

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMPLAINT OF)

STARPOWER COMMUNICATIONS, LLC)

Against Bell Atlantic - Virginia, Inc.)
for Breach of Interconnection Agreement)
and Request for Immediate Relief)

Case No.

Russell M. Blau
Michael L. Shor (Va. Bar No. 28478)
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7645

**Counsel for Starpower Communications,
LLC**

Dated: September 14, 1999

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**COMPLAINT
(For Breach Of Interconnection Agreement)**

Starpower Communications, LLC (“Starpower”), through its undersigned counsel, and pursuant to Section 8.01-184 of the Code of Virginia and Rule 5:3 of this Commission’s Rules of Practice and Procedure, files this Complaint against Bell Atlantic - Virginia, Inc. (“Bell Atlantic”) seeking enforcement of that certain *Interconnection Agreement* between Starpower and Bell Atlantic (the “Agreement”), adopted by the parties on March 9, 1998 and effective as of June 17, 1998.¹

Bell Atlantic has taken the unilateral position that it will not make any payments to Starpower as reciprocal compensation for the transport and termination of local calls placed by Bell Atlantic customers to Starpower local service end users who are Internet Service Providers or Enhanced Service Providers (collectively “ISPs”), despite the clear requirement in the Agreement that the parties will pay such compensation for the transport and termination of “Local Traffic.” Bell Atlantic’s stance is particularly egregious because it is adhering to a legally untenable position in the face of an express order of this Commission affirmatively rejecting Bell

¹ *Application of Bell Atlantic-Virginia, Inc. and Starpower Communications, L.L.C. for approval of interconnection Agreement under § 252(e) of the Telecommunications Act of 1996, Case No. PUC980061, Order Approving Agreement (Va. S.C.C. Jun. 17, 1998).*

Atlantic's position and concluding that *all* local traffic, including traffic terminating at ISPs, is subject to the reciprocal compensation provisions of agreements such as the one at issue here.²

The Federal Communications Commission ("FCC") recently addressed the subject of reciprocal compensation for traffic terminated to ISPs.³ In the *Declaratory Ruling*, the FCC upheld the rationale of this Commission's decision in the *Cox Telecom* case.⁴ It expressly confirmed that a State commission may enforce the terms of a negotiated interconnection agreement under which parties have agreed to treat ISP-bound traffic as "local," and may apply a variety of factors to ascertain the parties' intention in this regard. The FCC made clear that nothing in its decision was intended to limit or preempt State commission determinations. Importantly, since the *Declaratory Ruling* was released, fifteen state commissions and three federal courts, including the United States Court of Appeals for the Seventh Circuit, have issued decisions on the matter which endorse the view taken by this Commission in its prior decision.

Since this Commission previously has ruled that local traffic terminated at ISPs should be treated the same as other local traffic, Starpower requests that the Commission enter an order declaring that the Agreement's traffic exchange provisions are fully applicable to local calls that

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) ("*Cox Telecom*").

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98); *Inter-Carrier Compensation for ISP-Bound Traffic* (CC Docket No. 96-68), Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68, (released Feb. 26, 1999) (the "*Declaratory Ruling*").

⁴ The FCC determined that, in the absence of any federal rules directly addressing inter-carrier compensation for such traffic, it had "no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic . . ." *Declaratory Ruling* at 15, ¶ 21

terminate to ISPs; directing Bell Atlantic to treat local calls that terminate to ISPs the same way it treats all other local calls when calculating its reciprocal compensation obligations; directing Bell Atlantic to forward to Starpower all sums currently due and owing, together with such interest and late fees as are permitted by the Agreement; and directing Bell Atlantic to pay to Starpower on a timely basis all future sums as they come due pursuant to the terms of Section 5.7 of the Agreement (providing for the reciprocal compensation of local exchange traffic) at the rates set forth therein. In addition, due to Bell Atlantic's demonstrated propensity to make unilateral changes in its reciprocal compensation policies, the Commission should expressly direct BA to obtain affirmative relief from this Commission before making any such changes in the future.

I. JURISDICTION

1. Starpower and Bell Atlantic are local exchange carriers ("LECs") authorized to provide local exchange services in the Commonwealth of Virginia pursuant to certificates issued by this Commission.^{5/}

2. Pursuant to section 252(i) of the Telecommunications Act of 1996, 47 U.S.C. § 252(i), Starpower elected to adopt the interconnection agreement by and between Bell Atlantic and MFS Intelenet of Virginia, Inc. ("MFS") (the "MFS Agreement"), which was approved by this Commission in an Order entered in Case No. PUC960110. The Agreement between Bell Atlantic and Starpower was approved by the Commission on June 17, 1998.^{6/}

^{5/} [CITE TO GRANT OF AUTHORITY.]

^{6/} See note 1, *supra*.

3. The terms of the Agreement specifically provide for the right of either party to petition the Commission or a court to resolve "any dispute between the parties regarding the interpretation of this Agreement or any of its terms . . ."^{7/} The United States District Court for the Eastern District of Virginia has recently found that "the Telecommunications Act was designed to allow the state commission to make the first determination" regarding the interpretation of an interconnection agreement. *Bell Atlantic-Virginia, Inc. v. WorldCom Technologies of Virginia, Inc.*, Civil Action No. 99-275-A (E.D.Va. slip op. July 1, 1999) at 13.

4. Thus, the Commission has clear jurisdiction to interpret and to enforce the terms of the Agreement as alleged herein. The FCC confirmed 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."^{8/} 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."^{9/}

5. Correspondence regarding this Complaint should be sent to Starpower at the following address:

Deborah M. Royster, General Counsel
Starpower Communications, LLC
1130 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036

^{7/} Agreement at Section 29.9.

