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March 7, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

MAR - 7 2007

Federal Communications Commission
Office of the Secretary

**RE: Petition for Rulemaking and Request for Initiation of Section 403
Proceeding**

Dear Ms. Dortch:

On October 15, 2002, this firm filed a Petition for Rulemaking and Request for Initiation of Section 403 Proceeding into the character of WorldCom, Inc. and other Commission licensees on behalf of the Office of Communications of the United Church of Christ, Inc. A copy is attached. On behalf of the Office of Communications of the United Church of Christ, Inc., I hereby request that this Petition be withdrawn and any proceeding initiated pursuant to it be terminated.

Should you have any questions or require additional information in connection with this request, please do not hesitate to contact the undersigned.

Sincerely,


Gregg P. Skall

Enclosure

cc: Ms. Cheryl Leanza
Managing Director, United Church of Christ, Office
Of Communication, Inc.

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

RECEIVED

OCT 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
)
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)
_____)

FCC File No. _____

To: The Commission

PETITION FOR RULEMAKING
AND REQUEST FOR INITIATION OF § 403 PROCEEDING
INTO CHARACTER OF WORLDCOM, INC. AND OTHER COMMISSION
LICENSEES

Office of Communication of the United Church of Christ, Inc

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October 15, 2002

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WASHINGTON 70439v8

EXECUTIVE SUMMARY

Office of Communication of the United Church of Christ, Inc. ("OC-UCC.") petitions the Federal Communications Commission ("Commission" or "FCC") to establish new standards of conduct that will be required of all telecommunications providers that receive authorizations to operate from the Commission. The importance of the facilities and services provided by today's telecommunications providers, described as the central nervous system of our society, which serves as the hub for virtually all commerce and public safety, and which further serve as a critical resource for our national defense, demands that the Commission establish specific business conduct standards applicable to those who benefit from its authorizations.

Traditionally, the Commission evaluates the character qualifications of applicants for FCC licenses by considering three classes of non-FCC 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.¹ Rather, these classes of misconduct require an applicant or licensee be caught, tried and convicted before the FCC can protect the public interest. By the time a court adjudicates the matter, the harm to the public is done and, therefore, they do not always provide the Commission with an adequate opportunity to identify those individuals or companies, like

¹ Policy Regarding Character Qualifications in Broadcast Licensing, *102 FCC 2d 1179, 1209-10 (1986)* ("Character Policy Qualifications"; modified, *5 FCC Rcd 3252 (1990)* ("Further Character Policy Statement"; recon. granted in part, *6 FCC Rcd 3448 (1991)*, modified in part, *7 FCC Rcd 6564, 6566 (1992)* ("Further Character Qualifications Modifications";

WorldCom, that display a pattern of disregard not only for its rules and regulations, but basic business ethics.

The Commission has expanded its consideration of character qualifications when circumstances merit.² The flood of information now deluging the public and investigative government entities demonstrates that WorldCom (and potentially other Commission regulated entities) is not "possessed of the requisite propensity to obey the law."³ The Commission must have a clear mechanism in place that will allow it to ferret out such propensities at the fore rather than the aft. OC-UCC., therefore, seeks Commission adoption of a code establishing benchmarks for behavior in the marketplace so as to offset the increased corporate power, influence and opportunity for fraudulent conduct that has arisen as a by-product of deregulation.

WorldCom merely serves as an example of the Commission's need to act. Other carriers such as Qwest Communications and Global Crossing are also currently under investigation for accounting "irregularities." These events mandate that standards be established for any individual or entity, empowered with the public's trust for providing telecommunications services pursuant to FCC authorization.

OC-UCC. does not seek any punitive or adjudicative action against WorldCom. Rather, the petition is forward looking in that it seeks, through the requested rulemaking and § 403 Inquiry, proactive (as opposed to retroactive) rules governing the conduct of the Commission's

² Policy Regarding Character Qualifications in Broadcast Licensing, *5 FCC Rcd 3252 (1990)*

³ *Id.*

regulatees. OC-UCC. seeks action that will affect the telecommunications industry as a whole and not merely one entity in that field.

OC-UCC. recognizes that it may appear to some that existing rules have proven sufficient to catch WorldCom – but that occurred only because, fortuitously, the company spiraled into bankruptcy. causing creditors, journalists and law enforcement authorities to take note and thus leading to the Facts that have emerged. In that sense, in the words of former President Carter, the system was an "incomplete success." WorldCom was stopped in time to stop further misconduct. but not in time to prevent the misconduct that has already happened and thus not in time to prevent great harm to the nation's telecommunications ratepayers and consumers and to quite possibly the nation's telecommunications infrastructure and security. It seems clear that new rules are needed to ensure that misconduct like WorldCom's is *prevented*, or at least, caught early. Guidelines, such as those suggested, would be a prospective filter permitting the Commission to prevent potential future misconduct, and to catch any that does occur well before that misconduct spirals the company into bankruptcy and well before that misconduct presents a grave threat to the public and the nation.

The Commission is under a "duty to evaluate its policies [and rules] over time to ascertain whether they work"⁴ to ensure that the rules and policies it adopts are well founded in fact, and "should stand ready to alter its rule[s] if necessary to serve the public interest more fully."⁵ OC-UCC. submits that the time is ripe for consideration of the actions requested herein.

⁴ FCC v. Nat'l. Citizens Comm. for Broad., 436 U.S. 775, 814 (1978).

⁵ FCC v. WNCN Listener's Guild, 450 U.S. 582 603 (1981).

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nation's telecommunications providers serves as the hub for virtually all commerce, forms the foundation for much of our nation's public safety functions, and is a critical resource to our national defense. Reliable telecommunications facilities and services are essential to our personal and business lives and to the free flow of our nation's economy. Considering their importance, the Commission must establish specific business conduct standards to which those who benefit from its authorizations will be held accountable.

Recent events, such as the travesty perpetrated by WorldCom, Inc. and its subsidiaries ("WorldCom"), in which fraud and deceit were conducted to an outlandish extent, exemplifies how one FCC licensee's conduct can have far reaching effects on all aspects of the telecommunications industry, both nationally and internationally as well as on the economy as a whole. Unfortunately, WorldCom's conduct may be merely one example. Other carriers such as Qwest Communications and Global Crossing are also currently under investigation for accounting "irregularities." These events mandate that standards be established for any individual or entity providing telecommunications services pursuant to FCC authorization.

Accordingly, as will be shown, the Commission should immediately issue a Notice of Proposed Rulemaking seeking comment on the establishment of standards to which FCC licensees and regulatees should be subject. Additionally, in conjunction with the issuance of that item, the Commission should also initiate a §403⁸ investigation by which it may learn for itself the extent and nature of wrongdoing that has been enabled by its authorizations. With a complete record created in such an investigation, the Commission will have a catalogue of

⁸ 47 U.S.C. § 403.

wrongful and fraudulent practices that have crept into this uniquely important and vital field with which it may fashion rules that will not only withstand any subsequent judicial scrutiny, but serve to prevent any recurrence of such conduct.

