

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

In the Matter of	)	
	)	
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**

**Adopted: June 4, 2008**

**Released: June 4, 2008**

By the Associate Chief, Wireline Competition Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. This Memorandum Opinion and Order addresses the petition of Intrado Communications of Virginia Inc. (Intrado) for preemption of the jurisdiction of the Virginia State Corporation Commission (Virginia Commission) with respect to the arbitration of an interconnection agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq).<sup>1</sup> Specifically, Intrado seeks preemption of the jurisdiction of the Virginia Commission pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (the Act).<sup>2</sup> For the reasons set forth below, we grant Intrado’s petition.

2. Section 252 of the Act sets forth the procedures by which telecommunications carriers may request and obtain interconnection, services, or unbundled network elements from an incumbent local exchange carrier (LEC).<sup>3</sup> Section 252(b) permits a party negotiating an interconnection agreement to petition the relevant state commission to arbitrate any open issues.<sup>4</sup> Section 252(e)(5) requires the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which the state commission “fails to act to carry out its responsibility” under section 252.<sup>5</sup>

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<sup>1</sup> 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) (filed Mar. 6, 2008) (Intrado Petition).

<sup>2</sup> See 47 U.S.C. § 252(e)(5).

<sup>3</sup> See generally 47 U.S.C. § 252.

<sup>4</sup> See 47 U.S.C. § 252(b).

<sup>5</sup> 47 U.S.C. § 252(e)(5). See, e.g., *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, 15 FCC Rcd 11277 (2000) (*Starpower Preemption Order*).

3. On November 27, 2007, Intrado filed a petition for arbitration with the Virginia Commission asking the Virginia Commission to resolve the disputes arising from Intrado's attempts to negotiate an interconnection agreement with Embarq.<sup>6</sup> On February 14, 2008, the Virginia Commission expressly refused to arbitrate this dispute pursuant to the Act and issued an order dismissing Intrado's petition for arbitration.<sup>7</sup> Specifically, the Virginia Commission stated:

In this case, we find there is a threshold issue that should be determined by the Federal Communications Commission ("FCC"). Therefore, we believe the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to § 251(c) of the Telecommunications Act. As a result, based upon the potential conflict that may arise should the Commission attempt to determine the rights and responsibilities of the parties under state law or through application of the federal standards embodied in the Telecommunications Act, we find that this arbitration proceeding should be deferred to the FCC . . . . We note that until such time as this threshold issue is resolved that it would be inappropriate to resolve the other disputed issues. Therefore we will defer resolution of all issues in Intrado's Petition to the FCC.<sup>8</sup>

On March 6, 2008, Intrado filed the present petition requesting that the Commission preempt the jurisdiction of the Virginia Commission over the arbitration of pending issues between Intrado and Embarq.<sup>9</sup> The Commission sought comment on the petition and received no comments.<sup>10</sup>

## II. DISCUSSION

4. This petition involves virtually identical issues as those addressed by the Commission in the *WorldCom Preemption Order*,<sup>11</sup> and more recently, by the Bureau in the *KMC Preemption Order*.<sup>12</sup> Accordingly, we grant Intrado's petition and, pursuant to section 252(e)(5), assume the jurisdiction of the Virginia Commission over the interconnection arbitration proceeding between Intrado and Embarq in Virginia. Section 252(e)(5) directs the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which a state commission "fails to act to carry out its responsibility under

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<sup>6</sup> See Intrado Petition at 3.

<sup>7</sup> See Commonwealth of Virginia State Corporation Commission, *Petition of Intrado Communications of Virginia, Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Company of Virginia d/b/a Embarq and United Telephone – Southeast, Inc. d/b/a Embarq, Under Section 252(b) of the Telecommunications Act of 1996*, Case No. PUC-2007-00112, Order of Dismissal (rel. Feb. 14, 2008) (Virginia Commission Dismissal Order).

<sup>8</sup> *Id.* at 2-3 & n.2.

<sup>9</sup> See Intrado Petition at 1-6.

<sup>10</sup> See *Pleading Cycle Established for Comments on Petition of Intrado Communications of Virginia Inc. for Preemption of the Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Communications Act*, WC Docket 08-33, Public Notice, DA 08-544 (rel. Mar. 10, 2008).

<sup>11</sup> See *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.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) (*WorldCom Preemption Order*).

<sup>12</sup> See *Petition of KMC Telecom of Virginia, Inc., KMC Telecom V of Virginia, Inc., and KMC Data LLC 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 Sprint*, WC Docket No. 05-39, Memorandum Opinion and Order, 20 FCC Rcd 7542 (WCB 2005) (*KMC Preemption Order*).

[section 252].”<sup>13</sup> In this case, the Virginia Commission dismissed Intrado’s petition outright for the express purpose of enabling the parties to proceed before the Commission. Accordingly, based on the Virginia Commission’s explicit deferral of the action to the Commission, we find that the Virginia Commission failed to carry out its section 252 responsibilities in this case, and we therefore preempt the jurisdiction of the Virginia Commission in the Intrado/Embarq interconnection arbitration proceeding in Virginia pursuant to section 252(e)(5).<sup>14</sup>

5. Intrado may now petition the Commission for arbitration of the interconnection disputes that were the subject of the Virginia Commission proceeding addressed herein. Prior to filing its Petition for Arbitration, Intrado shall contact the Wireline Competition Bureau to schedule a joint pre-filing conference.<sup>15</sup> Once the pre-filing conference has been held the Bureau will issue a public notice establishing procedures and a pleading schedule specific to the arbitration proceeding. Intrado should also be prepared to file the Petition for Arbitration no more than 30 days after the pre-filing conference.

6. Finally, we reiterate the finding in the *Local Competition Order* that the Commission retains exclusive jurisdiction over any proceeding or matter over which it assumes responsibility under section 252(e)(5).<sup>16</sup> Similarly, after the Commission assumes responsibility over a proceeding, the Commission’s actions and any judicial review of those actions shall be the exclusive remedies available to the parties.<sup>17</sup>

### III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252, and sections 0.91, 0.291, and 51.801(b) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 51.801(b), the petition filed by Intrado on March 6, 2008 for the preemption of the jurisdiction of the Virginia State Corporation Commission IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher  
Associate Chief, Wireline Competition Bureau

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<sup>13</sup> 47 U.S.C. § 252(e)(5); *see also* 47 C.F.R. § 51.801(b). The Commission previously has indicated that it will evaluate whether a state commission has fulfilled its responsibilities under section 252 based on the particulars of each case. *See, e.g., Starpower Preemption Order*, 15 FCC Rcd at 11280, para. 8; *Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.’s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission, with BellSouth Before the Georgia Public Service Commission, and with GTE South Before the Public Service Commission of South Carolina*, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755, 1758-59, paras. 5, 33 (1997), *recons. denied*, 14 FCC Rcd 7024 (1999).

<sup>14</sup> *See KMC Preemption Order*, 20 FCC Rcd at 7544, paras. 5-6.

<sup>15</sup> For the purposes of the initial contact, the parties shall contact Christi Shewman, Wireline Competition Bureau, at 202-418-1520. Parties should refer to the procedures established for the Commission’s previous arbitration to determine what they should be prepared to discuss at the pre-filing conference. *See, e.g., Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, 16 FCC Rcd 3957, 3958 (2001).

<sup>16</sup> *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16129, para. 1289 (1996) (subsequent history omitted).

<sup>17</sup> *See* 47 U.S.C. § 252(e)(6).