

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition for Rulemaking)
To Establish Standards of Conduct) RM No. 10613
For Telecommunications Providers)
And)
Request to Initiate Section 403 Proceeding)
Into Activities of WorldCom, Inc. and)
Other Commission Licensees)

OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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January 31, 2003

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OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) respectfully submits its Opposition to the petition for rulemaking (“Petition”) filed by the Office of Communication of the United Church of Christ, Inc. (“OC-UCC”).¹ The Petition seeks to establish new standards of conduct for all telecommunications carriers that receive authorizations to operate from the Federal Communications Commission (“Commission”). As part of the Petition, OC-UCC requests that the Commission initiate a section 403 proceeding to investigate the “activities” of WorldCom, Qwest and Global Crossing and use the information gathered to help the Commission develop a record to support the proposed rulemaking proceeding.

Qwest opposes the Petition. Other governmental entities, namely the Congress and the Securities and Exchange Commission (“SEC”), have already taken actions to address concerns similar to the OC-UCC’s regarding corporate governance and accounting regulations. The investigations proposed by the OC-UCC would be duplicative and unnecessary. Second, OC-

¹ Petition for Rulemaking to Establish Standards of Conduct for Telecommunications Providers and Request to Initiate Section 403 Proceeding into Activities of WorldCom, Inc. and Other Commission Licensees, filed by OC-UCC, Oct. 15, 2002. *Public Notice*, Report No. 2585, rel. Dec. 5, 2002. *Order* extending time to file comments, DA 02-3502, rel. Dec. 19, 2002.

UCC fails to demonstrate that existing Commission precedent and rules are inadequate to govern these matters. Moreover, OC-UCC does not provide any basis to justify a Commission investigation of Qwest. Accordingly, the Commission must deny OC-UCC's Petition in its entirety.

I. INTRODUCTION AND SUMMARY

OC-UCC's Petition should be rejected by the Commission as unnecessary and unwise for a number of reasons. First, this matter has been fully addressed by other governmental entities. Just last year, Congress passed, and the President signed into law, the Sarbanes-Oxley Act,² which effects sweeping corporate disclosure and financial reporting reforms applicable to all telecommunications carriers. Indeed, most of the issues raised by OC-UCC are specifically addressed in the Sarbanes-Oxley Act and deemed by Congress to lie within the expertise of the SEC. Second, the Communications Act of 1934, as amended (the "Act"), already grants the Commission the necessary tools to monitor and, where appropriate, proceed against carrier misconduct. The Commission has used this authority to consider the character of an applicant before it grants an authorization and it retains the authority to revoke an authorization for carriers engaged in egregious misconduct. Thus, the rulemaking proposed by OC-UCC is unnecessary.

Similarly, it is not necessary for the Commission to initiate an investigation into the business practices of Qwest. Qwest is under new management and has taken dramatic steps to detect, prevent and correct any conduct that may violate laws, regulations or corporate policies. Qwest is committed to transparent accounting practices and is using both internal and external experts to that end.

² Pub. L. No. 107-204, 116 Stat. 745 ("Sarbanes-Oxley Act").

In addition, Congress and appropriate federal agencies, including the SEC, DOJ, and GSA, are conducting their own inquiries into the past activities of Qwest. Further investigation by the Commission would simply duplicate these ongoing efforts. Accordingly, OC-UCC's request to initiate a section 403 proceeding regarding Qwest should be rejected.

II. THE COMMISSION SHOULD REJECT OC-UCC'S REQUEST FOR RULEMAKING

In its Petition, OC-UCC requests that the Commission establish new standards of conduct that would govern all telecommunications carriers that receive authorization to operate from the Commission. These standards would be in addition to the regulations and statutory tools already used by the Commission in considering whether an applicant for a particular authorization is fit to hold a license or certificate. In particular, OC-UCC asks the Commission to initiate a rulemaking proceeding so that it may adopt a code or guidelines that would govern telecommunications carriers' behavior in the marketplace. The guidelines would address issues such as fraud, use of evidence, burden of proof, corporate governance, accounting, use of auditors and stock options.³ For the reasons discussed below, the Commission should reject OC-UCC's request for rulemaking.⁴

³ Petition at 39-41.