I. STANDING

This Petition for Rulemaking is submitted pursuant to Section 4(c) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e), which provides that an agency "shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." This section "requires agencies to receive and consider requests" for rulemaking.⁹ Section 553(3)(e) is implemented by §1.401(a) of the Commission's Rules¹⁰ which permits "[a]ny interested person" to petition for the issuance of a rule or regulation.¹¹

This Petition sets forth "the text or substance of the proposed rule[s]...together with all data deemed to support the action requested" and specifies "how the interests of OC-UCC. will be affected."¹² After the submission of a petition for rulemaking in accordance with the foregoing, the Commission must assign it a file number and place it on public notice.¹³

OC-UCC. has assumed the role of speaker in the past on behalf of the nation's telecommunications consumers, the telecommunications workforce, and the communities dependent on telecommunications enterprises and continues that tradition here. Since 1954, OC-

⁹ *Senate Judiciary Committee Print, June 1945, reprinted in Administrative Procedure Act: Legislative History, 79th Cong. 1944-46, S. Doc. No. 248, 79th Cong., 2d Sess. 11, 21 (1946).*

¹⁰ 47 C.F.R. § 1.401(a).

¹¹ *Id.*

¹² *Id.* § 1.401(c).

¹³ 47 C.F.R. § 1.403.

UCC. and its predecessor in interest within the United Church of Christ ("UCC") has been a leading proponent of public participation in communications policy, and of diversity of ownership and employment in all industries subject to Commission regulation. Indeed, OC-UCC. essentially founded the modern public interest movement in the media and telecom industries.¹⁴

OC-UCC's decision to bring the issues in this petition to the Commission's attention harkens back to UCC's own history as the conscience of the communications industry. In 1955, UCC brought the first complaints against Jackson, Mississippi's rigidly segregated television stations, including Lamar Life Insurance Company's WLBT-TV, the NBC affiliate. WLBT displayed such contempt for its own audiences that the station would cut off the network feed when NBC's nightly news contained interviews with civil rights heroes like Thurgood Marshall. After the FCC repeatedly rejected UCC's complaints, the D.C. Circuit Court of Appeals ordered the FCC to hold a hearing, rejecting the Commission's theory that the way to cure corruption is to afford an unreconstructed wrongdoer an unsupervised chance to do better."

When the Commission held a hearing so deficient that it was deemed "beyond repair," the Court ran out of patience and vacated the license renewal itself.¹⁶ As this saga of desegregation was playing itself out, UCC petitioned the FCC for rules prohibiting employment

¹⁴ Much of this history -- and what it meant for the television industry and the nation -- is detailed in Kay Mills, *Changing Channels: The Civil Rights Case that Changed Television*, (Civil Rights Forum on Communications Policy), 2000.

¹⁵ Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) ("UCC I").

¹⁶ Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (D.C. Cir. 1969) ("UCC II").

discrimination and requiring broad recruitment.¹⁷ Since Commission adoption of those rules," many of the industries under FCC authority have made great strides in desegregating and in promoting equal opportunity. Intentional discrimination has not yet been wiped out, but that day may come soon.

Today, other forms of misconduct by FCC regulatees, in addition to discrimination, diminish the "rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges" that all Americans are entitled to expect from their FCC regulated industries."

Thirty-six years after *UCC I*, another Jackson, Mississippi-based company tests the limits of the Commission's responsibility to protect the public against the intentional misconduct of regulatees. WorldCom's campaign of fraud has jeopardized the nation's telecommunications infrastructure, imperiled homeland security, and caused lasting damage to the credibility and thus the competitiveness of the telecom sector of the economy.

With communications and information technology representing one-sixth of our economy, it is difficult to imagine any corporate behavior that strikes more painfully at the heart of the nation's health and well-being than WorldCom's fraud and the apparent manipulations of Qwest and Global Crossing. The rise and fall of WorldCom and other corporate revelations only now receiving light illustrates why the full participation of all Americans in the regulation of

¹⁷ See *Nondiscrimination in Broadcasting*, 13 *F.C.C. 2d* 766 (1968).

¹⁸ *Nondiscrimination in Broadcasting*, 18 *F.C.C. 2d* 240 (1969).

¹⁹ 47 *U.S.C. § 151* (1996).

telecommunications and information technology is just as essential to the success of the economy, and to democracy. as access to broadcast television was in 1966

The effects on a host of stakeholders when a telecommunications regulatee perpetuates a fraud of the scale and nature detailed here includes:

- Investors in the telecommunications sector of our economy lose confidence; small investors lose their investments. Aware that internal controls and regulatory oversight are so weak that systemic fraud can take down a huge company like WorldCom, investors become hesitant to underwrite new facilities or innovative new services, or to bear the cost of finding ways to more efficiently use excess capacity. Small and large telecommunications enterprises experience difficulty raising capital on reasonable terms. Consequently, the industry as a whole may no longer provide optimal levels and varieties of service.
- Ratepayers will inevitably pay higher prices for telecommunications services. When a major telecommunications company like WorldCom implodes, that company becomes focused on survival -- not on competing effectively. With one fewer aggressive long distance competitor, long distance prices inevitably will increase and service levels inevitably will decline. Those most deeply affected are likely to be residential customers, particularly those residing in the rural and low-income areas that are already the least well served by the telecommunications industry.
- Employees who lost their jobs in the wake of corporate scandal will have fewer opportunities to put their unique and specialized skills to good use. "Retraining" may not be an option when there are mouths to feed. Families whose breadwinners lost their jobs will have to leave their homes, their churches, their friends and neighbors and move to other states where there might be some chance of gainful employment. With their pensions and 401(k) plans wiped out, many will have to rebuild from nothing.²⁰

20 For a thorough and poignant discussion of what happens to employees in a bankruptcy, see Shawn Young, "In Bankruptcy, Getting Laid Off Hurts Even Worse: WorldCom's Ex-Employees Suffer Loss of Severance, End of Health Insurance," The Wall St. J., Sept. 30, 2002, p. 1 col. 6. Compare the plight of WorldCom's average employee to that of the executives who ran the company. Jon Swartz, Homes of the Rich and Famous, USA Today, July 14, 2002 at 1B ("While former WorldCom CFO Scott Sullivan sat stoically before lawmakers last week — amid cries that executives responsible for corporate scandal, he jailed — construction continued on his \$15 million I Like.de mansion in Boca Raton, Fla. ").
http://www.usatoday.com/money/economy/housing/2002-07-15-rich-infamous-homes_him

