

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of the Petition of)
Intrado Communications of Virginia Inc. for)
Arbitration Pursuant to Section 252(b))
of the Communications Act of 1934, as Amended,) WC Docket No. 08-33
to Establish an Interconnection Agreement with)
Central Telephone Company of Virginia and)
United Telephone Southeast LLC)**

**In the Matter of the Petition of)
Intrado Communications of Virginia Inc. for)
Arbitration Pursuant to Section 252(b)) WC Docket No. 08-185
of the Communications Act of 1934, as Amended,)
to Establish an Interconnection Agreement with)
Verizon South Inc. and Verizon Virginia Inc.)**

**REPLY COMMENTS
OF CENTRAL TELEPHONE COMPANY OF VIRGINIA D/B/A EMBARQ
AND UNITED TELEPHONE SOUTHEAST LLC D/B/A EMBARQ**

Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq (collectively, “Embarq”)¹ respectfully file reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice released on June 4, 2009 in the above-referenced dockets.² The Commission set forth a specific issue for comment: “How competition in the provision of the 911 network to the [public safety answering points or] PSAPs and other public safety agencies would impact the provision of

¹ Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq provide services under the Embarq trade name. Effective July 1, 2009, they are indirect, wholly-owned subsidiaries of CenturyTel, Inc. The new company will be known as CenturyLink.

² Public Notice, DA 09-1262 (rel. June 4, 2009). The comment deadline was July 6, 2009.

public safety services in Virginia.”³ Eleven parties filed comments in this proceeding, including Embarq.

The commenting parties represent varied industry segments and include public safety interests, incumbent local exchange carriers (“ILECs”), associations, state agencies, and Intrado, a provider of competitive 911 services. There appears to be broad agreement among these diverse parties that the Commission should open a separate proceeding to fully examine the complex issues raised by competitive provision of 911 service. Moreover, as emphasized by many commenting parties, while competition in the provision of 911 service stands to yield benefits, it is critical that competition occur on a level playing field and in a manner that ensures the reliability and integrity of the emergency services provided. These principles should guide a future Commission proceeding on this matter, in which all interested parties can develop a comprehensive record to thoughtfully consider these issues.

These issues are separate and distinct from the legal question pending in Intrado’s Virginia arbitration petitions with Embarq and Verizon’s Virginia local operating companies, and it is inappropriate for the Commission to be addressing them in this proceeding. Embarq supports Commission review of the larger issues and concerns raised by competition in the provision of 911 service. In the meantime, however, the Commission should address the legal issue before it in the consolidated arbitration proceeding.

I. The Commission Should Address Competitive Provision of 911 Services in a Separate Proceeding Dedicated to that Important and Complex Issue.

There is widespread agreement among the commenting parties that the Commission should undertake a notice of inquiry or rulemaking proceeding to consider the important policy

³ *Id.* at 2.

issues raised by the Public Notice.⁴ It is readily apparent that the demands on the nation’s emergency services network are growing and becoming increasingly complex. Emergency 911 calls now originate from a host of diverse platforms, including mobile devices and IP telephones, in contrast to the wireline, circuit-switched voice calls that were the sole basis for the 911/E911 network when it was constructed.⁵

Notwithstanding this challenging reality, no commenting party asserts that the Commission should examine how competitive provision of 911 service may affect public safety only in the narrow context of this consolidated arbitration proceeding. Not even Intrado, a competitive 911 service provider hoping to win additional rights in the underlying arbitration, contends that the Commission should review these issues in this arbitration proceeding.⁶ As ITTA recognized, “[t]he breadth of issues to be addressed [in competitive 911 service] is beyond the borders of arbitration proceedings that have, essentially landed at the Commission solely by default of a state commission.”⁷ Rather, the appropriate forum for the Commission to examine 911 competition policy issues from a federal perspective would be a notice of inquiry or rulemaking proceeding where the Commission can conduct a comprehensive analysis, with input

⁴ See, e.g., Comments of the Washington State Enhanced 911 Program (“WA E911 Comments”) at p. 4: “The issues raised in this current request for comments point to the need for a thorough investigation of the regulatory environment in which 9-1-1 services are provided.”

⁵ Comments of AT&T, Inc. (“AT&T Comments”) at p. 4.

⁶ Intrado states that “[t]he FCC’s extensive statutory authority and well-established precedent support the further development of the federal framework to ensure adequate facilities for the purpose of promoting safety of life and property,” but never asserts in its comments that this federal framework should be developed as part of this arbitration. Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (“Intrado Comments”) at p. 19.

