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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of Cox Virginia Telcom, Inc.)
Pursuant to Section 252(e)(5) of the)
Communications Act for Expedited)
Preemption of the Jurisdiction of the)
Virginia State Corporation Commission)
Regarding Interconnection Disputes with)
GTE South Incorporated)

Docket No. 00-126

REPLY COMMENTS OF COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox"), by its attorneys, hereby submits its Reply Comments in the above-referenced proceeding. Despite the suggestion of the Verizon telephone companies ("Verizon") that the Virginia State Corporation Commission ("Virginia Commission") has acted on Cox's requests to resolve an interconnection dispute with GTE South, Incorporated ("GTE"), it is plain from the FCC's recent *Starpower Order*¹ and the evidence of record that the Virginia Commission has failed to act on Cox's requests in violation of Section 252.² Thus, the FCC should grant Cox's petition and consolidate this proceeding with the *Starpower* proceeding for further action.

¹ *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, Memorandum Opinion and Order, CC Docket No. 00-52, FCC 00-216 (rel. June 14, 2000) ("Starpower Order").*

² 47 U.S.C. § 252(e)(5).

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I. ARGUMENT

Verizon suggests that the Virginia Commission has acted by reviewing Cox's petition and denying its requests.³ The FCC, however, has expressly held in the related Starpower proceeding that the Virginia Commission, in declining to rule on Starpower's petition for enforcement of the Starpower-GTE reciprocal compensation provisions, failed to carry out its statutory obligations. Specifically, the FCC found that: "[T]he Virginia Commission expressly declined to resolve the petitions before it and interpret and enforce Starpower's interconnection agreements with GTE and Bell Atlantic."⁴ The FCC rejected Bell Atlantic and GTE's assertion that the issuance of a decision by the Virginia Commission was sufficient to fulfill its responsibility under Section 252 of the Act. According to the FCC:

We reject the arguments of Bell Atlantic and GTE that the mere issuance of the Virginia Commission's final order in each proceeding was sufficient to fulfill its responsibility under section 252(e)(5). Rather, as we have found in other orders interpreting section 252(e)(5), we evaluate whether a state commission has fulfilled its responsibility under section 252 based on the particulars of each case. For example, we have found that a state commission has carried out "its responsibility [under section 252]" when it resolves the merits of a section 252 proceeding or dismisses such a proceeding on jurisdictional or procedural grounds. The Virginia Commission did not dismiss Starpower's petitions because of jurisdictional or procedural defect, but rather expressly declined to resolve the merits of the case.⁵

³ *Id.*

⁴ *Starpower Order* at ¶ 7

⁵ *Id.* at ¶ 8. Verizon also suggests as a basis for its opposition that Cox can seek a legal remedy at the Federal District Court absent preemption by the FCC. The FCC rejected this argument stating that "we disagree with Bell Atlantic and GTE that Starpower's filing of an appeal of the Virginia Commission's order in federal district court precludes a finding that the state commission has failed to act under section 252(e)(5). Rather, by seeking relief concurrently in Federal district court and this Commission, Starpower exercised its right to seek alternative remedies." *Id.*

In this case, like the Starpower case, the Virginia Commission clearly failed to act and fulfill its obligations under Section 252. In its January 24, 2000 opinion, the Virginia Commission concluded that, absent any FCC rules on inter-carrier compensation for ISP-bound traffic, it would not reach any interpretation of the Cox/GTE agreement. In that opinion, the Virginia Commission stated that: “[g]iven the possibility of conflicting results, . . . we believe the only practical action is for this Commission to decline jurisdiction and allow the parties to present their cases to the FCC.”⁶

Thus, the Virginia Commission has failed to act on the Cox/GTE dispute and, as contemplated by Section 252(e)(5), the FCC should grant Cox’s Petition and preempt the Virginia Commission’s jurisdiction. Verizon’s suggestion that the Virginia Commission has acted by making a conscious decision not to act is too clever by half, and Verizon provides no principled basis to distinguish between a conscious refusal to act and a state regulator’s mere inattention to its duties. Thus, the FCC should act promptly on Cox’s request without further expending significant time or resources.

Verizon also asks the FCC not to consolidate the Cox proceeding with the Starpower enforcement proceedings. According to Verizon, the agreements are separate and distinct and based on separately negotiated terms and should not be consolidated into one proceeding.⁷

In the present case, however, the facts and legal issues are nearly identical.⁸ Both Starpower and Cox have sought preemption based on the Virginia Commission’s failure to act on

⁶ Case Nos. PUC990023, PUC 990046, at 6, January 24, 2000.

⁷ Comments of Verizon at 2-3.

⁸ See *Media General Cable of Fairfax County, Inc. Complainant v. Starpower Communications, LLC, Defendant*; *Media General Cable of Fredericksburg, Inc. Complainant v. Starpower Communications, LLC Defendant*; *Open Video System Complaints, Memorandum Opinion and continued...*

the *same* interconnection disputes with GTE, involving substantially similar factual issues.⁹ Moreover, the FCC will not be required to develop new legal precedent or review the law under a new set of facts. Consolidation of Cox's claims against GTE with the Starpower follow-on proceeding, which is pending at the Enforcement Bureau, clearly will be a more efficient use of administrative resources. Thus, the FCC should expeditiously grant Cox's Petition and consider its complaint in tandem with the Starpower/GTE dispute.¹⁰

...continued

Order, 14 FCC Rcd 7253, note 2 (1999) (when complaints filed “involve the same defendant and *virtually identical facts and legal issues*, we see good cause to consolidate the [] proceedings.”) (emphasis added).

⁹ Indeed, it is particularly clear that GTE has failed to honor the terms of its agreement with Cox.

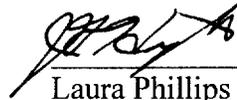
¹⁰ *See, e.g.*, Falcon Cable Systems; Petition for Reconsideration and Appeals of Local Rate Orders of the Regional Cable Commission, *Memorandum Opinion and Order*, 14 FCC Rcd 21301, ¶ 2 (1999); Petition of Armstrong Utilities, Inc. for Modification of Market of Station WGGN-TV, Sandusky, Ohio; Christian Faith Broadcast, Inc. against Armstrong Utilities, Inc. for Carriage of WGGN-TV, *Memorandum Opinion and Order*, 12 FCC Rcd 2498, ¶ 1 (1997) (In the interest of administrative convenience, the FCC will consolidate its consideration of matters which involve the similar parties and related issues)

II. CONCLUSION

For all these reasons, Cox Virginia Telcom, Inc. respectfully requests that the FCC act in accordance with these Reply Comments and its Petition.

Respectfully Submitted,

COX VIRGINIA TELCOM, INC.



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CERTIFICATE OF SERVICE

I, Roberta L. Rosser, hereby certify that on this 26th day of July, 2000, true and correct copies of the foregoing Reply Comments of Cox Virginia Telcom, Inc. were served via First Class Mail or hand delivery on:

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