- Potential employees will recognize that the instability of the telecommunications sector does not offer the promise of a long and stable career. Talented people will choose other fields of study; talented entrepreneurs will choose other fields of enterprise. The loss of future brainpower means the loss of future industry competitiveness.
- Honest telcom companies will be deprived of the full competitive value of the services of skilled employees. As noted above, potential newcomers to the field will avoid telecommunications careers, and laid off employees will endure periods of unemployment during which they will not remain current on the technology. Telecom companies innocent of wrongdoing inevitably will bear some of the burden of industry wide employee dislocations.
- Rural consumers and the poor are already inadequately served by telecommunications.²¹ They suffer from racial and economic disparities in online internet access²² and in broadband access.²³ Thanks to the misdeeds of WorldCom and others, they will experience slower growth in access to the telecommunications infrastructure. In particular, the Universal Service Fund and the E-rate program are driven by the volume of industry service, and those service

²¹ FCC News Release, New Telephone Subscribership (released February 7, 2002) (data as of July, 2001), reporting that telephone penetration for the nation was 95.1%, and for households with incomes over \$60,000 it was 98.9%; but for households with annual incomes below \$5,000 it was only 81.7%. Telephone penetration was 95.8% for White households, 91.3% in Hispanic households and 90.3% in African American households.

²² See NTIA, A Nation Online: How Americans Are Expanding Their Use of the Internet (released February 6, 2002) (data as of September, 2001), finding that children 10-17 years old exhibited Internet use rates as follows by race: Asian American/Pacific Islanders: 79.4%; Whites: 79.7%; African Americans: 52.3%; Hispanics: 47.8%. Children 10-17 years old in families in the less than \$15,000 income bracket had a 45.7% Internet use level, while children in families in the \$75,000 and above income bracket had an 87.5% Internet use level. Available at: <http://www.ntia.doc.gov/ntiahome/dnr/>

²³ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans (Third Report), FCC 02-33, released February 7, 2002 (data as of June, 2001), finding that high-speed subscribers were reported in 97% of the most densely populated zip codes but in only 49% of the lowest population density zip codes. The FCC did not determine whether more than one resident in these zip codes had high-speed service. High-speed subscribers were reported in 96% of the top one-tenth of zip codes ranked by median family income, but in only 59% of the zip codes with the lowest median family income. The report candidly acknowledged, "some of the low-income zip codes that have high-speed subscribers include businesses or industrial areas of major cities that have large demand for high-speed services. Thus, high-speed availability for residential low-income residents in these zip codes may actually be less prevalent than suggested here."

levels will be sub optimal as investors move their money to other sectors of the economy.

- Communities face economic and social disaster if they were highly dependent on corporate employee payrolls subject to reductions in force, property taxes and corporate citizenship. A prime example is Jackson, Mississippi, the original home of WorldCom. Downtown Jackson still houses much of the back office staff of the company. Today, the city faces a body blow to its economic stability and to its ability to serve the pressing educational and health care needs of its predominately low income, African American population.

No representative of the public without inside knowledge can know precisely the extent of the harm caused by a particular course of fraudulent conduct.²⁴ Only the Commission can investigate and measure that harm

When major telecommunications enterprises are not being managed responsibly, someone needs to serve as a watchdog to ensure that the harm done is cured to the extent possible.²⁵ Further, someone needs to represent the public at the table at which safeguards can be put in place to prevent additional wrongdoing, whether by the same company or by similarly situated ones. As the founder of public interest advocacy in broadcasting, OC-UCC, once more believes it imperative to step forward to perform that function in the telecommunications arena.

²⁴ *Even a petitioner to deny is not expected to "fully establish... what it is the very purpose of the hearing to inquire into."* Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985).

²⁵ "Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential." Nat'l Broad. Co. v. United States, 319 U.S. 190, 213 (1943), and made the FCC its administrative agent with a broad scope of authority to assure that the public interest, convenience and necessity must be served. WOKO, Inc. v. FCC, 153 F. 2d 623 (D.C. Cir. 1946), affirmed in FCC v. WOKO, 329 U.S. 223 (1946).

II. THE TELECOMMUNICATIONS INDUSTRY SHOULD BE HELD TO A HIGHER STANDARD DUE TO THE SPECIAL NATURE OF THE INDUSTRY

A. Telecommunications Industry as Central Nervous System

The telecommunications industry plays a vital role in the organization and operation of our modern life and the modern global economy; it has become key to our most treasured value, the First Amendment freedoms enshrined in our U.S. Constitution. Indeed, one can hardly overstate its significance to today's everyday social and economic life. Even more difficult is to overstate its likely future importance. According to a recent report of the U.S. Department of Commerce, "[b]y 2006, almost half of the U. S. workforce will be employed by industries that are either major producers or intensive users of information technology products and services."²⁶

In a brief period of time, telecommunications has become the central nervous system of the economy. According to FCC Chairman Powell, "Senator Bennett, Chairman of the Senate Special Committee on the Year 2000 Technology Problem, was right on the mark when he called the global communications infrastructure 'the central nervous system of modern society.'²⁷

Chairman Powell is also on record as saying that "[e]nsuring the health of this nervous system is our critical task."²⁸ The Commission will take a significant step in that direction by initiation of the requested rulemaking and §403 proceeding

²⁶ David Henry, *et. al*, *The Emerging Digital Economy*, *Economics and Statistics Administration U.S. Department of Commerce, June, 1999*, at <http://www.esa.doc.gov/508/esa/TheEmergingDigitalEconomyII.htm>.

²⁷ Michael K. Powell, (serving as a Commissioner of the FCC), *Address at the Year 2000 Contingency Planning for Government Conference, (Nov. 16, 1998) (emphasis added)*, available at <http://www.fcc.gov/Speeches/Powell/spmkp818.txt>.

²⁸ *Id.*

Advances in telecommunications technologies during the 20th Century were breathtaking. The technological advances and developments caused all economies across the globe to reconsider the fundamental policy assumptions underpinning the historic orthodoxy of rate-regulated monopoly service provision. Liberalization in the telecom sector has literally swept the world as demonstrated by the World Trade Organization's ("WTO") Basic Telecommunications Agreement which took effect in February, 1998 and entailed 69 economies pledging to liberalize their telecommunications markets either fully or partially.²⁹

The telecommunications industry is a trillion dollar per year global industry marked by fast innovation, new market entrants and restructuring³⁰ and ever increasing deregulation. New Paradigm Resources Group, Inc. calculates that "over \$150 billion in telecommunications capital expenditures resulted from" enactment of the Telecommunications Act of 1996, representing

²⁹ Fourth Protocol to the GATS. Fourth Protocol to the General Agreement on Trade in Services (WTO 1997). 36 I.L.M. 354, 366 (1997). *The WTO Basic Telecommunications Agreement, which is incorporated within the General Agreement on Trade in Services and is not a stand-alone agreement "seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition."* Vodafone Airtouch, PLC. and Bell Atlantic Corporation, 15 FCC Rcd 16507, 16512 (2000). *A brief summary of the agreement can be found in* Amendment of the Commission's Regulatory Policies to Allow Non-US.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, First Order on Reconsideration, IB Docket No. 96-111. 15 FCC Rcd 7207, 7208-09, para. 3 (1999).

