BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

COMMENTS OF TIME WARNER TELECOM

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Time Warner Telecom Corporation ("TWTC"), by its attorneys, hereby submits these comments in response to the Public Notice[1] in the above-referenced proceeding.

I. INTRODUCTION AND SUMMARY

In its petition, Verizon generally complains that it has experienced increases in uncollectible charges for interstate access caused by carrier bankruptcies and that it has not received adequate compensation for services it provides to debtor carriers in bankruptcy.[2] But these are problems faced by all facilities-based providers of access service. For example, TWTC has suffered very significant financial consequences as a result of uncollectible charges to carriers that have gone into bankruptcy. It has also experienced significant losses in cases where it has been effectively required to continue to provide services to debtor carriers in bankruptcy without compensation. Unfortunately (though not surprisingly), the relief sought by Verizon reflects its apparent conviction that regulators will cooperate in adopting extraordinary measures

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

2 *See* Verizon Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202 (filed July 24, 2002) ("Verizon Petition").

designed solely to protect Verizon from these risks, even though the measures would harm competition and in some cases appear to be completely unnecessary.

First and foremost, the changes Verizon has proposed in its interstate access tariff must be rejected. Those changes, proposed in Verizon's Transmittal No. 226, would essentially give Verizon the freedom to require any competitor that purchases interstate access (such as TWTC) to provide Verizon with a security deposit equal to two months of charges *and* would force any such purchaser to pay all bills, no matter how fraught with inaccuracies (and Verizon bills are often incorrect), within 30 days. They would do so, even though there is no basis for thinking that the proposed criteria for imposing security deposits are any more effective at targeting high-risk customers than the criteria (that rely primarily on a customer's payment history) in Verizon's existing tariff. In addition, the proposed tariff language would protect Verizon from the business risks faced by TWTC and all other facilities-based carriers, even though TWTC, which does not have an interstate special access tariff could not possibly obtain this kind of protection. Moreover, given Verizon's relatively low uncollectible rate for interstate service and its high rate of return (above 17 percent) for interstate service, the protections appear to be unnecessary.

Other relief sought by Verizon further reflects its attempt to co-opt the regulators. Verizon seeks the Commission's assistance in obtaining adequate assurance of payment from bankruptcy courts for service rendered to debtor carriers in bankruptcy. This is indeed a serious issue, but one faced by TWTC and other competitors just as much as Verizon (as the recent Winstar bankruptcy illustrated). The Commission should therefore do everything possible to ensure that *all* carriers classified as public utilities in a bankruptcy proceeding are paid for the services they provide. Furthermore, Verizon argues that competitor purchasers of assets and customers from a debtor carrier in bankruptcy must either compensate the ILEC for any money owed by the debtor under a contract used to purchase access to the ILEC's facilities or initiate an entirely new service order for those facilities (thus risking delay and service disruption). Meanwhile, of course, customers and assets could revert to Verizon seamlessly. The process for acquiring customers and assets out of bankruptcy cannot be so discriminatory. Nor should the CLECs take sole responsibility for carrier-to-carrier transitions for customers out of bankruptcy, since the ILECs are often in the best position to perform this task.

In sum, it is clear that Verizon is following a broader pattern in the ILECs' advocacy. In the context of the carrier bankruptcies, the ILECs have sought the benefits of regulation (most obviously in the form of tariffs) by asking for protections that are unavailable to their competitors. Yet in other proceedings, the ILECs strenuously argue that they face so much competition that regulation must be eliminated. For example, the ILECs argue that the purported level of competition in the provision of special access obviates the need for performance measurements, standards and penalties or apparently any other form of regulation. The Commission must reject these arguments. It must instead strike the proper balance in ILEC regulation by preventing the incumbents from exploiting their tariffs and other regulatory forms in a manner that harms competition while continuing to aggressively apply regulation (by, for example, eliminating obstacles to competitors' acquisition of assets and customers from debtors in bankruptcy) in a manner that limits the ILECs' opportunities to exploit their market power.