^{8/} *Declaratory Ruling* at 18, ¶ 26 n.87.

^{9/} *Id.* at 19, ¶ 28.

and to Starpower's attorneys as follows:

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

6. Correspondence regarding this Complaint should be sent to Bell Atlantic at the address specified in the Agreement, which is:

Vice President - Interconnection Services, Policy and Planning
Bell Atlantic Network Services, Inc.
1320 N. Courthouse Road
Arlington, Virginia 23219

with a copy to:

Vice President and General Counsel
Bell Atlantic - Virginia, Inc.
600 East Main Street
24th Floor
Richmond, Virginia 23261.

and to Bell Atlantic's attorneys as it may hereafter designate.

7. Starpower's interest in this proceeding, as stated elsewhere in this Complaint, is in the enforcement of the Agreement between Starpower and Bell Atlantic, with respect to the provision of local exchange services throughout those portions of the Commonwealth of Virginia served by Bell Atlantic.

8. Starpower hereby requests that the Commission commence a formal adjudicative proceeding on an expedited basis, to address the issues raised in this Complaint.

II. STATEMENT OF FACTS

A. BELL ATLANTIC REFUSES TO PAY RECIPROCAL COMPENSATION TO STARPOWER FOR TERMINATING LOCAL EXCHANGE CALLS TO ISPs

Terms of the Agreement

9. Section 251(a) of the Telecommunications Act obligates all telecommunications carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”

10. Section 251(b)(5) of the Act obligates Bell Atlantic and Starpower, as local exchange carriers, “to establish reciprocal compensation arrangements for the transport and termination of telecommunications.” The FCC has interpreted this obligation as applying only to “local” telephone services, but also has concluded that the Act does not prohibit carriers from establishing reciprocal compensation arrangements for calls to ISPs.

11. Section 5.7.2. of the Agreement provides: “the Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rate provided in the Detailed Schedule of Itemized Charges (Exhibit A of the Agreement.)”

12. Local Traffic is defined in the Agreement at Section 1.44 as
traffic that is originated by a Customer of one Party on the Party’s network and terminates to a Customer of the other Party on that other Party’s network, within a given local calling area, or expanded area service (“EAS”) area, as defined in BA’s effective Customer tariffs.

13. Section 28.1 of the Agreement specifically states that: “[e]ach Party represents and warrants that it is now and will remain in compliance with all laws, regulations, and orders applicable to the performance of its obligations hereunder.”

14. Finally, section 29.17, termed "Entire Agreement", states as follows:

The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all or prior understandings, proposals or other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's documents, purchase orders, quotations, acknowledgments, invoices or other communications.

15. The impact of these provisions is crystal clear. Reciprocal compensation is owed for the transport and termination of *all* local calls, regardless of the identity of the terminating end-user; the terms of the Agreement are subject to final, binding decisions of this Commission; and, if a representation or understanding is not contained within the four-corners of the Agreement, it is ineffective.

The Nature Of ISP Traffic

16. Pursuant to the terms of the Agreement, Starpower and Bell Atlantic have interconnected their networks to enable an end user subscribing to Starpower's local exchange service to place calls to end users subscribing to Bell Atlantic's local exchange service, and vice versa.

17. Both Starpower and Bell Atlantic provide tariffed local exchange services over their respective networks to end user customers, including certain business customers operating as ISPs. The interconnection terms of the Agreement permit subscribers to Bell Atlantic's local exchange service to place calls to ISPs located on Starpower's network, *just as they may with any other local exchange end user customer*. Likewise, subscribers to Starpower's local exchange service may place calls to ISPs served by Bell Atlantic.

18. ISPs provide information obtained from numerous sources, including sources accessed through the Internet and through databases. Typically, an ISP's customer connects to an ISP by means of a local phone call.

19. The characteristics of a call to an ISP are the same as any other local call and, in the industry, a call placed over the public switched telecommunications network is considered to be "terminated" when it is delivered to the called telephone number of an end user. Nothing in the Agreement creates a distinction pertaining to calls placed to end users *which happen to be ISPs*. All calls that terminate within a local calling area, regardless of the identity of the end user, are local calls as defined in the Agreement, and reciprocal compensation is due for such calls. This includes calls placed by Bell Atlantic's customers to Starpower's ISP customers, as well as calls placed by Starpower's customers to Bell Atlantic's ISP customers.

20. This Commission already has found that Bell Atlantic, like all other ILECs, treats calls to ISPs as local traffic in all other contexts. Bell Atlantic charges its own ISP customers local business line rates for local service. These services are provided pursuant to Bell Atlantic's local exchange tariff. This practice thus enables customers of Bell Atlantic's ISP customers to connect to their ISP by making a local phone call. When a Bell Atlantic customer places a call to an ISP within the caller's local calling area, Bell Atlantic rates and bills such customer for a local call pursuant to the terms of Bell Atlantic's local tariffs. In addition, Bell Atlantic treats the revenues associated with local exchange traffic to its ISP customers as local for purposes of interstate separations and ARMIS reports. Indeed, the FCC recently rejected Bell Atlantic's efforts to re-characterize the revenue and expenses associated with ISP traffic as interstate.

21. Bell Atlantic itself explained to the FCC that reciprocal compensation would be owed for traffic to ISPs. In its comments in the FCC's Local Competition proceeding, Bell Atlantic defended the adoption of reciprocal compensation, rather than bill and keep, against charges that the transport and termination rates might be set too high by pointing out that: "[i]f these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and Internet access providers" (May 30, 1996, Reply Comments of Bell Atlantic at p. 21 in FCC CC Docket No. 96-98; emphasis supplied).

