Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking	)	
to Establish Standards of Conduct	)	
for Telecommunications Providers	)	RM-10613
and	)	
Request to Initiate Section 403 Proceeding	)	
Into Activities of WorldCom, Inc. and	)	
Other Commission Licensees	)	

WorldCom, Inc.'s Response to Petition for Rulemaking and Request for Initiation of § 403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees

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Executive Summary

The petition for rulemaking filed by the Office of Communication of the United Church of Christ ("UCC" or "Petitioner") asks the Commission to impose a vast array of new accounting regulations on common carriers. The UCC asks the Commission to open an investigation of WorldCom's accounting problems and to use this as a basis for creating new character requirements for licensees. But petitioner cannot establish why, in the face of well-established oversight from the Securities and Exchange Commission ("SEC"), the Federal Communications Commission ("FCC" or "the Commission") should undertake the burden of becoming a financial police force.

Petitioner's request is unrelated to the central responsibilities of the FCC. Although the UCC's petition is replete with commentary on various aspects of WorldCom's financial troubles, UCC does not and cannot show how WorldCom failed to fulfill its responsibilities as a telecommunications carrier, both before and after its re-organization. Nor can it show how WorldCom's failures lead to the need for new regulations of carriers as carriers. The FCC already has the authority to punish carriers for failure to fulfill their responsibilities under the Act and under FCC regulations. It also has in place those accounting rules it believes are needed to fulfill its core regulatory functions.

At bottom then, petitioner is requesting that the Commission establish rules designed to prevent accounting fraud more generally. But it cannot explain why the Commission should duplicate the efforts of Congress and the SEC in setting such rules, or the SEC and Department of Justice ("DOJ") in enforcing those rules. The UCC presents no justification for the FCC to regulate telecommunications differently – and possibly inconsistently – from any other economic sector. And it is the SEC that has the expertise necessary to determine the appropriate level of accounting regulation across industries.

The petition must be rejected for another reason as well. It asks the Commission to apply any new accounting rules it adopts as part of its licensing evaluation of common carriers – as part of an evaluation of the "character" of those carriers. But the UCC fails to cite a single instance in which the Commission has denied a license to a common carrier based on a character assessment related to non-FCC conduct. Nor should the Commission begin doing so. While the Commission may need to apply criteria such as character in allocating scarce broadcast licenses, there is no need to do so for common carriers. Certainly there is no need to apply more rigorous criteria to common carriers than currently apply even to broadcasters.

Common carriers should be allowed to compete. If they break the law, they should be subject to enforcement action by the appropriate regulatory body, as WorldCom has been. But denying carriers licenses in advance based on the Commission's assessment of their character would vastly reduce the competition that is the best hope for eliminating the current financial woes in the telecommunications industry. Indeed, the Commission has repeatedly concluded as much over the past twenty-five years, determining that initiation and expansion of service by common carriers generally requires no scrutiny at all. The Commission has emphasized that the market, rather than regulators, will best discipline competitors. That remains the case today.

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I. Introduction

The significant regulatory intervention proposed by the UCC must be rejected as unnecessary, potentially harmful, and outside the core scope of the FCC's expertise. Petitioner proposes that the Commission investigate accounting problems at WorldCom and other companies and, based on the results of that investigation, apply accounting rules to assess the character of license applicants. But the Commission should not be using licensing decisions as a means of implementing major new regulations. And there is no need to adopt new regulations to begin with. The Commission already has the tools to ensure that carriers deal truthfully with the Commission and already has the accounting rules needed to fulfill the Commission's statutory mandates. As for the more broad-based reforms suggested by petitioner, such as a five-year vesting period for stock options, those proposals have nothing to do with telecommunications specifically and should be considered by Congress and the SEC.

II. Background

Petitioner attempts to convince the Commission that WorldCom's situation is the paradigmatic case for imposing rigorous character requirements on common carriers. But the history of WorldCom's accounting issues proves no such thing.

