of carriers such as Verizon to receive payment in advance (or other measures such as security deposits) in order to obtain assurance of payment for the services that they continue to provide.”¹⁷ It also asks the Commission to “ensure that purchasers of bankrupt carriers’ existing service arrangements comply with the

¹⁶ 11 U.S.C. § 366(b).

¹⁷ Verizon Petition at 6.

requirements of *bankruptcy* law.”¹⁸ In short, Verizon wants the Commission to lecture the Bankruptcy Courts on the meaning of the Bankruptcy Code.

This request is silly. The Commission’s fundamental obligation is to interpret and enforce the provisions of the Communications Act. As a part of that duty, the Commission is obliged to harmonize the requirements of the Communications Act with other federal policies.¹⁹ That obligation, however, is not *carte blanche* for the Commission to inject itself into areas where Congress has not endowed the agency with any particular expertise.

The terms “adequate assurance” and “cure” do not appear in the Communications Act. They are first and foremost bankruptcy concepts. Congress has entrusted to the Bankruptcy Courts the duty to determine what constitutes adequate assurance and the circumstances under which cure payments are required (and the amounts therefor).

Determinations of adequate assurance are fully within the discretion of the Bankruptcy Courts.²⁰ Indeed, under section 366(b) of the Bankruptcy Code, it is the exclusive province of the Bankruptcy Courts to determine what constitutes adequate assurance of payment of post-petition utility charges and the Bankruptcy Courts are not bound by local or state regulation.²¹

¹⁸ *Id.* at 8 (emphasis added; case changed).

¹⁹ *See LaRose v. FCC*, 494 F.2d 1145, 1147 n.2 (D.C. Cir. 1974) (“agencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.”)

²⁰ *Virginia Elec. & Power Co. v. Caldor, Inc. - NY*, 117 F.3d 646, 650 (2d Cir. 1997).

²¹ *See In re Begley*, 41 B.R. 402, 405-06 (Bankr. E.D. Pa. 1984), *aff’d*, 760 F.2d 46 (3d Cir. 1985).

Verizon's claim -- that Commission intervention is necessary because Verizon must continue to provide service post-petition to comply with Commission regulation and, therefore, has no assurance that it will be paid for such services (Verizon Petition at 7) -- is incorrect. Under section 366(b) of the Bankruptcy Code, Verizon can always request the Bankruptcy Court to alter the terms of any adequate assurance mechanism that the

Similarly, under section 365(b)(1)(A) of the Bankruptcy Code, it is the Bankruptcy Courts – and not the Commission – that determines the circumstances under which cure payments are required and the amounts therefor.²² Verizon may not like the results that it has obtained in the Bankruptcy Courts, but that hardly constitutes a valid basis for the Commission to interject itself into areas well beyond its expertise.

At bottom, what Verizon wants is the right to impose a “disconnect and reconnect” regime where it is unhappy with the outcome of Bankruptcy Court proceedings.²³ That result would not only impinge upon the role of the Bankruptcy Courts, it would violate the Communications Act as well. As the Commission has explained, the prohibition against disconnecting already connected facilities “is aimed at preventing incumbent LECs from ‘disconnecting previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose

Court has put into place if circumstances so dictate. And, in any event, a carrier is under no obligation to provide post-petition services free of charge. *See In re Security Investment Properties, Inc.*, 559 F.2d 1321, 1326 (5th Cir. 1997). Even outside the bankruptcy context, carriers routinely disconnect service for non-payment and do not, thereby, run afoul of the Communications Act.

²² *See, e.g., In re Personal Computer Network, Inc.*, 85 B.R. 507 (Bankr. N.D. Ill), *appeal den’d*, 89 B.R. 19 (N.D. Ill. 1988).

²³ Among the “options” Verizon suggests are available is the “purchase of a new service arrangement and the transfer of the customer using the normal carrier-to-carrier transfer process that all other carriers use (no cure is required and, if sufficient notice is provided, such transfers need not result in protracted interruption of service.)” Verizon Petition at 9.