II. THERE IS NO BASIS FOR PERMITTING VERIZON TO REVISE ITS FCC TARIFFS TO IMPOSE NEW AND ONEROUS REQUIREMENTS ON CARRIER CUSTOMERS.

Under its existing interstate access tariff, Verizon may require a customer "which has a proven history of late payments [to Verizon] or does not have established credit" to make a deposit payment "to be held by [Verizon] as a guarantee of the payment of rates and charges." *See, e.g.,* Verizon Tariff F.C.C. No. 1 § 2.4.1(A). In addition, Verizon's existing tariff permits it to terminate service to a customer that fails to comply with its tariff (for example by failing to provide a deposit) upon 30 days notice. *Id.*, § 2.1.8(B).

Verizon has now proposed that it be permitted to require that a purchaser of its interstate access service make a security deposit or comply with advance payment requirements if (1) the customer's account balance has fallen in arrears in any two months out of any consecutive twelve month period; (2) the customer owes $250,000 or more to Verizon that is 30 days or more past due; (3) the customer or its parent "informs [Verizon] or publicly states that it is unable to pay its debts as such debts become due;" (4) the customer or its parent is subject to a receivership or bankruptcy proceeding; (5) the senior debt securities of a customer or its parent are below investment grade; or (6) the senior debt securities of a customer or its parent are rated at the lowest investment grade rating category by a nationally recognized statistical rating organization, and are put on review for a possible downgrade. *See* Verizon Transmittal No. 226, Tariff F.C.C. No. 1, § 2.4.1(A)(2) (filed July 25, 2002). Verizon apparently retains full discretion to decide whether a carrier must pay a deposit or make payments in advance. The amount of a deposit can equal two months of a customer's recent bills. *Id.,* § 2.4.1(A)(4). If a customer fails to comply with either the deposit or advance payment requirement, Verizon may, upon seven day's written notice, refuse additional applications for service, refuse to complete any pending orders for service, or discontinue service entirely. *Id.*, § 2.1.8(A), (B).

As many carriers have already explained in petitions to reject or suspend, the proposed Verizon tariff provisions should not be allowed to go into effect. *First*, the criteria Verizon proposes for the imposition of deposit and advance payment requirements are unjust and unreasonable. The proposed criteria would not target high risk customers. It is quite obvious that virtually every carrier that purchases interstate access from Verizon would be subject to deposit and advance payments under the criteria that link creditworthiness to a customer's (or its parent's) senior debt ratings.[3] Yet there does not appear to be any basis for concluding that all firms with senior debt below investment grade will fail to pay their bills (especially those of their most important supplier of inputs). As WorldCom has explained, statistics published by Moody's Investor Service show that the rate of default among speculative grade debt issuers is approximately ten percent.[4] It seems reasonable to conclude that some of the carrier customers

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[3] In fact, with few exceptions, CLECs (excluding large incumbent IXCs) would have been subject to deposit and advance payment requirements based on these criteria since their very creation.

[4] WorldCom Petition to Reject Or, In The Alternative, Suspend And Investigate Verizon Transmittal No. 226 at 11 (filed Aug. 1, 2002) ("WorldCom Petition to Reject"). Verizon has argued that there is in fact a correlation between a carrier customer's S&P credit rating and the extent to which the customer's bills are 90 days or more in arrears. *See* Reply Comments Of Verizon To Petitions To Reject Or Suspend Transmittal No. 226 at 14, Exh. D (Aug. 7, 2002) ("Verizon Reply to Petitions to Reject"). It is doubtful that Verizon's survey in fact includes enough companies to form the basis for reliable conclusions. But putting this issue aside, Verizon's survey proves too much. It shows that it can identify high risk customers by relying on its existing criterion of a history of late payments.

of Verizon's interstate access service with below investment grade debt are more stable than others. It would be arbitrary and unreasonable to adopt criteria that would impose deposit and advance payment obligations on the more stable customers when those criteria are only needed for the carriers that are truly *in extremis*.

Nor does Verizon make any attempt to explain why the criteria it proposes are more accurate predictors of whether a customer will pay than is the case with the criterion currently in its tariff that relies on a customer's payment history. Indeed, while the existing criterion may not capture all carriers that will fail to pay for service in the future, it seems likely that it is more accurately targeted than criteria that would apply to virtually all carrier customers.