WorldCom is not alleged to have misrepresented facts to the FCC. WorldCom is alleged to have inaccurately recorded information on its books (subjecting operating expenses to depreciation).[1] And WorldCom itself discovered and reported this information. WorldCom then fired those employees who were responsible, replaced its chief executive officer, chief financial officer, and all of its Board members, restructured its accounting department, established a corporate ethics office, and established a zero-tolerance policy "for any actions that do not meet the highest standards of integrity."[2] To the extent governmental action is nonetheless needed, such action is already proceeding: the SEC continues to investigate WorldCom, as does the Department of Justice; there have been congressional hearings, and there have been criminal probes of individual WorldCom employees. The accounting scandals at WorldCom, Enron, and other companies have also led to regulatory reform. Congress adopted the Sarbanes-Oxley legislation,[3] which increased the SEC's authority to regulate corporate finances, established an accounting oversight board, and created several new crimes for securities violations.

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[1] Contrary to petitioner's allegations, the inaccuracies in WorldCom's books had no direct effect on the revenue reported to the Commission's Universal Service Fund, Local Number Portability Administration, North American Numbering Plan Administration, and Telecommunications Relay Service Program. Notably, to the extent that UCC also claims that Qwest and Global Crossing have improperly inflated revenues, at most that would mean that those carriers paid more, not less, universal service funds.

[2] Press Release, *Michael D. Cappellas Named Chairman of WorldCom, Inc.* (Nov. 15, 2002) *available at* http://www.worldcom.com/infodesk/news/news2.xml?newsid=6350& mode=long&lang=en&width=530&root=/infodesk/&langlinks=on&langpop=on.

[3] *See* Pub. L. No. 107-204, 116 Stat. 745.

Petitioner nevertheless proposes that the FCC investigate WorldCom, adopt rules to prevent accounting fraud, and apply those rules as part of its licensing determinations. But it does not explain how the rules or investigation it proposes would add anything to the accounting rules and investigatory authority that already exist through the SEC and elsewhere. Nor does it explain why the FCC is the appropriate body to adopt such rules, when Congress and the SEC have already considered and continue to consider which rules make sense from a policy perspective.

The UCC's repeated contention that accounting fraud harms the telecommunications industry is overstated and, more importantly, irrelevant. To begin with, the declining value of telecommunications companies has largely resulted from market forces having nothing to do with accounting issues. But even if that were not so, the fact that accounting fraud might impact the value of telecommunications companies does not make it different from any other accounting fraud and does not explain why it should be regulated by the FCC. Moreover, the FCC can best promote consumer welfare in the telecommunications industry by allowing competitors to compete, as they do in other industries, not by limiting competition in advance by denying telecommunications licenses based on nebulous standards of character. As in any other industry, competitors that engage in fraudulent activity should be punished based on the standards set forth by Congress and the SEC after enforcement actions by the SEC and DOJ. But for the FCC to deny carriers licenses based on its own conclusion about their character would only harm consumers. Certainly, revoking WorldCom's licenses would cause vast harm to the millions of consumers who have chosen to continue their service with WorldCom and would pose a huge blow to the telecommunications infrastructure that UCC claims it wants to protect.

Indeed, the Commission already has permitted the transfer of WorldCom's licenses to its Debtor in Possession over petitioner's objection.[4] Accordingly, only the forward-looking portion of UCC's filing remains before the Commission. That portion should be denied.

III. Discussion

UCC asks the Commission (1) to require character assessments for all common carriers based on generic guidelines concerning ethical behavior and specific guidelines regarding accounting, and (2) to initiate a § 403 proceeding to investigate matters that are already being investigated by other agencies and auditors. Both of these requests are unwarranted.

A. The Commission should not formally import Title III's standards to Title II

Petitioner asks this Commission to vastly increase its regulatory control over common carriers through the guise of the licensing process. It asks the Commission to develop and apply to all common carriers character standards that it does not even apply to broadcasters. But the Commission generally allows common carriers to expand service without requiring license applications at all. And even where the Commission does scrutinize licensing applications, it focuses on concerns about the competitive effects of granting a license, not concerns about character. This is appropriate under the statutory standard and best serves the Commission's longstanding goals of minimizing the harmful side effects of regulation and fostering competition.