⁷ Comments of the Independent Telephone & Telecommunications Alliance (“ITTA Comments”) at pp. 5-6.

from all interested parties. That would be impossible on this arbitration record, and improper in these consolidated arbitration proceedings.⁸

II. Any 911 Competition Policy Must Be Based on a Competitively-Neutral, Level Playing Field.

Embarq is not opposed to competition in 911 services, but competition must occur on a level playing field. As explained more thoroughly in Embarq's and Verizon's arbitration filings, Intrado's proposed network architecture would improperly and unreasonably shift the costs of Intrado's 911 network to Embarq and other carriers, at the risk of public safety.⁹

The Virginia Telecommunications Industry Association ("VTIA") described a situation in Franklin County, Virginia that shows how unreasonable Intrado's interconnection demands and expectations are, and the problems that will arise from unsound policies for competitive 911 service. In order for Intrado to provide its particular form of 911 services, Intrado expects other carriers provide trunks and transport -- at their own expense -- to deliver 911 calls to Intrado's selective router at a location Intrado dictates, typically a long distance from the local service area where the emergency calls originate. To serve the PSAP for Franklin County, Virginia, Intrado insisted that Citizens Telephone (and all other carriers providing service in the area, including wireless) establish trunking between its switch in Floyd, Virginia and a connection point dictated by Intrado in Raleigh, North Carolina -- approximately 165 miles away. Intrado expects these trunking and transport costs to be the other carrier's responsibility, with no reimbursement from

⁸ See, e.g., Comments of Verizon ("Verizon Comments") at p. 9.

⁹ Accord Verizon Comments at p. 5. See also AT&T Comments at p. 8: "Intrado apparently does not wish to self-provision these facilities. And, although it appears willing to pay for them, Intrado apparently insists that Verizon and Embarq should extensively reconfigure their existing trunking from their selective routers ('SRs') in order to connect to Intrado's facilities wherever Intrado has placed, or places, those facilities (which might be hundreds of miles from their PSAP customers), apparently at zero cost to Intrado."

Intrado and no available cost recovery from the PSAP. Citizens Telephone would incur a cost of \$2088 per month, or \$14.50 for each of Citizens Telephone's customers, if Intrado's position prevailed.¹⁰

Intrado's approach is not fair competition, as several commenters pointed out.¹¹ Intrado seeks to shift costs of call routing and transport onto other carriers, while claiming to offer PSAPs a cost-effective alternative to other 911 providers, particularly the ILECs that provide the great bulk of the nation's 911 capability.¹² Competition cannot reasonably or lawfully be based on shifting costs to competing carriers. As other parties noted, such a policy would actually undermine competition, by giving Intrado an entirely artificial competitive advantage. At the same time, it would increase costs on other carriers by imposing routing and transport costs with no mechanism for recovery. Ultimately, it could only lead to reduced network investment by other carriers, particularly in high-cost and rural areas. The Commission must address the cost implications if it hopes to promote advanced 911 capability to all communities.¹³

¹⁰ See Comments of the Virginia Telecommunications Industry Association ("VTIA Comments") at pp. 2-3.

¹¹ See, e.g., VTIA Comments at p. 3; Verizon Comments at p. 5; AT&T Comments at pp. 8-9.

¹² At the same time, Intrado appears to have sought to avoid or minimize regulation of its services to avoid the many costs imposed on its regulated competitors. [Do we want to say this?]

¹³ The 911 Industry Alliance acknowledges that carriers will incur new "costs to 're-home' inbound circuits," but it treats them dismissively, presuming these costs will eventually "diminish" because "NextGen 9-1-1" will use IP-technology. Comments of the 911 Industry Alliance ("911 Alliance") at pp. 7-8. The Commission cannot be so cavalier about the additional costs imposed by competitive 911 services, and certainly cannot presume -- as Intrado and the 911 Industry Alliance do -- that other carriers -- ILECs, CLECs, and wireless carriers alike -- should just absorb those costs themselves, without an appropriate mechanism for public cost recovery.

Making matters worse, as AT&T noted,¹⁴ Intrado seeks to enter markets selectively. In contrast, ILECs providing 911 services are expected to provide the highest quality and reliability throughout entire service areas, consistent with their obligations as carriers of last resort. Selective market entry also risks diminishing network investment in 911 capability in high-cost and rural areas, precisely where such investment is needed most. The Commission should consider the long-term implications, particularly for rural Virginians.

In addition to the cost, competition, and investment issues, requiring complex routing and long-distance transport may impair the reliability of 911 service.¹⁵ Currently, for example, wireless carriers (which now receive most of the nation's 911 calls) are able to aggregate calls by routing them to ILECs' multiple selective routers, typically located closer to the cell site receiving the call, the mobile switching center processing the call, and ultimately the PSAP coordinating the necessary emergency response. Intrado seems to assume that all other carriers will continue to send their traffic to ILECs, just as they now send them to ILEC selective routers. Evidently, as with the costs imposed, Intrado presumes it is the ILECs' and other carriers' problem to sort out how to get those calls routed and delivered accurately to Intrado's selective router, regardless where Intrado decides to locate it. The added complexities of switching, routing, and transport -- like the costs -- fall on those other carriers.

¹⁴ AT&T Comments at pp. 11-12.

¹⁵ VTIA at pp. 2, 3. In addition, the Florida Public Service Commission feared this very scenario: "[w]e are concerned that carriers may be forced to transport 911/E911 calls over great distances, perhaps even out of state." *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc., Pursuant to Section 252(b) of the Comm. Act as Amended*, Docket No. 070699-TP, Final Order, Dec. 3, 2008, at p. 7.