In addition, the criteria under which Verizon may impose deposits or advance payments for failure to pay on time are also unreasonable because they do not take into account disputed amounts.[5] The criteria in question state only that Verizon may impose deposits or advance payments if the customer is in arrears in any two months out of any consecutive twelve month period or if the customer owes $250,000 or more to Verizon that is 30 days or more past due. Verizon and other ILECs have often been unable to provide carrier customers with accurate bills

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5 Verizon has argued that these provisions merely clarify circumstances in which Verizon already has the right to impose security deposits under the existing tariff. *See* Verizon Reply to Petitions to Reject at 9-10. This assertion is implausible. The current Verizon tariff language allows Verizon to impose deposit requirements on customers with a "proven history of late payments." A single incident in which a customer is late in paying a bill for access that exceeds $250,000 cannot reasonably be construed to constitute a proven history of late payments. Moreover, the fact that a customer may have "fallen in arrears" for two months in a 12 month period because of billing disputes should not reasonably be construed to constitute a proven history of late payments. No doubt Verizon itself reached these same conclusions. Otherwise, there would have been no need for it to seek the addition of new tariff language that establishes these criteria as separate bases for requiring deposits.

in the past.[6] Since 2001, TWTC has successfully disputed approximately $13 million in ILEC bills. Moreover, given the complexity of the bills Verizon sends carriers like TWTC for special access, it often takes more than a month to determine whether the charges billed accurately match the services ordered. TWTC receives approximately 1,700 ILEC invoices every month, most of which are for special access and collocation. Each such invoice requires significant time and resources to review. For example, a typical BOC special access invoice is approximately 500 pages long. It is unreasonable to allow Verizon to force a carrier to make a substantial security deposit or advance payment because of delays in payment caused by the unnecessary complexity of Verizon's own billing system. Similarly, it is unreasonable to allow Verizon to impose these obligations on a carrier that has delayed payment because of legitimate disputes as to the accuracy of a bill. Moreover, there is no apparent connection between the extent to which a customer may raise legitimate concerns regarding a Verizon bill and the customer's ultimate willingness or ability to pay undisputed amounts.

The unreasonableness of punishing carriers for failing to pay bills that are subject to legitimate review or dispute is further compounded by the reduction in the notice period that Verizon must give before discontinuing service to a customer from 30 days to 7 days. Like most competitors, TWTC simply cannot risk termination by Verizon for the end-user special access

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6 *See* Petition to Reject Or Suspend And Investigate Proposed Tariff Revisions, Verizon Transmittal No. 226, of the Association of Communications Enterprises, BayRing Communications, Business Telecom, Inc., DSL.net, ATX Communications, CTC Communications, Focal Communications, Level 3 Communications, PaeTec Communications, Pac-West Telecomm, US LEC Corp., at 4-9 (filed Aug. 1, 2002) ("ASCENT Petition to Reject") (describing errors in Verizon interstate access bills to CoreComm/ATX, CTC, and BayRing).

connections it purchases under Verizon's interstate tariff. Moreover, TWTC purchases special access end-user connections only where self-deployment is impossible and viable non-ILEC wholesale sources are unavailable. Termination of Verizon service would therefore require that TWTC terminate service to its own customers. To make matters worse, TWTC's service contracts permit service termination only in certain narrowly defined circumstances and only after providing customers a notice period that generally far exceeds seven days. Failure to comply with these requirements would expose TWTC to possibly very substantial liability. Thus, when combined with the criteria for imposing deposits and advance payments, the seven day notice would essentially force TWTC to pay the full amount billed by Verizon and seek reimbursement only upon resolution of any billing disputes. As a result of this requirement, CLECs would lose the time value of the money in question. Given the ILECs' willingness and ability to engage in self-help, it is also not likely that a CLEC could readily recover even money paid for services that were incorrectly billed. TWTC is unaware of any basis in law or policy for requiring the nondominant purchasers of inputs to pay ILECs that have control over those bottleneck inputs and therefore very unwholesome incentives during the pendency of billing disputes.[7]