During the past twenty-five years, the Commission has gradually decreased scrutiny of licensing applications of common carriers. In 1980, it granted non-dominant carriers blanket authority to add new lines or services without submitting any applications to the Commission,

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[4] Public Notice, *Wireless Telecommunications Bureau Grants Applications for Assignment of Licenses to WorldCom, Inc. and its Subsidiaries as Debtors in Possession*, DA 02-3350, 2002 WL 31719796 (FCC rel. Dec. 5, 2002). For ease of reference in this response, WorldCom-DIP is hereafter referred to as WorldCom.

explaining that the purpose of the licensing regime is "best fulfilled by reduced entry and exit barriers, combined with continued monitoring of significant facility investment by those carriers capable of imposing ratepayers with the burden of the costs of those investments."[5]

Subsequently, the Commission extended this blanket licensing authority to all carriers providing domestic interstate service, including dominant carriers.[6] The Commission again emphasized that:

> eliminating the requirement for all carriers to file applications for section 214 authority will have . . . [a] de-regulatory, pro-competitive effect. . . . Rather than maintaining a regulatory regime that may stifle new and innovative services . . . , we believe it is more consistent with the goals of the 1996 Act to remove this hurdle. Instead, we will rely on the marketplace to ensure reasonable behavior by carriers . . . .[7]

In granting blanket licensing authority for common carriers, the Commission exempted transfers of corporate control, which it concluded often raise competitive concerns. For some transfer applications, however, such as applications by non-facilities based carriers or non-dominant carriers, it presumptively applied streamlined procedures, because it concluded that such applications generally would not significantly increase market concentration or diminish competition.[8] Thus, the Commission limited rigorous review of license applications to those that potentially would have anti-competitive effects.

Even when the FCC does require and review license applications by common carriers, it focuses on the competitive effects the licenses would have, not on the applicant's character. Section 214 of the Telecommunications Act directs the Commission to evaluate license

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[5] *In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 F.C.C.2d 1, ¶¶ 116, 118 (1980).

[6] *In re Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, 14 F.C.C.R. 11364, ¶ 12 (1999) ("*1999 Streamlining Order*"); *see* also 47 C.F.R. § 63.01(a).

[7] *1999 Streamlining Order*, ¶ 13.

[8] *In re Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 F.C.C.R. 5517, ¶¶ 28-33 (2002).

applications by common carriers based on "public convenience and necessity."[9] Applying this standard, the FCC evaluates license applications based primarily on the "likely competitive effects" of the proposed licensing.[10]

In contrast, as petitioner indicates, the Commission does focus on the character qualifications of applicants as part of its review of broadcast licenses. It does so because Title III of the Telecommunications Act directs it to consider character in evaluating broadcast licensees, because the scarcity of the broadcast spectrum forces it to adopt some standards to allocate that spectrum, and because character is arguably relevant to the broadcaster's role as purveyors of content.[11] Even so, with respect to non-FCC misconduct, the FCC generally limits its consideration of character to three classes of misconduct: (1) adjudicated fraudulent statements to another governmental unit; (2) criminal convictions involving false statements or dishonesty; or (3) adjudicated violations of anticompetitive or antitrust laws in connection with station-related misconduct. All involve findings of illegal action by another body.[12] In addition, in evaluating character of broadcasters, the Commission will consider an applicant's conviction for misconduct constituting a felony, along with mitigating circumstances. But the Commission will not consider unadjudicated, non-FCC misconduct unless the conduct meets the "shock the

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[9] 47 U.S.C. § 214(a).

[10] *In re Lockheed Martin Corporation, Comsat Corporation, and Comsat Digital Teleport, Inc., Assignors And Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees, Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, IB Docket No. 02-87, 2002 WL 31409399, ¶ 12 (FCC rel. Oct. 25, 2002).

[11] *See* 47 U.S.C. § 308(b).

[12] *In re Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, ¶¶ 35-44 (1986) ("*Policy Broadcast Licensing Order*").

conscience" standard.[13] The FCC has rarely denied a license even in the broadcasting context on the basis of an evaluation of character.

With respect to common carriers, the FCC has *never* said that even the character standards applied in the broadcast arena are applicable. Although the UCC cites *MCI Telecommunications Corp.*,[14] for the proposition that the Commission has held that the Character Policy Qualification Statement "applies equally to non-broadcast licensees,"[15] there, the Commission actually rejected that very proposition. The Commission concluded that "[a]lthough *not* directly applicable to common carriers, the character qualifications standards adopted in the broadcast context *can provide guidance* in the common carrier area as well."[16] Indeed the Commission long ago concluded that common carrier issues "are adjudicated on a case-by-case basis without the guidance of a specific policy statement."[17] And the Commission further concluded that "common carriers are distinguished from broadcasters for purposes of character qualifications because no content regulation is involved."[18] And even where the Commission has used the broadcast standards to provide guidance outside of the broadcast arena,

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13 *In re Policy Regarding Character Qualifications in Broadcast Licensing*, 5 F.C.C.R. 3252, ¶ 7 n.5 (1990).