⁴ As a threshold matter, the Petition should be rejected because it fails to satisfy even the most basic requirement for an entity offering a petition for rulemaking, *i.e.*, the "petition shall set forth the text or substance of the proposed rule." 47 C.F.R. § 1.401. Although OC-UCC does request that the Commission seek comment on certain "goals," Petition at 20, and "principles," *id.* at 39, it fails to provide any regulatory context for such proposals and only confuses matters by stating that its proposal should be applicable to both "telecommunications providers," *id.* at 1, and Commission "regulatees." *Id.* at 40. Parties cannot provide meaningful comments to such an amorphous proposal. Given the lack of specificity provided by OC-UCC necessary to draft regulations, the Commission should deny the Petition.

A. Congress Has Already Taken Significant Action
To Address Corporate Responsibility

On July 30, 2002, the President signed into law one of the most comprehensive bills ever to address corporate responsibility in the United States. That legislation, the Sarbanes-Oxley Act, was enacted in direct response to the bankruptcies of Enron Corporation and Global Crossing, LLC.⁵ The new law increases supervision of accountants that audit public companies, strengthens corporate responsibility and increases the transparency of corporate financial statements.⁶ Moreover, it applies to public companies, including telecommunications carriers, and grants the SEC primary authority over implementation.

Some of the specifics of the Sarbanes-Oxley Act bear highlighting because they directly address the concerns raised by OC-UCC in its Petition. For example, section 201 prohibits auditors from performing certain “non-audit” services,⁷ section 301 requires each member of a company’s audit committee to be “independent,”⁸ and section 302 requires certification that financial reports are accurate, not misleading, and contain no fraudulent statements.⁹ Given the breadth of the Sarbanes-Oxley Act, OC-UCC fails to explain why this recent act of Congress does not sufficiently protect Americans from the harms posited by OC-UCC. Similarly, OC-UCC fails to explain why the SEC, the entity chosen by Congress to address these issues on a national scale (and not restricted to telecommunications carriers), cannot adequately administer and enforce the Sarbanes-Oxley Act.

⁵ H.R. Rep. No. 414, 107th Cong., 2d Sess. at 18 (2002).

⁶ *Id.* at 16.

⁷ Sarbanes-Oxley Act, § 201, *but see* Petition at 40.

⁸ Sarbanes-Oxley Act, § 301, *but see* Petition at 41.

⁹ Sarbanes-Oxley Act, § 302, *but see* Petition at 39-40.

As recently as October 30, 2002, the SEC issued a *Public Notice* requesting comment on implementing key aspects the Sarbanes-Oxley Act.¹⁰ Among other matters, the SEC sought comment on implementing sections 404 (addressing internal controls for financial reporting), 406 (addressing a code of ethics for corporate officers), and 407 (addressing the independence of Audit Committees). The rules emanating from the SEC will govern the actions of publicly traded common carriers and thus will address the concerns of OC-UCC. To the extent that OC-UCC is not satisfied with these rules, it should challenge them before Congress, the SEC, or the courts. But, it is not appropriate to incorporate a modified version of the Sarbanes-Oxley Act into the Commission's rules.¹¹

B. The Communications Act Already Grants The Commission Sufficient Tools To Monitor And Protect Against Carrier Misconduct

Even though Congress recently spoke to the core issues raised by OC-UCC in its Petition and chose not to involve this Commission in this matter, the Commission has sufficient statutory authority and regulations in place to address and protect against carrier misconduct. No additional regulations are needed.

1. Section 214

Under section 214 of the Act, carriers must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communication, or before discontinuing, reducing or impairing service

¹⁰ Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, Part II, 67 Fed. Reg. 66208 (adopted Oct. 30, 2002).

¹¹ The Sarbanes-Oxley Act also strengthened criminal laws to deter corporate executives, employees and auditors from engaging in egregious and unlawful behavior. Titles VIII and IX of the new law enhance criminal penalties, including imprisonment, for altering documents, destroying audit records, conspiring to commit fraud, failing to certify financial reports and tampering with a record. These provisions alone serve as a sufficient deterrent to prevent abuses that may have taken place.

to a community.¹² In considering such requests, the Commission has employed a public interest standard under section 214(a) that involves an examination of the potential public interest harms and benefits of a proposed transaction.¹³ In the Commission’s recent *Further Streamlining Order*, it concluded that many requests for authorization raise few public interest concerns and, as a result, are entitled to a streamlined review process.¹⁴ For those section 214 applications that raise public interest issues, the Commission expressly stated that it would take those applications out of the presumptive streamlined review category and subject them to further scrutiny.¹⁵ Accordingly, nothing prevents OC-UCC from challenging the qualifications of an applicant for certification, on a case-by-case basis, as part of the Commission’s section 214 public interest inquiry.