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[7] The Commission's 1987 tariff decision on which Verizon relies to support a short period for notice of discontinuance in fact acknowledges the importance of review of billing. *See* Verizon Reply to Petitions to Reject at 21. As Verizon notes, the Commission did approve a 15-day notice period, but only if BellSouth provided adequate opportunity for carrier customers to review and dispute bills. As the Commission concluded, "We believe the tariff revisions are too broad because they could reach customers that have needed additional time to review and verify their bills; this is a likely possibility given the petitioner's claims regarding BellSouth's billing performance. The provisions should not reach customers who have not paid their bills by the late payment date if such failure occurred because they did not receive their bills in a timely manner and sufficiently in advance of the late payment date so as

Second, the tariff changes sought by Verizon are anticompetitive. Under the proposed provisions, Verizon retains complete discretion to determine whether and when a carrier customer will be subject to advance payments or deposits. In most cases, those carrier customers are, like TWTC, Verizon's competitors. Thus, the proposed tariff revisions give Verizon the freedom to raise its rivals' costs by a potentially significant amount (depending of course on the amount of access purchased by a customer) at any time.[8]

Furthermore, while Verizon states that it seeks only the same protections that "firms in other industries" are free to pursue, those protections are unavailable as a practical matter to TWTC. TWTC provides competitive special access service via contract. It does not have an FCC special access tariff. In order to obtain the changes sought by Verizon in Transmittal No. 226, TWTC would need to seek its customers' approval. There is simply no way that customers would agree to such changes. Yet there is every reason to believe that TWTC is as exposed, if not more exposed, to risk associated with carrier bankruptcies as Verizon. For example, TWTC's preliminary analysis indicates that it stands to lose more money (measured as a

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to allow them an opportunity to review and verify their bills; such customers do not pose a risk to BellSouth." *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304 (1986). In any event, the present circumstances are fundamentally different from those in which that prior order was adopted. Today, Verizon has the incentive to exploit the tariff provisions it has proposed to raise its rivals' costs. In 1986, the BOCs did not compete directly with the purchasers of access service.

[8] Verizon has stated that it would not have the incentive to impose security deposit requirements on rivals because Verizon must pay interest on those deposits. *See* Verizon Reply to Petitions to Reject at 15. This point is utterly unpersuasive. Verizon can largely cover the cost of interest by placing security deposit money in a secure interest-bearing investment vehicle and by reducing the magnitude of any shortfall by deducting it from its taxable income. In any event, any scheme to raise rivals' costs requires that the dominant firm incur some costs of its own. *See, e.g.*, Steven C. Salop and David T. Scheffman, *Raising Rivals' Costs*, 73 American Economic Review 267 (1983).

percentage of overall company revenue) due to unrecoverable debts WorldCom accumulated as of the time it filed for bankruptcy than either Verizon or SBC. Thus, Verizon's plea for regulatory protection from business risks would turn the logic of the 1996 Act on its head by allowing regulation to become the vehicle for preserving the handsome profits of the incumbents while further jeopardizing the stability of competitors.[9]

It is also critical to recognize that interstate access is simply one aspect of a broader set of intercarrier compensation mechanisms that ILECs exploit to their advantage by resorting to self-help. For example, some ILECs have routinely refused to pay TWTC reciprocal compensation charges for disputed amounts, even where the interconnection agreement in question requires payments of amounts in dispute. Thus, even if TWTC were to fail to pay an ILEC for interstate access on a timely basis, that failure may not cause TWTC to owe the ILEC more in overall intercarrier payments than the ILEC owes TWTC. In fact, the only way to determine whether an ILEC has experienced any overall harm as a result of service arrangements with other carriers is to examine all of the puts and takes in a particular relationship. It is TWTC's experience that,