The Dispute

22. The reciprocal compensation provisions in the Agreement clearly require the parties to compensate each other for the termination of all local traffic. There is no exception in the Agreement for calls terminating at ISPs.

23. Since the execution of the Agreement, and the interconnection of their respective networks, and through a number of validly delivered invoices, Starpower has billed Bell Atlantic for reciprocal compensation. Bell Atlantic has paid some, but not all, of the reciprocal compensation that Starpower has billed. A summary of the outstanding balance owed to Starpower is attached as Exhibit A. The only reason given by Bell Atlantic for its refusal to pay the balance invoiced is that it represents charges for the termination of ISP traffic and late charges on those amounts, although Bell Atlantic has not based its partial payment on any actual measurement of ISP traffic.

24. Bell Atlantic's steadfast reliance on this rationale is misplaced because this Commission has ruled that language *identical* to the language in the Agreement requires Bell

Atlantic to pay reciprocal compensation for traffic to ISPs.^{10/} In *Cox Telecom*, this Commission held that, for the purposes of reciprocal compensation under the applicable interconnection agreements, the call to an ISP is considered to be terminated when it is delivered to the ISP.

25. In addition, the Maryland Public Service Commission has ruled twice, and has been affirmed on appeal, that identical language in the interconnection agreement between MFS Intelenet of Maryland, Inc. and Bell Atlantic-Maryland, Inc. requires reciprocal compensation for this traffic.^{11/} Other state commissions in Bell Atlantic's territory also have rejected Bell Atlantic's argument. Thus far, state commissions in New York,^{12/} Delaware,^{13/} Pennsylvania,^{14/}

^{10/} *Petition of Cox Virginia Telcom, 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*, Final Order, Case No. PUC970069 (Va. S.C.C. Oct. 24, 1997). Bell Atlantic withdrew its appeal of the Virginia Commission order.

^{11/} *Complaint of MFS Intelenet of Maryland, Inc. Against Bell Atlantic-Maryland, Inc. For Breach of Interconnection Terms and Request For Immediate Relief*, Order, Public Service Commission of Maryland, Case No. 8731 (June 11, 1999); Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. On October 1, 1997, the Commission rejected Bell Atlantic's petition for reconsideration. Bell Atlantic appealed the September 11, 1997 decision to the Circuit Court for Montgomery County (CA No. 178260); the Circuit Court upheld the Commission decision. There was no written decision.

^{12/} *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y. PSC. July 17, 1997). *See also*, Order Closing Proceeding, (NYPSC March 19, 1998). BA-NY's Petition to Reopen the Proceeding was denied. *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Order Instituting Proceeding to Reexamine Reciprocal Compensation, New York Public Service Commission, Case No. 99-C-0529 (April 15, 1999).

^{13/} *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 (Del. P.S.C. May 11, 1999).

^{14/} *Petition for Declaratory Order of TCG Delaware Valley, Inc.*, Docket No. P-00971256, (Pa. P.U.C. June 16, 1998).

and Rhode Island^{15/} have ordered Bell Atlantic to pay reciprocal compensation for ISP traffic under applicable interconnection agreements.^{16/}

26. Bell Atlantic's refusal to pay reciprocal compensation for the calls of its customers that terminate at ISPs served by Starpower constitutes a material and willful breach of the terms of the Agreement.^{17/} Bell Atlantic's decision to withhold reciprocal compensation payments for ISP traffic also is wholly inconsistent with (1) the *Cox Telcom* decision of this Commission; (2) decisions of the United States Court of Appeals for the Seventh Circuit and United States District Courts for the Western District of Washington, the Western District of Texas, the Northern District of Illinois, the District of Oregon, the Western District of Michigan, and the Middle District of Alabama; (3) the Telecommunications Act of 1996; and (4) relevant FCC orders. Moreover, this attempt to withhold compensation from CLECs that terminate local traffic to ISPs has been addressed by a number of other state regulatory commissions, all but one of which have rejected the arguments made here by Bell Atlantic.

^{15/} *Re: NEVD of Rhode Island, LLC Petition for Declaratory Judgment that Internet Traffic Be Treated as Local Traffic Subject to Reciprocal Compensation*, Docket No. 2935, Order (R.I. PUC Jul. 21, 1999).

^{16/} Only two states have ruled that calls terminating to ISPs are not "local" for purposes of reciprocal compensation, although both noted that other forms of compensation may apply to such traffic. *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, Massachusetts Department of Telecommunications and Energy, D.T.E. 97-116-C (May 19, 1999); *Petition of Global NAPS Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Bell Atlantic-New Jersey, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Decision and Order, Docket No. TO98070426 (N.J. B.P.U., July 12, 1999) (pet. for recon. pending).

^{17/} Bell Atlantic's refusal also violates Section 251(b)(5) of the Act, which sets forth the obligation of all LECs to provide reciprocal compensation.

B. THIS COMMISSION, NUMEROUS OTHER STATE REGULATORY AUTHORITIES, THE FEDERAL COURTS, AND THE FCC HAVE CONCLUDED THAT CALLS TO ISPs ARE ELIGIBLE FOR RECIPROCAL COMPENSATION.

Prior Commission Determinations

27. Over a year before the parties executed the letter pursuant to which Starpower adopted the terms of the MFS Agreement, and in the context of a proceeding brought by Cox Virginia Telcom to interpret and enforce the terms of an interconnection agreement by and between Cox and Bell Atlantic (the "Cox/Bell Atlantic Agreement"), the Commission had occasion to decide a dispute over a reciprocal compensation arrangement identical to the arrangement set forth in the Agreement at issue here.^{18/} Specifically, in the Cox/Bell Atlantic Agreement, the parties agreed to a reciprocal compensation provision identical to Section 5.7.2 of the Agreement.

