



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 15, 2002

VIA HAND-DELIVERY

The Honorable Edward J. Markey
Ranking Member
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
United States House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Markey:

Last week, you issued a press statement responding to my letter of July 10, 2002, regarding the action this Commission has taken and will take to protect customers as WorldCom's situation continues to develop. Although your original letter did not specifically raise the applicability of section 214 to broadband Internet access services, your press statement that the Commission is powerless to protect broadband consumers prompts me to write to clarify several apparent misunderstandings regarding the scope of our authority and our approach to implementing the intent of Congress as set forth in the Communications Act ("the Act").

First, I appreciate your concerns and this opportunity to reiterate and emphasize that there is no question or issue concerning section 214's applicability to WorldCom. As we both have recognized, this Commission will act vigilantly and to the full extent of our statutory authority to ensure that consumers' interests are protected should WorldCom enter into bankruptcy. Ensuring continuity of service for consumers is our highest priority in the wake of the troubles facing many companies in the telecommunications industry today.

Second, I did not suggest that we are powerless to protect consumers and prevent service disruptions by any entity providing any type of communications service. In the case of Excite@Home, for instance, the Commission was an active participant and advocate in protecting consumer interests, as we engaged all the companies involved and the bankruptcy court itself to ensure that consumer interests were both contemplated and protected. Indeed, I urged the bankruptcy judge to "balance not just the interests of one debtor and its creditors, but also those of millions of customers and the American public" and that he, at a minimum, "provide for an orderly transition rather than a precipitous shutdown of Excite@Home, to avoid

disrupting broadband service to a significant percentage of U.S. customers." Our involvement was largely successful as a majority of consumers were migrated to new networks expeditiously and without an excessive service disruption.

As to section 214's inapplicability to Excite@Home, it is important to note that the company was not a "carrier" (whether a common carrier, telecommunications carrier or cable operator), but an Internet Service Provider ("ISP"), akin to AOL, Earthlink and Juno. As you know, ISPs do not incur any obligations under Title II of the Act. Because Excite@Home and the services provided by it had never been regulated as carrier services, by this or any previous Commission, any application of section 214 to Excite@Home would have been an unprecedented and unsupported extension of our authority under that provision. At no time, however, did this impede the Commission from intervening to protect the American public's interest and we will continue to do so where and when it is warranted.

Third, with respect to a carrier, it is not clear that section 214 could not be applied to any service offered by that carrier. Section 214(a) does not define either the class of "carrier" or the class of "services" to which the Commission's authority runs ("No carrier shall discontinue, reduce, or impair service to a community..." (47 U.S.C. § 214)). This, of course, is a consequence of the fact that this provision was written in 1934, as part of the original Communications Act, a time where there were no classes of carriers or services.

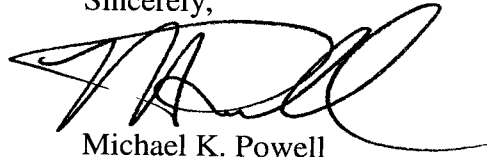
Fourth, our ongoing broadband proceeding specifically anticipated the concerns you raise and considers how to continue to protect consumers regardless of the classification of broadband Internet access services. See *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019, 3045-47 (2002). Noting that "section 214 of the Communications Act limits the ability of a telecommunications carrier to unilaterally discontinue telecommunications service to consumers," the Commission asks interested parties to "address the extent to which it is appropriate or necessary to apply such a requirement to the provision of wireline broadband Internet access service if we classify such services as information services." *Id.* at 3045.

Finally, given that bankruptcies have increased, regrettably, the Commission would greatly benefit from a more definitive and concise statement of its authority to prevent service disruptions for consumers. In this regard, I invite you and your colleagues on the Committee to explicitly extend the Commission's authority to impose discontinuance requirements on other carriers and services within our jurisdiction.

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I look forward to working with you and other members of the Committee as we jointly navigate these troubled times facing the telecommunications industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', with a long horizontal flourish extending to the right.