The Franklin County example highlights just some of the adverse consequences resulting from Intrado's proposed network architecture.¹⁶ As VTIA recognized, arrangements like Intrado's that unfairly shift new entrants' costs to existing service providers are subsidies, not competition.¹⁷ In formulating competitive 911 policy, the Commission should ensure that competition is on a level playing field without improper cost shifting to other carriers or consumers.

III. The Commission Should Rule on the Pending Arbitration Issue, and Address Other Issues in a Separate Rulemaking.

As observed by Embarq and echoed by Verizon, the only question before the Commission is whether Intrado is entitled to demand interconnection under Section 251(c).¹⁸ The Florida Public Service Commission found Intrado is not entitled to Section 251(c) interconnection under its current business model. The Illinois Commerce Commission found Intrado has no right even to Section 251(a) interconnection under its current business model. The North Carolina Utilities Commission, mistakenly in Embarq's view, recently concluded in an AT&T arbitration proceeding that Intrado has Section 251(c) interconnection rights.¹⁹ The

¹⁶ A full explanation of the infirmities and risks associated with Intrado's proposed network architecture can be found in Embarq's and Verizon's filings in the arbitration proceeding.

¹⁷ "This not only represents a significant, uncompensated increase in carriers' costs for routing the traffic (and, thus, a clear example of arbitrage), but it also irrationally increases service interruption risks due to the potentially extreme distances involved in connecting Intrado's facilities to [the ILEC], which is a risk to public safety." AT&T Comments at p. 9.

¹⁸ Embarq Comments at p. 2; Verizon Comments at p. 2.

¹⁹ Ohio's most recent ruling created a new category of service provider, ostensibly as a creative way to resolve the legal problem of Section 251(c) interconnection. The ruling does not squarely address the underlying statutory question, and, in Embarq's view, cannot be sustained with Intrado's current proposed business model.

Commission is now to decide the issue for Virginia, stepping into the shoes of the Virginia State Corporation Commission.²⁰

Interconnectors must meet the legal standard under Section 251(c) to obtain Section 251(c) interconnection. Embarq believes Intrado plainly fails to meet the Section 251(c) standard because it is not providing “telephone exchange service” as defined in the Act, and therefore the Commission must deny Intrado’s demand for Section 251(c) interconnection rights.

Denying Intrado’s petition will not prevent competition. Intrado does not need interconnection under Section 251(c) to provide competitive 911 services. As Embarq and Verizon noted, Intrado successfully negotiated a commercial interconnection agreement with Embarq in Florida pursuant to Section 251(a) and is proceeding to provision its 911 services there.²¹ Accordingly, the Commission can and should deny Intrado’s arbitration petitions against Embarq and Verizon without further delay. As most commenters agreed, the Commission should address the greater policy concerns of 911 competitive services in a separate rulemaking. However important those issues may be in a Commission rulemaking, they are irrelevant to the threshold question raised by the Virginia arbitration proceedings, which are -- as Embarq and Verizon both pointed out -- are not an appropriate forum for public comment.²²

²⁰ The Texas Commission on State Emergency Communications emphasized that the Commission would improperly prejudice public safety authorities by making broader policy in the consolidated Virginia arbitrations. It agreed with other parties that the Commission should address in a separate rulemaking proceeding the full range of issues raised by competitive 911 services. Joint Comments of the Texas Commission on State Emergency Communications, Texas 911 Alliance, Texas Municipal Emergency Communication Districts Association, National Emergency Number Ass’n, and Association of Public Safety Communications Officials International at p. 10.

²¹ Embarq and Intrado have also agreed to certain commercial terms in Ohio under Section 251(a).

²² See, e.g., Embarq Comments at pp. 4-6; Verizon Comments at p. 3.

IV. CONCLUSION

Embarq welcomes the Commission's concerns about the potential impacts that competition in the provisioning of 911 network services may have on public safety in Virginia -- and elsewhere. Embarq respectfully submits, however, that these important issues must be considered in a generic rulemaking proceeding, open to all interested parties, rather than in this consolidated arbitration proceeding. In a rulemaking or notice of inquiry, the Commission will be able to build a comprehensive record and take steps to protect the continued quality and reliability of 911 service, even in the face of increasing demands on the 911 system and technological change.

Embarq looks forward to participating in that proceeding. In the meantime, Embarq respectfully requests that the Commission address the threshold issue before it in the Virginia arbitrations. The Commission should find that, because of the nature of Intrado's specific services, Intrado does not qualify for Section 251(c) interconnection under the Act. This

conclusion is governed by statute and unaffected by the policy issues raised in the Public Notice and resulting comments.

Respectfully submitted,

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Dated: July 21, 2009

CERTIFICATE OF SERVICE

I certify that on the 21st day of July, 2009, a copy of the foregoing Reply Comments of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq were served on the following parties:

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