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March 16, 2000

00-52

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

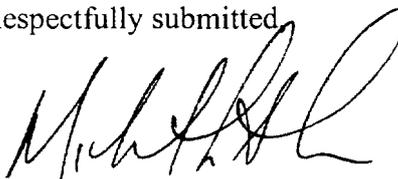
RE: Petition of Starpower Communications, LLC
Pursuant to Section 252(e)(5) of the Communications Act

Dear Secretary Salas:

Enclosed for filing with the Commission are an original and seven (7) copies of the Petition of Starpower Communications, LLC pursuant to Section 252(e)(5) of the Communications Act.

Please date stamp the extra copy of this filing and return to our messenger. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael L. Shor

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

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MAR 18 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of Starpower Communications, LLC)
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Virginia State Corporation)
Commission Regarding Interconnection)
Disputes with Bell Atlantic-Virginia, Inc.)
and GTE South, Incorporated)

CC Docket No. 00-52

**PETITION OF
STARPOWER COMMUNICATIONS, LLC
PURSUANT TO SECTION 252(e)(5) OF THE COMMUNICATIONS ACT**

Starpower Communications, LLC (“Starpower”), by its undersigned counsel and in accordance with Section 252(e)(5) of the Communications Act (the “Act”), 47 U.S.C. § 252(e)(5), and section 51.803 of the FCC’s rule and regulations, 47 C.F.R. § 51.803, respectfully petitions the Federal Communications Commission (“FCC”) to preempt the jurisdiction of the Virginia State Corporation Commission (“Virginia Commission”) which has failed to act when requested to resolve interconnection disputes between Starpower and Bell Atlantic-Virginia, Inc. (“BA-VA”) and between Starpower and GTE South, Incorporated (“GTE”).

Specifically, Starpower requests the FCC to assume jurisdiction over its disputes with BA-VA and GTE and, following such proceedings as it deems appropriate, to issue an order interpreting the reciprocal compensation provisions of the interconnection agreements between Starpower and BA-VA and GTE and directing BA-VA and GTE to pay Starpower reciprocal compensation for the transport and termination of traffic bound for Internet service providers

("ISPs"), as contemplated by the agreements and as agreed by the parties thereto. In support thereof, Starpower respectfully states as follows:

Statement of Facts

1. Starpower, BA-VA, and GTE are local exchange carriers providing competing local telephone services in the Commonwealth of Virginia pursuant to authority granted by the Virginia Commission. (Affidavit of Deborah Royster at ¶ 1) (hereafter "Affidavit.")

2. Pursuant to section 252(i) of the Act, 47 U.S.C. § 252(i), Starpower elected to adopt the interconnection agreement by and between BA-VA and MFS Intelenet of Virginia, Inc. that had been approved by the Virginia Commission in Case No. PUC960110 (the "First BA-VA Agreement").¹ Starpower's adoption of the BA-VA Agreement was approved by the Virginia Commission on June 17, 1998 in Case No. PUC980061. (Affidavit, ¶ 2.)

3. In accordance with its terms, BA-VA terminated the First BA-VA Agreement on July 1, 1999, although the Agreement continued in effect pending execution or adoption of a new agreement. Effective as of October 19, 1999, Starpower elected to adopt the interconnection agreement by and between BA-VA and MCIMetro Access Transmission Services of Virginia, Inc., that had been approved by the Virginia Commission in Case No. PUC960113 (the "Second BA-VA Agreement").² Starpower and BA-VA have petitioned the Virginia Commission for approval of the Second BA-VA Agreement, but the Virginia Commission has not yet acted on the request. (Affidavit, ¶ 4.)

¹ A copy of relevant pages from the First BA-VA Agreement is attached hereto as Exhibit 1.

² A copy of relevant pages from the Second BA-VA Agreement is attached as Exhibit 2.

