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June 23, 2009 – **VIA OVERNIGHT MAIL**

Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

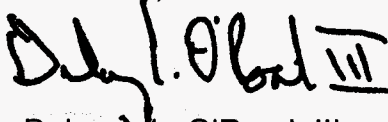
Re: Docket No. 080134-TP  
Petition by Intrado Communications, Inc. for arbitration to establish an  
interconnection agreement with Verizon Florida LLC, pursuant to Section 252(b)  
of the Communications Act of 1934, as amended, and Section 364.162, F.S.

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter are an original and 15 copies of the  
Direct Testimony on Behalf of Verizon Florida LLC – Witness Panel: Peter J. D'Amico  
and Nicholas Sannelli. Also enclosed is a diskette with a copy of the testimony in Word  
format.

Service has been made as indicated on the Certificate of Service. If there are any  
questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,

  
Dulaney L. O'Roark III

tas

Enclosures

COM	<u>5</u>
ECR	_____
GCL	<u>1</u> (+cc)
OPC	_____
RCP	_____
SSC	_____
SGA	_____
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**CERTIFICATE OF SERVICE**

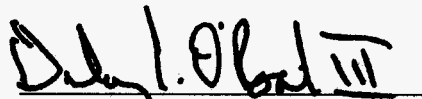
I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on June 24, 2009 to:

Theresa Tan, Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Intrado Communications Inc.  
Attention: Manager, Regulatory Compliance  
1601 Dry Creek Drive  
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Dulaney L. O'Roark III



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Intrado Communications Inc. )  
for arbitration to establish an interconnection )  
agreement with Verizon Florida LLC, pursuant )  
to Section 252(b) of the Communications Act )  
of 1934, as amended, and Section 364.12, )  
F.S. )  
\_\_\_\_\_ )

Docket No. 080134-TP

**DIRECT TESTIMONY ON BEHALF OF**

**VERIZON FLORIDA LLC**

**WITNESS PANEL:**

**Peter J. D'Amico**

**Nicholas Sannelli**

**June 24, 2009**

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1 I. INTRODUCTION

2 Q. PLEASE INTRODUCE THE PANEL.

3 A. The panel consists of Peter J. D'Amico and Nicholas Sannelli.

4

5 Q. MR. D'AMICO, PLEASE STATE YOUR POSITION, YOUR  
6 EMPLOYER AND YOUR BUSINESS ADDRESS.

7 A. I am a Product Manager in the switched access and interconnection  
8 Product Management Group for Verizon Services Corporation. My  
9 business address is 416 7<sup>th</sup> Avenue, Pittsburgh, Pennsylvania 15219.

10

11 Q. MR. D'AMICO, BRIEFLY STATE YOUR EDUCATIONAL  
12 BACKGROUND AND EXPERIENCE IN THE TELECOM-  
13 MUNICATIONS INDUSTRY.

14 A. I received a Bachelor of Science degree in Marketing from Indiana  
15 University of Pennsylvania. I have been employed at subsidiaries of  
16 Verizon Communications Inc. and its predecessor companies for 25  
17 years, in positions of increasing responsibility, and have been in product  
18 management dealing with interconnection arrangements for the last 19  
19 years.

20

21 Q. MR. D'AMICO, WHAT ARE YOUR RESPONSIBILITIES IN YOUR  
22 CURRENT POSITION?

23 A. My responsibilities include development, implementation, and product  
24 management of switched access and interconnection services.

25

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1   **Q.   MR. D' AMICO, HAVE YOU EVER TESTIFIED BEFORE?**

2   A.   Yes. I have testified on behalf of Verizon companies in many state  
3       commission proceedings over the last seven years, including, among  
4       others, interconnection agreement arbitrations under Sections 251 and  
5       252 of the federal Telecommunications Act of 1996 ("the Act") and  
6       proceedings addressing Verizon operating companies' entry into  
7       interLATA long-distance markets in accordance with Section 271 of the  
8       Act.

9

10   **Q.   MR. SANNELLI, PLEASE STATE YOUR POSITION, YOUR**  
11       **EMPLOYER AND YOUR BUSINESS ADDRESS.**

12   A.   I am a Product Manager in the Emergency Communications and 9-1-1  
13       Product Management Group for Verizon Services Corporation. My  
14       business address is 3 Bala Plaza, Bala Cynwyd, Pennsylvania 19004.

15

16   **Q.   MR. SANELLI, BRIEFLY STATE YOUR EDUCATIONAL**  
17       **BACKGROUND AND EXPERIENCE IN THE TELECOM-**  
18       **MUNICATIONS INDUSTRY.**

19   A.   I attended Temple University in Philadelphia, Pennsylvania and studied  
20       Engineering Technology. I have 35 years experience in the  
21       telecommunications industry working in a variety of network operations,  
22       engineering, and marketing departments within Verizon and/or its  
23       predecessor companies. I have 20 years of specific work experience in  
24       the design, implementation and product management of 9-1-1 Service.  
25       During 1988-90, I was a System Design Consultant specializing in the

1 design and development of public safety applications including 9-1-1  
2 Service. From 1991-95, I was the Product Manager for 9-1-1 Service for  
3 what was formerly Bell Atlantic, and had responsibility for all aspects of  
4 9-1-1 Service in the states of New Jersey, Pennsylvania, Delaware,  
5 Maryland, Virginia, West Virginia and the District of Columbia. From  
6 1996-99, I held the position of a Group Product Manager, under which I  
7 continued to have responsibility for 9-1-1 Services, along with a portfolio  
8 of other network services. In 2000, I assumed a Senior Application  
9 Manager position in which I had responsibility for integrating voice and  
10 data services for business customers. From 2001-04, I was self-  
11 employed as a communications consultant. From 2005 on, I have held  
12 the title of Senior Consultant-Product Marketing for the E 9-1-1 Product  
13 Manager position within Verizon.

14

15 **Q. MR. SANELLI, WHAT ARE YOUR RESPONSIBILITIES IN YOUR**  
16 **CURRENT POSITION?**

17 A. I am responsible for 9-1-1 tariff and contract development for all states  
18 in which Verizon currently provides 9-1-1 service; for providing subject  
19 matter expertise on state and federal legislative and regulatory matters  
20 related to 9-1-1, and for participating in public safety industry forums and  
21 associations.

22

23 **Q. MR. SANNELLI, HAVE YOU EVER TESTIFIED BEFORE?**

24 A. Yes. I have testified on behalf of Verizon companies in various state  
25 commission proceedings, including interconnection agreement

1 arbitrations, addressing 911 issues.

2

3

## II. PURPOSE OF TESTIMONY

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. We will explain why the Commission should dismiss Intrado's petition,  
6 just as it did Intrado's petitions for interconnection with AT&T and  
7 Embarras for exactly the same 911 services at issue here. The  
8 Commission has already found that Intrado is not entitled to  
9 interconnection for these services, so there is no point in continuing with  
10 this arbitration. Our testimony with respect to Intrado's specific  
11 proposals is offered only in the event that the Commission proceeds  
12 with the arbitration. We will explain that Intrado's proposals have  
13 nothing to do with Verizon's interconnection obligations under section  
14 251(c) of the Act, under which Intrado filed for arbitration. In short,  
15 Intrado proposes for Verizon to build and pay for a new 911 network for  
16 Intrado. Intrado may implement any kind of 911 network architecture it  
17 wishes, consistent with Florida 911 laws and regulations, but Verizon  
18 has no obligation to provide it and pay for it.

19

20 **Q. ARE YOU LAWYERS?**

21 A. No, but this entire arbitration, including whether the arbitration will go  
22 forward at all, turns on legal issues about whether the governing law—  
23 that is, section 251(c) of the Act—entitles Intrado to the "interconnection"  
24 arrangements it seeks from Verizon. Although we will leave detailed  
25 legal analyses to Verizon's lawyers, it is impossible to discuss Verizon's



1 positions in this arbitration without at least referring to the applicable  
2 law.

3

4

### III. DISCUSSION

5

#### A. BACKGROUND

6

7

#### Q. **WHAT SERVICES DOES INTRADO PLAN TO PROVIDE?**

8

A. Intrado plans to provide its Intelligent Emergency Network® services,  
9 which will provide 911/E911 services only to public safety agencies that  
10 receive emergency 911/E911 calls for a defined geographic area and  
11 dispatch emergency medical and public safety services in response to  
12 those calls. Intrado's Petition for Arbitration ("Petition") describes these  
13 services as "aggregation, routing, transmission, and transport of  
14 traditional and non-traditional emergency call traffic to the appropriate  
15 Public Safety Answering Point (PSAP)." (Petition at 6.) Intrado's Price  
16 List on file with the Commission (Intrado Price List No. 1) confirms that  
17 Intrado's "Intelligent Emergency Network Services are  
18 telecommunications services that permit a "PSAP" to receive emergency  
19 calls placed by dialing the number 9-1-1 and/or emergency calls  
20 originated by personal communications devices."<sup>1</sup> These services will  
21 "support interconnection to other telecommunications service providers  
22 for the purpose of receiving emergency calls originated in their

---

<sup>1</sup> Intrado Florida Price List No. 1, filed July 8, 2008, effective July 9, 2008, § 5.1.

1 networks.” (Intrado Price List No. 1, § 5.1.) Intrado has made clear that  
2 the PSAP “must subscribe to additional local exchange services for  
3 purposes of placing administrative outgoing calls and for receiving other  
4 calls” (aside from 911 calls). (Intrado Price List No. 1, § 5.2.3.) In fact,  
5 the PSAP’s subscription to another carrier’s local exchange service is a  
6 condition of receiving Intrado’s 911 services. (Intrado Price List No. 1, §  
7 5.2.9.D.)

8  
9 In short, Intrado will not serve any end users of its own who place 911  
10 (or any other) calls over Intrado facilities. Intrado instead seeks to  
11 compel Verizon to interconnect with Intrado to handle *Verizon’s* end  
12 users’ 911 calls. (See Intrado Petition at 22.)

13  
14 **Q. ARE THE INTELLIGENT EMERGENCY NETWORK® SERVICES FOR**  
15 **WHICH INTRADO SEEKS INTERCONNECTION WITH VERIZON THE**  
16 **SAME SERVICES FOR WHICH INTRADO REQUESTED**  
17 **INTERCONNECTION WITH AT&T AND EMBARQ?**

18 A. Yes. The 911/E911 services for which Intrado seeks interconnection  
19 with Verizon are exactly the same services for which Intrado sought  
20 interconnection with AT&T and Embarq. These services are described,  
21 in all material respects, in identical terms in Intrado’s Petitions for  
22 Arbitration with AT&T, Embarq, and Verizon.<sup>2</sup> Each Petition described

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<sup>2</sup> Compare, e.g., Verizon/Intrado Petition for Arbitration at 3-9, 18-24, and Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth

1 911/E911 service for which Intrado's "end users" would be Public Safety  
2 Answering Points ("PSAPs") and other public safety agencies. Intrado  
3 uniformly characterized its services as "routing, transmission, and  
4 transport of traditional and non-traditional emergency call traffic to the  
5 appropriate PSAP." (Verizon/Intrado Petition at 6; AT&T/Intrado Petition  
6 at 6; Embarq/Intrado Petition at 6.) In each arbitration, it was clear that  
7 Intrado would not be the originating caller's local exchange carrier, but  
8 rather handling the emergency calls of other carriers' customers. (See  
9 Verizon/Intrado Petition at 22; AT&T/Intrado Petition at 21-22;  
10 Embarq/Intrado Petition at 18-19.)  
11  
12 Intrado's uniform description of its services in its three arbitration  
13 petitions is consistent with the descriptions of Intrado's Intelligent  
14 Emergency Network® in its Florida price list, which applies statewide.<sup>3</sup>  
15 So the 911 services Intrado will provide—and for which it seeks section  
16 251(c) interconnection with Verizon—are necessarily the same 911

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*Telecomm., Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., Docket No. 070736-TP, filed Dec. 21, 2007 ("AT&T/Intrado Petition") at 3-9, 18-23; and 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 of 1934, as Amended, and Section 364.162, F.S., Docket No. 070699-TP, filed Nov. 27, 2007 ("Embarq/Intrado Petition") at 3-9, 15-20.*

<sup>3</sup> Intrado Communications Inc.'s Notice of Service of Objections and Responses to Verizon Florida LLC's First Set of Interrogatories, Intrado response to interrogatory No. 2, April 27, 2009.

1 services for which Intrado sought section 251(c) interconnection from  
2 Embarq and AT&T. There is no disagreement about what the services  
3 are. Verizon does not dispute that Intrado's 911 services are, as a  
4 factual matter, just as they are described by Intrado in its Petition and its  
5 Price List.

6

7 **Q. HAS INTRADO CONFIRMED THAT IT INTENDS TO PROVIDE**  
8 **EXACTLY THE SAME SERVICE IN VERZON'S SERVICE**  
9 **TERRITORY THAT IT INTENDS TO PROVIDE IN AT&T'S AND**  
10 **EMBARQ'S SERVICE TERRITORIES?**

11 A. Yes. In discovery that Verizon served on Intrado April 8, 2009, Verizon  
12 asked Intrado:

13 Are the services Intrado plans to provide in Verizon's service  
14 territory the same as the services Intrado plans to provide in  
15 AT&T's and Embarq's service territories in Florida? If your  
16 answer is anything other than an unconditional yes, please  
17 list and fully describe the additional or different services  
18 Intrado will provide in Verizon's territory as compared to the  
19 services Intrado will provide in AT&T's and Embarq's service  
20 territories in Florida.

21 Intrado's one word response to this interrogatory was an unconditional  
22 "yes."<sup>4</sup>

---

<sup>4</sup> Intrado Communications Inc.'s Notice of Service of Objections and Responses to Verizon Florida LLC's First Set of Interrogatories, Intrado

1   **Q.   HAS THE COMMISSION ALREADY DETERMINED THAT INTRADO**  
2       **IS NOT ENTITLED TO SECTION 251 INTERCONNECTION**  
3       **ARRANGEMENTS FOR THESE 911 SERVICES?**

4   A.   Yes.   In earlier proceedings, Intrado sought section 251(c)  
5       interconnection from AT&T and Embarq for the same 911/E911 services  
6       for which its seeks section 251(c) interconnection with Verizon. The  
7       Commission closed those dockets after ruling that Intrado was not  
8       entitled to section 251(c) interconnection for its 911/E911 services.<sup>5</sup>  
9       The Commission explained that “§251(c) is applicable when an entrant  
10      seeks interconnection arrangements with an ILEC in order to offer  
11      telephone exchange service and exchange access.” (*Embarq/Intrado*  
12      *Order*, at 6; *AT&T/Intrado Order*, at 7; 47 U.S.C. § 251(c)(2)(A). Intrado  
13      admitted that its 911 service is not exchange access service (see  
14      *AT&T/Intrado Order* at 2), so the Commission had to determine whether  
15      Intrado was providing “telephone exchange service.” The Commission  
16      concluded that for a service to be a telephone exchange service under

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response to interrogatory No. 4, April 27, 2009.