28. Bell Atlantic took the same position with Cox that it takes here, namely, that calls terminating at ISPs were not local calls subject to the reciprocal compensation provisions of that agreement. Considering the positions of the parties, the Commission rejected Bell Atlantic's arguments. Simply put, the Commission concluded that calls to ISPs were local. 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.

^{18/} *Petition of Cox Virginia Telcom, 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).*

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.^{19/}

29. Bell Atlantic initially appealed the Commissions decision to the Supreme Court of Virginia^{20/} but, for reasons of its own choosing, withdrew that appeal.^{21/} In short, the Commission's decision interpreting the scope of carriers' reciprocal compensation obligations to each other under interconnection agreements, as those provisions relate to telephone calls to ISPs, is final, binding and enforceable in Virginia. This decision is specifically enforceable against Bell Atlantic, which was a party to the Cox decision, and thus, is barred from re-litigating the issue under the doctrine of collateral estoppel.

The FCC's Declaratory Ruling

30. In the *Declaratory Ruling* released on February 26, the FCC addressed specifically the question of whether calls to ISPs are eligible for reciprocal compensation under the terms of interconnection agreements such as the one at issue here. The FCC concluded that such "traffic is jurisdictionally mixed," and that it had jurisdiction because it was "largely inter-state."^{22/} The FCC noted that ISP traffic historically had been treated as local by all parties and, further, in the absence of any federal rules directly addressing inter-carrier compensation for such

^{19/} Final Order at 2.

^{20/} *Bell Atlantic-Virginia, Inc. v. Cox Virginia Telecom, Inc., et al.*, Record No. 980385, Petition for Appeal filed February 24, 1998.

^{21/} *Id.*, Order Granting Motion For Leave To Withdraw Appeal (April 10, 1998).

^{22/} *Declaratory Ruling* at 18, ¶ 27.

traffic, “[found] no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic”^{23/}

31. The FCC observed that since 1983, ISPs, as a subset of enhanced service providers, had been exempted from the payment of interstate access charges. As a result, ISPs are treated as end-users who purchase their connections to the telephone network through *intra*-state tariffs, not *interstate* tariffs.^{24/} Thus, the FCC noted, it “*discharge[d] its interstate regulatory obligations by treating ISP-bound traffic as though it were local.*”^{25/}

32. At the same time, the FCC also noted that, under the 1996 Act, when more than one carrier combines to transport and complete a call, compensation has been provided through either the access charge regime, or through reciprocal compensation. With respect to calls to ISPs, the FCC observed that there are no federal rules in place governing inter-carrier compensation arrangements. In the absence of any such federal rules, the FCC concluded that it was proper for the parties to interconnection agreements to include calls to ISPs as local for reciprocal compensation purposes and it was proper for the state commissions that have decided the issue to date to continue to require the payment of reciprocal compensation for such traffic pending the completion of a federal rulemaking procedure. The FCC stated its conclusion as follows:

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

^{23/} *Declaratory Ruling* at 15, ¶ 21.

^{24/} *Id.* at 3-4, ¶ 5.

^{25/} *Id.* at 5, ¶ 5 (emphasis added); at 7, ¶ 9 (“Moreover, the Commission has directed states to treat ISP traffic as if it were local, by permitting ISPs to purchase their [Public Switched Telephone Network] links through local business tariffs.”); and at 15, ¶ 23 (“Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local.”)

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.^{26/}

33. Indeed, the FCC was quick to point out that, even though it had not yet adopted a rule governing compensation for ISP-bound traffic, “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.*”^{27/}

34. At the same time, the FCC also addressed and discussed the complex interplay of factors and considerations that properly led this Commission to conclude in *Cox Telcom* that calls to ISPs are subject to reciprocal compensation under interconnection agreements like the one at issue here. The FCC stated its view as follows:

When construing the parties’ agreements to determine whether the parties so agreed [to treat ISP-bound traffic as local], state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission’s longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. For example, it may be appropriate for state commissions to consider such factors as whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and

^{26/} *Id.* at 15, ¶ 22.

^{27/} *Id.* at 17, ¶ 25 (emphasis added).

subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic.^{28/}

43. In short, this Commission's conclusion that Bell Atlantic owed Cox reciprocal compensation for traffic to ISPs was correctly based on an interpretation of the interconnection agreement, applicable FCC precedent, and an analysis of Bell Atlantic's own treatment of calls to ISPs. As a party to the *Cox Telcom* case, with sufficient opportunity to argue and appeal, Bell Atlantic cannot unilaterally deny Starpower's right to reciprocal compensation for traffic bound to ISPs. This is especially true since the language of the Agreement at issue here is identical, in all material respects, to the language of the Agreement that was interpreted in *Cox Telcom*.

Other Commissions and State Decisions

35. To date, thirty-one (31) other state commissions have ruled that local exchange carriers owe reciprocal compensation for traffic to ISPs. Indeed, since the FCC released the *Declaratory Ruling*, fifteen state commissions have issued decisions which endorse the view this Commission took well before the FCC announced its own view.^{29/}

^{28/} *Id.* at 16, ¶ 24.