14 *In re MCI Telecommunications Corp. Petition for Revocation of Operating Authority*, 3 F.C.C.R. 509 (1988) ("*MCI Petition Order*").

15 *See* Office of Communication of the United Church of Christ's Petition for Rulemaking and Request for Initiation of § 403 Proceeding into Character of WorldCom, Inc. and Other Commission Licensees, RM 10613 at 16 (FCC filed Oct. 15, 2002) ("Petition").

16 *MCI Petition Order* ¶ 31 n.14 (emphasis added).

17 *In re Policy Regarding Character Qualifications in Broadcast Licensing*, 1 F.C.C.R. 421, ¶ 18 (1986) ("*Broadcast Licensing Order*").

18 *Broadcast Licensing Order* ¶ 18. Petitioner attempts to argue that as technology advances, common carriers will have the opportunity to engage in content control. But common carriers are required by §§ 201 and 202 to provide service on a non-discriminatory basis. They therefore have no control over the content that is transmitted over their wires. And, in any event, the Commission can far better protect the First Amendment values with which the UCC is purportedly concerned, by refraining from evaluating prospective licensees based on its own evaluation of their character.

it has explained that this "is not necessarily to say that the standard for judging the materiality of misconduct allegations . . . should be as strict as that specified . . . with regard to broadcast applicants."[19]

Contrary to petitioner's assertion, *Southern New England Telecommunications Corp.* ("*SNET*")[20] does not support the proposition that the Commission has "rigorously applied" the broadcast standards to § 214 authorizations.[21] In *SNET*, as part of the Commission's evaluation of the propriety of approving a merger between SNET and SBC, not simply evaluation of a license, the Commission concluded that SBC had the requisite character, even though it had been found liable for violating antitrust laws. Importantly, the Commission concluded that the record reflected that because SBC "has operated and is currently operating . . . its *communications businesses* in a sufficiently responsible manner," SBC possessed the requisite qualifications to hold the licenses and authorizations at issue.[22] Similarly, in *GTE*,[23] although the Commission considered the applicant's character as part of its public interest inquiry, it found that allegations of past anticompetitive conduct did not "provide[] a basis for finding that Applicants lack the

[19] *In re Application of Continental Satellite Corporation for Assignment of Direct Broadcast Satellite Orbital Positions and Channels and For Consent to Transfer of Control to Loral Aerospace Holdings, Inc.,* 10 F.C.C.R. 10473, ¶ 34 n.45 (1995) (considering the proposed transfer of a direct broadcast satellite system).

[20] *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, 13 F.C.C.R. 21292 (1998) ("*SNET Transfer Application*").

[21] Petition at 17.

[22] *SNET Transfer Application* ¶ 27 (emphasis added).

[23] *In re Application of GTE Corp., Transferor and Bell Atlantic Corp., Transferee for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* 15 F.C.C.R. 14032, ¶¶ 429-433 (2000) ("*GTE Order*").

fitness to acquire licenses and authorizations."[24] Indeed, although petitioner cites myriad cases for the proposition that character may be considered for licensees other than broadcasters, *not a single cited case* actually resulted in the Commission revoking or denying a license based on the applicant's character qualifications. Instead, the Commission uniformly concluded that the applicant possessed the requisite character, or, in one case, the Commission levied a fine for FCC-related misconduct.[25]

The Commission's repeated approval of license applications for common carriers in the face of character challenges is fully appropriate. This is so for both statutory reasons and policy reasons. With respect to the statute, Title II contains no analogue to Congress's directive in Title III, that it may consider "citizenship, *character*, financial, technical, and other qualifications"[26] of a broadcast license applicant. And even with respect to Title III, the Commission has lamented that "one source of difficulty" in meting out the definition of character "has been the lack of Congressional guidance as to the definition of 'character' to be utilized by the Commission."[27] That difficulty would only be magnified if the Commission were to deny licenses on the basis of character where Congress has not directed that it do so.

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[24] *GTE Order* ¶ 432.