<sup>5</sup> *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomm., Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) (“AT&T/Intrado Order”); 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 of 1934, as Amended, and Section 364.162, F.S., Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) (“Embarq/Intrado Order”).*

1 the statutory definition in 47 U.S.C. section 153(47), "it must provide for  
2 both the origination and termination of calls." (*AT&T/Intrado Order*, at 5;  
3 *Embarq/Intrado Order*, at 4.) The Commission found that Intrado's  
4 911/E911 service does not satisfy this statutory criterion, because it  
5 cannot originate calls: "Intrado Comm's Intelligent Emergency Network  
6 is a service that allows a PSAP to receive emergency calls....Intrado  
7 Comm provides a service that cannot be used to originate a call."  
8 (*AT&T/Intrado Order* at 4; *Embarq/Intrado Order* at 4.) The Commission  
9 explained: "The Intelligent Emergency Network does not offer a PSAP  
10 the ability to call back a 911/E911 user, and administrative lines not  
11 offered by Intrado Comm would be required to place such a call."  
12 (*AT&T/Intrado Order* at 4; *Embarq/Intrado Order* at 4.) The Commission  
13 rejected Intrado's arguments that its service could be used to originate  
14 calls and that it otherwise satisfied the definition of local exchange  
15 service for purposes of section 251(c) interconnection. (*Embarq/Intrado*  
16 *Order* at 4; *AT&T/Intrado Order* at 5.)

17

18 **Q. IF THE COMMISSION ALREADY RULED THAT INTRADO CANNOT**  
19 **SEEK SECTION 251(C) INTERCONNECTION FOR ITS 911/E911**  
20 **SERVICES, DOESN'T IT HAVE TO MAKE THE SAME RULING IN**  
21 **THIS CASE?**

22 A. Again, we are not lawyers, but we understand that the Commission must  
23 apply the same law here to the same services to reach the same  
24 conclusion as it did in the *Embarq/Intrado* and *AT&T/Intrado* arbitrations.  
25 It would be an arbitrary result for the Commission to decide here that

1 Intrado is entitled to interconnection for the same services for which it  
2 was *not* entitled to interconnection in the two previous cases. And in the  
3 absence of a consistent result across the three cases, we understand  
4 that all three decisions will be open to legal challenge.

5  
6 At the appropriate time, Verizon will ask the Commission to issue a  
7 summary final order ending the arbitration. Indeed, Verizon had done  
8 so in December 2008, but later withdrew its request while Intrado  
9 responded to discovery that confirms the 911 service Intrado intends to  
10 provide in Verizon territory is the same service it intends to provide in  
11 AT&T and Embarq territory. Now that Intrado has confirmed that is the  
12 case, there is no question that the facts about Intrado's 911 services  
13 that led the Commission to dismiss Intrado's arbitrations with AT&T and  
14 Embarq are exactly the same here. Therefore, Verizon intends to re-file  
15 its request for summary final order ending this arbitration. It makes no  
16 sense to waste time litigating all of the issues if the ultimate conclusion  
17 must be that Intrado is not entitled to section 251(c) interconnection.  
18 The rest of this testimony is offered only in the event that the  
19 Commission does not terminate this arbitration.

20

21 **Q. HAS THE COMMISSION ALSO FOUND THAT A BILATERAL**  
22 **ARBITRATION IS NOT THE APPROPRIATE FORUM TO ADDRESS**  
23 **ISSUES RELATING TO THE STATE'S 911/E911 SYSTEM?**

24 **A.** Yes. In addition to the Commission's legal conclusion that Intrado is not  
25 entitled to arbitration of an interconnection agreement for its 911

1 services, the Commission cited a number of policy reasons why it is not  
2 appropriate to entertain 911 issues in a bilateral arbitration. Florida has  
3 very detailed statutes governing the development, implementation, and  
4 funding of a statewide E911 system and that allocate responsibility for  
5 administration of that system to a number of different governmental  
6 entities. (Fla. Stat. §§ 365.171-.175.) As such, in the Embarq/Intrado  
7 and AT&T/Intrado arbitrations, the Commission observed that  
8 “emergence of a competitive 911/E911 provider in the Florida  
9 marketplace” presents the possibility of “potential unintended  
10 consequences that affect more than just the current parties to this  
11 docket, impacting all carriers in Florida, including wireless and VoIP  
12 providers.” (*Embarq/Intrado Order*, at 7; *AT&T/Intrado Order*, at 8.)  
13 Therefore, the Commission concluded that a bilateral interconnection  
14 arbitration was not the appropriate forum to consider matters involving  
15 911 services in Florida:

16 Sections 365.171-175, F.S., address Florida’s 911/E911  
17 plan. Any changes involving 911/E911 require the  
18 facilitation and cooperation of all affected agencies and  
19 entities to resolve any changes or complications that affect  
20 911/E911 in Florida. Decisions affecting the provision of  
21 911/E911 service in Florida are made by several different  
22 agencies, including the Department of Management  
23 Services, local and state officials, providers and PSAPs.  
24 Accordingly, any discussion regarding the provisioning of  
25 competitive 911/E911 service in Florida requires that all



1                   potentially affected parties be consulted and afforded an  
2                   opportunity to weigh in on these vital matters.

3                   (*Embarq/Intrado Order* at 8; *AT&T/Intrado Order*, at 9.)

4  
5                   Exactly the same policy considerations that infused Intrado's arbitrations  
6                   with AT&T and Embarq are present in this arbitration with Verizon.  
7                   There is no sign from Intrado's Petition that it even reviewed the Florida  
8                   E911 statutes, let alone considered whether its planned 911/E911  
9                   services might fit within the statewide E911 plan or whether this  
10                  arbitration was the appropriate forum to make changes to that plan.  
11                  Just as it was not in the public interest to make decisions affecting  
12                  911/E911 services and implicating Florida's 911/E911 statutes in  
13                  Intrado's arbitrations with AT&T and Embarq, it would not be in the  
14                  public interest to do so in this arbitration with Verizon.

15

16   **Q.   HAS ANY OTHER STATE COMMISSION CONCLUDED THAT**  
17   **INTRADO IS NOT ENTITLED TO SECTION 251(C)**  
18   **INTERCONNECTION?**

19   A.   Yes. In Intrado's arbitration with AT&T in Illinois, the Illinois Commerce  
20           Commission issued an order concluding, as this Commission did, that  
21           Intrado's proposed 911 service is not telephone exchange service within  
22           the meaning of the federal definition and as a result Intrado is not  
23           entitled to section 251(c) interconnection:

24                   [T]he Commission is neither willing nor authorized to  
25                   expand the specific provisions of the law beyond their

1           apparent meaning. The Congress did not say that any  
2           market entrant is entitled to interconnection under  
3           subsection 251(c)(2). Rather, it described the entrants  
4           entitled to such interconnection with particularity.  
5           Irrespective of this Commission's interest in expanding  
6           competition, we cannot exceed the limits established by  
7           the Congress.<sup>6</sup>

8  
9           There was, therefore, no need for the Illinois Commission to reach the  
10          parties' disputes about proposed interconnection agreement terms,  
11          because those disputes were "rendered moot and superfluous" by the  
12          conclusion that Intrado is not entitled to section 251(c) interconnection.  
13          (*Ill. Order* at 25.) (Consequently, Verizon filed a motion to dismiss the  
14          Intrado/Verizon Illinois arbitration, which is currently pending, and the  
15          Illinois procedural schedule has been suspended.)

16  
17          The same threshold issue of Intrado's entitlement to section 251(c)  
18          interconnection is now before the FCC's Wireline Competition Bureau in  
19          Intrado's consolidated Virginia arbitration with Embarq and Verizon.<sup>7</sup>

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<sup>6</sup> *Petition for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Illinois Bell Tel. Co., Proposed Arb. Decision, Docket No. 08-0545 (Mar. 17, 2009) ("Ill. Order")* (attached as Exhibit ("Ex.") 1), at 19.

<sup>7</sup> *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*

1     **Q.     IF THE COMMISSION DISMISSES THIS ARBITRATION, DOES THAT**  
2           **MEAN INTRADO CANNOT INTERCONNECT WITH VERIZON TO**  
3           **PROVIDE ITS 911 SERVICES?**

4     A.    No. It simply means that Intrado and Verizon may negotiate a  
5           commercial agreement with Intrado regarding the same 911 services at  
6           issue in this arbitration. In fact, that is what the Commission already  
7           found in the Embarq and AT&T cases: “Intrado Comm has the ability to  
8           offer the services it wants without a §251(c) interconnection agreement  
9           through the use of a commercial agreement.” (AT&T/Intrado Order, at  
10          7; see *also* Embarq/Intrado Order, at 8.) Verizon is willing to negotiate  
11          commercial terms with Intrado (and has already begun such  
12          negotiations with Intrado).

13

14    **Q.     PLEASE DESCRIBE WHAT THIS CASE IS ABOUT.**

15    A.    Intrado wants Verizon to build and pay for Intrado’s new 911 network.  
16          Specifically, Intrado demands that Verizon, *at Verizon’s sole expense*,  
17          interconnect with Intrado *on Intrado’s network*, at unspecified  
18          locations—at as many points of interconnection (“POIs”) as Intrado  
19          wishes and as far from Verizon facilities as Intrado wishes. Intrado

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*United Telephone – Southeast, Inc. (collectively, Embarq), WC Docket No. 08-33; 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 No. 08-185 (consolidated by Order released Dec. 9, 2008, FCC No. DA 08-2682).*

1 would require Verizon to get to those POIs by building at least two direct  
2 trunks from each affected Verizon end office to Intrado's network. In  
3 addition, Intrado would require Verizon to deploy in each of those end  
4 offices a new kind of call-sorting technology in place of the selective  
5 routing methodology Verizon uses today.

6  
7 Intrado's business plan is, therefore, to force Verizon to provide facilities  
8 and services that Intrado will market to PSAPs, but that Verizon would  
9 actually provide and pay for. This plan is rooted in Intrado's objective of  
10 shifting as much of its network costs to Verizon as it can. For Intrado's  
11 911 products to succeed in the marketplace, Intrado must convince its  
12 potential customers, the PSAPs, that Intrado's services are comparable  
13 in price and quality to Intrado's competitors' products. At the same time,  
14 Intrado is seeking to maximize its profit—an objective that will be easier  
15 to meet if Intrado can shift its costs to other carriers. To the extent  
16 Intrado's cost-shifting effort succeeds, it can sell its services more  
17 cheaply to PSAPs, thus gaining an unfair competitive advantage over its  
18 911 competitors.

19

20 **Q. DOES THE COMMISSION AGREE THAT INTRADO IS TRYING TO**  
21 **SHIFT ITS COSTS TO THE INCUMBENTS?**

22 A. Yes. In its Orders ruling that incumbents are not obligated to provide  
23 section 251(c) interconnection to Intrado, the Commission observed that  
24 Intrado's proposed interconnection arrangements "could present a  
25 serious disadvantage to [the ILEC], who would pay for Intrado Comm

1 establishing its 911/E911 service. We are concerned that the costs for  
2 interconnection would be borne by [the ILEC].” (*AT&T/Intrado Order* at  
3 7; *Embarq/Intrado Order* at 6.) This concern is well justified. Intrado is,  
4 indeed, trying to force Verizon to bear all the costs of Intrado’s  
5 interconnection.

6

7 **Q. DO INTRADO’S DEMANDS DESERVE SPECIAL CONSIDERATION**  
8 **BECAUSE IT PLANS TO PROVIDE E911 SERVICE TO PSAPS,**  
9 **RATHER THAN LOCAL TELEPHONE SERVICE TO BUSINESS AND**  
10 **RESIDENCE END USERS LIKE OTHER CLECS?**

11 A. No. Intrado is seeking interconnection with Verizon under section  
12 251(c) of the Act. If the Commission somehow decides that Verizon  
13 must provide Intrado section 251(c) interconnection even though it has  
14 already determined that Intrado is not entitled to such interconnection,  
15 then Verizon will provide Intrado the same interconnection  
16 arrangements it has with any other CLEC, in accordance with the  
17 requirements of the Act, the FCC’s implementing rules, and this  
18 Commission’s decisions. The same law applies to all CLECs seeking  
19 interconnection agreements. Contrary to Intrado’s arguments, there are  
20 no special interconnection rules just for 911 providers and this  
21 Commission cannot create any for any reason, least of all Intrado’s  
22 misguided policy arguments.

23

24 **Q. PLEASE DESCRIBE HOW THE E911 NETWORK WORKS TODAY.**

25 A. Exhibit (“Ex.”) 2 to this testimony depicts the current E911 network.

1 Verizon provides E911 services to counties pursuant to tariffs filed and  
2 approved by the Commission.<sup>8</sup> E911 service provides the counties'  
3 PSAPs with automatic number identification, or "ANI" (*i.e.*, the caller's  
4 telephone number) and automatic location identification "ALI" (*i.e.*, the  
5 caller's address) from the party making a 911 call, so that emergency  
6 responders can locate the caller even if he or she is incapacitated. The  
7 E911 services Verizon provides include trunking, routing and features  
8 that enable these local governmental authorities to provide E911 service  
9 to residents in their counties. Local governmental authorities maintain  
10 and operate 52 PSAPs throughout Verizon's service territory in Florida.

11

12 Verizon's wireline network includes a series of end office switches that  
13 serve Verizon's customers. Each end office switch is directly connected,  
14 by means of dedicated trunks, to a "mated" pair of special tandem  
15 switches, called selective routers. These selective routers aggregate 911  
16 calls from the end offices and send them over dedicated circuits to the  
17 appropriate PSAPs. When the end office switch forwards a call (and its  
18 ANI) to the selective router, that router communicates with one of two  
19 redundant "outboard" centralized storage and retrieval databases via  
20 dedicated diverse circuits to look up the caller's number in order to  
21 determine which PSAP is supposed to receive the call. This database  
22 associates every Verizon telephone number (and every telephone  
23 number of CLEC and other ILEC customers that access E911 via

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<sup>8</sup> See Verizon Florida Inc., General Services Tariff, Section A24, Emergency Reporting Services.