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[9] The ILECs' trade association, USTA, has taken this approach to absurd lengths. It has proposed that the Commission provide a mechanism for recovery of non-collectible charges resulting from the WorldCom and other carrier bankruptcies. *See* Letter to Michael K. Powell, FCC, from Walter B. McCormick, Jr., USTA at 2-3 (July 22, 2002). Specifically, USTA proposes that the Commission "allow recovery through the exogenous cost mechanism in its price cap rules or through a limited waiver of those rules. In the case of rate of return carriers, the [Commission] should allow an adjustment in rates to account for this factor." *Id.* at 3. This request must obviously be rejected. Competitive carriers will be unable to pass through their business risk to end-user customers simply by raising rates because they are constrained by competition. Likewise, ILECs would be unable to take this action if they were constrained by competition rather than protected by regulation. Protecting ILECs in this manner would give them an artificial competitive advantage and would further disadvantage competitors, contrary to the goals of the Act.

when everything is considered, the ILECs almost always resort to enough self-help to make sure that they come out ahead.

Third, it is not even clear that the protections Verizon and other ILECs seek are necessary. There is no basis for concluding that losses due to carrier bankruptcies represent a significant percentage of Verizon's overall revenues.[10] In fact, the ASCENT Petition to Reject estimated that, based on ARMIS reports, Verizon's uncollectible interstate revenues increased from 0.55 percent in 2000 to only 1.53 percent in 2001. *See* ASCENT Petition to Reject at 18. Nor is there any evidence that this change has resulted in any overall risk to Verizon's viability as an ongoing enterprise. Verizon's aggregate interstate rate of return exceeded 17 percent in 2001.[11]

Finally, for all of the reasons explained herein, the changes proposed by Verizon fail to meet the "substantial cause" test. Under Commission precedent, which has now been discussed at length in the tariff proceedings addressing the various ILEC filings related to deposits and advance payments, a dominant carrier may not make a material change to tariff provisions governing long-term service arrangements absent "substantial cause."[12] As several parties have explained, the significant changes in the deposit, advance payment, and notice provisions

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[10] As explained, the amount owed by WorldCom constituted a fairly significant portion of Verizon's overall revenues. But that exception proves the rule. It is hard to believe that any other carrier that purchases anywhere near as much access service as WorldCom is in imminent danger of filing for bankruptcy.

[11] *See* WorldCom Petition to Reject at 18 (citing Verizon ARMIS 43-01, col. h, lines 1910, 1915).

[12] *See RCA American Communications, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 1197 (1981) ("*RCA American Communications*").

contained in Transmittal No. 226 would result in a material change to just the type of long-term service arrangements to which the Commission has applied the substantial cause test. *See, e.g.*, WorldCom Petition to Reject at 15-16.

There should also be little question that Verizon lacks "substantial cause" for adopting the proposed changes. As the Commission has explained, customers have "legitimate expectations" that their long-term arrangements will remain stable and unchanged. *See RCA American Communications* ¶ 13. A carrier seeking to materially alter such long-term arrangements must therefore bear the burden of demonstrating that it has experienced unexpected changes that have resulted in losses so significant that the tariff revisions proposed outweigh the customers' legitimate expectations of stability in their long-term arrangements. Indeed, that burden should be especially heavy in this case, since Verizon has proposed highly over-inclusive protective measures. Those measures burden carrier customers that pose little or no threat to Verizon just as much as they burden higher risk carrier customers. Moreover, the proposed measures would be affirmatively harmful, as explained, because they would create an arbitrary competitive advantage for Verizon. When these very significant costs are compared with the relatively small cost that uncollectible interstate revenues have imposed on Verizon, it is clear that no substantial cause exists for adopting the proposed tariff changes.

In sum, there is no basis for concluding that Transmittal No. 226 is lawful. But there is also no basis for concluding that the existing criterion for requiring deposits and the existing 30-day notice period in Verizon's tariffs are somehow inadequate. Verizon cannot be sheltered from every possible consequence of the current market turmoil, but there is no reason for concluding that it is somehow disadvantaged vis-à-vis competitors like TWTC by its existing tariff.

III. THE COMMISSION SHOULD SUPPORT *ALL CARRIERS'* EFFORTS IN THE BANKRUPTCY COURTS TO OBTAIN ADEQUATE ASSURANCE OF PAYMENT.

