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June 25, 2001

EMAILED

Ms. Kathleen Cummings
State Corporation Commission
Division of Communications
1300 East Main Street
Richmond, Virginia 23219

Re: Ex rel. State Corporation Commission, Ex Parte: In the matter of Establishment of a Collaborative Committee to Investigate Market Opening Measures; Case No. PUC000026

Dear Ms. Cummings:

I have attached Cox Virginia Telecom, Inc.'s ("Cox") Comments Responding to Staff's Request for Alternative Plans for Remedies. I will be distributing these Comments electronically to the service list for the Performance Standards and Remedies Subcommittee in the Collaborative.

If you have any questions or comments, please contact me.

Thank you for your assistance

Very truly yours,

Deborah A. Jaggard

Enclosure

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

APPLICATION OF

VERIZON-VIRGINIA, INC. Case No. PUC000026

Ex Parte: Establishment of a
Collaborative Committee to Investigate
Market Opening Measures

COMMENTS OF
COX VIRGINIA TELCOM, INC.
REGARDING AN ALTERNATIVE PLAN FOR REMEDIES
IN THE VIRGINIA COLLABORATIVE

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June 22, 2001

COMMONWEALTH OF VIRGINIA
BEFORE THE
STATE CORPORATION COMMISSION

APPLICATION OF

VERIZON-VIRGINIA, INC. Case No. PUC000026

*E*x Parte: Establishment of a
Collaborative Committee to Investigate
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COMMENTS OF
COX VIRGINIA TELCOM, INC.
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IN THE VIRGINIA COLLABORATIVE

Pursuant to the Subcommittee for Performance Standards and Remedy Plans ("Subcommittee") May 22, 2001 meeting, Cox Virginia Telcom, Inc. ("Cox") files the following comments in response to the Staff's Request for submission of alternative plans for remedies in the above-captioned case.

I. SUMMARY

Cox is pleased to have the opportunity to reply to Staff's request for an alternative plan for remedies. Although Cox will not propose an alternative plan in its entirety, Cox would like to suggest that the Staff and Commission consider some guiding principles in their evaluation of Verizon-Virginia Inc.'s and Verizon-South Inc.'s, (cumulatively, "Verizon") and any other LEC's proposed remedies. Cox also reserves its right to comment further on the specific details of plans and comments submitted and proposed by other carriers as these opportunities are presented to the Subcommittee.

II. OVERALL GUIDING PRINCIPLES

Cox believes that the comments below, made by Mark Keffer of AT&T at the 2000 National Regulatory Conference, set a good baseline for any remedies plan:

> The purpose of an effective remedies plan is to provide a meaningful deterrent to anti-competitive behavior by the RBOC. The 'carrot' of entering the long distance market is a powerful incentive, but once the RBOC is in the long distance market it will have equally strong incentives to backslide on OSS performance. Such discriminatory behavior would have a devastating impact on competitors and competitions. Only a remedies plan with teeth will provide the necessary deterrent to anti-competitive behavior.[1]

An emphasis on the teeth in the plan, and the consequences for not quickly remedying the problem, is paramount. Cox has slightly modified the guiding principles espoused by AT&T at the 2000 National Regulatory Conference. In short, for a remedies plan to be effective, the remedies plan must successfully require the following: (1) provide direct and unambiguous consequences for discriminatory performance by the ILEC; (2) provide dollar remedies that are self-executing, immediate and sufficient; (3) be rooted in an established, comprehensive, verified, and onging performance measurement system; and (4) have specific non-monetary consequences for chronic violations or backsliding.[2] Additionally, Cox recommends that any delay in fixing a known problem that affects a CLEC's performance should have negative consequences.

III. GUIDING PRINCIPLE 1: Does the proposed remedy plan provide direct and unambiguous consequences for discriminatory performance by the ILEC?

Cox, being a facilities-based provider, has perhaps less dependence on Verizon to help it provide service to customers than do some other CLECs. The result is that only a few of the

[1] Mark A. Keffer, From The Back Office To The Front Lines OSS: Potential Land Mines On The Front Lines, RICHMOND J OF LAW & Tech (Fall, 2000), article available at http://www.urich.edu/~jolt/noflash_site/lthome.htm (Click on "Past Issues/Fall 2000/From the Back Office to the Front Lines," (last viewed June 22, 2001).

OSS measure areas hold a great interest to Cox. However, timely and appropriate performance by Verizon in those areas, such as local number portability, directory listings and directory assistance updates, E-911, and trunk blocking, are critical to Cox's success. Cox does not seek payment by Verizon for non-performance; Cox wants the performance, because no amount of money paid by Verizon to Cox can overcome the negative impact that poor performance has on Cox's business.[3]

So what does the Commission do to provide a strong incentive to Verizon? This is simple—the consequence for nonperformance must be clear, direct and significant. There should be no cap on the amount of charges against Verizon, for example, because then this allows Verizon to budget how much it will need to spend to bring the CLEC industry to its knees. The amount of fine per event should be significant, because otherwise, the fine simply becomes a cost of doing business—and well worth the cost if it means less competition.

