

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

PETITION OF)	
)	
STARPOWER COMMUNICATIONS, LLC)	
)	Case No. PUC990023
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.)	

**RESPONSE OF STARPOWER COMMUNICATIONS, LLC
TO THE MEMORANDUM OF LAW FILED BY GTE SOUTH, INC.**

Starpower Communications, LLC ("Starpower"), by its undersigned counsel, and pursuant to the Preliminary Order issued by the Commission in the above-referenced case on June 22, 1999, hereby files its Response to the Memorandum of Law filed by GTE South, Inc. ("GTE").

INTRODUCTION

The positions GTE articulates in its Memorandum of Law should be rejected entirely. First, GTE asserts that this Commission lacks jurisdiction to resolve the pending dispute. Then, GTE has the temerity to suggest to the Commission that it should be relieved from its contractual obligation to Starpower based on a serious misreading of both this Commission's earlier decision on the very issue raised by Starpower's Complaint¹ and an even more egregious effort to "spin"

¹ *Petition of Cox Virginia Telecom, Inc. 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, Case No. PUC-970069, Final Order (Oct. 24, 1997)(the "Cox Decision").*

the recent *Declaratory Ruling* of the Federal Communications Commission ("FCC").² Nothing in the Commission's *Cox Decision*, and nothing in the FCC's *Declaratory Ruling*, and certainly none of the alleged policy or economic considerations fabricated by GTE provide any support for the positions enunciated by GTE. Indeed, the FCC's *Declaratory Ruling*, combined with the decision of some 30 state commissions and five federal courts to consider the issue – both before and after the release of the *Declaratory Ruling* – strongly support the view that the Commission conclude on the pleadings presented, and without the need for any evidentiary hearing, that GTE's contractual obligations include the obligation to pay reciprocal compensation for calls to Internet service providers ("ISPs").

GTE's entire argument is based on the grounds that the FCC has resolved that traffic to ISPs is not jurisdictionally local traffic and therefore not subject to the parties' reciprocal compensation obligations. In GTE's view, the FCC's determination that ISP traffic is "largely interstate" is dispositive. GTE is wrong. Indeed, the *Declaratory Ruling* provides overwhelming support for this Commission to reinforce the very same decision it announced earlier in *Cox* and to conclude that ISP traffic should be subject to reciprocal compensation obligations that attach to the exchange of local traffic between local exchange carriers. The *Declaratory Ruling* clearly distinguishes between the analysis applied to determine the jurisdictional nature of ISP traffic – on which GTE places singular reliance – and the regulatory treatment afforded that traffic – which GTE pointedly dismisses as mere "dicta." Critically, after the *Declaratory Ruling* was

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68, FCC 99-38 (rel. Feb. 26, 1999) ("*Declaratory Ruling*").

issued, four state commissions have considered and decided the issue in cases involving GTE. Each one of those commissions – in Oregon, Washington, Hawaii and Florida – rejected the very arguments which GTE makes here. Like this Commission did in *Cox*, those commissions all concluded that traffic to ISPs is subject to reciprocal compensation. The *Declaratory Ruling* confirms that those decisions were appropriate and it further confirms that, pending the completion of the FCC’s own rulemaking on the subject, a similar finding by this Commission in this case would be equally appropriate.

ARGUMENT

I. THE COMMISSION HAS JURISDICTION TO RESOLVE STARPOWER’S COMPLAINT

In the first instance, it is abundantly clear that the Commission has jurisdiction to resolve the issue raised in Starpower’s complaint. The terms of the Interconnection Agreement by and between Starpower and GTE specifically provide for the right of either party to petition the Commission – or a court – “in the event of a default or violation hereunder, or for any dispute arising under this Agreement”³ Thus, contractually, the parties agreed that the Commission had jurisdiction to resolve disputes such as the one which is the subject of this action.

In addition, when Starpower initially filed its Complaint, it sought a declaratory judgment⁴, so the Commission also has jurisdiction to consider the issue raised by Starpower’s

³ Agreement at Section XVIII.

⁴ An invoice for reciprocal compensation recently was tendered to GTE; however, based on its stated position, Starpower expects that GTE will dispute some portion of that invoice as representing traffic to ISPs.

Complaint pursuant to Section 8.01-184 of the Virginia Code and Rule 5.3 of the Commission's own rules of Practice and Procedure.

Thus, the Commission has clear jurisdiction to interpret and to enforce the terms of the Agreement as alleged in the Complaint. This authority was explicitly recognized by the Eighth Circuit Court of Appeals in *Iowa Utilities Board v. FCC*.⁵ That portion of the Eighth Circuit's opinion was vacated by the Supreme Court purely on ripeness grounds.

Moreover, the FCC addressed the jurisdiction of this Commission in the *Declaratory Ruling*, stating that "in the absence of a federal rule, state commissions have the authority under section 252 of the Act to determine inter-carrier compensation for ISP-bound traffic."⁶ More particularly, in the Notice of Proposed Rulemaking issued along with the *Declaratory Ruling*, the FCC specifically noted that, until the completion of that Rulemaking, "state commissions will continue to determine whether reciprocal compensation is due for this traffic."⁷

Indeed, GTE's jurisdictional perspective recently was soundly rejected by the United States District Court for the Eastern District of Virginia.⁸ In *WorldCom*, the District Court dismissed Bell Atlantic's complaint to recover reciprocal compensation funds paid to WorldCom for ISP-bound traffic under their interconnection agreement and for a declaratory ruling that no

⁵ 120 F.3d 753, 804 ("We believe that the state commission's plenary authority to accept or reject [interconnection agreements] necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved."), *rev'd in part and remanded on other grounds sub nom. AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

⁶ *Declaratory Ruling* at 18, ¶ 26 n.87.

⁷ *Id.* at 19, ¶ 28.

