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Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201
Voice: (703) 974-4851
Fax: (703) 974-0259

Tracey M. DeVaux
Legal Assistant

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SEP 16 1998

Federal Communications Commission
Office of Secretary

September 16, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

ORIGINAL

Re: CCB/CPD 97-30, CC 96-98 - Reciprocal Compensation

Dear Ms. Salas:

Please enter the attached letter to Chairman William Kennard into the record for the above referenced proceeding.

In accordance with Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this notice are being submitted to the Secretary

Sincerely,

Tracey M. DeVaux
Tracey M. DeVaux

Attachments

cc: H. Furchtgott-Roth
M. Powell
S. Ness
G. Tristani
K. Brown

J. Casserly
T. Preiss
K. Dixon
J. Schlichting
P. Gallant

K. Martin
D. Stockdale
J. Jackson
T. Power

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Bell Atlantic Network Services, Inc.
1320 North Court House Road
8th Floor
Arlington, VA 22201
703 974-1200 Fax 703 974-8261
E-Mail: edward.d.young@BellAtlantic.com

Edward D. Young III
Senior Vice President & Associate General Counsel
Legal

SEP 16 1998

Federal Communications Commission
Office of Secretary



September 16, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Mr. Chairman:

Re: Reciprocal Compensation for Internet-Bound Calls

The August 26, 1998 letter to you from Cox incorrectly asserts that Bell Atlantic "did not object" to the fact that Cox planned to treat calls handed off to Internet service providers as local under its interconnection agreement in Virginia. The opposite is true.

Bell Atlantic repeatedly and consistently has objected during negotiations with other carriers to the treatment of Internet-bound calls as "local" calls that are subject to the payment of reciprocal compensation. This includes negotiations with Cox. As the attached affidavit makes clear, not only did Bell Atlantic never agree that Internet traffic qualified as local under its agreement with Cox, but it specifically objected during the negotiations to Cox's argument that calls to an ISP were local traffic.

Nor did the Virginia Commission conclude otherwise. While it did rule that traffic to an ISP was local, it made this ruling not on the basis of contract analysis but on the basis of its analysis that the calls from a customer to the Internet were made by dialing seven digits, that calls terminated at the ISP, and that "any transmission beyond that point presents a new consideration of service(s) involved." (A copy of the opinion is attached).

To the extent Cox points to statements from the arbitration proceedings in Virginia as suggesting that Bell Atlantic agreed that Internet calls were subject to reciprocal compensation, it misses the point. The issue in that litigation was whether the Virginia Commission should adopt a "bill and keep" form of compensation. Cox asserted that bill and keep was a fair method of compensation, because traffic between other carriers and Bell Atlantic would be in balance. In contrast, Bell Atlantic opposed bill and keep on the grounds that it would create incentives for other carriers to sign up customers with one-way traffic flows, and cited examples of customers whose traffic flowed only in one direction to make the point that such entities exist. But the issue of whether particular types of traffic qualified as

local or interexchange, or the policy implications of treating it as one or the other, was not addressed.

In any event, the important point, both then and now, is that competing carriers will game the compensation system where possible to extract the maximum payments possible. As a result of state orders misclassifying this traffic, based largely on mistaken interpretations of the FCC's previous decisions, that gaming is in full swing as competing carriers take advantage of the error to siphon off hundreds of millions of dollars from Bell Atlantic and other incumbent carriers.

The FCC should stop this practice and restore economic rationality by promptly confirming that Internet-bound traffic is interstate and interexchange in nature, and that the FCC's previous orders adopting the so-called enhanced service provider exemption did nothing to change that fact.

Respectfully submitted,

A handwritten signature in black ink that reads "Edward D. Young III". The signature is written in a cursive style with a prominent "E" and "Y".

Edward D. Young III (by neg)

Encl.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Petition of

COX VIRGINIA TELCOM, INC.,

v.

Case No. PUC970069

BELL ATLANTIC-VIRGINIA, INC.,

AFFIDAVIT OF JEFFREY A. MASONER

Jeffrey A. Masoner, being duly sworn, deposes and says:

1. I am Vice President, Bell Atlantic Telecom Industry Services, in Bell Atlantic Network Services, Inc. ("Bell Atlantic"). I make this Affidavit in opposition to the Petition of Cox Virginia Telecom, Inc. ("Cox") for Enforcement of Interconnection Agreement and Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers.
2. I participated on behalf of Bell Atlantic-Virginia, Inc. in interconnection negotiations with Cox both before and after the arbitration proceeding before the Virginia State Corporation Commission ("Commission"), Case No. PUC960104. In particular, I participated in a negotiation conference call between the parties that occurred on January 30, 1997 - before the interconnection agreement was executed on February 12, 1997.