1 Verizon's selective router) with the emergency services number of the  
2 serving PSAP.

3

4 Verizon has two selective routers in Florida. These selective routers are  
5 mated, so if the circuits from one selective router to a PSAP are busy,  
6 that selective router will automatically transfer the call to the other (mated)  
7 selective router that has direct circuits to the PSAP.

8

9 When a PSAP receives a call, the receiving Verizon telephone system  
10 automatically sends a request to one of the two databases via dedicated,  
11 diverse digital circuits. The address or location information of the caller is  
12 returned to the PSAP, which sends the appropriate public safety  
13 personnel in response to the emergency call.

14

15 **Q. HOW DOES VERIZON HANDLE 911 CALLS THAT ARE EXCHANGED**  
16 **WITH OTHER CARRIERS?**

17 A. Other carriers, such as wireless carriers and CLECs, that do not serve  
18 PSAPs themselves still have end users who need to make emergency  
19 calls. These carriers generally have service areas that overlap Verizon's  
20 and they interconnect at Verizon's tandem/selective routers using their  
21 own circuits or circuits provided by Verizon or another carrier. These  
22 carriers deliver their customers' 911 calls to Verizon's selective router,  
23 where the previously-mentioned database look-up procedure determines  
24 which PSAP should receive the call. In the case of wireless calls, the  
25 database look-up is not performed on the caller's actual telephone

1 number, but on a pseudo-ANI assigned by the carrier or its contracted  
2 third party database provider in order to route the call to the appropriate  
3 PSAP.

4  
5 All 911 calls exchanged between Verizon and other carriers today must  
6 go through Verizon's selective routers to ensure routing to the appropriate  
7 PSAP. Verizon would expect to interconnect with Intrado the same way it  
8 does with all other carriers in Florida—that is, at Verizon's selective  
9 routers on Verizon's network.

10  
11 **B. SPECIFIC ISSUES**

12  
13 **ISSUE 3 WHERE SHOULD THE POINTS OF INTERCONNECTION BE**  
14 **LOCATED AND WHAT TERMS AND CONDITIONS SHOULD**  
15 **APPLY WITH REGARD TO INTERCONNECTION AND**  
16 **TRANSPORT OF TRAFFIC? (911 Att. §§ 1.3, 1.4, 1.5, 1.6.2,**  
17 **1.7.3, 2.3.1; Glossary §§ 2.63, 2.64, 2.67, 2.94, 2.95.)**

18  
19 **Q. WHAT IS A “POINT OF INTERCONNECTION?”**

20 A. Local exchange carriers must interconnect their networks so their  
21 customers can call each other. A point of interconnection (“POI”) is the  
22 location where that interconnection occurs—where one carrier's network  
23 ends and the other carrier's network begins. In other words, assuming  
24 that a CLEC has customers that place calls, when a CLEC customer  
25 calls a Verizon customer, the CLEC hands the call off to Verizon at a



1       POI on Verizon's network, and Verizon delivers the call from the POI to  
2       its customer. Similarly, when a Verizon customer calls the CLEC's  
3       customer, Verizon hands the call off to the CLEC at the same POI, and  
4       the CLEC delivers the call from the POI to its customer. Depending on  
5       their particular agreements, carriers may interconnect at one or a  
6       number of POIs. The originating carrier is financially responsible for  
7       delivering traffic to the POI. The terminating carrier is responsible for  
8       delivering that traffic from the POI to its customer.

9  
10       As noted, however, the scenario Intrado's Petition presents is not at all  
11       like the usual interconnection situation where a CLEC interconnects with  
12       an ILEC so the CLEC's customers can call the ILEC's customers and  
13       vice versa. As we explained earlier, and as the Commission observed  
14       in the *AT&T/Intrado* and *Embarq/Intrado Orders*, Intrado is seeking  
15       interconnection not to allow its own subscribers to intercommunicate  
16       with other subscribers in the local exchange, but to carry *other carriers'*  
17       end users' calls to Intrado-served PSAPs.

18  
19       **Q.     IS THERE LAW GOVERNING PLACEMENT OF THE POI?**

20       A.     Again, we are not lawyers, but the Act and the FCC's rules explicitly  
21       address placement of the POI, as the Commission can see for itself.  
22       Section 251, under which Intrado seeks interconnection, states that  
23       each incumbent local exchange carrier has the duty to provide  
24       "interconnection with the local exchange carrier's network...at any  
25       technically feasible point within the carrier's network." (47 U.S.C. §

1           251(c)(2)(B)). The FCC's rule implementing this provision, Rule 51.305,  
2           likewise makes clear that the incumbent LEC must provide  
3           interconnection with its network "[a]t any technically feasible point *within*  
4           *the incumbent LEC's network*" (emphasis added). Consistent with this  
5           law, Verizon proposes for Intrado to interconnect with Verizon at a  
6           technically feasible point of interconnection on Verizon's network within  
7           each LATA.

8

9   **Q.   HAS THIS COMMISSION RECOGNIZED THAT THE POI MUST BE**  
10   **ON VERIZON'S NETWORK?**

11   A.   Yes. The Commission correctly reads the plain terms of federal law just  
12       as Verizon does to require the POI to be within the incumbent's network.  
13       In its generic case to determine appropriate intercarrier compensation  
14       methods for exchange of traffic subject to section 251 of the Act, the  
15       Commission ruled that CLECs have the right to "designate single POIs  
16       for the mutual exchange of telecommunications traffic at any technically  
17       feasible location *on an incumbent's network within a LATA.*"<sup>9</sup> The  
18       Commission even granted Verizon's request for a more explicit  
19       statement that the POI must be "within the incumbent LEC's network":  
20       "the point of interconnection designated by the ALEC, to which the  
21       originating carrier has the responsibility for delivering its traffic, must be

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<sup>9</sup> *Investigation into the Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996, Docket No. 000075-TP, Order on Reciprocal Compensation, Order No. PSC-02-1248-FOF-TP, at 25 (Sept. 10, 2002) ("Generic Order") (emphasis added).*

1        *within the ILEC's network.*"<sup>10</sup> The Commission has consistently ruled in  
2        section 251 arbitrations "that *the POI must be placed on Verizon's*  
3        *network*" for the mutual exchange of traffic.<sup>11</sup>

4  
5        **Q. DOES INTRADO RECOGNIZE THE FEDERAL LAW REQUIRING**  
6        **POIS TO BE ON VERIZON'S NETWORK?**

7        A. Yes. Intrado's Petition for Arbitration (at 26) states: "Under the law,  
8        Intrado Comm has the right to choose the location of the point of  
9        interconnection *on the incumbent's network*, including the right to  
10       establish a single POI." Intrado even quotes this Commission's *Generic*  
11       *Order* language requiring the CLEC to designate single POIs for the  
12       mutual exchange of traffic on the ILEC's network. (Petition at 27 n. 74.)

13  
14       **Q. DOES INTRADO'S PROPOSAL COMPLY WITH THIS LAW?**

15       A. No. Despite Intrado's recognition that Intrado must choose a POI *on*  
16       *Verizon's network*, Intrado proposes to establish POIs on its own  
17       network. It openly asks the Commission to "deviat[e] from a single POI  
18       arrangement" when Intrado serves the PSAP. (Petition at 28.) Although

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<sup>10</sup> *Investigation into the Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996*, Docket No. 000075-TP, Order Denying Motions for Reconsideration, Order No. PSC-03-0059-FOF-TP, at 23 (Jan. 8, 2003) ("*Generic Recon. Order*") (emphasis added).

<sup>11</sup> *Petition by Global NAPS, Inc. for Arbitration Pursuant to 47 U.S.C. 252(b) of Interconnection Rates, Terms and conditions with Verizon Florida Inc.*, Final Order on Arbitration, Order No. PSC-03-0805-FOF-TP, at 8 (July 9, 2003) ("*GNAPS Order*") (emphasis added) and 9 ("GNAPs may designate a single physical point of interconnection per LATA on Verizon's network").

1 we are not lawyers, no elaborate legal interpretation is necessary to  
2 understand that “within the incumbent LEC’s network” in the FCC’s  
3 Rules and this Commission’s orders cannot also mean “outside the  
4 incumbent LEC’s network.”

5

6 **Q. WHAT, EXACTLY, DOES INTRADO PROPOSE?**

7 A. Where Verizon is the designated 911/E911 service provider, Intrado  
8 agrees to deliver its 911/E911 calls to Verizon’s selective router on  
9 Verizon’s network. (See Intrado’s proposed 911 Att., § 1.3.1.) This part  
10 of Intrado’s proposal correctly reflects the legal requirement for Intrado  
11 to establish a POI on Verizon’s network. However, it will have little  
12 practical effect because Intrado’s only customers will be PSAPs, and  
13 they will not be making calls to Verizon’s customers (except to reroute  
14 the occasional misdirected 911/E911 call from an Intrado-served PSAP  
15 to a Verizon-served PSAP). The parties’ dispute with respect to Issue 3  
16 is, rather, about where the POI will be when Intrado is the designated  
17 911 provider—that is, when Verizon’s end users make emergency calls  
18 to PSAPs served by Intrado. In that case, Intrado’s proposed language  
19 would require Verizon to build out to, and interconnect within, Intrado’s  
20 network at multiple points chosen by Intrado.<sup>12</sup> In other words, there  
21 would be no POI for the mutual exchange of traffic, but instead POIs on  
22 each party’s network. This is exactly the kind of arrangement the  
23 Commission rejected in its Orders we cited earlier.

---

<sup>12</sup> See Intrado’s proposed 911 Att., § 1.3.2. The attached Ex. 2 shows Intrado’s planned network.

1    **Q.    HAS INTRADO TOLD VERIZON WHERE ON INTRADO’S NETWORK**  
2    **ITS POIS WOULD BE?**

3    A.    No. Intrado refuses to specify where it would establish POIs when it  
4    serves a PSAP. Its contract language is broad enough to allow it to  
5    establish as many POIs as it wishes, at any points on its network that it  
6    wishes, whether inside or outside Florida. (See Intrado’s proposed 911  
7    Att., § 1.3.2.) In other words, Intrado’s proposed contract language  
8    gives no indication of where Intrado plans to require Verizon to deliver  
9    calls to Intrado, except that it will be at multiple POIs somewhere on  
10   Intrado’s network.

11

12   **Q.    HAS THE COMMISSION RAISED PUBLIC INTEREST CONCERNS**  
13   **ABOUT INTRADO’S PROPOSAL TO FORCE INCUMBENTS TO**  
14   **HAUL TRAFFIC TO INTRADO’S NETWORK?**

15   A.    Yes. Intrado’s proposal to force carriers to transport emergency calls  
16   across potentially great distances to POIs on Intrado’s network was one  
17   of the “Public Interest Considerations” the Commission raised in its  
18   Orders terminating the AT&T/Intrado and Embarq/Intrado arbitrations:  
19   “We are concerned that carriers may be forced to transport 911/E911  
20   calls over great distances, perhaps even out of state.” (*Embarq/Intrado*  
21   *Order*, at 7; *AT&T/Intrado Order*, at 8 (“We are concerned that carriers  
22   could potentially be transporting 911/E911 emergency calls up and  
23   down the state or perhaps even out of state.”)) So, even aside from the  
24   fatal legal flaw in Intrado’s section 251(c) interconnection request, the  
25   Commission did not accept Intrado’s claim that its interconnection

1 arrangement “promotes public safety.” (See Petition at 29.)

2

3 **Q. WHAT RATIONALE DOES INTRADO OFFER FOR TRYING TO**  
4 **FORCE VERIZON TO INTERCONNECT ON INTRADO’S NETWORK?**

5 A. Instead of citing any law, Intrado claims that it is only seeking to “mirror  
6 the type of interconnection arrangements” Verizon has with adjacent  
7 ILECs and with CLECs. (Petition at 28.)

8

9 **Q. DOES VERIZON HAVE ANY INTERCONNECTION ARRANGEMENTS**  
10 **LIKE THE ONES INTRADO IS PROPOSING HERE?**

11 A. No. Verizon has not implemented anywhere with any carrier the kind of  
12 interconnection arrangements Intrado seeks here. Intrado would not  
13 only force Verizon to interconnect with Intrado at POIs on Intrado’s  
14 network, but, as we explain in Issue 12, Intrado would dictate how  
15 Verizon engineers its own network to get 911 traffic to those POIs and  
16 would require Verizon to deploy a new call-sorting method to replace the  
17 selective routing used today.

18

19 **Q. WHAT ABOUT INTRADO’S CLAIM THAT IT IS ONLY SEEKING THE**  
20 **SAME KIND OF INTERCONNECTION VERIZON REQUIRES OF**  
21 **CLECS? (PETITION AT 28.)**

22 A. It is wrong. Intrado’s argument seems to be that Verizon requires  
23 CLECs to bring their traffic to a POI on Verizon’s network, so it is only  
24 fair to require Verizon to bring its traffic to a POI on the CLEC’s network.  
25 The problem with this *policy* argument is that it ignores the *law* stating

1       that the POI must be within the ILEC's network. That is why other  
2       CLECs take their traffic there, and that is why Intrado, like any other  
3       CLEC, must also interconnect with Verizon at a POI (or POIs) on  
4       Verizon's network. And aside from the governing law, Intrado's proposal  
5       is not, in fact, fair at all, because there is no reciprocity. As we have  
6       explained, the parties will not "exchange" end user traffic as Verizon  
7       does under its other interconnection agreements with CLECs. Under  
8       the proposed Verizon/Intrado agreement, traffic would flow one way—  
9       from Verizon to Intrado—and Verizon would pay to haul all of it under  
10      Intrado's proposal.

11

12   **Q.   IS INTRADO CORRECT THAT IT IS ASKING ONLY FOR THE**  
13       **"TRADITIONAL METHOD OF INTERCONNECTION" BETWEEN**  
14       **ADJACENT ILECS FOR 911 TRAFFIC? (PETITION AT 28.)**

15   **A.**   No. Adjacent ILECs typically exchange 911 calls at a meet point--that  
16       is, each party builds its network out to an agreed point at which they  
17       mutually exchange traffic. This usually entails a relatively limited build-  
18       out from Verizon's network. Moreover, because the facilities that are  
19       constructed by Verizon carry all sorts of traffic between Verizon and the  
20       other carrier (and not just 911 calls), the cost and administrative burdens  
21       associated with those facilities are not restricted to 911 calls but are  
22       spread over the many different types of traffic Verizon exchanges with  
23       the other carrier.

24

25

1 Adjacent ILEC meet-point arrangements are, therefore, very different  
2 from Intrado's proposal, under which traffic would flow one way, from  
3 Verizon to Intrado, and Verizon would bear the entire cost of getting it  
4 from Verizon's network to potentially very distant POIs on Intrado's  
5 network. In short, in the typical meet-point arrangement, one carrier is  
6 not shifting its costs to the other, as Intrado is trying to do here with  
7 Verizon.