⁸ In *Bell Atlantic v. WorldCom*, Case No. 99-275-A (E.D. Va., June 30, 1999),

further such payments were required. The Court concluded that, under the 1996 Telecommunications Act, it lacked original jurisdiction over such a complaint; instead, the Court found that, in the first instance, the parties were required, both under their contract and the 1996 Act, to bring their dispute to this Commission. Not unexpectedly, GTE ignores this decision in its jurisdictional analysis.

The Commission sought comment on whether this case brought by Starpower against should be consolidated with a similar case brought by Cox Virginia Telecom, Inc. against GTE (Case No. PUC990046). Cox seeks exactly the same relief in its case as Starpower seeks here, namely, an order directing GTE to comply with its contractual obligations and directing GTE to pay reciprocal compensation for calls bound for ISPs. Even though the underlying contracts are different, when it comes to the parties' respective reciprocal compensation obligations, the terms are substantially the same. Starpower contends that consolidation, at least for procedural purposes would be appropriate and in the best interests of administrative economy.

II. THE FCC SPECIFICALLY ABSTAINED FROM INTERFERING WITH STATE DECISIONS REGARDING RECIPROCAL COMPENSATION FOR ISP TRAFFIC

The FCC anticipated the very sort of attack that is being waged here in Virginia by GTE. Accordingly, the FCC expressly recognized that its jurisdictional determinations did *not* resolve the question whether reciprocal compensation is owed:

- [W]e conclude that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. *This conclusion, however, does not in itself determine whether reciprocal compensation is due in any particular instance.*⁹

⁹ *Declaratory Ruling* at ¶ 1 (emphasis added).

- Our determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption. ESPs, including ISPs, continue to be entitled to purchase their PSTN links through intrastate (local) tariffs rather than through interstate access tariffs. Nor, as we discuss below, is it dispositive of interconnection disputes currently before state commissions.¹⁰
- We find no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic.¹¹
- [N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate [in this Declaratory Ruling.]¹²
- Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic.¹³

These admonitions are grounded in the fact that the FCC's jurisdictional analysis is separate and apart from the regulatory treatment afforded to ISP-bound traffic. Moreover, that treatment is consistent with FCC precedent that has long recognized the distinction. In this case, the admonitions also are grounded in the requirements imposed upon the FCC and the states to administer the terms of the Act.

The Act created a structure in which state commissions are provided with the authority to approve interconnection agreements negotiated or arbitrated under federal law. As the FCC

¹⁰ *Id.* at ¶ 20.

¹¹ *Id.* at ¶ 21.

¹² *Id.* at ¶ 27.

¹³ *Id.* at ¶ 28.

observed, it "has no rule governing inter-carrier compensation for ISP-bound traffic."¹⁴ In the absence of such a federal rule, the FCC stated that:

state commissions that have had to fulfill their statutory obligation under section 252 to resolve interconnection disputes between incumbent LECs and CLECs have had no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation. Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law.¹⁵

The FCC expressly recognized that its existing rules, on their own, did not resolve the issue, and that applying reciprocal compensation to this traffic did not violate federal law.¹⁶ Until there is a federal rule in place states had, and continue to have, the authority to resolve this issue.¹⁷ This view has been reinforced significantly by the recent decision of the United States Court of Appeals for the Seventh Circuit which affirmed the underlying decisions of the United States District Court for the Northern District of Illinois and the Illinois Commerce Commission in a case nearly identical to that before this Commission.¹⁸ The Seventh Circuit approached its analysis by stating that the proper standard of review on appeal was whether the decision of a

¹⁴ *Id.* at ¶ 22.

¹⁵ *Id.* at ¶ 26 (footnotes omitted).

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 28.

¹⁸ *Illinois Bell Telephone Co. d/b/a Ameritech Illinois v. WorldCom Technologies, Inc., et al.*, Case No. 98-3150, 1999 WL 436474, (7th Cir., June 18, 1999).

state commission requiring the payment of reciprocal compensation violated federal law. Noting the FCC's own determination that there is no conflicting federal law, the Seventh Circuit held that such a decision did not violate either the Act or the FCC's interpretations of that Act.

In this case, this Commission already resolved the issue raised by Starpower's complaint in the context of deciding the petition brought by Cox Virginia Telecom against Bell Atlantic involving the interpretation of reciprocal compensation terms in their interconnection agreement. For all of GTE's semantic manipulations, the terms in the Cox/Bell Atlantic agreement are not materially different from those at issue here.¹⁹ Considering the very same arguments that GTE now makes, the Commission concluded that calls to ISPs should be treated as local traffic, eligible for reciprocal compensation. More particularly, the Commission stated its conclusion as follows:

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

¹⁹ Through wild contortions, GTE contends that the term "local" was not defined in the Agreement, ignoring the fact that the Agreement states that the term "local traffic" which, after all, is the key term, is "as defined in GTE's tariff." (Agreement, section II.FF.) Although GTE's General Customer Services Tariff does not contain any definition of the term "local traffic"; the term is defined in a separate resale agreement between Starpower and GTE, signed by GTE on December 2, 1998, as "traffic that is originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements." This is the typical definition of local traffic and it sweeps within its scope the traffic at issue here.

service(s) involved. The presence of CLECs does not alter the nature of this traffic.²⁰

This decision does not violate the FCC's *Declaratory Ruling*, nor does that *Ruling* in any way "invalidate" the *Cox Decision*. (See, GTE Memo at 5 - 6). At most, as we discuss more fully below, the Declaratory Ruling merely confirmed that, for purposes of jurisdictional analysis, the totality of the communication from an end-user to an ISP was "largely interstate", but it in no way undermines the Commission's fundamental conclusion that the calls at issue constitute local traffic for purposes of reciprocal compensation. Quite to the contrary, the FCC explicitly stated that, had it stood in the shoes of this Commission when faced with this dispute, it probably would resolve it the same way:

While to date the Commission has not adopted a specific rule governing the matter, **we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.**²¹

This Commission should do likewise and reject GTE's oft-stated and oft-rejected effort to avoid its contractual obligations.