3. I have read the June 10, 1997 affidavit of Wes Neal, Marketing Director of Cox.

4. Paragraphs 4 and 5 of the Neal affidavit accurately state Cox's and Bell Atlantic's position with regard to bill and keep in the interconnection negotiations and in the arbitration before the Commission.

5. During the January 30, 1997 conference call, Cox stated that by the end of 1997, Cox would need several hundred trunks coming from Bell Atlantic, and that very few trunks would be needed for traffic flowing from Cox to Bell Atlantic.

6. In that conference call, Cox explained that the disparity in forecasted traffic was due largely to their plan to connect to Internet service providers to hand off Internet traffic from Bell Atlantic end users. In response, I explained Bell Atlantic's position that, despite interpretations of the FCC's rules exempting ISPs from access charges, that Bell Atlantic does not believe that traffic to an ISP is local traffic and that it would reserve the right to challenge any such application. I explained that Bell Atlantic believes that ISP traffic is a form of interstate access traffic.

7. Thus, contrary to Mr. Neal's statement, Bell Atlantic clearly did indicate to Cox on January 30, 1997, the date when Cox raised this issue with

Bell Atlantic, that Bell Atlantic considered traffic to Internet service providers not to be local traffic for purposes of reciprocal compensation under the agreement.

August 29, 1997

Jeffrey A. Masoner
Jeffrey A. Masoner

CITY OR COUNTY OF ARLINGTON

SS:

COMMONWEALTH OF VIRGINIA

Subscribed and sworn to before me this 29 day of August, 1997

[seal] James O. V. Boyd
Notary Public

My Commission Expires: 9/30/99

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 24, 1997

DOCUMENT CONTROL
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PETITION OF

COX VIRGINIA TELCOM, Inc.

CASE NO. PUC970069

For enforcement of interconnection
agreement with Bell Atlantic-
Virginia, Inc. and arbitration award
for reciprocal compensation for the
termination of local calls to
Internet service providers

FINAL ORDER

On June 13, 1997, Cox Virginia Telcom, Inc. ("Cox") filed a petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA") and for an arbitration award for reciprocal compensation for the termination of local calls to Internet service providers. Cox requested that the Commission enter an order declaring that local calls to Internet service providers ("ISPs") constitute local traffic under the terms of its agreement and that Cox and BA-VA are entitled to reciprocal compensation for the completion of this type of call.

By Order of August 14, 1997, the Commission directed that a response from BA-VA be filed on or before August 29, 1997, and that a reply be filed by Cox on or before September 15, 1997.

Interested parties were also allowed to submit comments by September 15, 1997. In addition to Cox, replies were filed by TCG Virginia, Inc., Hyperion Telecommunications of Virginia, Inc., AT&T Communications of Virginia, Inc., CFW Network, Inc., R&B Network, Inc., MCImetro Access Transmission Services of Virginia, Inc., MFS Intelenet of Virginia, Inc., WinStar Wireless of Virginia, Inc., and Sprint Communications L.P.

Having considered the response of BA-VA and the replies, the Commission finds that calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call.

Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of service(s) involved. The presence of CLECs does not alter the nature of this traffic.

Accordingly, IT IS THEREFORE ORDERED that:

- (1) The Cox petition is granted.

(2) The termination of local calls to ISPs are subject to the compensation terms of Cox and BA-VA's interconnection agreement.

(3) This matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Yaron Dori, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004; Carolyn Corona, Legal Assistant, TCG of Virginia, Inc., 2 Lafayette Centre, Suite 400, 1133 21st Street, N.W., Washington, D.C. 20036; Douglas G. Bonner, Esquire, Hyperion Telecommunications of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., Room 3-D, 3033 Chain Bridge Road, Oakton, Virginia 22185; Sarah Hopkins Finley, Esquire, MCImetro Access Transmission Services of Virginia, Inc., Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320; Michael W. Fleming, Esquire, CFW Network, Inc., R&B Network, Inc., and MFS Intelenet of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Washington, D.C. 20007-5116; Morton J. Posner, Esquire, WinStar Wireless of Virginia, Inc., Swidler and Berlin, 3000 K Street,

N.W., Suite 300, Washington, D.C. 20007-5116; James B. Wright, Esquire, Sprint Mid Atlantic Telecom, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, Inc., 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Alexander F. Skirpan, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Division of Communications and Office of General Counsel.

A True Copy
Filed *William J. Bridge*
Chair of the
State Consumer Commission