^{29/} See, *In Re: Emergency Petitions of ICG Telecom Group, Inc. and ITC Deltacom Communications, Inc. for a Declaratory Ruling*, Alabama P.S.C., Docket No. 26619 (March 4, 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*, Florida P.S.C., Docket No. 981008-TP, Order No. PSC-99-0658-FOF-TP (April 6, 1999); *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," Nevada P.U.C., Docket Nos. 98-10015 and 99-1007 (April 12, 1999); *Electric Lightwave, Inc. v. U S WEST Communications, Inc.*, Oregon P.U.C., Order No. 99-285 (April 26, 1999); *Complaints of ICG Telecom Group, Inc., MCImetro Access Transmission Services, Inc., and Time Warner Telecom v. Ameritech Ohio*, Ohio P.U.C., Case No. 97-1557-TP-CSS et

36. The United States Court of Appeals for the Seventh Circuit recently issued an opinion affirming the decision of the Illinois Commerce Commission, as affirmed by the District Court for the Northern District of Illinois, finding that reciprocal compensation was owed for calls to ISPs.^{30/} Since the FCC's *Declaratory Ruling*, federal district courts in Michigan^{31/} and Alabama^{32/} also have affirmed decisions of state commissions requiring the payment of reciprocal compensation for ISP-bound traffic.

al (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*, Hawaii P.U.C., Docket No. 99-0067, Decision and Order No. 16975 (May 6, 1999); *WorldCom, Inc. v. GTE Northwest Inc.*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Washington U.T.C., Docket No. UT-980338 (May 12, 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); *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., June 24, 1999); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service* (Rulemaking 95-04-043), *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service* (Investigation 95-04-044), *Order Modifying and Denying Applications for Rehearing of Decision 98-10-057* (Ca. P.U.C., July 26, 1999); *ICG Telecom Group, Inc. v. US West Communications, Inc.*, Docket No. 98F-299T, Order (Co. P.U.C., July 28, 1999); *USWC's Petition for a Determination that ISP Traffic is not Subject to Reciprocal Compensation Payments Under the MFS/US WEST Interconnection Agreement*, Docket No. P3167, 421/M-99-529, (Minn. P.U.C., August 3, 1999), and cases cited in notes 10 - 16, *supra*..

^{30/} *Illinois Bell Telephone Company d/b/a Ameritech Illinois v. WorldCom Technologies, Inc.*, 179 F.3d 566 (7th Cir. June 18, 1999).

^{31/} *Michigan Bell Telephone Co., d/b/a Ameritech Michigan, Inc. v. MFS Intelenet of Michigan, Inc.*, No. 5:98 CV 18, slip op. (W.D. Mich. Aug. 2, 1999).

^{32/} *BellSouth Telecommunications, Inc. v. ITC DeltaCom Communications, Inc., et al.*, Memorandum Opinion and Order, Civil Action Nos. 99-D-287-N, 99-D-747-N (M.D. Ala. Aug. 18, 1999).

Bell Atlantic's Position has Anticompetitive Implications

37. Bell Atlantic's current position on this issue also has severe and far-reaching anti-competitive implications. This is because any carrier terminating calls to an ISP obviously incurs costs in terminating such calls – the same costs incurred in terminating calls to any other end user, and the same costs Bell Atlantic would incur if it had to terminate the call. Bell Atlantic's announced position effectively compels Starpower and other new entrants to terminate the calls without compensation. The inevitable result likely will be that, practically speaking, no CLEC will be able to furnish service to an ISP, since providing that service would result in uncompensated termination costs. This would leave Bell Atlantic with an unreasonable *de facto* monopoly over ISP end users, a state of affairs that was clearly not intended by the 1996 Act.

38. An additional consequence is that, notwithstanding this Commission's prior decision in *Cox Telcom*, Bell Atlantic's refusal to pay reciprocal compensation to other carriers for terminating calls to ISPs forces each and every one of those carriers to go through the expensive and time-consuming process of seeking interpretation and enforcement of virtually identical interconnection agreements. Plainly, Bell Atlantic's strategy is to force CLECs to expend valuable resources in pursuit of legitimate claims. This forces the CLECs to divert resources from building networks and facilities and, ultimately, delays the advent of real competition.

39. Further aggravating this anti-competitive effect is the fact that Bell Atlantic now offers its own Internet access service to consumers. By gaining monopoly power over local exchange service to ISPs and increasing their costs for network access, Bell Atlantic will be in a position to drive competing ISPs out of the local market, thereby leaving Bell Atlantic with a *de*

facto monopoly over access to the Internet as well. This inevitable result cannot be permitted to occur.

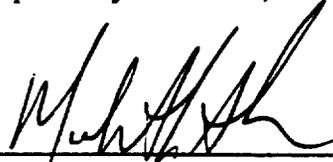
40. In light of this Commission's decision that calls to ISPs are eligible for reciprocal compensation, and the Seventh Circuit's seminal decision outlining the proper standard for the review of those decisions, Bell Atlantic no longer can be heard to contend that reciprocal compensation for ISP traffic is not owed to Starpower under this Agreement, and its adherence to that argument in the face of these decisions is stark evidence of its anti-competitive approach to the development of competition in the local exchange market in Virginia.

III. REQUEST FOR RELIEF

For all the reasons stated herein, Starpower respectfully requests that the Commission enter an order applying the decision in the *Cox Telecom* case and declaring that the Agreement's traffic exchange provisions are fully applicable to local calls that terminate to ISPs; compelling Bell Atlantic to treat local calls that terminate to ISPs the same way it treats all other local calls when calculating its reciprocal compensation obligations; and directing Bell Atlantic to pay immediately to Starpower all sums currently due as shown on Exhibit A, with interest and late fees from the date payment was originally due, and all sums that become due after the filing of this Complaint, pursuant to the terms of Section 5.7 of the Agreement (providing for the reciprocal compensation of local exchange traffic) at the rates set forth therein. In addition, the

Commission should expressly direct Bell Atlantic to seek affirmative relief from this Commission if it believes that any subsequent legislation, FCC ruling, or judicial decision requires or permits a change in its reciprocal compensation practices, and to make no such change without Commission approval.