4. Starpower also elected under section 252(i) to adopt the interconnection agreement by and between GTE and MFS, which had been approved by the Virginia Commission in Case No. PUC970007 (the “GTE Agreement”). Starpower’s adoption of the GTE Agreement was approved by the Virginia Commission on March 3, 1999 in Case No. PUC980192.³ (Affidavit, ¶ 5.)

5. Consistent with Section 251(b)(5) of the Act, Section VI.A. of the GTE Agreement requires GTE and Starpower to “reciprocally terminate POTS calls originating on each others’ networks” local exchange traffic⁴ and section VI.B. requires GTE and Starpower to pay reciprocal compensation to each other for the termination of local traffic at rates set forth therein. (Affidavit, ¶ 6.)

6. Section 5.7.2. of the First BA-VA Agreement provides that “the Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rate provided in” Exhibit A of the Agreement. (Affidavit, ¶ 7.) Similarly, section 4 of Attachment I to the Second BA-VA Agreement governs the payment of reciprocal compensation between the parties and provides that the parties shall compensate each other reciprocally for the exchange of Local Traffic at rates set forth in Table 1 to the Attachment. (*Id.*)

7. Pursuant to the respective agreements, Starpower interconnected its network with GTE’s and with BA-VA’s and began exchanging traffic with both ILECs. (Affidavit, ¶ 8.) In

³ A copy of the relevant pages from the GTE Agreement is attached as Exhibit 3.

⁴ “POTS” is defined as: “Plain Old Telephone Service Traffic,” which the parties agreed included “local traffic (including EAS) as defined in GTE’s tariff.” (Agreement, section II.FF.)

the ordinary course of business, Starpower submitted invoices to GTE and BA-VA seeking, in part, compensation for the exchange of traffic, including ISP-bound traffic. (Affidavit, ¶ 9.)

8. Separately, GTE and BA-VA declined and refused to pay Starpower for a substantial portion of the invoiced amounts. GTE and BA-VA both contended that they were not obligated to compensate Starpower for ISP-bound traffic. (Affidavit, ¶ 10.)

9. As a result of GTE's and BA-VA's refusals to pay reciprocal compensation properly due, Starpower filed separate petitions with the Virginia Commission seeking interpretation and enforcement of its agreements.

10. Specifically, Starpower filed a petition with the Virginia Commission on February 3, 1999, seeking a declaratory ruling directing GTE to pay reciprocal compensation to Starpower for transporting and terminating GTE's traffic to ISPs served by Starpower.⁵ (Affidavit, ¶ 11.) The Virginia Commission docketed Starpower's complaint against GTE in Case No. PUC990023⁶ and requested briefing on several issues. (Affidavit, ¶¶ 12, 13, 14.)

11. On September 15, 1999, Starpower filed a complaint with the Virginia Commission against BA-VA seeking enforcement of the First BA-VA Agreement and directing BA-VA to pay reciprocal compensation for Starpower's transport and termination of BA-VA's traffic to ISPs.⁷ (Affidavit, ¶ 15.)

⁵ A copy of the Complaint is attached as Exhibit 4.

⁶ A copy of the Virginia Commission's Order docketing the complaint and setting a briefing schedule is attached as Exhibit 5. Copies of GTE's Answer, Memorandum of Law and Additional Comments are attached, collectively, as Exhibit 6. Copies of Starpower's Response to GTE's Memorandum of Law and Reply to GTE's additional comments are attached, collectively, as Exhibit 7. Copies of Comments filed by other interested parties are attached, collectively as Exhibit 8.

⁷ A copy of the complaint against BA-VA is attached as Exhibit 9.