Michael K. Powell
Chairman

cc: The Honorable W.J. ("Billy") Tauzin
The Honorable John Dingell
The Honorable Fred Upton



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 10, 2002

**VIA FACSIMILE TRANSMITTAL
AND HAND-DELIVERY**

The Honorable Edward J. Markey
Ranking Member
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
United States House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of July 2, 2002, regarding WorldCom's disclosure of financial accounting inaccuracies and the possibility of the company's bankruptcy. In your letter, you asked what the Commission is doing "to prepare for a possible bankruptcy and to safeguard service quality," and also, in the event of a WorldCom bankruptcy, what the Commission will do "to assure consumers that their service will not be shut-off or that service quality will not suffer."

I am deeply troubled by WorldCom's recent disclosures and share your concern about the impact on consumers and the nation's telecommunications infrastructure if WorldCom or its creditors were to initiate bankruptcy proceedings. In direct response to your questions, I assure you that the Commission has already taken action to protect the public interest in general and WorldCom's customers in particular, and will continue to take such actions as are necessary and consistent with our authority under the Communications Act.

Over the last two weeks, I personally have taken steps to ensure that the Commission has and continues to receive the most up-to-date information about WorldCom's developing situation. I met with John W. Sidgmore, Chief Executive Officer of WorldCom, to hear about the company's financial situation and ability to maintain service quality first-hand and, since that initial meeting, have engaged in regular communications with Mr. Sidgmore and will continue to do so for the foreseeable future. Within three days of WorldCom's first announcement that it had discovered financial accounting irregularities, I met with representatives of the telephone industry, financial analysts and debt-rating agencies to gain an understanding of WorldCom's immediate situation and also discuss how these developments impact the telecommunications industry. Additionally, I have participated actively in interagency discussions to ensure a broad understanding of WorldCom's impact on the government's use of telecommunications and its impact on the industry, as a whole. I will continue to keep these lines of communication open and active for as long as the current situation persists. Finally, as you know, I was appointed to

serve on the new inter-agency Corporate Fraud Task Force to offer the Commission's expertise to assist in efforts to investigate and prosecute significant financial crimes and restore credibility to and confidence in the market.

My personal efforts are only one part of the hard work the entire Commission has undertaken to minimize the threat of a WorldCom bankruptcy to continuity of service. The Commission's staff has worked with WorldCom executives and conducted its own independent research so that our information regarding the extent of WorldCom's operations and its customer base are up-to-date. The Commission's staff has also spoken with anxious consumers, other carriers, and other government agencies, both to provide them with information the Commission has about the current situation and our processes, and also add to our own understanding of the scope of the problem. We have been in extensive consultation with state public utility commissions to explore coordinated responses to carrier bankruptcies. These state public utility commissions also have responsibility to ensure continuity of local and intrastate services and may be, in some cases, better placed to act quickly to prevent a catastrophic loss of service. In short, the Commission is gathering the information and developing the tools we need to deal with whatever situation may arise in coming weeks.

If a WorldCom bankruptcy were to occur, the Commission will act vigilantly and to the full extent of our statutory authority to prevent a catastrophic loss of service. Although I agree with you that a WorldCom bankruptcy would be a significant and unprecedented event, it is not necessarily the case that such a bankruptcy would result in a discontinuance of service to consumers. Indeed, carriers filing for reorganization under Chapter 11 of the Bankruptcy Code must still continue to provide service during the pendency of bankruptcy proceedings, and the Commission has seen a number of bankruptcies result in reorganization or an acquisition of the troubled carrier with no discontinuance of service at all. If WorldCom were to file for bankruptcy, it is possible that the Commission would not need to intervene to prevent service discontinuance, but would instead need to review applications for transfers of control of WorldCom's federal licenses and authorizations. The Commission would be well placed to do so given our efforts to gather information and communicate with the company.

If, however, a bankruptcy were to lead to a discontinuance of service, the Commission would act as quickly as possible to protect the integrity of the nation's telecommunications network and services provided to mission critical government functions. As you stated in your letter, the foundation of our authority to protect consumers from an abrupt discontinuance of service is section 214(a) of the Communications Act of 1934, as amended. Section 214(a) states, in pertinent part, that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby." 47 U.S.C. § 214(a). Our rules implementing this statute provide consumers the opportunity to find an alternative service provider by requiring the carrier to send individual

