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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	)	CC Docket No. 00-249
Communications Act for Preemption	)	
Of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
With Verizon Virginia, Inc. and	)	
For Arbitration	)	

RESPONSE OF COX VIRGINIA TELCOM, INC.
TO COMMENTS OF WORLDCOM, INC.
AND VERIZON VIRGINIA, INC.
ON THE ISSUE OF PREEMPTION

Cox Virginia Telcom, Inc. ("Cox") respectfully submits this Response in the above-referenced proceeding in accordance with the Public Notice, DA 00-2824, released December 14, 2000. This Public Notice sought responses to comments filed by interested parties in this proceeding. The two parties who have filed such comments are WorldCom, Inc. ("WCOM")[1] and Verizon Virginia, Inc. ("VZ-VA"). On December 29, 2000, VZ-VA filed the following two pleadings: (1) Verizon Virginia, Inc.'s Comments on Preemption and Opposition to Motion for Combination of Arbitration Petitions for Hearing of Cox Virginia Telcom, Inc. ("VZ-VA Comments"); and (2) the Opposition of Verizon Virginia, Inc. to Petition for Preemption and Motion for Consolidation of AT&T

[1] WCOM filed its comments on December 29, 2000 ("WCOM Comments"), both in this docket and in the AT&T docket, CC Docket No. 00-251.

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Corp. ("VZ-VA Opposition").[2] This Response addresses only the comments relating to the issue of preemption contained in the WCOM comments and in the VZ-VA Comments.[3]

I. BACKGROUND

On December 12, 2000, Cox filed a petition[4] ("Cox Petition") with the FCC pursuant to Section 252(b) of the Telecommunications Act of 1996. The Cox Petition seeks the FCC's preemption of the jurisdiction of the Virginia State Corporation Commission ("Virginia Commission"). The basis for Cox's request is the Virginia Commission's failure to act on Cox's request for state arbitration of disputes concerning the interconnection agreement between Cox and VZ-VA.[5] In addition to seeking preemption, the Cox Petition requested that the FCC arbitrate these disputes and identified both the issues that divide Cox and VZ-VA and Cox's position on how these issues should be resolved. This docket was established to consider the Cox Petition.

Both WorldCom, Inc. ("WCOM") and AT&T have filed petitions seeking the FCC's preemption of the Virginia Commission's jurisdiction with regard to interconnection disputes between them and VZ-VA. The WCOM docket, CC Docket No. 00-218, was established to consider the WCOM petition filed October 26, 2000. Also on December 12, 2000, Cox filed a motion[6] ("Cox Motion") seeking the

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[2] While the VZ-VA Comments were filed in this docket exclusively, the VZ-VA Opposition was filed here as well as in the WCOM docket, CC Docket No. 00-218, and the AT&T docket, CC Docket No. 00-251.
[3] Being filed contemporaneously herewith is Cox's response to VZ-VA's comments relating to the issue of combining or consolidating arbitration petitions for hearing, which are contained in the VZ-VA Comments and the VZ-VA Opposition.
[4] Petition for Preemption and Arbitration of Cox Virginia Telcom, Inc. (12/12/00).
[5] By Order of Dismissal, dated November 1, 2000, in Case No. PUC000212 ("Virginia Order"), the Virginia Commission dismissed Cox's petition for state arbitration.
[6] Motion for Combination of Arbitration Petitions for Hearing of Cox Virginia Telcom, Inc. (12/12/00). Inadvertently, this motion was filed exclusively in the Cox docket, CC Docket No. 249, and should have also been filed in the WCOM docket, CC Docket No. 218.

Also on December 12, 2000, Cox filed a motion[6] ("Cox Motion") seeking the combination, for hearing purposes, of Cox's interconnection disputes with those that led WCOM to file its preemption petition.

The AT&T docket, CC Docket No. 00-251, was established to consider the AT&T petition filed December 15, 2000. AT&T filed a motion[7] in all three dockets[8] to consolidate its VZ-VA interconnection disputes with those of Cox and WCOM. On December 29, 2000, Cox filed comments in support of AT&T's motion, urging the FCC to combine the three disputes for hearing in the manner recommended in the Cox Motion.