Even when the Commission has granted a carrier blanket authorization without filing a section 214 application,¹⁶ it retains “the ability to stop extremely abusive practices against consumers by withdrawing the blanket section 214 authorization that allows the abusive carrier to operate.”¹⁷ For example, the Commission recently revoked the operating authority of a nondominant carrier because of the “egregious actions and blatant violation of [the

¹² 47 U.S.C. § 214(a).

¹³ See, e.g., *In the Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, Memorandum Opinion and Order*, 12 FCC Rcd. 19985, 20063 ¶ 157 (1997).

¹⁴ *In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Report and Order*, 17 FCC Rcd. 5517 (2002).

¹⁵ See 47 C.F.R. § 63.03(c).

¹⁶ See 47 C.F.R. § 63.01.

¹⁷ *In the Matters of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43*, 14 FCC Rcd. 11364, 11372 ¶ 12 (1999).

Commission's] rules and the Act.”¹⁸ Given the Commission's broad authority under section 214, additional regulations are unnecessary.¹⁹

2. Section 308

In addition to the Commission's rules implementing section 214, carriers that hold radio licenses must also satisfy the statutory “character” requirement contained in section 308 of the Act. As OC-UCC correctly notes, section 308(b) requires applicants for wireless licenses to demonstrate that they have the necessary “citizenship, character, and financial, technical, and other qualifications” to hold a license.²⁰ In applying this provision, the Commission considers a range of factors assessing an applicant's “character” including, *inter alia*, fraudulent representations to governmental units and criminal misconduct involving false statements or dishonesty.²¹ As a practical matter, most large common carriers hold wireless licenses and are subject to the character requirements established by the Commission.²² Moreover, section 312(a)

¹⁸ *In the Matter of CCN, Inc., et al., Order*, 13 FCC Rcd. 13599, 13606-07 ¶ 12 (1998).

¹⁹ OC-UCC should also find comfort in other aspects of section 214. In particular, requests for certification are sent to the Secretary of Defense, the Secretary of State (with respect to such applications involving foreign points), and the governor of each state in which such line is proposed to be constructed, extended, acquired, or operated. 47 U.S.C. § 214(b); 47 C.F.R. § 1.763(b). These federal and state entities are thus given an opportunity to assess the qualifications of an applicant to hold a common carrier certificate before, during and after the Commission grants authorization.

²⁰ 47 U.S.C. § 308(a); *see also* 47 U.S.C. §§ 310(d)(transferee of a license must satisfy section 308(a) requirements), 319(a)(applicant for construction permits must also satisfy a “character” requirement).

²¹ *In the Matter of Policy Regarding Character Qualifications In Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement*, 102 FCC 2d 1179 (1985), *modified*, 5 FCC Rcd. 3252 (1990), *recon. granted in part*, 6 FCC Rcd. 3448 (1991), *modified in part*, 7 FCC Rcd. 6564 (1992).

²² *See, e.g., Applications 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 Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the*

of the Act permits the Commission to revoke a license for a host of reasons including “false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308,” “conditions coming to the attention of the Commission which would warrant it in refusing to grant a license,” and “for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule.”²³ OC-UCC has failed to demonstrate why these requirements and threats of revocation do not sufficiently address the concerns raised in its Petition.²⁴

OC-UCC offers two “goals” on which the Commission should seek comment:

(1) eliminate opportunities and incentives, corporate and personal, to misrepresent material facts to the Commission; and (2) ensure that persons of reliable character are in command.²⁵ Congress and the Commission are well beyond “goals” at this point and, as stated above, the Commission has established decades of precedent on dealing with the candor of applicants and recipients of authorizations.²⁶ Even OC-UCC recognizes that the Commission will “refuse to tolerate deliberate misrepresentations.”²⁷ As a result, the petition for rulemaking is unnecessary.

Commission’s Rules, Memorandum Opinion and Order, 14 FCC Rcd. 14712, 14947-48 ¶ 568 (1999); *see also, In the Matter of MCI Telecommunications Corporation, Petition for Revocation of Operating Authority, Order and Notice of Apparent Liability*, 3 FCC Rcd. 509, 515 at n.14 (1990).

²³ 47 U.S.C. § 312(a)(1), (2), and (4), respectively.