III. THE *DECLARATORY RULING* CLEARLY RECOGNIZES A CRITICAL DISTINCTION BETWEEN JURISDICTION AND REGULATORY TREATMENT

Although the FCC decided in its *Declaratory Ruling* that traffic to ISPs is jurisdictionally mixed but largely interstate, it also stated that its resolution of the jurisdictional nature of ISP-

²⁰ Final Order at 2.

²¹ *Id.* at ¶ 25.

bound traffic did not resolve the issue of whether reciprocal compensation is owed for this traffic.²² Rather, the FCC expressly divided its analysis into two major components – one focusing on the nature of ISP-bound traffic for the purpose of resolving jurisdictional issues, and the other on the separate issue of what regulatory treatment should apply to such calls. Thus, the determination that ISP-bound traffic is largely interstate in nature was made in the context of its jurisdictional analysis – not its assessment of the appropriate form of regulatory treatment. Indeed, the FCC repeatedly emphasized that its examination was intended to resolve **only** the jurisdictional issues. To illustrate, in the FCC's examination of the "severability theory," the FCC clearly addressed only the jurisdictional implications of the argument:

We disagree with those commenters that argue that, **for jurisdictional purposes**, ISP-bound traffic must be separated into two components: an intrastate telecommunications service, provided in this instance by one or more LECs, and an interstate information service, provided by the ISP. As discussed above, the Commission analyzes the totality of the communication when determining **the jurisdictional nature** of a communication.

* * *

The 1996 Act is consistent with this approach. For example, as amended by the 1996 Act, Section 3(20) of the Communications Act defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*." This definition recognizes the inseparability, **for purposes of jurisdictional analysis**, of the information service and the underlying telecommunications.

* * *

²² *Id.* at ¶ 1.

Thus, we analyze ISP traffic **for jurisdictional purposes as a continuous transmission from the end user to a distant Internet site.**²³

Thus, the FCC most assuredly did **not** analyze ISP traffic for the purpose of resolving the reciprocal compensation debate. To the contrary, the FCC carefully crafted its analysis to address only the jurisdictional issues and, in the absence of a federal rule, expressly left the door open for state consideration of the regulatory treatment of ISP traffic with respect to the propriety of reciprocal compensation.

The *Declaratory Ruling* makes clear in other places that there is a distinct difference between "jurisdictional analysis" and "regulatory treatment." The first sentence of the *Declaratory Ruling* after the Introduction says, "[i]dentifying **the jurisdictional nature and regulatory treatment** of ISP-bound communications requires us to determine how Internet traffic fits within our existing regulatory framework."²⁴ At the same time that the FCC concluded that Internet traffic was "jurisdictionally mixed and appears to be largely interstate,"²⁵ it also noted that "the Commission [FCC] has treated ISP-bound traffic as though it were local."²⁶ This alone undermines GTE's effort to avoid the payment of reciprocal compensation based

²³ *Declaratory Ruling* at ¶ 13 (emphasis added).

²⁴ *Id.* at ¶ 2 (emphasis added). This two-part analytical approach is reflected in the structure of the Discussion section, Part III, which is divided into Section A, "Jurisdictional Nature of Incumbent LEC and CLEC Delivery of ISP-Bound Traffic," (jurisdictional analysis) and Section B, "Inter-Carrier Compensation for Delivery of ISP-Bound Traffic" (regulatory treatment)..

²⁵ *Id.* at ¶ 2.

²⁶ *Id.* at ¶ 23. *See also, id.* at ¶ 5 ("In the *Access Charge Reform Order*, the Commission decided to maintain the existing pricing structure pursuant to which [enhanced service providers] are treated as end users for the purposes of applying access charges. Thus, the Commission continues to discharge its interstate regulatory obligations by treating ISP-bound traffic as though it were local."); *id.* at ¶ 16 ("We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic.")

primarily upon the FCC's jurisdictional analysis since the language of the agreement itself merely requires that calls fit the definition of local traffic. GTE has simply chosen to ignore this clear distinction by pretending that it does not exist.

The decoupling of the FCC's "jurisdictional analysis" from its "regulatory treatment" is nothing new. The very existence of an exemption for ESPs from interstate access charges is proof of the difference between jurisdictional analysis and regulatory treatment. The entire arrangement under which ISPs obtain local exchange service for the provision of interstate information service demonstrates that the distinction exists.

Moreover, the ability of the FCC to make this distinction and to create such a regulatory regime has been affirmed by the Eighth Circuit Court of Appeals.²⁷ In its appeal of the FCC's *Access Charge Reform Order*, GTE, among other appealing ILECs²⁸, challenged the FCC's authority to exempt ESPs from certain aspects of interstate regulation and to vest with state commissions the authority to regulate the telecommunications services they use. As summarized by the Eighth Circuit,

The BellSouth petitioners [including GTE] and the Bell Atlantic parties next allege that the interstate access charge exemption for ISPs [here, information service providers] impermissibly requires state regulatory commissions to recover interstate costs. They argue that "[t]hat there is no question" that ISPs, like IXCs, use the local network to provide interstate services. . . . The petitioners contend that the FCC's suggestion that LECs "address their concerns to state regulators," amounts to a dereliction of the Commission's obligation to retain exclusive jurisdiction over interstate communications and forces state regulatory commissions to overstep their authority by recovering interstate costs.²⁹

²⁷ *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1997).

²⁸ *Id.* at 535 n.2.

²⁹ *Id.* at 542, citing *Access Charge Reform Order* ¶346.