³⁰ "[O]f the approximately 300 'facilities based' CLECs in operation three years ago, only about 70 remained as of early 2002." Larry F. Darby, Jeffrey A. Eisenach, Joseph S. Kraemer, *The CLEC Experiment: Anatomy of a Meltdown, Periodic Commentaries on Policy Debate, Progress on Point*, Sept., 2002 (the "Darby Report"). *The Darby Report concludes, "the failure of the CLECs has not slowed the development of competition for local services; and, conversely, that CLECs did not fail because of a lack of growth in the market for competitive services – they failed in spite of it."* *Id.* at p. 2.

"2% of all U.S. capital spending and 28% of all communications spending by all market participants."³¹

Because of the special nature of the industry, the total negative effect of telecommunications corporate wrongdoing and fraud will continue to be felt throughout the telecommunications industry and the U.S. (indeed the global) economy, for years, if not decades to come. Indeed, WorldCom's fraud will "ripple through the telecom sector to the corner store, gashing local businesses and hampering economic recoveries."³²

Not unlike the railroads of yesteryear, today's telecommunications industry is globalizing markets, reducing transactions costs, expanding productivity, and directly increasing economic well being. The global telecommunications networks are rapidly becoming, if they have not already become, the new trade routes.

Technological advances are constantly reducing costs and expanding capabilities in telecommunications. These developments further drive down costs and expand capabilities not only in the telecom sector but with respect to complementary goods and services as well. So ubiquitous is the use of telecommunications in the production and marketing of goods and services that telecommunications is fast becoming an integral part of the production process, part of the product firms supply either as a value-added service, or as part of the product itself, e.g. telephonic order entry and credit validation and customer-service telephone lines.

³¹ Measuring the Economic Impact of the Telecommunications Act of 1996: Telecommunications Capital Expenditures (1996-2001), *October 2002*.

³² *Jon Swartz, WorldCom Woes Ripple Throughout Economies, USA Today, Aug 9, 2002 at 1B*

In but a few brief remarks, Chairman Powell has encapsulated the importance of today's telecommunications industry:

The Year 2000 Problem has clearly demonstrated the inter-connectivity and inter-dependency of the communications industry. Consider that hundreds of millions of users of communications services throughout the country transmit voice, data and video information upon the domestic communications infrastructure that is composed of the wireline telephone networks, cellular and PCS networks, satellite constellations, broadcasting and cable television systems, and the Internet.³³

* * *

The communications infrastructure—like energy—is one of a handful of basic building blocks upon which all other industries and programs rest. For example, critical programs, such as Defense Department command and control, Federal Reserve electronic fund transfers, and Medicare benefit payments, depend upon this ubiquitous infrastructure...³⁴

* * *

Unlike many other industries, telecommunications must operate all day, each and every day, without any downtime.³⁵

Recognizing the importance of today's telecommunications industry, Chairman Powell has likewise recognized that "[t]here is no greater sacrosanct role, either for carriers or the Commission, than to ensure the critical continuity of operations of those vital services for consumers, and critical consuming users, like the federal government"...³⁶ To properly fulfill that role, the Commission must initiate the requested rulemaking and investigatory proceedings.

³³ Michael K. Powell, (serving as a Commissioner of the FCC), *Address at the Year 2000 Contingency Planning for Government Conference*, (Nov. 16, 1998), available at: <http://www.fcc.gov/Speeches/Powell/spmkp818.html>.

³⁴ Id.

³⁵ Id. Quoting from: Frances Cairncross, Survey on the Year 2000 Problem, *The Economist*, Sept. 19, 1998.

³⁶ Remarks of Michael K. Powell, Chairman, FCC, Press Briefing on WorldCom Situation, 7/16/02, available at: <http://www.fcc.gov/Speeches/Powell?2002/spmkp209.html>.

Moreover, as telecommunications moves further and further toward becoming classified as an *information* service, providers are increasingly in a position to exercise control over the content as well as the means of our communication; the things we can say, the information we can access and even the thoughts we can think will be substantially affected if providers can restrict access to information. When a telecommunications service becomes reclassified as an "information service," providers have incredible power -- far more power than broadcasting which was, after all, always a one-way medium. Control over the lines serving and access to the Internet carries with it the potential to affect our interaction with others, the essence of the First Amendment. Therefore, character must be the *sine qua non* of entry into this business

The WorldCom case has already rung the alarm from other captains of the telecommunications industry. "The accounting fraud that brought down WorldCom and tainted a number of telecommunication companies has left 'a lingering stench that has poisoned our industry ...'"³⁷ Simultaneously with the filing of this petition, OC-UCC has filed with the Commission its Informal Objection to Assignment Applications ("Informal Objection") setting out in greater detail WorldCom's fraud, misrepresentations and accounting irregularities. OC-

(Continued...)

³⁷ Stacy Cowley, Sprint CEO blasts WorldCom, *Network WorldFusion*, Oct. 2, 2002 (quoting Sprint chairman and chief executive officer William Esrey in a keynote address at Internet World, Fall 2002) at <http://www.nwfusion.com/news/2002/1002sprintceo.html>. "Pressure to keep up in the booming market, and to match the growth claimed by companies that later turned out to be cooking the books, pushed companies into unreasonable expansion, foolish investments and unsustainably low pricing in a bid to grab customers at any cost..." *Id.* Esrey "expects the effects of those business decisions to continue haunting the industry for many years." *Id.* "We kept asking ourselves what we were doing wrong because we couldn't generate the numbers WorldCom reported. . . . As we discovered, the margins were a hoax but the devastating effect on our industry was very, very real." *Id.*

UCC. incorporates the recitation of those facts into this petition by reference, as if fully set forth herein to provide a vivid example of the type of behavior the Commission must preclude from the telecommunications sector.

III. WORLDCom'S BEHAVIOR AS A COMMISSION LICENSEE AND PERMITEE REQUIRE A COMMISSION INVESTIGATION AND RULEMAKING

A. The Behavior of WorldCom's Senior Management Requires an Investigation and the Institution of Rulemaking

In the history of the Communications Act it is hard to recall any parallel *to* the massive fraud and misrepresentation that has been visited upon the American people and the Commission by WorldCom and its management. Almost daily revelations have demonstrated that, in its desire to artificially inflate its stock value, WorldCom management at several levels made knowingly false verified statements to the public at large and to a variety of federal regulatory agencies, including the Commission. The extent of the fraud and the depth of the misrepresentation are still not fully known, despite several ongoing investigations and guilty pleas by top-level management.³⁸ Much of the detail of what is known to date is presented more fully in OC-UCC's contemporaneously filed Informal Objection and incorporated by reference herein

Taking only what we know already on face value, there is a clear *prima facie* demonstration of serious and pernicious effects on our nation's telecommunications infrastructure. The situation literally begs for the Commission to exercise its obligations under the Communications Act to promulgate new rules, standards and policing mechanisms to assure that WorldCom's behavior cannot be replicated by others in the future. Unfortunately, recent

³⁸ See Section V, *infra*.

revelations about the accounting practices of Qwest and Global Crossing may demonstrate that other abuses have occurred in other companies that similarly cry out for remedies. In order to comprehensively address the situation the Commission must be clear in its authority with a record that clearly supports its actions. To be in that position, it should use the tools Congress gave to it for that very purpose; it must conduct a full investigation targeted at matters relevant to telecommunications and institute a full notice and comment proceeding in compliance with the requirements of the Administrative Procedure Act."