²⁴ In fact, OC-UCC relies on this authority in its attempt to disqualify WorldCom from holding Commission licenses.

²⁵ Petition at 20.

²⁶ Note that this precedent includes holding a carrier responsible for the acts of its employees, which would include the person “in command.” *See* 47 U.S.C. § 217.

²⁷ Petition at 21.

3. Section 208

OC-UCC goes to great lengths to relate the collapse of our nation's economy with the absence of a Commission code of behavior in the marketplace. Yet, if OC-UCC, or any other stakeholder,²⁸ were truly harmed by the actions of a particular carrier or that carrier violated the Act, it could file a section 208 complaint against the carrier. Section 208(a) authorizes the filing of complaints by any person "complaining of anything done or omitted to be done by any common carrier" subject to the provisions of the Act.²⁹ Section 208(a) also states that "it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."³⁰ Rather than imposing needless new behavior regulations on all common carriers, including both dominant and nondominant carriers, the Commission properly insists that a complainant carry the burden that a particular carrier violated the Act.³¹ If the Commission concludes that the carrier's actions were so egregious and were a blatant violation of the Commission's rules, it has the power to revoke the carrier's certificate or license.³²

C. Corporations Already Have The Responsibility And Incentive To Establish A Code Of Conduct Without Commission Intervention

OC-UCC suggests, as part of its overall justification for a Commission rulemaking, that all entities regulated by the Commission adopt corporate governance principles subject to Commission review and approval. Failure to comply with the code would subject the regulated

²⁸ *Id.* at 6-8 (identifying "investors," "ratepayers," "employees," "potential employees," "honest telecom companies," "rural consumers and the poor," and "communities" as stakeholders in this debate).

²⁹ 47 U.S.C. § 208(a).

³⁰ *Id.*

³¹ 47 C.F.R. § 1.721(a)(5).

³² Short of revocation, Title V of the Act gives the Commission broad statutory authority to impose forfeitures on carriers that violate the Act. 47 U.S.C. § 501, *et seq.* Consequently, OC-UCC's request for additional penalties should be rejected. *See* Petition at 39.

entity to penalties.³³ Most corporations, however, and not just those regulated by the Commission, already have a responsibility to adopt a code of conduct that will deter corporate executives and other employees from engaging in illegal activities. For example, Section 406 of the Sarbanes-Oxley Act requires the SEC to issue rules regarding a “code of ethics” for senior financial officers and other employees performing similar functions.³⁴ Congress defined “code of ethics” to include standards that are reasonably necessary to promote “honest and ethical conduct.”³⁵ Clearly the relief the OC-UCC requests of the Commission has already been granted in Sarbanes-Oxley and oversight and enforcement assigned to the SEC. Any attempt by the Commission to overlay additional requirements will likely result in unnecessary, duplicative and possibly conflicting regulation in a time of scarce government resources.

III. A SECTION 403 INQUIRY INTO THE ACTIVITIES OF QWEST IS NOT NECESSARY

The OC-UCC Petition requests that the Commission conduct an investigation of Qwest pursuant to section 403 of the Act.³⁶ To justify the request, it states that the investigation will help the Commission gather facts to support a rulemaking proceeding and to “explore the nature and extent of corruption and wrongdoing that was fostered by ... Qwest.”³⁷ OC-UCC provides no meaningful data to support the suggested inquisition of Qwest. As a result, it fails to provide

³³ Petition at 40.

³⁴ Sarbanes-Oxley Act, § 406.

³⁵ *Id.* § 406(c).

³⁶ Petition at 30.

³⁷ *Id.* at 32.

a sufficient basis to warrant a Commission inquiry.³⁸ While the Commission always retains the discretion to initiate a section 403 proceeding, such an inquiry of Qwest is not necessary.

A. Qwest Is Under New Management

Since June of 2002, several months before OC-UCC filed its Petition, Qwest has installed a new chairman and chief executive officer, vice chairman and chief financial officer, as well as other crucial senior executives.³⁹ This management team is taking steps to detect, prevent and correct conduct that may violate laws, regulations or corporate policies. With respect to accounting issues, Qwest is committed to transparent accounting practices, utilizing both internal and external experts as it reviews its past accounting practices. Consequently, an investigation at this time into Qwest and its business practices would not yield the results hoped for by OC-UCC and is without merit.