[25] *See MCI Petition Order* ¶ 49 (actions did not "justify institution of invocation of revocation proceedings," but Commission imposed monetary sanctions); *SNET Transfer Order* ¶ 27 (SBC has the "requisite qualifications"); *GTE Order* ¶ 432 (despite allegations of bad character, none of them "provides a basis for finding that Applicants lack the fitness to acquire licenses and authorizations"); *In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., Application for Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership*, 10 F.C.C.R. 13368, ¶¶ 33-37 (1995) (applying character qualifications for non-FCC misconduct and concluding that the allegations did not rise to the level of prohibited conduct); *In re Applications of Craig O. McCaw, Transferor and AT&T, Transferee for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, 9 F.C.C.R. 5836, ¶ 8 (1994) (finding that AT&T met the character threshold for a Title III radio license).

[26] 47 U.S.C. § 308(b) (emphasis added).

[27] *Broadcast Licensing Order* ¶ 4.

As for policy, common carriers are different from broadcasters because: (1) the lines controlled by common carriers are not a scarce resource, and (2) common carriers are not responsible for content. While the Commission may need to make judgment calls in granting licenses in the scarce broadcast spectrum and may find character relevant because broadcasters transmit content, these concerns are not relevant for common carriers. In *United States Satellite Broadcasting Co. v. FCC*,[28] for example, the D.C. Circuit differentiated between broadcasters and common carriers on exactly these grounds and declined to require the Commission to consider the character of common carrier license applicants. The court has repeatedly distinguished broadcasters and common carriers, because the former manage a "scarce resource,"[29] and therefore are "public trustees,"[30] who are "periodically accountable for their stewardship [and must] use their discretion in insuring the public's access to conflicting ideas."[31] But there is no similar scarcity for common carriers.

And to begin injecting substantial character standards into license decisions for common carrier would be a significant mistake. Petitioner attempts to justify such regulation by analogizing the current importance of telecommunications to the historical importance of railroads.[32] But that analogy proves exactly the opposite. Railroads may not have been able to play the crucial role in national development that they did if railroad owners had been forced to pass a character test before they were permitted to build their infrastructure. Indeed, as a general

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[28] 740 F.2d 1177 (D.C. Cir. 1984)

[29] *Sea Island Broad. Corp. of S.C. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980).

[30] *Id.* at 1185.

[31] *Kennedy for President Comm. v. FCC*, 636 F.2d 417, 432 (D.C. Cir. 1980) (citing *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969)).

[32] Petition at 11.

matter, full participation in the market enhances consumer welfare and competition, and imposing character qualifications on market competitors is inconsistent with this policy goal.[33]

The Commission has repeatedly said as much in deciding not to impose *any* licensing requirements on most alteration of service by common carriers and in focusing on competitive effects of the applications it does scrutinize. There is no justification for the Commission to change course. Eliminating competitors such as WorldCom from the market on the basis of character qualifications would radically diminish consumer welfare by harming the millions of customers dependent on WorldCom.

B. <u>There is no need for new guidelines strengthening character qualifications</u>

One of the most striking aspects of UCC's petition is that, despite its acknowledgment that the character standards for broadcasters were promulgated pursuant to Title III's directives, it seeks to require *even more stringent* requirements for common carriers, where there is no analogous statutory authority for assessing character, and to apply these requirements to *all* licensing applications by common carriers, despite the Commission's clear judgment that few such applications should be subject to rigorous scrutiny. The guidelines suggested by UCC fall entirely outside the scope of actionable non-FCC directed misconduct has carefully enunciated in the broadcast context. And they are entirely unnecessary.

UCC's proposal falls into two categories. UCC first proposes crafting rules to ensure that carriers provide truthful information to the Commission (although none of the myriad rules it suggests appear designed to foster this specific goal). WorldCom fully agrees that

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[33] *See In re Application of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Commissions Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commissions Rules*, 14 F.C.C.R. 14712, ¶ 64 (1999) (Commission has "statutory obligation to promote competition"), *rev'd on other grounds*, *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

misrepresentations to the Commission impair the Commission's ability to regulate by depriving it of accurate information. But UCC makes no showing that the Commission's current practices are somehow insufficient to achieve thi s goal. In fact, the Commission has full authority under § 205 to investigate and penalize carriers if "any charge, classification, regulation, or practice of any carrier" violates any of the provisions of the Act.[34] And §§ 501 to 503 set forth the procedures for instituting monetary penalties.