In its petition, Verizon argues that the Commission should support ILECs' efforts in bankruptcy courts to obtain adequate assurance of payment for post-petition services rendered. It is certainly true that carriers should not be forced to provide service to debtors without compensation. But again, this is a problem for competitors as much as for ILECs. The Commission cannot therefore limit its advocacy to the cause of ILECs as suggested by Verizon.

Section 366 of the Bankruptcy Code requires bankrupt customers to offer adequate assurance of payment to utilities if they are to continue providing utility service while the bankruptcy proceeding is pending. *See* 11 U.S.C. § 366(b). The determination of whether assurance is in fact adequate under the Bankruptcy Code is a matter for the bankruptcy court and cannot be decided by the Commission. *See Virginia Electric & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 650 (2d Cir. 1997). However, bankruptcy courts have looked to the Commission as the expert federal agency for input on the appropriate resolution of bankruptcy issues in the context of the telecommunications industry. This advisory role has given the Commission substantial influence in many bankruptcy cases.

It is vitally important that the Commission use this influence to convey to the bankruptcy courts the critical need to continue payments to carriers for post-petition services. To address this problem, the Commission (through the Department of Justice) should take an active role in carrier bankruptcy cases by explaining to the court the interconnected and interdependent nature of the telecommunications industry. The Commission should emphasize the widespread and far-reaching effects of the current financial crisis. It should stress to the courts the need for adequate assurance at a level that truly ensures that carriers will be paid for post-petition services rendered.

Moreover, the Commission can be particularly influential in explaining to courts the importance of initiating discontinuance and customer migration procedures early enough in bankruptcy proceedings to ensure that funding will be available to pay carrier bills for service provided throughout the bankruptcy proceeding.[13] To be sure, it is important that customers receive uninterrupted service from a debtor carrier in bankruptcy. But in order to ensure uninterrupted service to end users and at the same time minimize financial losses to carriers that provide inputs to the debtor carrier, the Commission should impress upon bankruptcy courts the need to develop timelines for bankruptcy proceedings that allow bankrupt carriers both to comply with discontinuance and mass migration rules that protect end-user customers and to pay their bills to carriers that continue to provide service. Allowing bankrupt carriers to run to the end of their financing before initiating these procedures has created intractable disputes between

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[13] Moreover, state discontinuance and mass migration procedures often require even more notice to customers than the federal requirements. Although this is beyond the authority of the Commission, it is important that the Commission explain to bankruptcy courts the interaction between state and federal requirements so that the courts are able to make decisions about funding that will encompass the timeframe needed to comply with federal as well as state requirements.

carriers, risked disruption to end-user customers, and has unnecessarily increased the financial exposure of carriers.[14]

IV. THE COMMISSION HAS NO AUTHORITY TO DECIDE BANKRUPTCY LAW MATTERS, BUT IT MUST ENSURE THAT THE COMMUNICATIONS ACT IS ENFORCED IN CARRIER BANKRUPTCIES.

In its petition, Verizon asks the Commission to address whether the cure requirements of bankruptcy law apply to a carrier acquiring assets in a bankruptcy proceeding. *See* Verizon Petition at 8-10. To some extent, this argument has no place in this proceeding. Whether a bankrupt carrier has assumed and assigned, or rejected, a service arrangement with Verizon is a matter of bankruptcy law to be decided in a bankruptcy case by the bankruptcy court. A Commission statement in this proceeding would have no bearing on whether a particular service arrangement has been assumed and assigned, triggering the cure requirements of Section 365 of the Bankruptcy Code. *See* 11 U.S.C. § 365.

However, the Commission should clarify that carriers continue to have independent obligations under the Communications Act in the bankruptcy context. As Verizon observes, "the Commission must harmonize its policies under the Communications Act with the Bankruptcy Code." Verizon Petition at 9 (citing *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974)). But these independent Communications Act obligations in no way conflict with the provisions of the

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14 *See, e.g.*, Emergency Petition for Declaratory Ruling of Winstar Communications, LLC, WC Docket No. 02-80, at 3-8 (filed Apr. 17, 2002) ("Winstar Petition"); Comments and Counter-Petition of Verizon, WC Docket No. 02-80, at 4-12 (filed Apr. 29, 2002).