IV. THE FCC HAS THE AUTHORITY TO ESTABLISH STANDARDS FOR CONDUCT AS THE NATION'S STEWARD OF THE TELECOMMUNICATIONS INDUSTRY

A. The Commission Has Clear Authority to Establish Such Standards

The Commission was established "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio"⁴⁰ and is specifically authorized to promulgate such rules or issue such orders "as may be necessary in the execution of its functions."⁴¹

Section 201(b) of the Communications Act clearly obligates carriers subject to regulation under Title II of the Act to act in a just and reasonable fashion.⁴² Furthermore, carriers are fully

³⁹ 5 U.S.C. § 551 et. seq.

⁴⁰ 47 U.S.C. § 151.

⁴¹ 47 U.S.C. § 154(i).

■ *All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared unlawful." 47 U.S.C. § 201 (b) (emphasis added).*

liable for the "act[s], omission[s] or failure[s] of any officer, agent or other person acting for or employed by any common carrier or user, acting within the scope of his employment."⁴³

Section 308(b) of the Communications Act states in pertinent part that "[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station...." (Emphasis added). Similar language regarding construction permit applications is found in §319(a), and, under the provisions of §310(d) of the Act, applications for transfer or assignment of permits or licenses are treated as if the proposed transferee or assignee were filing under §308. Accordingly, the Commission has long recognized its authority to establish standards of conduct and has in fact done so on numerous occasions, as, for example, in the establishment of the broadcast decency standards and in their enforcement against Title III licensees.

B. The Commission has Already Applied Title III Standards to Title II Licensees

In 1988, the Commission held that the *Character Policy Qualification Statement* – originally drafted for and applied only to broadcast licensees – applies equally to non-broadcast licensees.⁴⁴ Examination of non-FCC related conduct of FCC licensees has been a long-established part of the licensing process for television and radio broadcasters because of the FCC's recognition that an applicant's misconduct may reflect on the "likelihood that an applicant

⁴³ 47 U.S.C. § 217.

⁴⁴ *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515 (1988), citing Policy Regarding Character Qualifications in Broadcast Licensing 102 FCC 2d 1179, 1195-97, 1200-03 (1986) ("Character Policy Qualifications"), modified, 5 FCC Rcd 3252 (1990) ("Further Character Policy Statement"), recon granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564, 6566 (1992) ("Further Character Qualifications Modifications").

will deal truthfully with the Commission and comply with the Communications Act and our rules and policies."⁴⁵

Since extending the applicability of the *Character Policy Qualifications* statement in 1988, the Commission rigorously applied the standards to entities that hold Section 214 authorizations,⁴⁶ submarine and cable landing licenses,⁴⁷ earth and space station authorizations,⁴⁸ and Part 22 cellular licenses.⁴⁹ In determining whether or not it should allow the assignment of Section 214 authorizations, the Commission noted that it was "required to determine whether [the proposed assignee had] the necessary citizenship, *character*, financial, technical and other qualifications"⁵⁰ The Commission should now evaluate WorldCom by the same *Character Policy Qualifications* standards that have been diligently applied to other licensees in the past to determine whether this example of corporate misbehavior lights a path for the formulation of a

⁴⁵ *Character Policy Qualifications*, 102 *FCC 2d* at 1196.

⁴⁶ See, e.g., 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 *FCC Rcd* 21292 (1998) ("Southern New England Telecommunications Transfer Application").

⁴⁷ See, e.g., Application of GTE Corporation, Transferor and Bell Atlantic Corporation, 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 *FCC Rcd* 14032 (2000).

⁴⁸ See, e.g., Amendment Of The Commission's Regulatory Policies To Allow Non-U.S. Licensed Space Stations To Provide Domestic And International Satellite Service In The United States And Amendment Of Section 25.131 Of The Commission's Rules And Regulations To Eliminate The Licensing Requirement For Certain International Receive-Only Earth Stations, 12 *FCC Rcd* 24094 (1997).

⁴⁹ See, e.g., Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company Application For Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership, 10 *FCC Rcd* 13368 (1995).

⁵⁰ Southern New England Telecommunications Transfer Application, 13 *FCC Rcd* at 21305 n. 65 (*emphasis added*), citing Craig O. McCaw, Transferor, and American Telephone & Telegraph Co., Transferee, For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, 9 *FCC Rcd* 5836, 5844 (1994).

more explicit and informative code of behavior that should govern the providers of our nation's telecommunications networks.

1. **The Character Policy Qualifications Provide An Appropriate Framework From Which To Launch An Evaluation Of WorldCom And Similarly Situated Regulated Entities**

The *Character Policy Qualifications* are a well-defined and established body of Commission law providing guidance as to the character qualifications that will serve the public interest. These guidelines do not require the Commission to wait until an applicant is an adjudicated felon prior to evaluating an applicant's fitness. Rather, they provide the Commission with the framework to make a decision that considers the public harm inherent in granting a license to an applicant that knowingly:

- makes a false statement to the Commission;
- willfully or repeatedly fails to operate substantially as set forth in the license; or
- willfully or repeatedly violates the Communications Act or FCC rules, such as making misrepresentations to FCC staff or demonstrating a lack of candor; or
- willfully or repeatedly violates such other laws, regulations or standards of behavior as to call into question the trustworthiness of the applicant.

The numerous civil and criminal proceedings pending against WorldCom (and the guilty pleas that have already been entered⁵¹) and the corporate culture of fraud and deceit they reflect demonstrates that a closer scrutiny of telecommunications company corporate behavior under the Commission's character policy is warranted. This examination will likely provide guidance for

⁵¹ *Supra at notes 64, 98, and 101*

the formulation of codes of corporate governance and behavior that the Commission might require in selecting more responsible and reliable providers of our national telecommunications network. *Public interest considerations demand accountability from telecommunications providers regardless of whether they serve by wire or radio, under authority of Title II and Title III of the Communications Act.*

2. Need for Standards

The Commission has consistently found that certain actions by a licensee or applicant are so egregious and outside the realm of acceptable conduct that they can disqualify the licensee or applicant from holding FCC licenses. WorldCom's behavior demonstrates that regulations to prevent such behavior are urgently needed.