Petitioner cites *SBC Communications, Inc.*[35] for the proposition that the Commission requires truthfulness in licensees' dealings with the Commission, but seems to contend that the Commission cannot police those requ irements. UCC fails to note, however, that in concluding that SBC was untruthful in representations to the Commission concerning its pending § 271 application, the FCC fined the company several million dollars for its various transgressions.[36] And in discussing more recent allegations of improprieties by Qwest, the Commission noted that any past statutory or regulatory violations would be "addressed expeditiously through enforcement processes at the Commission."[37]

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[34] Of course, the Commission also has at its disposal other authority to address violations of the Act by carriers. For example, § 202 prohibits discriminat ion against different classes of consumers. And under §§ 203(c) and (e), the Commission may penalize carriers for overcharging. *See also In re Applications of Roy M. Speer (Transferor) and Silver Management Company (Transferee) for Transfer of Control SK IL Broadcasting Partnership, Licensee*, 11 F.C.C.R. 18393, ¶ 92 (1996) ("A forfeiture penalty may be assessed against any person found to have willfully or repeatedly failed to comply with any of the provisions of the Communications Act or of the Commission's rules.").

[35] *See In re SBC Communications, Inc. Apparent Liability for Forfeiture*, 16 F.C.C.R. 19091 (2001) ("*SBC Order*").

[36] *SBC Order* ¶ 3.

[37] *In re Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterL ATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming,* WC Docket No. 02 -314, 2002 WL 31863801, ¶ 4 (FCC rel. Dec. 23, 2002).

Yet even after SBC made misrepresentations directly to the Commission on matters central to telecommunications policy, the Commission did not revoke its license. And after Qwest's financial irregularities were revealed, the Commission actually authorized Qwest to provide additional services, concluding under § 271 that it was in the public interest to authorize Qwest to provide in-region, interLATA services in the states for which it had applied to do so. The Commission's decisions reflect its conclusion that it is far better to ensure candor by penalizing carriers that lie to it than by preventing their ability to serve consumers altogether.

In addition to suggesting that additional rules are necessary to ensure that carriers are candid with the Commission, petitioner suggests that additional rules are needed to prevent accounting irregularities in the telecommunications industry. To accomplish this objective, UCC requests that the Commission promulgate "ethical behavior guidelines specially tailored to the telecommunication industry."[38] But UCC's proposal has nothing to do with the telecommunications industry specifically. Indeed, it is striking that UCC's proposal ignores the accounting rules the Commission already established as useful to fulfill the Commission's core telecommunications responsibilities. Instead, UCC proposes rules concerning the independence of auditors and the treatment of stock options in financial reporting that are potentially applicable to all industries, and for which no telecommunications expertise is required.

The Commission has long maintained accounting rules that apply to dominant carriers. These rules were originally designed to ensure that the Commission had the information it needed to engage in rate regulation, not to protect investors.[39] Because the Commission did not regulate the rates of non-dominant carriers, and because the market would best protect

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[38] Petition at 38.

[39] *In re 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements of Incumbent Local Exchange Carriers: Phase 2*, 16 F.C.C.R. 19911 (2001) ("*Biennial Review*").

consumers where carriers lacked market power, the Commission did not apply accounting rules to non-dominant carriers. Recently, the Commission has relaxed even the accounting rules that apply to dominant carriers. As the Commission's focus has shifted to local competition, universal service, and deployment of advanced services, it has gradually eliminated those accounting rules that are no longer necessary to serve the Commission's primary functions. The Commission has explained that "any unnecessary regulation places a corresponding, unnecessary burden on the carriers that are subject to it."[40] And it has read § 11 of the 1996 Act as requiring a review of regulations with an "eye toward achieving Congress's goal, in the 1996 Act, of a truly 'pro-competitive, deregulatory' national policy framework for the telecommunications industry."[41] Thus, the Commission has left in place only those accounting regulations that it has concluded are important to serve its statutory mandate.

But petitioner proposes enactment of new accounting regulations far beyond anything the Commission ever believed necessary to fulfill the policy mandates of the Telecommunications Act. These proposals are inconsistent with the deregulatory thrust of the 1996 Act and the Commission's policy. Moreover, they are proposals of exactly the sort that Congress has considered in the past year in determining what accounting changes to enact for all industries, some of which it decided to enact through the Sarbanes-Oxley legislation, some of which it decided not to enact, and some of which it delegated to the expert decision making of the SEC and accounting oversight board. Petitioner provides no justification for the FCC to reevaluate the policy considerations that Congress already has considered or directed the SEC and accounting oversight board to consider, and that fall within the core of their expertise.

