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April 26, 2004

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APR 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

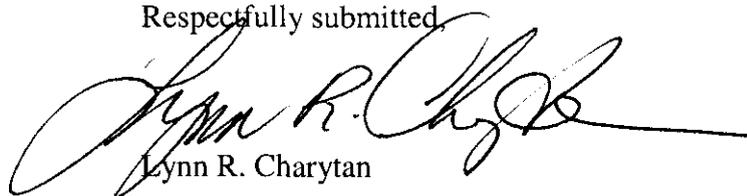
Re: Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Numbers 00-218

Dear Ms. Dortch:

On behalf of Verizon Virginia Inc. ("Verizon") please find attached an original and four copies of Verizon's Reply to MCI's Opposition to Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement.

Should there be any questions, please contact me at 202.663.6455.

Respectfully submitted,


Lynn R. Charytan

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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)
)
In the Matter of Petition of WorldCom, 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)
Expedited Arbitration)
)

CC Docket No. 00-218

**VERIZON'S REPLY TO MCI'S OPPOSITION TO MOTION
TO STRIKE MCI'S SUBMISSION FOR APPROVAL OF AMENDMENT TO
VERIZON-MCI INTERCONNECTION AGREEMENT**

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Dated: April 26, 2004

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 WorldCom, 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. 00-218

**VERIZON'S REPLY TO MCI'S OPPOSITION TO MOTION TO STRIKE MCI'S
SUBMISSION FOR APPROVAL OF AMENDMENT TO VERIZON-MCI
INTERCONNECTION AGREEMENT**

MCI acknowledges that the document it has submitted for Commission approval is a voluntarily negotiated agreement that must be approved under section 252(e)(1)-(e)(2) of the 1996 Act.¹ As Verizon explained in its motion to strike, that is the end of the matter.² The Act provides that if a state does not act on a voluntarily negotiated agreement, the result is that it is deemed approved, *not* that the FCC can preempt. 47 U.S.C. § 252(e)(4). A line of Commission orders beginning with the *Local Competition Order*,³ and two federal circuit court decisions,⁴

¹ Letter from Kecia Boney Lewis, Senior Counsel, MCI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 00-218 (filed March 26, 2004) at 1 ("MCI letter"); MCI's Opposition to Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement, CC Docket No. 00-218 (filed Apr. 19, 2004) at 4 ("MCI Opposition").

² Verizon's Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement, CC Docket No. 00-218 (filed April 8, 2004) at 3-4 ("Verizon Motion to Strike").

³ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16128 ¶ 1286 (1996) ("*Local Competition*

confirm that the Commission's section 252(e)(5) preemption authority does not extend to displacing state commissions from approving voluntarily negotiated agreements under section 252(e)(4). The Commission has codified this result at 47 C.F.R. § 51.801(c): "A state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is deemed approved under section 252(e)(4) of the Act."

MCI's opposition does not attempt to grapple with the clear implications of this authority. Verizon Motion to Strike at 4-5. The only answer MCI offers, in the final footnote of its opposition, is that section 252(e)(4) is "not really relevant" because, "where the Commission has already determined that the VSCC failed to act in arbitrating . . . the underlying [Verizon-MCI] interconnection agreement . . . [t]he state does not get a second chance." MCI Opposition at 5 n.16. In MCI's view, apparently, once the Commission has arbitrated an agreement, it has permanently preempted the state's jurisdiction, and the state has no further role to play at any point with respect to any amendment (or presumably enforcement or interpretation) of that agreement, no matter how long it remains in effect.

Order") ("We . . . conclude that the most reasonable interpretation is that automatic approval under section 252(e)(4) does not constitute a failure to act."); Memorandum Opinion and Order, *Global Naps South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc.*, 15 FCC Rcd 23318, 23321 ¶ 6 n.19 (1999); Memorandum Opinion and Order, *Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 12 FCC Rcd 15594, 15610-11 ¶ 25 n.97 (1997).

⁴ *MCI Telecomm. Corp. v. Ill. Commerce Comm'n*, 183 F.3d 558, 561 (7th Cir. 1999) ("[W]hen the parties reach a voluntarily negotiated agreement without any request for mediation or arbitration . . . the FCC will not step in to assume the approval function."); *MCI Telecomm. Corp. v. Pub. Serv. Comm'n*, 216 F.3d 929, 938 n.1 (10th Cir. 2000) ("[I]f a state commission does not approve or reject an agreement and it is deemed approved, the FCC cannot preempt the state commission's jurisdiction and review the agreement.").

MCI defends its expansive view of the Commission’s preemption authority by pointing to the *Local Competition Order*’s conclusion that, “once the Commission assumes jurisdiction of a proceeding or matter, it retains authority for that proceeding or matter.” *Local Competition Order* at 16129 ¶ 1289 (cited by MCI Opposition at 3). This statement is of little help to MCI. In the relevant discussion in the *Local Competition Order*, the Commission was considering two issues, neither of which is raised here: *first*, whether, once the Commission had assumed jurisdiction over a particular arbitration, a state could in effect “reclaim” the arbitration by belatedly deciding to act, and *second*, whether a state would have the right to exercise its authority under section 252(e)(4) to reject an agreement mediated or arbitrated by the Commission under section 252(e)(5).⁵ The Commission concluded in both situations that once it assumes responsibility for a proceeding or matter, it will see that matter to the end,⁶ including through the “approval” process that a state would otherwise conduct.⁷ But the Commission carefully limited its preemption of the state’s section 252(e)(1)-(e)(2) approval authority to agreements “mediated or arbitrated by the Commission,” *Local Competition Order* at 16129-30 ¶

⁵ *Local Competition Order* at 16125 ¶ 1278 (commenters arguing that “the state should be able to petition the Commission to reconsider its decision to preempt, and such petitions should be granted upon a reasonable assurance the state intends to carry out its obligations” and that “any agreement arbitrated by the Commission must be submitted to the state for approval.”)