Bankruptcy Code. Indeed, in the Winstar case, the bankruptcy judge acknowledged that additional obligations under the Communications Act may apply in a bankruptcy case:

> [A]nything this Court does cannot and should not and will not affect the federal Telecommunications Act. The parties still have whatever rights or obligations they have under that act. * * * If a contract or lease is not assumed, it is deemed rejected. The other party, the third party to any rejection or deemed rejected lease or contract can terminate its service and/or take possession of its property *subject, again, to any restrictions in the Telecommunications Act.*[15]

Among an ILEC's continuing Communications Act obligations is the duty to ensure the orderly transfer of customers with minimum service disruption to a new carrier. This obligation applies even if the new carrier has acquired assets, including customer accounts, from the bankrupt carrier for which the bankrupt carrier has exercised its right under bankruptcy law to reject the existing service arrangements. But rather than satisfying this obligation, ILECs such as Verizon have sought to impose unjust, unreasonable, and discriminatory conditions on service in order to obtain payment for debt of the bankrupt carrier that would not be required under bankruptcy law.

For example, Verizon has attempted to strong arm acquiring carriers into paying the debts of bankrupt carriers by threatening to abruptly discontinue service to customers and refusing to provide a seamless transition to the acquiring carrier's service arrangements, either through an interconnection agreement or tariff. *See* Winstar Petition at 3-8; Cavalier Comments, WC Docket No. 02-80, at 2-3 (filed Apr. 29, 2002). These practices, indeed even the threats, are

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[15] *In re Winstar Communications, Inc.*, No. 01-1430 (Bankr. D. Del.)(JCA), April 15, 2002, Hearing Transcript at 66-67 (emphasis added).

unjust, unreasonable, and discriminatory in violation of the Communications Act. *See* 47 U.S.C. §§ 201(b), 202(a), 251. Moreover, they defeat well-established Commission policy designed to ensure that customers remain connected to the network and to promote consumer choice through competition.[16]

ILECs must not be allowed to exploit their dominant position to blackmail carriers acquiring assets out of bankruptcy by threatening to disrupt service to customers, claiming that they are merely exercising rights under bankruptcy law to discontinue service while ignoring their independent obligations under the Communications Act. These anticompetitive practices harm not only the acquiring carriers and their customer relationships, but competition more broadly, and above all end-user customers whose service hangs in the balance. Accordingly, the Commission should issue a declaratory ruling unambiguously establishing that obligations independent of bankruptcy law flow from the Communications Act and indicating that the Commission is willing and able to enforce those obligations in the bankruptcy context to protect consumers and competition.

V. THE COMMISSION SHOULD NOT MANDATE THAT A SINGLE CLEC COORDINATE TRANSFERS IN MASS MIGRATIONS.

Finally, the Commission should reject Verizon's proposal that the Commission "mandate that a single CLEC assume the responsibility of coordinating end-user transfers with the ILEC in each and every mass migration." Verizon Petition at 11. Contrary to Verizon's assertion,

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[16] *See, e.g.,* 47 U.S.C. §§ 214(a), 251; 47 C.F.R. §§ 63.60 *et. seq.* (describing procedures for authorizations for service discontinuance), 64.1100 *et. seq.* (describing anti-slamming procedures for transfer of customers).

making the acquiring carrier responsible for coordinating customer transfers is not "[t]he logical default rule." *Id.* To the extent that the Commission decides to establish any default rule at all, the logical approach would be to require the ILEC to perform the role of coordinator in CLEC-to-CLEC mass migrations. The ILEC, in these circumstances, is in the best position to coordinate the customer migration in the most efficient manner possible and with minimum service disruption because it has superior access to information about the service arrangements of each CLEC and their interconnection architectures. This information advantage makes the ILEC the appropriate party to assume coordination responsibilities.

VI. CONCLUSION

The Commission should respond to the Verizon petition in the manner described herein.

Respectfully submitted,

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