8  
9 Moreover, the arrangements Verizon has with adjacent ILECs for the  
10 exchange of 911 traffic are not section 251 interconnection agreements,  
11 which is what Intrado seeks here. Such arrangements, therefore, could  
12 not guide the Commission's resolution of the parties' disputes about  
13 their rights and obligations under section 251(c) (in the unlikely event  
14 the Commission determines that Intrado has a right to section 251(c)  
15 interconnection).

16  
17 **Q. HAS VERIZON OFFERED INTRADO MEET-POINT ARRANGEMENTS?**

18 A. Yes. Meet-point arrangements are a standard term in Verizon's section  
19 251(c) interconnection contracts, but Intrado rejected the meet-point  
20 approach. It continues to insist that Verizon build out all the way to  
21 Intrado's network, rather than to a reasonable meet-point, which would  
22 not include construction of facilities outside of Verizon's service territory  
23 or across LATA boundaries.

24

25



1   **Q.    CAN THE COMMISSION ADOPT INTRADO’S PROPOSAL BASED**  
2       **ON ITS CLAIM THAT IT IS THE “MOST EFFICIENT, COST-**  
3       **EFFECTIVE   PHYSICAL   ARCHITECTURE   ARRANGEMENT”?**  
4       **(PETITION AT 26.)**

5   A.   No.  Again, Intrado’s *policy* arguments about the merits of its  
6       interconnection architecture are irrelevant; they cannot override the *law*  
7       requiring the POI(s) to be within Verizon’s network.  In any event,  
8       Intrado’s *policy* claims are wrong.  Intrado’s network architecture  
9       proposal is certainly more “efficient and effective” for Intrado, but it is  
10      grossly inefficient for Verizon and other carriers, which will have to bear  
11      the expense of Intrado’s entirely new network configuration, as we will  
12      explain in more detail in response to Issue 12.

13

14   **Q.    HOW SHOULD THE COMMISSION RESOLVE ISSUE 3?**

15   A.   If the Commission goes forward with this arbitration, it should reject  
16       Intrado’s unlawful proposal to require POIs on its own network and  
17       instead approve Verizon’s proposed sections 1.3 and 1.4 of the 911  
18       Attachment.  The law is unambiguous that Intrado must select a POI  
19       within Verizon’s network for mutual exchange of traffic, and Verizon is  
20       not responsible for transporting its traffic beyond that POI.  (See *Generic*  
21       *Order*, at 25; *Generic Recon. Order*, at 20.)  As the Arbitrator in  
22       Verizon’s arbitration with Intrado in West Virginia found, “this issue is  
23       quite simple to decide.  The law is clear and unequivocal” that the POI

1 must be on Verizon's network.<sup>13</sup> "Intrado's arguments are ludicrous on  
2 their face." (*Id.* at 13.) The Massachusetts Department of  
3 Telecommunications and Cable ("DTC"), likewise found: "Contrary to  
4 Intrado's assertions, there is no ambiguity within [§251(c)(2)(B)] and  
5 implementing rules, which require that the POI must be within the  
6 incumbent's network, unless the parties agree otherwise."<sup>14</sup>

7  
8 The legal issue with respect to POI placement is driving Intrado's entire  
9 network architecture proposal (and other disputed issues, as well). As  
10 Verizon points out in its positions on other issues, Intrado's proposals  
11 and related language for resolving a number of issues in the arbitration  
12 incorrectly assume that Verizon must interconnect with Intrado on  
13 Intrado's network. Once the Commission rejects Intrado's unlawful  
14 position on Issue 3, many of the other issues in this arbitration will be  
15 resolved.

16  
17 **ISSUE 4 (A) SHOULD THE PARTIES IMPLEMENT INTER-SELECTIVE**  
18 **ROUTER TRUNKING?**

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<sup>13</sup> *Intrado Comm., Inc. and Verizon West Virginia Inc.*, Petition for Arbitration Filed Pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, Case No. 08-0298-T-PC, Arbitration Award, at 12-13 (Nov. 14, 2008) ("W.V. Award") (attached as Ex. 4), affirmed by Commission Order dated Dec. 16, 2008 (attached as Ex. 5) ("W.V. Order").

<sup>14</sup> *Petition for Arbitration of an Interconnection Agreement Between Intrado Comm. Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts*, Arbitration Order, DTC 08-09 ("Mass Order") (May 8, 2009) (attached as Ex. 6), at 33.

1                   **(B) IF SO, WHAT TERMS AND CONDITIONS SHOULD**  
2                   **GOVERN PSAP-TO-PSAP CALL TRANSFERS USING INTER-**  
3                   **SELECTIVE ROUTER TRUNKING?**  
4                   **(911 Att. § 1.4; Glossary §§ 2.6, 2.63, 2.64, 2.67, 2.94, and**  
5                   **2.95.)**

6

7   **Q.   DO THE PARTIES DISPUTE WHETHER INTER-SELECTIVE ROUTER**  
8   **TRUNKING SHOULD BE USED?**

9   A.   No.   Inter-selective router trunking is trunking between the parties'  
10       respective selective routers.   Such trunking allows transfer of calls  
11       between PSAPs when calls are initially directed to the wrong PSAP.  
12       This may occur, for example, in the case of a wireless call because of a  
13       lack of identification of the caller's exact location.

14

15       Verizon does not oppose inter-selective-router trunking.   In fact,  
16       Verizon's position in this arbitration is that interconnection between  
17       Verizon and Intrado for *all* 911 calls can and should be accomplished by  
18       means of connecting using inter-selective router trunks (instead of  
19       through Intrado's proposal for Verizon to forego use of its selective  
20       routers and build direct trunks to Intrado; see Issue 12).   However, the  
21       details of Intrado's specific inter-selective routing proposal are  
22       unacceptable for a number of reasons.

23

24

25

1   **Q.   PLEASE LIST THE REASONS WHY THE COMMISSION SHOULD**  
2       **REJECT INTRADO'S SPECIFIC INTER-SELECTIVE-ROUTING**  
3       **PROPOSAL.**

4   A.   First, and most fundamentally, Intrado's inter-selective-router trunking  
5       proposal assumes that Intrado may force Verizon to deliver 911 calls  
6       being transferred from a Verizon-served PSAP to an Intrado-served  
7       PSAP *at a POI on Intrado's network*. As Verizon explained in response  
8       to Issue 3, Verizon cannot lawfully be forced to build out its network to a  
9       POI on Intrado's network. Therefore, the Commission must reject  
10      Intrado's proposal and associated language for Issue 4, just as it must  
11      for Issue 3.

12

13      Second, because Intrado proposes to designate POIs on its own  
14      network when it serves a PSAP in a particular area, all of the inter-  
15      selective router trunking between Verizon's selective routers and  
16      Intrado's selective routers for misdirected calls being transferred from a  
17      Verizon-served PSAP to an Intrado-served PSAP would be on Verizon's  
18      side of the POI. This means that Verizon would have to pay for virtually  
19      all of the trunking between Verizon's and Intrado's selective routers, as  
20      well as any other activities necessary to implement Intrado's particular  
21      method for selective router-to-selective router transfers. (These  
22      obligations would be in addition to Intrado's proposal, discussed in  
23      conjunction with Issue 12, to make Verizon pay for direct trunks from  
24      Verizon's end offices to Intrado's selective routers.) Intrado's proposal  
25      is, therefore, inequitable and anticompetitive (as well as unlawful,

1           because it requires POIs on Intrado's own network). Intrado is once  
2           again seeking to make Verizon pay to implement new capabilities that  
3           Intrado can then market to PSAPs.

4  
5           Third, the PSAPs served by Verizon and Intrado must *agree* to transfer  
6           misdirected 911 calls between them before such transfers can occur.  
7           Intrado argues that "[t]he interoperability currently available to ILECs  
8           providing 911/E911 services must be made available to Intrado Comm  
9           when it offers a competing 911/E911 service product." (Petition at 30.)  
10          It is not clear what Intrado means, but to the extent it is saying that  
11          PSAPs should have the same arrangements that they do today to  
12          transfer calls between one ILEC-served PSAP and another, that is not a  
13          matter for Verizon's and Intrado's interconnection agreement. The  
14          agreement between Verizon and Intrado cannot impose upon PSAPs  
15          specific interoperability provisions without their consent, as Intrado  
16          seeks to do. Verizon does not seek to dictate PSAPs' call transfer  
17          arrangements, but rather, where PSAPs have agreed to transfer calls  
18          between themselves, Verizon will work with Intrado to establish  
19          arrangements for these transfers. An interconnection agreement  
20          cannot, however, purport to control the conduct of third parties or the  
21          services that can be sold to them.

22  
23          Fourth, Intrado's proposed language specifying particular activities to be  
24          undertaken by the parties in support of Intrado's proposed call transfer  
25          methodology would require the parties to maintain inter-911-selective

1 router dial plans. (Intrado proposed 911 Att., § 1.4.4.) Verizon agrees  
2 that current dial plans are necessary to ensure proper transfers of calls  
3 between companies' selective routers, and Verizon is willing to provide  
4 this information to Intrado just as it does to other providers. But Intrado  
5 seeks an excessive level of dial-plan detail in the interconnection  
6 agreement that is not customary, appropriate, or workable, and that is  
7 better left to the implementation efforts that are ordinarily undertaken by  
8 interconnecting carriers.

9  
10 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 4?**

11 A. The Commission should reject Intrado's language related to Issue 4 for  
12 the same reason it should reject Intrado's language related to Issue 3—  
13 that is, it incorrectly assumes that Verizon must interconnect on  
14 Intrado's network. Intrado's language on "interoperability" and dial plans  
15 is, in addition, unacceptable, because it would impose other  
16 unreasonable and unworkable obligations upon Verizon. The  
17 Commission should instead direct the parties to incorporate into their  
18 interconnection agreement Verizon's proposed §1.4 of the 911  
19 Attachment.

20  
21 **ISSUE 6 SHOULD REQUIREMENTS BE INCLUDED IN THE ICA ON A**  
22 **RECIPROCAL BASIS FOR FORECASTING? (911 Att. § 1.6.)**

1   **Q.    WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

2    A.    The disputed language for this issue addresses forecasting of trunks for  
3           traffic exchanged between the parties' networks. Verizon's language for  
4           section 1.6.2 of the 911 Attachment requires Intrado to provide a semi-  
5           annual forecast of the number of trunks Verizon will need to provide for  
6           the exchange of traffic with Intrado. Intrado proposes to make this  
7           language reciprocal, so that Verizon would need to provide forecasts of  
8           the number of trunks Intrado would need to provide for the exchange of  
9           traffic with Verizon.

10

11   **Q.    WHY SHOULD THE COMMISSION REJECT INTRADO'S**  
12       **"RECIPROCAL" TRUNK FORECASTING REQUIREMENT?**

13   A.    Intrado's proposal for so-called "reciprocal forecasting obligations" would  
14           serve no useful purpose and would impose an unnecessary burden on  
15           Verizon. Contrary to Intrado's characterization, Intrado and Verizon  
16           would not be "co-carriers"<sup>15</sup> in the sense of exchanging local end user  
17           traffic like other CLECs and ILECs; traffic will flow virtually all one way,  
18           from Verizon to Intrado. The number of trunks necessary for traffic  
19           flowing from Verizon to Intrado will depend on Intrado's success in the  
20           market, which is something completely outside of Verizon's control and  
21           ability to predict. In addition, to the extent Intrado signs up PSAPs as  
22           customers, those PSAPS will have the best knowledge of call volumes  
23           from Verizon's serving area to the PSAP.

---

<sup>15</sup> Disputed Issues Matrix, Intrado Position on Issue 6 (filed Sept. 8, 2008).

1   **Q.   HAVE THE PARTIES AGREED ON ANY FORECASTING**  
2   **LANGUAGE?**

3   A.   Yes. To the extent Intrado has a legitimate need for forecasts, that  
4       need will be fully met through language the parties have already agreed  
5       upon.

6       The agreed-upon language in 911 Attachment section 1.5.5, states:

7               Upon request by either Party, the Parties shall meet  
8               to: (a) review traffic and usage data on trunk  
9               groups; and (b) determine whether the Parties  
10              should establish new trunk groups, augment  
11              existing trunk groups, or disconnect existing trunks.

12

13       This language, which requires Intrado and Verizon to cooperate in  
14       updating arrangements for traffic exchange, will assure that Intrado will  
15       receive the type and quantity of information it needs to assure adequate  
16       trunking between the parties' networks.

17

18   **Q.   HOW SHOULD THE COMMISSION DECIDE ISSUE 6?**

19   A.   The Commission should delete Intrado's proposed forecasting language  
20       in section 1.6 of the 911 Attachment.

21

22   **ISSUE 9**    **WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW**  
23               **THE PARTIES WILL INITIATE INTERCONNECTION? (911 Att.**  
24               **§ 1.5)**

25



1   **Q.    WHAT ARE THE AREAS OF DISPUTE BETWEEN INTRADO AND**  
2   **VERIZON WITH RESPECT TO THIS ISSUE?**

3   A.    This issue is related to Issue 3, whether Verizon can be forced to  
4       interconnect with Intrado at POIs on Intrado's network.  Verizon's  
5       proposed language for Section 1.5 of the 911 Attachment correctly  
6       recognizes that interconnection will occur on Verizon's network, and that  
7       certain steps need to be taken to initiate service at the POI(s) on  
8       Verizon's network.  Intrado's competing language, however, assumes  
9       that Intrado may require as many POIs on its network as it wishes and  
10      that Verizon will provide Intrado information about those interconnection  
11      arrangements; and, further, that there will be a need, each time Intrado  
12      signs up a new PSAP customer, for Verizon to establish new direct  
13      trunks from Verizon's end offices to a POI on Intrado's network (*see also*  
14      Verizon's response to Issue 12).

15  
16   **Q.    WHY    SHOULD    THE    COMMISSION    REJECT    INTRADO'S**  
17   **LANGUAGE?**

18   A.    First, it should be rejected because it reflects the erroneous notion that  
19       Verizon must interconnect with Intrado on Intrado's network.  Second,  
20       when Intrado interconnects with Verizon on Verizon's network (as it  
21       must) and Verizon routes its end users' 911 calls to Intrado through  
22       Verizon's 911 selective routers (*see* Verizon's response to Issue 12),  
23       then, while Intrado will have the right to interconnect at as many  
24       technically feasible points on Verizon's network as Intrado wishes (either  
25       when interconnection is initially established in a LATA or at a later time),

1 as a practical matter Intrado will only need to interconnect to Verizon's  
2 network at the offices where Verizon's 911 selective routers are located.  
3 These interconnections would probably be established by Intrado when  
4 it initially interconnects with Verizon. Thereafter, changes to these  
5 interconnection arrangements would be managed under 911 Attachment  
6 Section 1.5.5. If Intrado for some reason needs additional  
7 interconnection arrangements in a LATA, it can order them from Verizon  
8 pursuant to Verizon's generally established business practices for CLEC  
9 interconnection. Therefore, Intrado's specific language on this point is  
10 unnecessary in the interconnection agreement.