Respectfully submitted,



Russell M. Blau
Michael L. Shor (Va. Bar No. 28478)
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, LLP.

Dated: September 14, 1999

**EXHIBIT A
UNPAID RECIPROCAL COMPENSATION
PAST DUE TO STARPOWER**

Month of Usage	Bill Date	Payment Due Date	Billed Amount	<i>Billed Amount Includes:</i>		Paid Amount	TOTAL UNPAID	
				<i>Late Fee</i>	<i>Other Charges/ Adjustments</i>			
VA	Jan-99	3/18/99	4/18/99	82,907.31	-	-	22,733.52	60,173.79
	Feb-99	3/22/99	4/22/99	127,395.69	141.48	-	34,893.63	92,502.06
	Mar-99	4/15/99	5/15/99	193,340.21	-	-	53,014.68	140,325.53
	Apr-99	5/14/99	6/14/99	677,755.31	2,584.30	242,508.73	69,641.03	608,114.28
	May-99	6/15/99	7/15/99	551,861.96	5,360.93	(421.99)	94,878.56	456,983.40
TOTAL				1,633,260.48	8,086.71	242,086.74	275,161.42	1,358,099.06
				A			B	A - B

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

000120170

AT RICHMOND, JANUARY 24, 2000

PETITION OF

STARPOWER COMMUNICATIONS, LLC

CASE NO. PUC990023

For Declaratory Judgment
Interpreting Interconnection
Agreement with GTE South, Inc.

and

PETITION OF

COX VIRGINIA TELCOM, INC.

CASE NO. PUC990046

v.

GTE SOUTH INCORPORATED

For enforcement of interconnection
agreement for reciprocal compensation
for the termination of local calls
to Internet Service Providers

2000 JAN 24 PM 4:34

FINAL ORDER

On February 4, 1999, and March 18, 1999, Starpower Communications, LLC, ("Starpower") and Cox Virginia Telcom, Inc., ("Cox") filed their respective petitions against GTE South Incorporated ("GTE"), seeking declaratory relief and enforcement of their interconnection agreements with GTE. Specifically, Starpower and Cox seek the payment of reciprocal compensation for their transport and termination of GTE's traffic to Internet service providers ("ISPs"). All pleadings have been filed by the parties as provided in the Commission's Preliminary Order of June 22, 1999, and Second Preliminary Order of August 9, 1999.

In Case No. PUC970069,¹ Cox, in its petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA"), presented the issue of payment of reciprocal compensation for its transport and termination of BA-VA traffic to ISPs served by Cox. We found in that case that calls to ISPs as described in the Cox petition constituted local traffic, and that both Cox and BA-VA were entitled to reciprocal compensation for the termination of this type of call. We found that calls to an ISP dialed on a seven-digit basis were local in nature.

Subsequent to that Order, the Federal Communications Commission ("FCC") issued an order in which it held that the jurisdictional nature of ISP-bound traffic is determined by the end-to-end transmission between an end user and the Internet.² The FCC further concluded that such ISP-bound traffic is jurisdictionally mixed and appears to be substantially interstate rather than intrastate.³

In its Reciprocal Compensation Order, the FCC did not support the extension of its jurisdiction over locally dialed

¹ Petition of Cox Virginia Telcom, Inc., For enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc., Case No. PUC970069, 1997 S.C.C. Ann. Rep. 298, Final Order (Oct. 24, 1997).

² In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, CC Dockets 96-98 and 99-68, FCC 99-38, released Feb. 26, 1999 (hereinafter, "Reciprocal Compensation Order"), at ¶ 12.

³ Id. at ¶ 1.

calls to ISPs with any rules regarding inter-carrier compensation for ISP-bound traffic. Nor has the FCC made modifications to jurisdictional separations systems that apportion regulated costs and revenues between intrastate and interstate jurisdictions.

The FCC did, however, establish a further rulemaking to consider prospective inter-carrier compensation methods for ISP-bound traffic. As part of this rulemaking, the FCC requested comment on the implications of various alternative inter-carrier compensation proposals "on the separations regime, such as the appropriate treatment of incumbent [local exchange carrier ("ILEC")] revenues and payments associated with the delivery of such traffic."⁴ In the interim, the FCC left it to state commissions to consider what effect, if any, its ruling had on state decisions regarding present reciprocal compensation provisions of interconnection agreements whether negotiated or arbitrated.⁵

This matter is of serious concern to this Commission because, notwithstanding its interstate classification of ISP-bound traffic, the FCC continues to require ILECs to account for costs and revenues associated with end users' and ISPs' end office connections for ISP-bound traffic as intrastate for

⁴ Id. at ¶ 36.

