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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the

Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition of AT&T Communications)
of Virginia, Inc., Pursuant)
to Section 252(e)(5) of the)
Communications Act, for Preemption)
of the Jurisdiction of the Virginia)
State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon-Virginia, Inc.)

CC Docket No. 00-251

PETITION OF AT&T CORP.

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December 15, 2000

Sections 251 and 252 of the Act, and the Commission's implementing regulations – to arbitrate interconnection disputes between competitive and incumbent local exchange carriers. This most recent order applied to AT&T's request that the VSCC arbitrate the interconnection disputes between AT&T and Verizon.

The background of this proceeding, and the issues it raises, are summarized in the attached affidavit of G. Ridgely Loux (Exhibit A) and the record of the Virginia proceeding (Exhibits B, G and H). The disputes involve AT&T and four subsidiaries of AT&T Corp. – TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, and MediaOne Telecommunications of Virginia, Inc. The subsidiaries had previously been independent entities, and AT&T and each of the subsidiaries (with the MediaOne entities acting collectively) had entered into separate interconnection agreements with Verizon (then known as Bell Atlantic) in 1997 and 1998. Verizon recently notified AT&T that it was terminating these agreements and that replacement agreements would have to be negotiated and/or arbitrated. *See Loux Aff.*, ¶ 4.

By letter dated September 29, 1999, AT&T requested that Verizon negotiate a new interconnection agreement, pursuant to Sections 251 and 252 of the Act, for the AT&T entities. More than fifty negotiating sessions followed – some in person, most by telephone – and AT&T and Verizon reached negotiated resolutions on many issues. *Loux Aff.*, ¶¶ 5-7. Many other issues, however, remained in dispute. AT&T therefore filed a petition with the VSCC on October 20, 2000, requesting that it arbitrate those open issues, and Verizon filed its Answer on November 14, 2000. *See AT&T Communications of Virginia, Inc., et al., Petition for Arbitration of Interconnection*

Terms, Conditions, and Prices with Verizon-Virginia, Inc. (“AT&T Arbitration Petition”) (Exhibit G); Answer of Verizon Virginia, Inc. to the Petition filed by AT&T Communications of Pennsylvania (sic), et al. (Exhibit H).

At the time AT&T filed its petition with the VSCC, the VSCC had already issued at least four orders declining to arbitrate interconnection disputes. In each of these orders, the VSCC had stated that it was unwilling to waive sovereign immunity and submit to the jurisdiction of federal courts pursuant to Section 252(e)(6) of the Act (and, indeed, did not regard itself as authorized by Virginia law to do so). It had therefore stated that, in order to avoid any claim of any such waiver, it would arbitrate interconnection disputes under state law only, and that parties that wished to invoke federal law would be required to bring their arbitrations to this Commission instead.¹ Anticipating that the VSCC would take the same position on AT&T’s petition, AT&T stated in its petition that if the VSCC did so, AT&T would “request that the FCC assume jurisdiction over this arbitration pursuant to § 252(e)(5) of the Act.” AT&T Arbitration Petition, ¶ 19.

¹ See Order, *Petition of Cavalier Telephone, LLC, for Arbitration and Interconnection Rates, Terms, and Conditions, and Related Relief*, Case No. PUC990191 (June 15, 2000) (Exhibit C); Final Order, *Petition of Focal Communications Corporation of Virginia for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Virginia Inc. f/k/a/ Bell Atlantic – Virginia, Inc.*, Case No. PUC000079 (August 22, 2000) (Exhibit D); Order, *Petition of MCIMetro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic – Virginia, Inc.*, Case No. PUC000225 (September 13, 2000) (Exhibit E); Order of Dismissal, *Petition of Cox Virginia Telcom, Inc., Requesting Party, v. Verizon Virginia Inc. f/k/a/ Bell Atlantic-Virginia Inc., Responding Party, for Declaratory Judgment and Conditional Petition for Arbitration of Unresolved Issues by the State Corporation Commission Pursuant to Section 252 of the Telecommunications Act of 1996 or Alternative Petition for Dismissal*, Case No. PUC000212 (November 1, 2000) (Exhibit F).