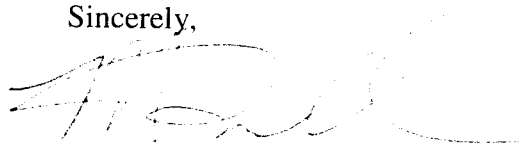
written notices to each consumer affected by the discontinuance. 47 C.F.R. §§ 63.60, *et seq.* The carrier is then prohibited from discontinuing service for a minimum period of thirty-one (31) day from the date the carrier's notice of discontinuance is released on public notice by the Commission. This thirty-one (31) day period is, however, a minimum period, and the Commission may extend it if consumers would be unable to receive service or a reasonable substitute from another carrier, or if the Commission otherwise finds that the public convenience and necessity is adversely affected.

Over the past year, the Commission has acted repeatedly to ensure that carriers observe the discontinuance requirements, and thereby provided consumers an opportunity to migrate. The agency has devoted a great deal of time to working with carriers to make sure that they understand the requirements, and has made a number of appearances in bankruptcy court proceedings to advise the court when the requirements had not been met, or when action by the court might have caused an unnoticed discontinuance of service. The end result is that the industry has, so far, weathered numerous carrier bankruptcies without significant disruptions of service to end-users.

The two discontinuances mentioned in your letter, Northpoint Communications and Excite@Home, have given the Commission important experience in dealing with bankruptcy and discontinuance of service. Northpoint Communications did not observe our regulatory requirements and provided seventy-two (72) hours notice of its discontinuance of service without any advance warning to the Commission. We thus were unable to take effective, timely action to protect consumers. The Commission has, however, incorporated the lessons from this experience into our process, and has taken proactive steps to work with troubled carriers in advance, as I have described above. The services provided by Excite@Home were not within the scope of the services to which section 214 applies. I did, however, urge the bankruptcy court to entertain our public policy concerns (a copy of the letter I sent is attached). Additionally, we worked directly with individual companies to facilitate an orderly transition of customers.

Again, I want to assure you that we are doing the hard work necessary to protect the public interest in this unfortunate situation. Please do not hesitate to contact me if you need further information regarding our efforts.

Sincerely,



Michael K. Powell
Chairman

attachment



CHAIRMAN

Federal Communications Commission

Washington, D.C.

29 November, 2001

The Honorable Thomas Carlson
United States Bankruptcy Court
Northern District of California
San Francisco Division
235 Pine Street, 23rd Floor
San Francisco, CA 94104

Re: In re At Home Corporation, et al., Debtors, Case No. 01-32495 TC

Dear Judge Carlson:

It has come to my attention that, in the course of the Excite@Home bankruptcy litigation now before you, you may be asked to permit or perhaps order the service to be discontinued. I write to urge you to balance not just the interests of one debtor and its creditors, but also those of millions of customers and the American public as you consider these requests. In particular, in the event that you permit service to be discontinued, I respectfully urge you, at a minimum, to provide for an orderly transition rather than a precipitous shutdown of Excite@Home, to avoid disrupting broadband service to a significant percentage of U.S. customers.

Let me first note that the Federal Communications Commission has a strong interest in the provision of high-speed Internet services to the American public. As part of the Telecommunications Act of 1996 (Pub. L. No. 104-104, § 706(a)) Congress directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Pursuant to Congress's directive, the Commission has devoted considerable resources to the goal of promoting the deployment of high-speed (or "broadband") services.

The technologies used to provide high-speed services have achieved varying degrees of deployment in the marketplace. As of September 30, 2001, a review of various SEC filings and industry sources indicates that there were approximately 9.8 million residential and business subscribers to high-speed services in the United States. Cable industry sources indicate that, as of that date, cable Internet providers were responsible for serving approximately 6.4 million (or 65%) of those subscribers. Our understanding is that approximately 2.7 million of those customers – more than 40% of the cable Internet consumers and more than 27% of the total broadband consumers - are

subscribers to cable Internet services jointly provided by cable companies and Excite@Home.

Given these circumstances, an immediate shutdown of Excite@Home would disrupt broadband service to a significant percentage of the subscribers in the U.S. These customers, including numerous schools, libraries, public institutions, and residential consumers, would be left without high-speed Internet access unless and until their cable operator completes alternative arrangements or they initiate service with another high-speed provider (which could take weeks or longer), if one is available. This would be highly disruptive and could harm broadband deployment, contrary to the goals of Congress and the FCC.