The Eighth Circuit rejected GTE's argument. By permitting jurisdictionally interstate information services to be regulated as local services, "the Commission has appropriately exercised its discretion[.]"³⁰ Moreover, "[i]n these circumstances, we cannot say that the FCC has shirked its responsibility to regulate interstate telecommunications."³¹

The *Declaratory Ruling* recognizes and continues this regulatory regime in which services the FCC deems jurisdictionally interstate are regulated by states as local services. The FCC's position was confirmed when, after the *Declaratory Ruling*, the Chief of the Common Carrier Bureau of the FCC instructed Southwestern Bell to continue to report the cost and revenues related to ISP-bound traffic in the intrastate jurisdiction.³² Requiring reciprocal compensation for this traffic is totally consistent with this regulatory regime.

IV. A DECISION THAT RECIPROCAL COMPENSATION IS OWED WOULD NOT CONFLICT WITH THE ACT

GTE also asserts that it does not owe reciprocal compensation because the FCC has decided that ISP-bound traffic falls outside the scope of Section 251(b)(5). (GTE Memo at 6). That argument misses the point and has been rejected by the Seventh Circuit, as well as the FCC. First, the discussion of the relationship between reciprocal compensation for ISP-bound traffic and the scope of Section 251(b)(5) in the *Declaratory Ruling* was made in the context of observing that there are no federal rules addressing inter-carrier compensation for ISP-bound traffic and, therefore, the states had the responsibility under Section 252 to resolve reciprocal compensation disputes. Second, that statement is merely an adjunct to the principle thrust of the

³⁰ *Id.* at 543.

³¹ *Id.*

³² Public Notice, *Common Carrier Bureau Releases Letter to SBC Regarding Its Jurisdictional Separations Treatment of Internet Traffic*, 1999 WL 313950 (May 19, 1999).

FCC's discussion, which is that state commissions had – and still have – the authority to order reciprocal compensation for ISP traffic, regardless of any limits allegedly imposed by section 251(b)(5), because that determination did not conflict with any federal law. The FCC stated this view as follows:

Although reciprocal compensation is mandated under Section 251(b)(5) only for the transport and termination of local traffic, **neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law. A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding – or a subsequent state commission decision that those [reciprocal compensation] obligations encompass ISP-bound traffic – does not conflict with any Commission rule regarding ISP-bound traffic.**³³

This statement makes clear that those state commissions that resolved this issue prior to the issuance of the *Declaratory Ruling*, and those that address the issue again, as well as those that resolve it for the first time after that ruling would not be acting inconsistently with the terms of the Act. A determination that reciprocal compensation obligations would apply to ISP-bound traffic would not conflict with federal law or FCC rules because no rule exists with which it could conflict.

The Seventh Circuit, in *WorldCom*, agreed. The Court rejected the very same argument, raised there by Ameritech, concluding that just because "the Act does not require reciprocal compensation for calls to ISPs is not to say that it prohibits it. . . . The Act clearly does not set

³³ *Declaratory Ruling* at ¶ 26.

out specific conditions which one party could enforce against the other. The details are left to the parties, or the commissions, to work out."³⁴

Moreover, the FCC specifically addressed the argument made by GTE that "our rules preclude the imposition of reciprocal compensation obligations to interstate traffic and that, pursuant to the ESP exemption, LECs carrying ISP-bound traffic are compensated by their end user customers -- the originating end user or the ISP."³⁵ While acknowledging this argument as one possible "reasonable extension of our rules," the FCC rejected the idea that it was dispositive of the question of reciprocal compensation for ISP-bound traffic, noting that it had not addressed the core issue of the application of the ESP exemption to the joint provisioning of service to the ISP.³⁶ The FCC's position on the matter is clear--it has not ruled on the issue and state commissions are authorized to do so. There is no reason for this Commission to accept an argument made by GTE that already has been declared inapplicable by the FCC and the Seventh Circuit.

V. GTE'S ARGUMENT THAT THE *DECLARATORY RULING* RELIEVES IT OF ITS OBLIGATION TO PAY RECIPROCAL COMPENSATION HAS BEEN REJECTED BY EVERY STATE COMMISSION TO HAVE CONSIDERED THE ISSUE

Since the *Declaratory Ruling* was issued on February 26, 1999, incumbent carriers, including GTE, have stampeded to state commissions and federal courts to present the same argument GTE submits here: that the *Declaratory Ruling* relieves them of the obligation to pay

³⁴ 1994 WL 436474 at 5, slip. op. at 7.

³⁵ *Id.* at ¶ 26.

³⁶ *Id.* at ¶ 26.

reciprocal compensation for local traffic to ISPs. The argument has been rejected by nearly every regulatory body that has considered the issue – fourteen to date, including four cases directly involving GTE.³⁷ Notable among these reaffirmations of reciprocal compensation for