Until now, the Commission has broadly split character related misbehavior into FCC-related misconduct and non-FCC related misconduct. The Commission's primary concern with a licensee's violation of law, the Act, or Commission rules and policies is that such misconduct has a clear relationship with the traits of "veracity and reliability."⁵² FCC-related misconduct raises the question of "whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate . . . consistent with the requirements of the Communications Act and the Commission's Rules and policies."⁵³

⁵² Character Policy Qualification, *102 FCC 2d at 1209*

⁵³ *Id.*

"It is well settled that the ability of the Commission to rely on the representations of applicants and licensees is crucial to the functioning of our regulatory process."⁵⁴ "The requirement for absolute truth and candor from those appearing before the Commission is bedrock because the Commission must rely heavily on the completeness and accuracy of the submissions made to it by applicants who, in turn, have an obligation to provide the Commission with the facts needed to carry out its statutory mandate."⁵⁵ Accordingly, in its quest for rules to shore up the character requirement of its telecommunications grantees, the Commission would be justified in seeking comment on rules that could be relied upon to serve at least these two goals:

- eliminate opportunities and incentives, corporate and personal, to misrepresent material facts to the Commission, and
- ensure that persons of reliable character are in command

While misrepresentations involve false statements of fact made with an intent to deceive and lack of candor involves concealment, evasion and other failures to be fully informative,⁵⁶

⁵⁴ MobileMedia Corporation 12 FCC Rcd 14896, 14899 (HDU 1997), citing, Richardson Broadcast Group, 7 FCC Rcd 1583 (1992) (subsequent history omitted).

⁵⁵ Contemporary Media, Inc. et al., Decision, 13 FCC Rcd 14437, 14454 (1998). See also SBC Communications, Inc. Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture and Order. 16 FCC Rcd 19091, 19106 (2001) ("SBC Notice of Apparent Liability for Forfeiture"? ("Our decisions rely heavily on the completeness and accuracy of applicants' submissions because we do not have the resources to verify independently each and every representation made in the thousands of pages submitted to us each day"). "Indeed, the Commission's demand for absolute candor is itself all but absolute." MobileMedia, 12 FCC Rcd at 14899, citing Emision de Radio Balmaseda Inc., 7 FCC Rcd 3852, 3858 (1992), rev. denied, 8 FCC Rcd 4335 (1993).

⁵⁶ See Fox River Broadcasting, Inc., DePere, Wisconsin; Jun A. Le Duc d/b/a/, American Communications Company, DePere, Wisconsin; For Construction Permit for New FM Broadcast Station, Order, Y3 FCC 2d 127, 129 (1983) ("Fox River Broadcasting Order"?

both represent deceit, differing only in form.⁵⁷ Not only does the Commission "refuse to tolerate deliberate misrepresentations,"⁵⁸ it may also premise a finding of lack of candor on omissions.⁵⁹

Candor is important regardless of the services provided,⁶⁰ and, as will be shown, may even carry more dire consequences in the modern day arena of telecommunications than ever was the case in broadcasting. Moreover, "false certifications are abuses of the Commission's processes which waste the resources of both the Commission and legitimate qualified applicants, which may not

⁵⁷ Id.

⁵⁸ Nick J. Chaconas for Renewal of License Station WHMC, Gaithersburg, MD, Decision, 28 FCC 2d 231, 233 (1971). See also FCC v. WOKO, Inc., 329 U.S. 223, 227, 67 S. Ct. 213 (1946); WMOZ, Inc., 36 FCC 202, 237-39 (1964), aff'd., 3 FCC 2d 637 (1966).

⁵⁹ KKO General, Inc. v FCC, 670 F.2d 215, 229, 230 (D.C. Cir. 1981).

⁶⁰ See, e.g., SBC Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 19114-15 ("We consider misrepresentation to be a serious violation, as our entire regulatory scheme rests upon the assumption that applicants will supply [the Commission] with accurate information.") (internal citations omitted); Liberty Productions, A Limited Partnership; Willsyr Communications Limited Partnership; Biltmore Forest Broadcasting FM, Inc., Skyland Broadcasting Company; Orion Communications Limited; For A Construction Permit For A New FM Broadcast Station on Channel 243A at Biltmore Forest, North Carolina Memorandum Opinion and Order, 16 FCC Rcd 12061, 12080 (2001) ("[I]mmaterial misrepresentations can be a basis for disqualification."), citing WOKO, Inc. v. FCC, 329 U.S. 223 (1946); Liberty Cable Co., Inc.; For Private Operational Fixed Microwave Service Authorization and Modifications; New York, New York, Decision, 15 FCC Rcd 25050, 25071-72 (2000) ("[T]he duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications."); The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17098 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement") ("Regardless of the factual circumstances of each case, misrepresentation to the Commission is always an egregious violation."); Garden State Broad. Ltd. P'ship. v. FCC, 996 F.2d 386, 393 (D.C. Cir. 1993) ("[D]eliberate failures to produce information can result in disqualification for lack of candor."); Fox River Broad. Inc., 73 FCC 2d 127, 130 (1983) ("Our concern with misrepresentation and lack of candor stems from the necessity of relying on licensees' representations to the Commission."); RKO v. FCC, 670 F.2d at 229 ("As a licensing authority, the Commission is not expected to 'play procedural games with those who come before it in order to ascertain the truth.'") (internal citation omitted).

only break Commission rules, but may subject the applicant to monetary forfeitures, as well as criminal liability."⁶¹

C. Non-FCC Related Conduct is An Important Indicator of FCC Related Character

It is well-settled that the Commission views certain non-FCC related misconduct as relevant to whether a party is qualified to hold FCC authorizations and certifications. The Commission consistently focuses on three classes of non-FCC misconduct when evaluating the qualifications of licensees:

- adjudicated fraudulent statements to another governmental unit;
- criminal convictions involving false statements or dishonesty; or
- adjudicated violations of anticompetitive or antitrust laws in connection with FCC authorized business-related misconduct.⁶²

The Commission regularly applies these standards when considering applications for assignment of authorizations from one entity to another, and in determining whether the totality of

⁶¹ 62 Broadcasting, Inc., 3 FCC Rcd 4429, 4449 (1988) (internal citations and subsequent history omitted), citing, In the Matter of Financial Certifications by Applicants for Broadcast Station Permits, 2 FCC Rcd 2/22, 1987 (internal citations omitted).