11

12 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9?**

13 A. Once the Commission finds that Verizon cannot be required to  
14 interconnect on Intrado's network, Intrado's proposed language in §§  
15 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment would be deleted in  
16 favor of Verizon's proposed language in those same sections, which  
17 correctly describes how Intrado can initiate interconnection at technically  
18 feasible POIs on Verizon's network.

19

20 **ISSUE 12 HOW WILL THE PARTIES ROUTE 911/E911 CALLS TO EACH**  
21 **OTHER? (911 Att. §§ 1.3, 1.4, 1.7.3; Glossary §§ 2.6, 2.64,**  
22 **2.94, 2.95.)**

23

24 **Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 12?**

25 A. Issue 12 is another issue closely linked to Issue 3. As explained in

1 Issue 3, Intrado proposes for Verizon to interconnect with Intrado at  
2 POIs on Intrado's network. It follows from that proposal that Verizon  
3 would have to route its end users' 911 calls to those POIs on Intrado's  
4 network. Issue 12 addresses Intrado's proposal to dictate how Verizon  
5 would route its end users' calls to Intrado. Issues 3 and 12 together  
6 constitute most of Intrado's network architecture proposal.

7  
8 Intrado described its network architecture proposal in its Petition in only  
9 the vaguest terms, probably because it is patently unreasonable.  
10 Intrado states that it has modified the interconnection agreement  
11 "language to reflect how Intrado Comm will route 911/E911 Calls to  
12 Verizon's Selective Router/E-911 Tandem when Verizon is the  
13 designated provider of 911/E-911 Service in a particular geographic  
14 area and how Verizon will route 911/E911 Calls to Intrado Comm's  
15 network when Intrado Comm is the designated provider of 911/E-911  
16 Service in a particular geographic area." (Petition at 39-40.) What  
17 Intrado's proposal would actually require is for Verizon to buy or build a  
18 minimum of two new dedicated 911 trunks from each end office (Verizon  
19 has 91 end offices) in areas where Intrado is the designated 911 service  
20 provider to an unspecified number of POIs somewhere on Intrado's  
21 network. (Intrado's proposed 911 Att., § 1.34(ii).) Intrado's proposal for  
22 direct end office trunking means that calls would no longer be  
23 aggregated at Verizon's selective routers, which today sort calls to the  
24 appropriate PSAP. But because Verizon's end offices do not have this  
25 call-sorting capability, some kind of new call-sorting method would have

1 to be developed and deployed in those end offices. In other states,  
2 Intrado recommended that Verizon deploy what Intrado calls “line  
3 attribute routing” to get calls to Intrado-served PSAPs. Intrado  
4 proposes for Verizon (and, as explained below, other carriers) to bear  
5 the entire cost of Intrado’s proposed network architecture.

6

7 **Q. HOW DOES VERIZON PROPOSE TO ROUTE 911 CALLS FROM ITS**  
8 **CUSTOMERS TO INTRADO-SERVED PSAPS?**

9 A. In situations where Intrado serves a PSAP, Verizon would route calls  
10 from Verizon’s customers to Intrado in the same way Verizon routes  
11 calls to a PSAP today. An E911 call from a Verizon end user would  
12 travel to Verizon’s selective router over Verizon’s existing trunks and  
13 then the selective router would route the call to a POI on Verizon’s  
14 network, from which Intrado will carry the call to its selective router.

15

16 **Q. WHAT IS WRONG WITH INTRADO’S PROPOSAL?**

17 A. First, as discussed in Issue 3, Intrado’s network architecture proposal  
18 assumes that Intrado has the right to designate points of interconnection  
19 on Intrado’s own network, which it does not. For this reason alone, the  
20 Commission must reject all of it, including the call routing proposal, as  
21 the West Virginia and Massachusetts commissions did. (*Mass. Order* at  
22 37; *W.V. Order* at 3.)

23

24 Second, Intrado’s proposal for Verizon to install direct trunks from its  
25 end offices to POIs on Intrado’s network would dictate how Verizon

1 designs its own network for the purpose of routing calls on Verizon's  
2 side of the POI. There is nothing that would justify one carrier dictating  
3 to another carrier how it transports traffic *within its own network*.

4  
5 Third, Intrado's direct trunking proposal would also dictate how *other*  
6 carriers design their networks, by requiring them to also direct trunk to  
7 Intrado's network, rather than routing their traffic through Verizon's  
8 selective routers, as most CLECs and wireless carriers do today.

9  
10 Fourth, Intrado's proposal would compromise the reliability of the 911  
11 system. Intrado's direct end office trunking approach will not work  
12 without implementation of some kind of new call-sorting methodology in  
13 Verizon's end offices. But Verizon's end offices do not have call-sorting  
14 capability, which resides exclusively in the selective routers. That  
15 means that Verizon would have to develop and implement some kind of  
16 new routing feature in all of its end offices in areas with Intrado-served  
17 PSAPs. Verizon is not aware of any alternative to selective routing in  
18 use today, or even in development. The line attribute routing concept  
19 Intrado has proposed before (and that it may propose again here) has  
20 not been implemented anywhere and is in all material respects like the  
21 "class marking approach" that is both obsolete and not an accepted  
22 methodology for routing 911 calls. In addition, as reflected by the  
23 Commission's decisions rejecting Intrado's positions in the AT&T and  
24 Embarq proceedings, Intrado has no way to compel its network  
25 architecture proposal on other carriers that operate in Florida. If Intrado

1 cannot force its proposed architecture on other carriers, then there is no  
2 assurance these carriers' end users' calls will reach the appropriate  
3 PSAP.

4  
5 All of these specific issues with Intrado's proposal are part of the  
6 overarching problem with that proposal—that is, it would require Verizon  
7 (and other carriers) to essentially build a new 911 network just for  
8 Intrado. Again, Intrado has not told Verizon how many POIs it plans to  
9 establish or where on Intrado's network they would be, so Intrado's plan  
10 for Verizon to haul 911 traffic to potentially very distant POIs gives it  
11 *carte blanche* to impose unknown and unlimited costs upon Verizon.  
12 Even if Intrado's proposal were lawful (and it is not), we understand that  
13 the FCC requires carriers to pay the ILEC for any expensive forms of  
14 interconnection it requests, as Verizon will explain in its brief.<sup>16</sup>

15  
16 **Q. PLEASE ELABORATE ON HOW INTRADO'S NETWORK**  
17 **ARCHITECTURE PROPOSAL WOULD AFFECT CARRIERS OTHER**  
18 **THAN VERIZON.**

19 A. CLECs and wireless carriers today typically choose to send their 911  
20 calls to Verizon's selective routers for routing to PSAPs. If Intrado's  
21 direct trunking plan is approved, Verizon would no longer be able to  
22 transport 911 traffic from other carriers to Intrado-served PSAPs, so

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<sup>16</sup> *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*First Report and Order*"), at ¶¶ 199, 200, 209, 225 and 552.

1        those carriers would have no choice but to lease or build their own  
2        facilities to directly connect on Intrado's network—thereby increasing  
3        their costs--or leave their customers without access to 911 service.  
4        Neither result is in the public interest. And we doubt that these other  
5        carriers would be eager to raise their own costs for Intrado's benefit by  
6        establishing new direct trunks to Intrado. In the absence of agreement  
7        with Intrado, it appears the 911 calls of these carriers' customers would  
8        not reach Intrado-served PSAPs. Intrado has not addressed this very  
9        serious public safety concern, which alone merits rejection of its  
10       proposal.

11

12       **Q. DOES INTRADO HAVE THE RIGHT TO STOP VERIZON FROM**  
13       **TRANSPORTING CALLS FROM OTHER CARRIERS TO INTRADO-**  
14       **SERVED PSAPS?**

15       A. No. This legal issue will be addressed in greater detail in Verizon's  
16       briefs. Today, virtually all CLECs and wireless carriers provide their  
17       customers access to 911 services by interconnecting at the ILECs'  
18       selective routers. Intrado's proposal would remove this option for  
19       CLECs, disrupt Verizon's agreements reflecting this option.

20

21       **Q. DOES INTRADO HAVE ANY PLAN TO ASSURE 911 CALLS GET TO**  
22       **THE RIGHT PSAP IF ITS DIRECT TRUNKING PROPOSAL IS**  
23       **ADOPTED?**

24       A. No. As we have explained, Verizon's end offices cannot perform the call  
25       sorting necessary to send 911 calls to the appropriate PSAP. This call-

1        sorting capability instead resides in Verizon's selective routers. But  
2        because Intrado's direct trunking proposal would bypass Verizon's  
3        selective routers, someone would have to come up with another way to  
4        try to assure calls are sorted to the right PSAP. Intrado has, therefore,  
5        proposed for Verizon to deploy—and to pay for—new call-sorting  
6        capability in Verizon's end office switches. Intrado's demand for Verizon  
7        to provide direct trunks from Verizon's end offices to POIs on Intrado's  
8        network thus goes hand-in-hand with a new call routing methodology yet  
9        to be developed. There will be no reason for the Commission to  
10       consider any new call sorting alternative to Verizon's existing selective  
11       routers if it rejects (as it should) Intrado's direct trunking proposal.

12

13    **Q.    DOES INTRADO'S CONTRACT LANGUAGE REQUIRE LINE**  
14    **ATTRIBUTE ROUTING?**

15    A.    No, Intrado's draft language does not require any specific call routing  
16       method, but Intrado nonetheless recognizes that its direct trunking  
17       proposal will not work without some kind of new call routing method to  
18       replace selective routing. Therefore, when Intrado began to litigate  
19       these arbitrations around the country, it unambiguously proposed line  
20       attribute routing as part of its direct trunking proposal. Line attribute  
21       routing, however, is not an industry standard, has never been used  
22       anywhere and is, in fact, just a concept dreamed up by Intrado to try to  
23       convince public utilities commissions that Intrado's direct trunking  
24       approach will work. As 911 entities and commissions have become  
25       aware of Intrado's line attribute concept, it has generated serious



1 concerns. In Texas, for example, a coalition of state and local 911  
2 agencies and associations were given special permission to file position  
3 statements in Intrado's arbitrations with Verizon and AT&T, in order to  
4 help "ensure that public safety interests are not compromised via either  
5 a negotiated or arbitrated interconnection agreement between the  
6 Parties." The Texas 911 coalition was particularly concerned about  
7 Intrado's line attribute routing proposal, explaining that granting that  
8 proposal "would be contrary to law, the public interest, public safety, and  
9 be null and void as a matter of law" in Texas.<sup>17</sup> The West Virginia  
10 Enhanced 9-1-1 Council, in a letter to the Commission in Verizon's  
11 arbitration with Intrado, also expressed concern about Intrado's line  
12 attribute routing proposal: "The 9-1-1 Council is concerned about the  
13 reliability and effectiveness of this method of emergency call delivery."<sup>18</sup>  
14 And the Ohio Commission rejected Intrado's direct trunking proposal in  
15 Intrado's arbitrations with Embarq and Cincinnati Bell, citing the lack of  
16 any law to support it, as well as "conflicting evidence concerning the  
17 reliability and expense of implementing such an arrangement."<sup>19</sup>

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<sup>17</sup> *Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Docket. No. 36185, Unopposed Joint Motion of the Tex. Comm'n on State Emergency Comm., The Texas 9-1-1 Alliance, and the Municipal Emergency Comm. Districts Ass'n for Leave to File a Statement of Position (filed Oct. 17, 2008) ("*Texas 911 Alliance Motion*") (attached as Ex. 7), at 1-2.

<sup>18</sup> Letter from Robert Hoge, Secretary, West Virginia Enhanced 9-1-1 Council, to Sandra Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (dated Nov. 7, 2008) ("*WV 911 Council Letter*") (attached as Ex. 8), at 1.

<sup>19</sup> *Petition of Intrado Comm., Inc. for Arbitration of Interconnection*

1        These concerns have prompted Intrado to adopt more of a soft-sell  
2        approach to line attribute routing, in an effort to try to salvage its direct  
3        trunking proposal. Instead of asking commissions to require Verizon to  
4        implement line attribute routing, Intrado is now “offering” or  
5        “recommending” it as the routing component of its direct trunking  
6        proposal. This tack does not make Intrado’s case any more credible.  
7        Whether Intrado proposes line attribute routing or nothing at all for call  
8        routing along with its direct trunking proposal, there is no existing,  
9        reliable call-sorting alternative to selective routing.

10

11    **Q.    DID INTRADO PROPOSE LINE ATTRIBUTE ROUTING IN ITS**  
12    **PETITION FOR ARBITRATION HERE?**

13    A.    As we pointed out, Intrado’s Petition is vague on the details of its direct  
14        trunking proposal, and its Petition was silent as to how Verizon would be  
15        expected to route calls to the right PSAP if Intrado’s direct trunking  
16        proposal is adopted. Intrado may not propose anything in its testimony,  
17        either. In the event that Intrado supports line attribute routing here, as it

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*Rates, Terms, and Conditions and Related arrangements with Embarq, Arbitration Award, Case No. 07-1216-TP-ARB, Arbitration Award (“Ohio Intrado/Embarq Order”), at 33 (Sept. 24, 2008) (attached as Ex. 9); Petition of Intrado Comm., Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co., Case No. 08-537-TP-ARB, Arbitration Award (“Ohio Intrado/CBT Order”), at 15 (Oct. 8, 2008) (Attached as Ex. 10). The Ohio Commission decided particular arbitration issues under section 251(a) in Intrado’s arbitrations with Embarq and Cincinnati Bell, but neither Verizon nor Intrado seek arbitration under section 251(a) in this case, and Verizon is not required and does not agree to arbitrate commercial agreement terms in this arbitration.*

1 has elsewhere, we will address it in rebuttal testimony.