I respectfully urge you to consider these factors as you weigh the motions before you. There is abundant case law for the proposition that a bankruptcy court acts in equity and can and should consider the interests of consumers and the public at large. *See, e.g., In re Huang*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982) (noting that the application of the business judgment rule to a debtor's decision to reject an executory contract "may involve a balancing of interests"); *In re Midwest Polychem*, 61 B.R. 559, 562 (Bankr. N.D. Ill. 1986) ("Since the bankruptcy court is a court of equity, this court believes that it is appropriate to always consider the equities of the situation and measure the relative effects of rejection before granting approval") (citing *Huang*).

It would be ideal to find some way to continue the service without negatively impacting the bankruptcy estate. If for some reason that is impossible, then at a minimum I hope an orderly transition could be arranged to avoid the impairments described above.

I appreciate your willingness to consider these views. I stand ready to provide additional information at your request.

Sincerely,



Michael K. Powell

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS
www.house.gov/markey

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July 2, 2002

The Honorable Michael K. Powell
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

I am writing with respect to recent announcements by WorldCom that it has discovered serious financial accounting inaccuracies and to subsequent media reports regarding the possible imminent bankruptcy of the company. Obviously, the collapse of the nation's second largest long distance carrier would be a significant and unprecedented event.

I am concerned that any decision by WorldCom management to seek bankruptcy protection could prove disruptive to essential communications as well as economic activity in our country. As you well know, WorldCom has millions of subscribers in the residential and business telecommunications marketplace and also operates valuable assets associated with Internet connectivity and web-based telecommunications services.

Whether WorldCom will actually go into bankruptcy is unknowable at this point in time. I believe it is wise, however, for the Commission to prepare adequately for such an event in order to minimize any harm to the public and to ensure that telecommunications services continue if bankruptcy does occur. The law provides the Commission with ample authority to protect the public in the event of a bankruptcy. For example, Section 214(a) of the Communications Act stipulates, in part, that "***No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby....***" [47 U.S.C. 214(a)].

While the Commission chose not to intervene directly to ensure continuity of service when Excite@Home and Northpoint Communications went bankrupt last year and cut-off Internet access for tens of thousands of Americans, I hope you agree that the hazards posed to the public if WorldCom were to go bankrupt go to the core of the Commission's responsibilities. In addition to the millions of Americans who subscribe to WorldCom for traditional telephone service, WorldCom is also responsible for carrying a vast portion of the nation's email traffic. In fact, some analysts calculate WorldCom's

The Honorable Michael K. Powell
July 2, 2002
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email traffic carriage to be as high as 70 percent of those emails that travel within the United States and 50 percent of all such traffic worldwide.

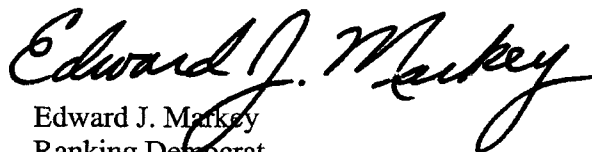
Continuity of service will be critical for the stability of the nation's telecommunications network and the quality of service to consumers. In the event of a bankruptcy, consumers must have ample opportunity to find service alternatives. Moreover, related industries will require sufficient time to ascertain how traffic may be continued or how additional subscribers and services can be accommodated by other providers.

I urge the Commission to take such steps as may be necessary to ensure the continuation of service to subscribers in the event that WorldCom goes into bankruptcy. In addition, I further recommend that the Commission work with WorldCom officials now to ensure that any layoffs that may occur as a result of, or just prior to, any bankruptcy do not lead to service quality deterioration or interruption of telecommunications service to any segment of the public.

At your earliest convenience, please provide me with your thoughts on these matters. Specifically, I am interested to know what the Commission is doing now to prepare for a possible bankruptcy and to safeguard service quality. Secondly, should a WorldCom bankruptcy occur, I am eager to know what the Commission is prepared to do to assure consumers that their service not be shut-off or that service quality will not suffer.

Thank you in advance for your time and attention to this issue.

Sincerely,



Edward J. Markey
Ranking Democrat
House Subcommittee on
Telecommunications and the Internet