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.

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,

Michael K. Powell
Chairman

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