⁵ Id. at ¶ 27.

jurisdictional purposes and to require that such services be purchased from intrastate tariffs.⁶

In its Order, the FCC assures us that it has no intention of permitting a mismatch of costs and revenues between the jurisdictions.⁷ However, the FCC has yet to commit to the separations reform necessary to match the jurisdictional costs and revenues to its "newly" determined interstate jurisdiction for ISP-bound traffic.⁸ Moreover, to date the FCC has not acted in its rulemaking regarding inter-carrier compensation for ISP-bound traffic nor adopted separations reform.⁹

The FCC's stated goal in its Separations Reform NPRM was a comprehensive review of the Part 36 separations rules to consider changes in the telecommunications industry.¹⁰ The Separations Joint Board is currently reviewing various proposals

⁶ The Chief of the Common Carrier Bureau of the FCC has directed Bell Atlantic and SBC Communications to reclassify their ISP-bound expenses and revenues as intrastate in their ARMIS reporting. See "Common Carrier Bureau Issues Letter To Bell Atlantic Regarding Jurisdictional Separations Treatment of Reciprocal Compensation For Internet Traffic", ASD 99-40, Released July 30, 1999.

⁷ Separations Reform Order at ¶ 36.

⁸ The time may come when the State Corporation Commission will have to consider disallowing, for ratemaking purposes, intrastate costs associated with carrying ISP-bound traffic even though the FCC continues to require these costs to be apportioned intrastate.

⁹ In re Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22122 (1997) (hereinafter, "Separations Reform NPRM").

¹⁰ "The fundamental basis on which separations are made is the use of telecommunications plant on each of the [interstate and intrastate] operations." (47 C.F.R. § 36.1(c)).

for separations rule changes. As part of this effort, the State Members of the Separations Joint Board have recently developed a cost study tool to help evaluate cost shift effects of separations rule changes.¹¹ To demonstrate the use of this tool the State Members estimated the possible effect of two recent FCC decisions, one of which was the Reciprocal Compensation Order. The potential misallocation of costs to the state jurisdictions appears enormous.

The cost study tool estimated costs that would be allocated to the interstate jurisdiction if the FCC had found that Internet minutes should be counted as interstate for separations purposes. The State Members reported that "it appears that the effect of moving Internet minutes to the interstate jurisdiction would be a shift in costs of about \$2.8 billion annually nationwide (about \$1.40 per line per month) to the interstate jurisdiction."¹²

Based on the FCC's failure to act on either inter-carrier compensation or separations reform for ISP-bound traffic, we conclude that the Reciprocal Compensation Order has created great regulatory uncertainty. In the absence of any FCC rules

¹¹ See "Formal Request from State Members For Notice and Comment on Separations Simulation Cost Study Tool", filed October 28, 1999, in the FCC proceeding captioned In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket 80-286. The FCC requested comments on the cost study analysis tool by December 17, 1999.

¹² Id.

on inter-carrier compensation for ISP-bound traffic, any interpretation of the instant agreements we might reach may well be inconsistent with the FCC's final order in its rulemaking. Further, our decision on these agreements might also conflict with the FCC's ultimate resolution of the separations reform issues, which also remain unresolved.

Given the possibility of conflicting results being reached by this Commission and the FCC, we believe the only practical action is for this Commission to decline jurisdiction and allow the parties to present their cases to the FCC. The FCC should be able to give the parties a decision that will be compatible with any future determinations that it might issue. Being unable to determine the FCC's ultimate resolutions of these issues, any decision by us would be compatible with such rulings only by coincidence.

We further conclude that the FCC's Reciprocal Compensation Order, to the extent it intends to confer regulatory jurisdiction, is of dubious validity. The FCC has concluded that ISP-bound traffic is "jurisdictionally mixed and appears to be largely interstate" in nature.¹³ Nevertheless, the FCC has suggested that the states should continue to approve and construe interconnection agreements that establish compensation

¹³ Reciprocal Compensation Order at ¶ 1.

for transport and termination of ISP-bound traffic, because "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."¹⁴

The Commission is a constitutional agency that derives all of its powers and authority from the Constitution of Virginia and properly enacted legislative measures. A statement by the FCC does not, per se, grant jurisdiction to this Commission. Thus, even if we could, by chance, respond to the petitions in a manner not inconsistent with rules the FCC may later adopt, our ruling might be challenged on jurisdictional grounds by a party dissatisfied with the outcome.¹⁵

Therefore, upon full consideration of the pleadings, the Reciprocal Compensation Order, and the applicable statutes and rules, we find we should take no action on the petitions. We will dismiss these petitions without prejudice but encourage the parties to carry their requests for construction of these agreements to the FCC where they can obtain relief that should be consistent with the rules the FCC may issue in the future.

¹⁴ Id. at ¶ 26.

¹⁵ We will not comment on the validity of such a challenge, but note that the invitation of the FCC for us to act in these cases may encourage such a challenge.

It is also our hope that referring these parties to the FCC might encourage the FCC to complete its rulemaking on inter-carrier compensation and to address the separations reform issues for ISP-bound traffic. Accordingly,

IT IS THEREFORE ORDERED that the petitions in Case Nos. PUC990023 and PUC990046 are DISMISSED and, there being nothing further to come before the Commission, the papers transferred to the files for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Magalie Roman Salas, Secretary, Federal Communications Commission, Office of the Secretary, Portals, 445 12th Street, S.W., Washington, D.C. 20024; Russell M. Blau, Esquire, and Michael L. Shor, Esquire, Swidler, Berlin, Shereff, Friedmann, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007; Louis R. Monacell, Esquire, and Robert M. Gillespie, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Stephen C. Spencer, Regional Director-External Affairs, GTE South Incorporated, Three James Center, Suite 1200, 1051 East Cary Street, Richmond, Virginia 23219; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Eric M. Page, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; John F. Dudley, Senior Assistant Attorney General, 900 East Main

Street, Second Floor, Richmond, Virginia 23219; and the Commission's Divisions of Communications, Economics and Finance, and Public Utility Accounting, and the Office of General Counsel.