³⁷ *In Re: Emergency Petitions of ICG Telecom Group, Inc. and ITC Deltacom Communications, Inc. for a Declaratory Ruling*, Docket No. 26619 (Ala. P.S.C., March 4, 1999); *In the matter of the Petition of Electric Lightwave, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with GTE Northwest Incorporated, Pursuant to the Telecommunications Act of 1996*, Arb 91, Order No. 99-218, Commission Decision (Or. P.U.C., Mar. 17, 1999); *Request for Arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. v. BellSouth Telecommunications, Inc. regarding Traffic Terminated to Internet Service Providers*, Docket No. 981008-TP, Order No. PSC-99-0658-FOF-TP (Fla. P.S.C., April 6, 1999); *In the Matter of the Petition of Birch Telecom of Missouri, Inc. For Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company*, Order Clarifying Arbitration Order, Case No. TO-98-278 (Mo. P.S.C. Apr. 6, 1999) (effectively suspending SBC's payment obligation pending the FCC NPRM without altering its conclusion that some reciprocal compensation is owed); *In Re Petition of Pac-West Telecomm, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell*, Order Adopting Revised Arbitration Decision, Docket Nos. 98-10015 and 99-1007 (Nev. P.U.C., April 12, 1999); *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Order Instituting Proceeding to Reexamine Reciprocal Compensation, Case No. 99-C-0529 (N.Y.P.S.C., April 15, 1999); *Electric Lightwave, Inc. v. US WEST Communications, Inc.*, Order No. 99-285 (Or. P.U.C., April 26, 1999); *In the Matter of the Complaints of ICG Telecom Group, Inc., MCImetro Access Transmission Services, Inc., and Time Warner Telecom v. Ameritech Ohio*, Case No. 97-1557-TP-CSS et al (Ohio P.U.C., May 5, 1999); *Petition of GTE Hawaiian Telephone Company, Inc. for a Declaratory Order that Traffic to Internet Service Providers is Interstate and Not Subject to Transport and Termination Compensation*, Docket No. 99-0067, Decision and Order No. 16975 (Ha. P.U.C., May 6, 1999); *Application of Global NAPs South, Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Bell Atlantic-Delaware, Inc.*, Docket No. 98-540, Order No. 5092 (De. P.U.C., May 11, 1999); *WorldCom, Inc. v. GTE Northwest Inc.*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Docket No. UT-980338 (Wa. U.T.C., May 12, 1999); *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, D.T.E. 97-116-C (Mass. D.T.E., May 19, 1999); *Complaint of Time Warner Communications of Indiana, L.P., Against Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana, for Violation of the Terms of the Interconnection Agreement*, Order on Reconsideration, Cause No. 41097 (Ind. U.R.C. June 9, 1999); *In the Matter of the Complaint of MFS Intelenet of Maryland, Inc. Against Bell Atlantic-Maryland, Inc. For Breach of Interconnection Terms and Request For Immediate Relief*, Order, Case No. 8731 (Md. P.S.C., June 11, 1999); *In the matter of the petition by Pacific Bell (U 1001 C) for arbitration of an interconnection agreement with Pac-West Telecomm, Inc. (U 5266 C) pursuant to Section 256(b) of the Telecommunications Act of 1996*, Application 98-11-024, Opinion, Decision 99-06-088, (Ca. P.U.C.,

ISP traffic are decisions from the Oregon Public Utilities Commission and the Washington Utilities and Transportation Commission. Both have rejected the same GTE arguments asserted here. In two rulings, one against US WEST, the other against GTE Northwest Incorporated, the Oregon Public Utility Commission explained that the *Declaratory Ruling* supports its conclusion that reciprocal compensation is owed for ISP-bound traffic. First, deciding an arbitration between ELI and GTE, the Oregon Commission noted that it had:

held in other arbitration proceedings that ISP-bound traffic should be subject to reciprocal compensation. We find that it would be inappropriate to depart from that policy in this proceeding. Although the FCC has concluded that ISP traffic is largely interstate, it has also observed that ISP traffic should not be subject to interstate access charges and has yet to develop a compensation structure for this traffic. In the absence of a federal rule, we believe that reciprocal compensation is a logical and reasonable method of compensating carriers for the costs incurred to terminate traffic to ISPs.³⁸

Not long thereafter, the Oregon Commission had occasion to address the same issue in the context of an enforcement action brought by ELI against US WEST.³⁹ Reaching the same conclusion, the Oregon Commission stated as follows:

The ISP Decision, in which the FCC interpreted its policy on the nature of ISP traffic, does not support US WEST's position. In the ISP Decision, the FCC held that ISP traffic is jurisdictionally mixed but is largely interstate in nature. However, the FCC also stated that this determination is not dispositive of interconnection

June 24, 1999); *Request for Arbitration Concerning Complaint of Intermedia Communications, Inc. Against GTE Florida Incorporated for Breach of Terms of Florida Partial Interconnection Agreement*, Docket No. 98-986-TP, Decision (Fla. P.S.C., July 6, 1999)(no written opinion issued yet).

³⁸ *Electric Lightwave, Inc. - GTE Arbitration, supra*, at 3.

³⁹ *Electric Lightwave, Inc. v. US WEST Communications, Inc.*, Order No. 99-285 (Or. P.U.C., April 26, 1999).

disputes currently before state commissions. The ISP Decision also acknowledges – contrary to US WEST’s assertion that the FCC has historically treated ISP traffic as interstate – that the opposite is in fact true. "When construing the parties’ agreements to determine whether the parties so agreed [to treat ISP traffic as local], state commissions have the opportunity to consider all relevant facts, *including the negotiation of the agreements in the context of this Commission’s longstanding policy of treating the traffic as local, . . .*"

The FCC specifically noted that it treats ISPs as end users for purposes of assessing access charges and exempts ISPs from payment of these charges. The FCC also noted that it permits ISPs to purchase their links to the public switched telephone network through intrastate business tariffs rather than interstate access tariffs, which allows ISPs to pay local business rates and interstate subscriber line charges for their switched connections to local exchange company central offices. In addition, the FCC also pointed out that incumbent local exchange company (ILEC) expenses and revenues associated with ISP traffic have traditionally been characterized as intrastate for separation purposes.⁴⁰

An arbitrator’s decision in Washington, also involving GTE and Electric Lightwave, similarly provides valuable insight to the issue presented here of whether reciprocal compensation should be paid for ISP-bound traffic given that enhanced service providers are exempt from interstate access charges. After first concluding that ISP-bound traffic is "local-interstate traffic," the arbitrator stated that

LECs incur a cost when delivering traffic to an ISP that originates on another LEC’s network and the terminating LEC does not directly receive any revenue from the customer who originates the call. Even though local-interstate traffic is not addressed by section 251(b)(5) of the Telecom Act, the FCC’s policy of treating ISP-bound traffic as local for purposes of interstate access charges

⁴⁰ *Electric Lightwave, Inc. v. US WEST Communications, Inc., supra*, at 6 (citations omitted, emphasis in original).