12. On January 24, 2000, the Virginia Commission issued a Final Order declining jurisdiction over Starpower's complaint against GTE.⁸ (Affidavit, ¶ 16.) The Virginia Commission cited the FCC's *Declaratory Ruling*⁹ and its *Separations Reform Order*,¹⁰ finding that "the FCC's failure to act on either inter-carrier compensation or separations reform for ISP-traffic . . . has created great regulatory uncertainty."¹¹ The Virginia Commission further stated that, in the absence of any FCC rules on inter-carrier compensation, "any interpretation of the instant agreements we might reach may well be inconsistent with the FCC's final order in its rulemaking."¹²

13. Accordingly, the Virginia Commission decided to decline jurisdiction, and directed the parties to pursue their cases with the FCC. (Affidavit, ¶ 16.) In a subsequent order issued February 9, 2000,¹³ the Virginia Commission dismissed Starpower's complaint against

⁸ *Petition of Starpower Communications, LLC For Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc.*, Final Order, Case No. PUC990023 (Va. S.C.C., Jan. 24, 2000) ("*Starpower/GTE Decision*"). A copy of this decision is attached as Exhibit 10.

⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd. 3689, 3703, ¶ 22 ("*Declaratory Ruling*").

¹⁰ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, 12 FCC Rcd. 22120 (1997) ("*Separations Reform Order*").

¹¹ *Starpower/GTE Decision*, slip. op. at 5.

¹² *Id.*, slip op. at 6.

¹³ *Petition of Starpower Communications, LLC For Declaratory Judgment and Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Order Dismissing Petition, Case No. PUC990156 (Va. S.C.C., Feb. 9, 2000) ("*Starpower/BA-VA Decision*"). A copy of this decision is attached here to as Exhibit 11.

BA-VA, adopting entirely the reasoning set forth in the *Starpower/GTE Decision*, and encouraged Starpower to seek appropriate relief from the FCC.¹⁴

Argument

14. Starpower now respectfully requests the FCC take jurisdiction of and resolve Starpower's disputes with BA-VA and GTE.¹⁵ (Affidavit, ¶ 15.) By dismissing Starpower's complaints against BA-VA and GTE, the Virginia Commission has "fail[ed] to act to carry out its responsibility" under section 252 of the Act to resolve Starpower's complaints. Absent preemption, Starpower will be left without any legal remedy to resolve its disputes with BA-VA and GTE over the interpretation of their respective interconnection agreements, and to collect the amounts due to Starpower under those agreements.

15. The FCC has authority to preempt the Virginia Commission and assume jurisdiction over this dispute pursuant to Section 252(e)(5) of the Act, which states as follows:

[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the [FCC] shall issue an order preempting the State commission's jurisdiction of that proceeding or matter . . . and shall assume the responsibility of the state commission under this section with respect to the proceeding or matter and act for the State commission.¹⁶

¹⁴ *Starpower/BA-VA Decision*, slip op. at 4.

¹⁵ Starpower believes that the Virginia Commission erred in declining jurisdiction over its disputes with BA-VA and GTE and has appealed that decision to the Supreme Court of Virginia and to the U.S. District Court for the Eastern District of Virginia under Section 252(e)(6). In the event the FCC preempts the Virginia Commission and asserts jurisdiction over Starpower's claims, however, those appeals would be dismissed, inasmuch as Section 252(e)(6) provides that, where section 252(e)(5) applies, it provides the "exclusive" remedy for a state commission's failure to act.

¹⁶ 47 U.S.C. § 252(e)(5).

A. Starpower's Petitions Arise Under Section 252 of the Act

16. In order for the FCC to assume jurisdiction under Section 252(e)(5), it must find that a State commission has “fail[ed] to act” in “any proceeding or other matter under this section[.]”

17. The proceedings before the Virginia Commission on Starpower's separate complaints against GTE and BA-VA were “proceedings or other matter[s]” under Section 252. That section sets forth the procedures and substantive criteria to be applied by State commissions both in arbitration of interconnection agreements and in approval of negotiated and arbitrated agreements between local exchange carriers.

18. Both the FCC and federal courts have established that Section 252, by necessary implication, also empowers the State commissions to interpret and enforce interconnection agreements they have approved.¹⁷ Indeed, the FCC's *Declaratory Ruling* on inter-carrier compensation expressly recognized that the State commissions would, in the first instance, be responsible for resolving disputes over the interpretations of previously-approved agreements.¹⁸ Therefore, a complaint proceeding requiring interpretation or enforcement of such an agreement is a “proceeding or matter” under Section 252.