⁶² See Character Policy Statement, 102 FCC 2d at 1193; Policy Regarding Character Qualification in Broadcast Licensing; Amendment of Part I, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, Policy Statement and Order, 5 FCC Rcd 3252, 3252 (1990) ("Further Policy Statement").

circumstances raises questions about the licensee's character to the level necessary to prohibit the company from continuing as a Commission licensee.⁶³

It is an understatement of extreme proportions to say that WorldCom has exhibited a lack of candor in its misrepresentations, not only to the Commission, but to other agencies of government. Those misrepresentations have already resulted in three guilty pleas of conspiracy to commit securities fraud and securities fraud along with sworn allocutions as to the crimes committed.⁶⁴ The WorldCom case has emerged as a smoking gun of unimagined proportions, leading to the inescapable conclusion that intentional misrepresentations of any kind to any institution of authority demonstrate a lack of corporate citizenship and character that must be required of service providers authorized by the Commission. Good corporate citizens should be expected to organize themselves in a fashion that reduces or eliminates the opportunities or incentives for such misbehavior before the Commission or any other institution of government when seeking to perform activities vested with a public trust or interest.

D. The Need for Standards for Telecommunications Providers to be Clarified

Herein and in its simultaneously filed Informal Objection, OC-UCC, has set out the pernicious effects of WorldCom's misconduct. In this era of an Internet economy dependent on rapid, efficient voice and data telecommunications, WorldCom serves as an example of behavior

⁶³ See, e.g., *Twiggs County Cellular Partnership Macon- Warner Robins, Georgia MSA Market No. 138(B) Petition for Waiver of Section 22.944(a) of the Commission's Rules*, 14 *FCC Rcd* 9663 (1999), citing *A.S.D. Answer Service, Inc.*, 1 *FCC Rcd* 753 (1986).

⁶⁴ *United States v. Myers, Plea, Case no. 02 Cr. 1261 (S.D.N.Y. Sept. 26, 2002)*. Ben White, *WorldCom Officer Pleads Guilty to Fraud*, *Washington Post*, Oct. 8, 2002, at E01 (reporting on the guilty plea of Buford "Buddy" Yates); Devlin Barrett, *Two Ex-WorldCom Execs Pleads [sic] Guilty*, *The Associated Press*, at http://news.findlaw.com/ap_stories/high_tech/1700/10-10-2002/20021010150007_15.html.

that must be changed just as surely as *WLBT* was an icon for misbehavior a half century ago. Just as other stations were involved in reprehensible conduct similar to that engaged in by *WLBT*, patterns of potential fraudulent accounting practices are currently under investigation at Qwest and Global Crossing.

The accounting methods of these formerly high-flying telecommunications service providers and Commission regulatees are under investigation to determine if they artificially inflated revenue by swapping fiber-optic network capacity with each other and other telecoms with both parties recording a profit. "Imagine going to a department store and exchanging a medium shirt for a large at the same price. Now imagine that both you and the store claimed that this exchange created profit. That's what Global Crossing [and Qwest] did."⁶⁵

Qwest, already laden with debt acquired largely by virtue of its voracious appetite for growth by acquisition, revealed that it improperly accounted for over one billion dollars between 1999 and 2001 and that more revelations might be on the way.⁶⁶ Qwest's accounting problems caused it to recently withdraw its applications for Section 271 authority to provide in-region, interLATA service in Colorado, Idaho, Iowa, Nebraska, North Dakota, Montana, Utah, Washington, and Wyoming."

⁶⁵ William K. Black, *Repeating The Past*, at: <http://Mwww.scu.edu/ethics/publications/ethicalperspectives/fraud.html>.

⁶⁶ *Qwest Communications International, Inc., Form 8-K, September 22, 2002.*

⁶⁷ Application by Qwest Communications International Inc. Consolidated Application for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota, *DA 02-2230, released September 10, 2002.*

Qwest recently refiled for this authority under a newly created unit, Qwest Long Distance Corp.⁶⁸ In doing so, a Qwest spokesperson said that the new unit “does not have the historical financial accounting issues noted by the FCC.”⁶⁹ With respect to the filing, Qwest’s attorney is quoted as saying that “[w]e’re starting with a clean slate.”⁷⁰

Should it really be that simple?⁷¹ Meanwhile, Qwest’s stock, which once traded at nearly “\$200 per share (adjusted for splits)”⁷² is now trading in the vicinity of \$2 per share.

At the time, Global Crossing’s bankruptcy was the “largest of any telecommunications company ... and the fourth largest in U.S. history.”⁷³ Global Crossing is currently being investigated by the SEC, the Justice Department and the Congress over its accounting practices and possible insider trading by its chairman, Gary Winnick. Late this summer, the Securities and Exchange Commission rejected an initial settlement proposal of the fraud charges that would require Global Crossing to cease and desist fraudulent practices, but not admit or deny guilt.⁷⁴

⁶⁸ Scott Moritz, Qwest is Back in it for the Long Haul, *TheStreet.com*, Sept. 30, 2002, at <http://www.thestreet.com/tech/scottmoritz/10045078.html>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See, UCC I, 359 F.2d at 994 (rejecting the Commission’s theory that the way to cure corruption is to afford an unreconstructed wrongdoer an unsupervised chance to do better).

⁷² *The Contrarian*, Is Qwest Playing Accounting Games, *Red Herring*, Jan. 31, 2002 at <http://www.redherring.com/investor/2002/0131/contrarian.html>.

⁷³ George A. Chidi, Global Crossing Battles Accounting Controversy, *Info World*, February 8, 2002. <http://www.infoworld.com/articles/hn/xml/02/02/08/020208hncrossing.xml>.

⁷⁴ Siobhan Kennedy, SEC Rebuffs Global Crossing Proposal, *Reuters Marker News*, Aug. 28, 2002, at http://216.239.37.100/search?q=cache:6WNhi_LSJ7MC:biz.yahoo.com/rf/020828/tech_globalcrossing_1.html+global+crossing+accounting+fraud&hl=en&ie=UTF-8.

Global Crossing recently announced that it signed an agreement with Hutchinson Telecommunications Limited and Singapore Technologies Telemedia Pte. Ltd., which will invest \$250 million in exchange for a 61.5% majority interest in a post bankruptcy Global Crossing.⁷⁵ Pursuant to the arrangement, Global Crossing's banks and creditors will receive 38.5% of the common equity along with \$300 million in cash and \$200 million of new debt in the form of senior notes.⁷⁶ "Existing common equity and preferred shareholders of Global Crossing will not participate in the capital structure,"⁷⁷ which is a nice way of saying that Global Crossing's investors have lost the entirety of their investments in the company.

Just as in *WLBT*, an urgent need exists for the Commission to step forward and set a regulatory approach to protecting the public interest from harm. In the case of *WLRT*, it fell upon the U.S. Circuit Court of Appeals to remind the Commission of its responsibility to the public. Here is the opportunity for the Commission to address a dreadful situation proactively, without waiting for another branch of government to force it into action. Telecommunications must be more than a stock play opportunity if it is to play the vital role in American society that everyone from the President to the FCC Chairman envision.