*leads to the equitable conclusion that it also should be treated as local for purposes of reciprocal compensation charges. The only other alternative would be to apply interstate terminating access charges.*⁴¹

In other words, if reciprocal compensation were not paid to the terminating LEC for transporting and terminating ISP-bound traffic, the carriers' costs would be uncompensated for the services it provides for the originating carrier's customer.

The Washington Commission also has addressed and resolved the issue in a contract enforcement proceeding between WorldCom and GTE. Adopting the same reasoning as the arbitrator quoted above, the Commission stated:

We agree with WorldCom's analysis that, taking into consideration the compensation framework established in the Act, the termination of traffic carried by two carriers not otherwise subject to access charges is subject to reciprocal compensation.⁴²

Some compensation mechanism must apply, and under the Act and in the absence of access charges, that mechanism would be reciprocal compensation. This sort of equitable resolution was identified by the FCC in the *Declaratory Ruling* as one basis, among many, on which state commissions could conclude that reciprocal compensation was owed for ISP-bound traffic.⁴³

In addition, as we noted above, other state commissions have held that the *Declaratory Ruling* provides no reason to conclude that terminating LECs should not be compensated by

⁴¹ *Petition for Arbitration of an Interconnection Agreement between Electric Lightwave, Inc. and GTE Northwest Incorporated Pursuant to 47 USC Section 252, Arbitrator's Report and Decision, Docket No. UT-980370 at 11 (Wa. U.T.C., Mar. 22, 1999)(emphasis added).*

⁴² *WorldCom, Inc. f/k/a MFS Intelenet of Washington, Inc. v. GTE Northwest Inc., Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Docket No. UT-980338 at 23 (Wa. U.T.C., May 12, 1999).*

⁴³ *Declaratory Ruling at ¶ 27.*

originating LECs for transporting and terminating traffic to ISPs. In fact, the same argument asserted here – that the *Declaratory Ruling* acknowledged the distinction between jurisdictional analysis and regulatory treatment for ISP-bound traffic was specifically accepted by the Public Utilities Commission of Ohio.⁴⁴

As could be expected, GTE places singular reliance on the decision of the Massachusetts Department of Telecommunications and Energy, which vacated its earlier decision that reciprocal compensation is owed for ISP traffic, as providing support for the argument it makes here.⁴⁵ That reliance is completely misplaced. Like the FCC's *Declaratory Ruling*, the *Massachusetts Order* must be read for what it says, rather than what GTE wants it to say. The *Massachusetts Order* ruled only that the "sole and exclusive" basis for its earlier decision, the so-called "two call theory," had been invalidated by the *Declaratory Ruling*. It did not say that reciprocal compensation was not owed for ISP-bound traffic; indeed, it stated unambiguously that "MCI WorldCom may choose to renew its complaint upon some claim that Massachusetts contract law 'or other legal or equitable considerations' give rise to mutual obligations on its and Bell Atlantic's parts to pay reciprocal compensation for ISP-bound traffic, even despite the FCC's jurisdictional pronouncement."⁴⁶ The Department asserted that it was not prejudging the

⁴⁴ *In the Matter of the Complaints of ICG Telecom Group, Inc., MCImetro Access Transmission Services, Inc., and Time Warner Telecom v. Ameritech Ohio*, Case No. 97-1557-TP-CSS et al (Ohio P.U.C., May 5, 1999).

⁴⁵ *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, D.T.E. 97-116-C (Mass. D.T.E., May 19, 1999) ("*Massachusetts Order*").

⁴⁶ *Massachusetts Order* at 27, quoting *Declaratory Ruling* at ¶ 27.

issue, but noted that "[i]f such a basis can be convincingly shown, then it would not be the Department's role to save contracting parties from later-regretted commercial judgments."⁴⁷ The *Massachusetts Order* simply left the legal issue back where it began. In the words of the Massachusetts Department, "all that remains is a now-unresolved dispute."⁴⁸ To argue that the *Massachusetts Order* supports its position – particularly when Starpower's Complaint cannot be read as advocating the so-called "two call theory" as a basis for this Commission to decide the issue – is meritless.⁴⁹

Starpower submits that this Commission should follow the example of those states that have reaffirmed their prior decisions, or made initial decisions, that reciprocal compensation is owed for ISP-bound traffic in light of the *Declaratory Ruling*.

VI. GTE'S "ECONOMIC" ARGUMENTS ENTIRELY LACK MERIT

Perhaps recognizing the weakness of its legal arguments, GTE peppers its Memorandum with several "policy" and "economic" arguments, most of which seem simply fabricated out of whole cloth, at best, and utterly preposterous, at worst. Starpower will address only the most egregious.

⁴⁷ *Id.* at n.29.

⁴⁸ *Id.* at 26.

⁴⁹ Arguing that ISP-bound traffic consists of two components, a telecommunications component and an information services component, as Starpower does, is not the same as arguing that there are "two calls" involved in an ISP-bound transmission. Starpower's view acknowledges the reality long enunciated by the FCC: there are, in fact, two components; however, it does not seek to distort that reality into arguing for a determination that calls to ISPs, therefore, are jurisdictionally local, as GTE contends.

