

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 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

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)
Expedited Arbitration)

CC Docket No. 00-218

In the Matter of)
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

**AT&T'S REPLY TO VERIZON'S OPPOSITION TO
PETITION FOR PREEMPTION AND MOTION TO CONSOLIDATE**

AT&T Communications of Virginia, Inc. ("AT&T") respectfully submits this consolidated reply to Verizon Virginia Inc.'s ("Verizon's") opposition to AT&T's petition for preemption and motion to consolidate.¹

¹ See Opposition of Verizon Virginia, Inc. to Petition for Preemption and Motion to Consolidate of AT&T Corp. (filed Dec. 29, 2000).

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Petition for Preemption

Verizon does not dispute that each of the statutory prerequisites for preemption under Section 252(e)(5) has been satisfied. By declaring in its Order that it will not arbitrate the interconnection disputes between Verizon and AT&T under federal law, the Virginia State Corporation Commission (“VSCC”) has indisputably “fail[ed] to carry out its responsibility under this section [Section 252] in a[] proceeding or matter under this section.” *See* 47 U.S.C. § 252(e)(5); AT&T Pet., pp. 4-6. Where that prerequisite is met, preemption is mandatory. *See* 47 U.S.C. § 252(e)(5) (this Commission “*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”) (emphasis added).

Verizon nonetheless claims that the Commission can and should either dismiss AT&T’s petition as premature or defer deciding it for 90 days in order to enable the parties to make further progress in negotiations. Verizon, pp. 2-4. Any such action would be unlawful. Because the VSCC has issued its Order and that Order meets all the statutory prerequisites for preemption, AT&T’s petition cannot be “premature.” And because Section 252(e)(5) directs that a preemption order be issued “within 90 days,” the Commission lacks discretion to defer its decision beyond that point.

Finally, even if Verizon’s proposed dispositions were permissible, there would still be no reason to adopt them. Deferral of AT&T’s petition would not help to resolve outstanding issues; rather, it would take the pressure *off* those negotiations. *The parties have had more than 50 discussions over approximately the past year, but they only began achieving significant progress in resolving issues recently, when deadlines loomed. Indeed, as Verizon notes (p. 3), thirty-seven issues were resolved through negotiations “within the past month.”*

A prompt preemption order, and the expeditious scheduling of hearings, will therefore be the best possible spur to whatever additional progress is possible.² And in the event further progress is not possible, action on AT&T's petition is the only way to resolve these disputes. By contrast, delaying such action would be inconsistent with the Act's emphasis on rapid conclusion to such matters so that the framework for competitive entry can be in place as soon as possible.

Motion for Consolidation

Verizon misunderstands the relief sought in AT&T's motion for consolidation. The Commission need not and should not decide at this point whether and to what extent the *arbitration proceedings* between Verizon and AT&T, WorldCom, and Cox should be consolidated. Granting AT&T's motion would simply require deciding the three *preemption petitions* together – so as to preserve the Commission's ability subsequently to consolidate the underlying arbitration proceedings if it deems consolidation appropriate. See AT&T Motion, p. 2. Once the petitions are granted, the structure of the proceedings could then be the subject of a status conference.³

² The dispute between AT&T and Verizon over uniform OSS interfaces is a vivid example. The parties were able to settle that matter principally because the Commission held their feet to the fire by insisting on moving forward with the adjudicative proceedings if no settlement were reached.

³ The only argument Verizon makes that is addressed to consolidating the petitions, as opposed to the arbitrations, is Verizon's suggestion that the Commission should always take the full statutory 90 days to decide such petitions so that it can "review [them] thoroughly." Verizon also claims that consolidation would cause problems if a new petition were filed on the 89th day after the first petition had been filed and if Verizon were therefore given no chance to respond. Verizon, pp. 8-9. These arguments are both frivolous and hypothetical. The 90-day deadline is a statutory maximum designed to prevent delay, not the minimum period necessary for proper consideration. And there is no reason to suppose that any other petition will be filed on the

Furthermore, although the Commission need not address it at this point, some degree of consolidation of the ultimate proceedings would patently be appropriate, and Verizon's premature arguments to the contrary do not withstand scrutiny. Verizon points out (p. 4) that some issues will not be common to all parties, but it does not deny that some issues will be common. Instead, it complains (p. 7) that identifying which issues are common will take the Commission too much time. But the Commission will have to make that determination regardless of whether the underlying arbitrations are consolidated – even if they are not, the Commission will need to resolve the same issues consistently for all parties.⁴

Finally, Verizon's suggestion that there is something unusual or inefficient about a consolidated proceeding is remarkable. As Verizon is aware, numerous States have resolved such disputes by holding "Mega-Arbitrations" or generic proceedings in which multiple parties' claims are adjudicated simultaneously. Such proceedings have been held, for example – and this list is not meant to be exhaustive -- in California, the District of Columbia, Florida, Georgia, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and Washington. Section 252(g) of the Act specifically authorizes state commissions to consolidate proceedings "in order to reduce administrative burdens on telecommunications carriers, other parties to the

hypothetical 89th day, and in all events AT&T's consolidation motion would not encompass any such petition if one were filed.

⁴ Verizon's assertion that the Commission's rules prohibit consolidation simply because those rules state that Section 252(e)(5) proceedings will be limited to the requesting carrier and the incumbent LECs, and because the rules refer to "the" agreement that will be before the Commission, is a *non sequitur*. Verizon, p. 5. Only requesting carriers and the incumbent LEC would be parties to a consolidated arbitration. And Rule 7 of the Federal Rules of Civil Procedure, for example, provides that "[t]here shall be a complaint and an answer" (emphasis added), but that obviously does not preclude consolidation of multiple such complaints. See

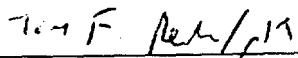
proceedings, and the State commission." 47 U.S.C. § 252(g). Indeed, before the Court of Appeals for the Third Circuit, Verizon-New Jersey recently stated its affirmative support for reliance on generic proceedings over individual arbitrations by citing this extensive practice. See Brief of Verizon New Jersey, *State of New Jersey Ratepayer Advocate v. Verizon New Jersey*, No. 00-2000 (3rd Cir.) pp. 41-42 & n.63.

CONCLUSION

For the foregoing reasons, and those stated in AT&T's petition and its motion, AT&T's petition for preemption should be consolidated with the similar petitions of WorldCom and Cox and then granted.

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January 10, 2001

Fed.R.Civ.P. 42 (authorizing consolidation of complaints where they present a common question of law or fact).

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2001, I caused true and correct copies of AT&T's Reply to Verizon's Opposition to Petition for Preemption and Motion to Consolidate to be served on the following by first class mail, postage prepaid, and by hand-delivery to the addresses on the attached service list:


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