¹⁷ See, e.g., *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999) (“state commissions’ plenary authority to accept or reject these agreements necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved”); *Declaratory Ruling*, 14 FCC Rcd. at 3703, ¶ 22 (interconnection agreements are “interpreted and enforced by the state commissions”); *Bell Atlantic-Virginia, Inc. v. WorldCom Techs. of VA., Inc.*, 70 F. Supp.2d 60, 626 (E.D. Va. 1997) (“the Telecommunications Act was designed to allow the state commission to make the first determination.”)

¹⁸ *Declaratory Ruling* at ¶¶ 24, 26 (“state commissions . . . have had to fulfill their *statutory obligation under section 252* to resolve interconnection disputes between incumbent LECs and CLECs”) (emphasis supplied).

2. The Virginia Commission Has Failed to Act

19. The Virginia Commission's election to "decline jurisdiction"¹⁹ in a matter that is within its statutory authority under Section 252 of the Act, without citing any substantive or procedural bar to resolution of that matter (other than its own desire to avoid jurisdictional conflicts with the FCC), is tantamount to "failing to act" for purposes of Section 252(e)(5).²⁰

20. In 1996, the FCC adopted "interim" procedures for implementation of Section 252(e)(5).²¹ Its procedural rules state that,

[f]or purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for [*sic*] a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act."²²

There is no rule governing "proceedings or matters" under Section 252 other than the enumerated cases of mediation or arbitration. This omission is readily explained by the fact that the interim procedures were adopted very shortly after the adoption of the Act, before any interconnection

¹⁹ *Starpower/GTE Decision* at 6.

²⁰ The Virginia Commission questioned whether the FCC's conclusion in the *Declaratory Ruling* that State commissions are empowered to interpret interconnection agreements in the first instance might be erroneous. *Id.* at 6-7. It also stated, notwithstanding the fact that it had previously exercised its Section 252 authority in many other instances, that its delegated powers derive solely from the Constitution and laws of Virginia and not from federal law. *Id.* at 7. These issues are irrelevant for purposes of this petition, because Section 252(e)(5) provides for preemption based solely on the fact that a State commission has failed to act, regardless of the reasons for that failure.

²¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16122-16132 (1996) (*Local Competition Order*), *aff'd in part and vacated in part*, *Iowa Utils. Bd. v. FCC*, *supra*.

²² 47 C.F.R. § 51.801(b).

agreements had been approved by State commissions, and therefore before any occasion had arisen for those commissions to conduct proceedings relating to interpretation or enforcement of previously-approved agreements. Indeed, the FCC wisely recognized that “[a]dopting *minimum interim* procedures now will allow the Commission to learn from the initial experiences and gain a better understanding of what types of situations may arise that require Commission action.”²³

21. The FCC’s preemption authority under Section 252(e)(5) is derived from the Act, not from the implementing rules, and therefore may be exercised in any proceeding that falls within the terms of the Act, even though it is not a case covered by the minimum interim procedural rules. As noted above, the FCC intended to leave itself flexibility to “gain a better understanding of what types of situations may arise” subsequent to the adoption of the interim rules.

22. The term “fails to act” in Section 252(e)(5) should not be interpreted as encompassing only complete inaction by a State commission. Although the FCC has quite properly eschewed an “expansive view” of its preemption authority,²⁴ it would do no violence to the statute to conclude that a State commission “fails to act” when it expressly declines to address the merits of a proceeding before it. Thus, this case is readily distinguishable from past cases in which the FCC has declined to find a “failure to act.” For example, in a previous case arising in Virginia, the FCC found that the Virginia Commission had not “failed to act” where it dismissed an arbitration proceeding on equitable grounds.²⁵ In that case, the petitioner was really

²³ *Local Competition Order*, para. 1284 (emphasis supplied.)

²⁴ *Id.*, para. 1285.

