

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

DOCKET FILE COPY ORIGINAL

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

RECEIVED

DEC 29 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF  
COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox") submits these Comments in the above-referenced proceeding in accordance with the Public Notice, DA 00-2838, released December 15, 2000. This Public Notice sought comment from interested parties on the petition ("the Petition") filed on December 15, 2000, by AT&T Communications of Virginia, Inc. ("AT&T") seeking the Federal Communications Commission's ("FCC's") preemption of the jurisdiction of the Virginia State Corporation Commission ("the VSCC") and on AT&T's accompanying Motion to Consolidate.

I. Comments on the Petition

The Petition was filed pursuant to Section 252(e)(5) of the Communications Act, 47 USC § 151 *et seq.* ("the Act"), and Section 51.803 of the FCC's Rules, 47 C.F.R. § 51.803. AT&T seeks FCC preemption for the purpose of arbitrating an interconnection agreement with Verizon-Virginia, Inc. ("VZ-VA"). AT&T earlier had sought the VSCC's arbitration of this agreement; however, on November 22, 2000, the VSCC issued an order denying AT&T's

No. of Copies rec'd 0+7  
List A B C D E

request to arbitrate this agreement pursuant to federal law.<sup>1</sup> In this ruling, the VSCC said it would not arbitrate solely under federal law since such action could be deemed a waiver of the immunity of the Commonwealth of Virginia. The VSCC offered AT&T the opportunity to arbitrate solely under state law; however, AT&T elected to exercise its federal rights instead by filing the Petition.<sup>2</sup> The VSCC's express refusal to arbitrate the dispute between AT&T and VZ-VA under federal law constitutes a failure by the VSCC "to act to carry out its responsibility" under 42 U.S.C. § 252 of the Act. As a result, AT&T, as WorldCom, Inc. and Cox had done before it, filed a petition with the FCC seeking preemption.<sup>3</sup> In none of these proceedings has VZ-VA or any other party or commentator taken the position that the VSCC's action was anything other than a failure by the VSCC "to act to carry out its responsibility" under Section 252 of the Act. Under these circumstances – the same circumstances that exist with both the WorldCom Petition and the Cox Petition – preemption under Section 252(e)(5) is mandatory.

---

<sup>1</sup> 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).

<sup>2</sup> The VSCC had taken a similar course in response to previous requests by competitive local exchange carriers to arbitrate their interconnection agreements with VZ-VA under the Act, including one such request that Cox had made. See Order, *Petition of Cavalier Telephone, LLC, for Arbitration and Interconnection Rates, Terms, and Conditions, and Related Relief*, Case No. PUC990191 (June 15, 2000); 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); Order, *Petition of MCI Metro 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); 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).

<sup>3</sup> See *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 Expedited Arbitration*, CC Docket No. 00-218 (the "WorldCom Petition"); *Petition of Cox Virginia Telcom, 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. and for Arbitration*, CC Docket No. 00-249 (the "Cox Petition").

## II. COMMENTS ON THE MOTION TO CONSOLIDATE

AT&T also filed with the FCC a Motion to Consolidate its Petition against VZ-VA with the WorldCom Petition and the Cox Petition already pending before the Commission. As noted above, in each of these proceedings, the competitive local exchange carrier has asked that the FCC preempt the VSCC's jurisdiction and conduct its arbitration against VZ-VA as required by Section 252. AT&T suggests that the most efficient means for the FCC to proceed is to conduct a "Mega-Arbitration" that "would enable the Commission to conserve resources by arbitrating common issues together, while preserving each party's ability to raise non-common issues."<sup>4</sup>

Cox agrees that the three petitions should be consolidated. Both in its comments filed in the WorldCom Proceeding and in conjunction with its own proceeding, Cox has advocated that the FCC combine for hearing purposes the arbitrations against VZ-VA and has made recommendations to the FCC as to how such a combined hearing should be structured.<sup>5</sup> The other parties, too, have offered their views on how the FCC should conduct these arbitrations in response to the WorldCom Petition.<sup>6</sup> Rather than repeat the contents of its own previous filings here, Cox incorporates them by reference. To avoid further delay in conducting the arbitrations, the FCC could simply fashion a combined arbitration based on the petitioners' recommendations rather than solicit additional public comment.

---

<sup>4</sup> Motion to Consolidate, p. 2.

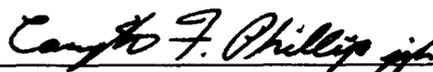
<sup>5</sup> See *Comments of Cox Virginia Telecom, Inc.* (November 13, 2000) and *Response of Cox Communications, Inc. to the Opposition of Verizon-Virginia, Inc.* (November 20, 2000) in response to the WorldCom Petition; *Motion for Combination of Arbitration Petitions for Hearing of Cox Virginia Telecom, Inc.* (December 12, 2000).

<sup>6</sup> See, e.g., *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 Expedited Arbitration*; *Comments of AT&T Corp.* (November 13, 2000); *Opposition of Verizon-Virginia, Inc.* (November 13, 2000); *Reply Comments of Verizon Virginia, Inc.* (November 20, 2000).

Cox does wish to emphasize that a combined hearing is appropriate for only interconnection agreement issues and proposed resolutions that are common to the petitioning parties. And, in such a combined hearing, Cox reserves the right to put on its own case, with its own positions, pleadings and witnesses, for common issues and proposed resolutions. As to specific issues, Cox believes that the parties retain their individual rights to a unique decision from the FCC. This is based, in part, on the different status of each party. As a facilities-based local service provider, Cox has different needs than either a reseller or a provider who relies on unbundled network elements. As a result, by agreeing to the FCC conducting a combined proceeding, Cox is not waiving its right to a separate adjudication either of its disputed issues with VZ-VA that are not also presented by the other parties, or of any common issues whose proposed resolution differs significantly from the resolution proposed by Cox.

Respectfully submitted,

COX COMMUNICATIONS, INC.



\_\_\_\_\_  
Carrington F. Phillip, Vice President,  
Regulatory Affairs  
Donald L. Crosby, Senior Counsel

1400 Lake Hearn Drive, N.E.  
Atlanta, GA 30319  
(404) 843-5791  
December 29, 2000

CERTIFICATE OF SERVICE

I, Deborah E. Buhner, hereby certify that a copy of the foregoing Comments of Cox Communications, Inc. has been served this 29th day of December, 2000, via first class mail, postage prepaid or by hand delivery to the following:

\*Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
Room 5-C327  
445 12th Street, S.W.  
Washington, D.C. 20554

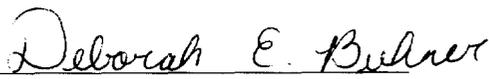
Virginia State Corporation Commission  
1300 East Main Street  
Richmond, VA 23219

\*International Transcription Services, Inc.  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

Richard D. Gray  
Edward J. Fuhr  
Eric Feiler  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074  
Counsel for Verizon-Virginia, Inc.

Mark C. Rosenblum  
Richard H. Rubin  
AT&T Corp.  
295 North Maple Avenue  
Basking Ridge, NJ 07920

James F. Bendernagel, Jr.  
Peter D. Keisler  
David L. Lawson  
C. Frederick Beckner III  
Sidley & Austin  
1722 Eye Street, N.W.  
Washington, D.C. 20006

  
Deborah E. Buhner

\*Denotes hand-delivery