A True Copy
Taken
Joel H. Peck
Clark of the
State Corporation Commission

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

000220039

AT RICHMOND, FEBRUARY 9, 2000

PETITION OF 2000 FEB -9 P 1:20

STARPOWER COMMUNICATIONS, LLC

CASE NO. PUC990156

For declaratory judgment
and enforcement of
interconnection agreement
with Bell Atlantic - Virginia, Inc.

ORDER DISMISSING PETITION

On September 15, 1999, Starpower Communications, LLC ("Starpower"), filed a "Complaint," pursuant to § 8.01-184 of the Code of Virginia and Rule 5:3 of the Commission's Rules of Practice and Procedure, against Bell Atlantic - Virginia, Inc. ("BA-VA"). Starpower seeks enforcement of its interconnection agreement with BA-VA that was approved by the Commission on June 17, 1998 ("the Agreement"). We treat Starpower's filing as a petition for declaratory judgment in accordance with Rule 5:3 and § 8.01-184.

Starpower states that it adopted, pursuant to § 252(i) of the Telecommunications Act of 1996, 47 U.S.C. § 252(i), the interconnection agreement between BA-VA and MFS Intelenet of Virginia, Inc., that was approved by the Commission in Case No. PUC960110.

Starpower further states that BA-VA has taken the unilateral position that it will not make any payments to

Starpower as reciprocal compensation for the transport and termination of local calls placed by BA-VA customers to Starpower local service end users who are Internet Service Providers or Enhanced Service Providers (collectively "ISPs"), despite a requirement in the agreement that the parties will pay compensation for the transport and termination of "Local Traffic." Starpower asserts that BA-VA's position is contrary to a prior ruling of this Commission,¹ and is inconsistent with the Federal Communications Commission's ("FCC") February 26, 1999, declaratory ruling² addressing reciprocal compensation issues.

Starpower requests that this Commission enter an order declaring that the Agreement's traffic exchange provisions are fully applicable to local calls that terminate to ISPs; directing BA-VA to treat local calls that terminate to ISPs the same way it treats all other local calls when calculating its reciprocal compensation obligations; directing BA-VA to forward to Starpower all sums currently

¹ Petition of Cox Virginia Telcom, Inc., For enforcement of interconnection agreement with Bell Atlantic - Virginia, Inc., Case No. PUC970069, 1997 Ann. Rep't 298, Final Order (Oct. 24, 1997).

² In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking (CC Dockets 96-98 and 99-68) FCC 99-38, rel. Feb. 26, 1999 ("Reciprocal Compensation Order").

due and owing, together with such interest and late fees as are permitted by the Agreement; and directing BA-VA to pay to Starpower all future sums as they come due pursuant to the terms of Section 5.7 of the Agreement at the rates set forth therein. Additionally, Starpower requests that the Commission direct BA-VA to obtain affirmative relief from the Commission before making unilateral changes in its reciprocal compensation policies.

On October 22, 1999, AT&T Communications of Virginia, Inc., filed a petition to intervene in this proceeding.

Starpower's petition seeks essentially the same relief that it sought in its petition filed in Case No. PUC990023 for declaratory judgment and interpretation of Starpower's interconnection agreement with GTE South Incorporated ("GTE"). Cox Virginia Telcom, Inc. ("Cox"), in Case No. PUC990046, also filed a petition for enforcement of an interconnection agreement with GTE seeking from GTE reciprocal compensation payments for termination of calls to ISPs. Pursuant to Commission orders in those two cases, Starpower, Cox, GTE, and other interested parties filed various pleadings on this issue of payment of reciprocal compensation for the transport and termination of traffic to ISPs.

On January 24, 2000, we issued a Final Order on the Starpower and Cox petitions in Case Nos. PUC990023 and PUC990046.³ In that Order we dismissed, without prejudice, the petitions of Starpower and Cox citing the FCC's failure to act on either inter-carrier compensation or separations reform for ISP-bound traffic, and the resulting regulatory uncertainty created by the FCC's February 26, 1999, Reciprocal Compensation Order.

Therefore, upon consideration of Starpower's petition and the January 24, 2000, Final Order in Case Nos. PUC990023 and PUC990046, and for the reasons stated in that Order, the Commission will dismiss this petition without prejudice and encourage Starpower to seek appropriate relief from the FCC. Accordingly,

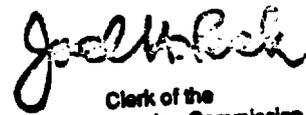
IT IS ORDERED that this matter is DISMISSED and, there being nothing further to come before the Commission, the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Russell M. Blau, Esquire, and Michael

³ Petition of Starpower Communications, LLC, For declaratory judgment interpreting Interconnection Agreement with GTE South, Inc., Case No. 990023 and Petition of Cox Virginia Telcom, Inc. v. GTE South Incorporated, for enforcement of interconnection agreement for reciprocal compensation for the termination of local calls to Internet Service Providers, Case No. PUC990046, Final Order, Jan. 24, 1999, S.C.C. Doc. Control No. 000120170. This Order is posted on the Commission's Web site at <http://www.state.va.us/scc/orders/c990023.htm>.

Shor, Esquire, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007; Deborah M. Royster, General Counsel, Starpower Communications, LLC, 1130 Connecticut Avenue, NW, Suite 400, Washington, DC 20036; Warner F. Brundage, Jr., Esquire, Bell Atlantic - Virginia, Inc., 600 East Main Street, 11th Floor, Richmond, Virginia 23219; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., 3033 Chain Bridge Road, Oakton, Virginia 22185; and the Commission's Division of Communications and Office of General Counsel

A True Copy
Testa:


Clerk of the
State Corporation Commission