On November 22, 2000, the VSCC issued an order addressing AT&T's petition in the same manner as it had the recent petitions by other CLECs. *See Order, Application of AT&T Communications of Virginia, Inc., et al., for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Verizon-Virginia Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. PUC000282 (November 22, 2000) ("VSCC Order") (Exhibit B).² It gave the parties the same choice it had given the parties in the prior proceedings: they could "elect to proceed with AT&T's arbitration under the [federal] Act before the Federal Communications Commission in lieu of this Commission, or the parties may pursue resolution of unresolved issues pursuant to [state law]. If AT&T wishes to pursue this matter before the [Virginia] Commission, the proceeding before us will be deemed to be requesting our action only under authority of Virginia law and our Rules." *Id.*, p. 3. By letter dated December 4, 2000, AT&T informed the VSCC that it would not be pursuing arbitration solely under Virginia law.

Argument

Section 252(e)(5) directs that:

"If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the [FCC] shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission."

² At the same time that the VSCC disposed of AT&T's request for arbitration, it also dismissed a prior petition for declaratory judgment that AT&T had filed in which AT&T had asked the VSCC to declare whether it would decline to arbitrate interconnection disputes between AT&T and Verizon under federal law. As the VSCC correctly recognized, the filing of AT&T's arbitration petition rendered moot AT&T's petition for declaratory judgment. VSCC Order, p. 4.

47 U.S.C. § 252(e)(5). There is no question that the prerequisites for Commission preemption are present here.

First, the arbitration proceeding was a “proceeding . . . under this section” (Section 252). AT&T’s petition for arbitration was filed under Section 252(b)(1), which provides that “[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.” 47 U.S.C. § 252(b)(1).

Second, the VSCC’s “responsibility under [that] section” included that of applying federal law to resolve those open issues. Section 252(c) provides that “[i]n resolving by arbitration under subsection (b) any open issues, . . . a State commission shall (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251” and “(2) establish any rates for interconnection, services, or network elements according to subsection (d)” 47 U.S.C. § 252(c)(1-2); *see also* 47 U.S.C. § 252(e)(2)(B) (“The State commission may only reject . . . an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251, or the standards set forth in subsection (d) of this section”).

Finally, the VSCC “failed to act to carry out” that responsibility. It stated expressly that it would not apply federal law, and that it would not agree to arbitrate the

disputes at all unless the parties waived any rights they had under Sections 251, 252, and this Commission's implementing regulations.

Under these circumstances, preemption under Section 252(e)(5) is mandatory. Section 252(e)(5) directs that the Commission "shall" issue an order preempting the State commission where the foregoing predicates are met. Indeed, Section 252(e)(6) confirms that "[i]n a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act."

Conclusion

For the foregoing reasons, the Commission should issue an order preempting the VSCC's jurisdiction over this matter and should initiate an arbitration proceeding to resolve the open issues between AT&T and Verizon.

Respectfully submitted,



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Counsel for AT&T Communications of Virginia

December 15, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2000, I caused true and correct copies of the foregoing Petition of AT&T Corp. along with accompanying exhibits to be served by Federal Express on the day before filing in order to ensure that the following parties receive it on the same day that it is filed:

Virginia State Corporation Commission 1300 East Main Street Richmond, VA 23219	Richard D. Gary Edward J. Fuhr Eric Feiler Hunton & Williams Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219-4074 Counsel for Verizon-Virginia, Inc.
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Charissa N. Stroup



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Petition of AT&T Communications)	
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to Section 252(e)(5) of the)	
Communications Act, for Preemption)	CC Docket No. 00-
of the Jurisdiction of the Virginia)	
State Corporation Commission)	
Regarding Interconnection Disputes)	
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Declaration of G. Ridgley Loux

1. My name is G. Ridgley Loux. I am employed by AT&T as Regional Commercial Counsel for that portion of AT&T's Eastern Region which covers those states in which, as of passage of the Telecommunications Act of 1996, Bell Atlantic was the incumbent local exchange carrier.