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[40] *Id.* ¶ 2.

[41] *Id*. (footnote omitted)

UCC concedes that the SEC is responsible for policing the principles set out in UCC's proposed guidelines, but argues that "the fact that one agency has regulated an area . . . does not bar another from doing likewise."[42] For support, it relies on the memorandum of understanding that the Commission and the Equal Employment Opportunity Commission ("EEOC") entered in 1978.[43] That collaboration is distinguishable because it formalized past "intermittent and informal" coordination that was "directed toward a common goal." [44] Before the collaboration, "duplicative efforts" abounded because both agencies had a legal responsibility to eliminate discriminatory practices by broadcasters. Despite what UCC says, therefore, the EEOC/FCC collaboration was an example of two agencies that chose to work in tandem to eliminate duplicative efforts. UCC, on the other hand, seeks to infuse duplicative responsibilities onto the agencies by requiring both the Commission and the SEC to monitor securities and financial responsibilities without explaining what the FCC will add to the job already performed by the SEC. This is so even though, as the UCC acknowledges,[45] the FCC has neither a statutory mandate, nor the expertise, to promulgate general rules concerning financial integrity. It is also so even though it is inappropriate to attempt to enforce accounting standards as part of a process of "character determinations" in licensing decisions.

C. <u>A § 403 investigation would unnecessarily burden the Commission's resources</u>

In addition to asking the Commission to undertake a complicated and unnecessary rulemaking, petitioner invites the Commission to initiate an investigation pursuant to 47 U.S.C. § 403. Although UCC repeatedly stresses that the Commission should investigate WorldCom's

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42 Petition at 42.

43 *See In re Memorandum of Understanding Between the FCC and the EEOC*, 70 F.C.C.2d 2320 (1978).

44 *Id.* ¶ 2.

45 Petition at 42-43.

actions, it fails to suggest what such an investigation would uncover that is not already being investigated by the SEC, by DOJ, and by WorldCom's own internal investigators.[46]

As discussed above, the Commission's locus of power relates to the services that carriers provide, not to their corporate practices. Yet stripped of its rhetoric, UCC makes no substantial claims that any misconduct perpetrated by past WorldCom employees was related to WorldCom's telecommunications obligations, as opposed to its financial responsibilities. The UCC attempts to obscure this failure by engaging in histrionics. For example, the UCC contends that "WorldCom's campaign of fraud has jeopardized the nation's telecommunications infrastructure, imperiled homeland security, and caused lasting damage to the . . . telecom sector of the economy"; that its misconduct has harmed the poor and racial minorities and that it will affect our "very way of life." [47] To be sure, misdeeds of several of WorldCom's past officers have been harmful to the company, but the UCC's portraits are simply untrue. Despite WorldCom's financial troubles, its services have not been disrupted. [48] Moreover, any impact of accounting practices on WorldCom's financial well-being would not be sufficient to bring those practices within the purview of the FCC's expertise. [49]

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[46] Indeed, WorldCom uncovered the financial irregularities itself, after it hired auditors to audit its external auditors. Upon discovering the problems, WorldCom alerted the SEC. *See Hearings Before the House Comm. on Fin. Servs.*, 107th Cong. (July 8, 2002) (*Testimony of John W. Sidgmore, President and Chief Executive Officer, WorldCom, Inc*.) (Attachment E to UCC's Informal Objection to Assignment Applications).

[47] Petition at 5, 7, 27.

[48] *See, e.g.*, Statement by FCC Chairman Michael K. Powell on WorldCom Bankruptcy Filing, 2002 WL 1592853 (FCC July 21, 2002) ("I want to assure the public that we do not believe this bankruptcy filing will lead to an immediate disruption of service to consumers or threaten the operation of WorldCom's Internet backbone facilities.").

[49] The only conceivable FCC-related action was WorldCom's filing of its SEC Form 10-K with the Commission, pursuant to 47 C.F.R. § 1.785(b). The 10-K's inclusion of some irregularities is not a basis for re-assessing WorldCom's character and revoking its licenses.