Without one shred of empirical evidence whatever, GTE suggests that Starpower is "serv[ing] primarily ISPs"⁵⁰, contends that "CLECs, such as Starpower, are reaping enormous windfall profits from reciprocal compensation"⁵¹ and asserts that "CLECs [presumably GTE includes Starpower] are able to pay ISPs to be their customers so that they will reap reciprocal compensation from ILECs . . ."⁵² The reality, of course, is vastly different from GTE's tortured view. In fact, Starpower, and other CLECs, are struggling to gain a competitive foothold in an arena dominated by corporate giants - like GTE and Bell Atlantic - that are doing everything possible, including arbitrarily deciding to withhold contractually agreed-upon payments for terminating traffic, as part of a master plan to squelch competition in the local market. There is no transfer of wealth at issue here; there is no delay in the development of competition; there is no lack of competition for end-user customers and there certainly is no "disincentive to invest in local infrastructure."⁵³ Instead, there are new entrants into the local telephone exchange service market who are "spending billions, block by painful block, to install thin glass fibers that can carry extraordinary amounts of information on waves of light."⁵⁴ This is not the "disincentive to invest" that GTE complains about. It is, instead, "competitive companies, some small, some

⁵⁰ GTE Memo at 13.

⁵¹ *Id.*

⁵² *Id.* at 14 - 15.

⁵³ *Id.* at 13.

⁵⁴ Justin Gillis and Jackie Spinner, *A Nation Plugged in and Dug Up*, WASHINGTON POST, July 15, 1999, at A1.

large, [who] are stepping up construction of their own networks so they can compete with Bell Atlantic [and GTE] and with one another."⁵⁵

The impact of GTE's unilateral refusal to pay reciprocal compensation for ISP calls on the development of competition in the local market cannot be overstated. In the recent decision of the Washington Utilities and Transportation Commission involving GTE, the Commission found GTE's similar action against WorldCom to be so egregious that it imposed statutory penalties on GTE. Concluding that GTE had "subjected its competitor, WorldCom, to unfair and unreasonable disadvantage"⁵⁶ when it refused to pay reciprocal compensation for calls to ISPs, the Washington Commission noted the impact of that action on competition, stating:

In essence, GTE cut off the money supply to its competitor while it continued to collect and retain money for providing the same service to GTE. As Staff points out, an incumbent's ability to restrict the cash flow of new entrants into the market would create substantial barriers to entry for small, startup companies. Thus, not only are competitors harmed by unreasonable disadvantage imposed contrary to RCW 80.36.170, but customers are ultimately harmed as well.⁵⁷

In sum, GTE's policy and economic arguments are as weak and ill-founded as its legal arguments and should be rejected. Starpower urges the Commission to reaffirm its earlier *Cox* decision and to remove one of the major roadblocks to competition thrown in the path of CLECs by GTE. The Commission should direct GTE to abide by its contractual obligation to pay

⁵⁵ *Id.* at A16.

⁵⁶ *WorldCom v. GTE, supra*, at 25.

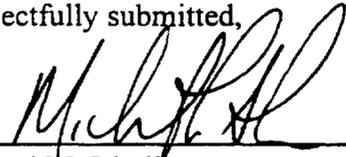
⁵⁷ *Id.*

reciprocal compensation to Starpower for terminating all local traffic, including traffic terminating at ISPs.

VII. CONCLUSION

The FCC's *Declaratory Ruling*, the decisions of four other commissions involving GTE, and this Commission's prior decision clearly support the view that the Commission should resolve this dispute by concluding that GTE owes reciprocal compensation for traffic to ISPs. Such a decision would be entirely consistent with federal law and would facilitate the development of true competition in the local market. Starpower respectfully requests that the Commission overrule GTE's objections and decide, on the pleadings, that GTE is obligated to pay reciprocal compensation to Starpower for all local calls, including calls to ISPs.

Respectfully submitted,



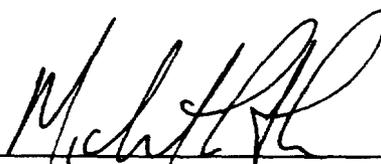
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Dated: July 19, 1999

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 1999, a true and correct copy of the foregoing Response of Starpower Communications, LLC To the Memorandum of Law filed by GTE South, Inc. was served by first class mail, postage pre-paid upon the parties identified on the attached list:



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**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

PETITION OF)
)
STARPOWER COMMUNICATIONS, LLC)
) Case No. PUC990023
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.)

**REPLY OF STARPOWER COMMUNICATIONS, LLC
TO THE ADDITIONAL COMMENTS OF GTE SOUTH, INC.**

Starpower Communications, LLC ("Starpower"), by its undersigned counsel, and pursuant to the Second Preliminary Order issued by the Commission in this case on August 9, 1999, hereby files its Reply to the Additional Comments of GTE South, Inc. ("GTE").

ARGUMENT

GTE's Additional Comments raise three points. First, GTE contends that a hearing is necessary to resolve the legal issue raised by Starpower's Complaint. Second, GTE argues that Starpower either "presents a misleading interpretation", "attempts to gloss over" or "misinterprets" the FCC's *Declaratory Ruling*¹ addressing reciprocal compensation for ISP traffic. (Additional Comments at 1, 2). Third, GTE suggests that neither this Commission's prior

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68, FCC 99-38 (rel. Feb. 26, 1999) ("*Declaratory Ruling*").

decision in the *Cox/Bell Atlantic Proceeding*² nor the near-unanimous decisions of over thirty other state commissions have any impact on this case. GTE is wrong on all counts.

In the first instance, Starpower rejects entirely GTE's efforts to re-write the *Declaratory Ruling* to suit its own purposes, or to contend that Starpower has misrepresented anything in that decision. Starpower stands by its analysis of that decision and, for these purposes, reiterates the view that the long-standing regulatory treatment of ISP traffic as local drives the Commission's determination here, not the jurisdictional analysis pursuant to which the FCC assumed ultimate jurisdiction over traffic to the Internet. In this regard, Starpower refers the Commission to its earlier-filed Response of Starpower Communications, LLC To the Memorandum of Law filed by GTE South, Inc. (the "Starpower Response"), which is incorporated herein by reference, and specifically refers the Commission to pages 5 - 13 of that document.