²⁵ *Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia*,

seeking review of the Virginia Commission's decision on the merits that petitioner was not entitled to adopt another carrier's interconnection agreement under Section 252(i). Similarly, in other cases where the FCC has declined to preempt, the petitioner has really been seeking to review a substantive or procedural decision of a State commission, rather than a failure to act.²⁶

23. In this case, however, there is no State commission decision on the merits (either on substantive or procedural grounds), but simply a decision to "decline" to consider the merits. Indeed, it is difficult to imagine a more clear-cut case of a failure to act than this, since the Virginia Commission expressly invited the FCC to resolve the underlying dispute between Starpower and the incumbent LECs.

CONCLUSION

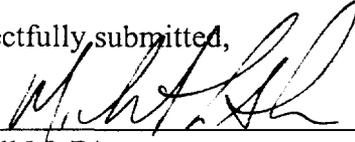
For the foregoing reasons, Starpower respectfully requests the FCC preempt the jurisdiction of the Virginia State Corporation Commission regarding the interconnection disputes between Starpower and BA-VA and GTE; conduct such proceedings as it deems necessary to determine the merits of the disputes; following such proceedings, issue an order interpreting the reciprocal compensation provisions of the interconnection agreements between Starpower and BA-VA and GTE and directing BA-VA and GTE to pay Starpower reciprocal compensation for

Inc., CC Docket No. 99-198, Memorandum Opinion and Order, DA 99-1552 (Comm. Carr. Bur. released Aug. 5, 1999.)

²⁶ See, e.g., *Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission, with BellSouth Before the Georgia Public Service Commission, and with GTE South Before the Public Service Commission of South Carolina*, Order, 13 FCC Rcd 1755 (1997), *recon. denied*, CC Docket Nos. 97-163, 97-164, 97-165, FCC 99-71 (rel. Apr. 13, 1999). In this case, the petitioner was seeking review of the State commission's determination that petitioner was not a "carrier" qualified to request interconnection under Section 251(a).

the transport and termination of traffic bound for ISPs, as contemplated by the agreements; and grant such other relief as the FCC may deem just and reasonable.

Respectfully submitted,



Russell M. Blau

Michael L. Shor

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, N.W., Suite 300

Washington, D.C. 20007

Tel: (202) 424-7775

Fax: (202) 424-7645

Counsel for Starpower Communications, LLC

Dated: March 15, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2000, true and correct copies of the foregoing Petition of Starpower Communications, LLC Pursuant to Section 252(e)(5) of the Communications Act, including all exhibits and attachments thereto, were served via Federal Express on:

Virginia State Corporation Commission
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Richmond, Va. 23219

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Robert M. Gillespie, Esq.
Christian & Barton, L.L.P.
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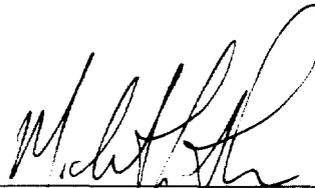
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Office of Attorney General
900 East Main Street, 2nd Floor
Richmond, VA 23219



Michael L. Shor

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Before the
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In the Matter of)
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Disputes with Bell Atlantic-Virginia, Inc.)
and GTE South, Incorporated)

CC Docket No. 00-52

AFFIDAVIT OF DEBORAH M. ROYSTER

City of Washington :
District of Columbia, ss :

I, Deborah M.Royster, being duly sworn, state as follows:

1.I am General Counsel of Starpower Communications, LLC (“Starpower”). I have knowledge of the facts set forth herein and I make this affidavit in support of Starpower’s Petition to the Federal Communications Commission (the “Petition”) to preempt the jurisdiction of the Virginia State Corporation Commission (“Virginia Commission”) with respect to disputes between Starpower and Bell Atlantic-Virginia (“BA-VA”) and between Starpower and GTE South, Incorporated (“GTE”).

2. Starpower, BA-VA, and GTE are local exchange carriers providing competing local telephone services in the Commonwealth of Virginia pursuant to authority granted by the Virginia Commission.