Indeed, a review of the Commission's recent decisions initiating § 403 investigations shows that the Commission routinely limits its § 403 investigations to situations regarding telecommunications matters.[50] The Commission should not alter its practice here by initiating a § 403 investigation into purely financial irregularities.

In any event, there is no need to undertake a § 403 investigation now. The SEC and DOJ are both already conducting investigations, and the UCC provides no explanation of what it expects the FCC to uncover that the SEC and DOJ cannot. Moreover, WorldCom itself uncovered the malfeasance of its former officers and has publicly engaged in a reorganization to ensure that all of the past wrongdoing has been uncovered and that financial irregularities will not recur.

The Commission has repeatedly recognized that a corporate reorganization may absolve carriers of past misconduct. For example, in *A.S.D. Answer Service, Inc.*,[51] the Commission applied the broadcast character standards to a domestic public radio service application, and concluded that the company possessed the requisite character to retain its license. The Commission's character analysis was premised on the fact that after the corporate wrongdoing was uncovered, the management had been changed and the Chairman and other wrongdoers had

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[50] *See, e.g.*, *In re Madison River Telephone Co., LLC, Tariff FCC No. 1, Transmittal No. 9*, WC Docket No. 02-371, 2002 WL 31662780 (FCC rel. Nov. 25, 2002); *In re Verizon Telephone Companies Tariff FCC Nos. 1 and 11, Transmittal No. 232*, WC Docket No. 02-362, 2002 WL 31549424 (FCC rel. Nov. 18, 2002) (designating for § 403 investigation, *inter alia*, whether certain of Verizon's rates were unreasonably high and if certain tariff revisions were unlawful); *In re National Exchange Carrier Assoc., Inc.*, Tariff FCC No. 5, Transmittal No. 952, WC Docket No. 02-356, 2002 WL 31500570 (FCC rel. Nov. 8, 2002) (designating for § 403 investigation certain tariff revisions); *In re BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657*, 17 F.C.C.R. 17256 (2002) (same).

[51] *In re Applications of A.S.D. Answer Service, Inc., B.W. Communications, Inc., P.A.L. Communications Systems Inc., Vineyard Communications, Inc. for Authority to Construct New One-Way Paging Stations in the Domestic Public Land Mobile Radio Service on 34 and 43 MHz Frequencies at Various Locations Throughout the United States*, 1 F.C.C.R. 753 (1986).

been eliminated.[52] Likewise, the Commission concluded in *Twiggs County Cellular Partnership*,[53] that although a common carrier's misconduct would have "cause[d] . . . concern" in the broadcast context, questions of character were irrelevant because the wrongdoer, who had been convicted of defrauding the United States, no longer controlled the carrier.[54] The Commission reasoned that under the reorganized partnership, there was no reason to believe that the new officials would not be candid with the Commission.

The Commission's rationale in *A.S.D. Answer Service* and *Twiggs County* is applicable here, where, upon discovering the financial discrepancies, WorldCom's senior management and board were removed, and WorldCom was entirely reorganized. Thus, there is no basis upon which to believe that the newly reconstituted WorldCom would be untruthful with the Commission. Indeed, given the rockiness of the past year, WorldCom has every incentive to avoid any ethical missteps in the future. And depriving WorldCom of its licenses would harm the very consumers petitioner claims it wants to protect, millions of whom have chosen to stay with WorldCom despite the revelations of the past year.

In any event, in proposing that the Commission undertake a § 403 investigation, UCC disavows that it "seek[s] any punitive or adjudicative action against WorldCom."[55] Instead, petitioner asserts that its petition is forward looking and that the § 403 inquiry will merely provide information for the rulemaking it proposes. But as noted above, the rules petitioner proposes are entirely unnecessary and would indeed prove counterproductive. The § 403 inquiry is therefore unnecessary as well.

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[52] *Id.* ¶ 12.

[53] *In re Twiggs County Cellular Partnership, Petition for Waiver of Section 22.944(a) of the Commission's Rules*, 1999 WL 401949 (FCC rel. June 18, 1999).

[54] *Id.* ¶ 10.

[55] Petition at ii.

IV. Conclusion

For the foregoing reasons, WorldCom respectfully requests that UCC's petition be denied in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2003, a copy of the foregoing was delivered via first class mail, postage prepaid to:

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