

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

In the Matter of)
)
Petition of Starpower Communications, LLC)
Pursuant to Section 252(e)(5) of the) CC Docket No. 00-52
Communications Act for Preemption of the)
Jurisdiction of the Virginia State Corporation)
Commission Regarding Interconnection Disputes)
with Bell Atlantic-Virginia, Inc. and GTE South,)
Incorporated)

COMMENTS OF BELL ATLANTIC¹ AND GTE²

The Commission should deny Starpower’s petition to preempt orders of the Virginia State Corporation Commission (“SCC”) declining to issue declaratory rulings interpreting terms of interconnection agreements.³ Preemption under the Act and the Commission’s rules lies only when a state commission “fails to act” in a matter or proceeding under section 252. Here,

¹ The Bell Atlantic telephone companies (“Bell Atlantic”) are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² GTE Service Corporation and the following affiliates (“GTE”): GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

³ The state orders were *Petition of Starpower Communications, LLC For Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc.*, Case No. PUC990023, *Final Order* (Jan. 24, 2000) (“GTE Order”) and *Petition of Starpower Communications, LLC For Declaratory Judgment and Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC990156, *Order Dismissing Petition* (Feb. 9, 2000) (“Bell Atlantic Order”).

however, the SCC has acted by reviewing and denying Starpower's requests. The Act gives federal district courts the exclusive authority to review such state commission actions.

Starpower has already petitioned a federal district court to review the SCC decisions, and that proceeding gives Starpower a forum for obtaining an interpretation of the interconnection agreements. Therefore, there is no basis for Commission preemption.

The state orders addressed declaratory ruling petitions by Starpower, filed under section 252 of the Act, asking the SCC to interpret provisions of interconnection agreements between Starpower and Bell Atlantic-Virginia, Inc. and GTE South, Inc. relating to reciprocal compensation.⁴ The first, the GTE Order, contained a comprehensive discussion of the issues, including the impact of a potential mismatch of costs and revenues between the federal and state jurisdictions. GTE Order at 3-6. The SCC considered the merits of the pleadings, the applicable Commission order, and the "applicable statutes and rules," then declined to issue a substantive ruling. *Id.* at 7-8. The second, the Bell Atlantic Order, incorporated by reference the analysis in the GTE Order and came to the same conclusion. Bell Atlantic Order at 3-4. The SCC, therefore has issued final orders on Starpower's request, and Starpower's challenge is to the validity of those orders.

Under Section 252(e)(6) of the Act, an aggrieved party "[i]n any case in which a State commission makes a determination under this section" may bring an action in "an appropriate Federal district court." 47 U.S.C. § 252(e)(6). The SCC's final orders declining to issue declaratory rulings were issued under section 252, and review therefore lies in federal court. And Starpower has, in fact, filed for such review. *Starpower Communications LLC v. The*

⁴ Starpower chose not to negotiate its own interconnection agreements but instead, pursuant to section 252(i) chose to adopt agreements that Bell Atlantic-Virginia and GTE South had signed with other carriers.

Virginia State Corporation Commission, et al., Civil Action No. 00-308-A (E.D. Va., Feb. 23, 2000). See *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n of Texas*, No. 98-50787, slip. op. at 5 (5th Cir. March 30, 2000) (“We conclude that federal court jurisdiction extends to review of state commission rulings on complaints pertaining to interconnection agreements and that such jurisdiction is not restricted to mere approval or rejection of such agreements”). In its petition to the district court, Starpower acknowledged that the court has subject matter jurisdiction under (*inter alia*) 47 U.S.C. § 252(e)(6) and is the “appropriate federal district court” within the meaning of that section. Petition for Review at §§ 9, 11.

Therefore, Starpower has admitted that this is a matter over which the district court has jurisdiction under section 252(e)(6). If this were a matter over which the Commission had preemptive authority, then Commission preemption, and the *subsequent* right to seek district court review of the Commission’s action, “shall be the exclusive remedies for a State Commission’s failure to act.” 47 U.S.C. § 252(e)(6). But here, Starpower appealed the SCC’s decisions directly to the federal district court.⁵

While Starpower has to date asked the court only to review the validity of the SCC’s denial of the declaratory ruling requests, it could easily amend its petition to include interpretation of the agreements. The court clearly has jurisdiction under section 252(e)(6) – Starpower is a “party aggrieved” by the SCC’s decision, and the Act gives such a party the right to bring action in a federal district court. And interpretation of interconnection agreements – which are simply service contracts – is certainly within the court’s expertise. It need simply

⁵ The Commission’s own rules limit preemption to a state’s failure to act within statutory deadlines, and Starpower does not claim here that the SCC missed any such deadlines. See 47 C.F.R. § 51.801(b).

apply traditional standards of contract interpretation and construction. Therefore, there is no issue that would require this Commission's unique expertise to resolve.

Accordingly, the Commission should find that Starpower has properly invoked the jurisdiction of the federal district court to review the SCC's orders and deny its petition for preemption.

Respectfully submitted,

/S/

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