Fraud in the area of telecommunications is most serious. WorldCom's, and possibly Qwest's and Global Crossing's, corporate misconduct has and will take a tremendous toll, not only on company employees, but also on the lives of average Americans. Misrepresentations by these entities can have pernicious effects on the nation's economy. Because the nation's

⁷⁵ *Global Crossing Ltd., Form 8-K, August 9, 2002.*

⁷⁶ *Id.*

⁷⁷ *Id.*

telecommunications infrastructure now serves as the central nervous system of the nation's and, in some ways, the world's economy, entrusted to persons of poor character or criminal intent, the cost to the nation can be enormous, with implications for our very way of life.

The Commission relies substantially upon the information provided to it by regulated entities such as WorldCom. Under longstanding Commission rules, WorldCom and other telecommunications entities such as Qwest and Global Crossing must report a variety of financial and revenue data to the Commission on a periodic basis. In particular, sections 1.785(b) and 43.21(b) of the Commission's rules require publicly traded carriers to file with the FCC "verified" copies of their 10-K reports submitted to the SEC.⁷⁸ Additionally, carriers must annually report to the FCC their operating revenues and the value of their total communications plant at the end of that year.⁷⁹

These carriers must also report data on gross billed revenues on an annual and quarterly basis. This data, filed on FCC Form 499-A or 499-Q and signed by an officer of the company (along with revenue information collected on FCC Form 159 submitted in September of each year), is used by the Commission to calculate regulatory fees as well as contributions to support the agency's Universal Service Fund ("USF") program, Local Number Portability Administration, North American Numbering Plan Administration, and Telecommunications Relay Service program. Furthermore, international common carriers subject to section 43.61 of

⁷⁸ 47 C.F.R. §§ 1.785(b), 43.21(b).

⁷⁹ *Id.* § 43.21(c).

the Commission's rules must also report data for the preceding calendar year on actual traffic and revenue for each service provided.⁸⁰

The Commission specifically relies on the financial information supplied to it by those it authorizes. The supply of inaccurate or falsified data undermines the FCC's ability to rely on company-supplied data to establish and implement its regulatory objectives.

For example, WorldCom and MCI have actively participated over the years in FCC proceedings determining whether AT&T should be released from price regulation or whether the Bell companies should be allowed to offer long-distance service. If false or unreliable information in such proceedings skews the FCC's development of regulations, the investment decisions and competitive strategies of telecommunications carriers also will [be] misdirected, all to the ultimate detriment of consumers."

The FCC itself publishes a number of reports containing and analyzing the information supplied by telecommunications entities.⁸² These reports often serve as an official record regarding the status of the market. For example, the Commission's *Statistics of Communications Common Carriers* states:

The Statistics of Communications Common Carriers (SOCC), which has been published annually since 1939, is one of the most widely used reference works in the field of telecommunications. It is the only permanent record of common carrier activity published by the Government Printing Office and sent to repository libraries

⁸⁰ Id. § 43.61.

⁸¹ J. Gregory Sidak, The Failure of Good Intentions, The Collapse of American Telecommunications After Six Years of Deregulation, 2002 Beesley Lecture on Regulation, October 1, 2002.

⁸² These reports (and their latest release dates) include: Statistics of Communications Common Carriers (2001/2002 Edition); Telecommunications Industry Revenues (2002); Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service (July 2002); Trends in Telephone Service (May 2002); Statistics of the Long Distance Telecommunications Industry (January 2001); Fiber Deployment Update - End of Year 1998 (1999); International Telecommunications Data (2000); Trends in the International Telecommunications Industry (April 2001).

Moreover, the FCC and other governmental agencies use the information from these reports to assess the condition of the market and establish regulatory policies."⁸³

Regulatory accounting data and related information filed by telecommunications carriers is used by federal and state telecommunications policymakers to fulfill various responsibilities, such as determining interstate access charges, evaluating federal-state jurisdictional separations, setting rates for unbundled network elements and calculating universal service support....⁸⁴

Additionally, the Commission uses carrier-supplied information for purposes of evaluating mergers or acquisitions;⁸⁵ resolving carrier complaints,⁸⁶ and managing numbering resources.⁸⁷ It also relies on company self-reporting of data to establish and collect fees and contribution payments associated with its regulatory and support programs.⁸⁸

⁸³ *Non-government entities - including vendors, investors and competitors — use the information to monitor and evaluate the telecommunications industry and participants.*

⁸⁴ *Press Statement of Michael K. Powell, Chairman, Federal Communications Commission, Re: Federal-State Joint Conference on Regulating Accounting Issues, Sept. 5, 2002, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-225969A1.doc (last visited Sept. 16, 2002) (emphasis in original).*

⁸⁵ See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee, *Memorandum Opinion and Order*, 15 *FCC Rcd* 9816 (2000); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee, *Memorandum Opinion and Order*, 14 *FCC Rcd* 3160 (1999).

⁸⁶ See, e.g., AT&T Corp. v. Business Telecom, Inc., et al., *Memorandum Opinion and Order*, 16 *FCC Rcd* 12312 (2001).

⁸⁷ See, e.g., Numbering Resource Optimization, *Notice of Proposed Rulemaking*, 14 *FCC Rcd* 10322 (1999).

⁸⁸ See, e.g., Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, *Tenth Report and Order*, 14 *FCC Rcd* 20156 (1999).

The supply of inaccurate or falsified data jeopardizes all these efforts since it clearly affects the accuracy of the FCC reports and analyses relying on company data. Anything less than fully reliable information subverts virtually the entirety of the Commission's processes.

In order to fully perform its functions in accordance with its statutory mandate, the Commission must be able to rely on the information provided to it. But the only way it can do that is with the knowledge that the information provider is being, and will continue to be, truthful with the Commission. Only through the establishment of clear and explicit standards – and clear and explicit consequences for violations thereof – can the Commission acquire such knowledge.

V. THE FCC SHOULD CONDUCT A SECTION 403 INVESTIGATION INTO THE FULL EXTENT OF THE CHARACTER MATTERS AT ISSUE IN CONNECTION WITH ALL TELECOMMUNICATIONS AUTHORIZATIONS FOR WORLDCOM

As an adjunct to the rulemaking and so that it is fully able to gather facts and information upon which to base an empirical decision, the Commission should conduct a §403⁸⁹ investigation regarding WorldCom's activities as well as those of other entities such as Qwest and Global Crossing falling under its jurisdiction

"Under Section 403 of the Communications Act, as amended, (47 U.S.C. § 403), full authority and power are given to the Commission to institute an inquiry on its own motion, with or without complaint, as to any matter falling within its jurisdiction."⁹⁰ Section 403 grants the

⁸⁹ 47 U.S.C. § 403

⁹⁰ Tidewater Radio Show, Inc., 75 FCC 2d 670, 677 (1980), citing *Stahlman v. FCC*, 126 F. 2d 124 (D.C. Cir. 1942).