

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

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

**REPLY COMMENTS OF GLOBAL CROSSING  
NORTH AMERICA, INC.**

Global Crossing North America, Inc., on its behalf and that of its FCC-licensed subsidiaries and affiliates (“Global Crossing”), submits this reply to the comments received in response to Verizon’s petition for emergency declaratory and other relief.<sup>1</sup> Even those commenters filing in support of Verizon fail to suggest any legitimate justification for the Commission to embroil itself in bankruptcy proceedings to opine on matters of bankruptcy law. Other commenters – notably the American Public Communications Council (“APCC”) and the so-called Mid-Sized Carriers Group – offer their own proposals that are so far beyond the scope of this proceeding and substantively meritless that the Commission should dismiss them out of hand.

While the ILEC commenters – like Verizon – predictably want the Commission to insulate them from the risks of an economic downturn, none satisfactorily explain why the Commission should involve itself in a substantive area of law in which the Commission possesses no expertise. This is particularly true with respect to two issues: adequate assurance and cure costs.

With respect to adequate assurance, for example, SBC observes that:

Bankruptcy courts, however, have considerable latitude in determining how to provide adequate assurance of payment,

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<sup>1</sup> *Petition for Emergency Declaratory and Other Relief*, WC Dkt. 02-202 (July 24, 2002).

including by authorizing unpaid suppliers immediately to terminate service for non-payment.<sup>2</sup>

In essence, SBC concedes that this issue is committed to the sound discretion of the Bankruptcy Court. Moreover, the issue of adequate assurance entails a highly fact-specific inquiry. Indeed, based upon the facts developed in individual bankruptcy proceedings, Bankruptcy Courts have crafted very different adequate assurance orders.<sup>3</sup> It is unclear how the Commission could add anything of value to such determinations, and the ILECs provide no guidance in this regard. For the Commission to choose sides in any particular bankruptcy proceeding or to advocate a “one-size-fits-all” position on the issue of adequate assurance would not only be fundamentally unfair, it would highly antithetical to the Commission’s role as a neutral regulator.<sup>4</sup>

When it comes to cure costs, the ILECs make the same mistake. While the ILECs argue at length about the meaning of section 365 of the Bankruptcy Code, they miss two fundamental points: (a) cure is *bankruptcy*, not a Communications Act, concept; and (b) they fail to square the ultimate relief that they seek with their common carrier obligations under the Communications Act.

The ILECs assume the answer to the question posed under section 365 of the Bankruptcy Code; namely, whether the service arrangements at issue are executory contracts. SBC asserts:

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<sup>2</sup> SBC at 10.

On its face, this statement is overbroad. If SBC is referring to pre-petition debts, not only is the statement incorrect, acting upon it would violate the automatic stay provisions of the Bankruptcy Code. 11 U.S.C. § 362.

<sup>3</sup> CTC at Exhibit I.

<sup>4</sup> Moreover, as WorldCom aptly observes (at 1), “Verizon’s attorneys are perfectly capable of advocating Verizon’s interests in bankruptcy courts without help from the Commission.”

ILEC creditors [are entitled] to a cure under section 365 of the Bankruptcy Code (or their tariffs) from amounts due from any carrier that seeks to assume or otherwise take the benefits of a bankrupt carrier's *executory service arrangements*.<sup>5</sup>

For its part, BellSouth wants the Commission to “declare that telecommunications carriers may fully exercise their executory contract rights under Section 365.”<sup>6</sup>

Whatever the merits of these claims – and they are patently wrong<sup>7</sup> -- they, yet again, remain bankruptcy law issues. None of the ILECs explain what the Commission could add to such determinations.

With the notable exception of Verizon, the ILECs are somewhat muted on the precise relief that they want the Commission to afford to them. For its part, Verizon unabashedly wants the Commission to permit it to engage in “disconnect-and-reconnect” procedures whenever it is unhappy with a Bankruptcy Court's determination on the cure issue. Presumably, the other ILECs would not object to such a result. Yet, *not one* of the ILECs even attempts to explain how this practice is consistent with controlling *Communications Act* precedent.<sup>8</sup>

In short, even those commenters that support Verizon cannot provide any remotely justifiable reason for the Commission to embroil itself in *bankruptcy proceedings* to lecture *Bankruptcy Courts* on the meaning of the *Bankruptcy Code*.

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<sup>5</sup> SBC at 11 (emphasis added).

<sup>6</sup> BellSouth at 6.

<sup>7</sup> See CTC at 11-13.

Indeed, the claims of the ILECs are tautological. By posing the question whether carriers must assume and cure “service arrangements” in a bankruptcy proceeding (BellSouth at 6), the ILECs gloss over the fact that the new carrier will virtually always need to procure services from the ILEC as the provider of monopoly bottleneck facilities. See WorldCom at 11-12. If the ILECs were correct, the affected ILEC would always receive “cure” payments. This interpretation would render section 365 of the Bankruptcy Code a nullity.

<sup>8</sup> See Global Crossing at 9-11; CTC at 12-13.

APCC and the Mid-Sized Group wander far afield in advancing new proposals for the Commission’s consideration. These proposals are so far beyond the scope of Verizon’s petition that the Commission should dismiss them out-of-hand. Both are substantively meritless, in any event.

APCC wants the Commission to guarantee its members “adequate assurance.” The short answer is that payphone service providers are not entitled to adequate assurance either under section 276 of the Communications Act or section 366 of the Bankruptcy Court. APCC’s members are unsecured creditors with the same rights as any other unsecured creditors, and are simply not entitled to any greater priority.<sup>9</sup>

The Mid-Sized Group wants the Commission to permit its members to implement – with no regulatory oversight – its misleadingly-named “seamless transition customer protection plan.”<sup>10</sup> A more apt name would be the “license to steal customers plan.” Under this plan, the ILECs would be given permission to migrate (*i.e.*, steal) customers by moving them from the customers’ preferred interexchange carriers to the “ILEC (or the ILEC’s long distance affiliate).”<sup>11</sup> Such a result would be so blatantly anticompetitive and contrary to the core non-discrimination provisions of the Communications Act that, were an ILEC unilaterally to implement such a plan, the Commission would undoubtedly greet such actions with heavy sanctions.

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<sup>9</sup> APCC repeats its familiar refrain that “PSPs are already under serious threat as increased wireless calling has dramatically changed the economics and sharply reduced the profitability of payphones.” APCC at 2. Of course, when the price of a payphone call significantly exceeds the price of a wireless call, customers will substitute the wireless alternative. APCC’s consistent solution is to raise the effective price of a payphone call by increasing the per-call compensation rate or, in this case, effectively make per-call compensation more expensive for interexchange carriers. Not only does this “solution” ignore basic economic theory, it is bad law and bad public policy.

<sup>10</sup> Mid-Sized Group, *passim*.

<sup>11</sup> *E.g., id.* at 15, 17.

For the foregoing reasons, the Commission should dismiss Verizon's petition and terminate this proceeding promptly.

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### **Certificate of Service**

I hereby certify that, on this 22<sup>nd</sup> day of August, 2002, copies of the foregoing Reply Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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