B. Congress And Appropriate Federal Agencies Are Currently Conducting Their Own Inquiries Into Past Qwest Activities

With respect to past conduct, Congress and several federal agencies already have ongoing investigations of Qwest and further inquiry by the Commission is not warranted. The House Financial Services Committee and House Energy and Commerce Committee have each conducted their own investigations into corporate governance and accounting practices within the telecommunications industry. Qwest testified before each Committee and continues to

³⁸ See *In the Matter of James A. Kay, Jr.; Licensee of one hundred fifty two Part 90 Licenses in the Los Angeles, California area, Memorandum Opinion and Order*, 13 FCC Rcd. 16369 (1998); *In Re Applications of Tidewater Radio Show, Inc.; For Renewal of License of WPCE, Portsmouth, Virginia and Willis Broadcasting Corporation; For Renewal of License of WOWI-FM, Norfolk, Virginia, Memorandum Opinion and Order*, 75 FCC 2d 670 (1980).

³⁹ Some of the new executives include an executive vice president and chief human resources officer, executive vice president and general counsel, executive vice president of wholesale markets, executive vice president for national markets, executive vice president for consumer markets, executive vice president for product management, senior vice president for corporate

cooperate with their efforts.⁴⁰ Similarly, Qwest is fully cooperating with the SEC, DOJ, and GSA regarding certain transactions and accounting procedures that took place in the past.⁴¹ If these agencies conclude that further inquiry is necessary, they will not hesitate to act.⁴² Given the thoroughness of each investigation and the expertise and enforcement tools available to each agency, an inquiry by the Commission would be duplicative and not serve the public interest.

C. Ratepayers Are Protected

The OC-UCC Petition attempts to distinguish the protections afforded to shareholders and investors by Congress and the SEC from those afforded to telephone ratepayers.⁴³ While it is true that the regulatory jurisdictions of the SEC and the Commission address different constituencies, clearly the Sarbanes-Oxley Act will benefit all Americans. Its impact on accountants, auditors and corporations will be widespread and will protect investors,

communications, senior vice president for federal relations, and senior vice president for corporate development and strategy.

⁴⁰ U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations, March 21, 2002; U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, September 24, 2002 and October 1, 2002.

⁴¹ The SEC and other relevant federal and state agencies have conducted (or continue to conduct) investigations into the activities of AOL Time Warner, Adelphia, Tyco, ImClone, Enron, Aura Systems, Computer Associates International, Computer Horizons, Credit Suisse First Boston, Dollar General Merchandise, Dynergy, El Paso Corp., Elan, Enterasys Networks, Global Crossing, WorldCom, Haliburton, HealthSouth, HPL Technologies, I&J, Kmart, KPMG, J.P. Morgan Chase, Nesco, Network Associates, PricewaterhouseCoopers, Trump Hotels & Casino Resorts, and Xerox. See www.usatoday.com. Similarly, the investigations of the leaders of many of these companies continue. See money.cnn.com/news/specials/corruption. Clearly the corporate “behavior” matters that OC-UCC wants investigated by the Commission have affected many sectors of U.S. industry and are not limited to telecommunications. That is why Congress, the SEC, and DOJ have properly taken the lead on these issues.

⁴² See, e.g., *SEC v. WorldCom, Inc.*, 02 Civ. 4963 (JSR), filed June 26, 2002 (S.D.N.Y.) (alleging that WorldCom “mislead” and “defrauded” investors, “falsely” portrayed itself as profitable, and otherwise engaged in a “fraudulent scheme”).

⁴³ Petition at 33.

shareholders and ratepayers alike. It is unlikely that a Commission inquiry into the activities of WorldCom, Qwest and Global Crossing will result in additional deterrence over and above that achieved by the Sarbanes-Oxley Act and, thus, OC-UCC incorrectly states that “[o]nly the Commission can investigate and measure ... harm.”⁴⁴

IV. CONCLUSION

For the reasons discussed above, the Commission should reject OC-UCC’s request to initiate a section 403 proceeding against Qwest and its Petition for rulemaking. Other federal bodies, which are already addressing the concerns raised by OC-UCC, and the Commission have sufficient rules in place to ensure that the public interest is served. Similarly, an investigation of Qwest is unwarranted given the new management team, the adoption of internal controls and the pending investigations already taking place.

Respectfully submitted,

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⁴⁴ *Id.* at 8.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via email on the FCC's duplicating contractor, and 3) served via First Class United States mail, postage prepaid on the other party listed on the attached service list.

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