2

3 **Q. IS THE WAY THAT VERIZON ROUTES 911 CALLS TODAY VIA**  
4 **SELECTIVE ROUTERS THE INDUSTRY STANDARD?**

5 A. Yes. Using selective routers is efficient because it enables a company  
6 to aggregate and route calls to multiple PSAPs through a single switch.  
7 Conversely, it is not efficient to build multiple trunks from multiple end  
8 offices to multiple selective routers, as Intrado's proposal would require.  
9 The industry standard is to concentrate trunks from end offices at a "911  
10 tandem" or selective router from which a single trunk group serves the  
11 PSAP. This type of most-efficient configuration is used throughout the  
12 country.<sup>20</sup>

13

14 **Q. THEN HOW DOES INTRADO ATTEMPT TO JUSTIFY ITS**  
15 **PROPOSAL?**

16 A. Instead of citing any law, Intrado suggests it is seeking the same type of  
17 interconnection architecture and arrangements that Verizon has with  
18 other ILECs and CLECs. (Petition, at 28.)

19

20 **Q. IS THAT TRUE?**

---

<sup>20</sup> See National Emergency Number Association ("NENA") Technical Development Conference 9-1-1 Tutorial ("NENA Tutorial"), at 5. This tutorial can be accessed at the following website: <http://www.nena.org/florida/Directory/911Tutorial%20Study%20Guide.pdf>

1 A. No. As we discussed under Issue 3, interconnection with Verizon's  
2 network by CLECs and other ILECs is fundamentally different from  
3 Intrado's proposed method of "interconnection" with Verizon's network.  
4 Intrado's proposed network architecture is completely novel and no  
5 ILEC, to Verizon's knowledge, has been forced to implement it  
6 anywhere—indeed, no one has ever asked Verizon for it. Intrado's  
7 attempt to defend its network architecture proposal by claiming that it's  
8 just the same thing Verizon requires of other carriers is wrong. Again,  
9 when Verizon exchanges 911 traffic with other ILECs, it is through  
10 reasonable meet-point arrangements that do not require Verizon to haul  
11 its traffic to distant points on the other party's network or to forego use of  
12 its selective routers. And when Verizon exchanges traffic with CLECs  
13 through section 251(c) interconnection agreements—like the one Intrado  
14 is seeking here—those CLECs bring their traffic to Verizon's network  
15 because federal law requires them to interconnect within the ILEC's  
16 network.

17

18 **Q. HAVE ANY OTHER COMMISSIONS RULED ON INTRADO'S DIRECT**  
19 **TRUNKING PROPOSAL?**

20 A. To Verizon's knowledge, only the Massachusetts, Ohio and West  
21 Virginia Commissions have ruled on Intrado's direct trunking proposal,  
22 and they rejected it. The West Virginia Arbitrator ruled that "Intrado's  
23 proposals for direct trunking, line attribute routing and the elimination of  
24 the use of Verizon's selective routers are all rejected, since, with the  
25 establishment of the point of interconnection on Verizon's network,

1 those requests by Intrado intrude upon Verizon's right to engineer its  
2 own system in the manner that it deems best." (*W.V. Award*, at 20;  
3 *W.V. Order*, at 3 ("the arbitrator properly determined that Verizon may  
4 organize its call delivery to the POI as it sees fit and properly rejected  
5 the Intrado demand for dedicated trunk lines from every end office to the  
6 Intrado network.").)

7  
8 In Intrado's arbitrations with Embarq and Cincinnati Bell Telephone in  
9 Ohio, the Ohio Commission ruled that the ILECs were "not required to  
10 utilize direct end office trunking in conjunction with class marking/line  
11 attribute routing." The Ohio Commission pointed out that there was no  
12 FCC requirement for direct trunking and cited concerns about reliability  
13 and expense as additional reasons for rejecting Intrado's direct  
14 trunking/line attribute routing proposal. (*Ohio Intrado/Embarq Order*, at  
15 33; *Ohio Intrado/CBT Order*, at 15).

16  
17 In Intrado's arbitration with Verizon in Massachusetts, the DTC rejected  
18 Intrado's call routing arrangements along with the rest of its network  
19 architecture proposal, because the entire thing is based on the  
20 erroneous notion that Verizon must interconnect on Intrado's network.  
21 (*Mass. Order*, at 33-34.)

22  
23 **Q. HOW SHOULD ISSUE 12 BE RESOLVED?**

24 A. The Commission should reject Intrado's proposals, which have no basis  
25 in law or sound policy. Specifically, the Commission should find that

1 Verizon is not required to: (1) build facilities to and interconnect at POIs  
2 on Intrado's network; (2) install direct trunking from each of its end  
3 offices to POIs on Intrado's network; (3) implement line attribute routing  
4 or any other new call routing methodology to go along with direct  
5 trunking; and (4) send all 911 calls from split wire centers to Intrado,  
6 even where 911 calls are destined for Verizon-served PSAPs. The  
7 Commission should reject Intrado's language related to these proposals  
8 and instead direct the parties to incorporate into their interconnection  
9 agreement the language Verizon proposes for sections 1.3, 1.4, and  
10 1.7.3 of the 911 Attachment, and sections 2.6, 2.64, 2.94 and 2.95 of the  
11 Glossary.

12  
13 **ISSUE 13 SHOULD THE ICA INCLUDE A DESCRIPTION OF VERIZON'S**  
14 **911/E-911 FACILITIES? IF SO, WHAT IS THE APPROPRIATE**  
15 **DESCRIPTION? (911 Att. § 1.1.1)**  
16

17 **Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

18 A. Verizon does not oppose listing its 911 network components in the  
19 interconnection agreement. Rather, Verizon opposes Intrado's  
20 language inaccurately describing those components. Intrado's language  
21 with respect to Verizon's "Tandem/Selective Router(s)" is deliberately  
22 vague as to the function of these routers—which Verizon's language  
23 makes clear is to route 911 calls between Verizon's end offices and the  
24 PSAPs--no doubt to advance Intrado's objective of forcing Verizon to  
25 bypass its own selective routers and implement some new form of call

1 routing. In addition, Intrado's language does not reflect the location of a  
2 911 Tandem/Selective Router in Verizon's network--that is, at a point  
3 between Verizon's end offices and the PSAPs. Accordingly, the  
4 Commission should exclude from the agreement Intrado's proposed  
5 sentence in section 1.1.1 describing Verizon's 911/E911 facilities.

6

7 Alternatively, the Commission should adopt the following sentence in  
8 place of Intrado's proposed sentence:

9 For areas where Verizon is the 911/E-911 Service  
10 Provider, Verizon provides and maintains (a) Verizon 911  
11 Tandem/Selective Router(s) for routing 911/E-911 Calls  
12 from Verizon End Offices to PSAP(s) and (b), if Verizon  
13 manages the ALI Database, the ALI Database.

14

15 Verizon's proposed language for section 1.1.1 of the 911 Attachment  
16 accurately describes Verizon's network arrangements and capabilities  
17 and should be adopted.

18

19 **ISSUE 14** SHOULD THE ICA INCLUDE A PROVISION FOR  
20 MAINTAINING ALI STEERING TABLES? IF SO, WHAT  
21 PROVISIONS SHOULD BE INCLUDED? (911 Att. Intrado  
22 proposed § 1.2.1.)

23

24 **Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

25 **A.** This issue deals with how ALI databases are maintained in areas where

1 Intrado provides 911 service to a PSAP and manages an ALI database.  
2 Verizon agrees with Intrado that the parties should work together to  
3 ensure that misdirected 911 calls are directed to the right PSAP.  
4 Therefore, Verizon has agreed to language requiring the parties to  
5 “establish mutually acceptable arrangements and procedures for  
6 inclusion of Verizon End User data in the ALI Database” for areas where  
7 Intrado is the 911 provider and manages the ALI (automatic location  
8 identification) database. (911 Att., § 1.2.) But Verizon does *not* agree  
9 that Intrado’s additional language with regard to ALI steering tables  
10 belongs in an interconnection agreement. (See Intrado proposed §  
11 1.2.1, 911 Attachment, requiring Parties to “maintain the necessary ALI  
12 steering tables to support display of ALI between the Parties' respective  
13 PSAP Customers upon transfer of 911/E911 Calls.”)

14

15 **Q. WHY DOES VERIZON DISAGREE WITH INTRADO’S PROPOSAL?**

16 A. As Intrado has acknowledged elsewhere (*i.e.*, in West Virginia) the ALI  
17 function is an information service. This issue will be treated in legal  
18 briefs, but we understand that, because the FCC has determined that  
19 the provision of caller location information to a PSAP is an information  
20 service, not a telecommunications service, such services fall outside the  
21 scope of interconnection agreements negotiated and arbitrated under  
22 sections 251 and 252 of the Act.

23

24 **Q. IS VERIZON OPPOSED TO ADDRESSING ALI ARRANGEMENTS IN**  
25 **NON-SECTION-251/252 AGREEMENTS?**



1 A. No.

2

3 **Q. DOES VERIZON HAVE COMMERCIAL AGREEMENTS ADDRESSING**  
4 **ALI ARRANGEMENTS?**

5 A. Yes, Verizon has commercial agreements that address the creation of  
6 steering tables. However, there is no language in these agreements  
7 requiring Verizon to “maintain” another E911 Service Provider’s steering  
8 tables, as Intrado unreasonably proposes.

9

10 **Q. DOES VERIZON HAVE A COMMERCIAL AGREEMENT WITH**  
11 **INTRADO THAT ADDRESSES ALI ARRANGEMENTS?**

12 A. Yes.

13

14 **Q. DOES THAT AGREEMENT ADDRESS THE ISSUE THAT INTRADO**  
15 **HAS RAISED IN THIS ARBITRATION?**

16 A. To Verizon’s knowledge, its commercial agreement with Intrado  
17 provides Intrado with everything it needs to conduct its business with  
18 respect to ALI database arrangements between the Parties. If Intrado  
19 believes that the existing commercial agreement needs to be modified,  
20 that issue is properly addressed in commercial negotiations (as are all of  
21 Intrado’s issues).

22

23 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 14?**

24 A. The Commission should reject Intrado’s proposed language in section  
25 1.2.1 of the 911 Attachment related to ALI databases. The Parties can

1 negotiate separate commercial terms, if necessary, addressing any  
2 additional, legitimate needs Intrado may have in relation to ALI database  
3 arrangements.  
4

5 **ISSUE 15 SHOULD CERTAIN DEFINITIONS RELATED TO THE**  
6 **PARTIES' PROVISION OF 911/E911 SERVICE BE INCLUDED**  
7 **IN THE ICA AND WHAT DEFINITIONS SHOULD BE USED?**  
8 **(Glossary §§ 2.6 ("ANI"), 2.63 ("911/E-911 Service Provider"),**  
9 **2.64 ("911 Tandem/Selective Router"), 2.67 ("POI"), 2.94**  
10 **("Verizon 911 Tandem/Selective Router"), and 2.95 ("Verizon**  
11 **911 Tandem/Selective Router Interconnection Wire Center."))**  
12

13 **Q. DOES THE PARTIES' DISPUTE ABOUT DEFINITIONS IN THE**  
14 **GLOSSARY RELATE TO OTHER ISSUES IN THIS CASE?**

15 A. Yes. Each of the glossary definitions covered in Issue 15 is referenced  
16 in one or more of the draft interconnection agreement sections relating  
17 to Issues 3, 4 and 12. The parties' disputes about the Glossary terms,  
18 like many others in this arbitration, relate to the parties' fundamental  
19 dispute about network architecture—specifically, Intrado's unlawful  
20 proposal for Verizon to interconnect with Intrado at multiple, unspecified  
21 points on Intrado's network by means of direct trunks supplied by  
22 Verizon and that would bypass Verizon's selective routers. As a general  
23 matter, Intrado's definitions for Issue 15 incorrectly assume  
24 implementation of Intrado's proposed, unlawful and unprecedented  
25 network architecture, so they must be rejected.

1

2 **Q. WHAT IS THE SPECIFIC DISPUTE BETWEEN INTRADO AND**  
3 **VERIZON WITH RESPECT TO THE DEFINITION OF AUTOMATIC**  
4 **NUMBER IDENTIFICATION (“ANI”) IN § 2.6 OF THE GLOSSARY?**

5 A. Intrado’s proposed definition of ANI is related to an express requirement  
6 proposed by Intrado in its language in the 911 Attachment that Verizon  
7 deliver 911 calls to Intrado with ANI. Since the Commission should  
8 reject Intrado’s proposed language for the 911 Attachment for the  
9 reasons set out under Issue 3, above, there will be no need for a  
10 definition of ANI. Moreover, there is no need to set out in the 911  
11 Attachment language requiring Verizon to deliver 911 calls to Intrado  
12 with ANI, because technical aspects of call transport such as this should  
13 be left to the evolving requirements of applicable law and industry  
14 practice.

15

16 **Q. WHY SHOULD THE COMMISSION ADOPT VERIZON’S PROPOSED**  
17 **DEFINITION OF “911/E-911 SERVICE PROVIDER” IN GLOSSARY §**  
18 **2.63?**

19 A. The parties agree on most of the definition of “911/E-911 Service  
20 Provider.” Intrado has refused to accept Verizon’s language reflecting  
21 the legal requirement for POI(s) to be on Verizon’s network. As we  
22 explained under Issue 3 and elsewhere, Intrado is not entitled to select  
23 POIs on its own network, so the Commission should approve Verizon’s  
24 language.

25

1   **Q.   DO THE PARTIES HAVE THE SAME DISPUTE WITH RESPECT TO**  
2       **THE DEFINITION OF “POI (POINT OF INTERCONNECTION)” IN §**  
3       **2.67 OF THE GLOSSARY?**

4   A.   Yes.   There, too, Verizon’s proposed definition of “POI (Point of  
5       Interconnection)” reflects the legal requirement that the POI must be  
6       within Verizon’s network.   Intrado has unreasonably refused to accept  
7       this language, because it maintains the erroneous position that it may  
8       designate POIs on its own network.

9  
10   **Q.   INTRADO PROPOSES A SINGLE GENERIC DEFINITION OF “911**  
11       **TANDEM/SELECTIVE ROUTER” IN GLOSSOARY SECTION 2.6.4.**  
12       **WHY IS INTRADO’S APPROACH UNACCEPTABLE?**

13   A.   Intrado’s proposed, generic definition of “911 Tandem/Selective Router”  
14       does not fully reflect the location and operation of this facility in  
15       Verizon’s existing retail network.   Intrado proposes the following  
16       definition of “911 Tandem/Selective Router:”

17               Switching or routing equipment that is used for routing and  
18               terminating originating end user 911/E-911 Calls to a  
19               PSAP and/or transfer of 911/E911 Calls between PSAPs.