3. Pursuant to Section 252(i) of the Communications Act (the “Act”), 47 U.S.C. § 252(i), Starpower elected to adopt the interconnection agreement by and between BA-VA and MFS Intelenet of Virginia, Inc. (“MFS”), which had been approved by the Virginia Commission in Case No. PUC960110 (the “First BA-VA Agreement”). Starpower’s adoption of the First BA-VA Agreement was approved by the Virginia Commission on June 17, 1998 in Case No.

PUC980061. A copy of relevant pages from the First BA-VA Agreement is attached to the Petition as Exhibit 1.

4. In accordance with its terms, BA-VA terminated the First BA-VA Agreement on July 1, 1999, although the Agreement continued in effect pending execution or adoption of a new agreement. Effective as of October 19, 1999, Starpower elected to adopt the interconnection agreement by and between BA-VA and MCIMetro Access Transmission Services of Virginia, Inc., that had been approved by the Virginia Commission in Case No. PUC960113 (the “Second BA-VA Agreement”). Starpower and BA-VA have petitioned the Virginia Commission for approval of the Second BA-VA Agreement, but the Virginia Commission has not yet acted on the request. A copy of relevant pages from the Second BA-VA Agreement is attached to the Petition as Exhibit 2.

5. Starpower also elected under section 252(i) to adopt the interconnection agreement by and between GTE and MFS, which had been approved by the Virginia Commission in Case No. PUC970007 (the “GTE Agreement”). Starpower’s adoption of the GTE Agreement was approved by the Virginia Commission on March 3, 1999 in Case No. PUC980192. A copy of the GTE Agreement is attached to the Petition as Exhibit 3.

6. Section VI.A of the GTE Agreement requires GTE and Starpower to “reciprocally terminate POTS calls originating on each others’ networks”¹ and section VI.B requires GTE and Starpower to pay reciprocal compensation to each other for the termination of local traffic at rates set forth therein.

7. Section 5.7.2 of the First BA-VA Agreement provides that “the Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rate provided in” Exhibit A of the Agreement. Similarly, section 4 of Attachment I to the

¹ “POTS” is defined as: “Plain Old Telephone Service Traffic,” which the parties agreed included “local traffic (including EAS) as defined in GTE’s tariff.” (GTE Agreement, section II.FF.).

Second BA-VA Agreement governs the payment of reciprocal compensation between the parties and provides that the parties shall compensate each other reciprocally for the exchange of Local Traffic at rates set forth in Table 1 to the Attachment.

8. Pursuant to the respective agreements, Starpower interconnected its network with GTE's and with BA-VA's and began exchanging traffic with both ILECs.

9. In the ordinary course of business, Starpower submitted invoices to GTE and BA-VA seeking, in part, compensation for the exchange of traffic, including ISP-bound traffic.

10. Separately, GTE and BA-VA declined and refused to pay Starpower for a substantial portion of the invoiced amounts. GTE and BA-VA both contended that they were not obligated to compensate Starpower for ISP-bound traffic.

11. On February 3, 1999, Starpower filed with the Virginia Commission a petition seeking a declaratory ruling directing GTE to pay reciprocal compensation to Starpower for transporting and terminating GTE's traffic to ISPs served by Starpower. In particular, Starpower asked the Virginia Commission to determine whether calls to ISPs constituted "local traffic" for purposes of the definition of "POTS traffic" in the GTE Agreement. A copy of Starpower's complaint against GTE is attached to the Petition as Exhibit 4.

12. By order dated June 22, 1999, the Virginia Commission docketed Starpower's complaint in Case No. PUC990023 and directed GTE to file a response. The Virginia Commission further directed the parties to address the impact, if any, of the FCC's *Declaratory Ruling* on the merits of the dispute and "this Commission's subject matter jurisdiction." The Virginia Commission also invited others with an interest in the outcome of the proceeding to file comments. A copy of the Virginia Commission's Order is attached to the Petition as Exhibit 5.