⁶ *Id.* at 16129 ¶ 1289 (holding that “if the Commission obtains jurisdiction after a state commission fails to respond to a request for arbitration, the Commission maintains jurisdiction over the arbitration proceeding” because “the Commission, with significant knowledge of the issues at hand, would be in the best position efficiently to conclude the matter”).

⁷ *Id.* at 16129-30 ¶ 1290 (observing that no provision of the 1996 Act “call[s] for state commission approval or rejection of agreements mediated or arbitrated by the Commission” and holding that “[i]n those instances where a state has failed to act, the Commission acts on behalf of the state and no additional state approval is required”).

1290; it did *not* sweep in voluntarily negotiated amendments that the parties might reach in the future, like the one at issue here.

Further, the Commission did not consider the question whether its preemption of a state with respect to an arbitration proceeding would require it to remain permanently responsible for *any* future questions relating in any way to the agreement produced by the arbitration: To the contrary, as the *Local Competition Order*'s plain language states, the Commission retains jurisdiction for the *proceeding* or the *matter* for which it has exercised its section 252(e)(5) jurisdiction — *not*, as MCI would have it, for the resulting *agreement*.⁸ And MCI's effort to portray approval of this new, voluntarily negotiated understanding as part of the same proceeding or matter as to which the Commission already has assumed jurisdiction falls flat. The sole "matter" as to which the Virginia SCC failed to act and over which the Commission assumed jurisdiction in the *Preemption Order* is "*arbitrat[ing] any open issues concerning an interconnection agreement [between MCI and] Verizon in Virginia.*"⁹ The instant "matter," on the other hand, was neither "arbitrate[d]" nor designed to address Virginia-specific issues and does not present an "open issue." Instead it is an agreement reached through voluntary negotiation entirely unrelated to the arbitration proceeding and designed to apply prospectively throughout the many states in which Verizon and MCI affiliates do business.

⁸ Thus, MCI's warning that leaving "parts of an agreement" under the Commission's jurisdiction and part under a state's jurisdiction would create an "administrative nightmare" and a "chaotic regime," MCI Opposition at 4, is a straw man. The fact is, the Commission assumed jurisdiction over the *arbitration*, not all *future* proceedings related in any way to the "agreement." Moreover, the Virginia SCC routinely approves amendments to agreements that the Virginia SCC neither arbitrated nor negotiated. Verizon Motion to Strike at 4-5.

⁹ Memorandum Opinion and Order, *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon Virginia Inc.*, 16 FCC Rcd 6224, 6229 ¶ 11 (2001) ("*Preemption Order*") (emphasis added).

Indeed, the two “matters” do not even involve the application of the same standards: the Commission’s task in the arbitration was to adjudicate whether particular rates, terms, and conditions of interconnection proposed by the two parties were consistent with section 251’s substantive requirements and the Commission’s TELRIC methodology. The inquiry for approving a voluntarily negotiated agreement, in contrast, applies an entirely different set of substantive criteria — whether “(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 252(e)(2).

The Virginia SCC has not “failed to act” with respect to this second matter. In fact, Verizon submitted the very agreement at issue here to the SCC for approval on March 22, 2004. The Virginia SCC should act on that agreement soon, just as it has routinely exercised its authority to approve other negotiated interconnection agreement amendments.¹⁰ What MCI requests thus flies directly in the face of the Commission’s and the courts’ determination that the Commission’s section 252(e)(5) preemption authority should be used only in specific instances where the state has failed to act and should not be expansively interpreted.¹¹

¹⁰ As Verizon noted in its motion to strike, the SCC has continued to review negotiated agreements, including negotiated agreements to existing interconnection agreements, since at least 2000, and, in fact, the Virginia General Assembly recently enacted legislation giving the SCC explicit authority to fulfill its duties under the 1996 Act. Verizon Motion to Strike at 4-5.

¹¹ *Local Competition Order at 16128* ¶ 1285 (1996); *Global NAPs, Inc. v. FCC*, 291 F.3d 832, 837 (D.C. Cir. 2002).

CONCLUSION

For all the reasons stated above, the Commission should strike MCI's submission and should not review the amendment, leaving review thereof to the governmental body charged with doing so — the Virginia SCC.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael Glover". The signature is written in black ink and is positioned above a horizontal line. To the right of the line, the letters "JEC" are written in a smaller, cursive script.

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Dated: April 26, 2004

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing, Verizon's Reply to MCI's Opposition to Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement, were served by electronic mail on this 26th day of April, 2004, to:

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Wireline Competition Bureau
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Washington, D.C. 20554

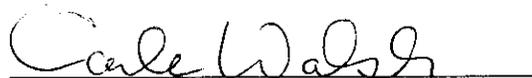
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