

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

In the Matter of )
)
Petition of WorldCom, Inc. Pursuant to )
Section 252(e)(5) of the Communications Act ) CC Docket No. 00-218
for Preemption of the Jurisdiction of the )
Virginia State Corporation Commission )
Regarding Interconnection Disputes with )
Verizon Virginia, Inc. and for Expedited )
Arbitration )
)
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 )
Expedited Arbitration )
)
Petition of AT&T Communications of )
Virginia, Inc., Pursuant to Section 252(e)(5) ) CC Docket No. 00-251
of the Communications Act for Preemption of )
the Jurisdiction of the Virginia State )
Corporation Commission Regarding )
Interconnection Disputes with Verizon )
Virginia, Inc. )
)

ORDER ON RECONSIDERATION

Adopted: May 13, 2004

Released: May 14, 2004

By the Chief, Wireline Competition Bureau:

1. This Order on Reconsideration (Order) addresses a petition filed by AT&T Communications of Virginia, Inc. (AT&T) seeking reconsideration of an order adopted by the Chief of the Wireline Competition Bureau (Bureau) to resolve questions presented by petitions

for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon).<sup>1</sup> For the reasons set forth below, we deny AT&T's petition.<sup>2</sup>

2. AT&T seeks reconsideration of the Bureau's conclusion that, absent clear Commission precedent, it could not determine that incumbent LECs have a duty, under section 251(c)(2) of the Act, to provide transit service at TELRIC rates.<sup>3</sup> AT&T asserts that the Bureau erred in deferring to the Commission on the question whether incumbent LECs are required to provide transit service at TELRIC rates.<sup>4</sup> AT&T argues that, if the Virginia State Corporation Commission (Virginia Commission) had conducted this arbitration, it would have been required by the Act to decide on its own whether incumbent LECs must provide transit service.<sup>5</sup> According to AT&T, therefore, because the Commission stood in place of the Virginia Commission and the Bureau acted upon delegated authority, the Bureau also was required to decide this issue.<sup>6</sup>

3. We disagree. By preempting the authority of the Virginia Commission, under section 252(e)(5), the Commission undertook to arbitrate the parties' dispute in accordance with the Act and the Commission's rules, and the Commission delegated that role to the Bureau.<sup>7</sup> In

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<sup>1</sup> *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 for Reconsideration (filed Aug. 16, 2002) (AT&T Petition). AT&T's petition seeks reconsideration of *Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and 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 Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 (WCB 2002) (*Arbitration Order*). Verizon filed a response to AT&T's petition on September 10, 2002. AT&T filed a reply to Verizon's response on September 20, 2002.

<sup>2</sup> The arbitration of AT&T's agreement with Verizon was conducted concurrently with those of WorldCom, Inc. and Cox Virginia Telcom, Inc. Other parties to this consolidated proceeding have filed petitions for reconsideration or petitions for review, which will be resolved in separate orders. See *Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc., and 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 Nos. 00-218, 00-249, and 00-251, Verizon's Application for Review of the Wireline Competition Bureau's October 8, 2002 Order Approving the Interconnection Agreements (filed Nov. 7, 2002), Verizon's Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order (filed Aug. 16, 2002), and Application for Review (filed by WorldCom, Inc., Aug. 16, 2002).

<sup>3</sup> See *Arbitration Order*, 17 FCC Rcd at 27101, para. 117.

<sup>4</sup> AT&T Petition at 5-6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* AT&T also asserts that this situation is analogous to cases in which federal courts are required to interpret unclear state law. AT&T Petition at 6, n.7.

<sup>7</sup> 47 U.S.C. § 252(e)(5); 47 C.F.R. § 51.807(c). See *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended*, Order, 16 FCC Rcd 6231 (2001).

arbitrating that dispute, the Bureau addressed and adopted language governing Verizon's provision of tandem transit service.<sup>8</sup> AT&T argued that Verizon has a legal obligation, under the Act, to provide transit service.<sup>9</sup> Verizon disputed AT&T's position but volunteered to continue to provide transit service as an accommodation to competitive LECs.<sup>10</sup> The Bureau made findings that certain proposals were reasonable and directed the parties to include in the interconnection agreement other language to govern transit service. While the Bureau did not find that Verizon had a legal obligation to provide transit service at TELRIC rates, as AT&T argued,<sup>11</sup> it nonetheless arbitrated the transit issues in accordance with the Act and the Commission's rules. We do not agree with AT&T's assertion that the Virginia Commission would have been required to agree with AT&T that Verizon must provide transit service under the Act, nor do we agree that the Bureau was required to so conclude. AT&T presents no other argument to support its petition, other than to reiterate the arguments it made before the Bureau issued the *Arbitration Order*.<sup>12</sup> Therefore, we deny AT&T's petition, and reaffirm the conclusion the Bureau reached in the *Arbitration Order*.

4. ACCORDINGLY, IT IS ORDERED, pursuant to sections 0.91, 0.291, 1.106, and 51.807 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, and 51.807, that the Petition for Reconsideration filed by AT&T Communications of Virginia, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief, Wireline Competition Bureau

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<sup>8</sup> See *Arbitration Order*, 17 FCC Rcd at 27094-103, paras. 107-121.

<sup>9</sup> *Id.* at 27094-95, paras. 107-108.

<sup>10</sup> *Id.* at 27095, para. 107.

<sup>11</sup> Specifically, the Bureau said that "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [section 251(c)(2)] of the statute, nor do we find clear Commission precedent or rules declaring such a duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates." See *Arbitration Order*, 17 FCC Rcd at 27101, para. 117.

<sup>12</sup> We also are not persuaded by AT&T's argument comparing the Bureau's authority in this matter with the authority exercised by federal courts when they make determinations based on state law.