In particular, Starpower disagrees with GTE's characterization of the *Declaratory Ruling* as limiting this Commission's role to deciding "whether GTE and MFS Intelenet Services of Virginia, Inc. ["MFS"]. . . *expressly* agreed to include ISP-bound traffic in their interconnection agreement." (Additional Comments at 2; emphasis added). In fact, the *Declaratory Ruling* does not so limit the Commission's determination. Indeed, nowhere in the *Declaratory Ruling* is it stated that the parties to an interconnection agreement must have reached an "express agreement" to include ISP-bound traffic in their reciprocal compensation obligations for that agreement to be binding. Instead, the FCC stated as follows:

² *Petition of Cox Virginia Telecom, Inc. 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, Case No. PUC-970069, Final Order (Oct. 24, 1997)(the "Cox/Bell Atlantic Proceeding").*

Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the absence of such a rule, **parties may voluntarily include this traffic within the scope of their interconnection agreements** under sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law. **Where parties have agreed to include this traffic** within their 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted and enforced by the state commissions.³

Plainly, GTE's recitation alters materially the FCC's words. GTE changes the FCC's notion of a "voluntary" agreement to a requirement for an "express" agreement. The attempted change has serious implications for the way in which the Commission decides this dispute. In deciding whether GTE and Starpower (or GTE and MFS, for that matter) "voluntarily agreed" to include ISP traffic, the Commission need only look to (1) the agreement itself – since evidence of a "voluntary agreement" to include certain traffic can be found in unambiguous language that does not specifically exclude it, and (2) the prevailing law and regulatory environment within which that agreement was negotiated. This is precisely what the Commission did in the *Cox/Bell Atlantic Proceeding* and it is precisely what the Commission should do here.

Under GTE's view of the world, though, a determination that GTE and Starpower, or GTE and MFS, "expressly agreed" to include ISP traffic would require the Commission to find such express, inclusionary, language either in the agreement itself or from evidence of the parties' intent as expressed in their negotiations. This task mandates that the Commission ignore the very regulatory environment the FCC said was critical⁴ and it would require the Commission

³ *Id.* at 15, ¶ 22.

⁴ *Id.* at 17, ¶ 24.

to conduct an evidentiary analysis that plainly is not required by the terms of the *Declaratory Ruling*.

To be sure, a proper reading of the *Declaratory Ruling* suggests that the Commission's role is to determine whether GTE and Starpower voluntarily agreed to pay reciprocal compensation for calls to ISPs, but GTE goes too far in arguing that the only way that can be accomplished is by an evidentiary hearing examining the express intent of the parties to the negotiations.⁵ Such a hearing simply is not called for by the *Declaratory Ruling*, and it would serve no useful purpose other than to delay resolution of Starpower's complaint. Instead, as it did in resolving the *Cox/Bell Atlantic Proceeding*, the Commission may properly rely on the express terms of the agreement itself and it may interpret that agreement in the light of the prevailing regulatory environment as enunciated so clearly by the FCC in the *Declaratory Ruling*.

Finally, GTE goes too far in suggesting that the Commission can derive no guidance whatsoever from its prior decision in *Cox/Bell Atlantic* or from the nearly unanimous decisions of over thirty other states. GTE makes much of the simple fact that the language of the other agreements is not identical to the Starpower/GTE agreement, but that misses the point. Starpower does not contend that the language of the other agreements is identical or that the other decisions are either binding or controlling. However, Starpower does submit that, where the language of the other agreements is not materially or substantively different, and where over thirty state commissions - including this one - interpreted those virtually identical agreements in

⁵ It is not at all clear what purpose that evidentiary hearing would serve - GTE has not alleged in any filing with the Commission that it actually discussed the issue of reciprocal compensation for ISP traffic with either MFS or Starpower during the negotiations which led up to those agreements.

light of prevailing regulatory practices, then this Commission certainly is permitted to draw on its own prior experience and the more recent experiences of other, similarly situated, regulatory bodies in resolving the present dispute. In an overwhelming majority of cases, state commissions interpreting substantially similar agreements have concluded, in light of the prevailing regulatory treatment of ISP traffic as local, that the parties to those agreements "voluntarily agreed" to include ISP traffic in their reciprocal compensation obligations. In the *Cox/Bell Atlantic Proceeding*, this Commission reached that same result as a matter of law. Since it decided that case in October 1997, over twenty other state commissions have reached the same result – some as a matter of law, some after evidentiary hearings. In light of the clear direction provided by the FCC in its *Declaratory Ruling*, Starpower respectfully submits that it would be appropriate for the Commission to decide this issue again as a matter of law and to conclude that the parties to the interconnection agreement at issue voluntarily agreed to pay reciprocal compensation for calls bound for ISPs.

To the extent the Commission determines that a hearing is necessary to resolve this, and the companion case brought by Cox Virginia Telecom, Inc., then Starpower respectfully requests that the Commission set an expedited schedule for discovery and a hearing. GTE has delayed long enough in the performance of its contractual obligations.

CONCLUSION

The FCC's *Declaratory Ruling*, the decisions of four other commissions involving GTE, and this Commission's prior decision in the *Cox/Bell Atlantic Proceeding* clearly support the view that the Commission should resolve this dispute – as a matter of law – by concluding on the filed pleadings that GTE owes reciprocal compensation to Starpower for traffic to ISPs.

Respectfully submitted,



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Dated: August 12, 1999

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 1999, true and correct copies of the foregoing Reply of Starpower Communications, LLC To The Additional Comments of GTE South, Inc. were served by first class mail, postage pre-paid upon the parties listed below:

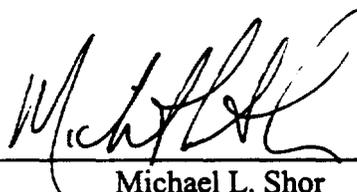
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