

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of WorldCom, 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 Verizon-Virginia, Inc. And for)
Expeditious Arbitration)

CC Docket No. 00-218

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Public Notice, DA 00-2432, released October 27, 2000, AT&T Corp. ("AT&T") respectfully replies to the comments of other parties on the petition ("Petition") of WorldCom, Inc. ("WorldCom") for an order preempting the jurisdiction of the Virginia State Corporation Commission ("VSCC") to arbitrate an interconnection agreement for Virginia between WorldCom and Verizon ("Verizon") under Section 252 of the Telecommunications Act of 1996 ("the Act").¹

No party, including specifically Verizon, disputes that the VSCC has failed to act on WorldCom's petition, and that the Commission should assume jurisdiction over WorldCom's request for arbitration. Although Verizon claims that WorldCom is not eligible to request arbitration under the Act, it concedes (p. 7) that

¹ Comments were filed by Verizon-Virginia, Inc. ("Verizon") and Cox Communications, Inc. ("Cox"), in addition to AT&T.

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“the VSCC has never ruled on whether [WorldCom’s] arbitration petition met the requirements of the Act.” Indeed, based on the fact that issuance of such a ruling would subject the VSCC to federal court jurisdiction in any review requested under Section 252(e)(6), the VSCC will not act on that petition,² and has instead encouraged WorldCom to file its arbitration petition with this Commission.³ Given these undisputed facts, the Commission should preempt the jurisdiction of the VSCC under Section 252(e)(5).

Verizon claims, however, that the Commission should deny WorldCom’s petition to the extent it seeks arbitration of the requested interconnection agreement, based on allegations that WorldCom has failed to negotiate in “good faith,” and has otherwise not satisfied the requirements for arbitration under the 1996 Act. AT&T has no direct knowledge of the facts alleged by Verizon, but based on its own experience, believes that little purpose would be served -- beyond perpetuating Verizon’s local monopoly in Virginia -- by requiring further negotiations prior to the arbitration. The simple fact is that the enormous disparity in bargaining power between incumbents LECs like Verizon, on the one hand, and CLECs like WorldCom and AT&T on the other, has not been even slightly mitigated since 1996 -- when it was first acknowledged by the Commission.⁴ As a result, AT&T has been unable to conclude any

² See Cox Virginia Telcom, Inc. v. Verizon Virginia, Inc., case no. PUC000212, Order of Dismissal, Nov. 1, 2000

³ See Petition of MCI WorldCom Communications of Virginia, Inc., case no. PUC000225, Order, Sept. 13, 2000.

⁴ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 F.C.C. Rcd. 15,499 (1996) (“Local Competition Order”), para. 55.

interconnection agreement with Verizon, for *any* state, without a substantial arbitration proceeding resolving a broad array of issues.

It is clear from WorldCom's petition and Verizon's response that an extensive arbitration will likewise be required in order to achieve a new interconnection agreement for Virginia, and that further negotiations would not result in a "voluntary" agreement. In this regard, AT&T's efforts to negotiate a new agreement with Verizon in Virginia have also been unsuccessful, forcing AT&T to file its own petition for arbitration with the VSCC. Verizon simply has no incentive to make material concessions to CLECs, like AT&T and WorldCom, that seek to enter local markets on a broad scale. That is particularly so now that Verizon can attempt to rely on its existing interconnection agreements to seek authority to provide long distance service pursuant to Section 271. Delay can work only in Verizon's favor, and against WorldCom.

Against this background, none of Verizon's arguments support a decision to dismiss or deny WorldCom's request for arbitration. Most of these arguments -- *i.e.*, that WorldCom has not negotiated in good faith, that it has not included with its petition a sufficiently specific list of issues, and that it has presented with its petition a draft proposed agreement that is not in all respects identical to the draft it presented in negotiations -- all appear to stem from the fact that *Verizon* refuses to negotiate except on its own terms.

Nor does Verizon's allegation (p. 14) that granting WorldCom's petition "would upset ongoing negotiations" in other jurisdictions provide any basis for the

Commission to decline to conduct the Virginia arbitration now.⁵ The circumstances raised by WorldCom with respect to Virginia require CLECs to seek arbitration as promptly as possible. Specifically, the VSCC's determination not to act under federal law on arbitration petitions requires CLECs such as AT&T and WorldCom to go through additional hurdles (e.g., obtaining a preemption order from this Commission) before their disputes with Verizon can be resolved in accordance with the Act, introducing further and potentially indefinite delay into the process. It was essential for WorldCom to file its petition when it did to avoid even further delay. Verizon's cynical suggestion (p. 15) that WorldCom is seeking to use a Commission arbitration for Virginia "to override ongoing negotiations" and proceedings in other states "that may result" is therefore baseless.

In all events, the purported concern that a Commission arbitration may "override" negotiations and state commission proceedings is essentially the same as that raised by Verizon and other incumbent LECs in the Commission's 1996 local competition proceeding, and their subsequent appeals to the Eighth Circuit. There, the incumbent LECs argued that FCC regulations would likewise "chill" negotiations and intrude upon the "authority" of state commissions. The Commission and eventually the Supreme Court properly rejected these arguments.⁶ Indeed, far from impeding negotiations, Commission resolution of disputes through its arbitration of

⁵ To the extent that Verizon is suggesting that arrangements to conduct negotiations for other states is evidence that further negotiations for the Virginia agreement would serve some useful purpose, it is plainly incorrect. Verizon states only that the parties are attempting to negotiate an agreement on the timing of other negotiations; it does not claim that other negotiations have occurred, much less that they will resolve the numerous disputes between the parties.

⁶ See Local Competition Order, paras. 53-58.

interconnection agreements for Virginia will provide a "useful guide in negotiations" for agreements in other States.⁷ Verizon's argument cannot, moreover, excuse the Commission from carrying out the mandatory duty imposed by Congress pursuant to Section 252(e)(5).

WHEREFORE, the Commission should grant WorldCom's petition, preempt the jurisdiction of the VSCC, and conduct an arbitration as set forth in AT&T's initial Comments in this proceeding.

Respectfully submitted,

AT&T Corp.

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Date: November 20, 2000

⁷ Id., para. 60.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that on this 20thth day of November, 2000, I caused a true copy of the foregoing "Reply Comments of AT&T Corp." to be served by U.S. mail, first class, postage prepaid, on the following parties:

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