2. My responsibilities include the conduct and supervision of negotiations in those States over interconnection agreements, and, if those negotiations fail to yield an agreement, active participation in state proceedings arbitrating open issues for those agreements. I prepared this affidavit in order to describe the background facts that are relevant to AT&T's petition for preemption of the Virginia State Corporation Commission's ("VSCC's") jurisdiction over the pending interconnection disputes between AT&T and Verizon-Virginia, Inc. ("Verizon").

3. AT&T Communications of Virginia, Inc. ("AT&T") and several entities that are now subsidiaries of AT&T Corp. entered into interconnection agreements in 1997 with what was then known as Bell Atlantic-Virginia. The agreement between AT&T and

Bell Atlantic was approved by the VSCC on September 4, 1997. An agreement between TCG Virginia, Inc. and Bell Atlantic-Virginia was approved by the VSCC on May 30, 1997. An agreement between ACC National Telecom and Bell Atlantic-Virginia was approved by the VSCC on November 3, 1998. An interconnection agreement between the predecessors to the MediaOne entities – MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. – and Bell Atlantic-Virginia was approved by the VSCC on December 14, 1998.

4. For each of these agreements, Verizon subsequently notified AT&T that it was terminating them and that replacement agreements would have to be negotiated and, if necessary, arbitrated. By letter dated September 29, 1999, AT&T formally requested that Verizon negotiate a new interconnection agreement.

5. The first negotiation session between AT&T and Verizon took place prior to that formal request, on August 17, 1999. Among the issues discussed at that first session was the need to draft and execute amendments to the interconnection agreements that Verizon had terminated in order to permit ongoing operations by the parties and to support whatever renegotiation schedule the parties would ultimately implement. AT&T and Verizon thereafter executed amendments to the interconnection agreements that extended their terms on a month-to-month basis until successor interconnection agreements were executed and approved.

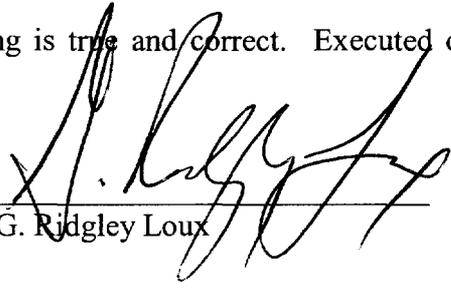
6. AT&T and Verizon negotiating teams then began meeting, most often by telephone but on some occasions in person, to review proposed terms and conditions of the successor interconnection agreements. In instances involving particular areas, subject matter experts from both parties would participate in the negotiation sessions or would

meet separately to discuss open issues. More than fifty such sessions have taken place to date, and additional ones are scheduled. Several times during the course of these sessions, the parties have stipulated to extend the effective renegotiation request dates in order to continue negotiations, with the objective of trying to resolve disputes where possible. Under the most recent stipulation, the parties agreed that the re-negotiation request date would be June 7, 2000, and that AT&T would file its Petition for Arbitration with the VSCC on October 20, 2000.

7. Many issues originally in dispute were resolved prior to the time AT&T was obligated to file its Petition for Arbitration with the VSCC, but other disputes remained. AT&T therefore filed a petition for arbitration with the VSCC on October 20. That petition is attached as Exhibit G to AT&T's petition for preemption. Verizon's Answer is attached as Exhibit H. The VSCC's Order declining to arbitrate these disputes under federal law is attached as Exhibit B.

8. Taken together, AT&T's petition for arbitration and Verizon's answer identified almost 200 disputed issues. Those issues are detailed in Exhibits G and H. Since those filings were made, AT&T and Verizon have tentatively resolved several of those disputed issues. Contingent upon AT&T and Verizon being able to reduce their tentative agreements to writing, AT&T anticipates that the following thirty-seven issues will be withdrawn from the arbitration, and possibly others as negotiations continue: Issue Numbers 10, 16, 47, 51, 57, 58, 59, 60, 72, 91, 94, 98, 106, 107, 108, 109, 111, 112, 114, 115, 119, 121, 124, 133, 139, 145, 153, 154, 155, 156, 157, 158, 159, 160, 168, 169, 170.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
December 14, 2000.