13. On or about July 7, 1999, GTE filed its response to Starpower's complaint in which GTE argued, in part, that even though the FCC had declared the traffic at issue to be interstate, the Virginia Commission had subject matter jurisdiction to decide, as a matter of contract law,

whether the parties had agreed to compensate each other for ISP-bound traffic. A copy of GTE's Response is attached to the Petition as Exhibit 6.

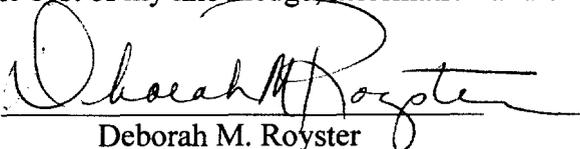
14. Starpower filed its reply on or about July 19, 1999, contending that the Virginia Commission had jurisdiction over the reciprocal compensation dispute based on the provisions of the Act and in various pronouncements of the FCC, all as interpreted by various courts that had considered the issue. A copy of Starpower's Reply is attached to the Petition as Exhibit 7.²

15. On September 15, 1999, Starpower filed a complaint against BA-VA seeking enforcement of the BA-VA Agreement and a determination that ISP traffic is local traffic for purposes of reciprocal compensation under the BA-VA Agreement. In particular, Starpower's complaint asked the Virginia Commission to determine whether calls to ISPs are including within the definition of "local traffic" in the BA-VA Agreement. A copy of Starpower's Complaint against BA-VA is attached to the Petition as Exhibit 9.

16. On January 24, 2000, the Virginia Commission issued a Final Order declining jurisdiction over Starpower's complaint against GTE. A copy of the Final Order is attached to the Petition as Exhibit 10.

17. In a subsequent order issued February 9, 2000, the Virginia Commission dismissed Starpower's complaint against BA-VA for the reasons set forth in the *Starpower/GTE Decision*, and encouraged Starpower to seek appropriate relief from the FCC.³ A copy of the February 9, 2000 Order Dismissing Complaint is attached to the Petition as Exhibit 11.

The foregoing is true and correct to the best of my knowledge, information and belief.


Deborah M. Royster

² In addition to the response and reply from Starpower and GTE, other parties filed comments on the issues raised by the Virginia Commission. Copies of these documents are attached to the Petition collectively as Exhibit 8.

³ *Starpower/BA-VA Decision*, slip op. at 4.

Subscribed and sworn to before me this 15th day of March, 2000.

Maggie O. Westfield
Notary Public

Maggie O. Westfield
Notary Public, District of Columbia
My Commission Expires April 30, 2003

My Commission expires: 4/30/2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
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INDEX OF EXHIBITS

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2. Interconnection Agreement Between Starpower LLC. and Bell Atlantic-Virginia, Inc., dated as of October 19, 1999.
3. Interconnection Agreement Between Starpower, LLC. and GTE South, Inc., effective as of March 11, 1998.
4. Petition of Starpower Communications, LLC for Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc. and Directing GTE to pay reciprocal compensation for the termination of local calls to Internet service providers.
5. Virginia State Corporation Commission Preliminary Order in PUC990023 (June 22, 1999).
6. Answer, Memorandum of Law and Additional Comments of GTE
7. Response of Starpower to GTE's Memorandum of Law and Reply to GTE's Additional Comments.

8. Comments of Other Parties:
 - A. Comments of AT&T Communications of Virginia, Inc. (without exhibits)
 - B. Comments of KMC Telecom of Virginia, Inc., Hyperion Communications of Virginia, LLC. and CFW Network, Inc.
 - C. Comments of Level 3 Communications, LLC.
 - D. Comments of MCI WorldCom, Inc. (without exhibits)
9. Complaint of Starpower Communications, LLC Against Bell Atlantic – Virginia, Inc. for Breach of Interconnection Agreement and Request for Immediate Relief.
10. Final Order in PUC 990023 (January 24, 2000)
11. Order Dismissing Petition in PUC 990156 (February 9, 2000)