IV. GUIDING PRINCIPLE 2: Does the proposed remedy plan provide dollar remedies that are self-executing, immediate and sufficient?

The ILEC's current plan places a cap of $31.1 million for Verizon-Virginia, Inc., and $5.2 million for Verizon-South. Cox doubts whether these dollar amounts are sufficient enough to actually offer an incentive to the ILECs to perform, Cox would urge the Commission and its Staff to review the annual dollars at risk in other states. Recently, in Illinois, for example, the legislature introduced an aggressive bill that promotes competition by raising the fines for anti-competitive behavior to as much as $250,000 daily from a maximum of $30,000.[4] In Michigan, the Commission adopted a threshold that was 36% of Ameritech's net earnings. This threshold was not an absolute cap, but simply an amount at which the matter would go to hearing—the

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[2] Id.

[3] Keffer points out that one CLEC representative has noted that "no amount of Bell Atlantic refunds can repair [a] CLEC's damaged relationship with customers whose orders were lost."

total dollar amount could potentially be greater. This made Ameritech's dollars at risk greater as the company grew, especially if the company grew at the expense of CLECs.

Cox's primary concern is that the dollar penalty not be considered by the ILEC as the "cost of doing business." The Staff and the Commission should urge the ILECs to "perform;" in order for competition to thrive, Cox and other CLECs need to be able to rely upon the performance of the ILECs. Only severe financial penalties will encourage the ILECs to consistently do this.

Additionally, the incentive credits due to a CLEC under the ILEC's plan conceivably may not be processed for up to one quarter of a year. Verizon's current plan calls for conflicting timeframes. Although Verizon says incentive credits will appear on the appropriate CLEC's bill within two months after the performance is reports, the Plan goes onto say that for a violation committed in January, it will be reported in February and not appear on the bill until March or April. When a CLEC has been wronged by the ILEC, it should be entitled to self-executing and immediate dollar remedies. Cox is concerned, that currently as worded, the ILEC's plan allots for a "performance" period and a "reporting" period prior to the financial penalty being imposed. Verizon's plan, as drafted, currently permits the ILEC three to four months to actually provide financial compensation for wrongs that were committed, conceivably, in the previous quarter.

V. GUIDING PRINCIPLE 3: Is the proposed remedy plan rooted in an established, comprehensive, verified and ongoing performance measurement system?

In Verizon's Proposed Performance Plan, Verizon states that its Virginia Plan would not go into effect until Verizon enters into the long distance market in Virginia. Cox believes that

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[4] See Maura Webber, Ameritech rivals like phone bill bill, available at http://www.suntimes.com/output/business/cst-fin-fone18.html (last visited June 22, 2001), referring to Amendment to Illinois House Bill 2900 legislation and available at http://www.legis.state.il.us/legisnet/legisnet92/hbgroups/hb/920HB2900sam003.html (last visited June 22, 2001).

this is inappropriate, and is the equivalent of sending a racecar out on the track without testing it first.

There are several aspects of any performance measurement plan that the Commission should consider: First, do the performance measures appropriately capture the points, which have an impact on the various CLECs' abilities to provide service? The Commission is working with KPMG to test whether the measures proposed by Verizon do capture the critical events in the interactions between Verizon and its competitors.

Second, is there a process for reviewing the measures to ensure that they continue to be appropriate over time? Cox experienced this recently in this year's close of the Southside telephone directory, when a Verizon error-causing software change several months earlier, and its subsequent "fix," resulted in incorrect directory listings for hundreds of Cox customers, causing significant disruption and resource reassignment, and costs for Cox. This type of problem was never considered by Cox before as needed for measurement; however now Cox believes it is needed, as a result of our bad experience. It is likely that such issues, and the consequent need to measure, will need to be monitored, with potential new measures being on the drawing board constantly. Cox believes that this Collaborative should be a standing industry group that reviews the OSS measures and performance at least every six months.

Third, does the performance being measured by Verizon on a retail basis versus that being provided to the CLECs on a wholesale basis take into account the additional processes the CLEC must add to be able to provide its end user customer the same retail service as Verizon is measuring? If Verizon measures its wholesale service provision (ordering, billing, etc.) against the retail service it provides to its end users, without allowing for the CLEC's additional processes it must add to the Verizon wholesale services, then the CLEC will not be able to timely compete against Verizon.

VI. GUIDING PRINCIPLE 4: Does the proposed remedy plan have specific non-monetary consequences for chronic violations or backsliding?

Put simply, the consequence of Verizon's non-performance in interactions with CLECs is that the CLEC industry does not survive. As such, the Commission should have the authority to restrict Verizon's marketing efforts in its competitive offerings (such as intra and interLATA long-distance, voice mail, Centrex, etc.) in the event that Verizon consistently does not perform. Further, the existence of any remedies adopted in this proceeding should not restrict the Commission, the CLECs, the FCC, or any other party from pursuing other remedies, such as filing a complaint.

III. CONCLUSION

WHEREFORE**,** Cox Virginia Telcom, Inc., respectfully urges the Staff and Commission to consider its recommendations contained herein.

Respectfully submitted,

COX VIRGINIA TELCOM, INC.

By: ________________________________

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