G. Ridgley Loux



DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the Clerk of the Commission, Document Control Center.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 22, 2000

PETITION OF

AT&T COMMUNICATIONS OF VIRGINIA,
INC.,
TCG VIRGINIA, INC.,
and
NATIONAL TELECOM CORP.

CASE NO. PUC000261

For declaratory judgment

and

APPLICATION OF

AT&T COMMUNICATIONS OF VIRGINIA,
INC.,
TCG VIRGINIA, INC.,
ACC NATIONAL TELECOM CORP.,
MEDIAONE OF VIRGINIA,
and
MEDIAONE TELECOMMUNICATIONS OF
VIRGINIA, INC.

CASE NO. PUC000282

For arbitration of interconnection
rates, terms and conditions, and
related arrangements with Verizon-
Virginia Inc. pursuant to Section
252(b) of the Telecommunications
Act of 1996

ORDER

On September 25, 2000, AT&T Communications of Virginia,
Inc., TCG Virginia, Inc., and ACC National Telecom Corp.
(collectively "AT&T"), filed a petition for declaratory judgment
seeking a ruling on whether the Commission would decline to
arbitrate, in accordance with §§ 251 and 252 of the

Telecommunications Act of 1996 ("the Act"), issues that remain unresolved in negotiations between AT&T and Verizon Virginia Inc. ("Verizon") for a new interconnection agreement. That case was docketed as Case No. PUC000261. Verizon filed a response to AT&T's petition on October 2, 2000, and AT&T filed a reply to Verizon's response on October 10, 2000.

Before the Commission could rule on AT&T's petition, on October 20, 2000, AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, and MediaOne Telecommunications of Virginia, Inc. (again, collectively "AT&T"), filed a petition for arbitration of interconnection rates, terms, conditions, and related arrangements with Verizon pursuant to § 252(b) of the Act. On November 14, 2000, Verizon filed its Answer to AT&T's petition.

Until the issue of Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we will not act solely under the Act's federally conveyed authority in matters that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms, and conditions of interconnection agreements between local exchange carriers.

As discussed in our Order of June 15, 2000, in Case No. PUC990101,¹ the Commission has authority under state law to order interconnection between carriers operating within the Commonwealth, and § 56-38 of the Code of Virginia authorizes us, upon request of the parties, "to effect, by mediation, the adjustment of claims, and the settlement of controversies, between public service companies, and their employees and patrons." Further, our rules codified at 20 VAC 5-400-180 as "Rules governing the offering of competitive local exchange telephone service" anticipate that we would address interconnection issues under the authority of the Virginia Code. Rules 20 VAC 5-400-180 F 5 and 6 specifically provide for our "arbitration" of contested matters.

The parties may elect to proceed with AT&T's arbitration under the Act before the Federal Communications Commission in lieu of this Commission, or the parties may pursue resolution of unresolved issues pursuant to 20 VAC 5-400-180 F 6. If AT&T wishes to pursue this matter before the Commission, the proceeding before us will be deemed to be requesting our action only under authority of Virginia law and our Rules.

¹ Petition of Cavalier Telephone, LLC, For arbitration of interconnection rates, terms and conditions, and related relief, Document Control Center No. 000630199.

Accordingly, IT IS ORDERED THAT:

(1) AT&T shall, within fifteen (15) days of the date of this Order, advise us in writing whether it wishes to pursue its arbitration request before us, consistent with the findings above.

(2) As a result of AT&T's subsequent petition for arbitration in Case No. PUC000282, AT&T's petition for declaratory judgment filed in Case No. PUC000261 is hereby declared moot.

(3) Case No. PUC000261 is hereby dismissed, and the papers filed herein shall be placed in the file for ended causes.

(4) Case No. PUC000282 is continued for further orders of the Commission.