



PUBLIC NOTICE

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Federal Communications Commission
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COMMENT SOUGHT ON COMPETITIVE PROVISION OF 911 SERVICE PRESENTED BY CONSOLIDATED ARBITRATION PROCEEDINGS

PLEADING CYCLE ESTABLISHED

WC Docket No. ~~08-33~~

WC Docket No. 08-185

Comment Date: July 6, 2009

Reply Comment Date: July 21, 2009

In this Public Notice, pursuant to authority delegated to the Chief of the Wireline Competition Bureau (Bureau),¹ we seek comment on a specific policy issue that has arisen in the context of the consolidated arbitration proceedings between Intrado Communications of Virginia, Inc. (Intrado), Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq), and Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon). In addition, on our own motion, we waive, for the limited purposes set forth below, section 51.807(g) of the Commission's rules,² which would otherwise limit participation in this proceeding to the parties to the interconnection agreements before us. Because this is a restricted proceeding, any comments must be both filed with the Commission and served on the parties as specified below.

On June 4, 2008, the Bureau preempted, pursuant to section 252(e)(5) of the Act, the jurisdiction of the Virginia Commission with respect to the arbitration of an interconnection agreement between Intrado and Embarq.³ On October 16, 2008, the Bureau preempted, pursuant to section

¹ 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) (*Arbitration Procedures Order*); see also 47 C.F.R. §§ 0.91, 0.291, 51.805, 51.807. The Commission delegated to the Chief, Common Carrier Bureau (now the Wireline Competition Bureau), authority to serve as the Arbitrator in section 252(e)(5) arbitration proceedings, with the assistance of the staff of the Wireline Competition and Enforcement Bureaus.

² 47 C.F.R. § 51.807(g).

³ See *Petition of Intrado 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 Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33, Memorandum Opinion and Order, 23 FCC Rcd 8715 (WCB 2008) (*Intrado/Embarq Preemption Order*).

252(e)(5) of the Act, the jurisdiction of the Virginia Commission with respect to the arbitration of an interconnection agreement between Intrado and Verizon.⁴ Intrado filed separate petitions for arbitration of interconnection agreements with both Embarq and Verizon, and on December 9, 2008, the Bureau consolidated the proceedings.⁵

In its petitions, Intrado seeks physical interconnection with Embarq and Verizon to offer emergency services in Virginia, including a competitive alternative to the 911 network currently provided to Public Safety Answering Points (PSAPs) and other public safety agencies by Embarq and Verizon, in their respective territories in Virginia. While Intrado's petitions raise a number of contractual issues specific to Intrado, Embarq, and Verizon, the arbitration proceeding also has raised the more general policy issue of the competitive provision of 911 voice services. Resolution of that issue in the context of this arbitration proceeding could have a significant impact on persons and entities that are not parties to the proceedings, including PSAPs, competitive carriers, Commercial Mobile Radio Services (CMRS) providers, and others. Therefore, we seek public comment on the specific issue of how competition in the provision of the 911 network to the PSAPs and other public safety agencies would impact the provision of public safety services in Virginia.

Under section 51.807(g) of the Commission's rules governing this arbitration proceeding, "[p]articipation in the arbitration is limited to the requesting telecommunications carrier and the incumbent [local exchange carrier], except that the Commission will consider requests by third parties to file written pleadings."⁶ Believing that "arbitration proceedings generally should be limited" to the parties, the Commission adopted this rule to allow for an efficient process and to minimize delay, while still allowing "interested parties to identify important policy issues not raised by parties to an arbitration."⁷

The Commission may waive any provision of its rules on its own motion, or on the motion of a petition, for good cause shown.⁸ A rule may be waived where the particular facts make strict

⁴ See *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, WC Docket No. 08-185, Memorandum Opinion and Order, 23 FCC Rcd 15008 (WCB 2008) (*Intrado/Verizon Preemption Order*).

⁵ See *Petition of Intrado 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 Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*; *Petition of Intrado 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 Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, WC Docket Nos. 08-33, 08-185, Order, 23 FCC Rcd 17867 (WCB 2008) (consolidating proceedings).