20  
21       Verizon agrees that a 911 Tandem/Selective Router is switching or  
22       routing equipment that is used for routing end user 911/E-911 calls to a  
23       PSAP.   Verizon also agrees that in some instances such equipment may  
24       be used to transfer 911/E-911calls between PSAPs.   However, a 911  
25       Tandem/Selective Router is not always used for this call transfer

1 purpose—whether or not it will be is determined by the PSAPs.  
2 Intrado's joinder of the two possible uses of 911 Tandem/Selective  
3 Router (that is, routing end user calls and transferring calls between  
4 PSAPs) into a single sentence with the conjunction "and" inaccurately  
5 suggests that a 911 Tandem/Selective Router *always* performs the call  
6 transfer function. By using "and/or," Intrado's language could be  
7 interpreted to mean that equipment could be deemed to be a 911  
8 Tandem/Selective Router even if it performed only the PSAP-to-PSAP  
9 call transfer function. In Verizon's network, a 911 Tandem/Selective  
10 Router would not perform only this function. It either performs only the  
11 first function (routing end user calls to PSAPs), or both the first and  
12 second functions, but not just the second alone. Therefore, Intrado's  
13 language must be rejected as inaccurate.

14

15 **Q. ARE THERE OTHER REASONS WHY INTRADO'S PROPOSED**  
16 **DEFINITION OF "911 TANDEM/SELECTIVE ROUTER" IS**  
17 **INAPPROPRIATE?**

18 A. Yes. Intrado's definition fails to properly describe the location and  
19 function of a 911 Tandem/Selective Router in Verizon's network, which  
20 is located at a point between Verizon end offices and the PSAPs and  
21 which functions to route traffic from Verizon end offices to PSAPs. The  
22 first part of Intrado's definition -- "Switching or routing equipment that is  
23 used for routing and terminating originating end user 911/E-911 Calls to  
24 a PSAP" -- could also include a Verizon end office switch, since a  
25 Verizon end office switch routes end user 911/E-911 calls to a PSAP.

1           However, a Verizon end office switch is not a 911 Tandem/Selective  
2           Router, so Intrado's definition is inaccurate.

3

4           Verizon correctly defines "911 Tandem/Selective Router" in a way that is  
5           appropriate for this equipment in either Party's network as follows:  
6           "Switching or routing equipment that is used for routing 911/E-911  
7           Calls." This definition is broad enough to cover both 911/E-911 calls  
8           routing to a PSAP and 911/E-911 call transfer between PSAPs.

9

10          Verizon's language also properly specifies the location (*i.e.*, between  
11          Verizon end offices and the PSAPs) and function (*i.e.*, to receive 911  
12          calls from Verizon end offices and route them to PSAPs) of a "911  
13          Tandem/Selective Router" in Verizon's network as follows:

14                 In Verizon's network, a 911 Tandem/Selective Router  
15                 receives 911/E-911 Calls from Verizon's End Offices and  
16                 routes these 911/E-911 Calls to a PSAP.

17

18          Verizon's definition of "Verizon 911 Tandem/Selective Router" in  
19          Glossary § 2.94, likewise, accurately describes the function of this  
20          equipment: "A 911 Tandem/Selective Router in Verizon's network which  
21          receives 911/E-911 Calls from Verizon End Offices and routes these  
22          911/E-911 Calls to a PSAP."

23

24          And, then, given the location and operation of the 911 Tandem/Selective  
25          Router in Verizon's network, Verizon defines "Verizon 911

1 Tandem/Selective Router Interconnection Wire Center” in Glossary §  
2 2.95 as: “A building or portion thereof which serves as the premises for  
3 a Verizon 911 Tandem/Selective Router.”  
4

5 Because these provisions more accurately describe the function and  
6 location of the equipment at issue, the Commission should adopt them  
7 instead of Intrado’s factually inaccurate definitions.  
8

9 **Q. WHY SHOULD THE COMMISSION ADOPT VERIZON’S PROPOSED**  
10 **DEFINITION OF “VERIZON 911 TANDEM/SELECTIVE ROUTER**  
11 **INTERCONNECTION WIRE CENTER” IN GLOSSARY SECTION**  
12 **2.95?**

13 A. Verizon’s proposed definition for “Verizon 911 Tandem/Selective Router  
14 Interconnection Wire Center” (Glossary § 2.95) correctly describes a  
15 Verizon 911 Tandem/Selective Router Interconnection Wire Center as  
16 “[a] building or portion thereof which serves as the premises for a  
17 Verizon 911 Tandem/Selective Router.” Contrary to the position Intrado  
18 has taken, this definition is different from the generic definition of  
19 “Interconnection Wire Center” (Glossary § 2.47) and is necessary to  
20 describe the location and function of 911 Tandem/Selective router in  
21 Verizon’s network. Including Verizon’s proposed definition of “Verizon  
22 911 Tandem/Selective Router Interconnection Wire Center” is also  
23 appropriate because one of the POIs on Verizon’s network is specifically  
24 stated in the 911 Attachment to be a “Verizon 911 Tandem/Selective  
25 Router Interconnection Wire Center.” Intrado has no legitimate reason

1 to reject Verizon's language. Intrado's opposition to that language is  
2 again based on Intrado's unsupported proposal to prevent Verizon from  
3 using its selective routers to direct calls to Intrado-served PSAPs.  
4

5 **ISSUE 34** (A) WHAT WILL VERIZON CHARGE INTRADO COMM FOR  
6 911/E-911 RELATED SERVICES?

7 (B) WHAT WILL INTRADO COMM CHARGE VERIZON FOR  
8 911/E-911 RELATED SERVICES?

9 (C) SHOULD INTRADO COMM'S PROPOSED INTERCON-  
10 NECTION RATES BE ADOPTED?

11 (911 Att. §§ 1.3, 1.4 and 1.7; Pricing Att. §§ 1.3, 1.5 and  
12 Appendix A.)  
13

14 Q. WHAT ARE THE AREAS OF DISPUTE BETWEEN INTRADO AND  
15 VERIZON WITH RESPECT TO THIS ISSUE?

16 A. This issue deals with the 911 Attachment and the Pricing Attachment  
17 and the rates Verizon will charge Intrado for 911/E-911-related services  
18 and the rates that Intrado proposes to charge Verizon.  
19

20 Q. PLEASE DESCRIBE GENERALLY WHAT THE 911 ATTACHMENT  
21 AND THE PRICING ATTACHMENT ADDRESS.

22 A. The attachments to the Agreement (such as the Collocation Attachment,  
23 the Verizon-proposed 911 Attachment and the Verizon-proposed Pricing  
24 Attachment) describe the charges that Verizon would bill for services it  
25 provides to Intrado. In particular, Intrado must pay Verizon for



1 interconnection at the POI on Verizon's network (for instance,  
2 collocation charges) and must pay for any facilities and services  
3 provided by Verizon to carry 911/E-911 calls between the POI on  
4 Verizon's network and Intrado's network. Transport and termination of  
5 911/E-911 calls would be handled on a non-charged basis, so Verizon  
6 would not bill Intrado for the transport and termination on Verizon's side  
7 of the POI on Verizon's network, of 911/E-911 calls transferred from an  
8 Intrado-served PSAP to a Verizon-served PSAP.

9  
10 Verizon's proposed 911 Attachment and the Pricing Attachment would  
11 apply Verizon's tariffed rates for tariffed services and, in the absence of  
12 a tariff rate, the rates set out in Appendix A to the Pricing Attachment.  
13 The rates in Appendix A are Verizon's standard rates offered to other  
14 CLECs and approved by this Commission.

15  
16 **Q. IS THERE ANY DISPUTE ABOUT VERIZON'S PROPOSED**  
17 **APPENDIX A RATES?**

18 A. No. The rates themselves are not in dispute.

19  
20 **Q. IS THERE ANY DISPUTE CONCERNING VERIZON'S PROPOSED**  
21 **PRICING ATTACHMENT?**

22 A. Yes. The 911 Attachment and the Pricing Attachment contain a few  
23 generic references to Verizon tariffs. Intrado objects to the generic  
24 references to Verizon tariffs and contends that any rates that may be  
25 charged, or the specific tariffs that contain such rates, should be

1 identified in the agreement. Intrado has also suggested that anything it  
2 buys from Verizon must be priced in accordance with the Act's section  
3 252(d) standard—that is, the FCC's TELRIC methodology. Intrado has  
4 no basis for either aspect of its position.

5

6 **Q. WHY IS IT REASONABLE TO INCLUDE GENERIC TARIFF**  
7 **REFERENCES IN THE AGREEMENT?**

8 A. Verizon offers in its various tariffs a wide variety of services that Intrado  
9 may someday purchase from Verizon. At present, neither Verizon nor  
10 Intrado can know which of these tariffed services and facilities Intrado  
11 may eventually take and in what configurations, so Verizon cannot  
12 specify in the agreement which tariff and tariff sections will apply. Using  
13 a generic reference to Verizon tariffs benefits both parties because it  
14 leaves Intrado free to purchase from Verizon, and for Verizon to provide  
15 to Intrado, any potentially applicable Verizon service that is provided  
16 under a Verizon tariff. Moreover, Verizon's generic tariff references—  
17 which are standard terms in Verizon's interconnection agreements--will  
18 assure that Intrado receives nondiscriminatory pricing under tariff  
19 provisions that are current at the time Intrado takes the tariffed services.

20

21 **Q. IS VERIZON REQUIRED TO OFFER INTRADO AT TELRIC PRICES**  
22 **ANYTHING INTRADO TAKES FROM VERIZON UNDER THE**  
23 **AGREEMENT?**

24 A. No. The mere fact that Intrado (and only Intrado) labels a service or  
25 feature an interconnection element does not make it subject to TELRIC

1 pricing. The FCC has determined what elements must be priced at  
2 TELRIC and Verizon offers those elements to all CLECs at TELRIC  
3 rates. Intrado is not entitled to anything else at TELRIC prices.  
4

5 **Q. DOES INTRADO'S PROPOSED INTERCONNECTION AGREEMENT**  
6 **CONTAIN RATES THAT INTRADO PROPOSES TO CHARGE**  
7 **VERIZON?**

8 A. Yes. This is Intrado's entire pricing proposal:

<u>Service or Element Description:</u>	<u>Recurring Charges:</u>	<u>Non-Recurring Charge:</u>
<u>Per DS1</u>	<u>\$ 127.00</u>	<u>\$ 250.00</u>
<u>Per DS0</u>	<u>\$ 40.00</u>	<u>\$250.00</u>

9 (Intrado's proposed App. A, Pricing Attachment.)

10 **Q. WHAT, EXACTLY, ARE THESE CHARGES FOR?**

11 A. It is impossible to tell. Intrado's proposed language does not specify  
12 what services "per DS1" or "per DS0" it proposes to charge for, or what  
13 facility arrangements it might have in mind.  
14

15 **Q. IS IT APPROPRIATE FOR INTRADO TO CHARGE VERIZON FOR**  
16 **INTERCONNECTION OF VERIZON'S FACILITIES TO INTRADO'S**  
17 **NETWORK?**

18 A. No. To the extent Intrado's charges relate to interconnection or facilities  
19 used to carry 911 calls, they are inappropriate. The parties have agreed  
20 that the transport and termination of 911/E-911 calls will be handled on  
21 a non-charged basis. Thus, Intrado should not bill Verizon any charges  
22 for the transport and termination of 911/E-911 calls from Verizon end

1 users to PSAPs served by Intrado or for the transport and termination of  
2 911/E-911 calls transferred from Verizon-served PSAPs to Intrado-  
3 served PSAPs.

4  
5 In addition, since Intrado must interconnect with Verizon at a technically  
6 feasible point on Verizon's network, Intrado has no right to charge  
7 Verizon for interconnection and transport facilities to carry 911/E-911  
8 calls to Intrado's network. Therefore, to the extent Intrado would impose  
9 port, termination, or other such fees, they are inappropriate. This issue  
10 will become moot once the Commission determines, in the context of  
11 Issue 3, that Intrado cannot force Verizon to interconnect on Intrado's  
12 network. As the West Virginia Arbitrator determined, "there will be no  
13 Intrado charges to Verizon" because the POI must be on Verizon's  
14 network. (*W.V. Award*, at 24.) The Massachusetts DTC rejected all of  
15 Intrado's references to charges to Verizon for the same reason:  
16 "because Verizon is not required to interconnect at POIs on Intrado's  
17 network, then Intrado's proposed interconnection charges in Appendix A  
18 are inapplicable as well as Intrado's proposed language for the last  
19 sentence of 911 Attachment § 1.7.3." (*Mass Order*, at 78.)

20 This Commission should make the same ruling.

21

22 **Q. HAS INTRADO PROVIDED ANY COST SUPPORT FOR ITS**  
23 **PROPOSED RATES?**

24 A. No. Intrado has offered no cost or other justification for the rates it  
25 proposes for the unspecified services in Appendix A to the Pricing

Attachment. So even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), and even if it were entitled to some payment (and it is not), the Commission would have no choice but to reject those arbitrary rates because Intrado has provided absolutely no support for them.

**ISSUE 35** (A) SHOULD ALL “APPLICABLE” TARIFF PROVISIONS BE INCORPORATED INTO THE ICA?

(B) SHOULD TARIFFED RATES APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF?

(C) SHOULD TARIFFED RATES AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF?

(D) SHOULD VERIZON’S PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO “TBD” RATES BE INCLUDED IN THE ICA?

(GT&C § 1.1; 911 Att. § 1.3 (Verizon § 1.3.3, Intrado § 1.3.6), 1.4.2, 1.7.3; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

**Q. WHAT IS THE PARTIES’ DISPUTE WITH RESPECT TO THIS ISSUE?**

A. The dispute here is essentially the same as the dispute discussed in Issue 34, with respect to Verizon’s use of tariff references in the Agreement. Verizon proposes language referring to “applicable tariff provisions” at various places in the draft agreement, including, but not

1 limited to, in General Terms and Conditions §1.1, the Collocation  
2 Attachment, the 911 Attachment and the Pricing Attachment. Verizon  
3 also proposes language in Pricing Attachment section 1.5 that states  
4 that “TBD” (to-be-determined) rates will be replaced with applicable tariff  
5 rates, when they become effective, or rates required, approved or  
6 allowed to go into effect by the Commission or the FCC.

7  
8 Intrado objects to these general references to applicable tariff  
9 provisions, as well as to Verizon’s standard Pricing Attachment provision  
10 stating that the rates for a party’s services will be the rates set out in the  
11 party’s applicable tariff and that, in the absence of an applicable tariff  
12 rate, the rates in Appendix A of the Pricing Attachment apply.