II. PREEMPTION

For the reasons stated in the Cox Petition,[9] Cox believes that the FCC's grant of its preemption request is necessary in this case. The Virginia Commission has failed to act to carry out its responsibilities under Section 252(e) of the Act in resolving through arbitration the issues that divide Cox and VZ-VA relating to their negotiation of a renewal of their current interconnection agreement. The Virginia Commission has refused to act on Cox's state arbitration petition because Cox is unable to accept the condition imposed by that agency: a resolution of the disputed issues that complied only with state, not federal, law. Having determined that it will not carry out its duties assigned by the Act, the Virginia Commission dismissed Cox's pleading. As the Virginia Commission noted, it took this step so that Cox "may proceed before the FCC."[10]

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[6] Motion for Combination of Arbitration Petitions for Hearing of Cox Virginia Telcom, Inc. (12/12/00). Inadvertently, this motion was filed exclusively in the Cox docket, CC Docket No. 249, and should have also been filed in the WCOM docket, CC Docket No. 218.
[7] AT&T's Motion to Consolidate (12/15/00).
[8] CC Dockets Nos. 00-218 (WCOM); 00-249 (Cox); and 00-251 (AT&T).
[9] Rather than repeat the contents of its own previous filings here, Cox incorporates them by reference.
[10] Virginia Order, p. 5.

The FCC's mandate under Section 252(e)(5) is clear in this case. Congress contemplated this very situation by directing the FCC to act in the state's stead to carry out the duties assigned under Section 252 of the Act. Cox accordingly urges the FCC to issue a ruling preempting the jurisdiction of the Virginia Commission for purposes of arbitrating an interconnection agreement between Cox and VZ-VA.

In Cox's view, VZ-VA raises no substantive objection in either the VZ-VA Comments or the VZ-VA Opposition to the FCC's preemption in this specific docket for the purpose of arbitrating the interconnection disputes between Cox and VZ-VA. While both VZ-VA pleadings oppose combination or consolidation for hearing purposes of VZ-VA's disputes with Cox, WCOM and AT&T, they do not argue against the Cox Petition apart from opposing the Cox Motion. While it is true that the VZ-VA Comments conclude that the Cox Petition should be rejected, this action is urged only in the context of combining or consolidating the Cox Petition with those of WCOM and AT&T. No reason is given in the text of the VZ-VA Comments to support such a conclusion. Indeed, the only reference in the VZ-VA Comments to the substance of Cox's case states in part:

> Along with [the Cox] Motion, Cox has submitted in its pleading substantive positions on the ten issues in dispute. Since the [FCC] has not yet granted either WorldCom's Preemption Petition or Cox's Motion, arguments on the merits of these issues are premature and Verizon certainly will respond to each in turn at the appropriate time in this proceeding as directed by the [FCC] and pursuant to the [Act].[11]

Cox thus concludes that VZ-VA is not opposed to the FCC's preemption and arbitration of the issues raised in the Cox Petition, while it remains opposed to doing so in a joint proceeding involving its disputes with WCOM and AT&T.

[11] VZ-VA Comments, n. 1.

The WCOM Comments support preemption in this docket, advising the FCC to grant the preemption petitions of itself, Cox and AT&T.[12] WCOM points out that it is similarly situated with Cox and AT&T with respect to the position taken by the Virginia Commission regarding its arbitration of interconnection disputes. Cox agrees with WCOM that the FCC must preempt the Virginia Commission's jurisdiction and resolve the disputes presented by all three petitioners.

III. CONCLUSION

For the reasons stated above, Cox respectfully requests the FCC to assume jurisdiction over and arbitrate the interconnection disputes between Cox and VZ-VA. Additionally, Cox respectfully urges the FCC to direct VZ-VA to submit it substantive response, and supporting testimony, to the issues raised in the Cox Petition.

Respectfully submitted,

COX VIRGINIA TELCOM, INC.

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January 10, 2001

[12] WCOM Comments, p. 2.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, hereby certify that a copy of the foregoing Response Of Cox Virginia Telcom, Inc. To Comments of WorldCom, Inc. and Verizon Virginia, Inc. on the Issue of Preemption has been served this 10th day of January, 2001, via first class mail, postage prepaid or by hand delivery to the following:

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