Not only is this statement, on its face, factually inaccurate, it is code-speak for “disconnect-and-reconnect.” Verizon itself was a bit more forthright with the state Commissions. In Florida and Maryland, for example, Verizon threatened that “there will be no service to Winstar” while conducting its “disconnect-and-reconnect” procedures. *See Winstar Communications, LLC; Emergency Petition for Declaratory Relief Regarding ILEC Obligations To Continue Providing Services*, WC Dkt. 02-80, *Reply of Winstar Communications, LLC* at 9 n.19 (May 3, 2002) (“Winstar Reply”).

wasteful reconnection costs on new entrants.”²⁴ In upholding the prohibition, the Supreme Court noted that:

incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.²⁵

The fact that Verizon would favor an action that other creditors would no doubt oppose demonstrates clearly that ILECs’ interests diverge widely from the interests of ordinary unsecured creditors in a bankruptcy proceeding. Customers and creditors of bankrupt carriers may be far better off when a willing, financially stable purchaser is found for the assets and customer base of a distressed carrier, a transaction that the competitor-creditor ILEC has little, if any, interest in seeing smoothly consummated.²⁶

²⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers*, CC Dkts. 96-98 and 95-185, *First Report and Order*, 11 FCC Rcd. 15499, ¶ 293 (1996).

²⁵ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999) (quoting Reply Brief for Federal Petitioners and Brief for Federal Cross-Respondents at 23). See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-98, *Supplemental Order*, 15 FCC Rcd. 1760, ¶ 5 (1999); *id.*, *Supplemental Order Clarification*, 15 FCC Rcd. 9587, ¶ 30 (2000) (“Under this process [conversion from special access to loop-transport combinations], the conversion should not require the special access circuit to be disconnected and re-connected *because only the billing and other administrative information associated with the circuit will change when a conversion is requested*. We continue to believe that [this] process will allow requesting carriers to avoid material provisioning delays and unnecessary costs to integrate unbundled loop-transport combinations into their networks, and expect that carriers will use this process for conversions.”) (Emphasis added.)

²⁶ Because they are monopoly providers of bottleneck facilities, ILECs, as competitor-creditors, have an incentive to impede the transfer of customers from a bankrupt carrier to a more financially stable competitor. By positing the option that a carrier acquiring the customer base of another carrier could serve the acquired accounts by replacing existing facilities with newly-ordered ones without having to cure the bankrupt carrier’s payment defaults, Verizon concedes that debt recovery is not its primary motivation. If the acquiring carrier made such an election, an ILEC would impose installation fees – offset by the costs of disconnecting/connecting circuits – netting the ILEC nothing, while raising costs for the acquiring carrier. Of even greater benefit to Verizon is the tactic of forcing the acquiring carrier “to the end of the line,” thereby anonymously disrupting service to the bankrupt carrier’s former customers. The resultant devaluation of the bankrupt carrier’s primary assets (*i.e.*, its customer base and installed facilities) will

The Commission should reject Verizon’s transparent attempt to resurrect this discredited practice.

C. The Commission Should Decline To Change Its Service Discontinuation Rules in Response to Verizon’s Petition.

Verizon requests that the Commission alter its service discontinuance rules²⁷ to direct CLECs to cooperate with ILECs in effectuating transfers of customer bases as a result of bankruptcy proceedings.²⁸

This request is truly mystifying. Verizon cites only to unspecified “problems” it has encountered in processing disconnect and connect orders from different carriers.²⁹ Verizon cites to no example of any such “problems” it has encountered.³⁰

The motivation behind Verizon’s request likely lies in another area – one that Verizon is understandably reluctant to address directly. That circumstance involves Verizon’s unwillingness to transfer billing records from one carrier to another coincident with the latter carrier’s acquisition of the former’s assets in a bankruptcy proceeding or upon confirmation of a plan of reorganization.³¹ If this is truly the case – and Verizon has provided no indication to the contrary – the Commission should forcibly remind

effectively preclude the transition of assets to any carrier other than the incumbent LEC. Few companies will wish to bid on assets so encumbered. Customers will migrate to the ILEC by default. The Commission should reject Verizon’s proposal as an unlawful attempt to raise competitors’ costs and to thwart competition.

²⁷ 47 C.F.R. § 63.71.

²⁸ Verizon Petition at 10-11.

²⁹ *Id.*

³⁰ Verizon’s alleged justification strains credulity as Verizon must process thousands of provisioning orders (or, more likely and reasonably, transfers of billing records) daily in the ordinary course of its business as customers change from one carrier to another.

³¹ *See, e.g.,* Winstar Reply, *passim*.

Verizon of its obligations under the Communications Act,³² rather than grant the backhanded relief that Verizon requests.³³

Conclusion

For the foregoing reasons, the Commission should dismiss Verizon's petition in its entirety.

Respectfully submitted,

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³² See Part II.B, *supra*.

³³ This would also be a far more productive use of Commission resources than having its staff lecture Bankruptcy Courts on the meaning of the Bankruptcy Code.

Certificate of Service

I hereby certify that, on this 15th day of August, 2002, copies of the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid upon:

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