⁶ 47 C.F.R. § 51.807(g).

⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16131-32, para. 1295 (1996) (subsequent history omitted).

⁸ 47 C.F.R. § 1.3; see also 47 C.F.R. §§ 0.91, 0.291.

compliance inconsistent with the public interest.⁹ Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁰

We find good cause to waive section 51.807(g) for this arbitration proceeding for the limited purpose of seeking comment on the competitive provision of the 911 network to PSAPs and other public safety agencies. While no third party has submitted a request to file written pleadings in the arbitration, we believe that the complex policy issues implicated by the competitive provision of 911 service raised by this proceeding are best resolved with maximum participation by all interested parties. Because the resolution of such issues would impact the provision of public safety services in Virginia, moreover, we find that allowing potentially affected persons or entities to participate would better serve the public interest. We emphasize, however, that this waiver is limited to the instant proceeding and solely for the purpose of seeking comment on the specific issue of competition in the provision of the 911 network. All other issues raised by the arbitration of the interconnection agreements before the Commission remain subject to section 51.807(g).

This consolidated arbitration is a restricted proceeding.¹¹ Thus, third parties seeking to comment in response to this notice must adhere to the Commission's rules and practices governing restricted proceedings.¹² Written comments responding to this notice must be served on the parties to the arbitration proceeding via the email addresses set forth in the service list below. Third parties wishing to schedule meetings or provide oral communications in response to this notice must provide the parties to the arbitration proceeding with advanced notice and an opportunity to participate in such communications. Finally, we wish to make clear that persons or entities submitting comments in response to this notice do not themselves become parties to the arbitration going forward.¹³

Service List for WC Docket Nos. 08-33, 08-185:

Intrado

1. Chérie R. Kiser – Cahill Gordon & Reindel LLP – ckiser@cgrdc.com
2. Rebecca Ballesteros – Intrado Inc. – rebecca.ballesteros@intrado.com

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

¹⁰ *Northeast Cellular*, 897 F.2d at 1166.

¹¹ See *Procedures Established for Arbitration of an Interconnection Agreement Between Intrado Communications of Virginia and Embarq*, WC Docket No. 08-33, Public Notice, 23 FCC Rcd 12020 (2008); *Procedures Established for Arbitration of an Interconnection Agreement Between Intrado Communications of Virginia and Verizon*, WC Docket No. 08-185, Public Notice, 23 FCC Rcd 17854 (2008); 47 C.F.R. § 1.1208.

¹² 47 C.F.R. § 1.1208; see *AT&T Corp. v. Business Telecom. Inc.*, EB-01-MD-001, EB-01-MD-002, Order, 16 FCC Rcd 18159, 18161-62, para. 6 (2001) (explaining that in a restricted proceeding “no person may make to any Commission decision-making personnel any communication directed to the merits or outcome [of the proceeding], unless the communication, if written, is served on the parties to the proceeding, or unless the communication, if oral, is made with advance notice to the parties and with opportunity for them to participate.”)

¹³ See 47 C.F.R. § 1.1200(a) (Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by order, letter, or public notice).

Embarq

3. John E. Benedict – Embarq – john.e.benedict@embarq.com
4. Edward Phillips – Embarq – edward.phillips@embarq.com

Verizon

5. Kathleen M. Grillo – Verizon – kathleen.m.grillo@verizon.com
6. Leslie V. Owsley – Verizon – leslie.v.owsley@verizon.com

Federal Communications Commission

7. Christi Shewman – WCB Pricing – christi.shewman@fcc.gov
8. Stephanie Weiner – WCB Policy – stephanie.weiner@fcc.gov

In addition to these service and notice procedures, comments should be submitted to the Commission as follows. All comments should refer to WC Docket Nos. 08-33 and 08-185. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁴

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.¹⁵ Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be

¹⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

¹⁵ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

addressed to 445 12th Street, S.W., Washington, D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530, (202) 418-0432 (TTY).

For further information about this Public Notice, please contact Stephanie Weiner at 202-418-1553.

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