13  
14 **Q. IS VERIZON’S POSITION HERE THE SAME AS IT WAS ON THE**  
15 **DISPUTE ABOUT TARIFF REFERENCES IN ISSUE 34?**

16 **A.** Yes. Applying tariff rates for the services Verizon provides Intrado is  
17 appropriate because these rates are subject to Commission review in  
18 accordance with applicable legal standards. Using tariff rates helps  
19 ensure that Intrado receives the same, nondiscriminatory prices that  
20 other CLECs do (and that Intrado does not receive more favorable  
21 rates). Intrado’s proposal to limit the tariffs that apply to those that are  
22 specifically cited in the Agreement or in Appendix A of the Pricing  
23 Attachment is infeasible because neither Verizon nor Intrado can identify  
24 the tariffs, tariff rates and sections that might apply to particular services  
25 that Intrado might possibly take at some point in the future. As we

1 explained in the context of Issue 34, Intrado is also incorrect that it is  
2 entitled to TELRIC pricing for everything Verizon provides under the  
3 Agreement. The Commission should, therefore, adopt Verizon's  
4 proposed references to "applicable tariffs."

5  
6 **ISSUE 36 MAY VERIZON REQUIRE INTRADO COMM TO CHARGE THE**  
7 **SAME RATES AS, OR LOWER RATES THAN, THE VERIZON**  
8 **RATES FOR THE SAME SERVICES, FACILITIES, AND**  
9 **ARRANGEMENTS? (Pricing Att. § 2.)**

10  
11 **Q. WHAT IS THE DISPUTE BETWEEN INTRADO AND VERIZON WITH**  
12 **RESPECT TO THIS ISSUE?**

13 A. Verizon proposes language in the Pricing Attachment that would require  
14 Intrado to charge no more than Verizon charges Intrado for the same  
15 services, facilities and arrangements. Intrado contends that it should be  
16 allowed to charge Verizon higher rates than those Verizon charges  
17 Intrado.

18  
19 **Q. DOES VERIZON PROPOSE TO CHARGE INTRADO FOR THE SAME**  
20 **SERVICES, FACILITIES AND ARRANGEMENTS THAT INTRADO**  
21 **PROPOSES TO CHARGE TO VERIZON?**

22 A. As explained in Issue 34, Intrado proposes "per DS1" and "per DS0"  
23 non-recurring and recurring charges, presumably for some kind of  
24 interconnection service. Verizon's charges will depend upon how  
25 Intrado proposes to interconnect to points on Verizon's network. For

1 example, if Intrado has the right to collocate equipment at Verizon  
2 offices and if it chooses to do so, Intrado would be charged rates from  
3 Verizon's collocation price schedule, as approved by the Commission.  
4 Neither Verizon's proposed Pricing Attachment nor the Commission-  
5 approved price schedules contain a rate for "interconnection" per DS1  
6 and per DS0 as Intrado has depicted its rates. It is unclear what Verizon  
7 rates Intrado believes are "comparable" to the rates it proposes. In any  
8 event, as Verizon has discussed, all of Intrado's proposed charges must  
9 be rejected, because they all incorrectly assume that Verizon is required  
10 to interconnect on Intrado's network.

11

12 **Q. IF VERIZON DOES HAVE RATES FOR SERVICES, FACILITIES AND**  
13 **ARRANGEMENTS THAT ARE COMPARABLE TO INTRADO'S,**  
14 **SHOULD INTRADO'S RATES BE NO HIGHER THAN VERIZON'S?**

15 **A.** Yes. Verizon rates are subject to review and approval by the  
16 Commission and therefore are subject to a presumption of  
17 reasonableness. If Intrado wants to charge Verizon higher rates for  
18 some service at some point, Intrado should be required to show, based  
19 on its costs, that its proposed rates are reasonable.

20

21 Rate parity provisions are standard terms in Verizon's interconnection  
22 agreements, and benchmarking to the ILEC's rates is quite common in a  
23 number of areas. For instance, CLECs must charge ILECs the same  
24 reciprocal compensation rates as the ILEC charges the CLEC, unless  
25 the CLEC can justify higher rates based on its costs. In addition, the



1 FCC and numerous states have requirements capping CLEC access  
2 rates at the rate of the competing ILEC. As the New York Commission  
3 stated in adopting a rate parity proposal similar to the one Verizon is  
4 making here: "We find Verizon's proposal to be reasonable, as it is  
5 premised on the established practice we employ."<sup>21</sup>

6  
7 In the absence of voluntary agreement, there must be some basis to  
8 determine the justness and reasonableness of any Intrado rates in order  
9 to impose them on Verizon. If Intrado does not demonstrate its costs,  
10 the best alternative is to benchmark to large ILEC rates, because they  
11 have been subject to much greater regulatory scrutiny and economic  
12 discipline than CLEC rates.

13

14 **Q. WOULD VERIZON'S PROPOSAL PERMIT INTRADO TO CHARGE**  
15 **HIGHER RATES THAN VERIZON IF THEY WERE JUSTIFIED?**

16 A. Yes. Intrado could charge rates above those Verizon charges for  
17 comparable services if Intrado showed that its costs exceeded Verizon's  
18 charges for the service.

19

20 **Q. WILL THE COMMISSION'S RESOLUTION OF ISSUE 3 HAVE AN**  
21 **IMPACT ON THIS DISPUTE?**

---

<sup>21</sup> *Joint Petition of AT&T Comm. et al. Pursuant to Section 252(b) of the Telecom. Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc, Order Resolving Arbitration Issues, at 86 (N.Y. P.S.C. July 30, 2001.)*

1 A. Yes. If the Commission decides Issue 3 in Verizon's favor, Verizon will  
2 not be purchasing any interconnection facilities or arrangements from  
3 Intrado and Intrado's proposed charges for interconnection facilities and  
4 arrangements will no longer be an issue.

5  
6 At present, Verizon is not aware of any other services, facilities or  
7 arrangements that Verizon will be purchasing from Intrado under the  
8 agreement. However, to the extent that there are any such services,  
9 facilities or arrangements, the issue of parity in pricing for these  
10 services, facilities and arrangements will remain regardless of the  
11 Commission's resolution of Issue 3, because Intrado might seek to apply  
12 its tariffed rates for services, facilities or arrangements Verizon might  
13 take from Intrado in the future.

14  
15 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 36?**

16 A. The Commission should approve Verizon's proposed § 2 of the Pricing  
17 Attachment that would prohibit Intrado from charging more than Verizon  
18 charges Intrado for the same services, facilities and arrangements.

19  
20 **ISSUE 46 SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE**  
21 **AGREEMENT AMENDED TO INCORPORATE PROVISIONS**  
22 **PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN**  
23 **911/E-911 CALLS? (GT&C § 1.5.)**

24 **Q. WHAT ARE THE AREAS OF DISPUTE BETWEEN INTRADO AND**  
25 **VERIZON WITH RESPECT TO THIS ISSUE?**

1     A.     In the event that Intrado seeks to provide services other than 911/E911  
2           services while the interconnection agreement is effective, Intrado wants  
3           the right to request and obtain an amendment covering those other  
4           services. (See Intrado proposed § 1.5, General Terms and Conditions.)  
5           Intrado's proposed language states:

6                     Notwithstanding the foregoing, the Parties agree  
7                     that: (a) Intrado Comm may seek to offer  
8                     telecommunications and local exchange services  
9                     other than 911/E-911 Calls in the future; and (b)  
10                    upon Intrado Comm's request, the Parties will  
11                    amend this Agreement as necessary to provide for  
12                    the interconnection of the Parties' networks pursuant  
13                    to 47 U.S.C. § 251(c)(2) for the exchange of traffic  
14                    other than 911/E-911 Calls.

15  
16           This language provides Intrado the unilateral right to an amendment,  
17           outside of the contract's change of law provisions, which would allow  
18           either Party to seek an amendment to the agreement under appropriate  
19           circumstances. The change of law provision in § 4.6 of the agreement,  
20           unlike Intrado's proposed language above, specifies how the Parties  
21           may resolve disputes and the circumstances under which amendment  
22           would be appropriate. Intrado's language is inappropriate, because the  
23           parties agreed to negotiate and arbitrate an agreement based largely on  
24           the fact that Intrado is seeking to provide only 911-related services to  
25           PSAPs. This interconnection agreement approach is unique; the give-

1 and-take in negotiations and the parties' compromises assumed a much  
2 narrower scope of services and operation than the usual CLEC  
3 agreement, under which the CLEC, unlike Intrado, will provide basic  
4 local exchange services to business and residence end users. Absent a  
5 change in law affecting provisions of the agreement which would allow a  
6 Party to request an amendment to the agreement (see § 4.6, General  
7 Terms and Conditions), Intrado should not have a unilateral right to seek  
8 an amendment to the agreement.

9  
10 **Q. WHY IS INTRADO'S PROPOSAL INAPPROPRIATE?**

11 A. It is not appropriate to allow Intrado to retain the benefit of any  
12 provisions already obtained through negotiation or arbitration and then  
13 seek the benefit of additional provisions associated with exchange of  
14 traffic other than 911/E-911 calls. If Intrado wishes to greatly expand  
15 the scope of the agreement, it should negotiate an entirely new  
16 agreement in which all of the provisions of the agreement will be at  
17 issue and the parties will be able to engage in a fair and balanced trade-  
18 off of one provision against another. The Commission should, therefore,  
19 reject Intrado's proposed language in section 1.5 of the General Terms  
20 and Conditions.

21  
22 **ISSUE 47 SHOULD THE TERM "A CALLER" BE DELETED FROM**  
23 **SECTION 1.1.1 OF THE 911 ATTACHMENT TO THE ICA?**  
24 **(911 Att. § 1.1.1.)**  
25

1     **Q.     WHAT IS THIS ISSUE ABOUT?**

2     A.     Verizon proposes including the term “a caller” in section 1.1.1 of the 911  
3     Attachment to make clear what entity is dialing 911. Intrado contends  
4     that there is no reason for the description of “911/E-911 Arrangements”  
5     to include what entity is dialing 911.

6

7     **Q.     WHY IS VERIZON’S LANGUAGE NECESSARY?**

8     A.     Section 1.1.1 describes how 911/E-911 arrangements provide access to  
9     the appropriate PSAP by dialing a 3-digit universal telephone number,  
10     “911.” Verizon simply proposes to include “a caller” between the words  
11     “provide” and “access” so that the sentence reads: “911/E-911  
12     arrangements provide a caller access to the appropriate PSAP by  
13     dialing a 3-digit universal telephone number, ‘911.’” Verizon’s language  
14     accurately describes the function of 911/E911 arrangements and  
15     provides additional clarity.

16

17     Intrado is seeking interconnection with Verizon so that Verizon  
18     customers calling 911 can reach PSAPs that are served by Intrado. No  
19     other “entities” would call 911. Verizon’s customers acquire access to  
20     the appropriate PSAP by dialing a 3-digit universal telephone number,  
21     “911.” In other words, for Verizon’s end user customers to summon  
22     emergency services, they must place a call to 911—that is, be “a caller.”  
23     Verizon’s proposed inclusion of the phrase “a caller” in § 1.1.1 of the  
24     911 Attachment accurately describes the access that 911/E911  
25     arrangements provide to a caller, and there is no legitimate reason for

1           Intrado to object to this simple clarification. The Commission should,  
2           therefore, adopt Verizon's proposed language for section 1.1.1 of the  
3           911 Attachment.

4

5   **ISSUE 49**    **SHOULD THE WAIVER OF CHARGES FOR 911 CALL**  
6                   **TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI**  
7                   **DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY**  
8                   **INTRADO COMM BY OTHER PROVISIONS OF THE**  
9                   **AGREEMENT? (911 Att. §§ 1.7.2 and 1.7.3.)**

10

11   **Q.    WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

12   A.   As discussed earlier, the parties have agreed not to charge each other  
13       intercarrier compensation for 911/E911 calls. In §§ 1.7.2 and 1.7.3,  
14       however, Intrado has proposed language that would create a loophole  
15       that might permit such charges. Specifically, Intrado proposes to add  
16       the phrase, "Except as otherwise set forth in this Agreement or in  
17       Appendix A to the Pricing Attachment" to the agreed-upon language in §  
18       1.7.2. The Commission should reject this unnecessary and  
19       inappropriate qualification, which has no legitimate basis. Aside from  
20       undercutting the parties' agreement not to bill for transport of 911/E-911  
21       calls, Intrado's proposed language contemplates that Intrado might bill  
22       Verizon for interconnection or facilities for transport of 911/E-911 calls to  
23       Intrado's network, which, as discussed in Issue 3, incorrectly assumes  
24       that Intrado may designate POIs on Intrado's network. Moreover, if  
25       Intrado's objective is to allow it to bill charges in connection with the ALI

1 database or the MSAG, Intrado should recover these costs from the  
2 applicable government agency as part of the 911 services Intrado  
3 provides for the PSAP.

4

5 Intrado also proposes language in § 1.7.3 that would require Verizon to  
6 pay Intrado to interconnect at POIs on Intrado's network. That is  
7 inappropriate for the reasons discussed in Issues 3 and 34.

8

9 For all of these reasons, the Commission should reject Intrado's  
10 proposed qualifying language in §§ 1.7.2 and 1.7.3 and Intrado's  
11 proposed language in § 1.7.3 of the 911 Attachment regarding payment  
12 of charges for interconnection to POIs on Intrado's network.

13

14 **ISSUE 52 SHOULD THE RESERVATION OF RIGHTS TO BILL**  
15 **CHARGES TO 911 CONTROLLING AUTHORITIES AND**  
16 **PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM**  
17 **BY "TO THE EXTENT PERMITTED UNDER THE PARTIES'**  
18 **TARIFFS AND APPLICABLE LAW"? (911 Att. §§ 2.3 and 2.4.)**

19

20 **Q. WHAT IS THIS ISSUE ABOUT?**

21 A. The agreed-upon language for sections 2.3 and 2.4 of the 911  
22 Attachment specifies that nothing in the Agreement shall prevent  
23 Verizon or Intrado from billing PSAPs for specified services, facilities  
24 and arrangements. Intrado seeks to qualify this language with the  
25 phrase "[t]o the extent permitted under the Parties' Tariffs and

1           Applicable Law.”

2

3   **Q.   WHAT IS WRONG WITH INTRADO’S PROPOSAL?**

4   A.   Sections 2.3 and 2.4 are reservations of rights as between the Parties;  
5       they do not and cannot affect rights with respect to third parties,  
6       including PSAPs. It is not appropriate for Intrado to try, in the  
7       interconnection agreement, to limit Verizon’s right to charge third parties  
8       for services and facilities provided to those entities. Whether Verizon is  
9       able to assess charges to government agencies or other third parties is  
10      a matter between those entities and Verizon, not a matter for the  
11      interconnection agreement between Verizon and Intrado. The  
12      Commission should reject Intrado’s attempt to intrude upon Verizon’s  
13      relationships with third parties.

14

15       The qualification Intrado proposes is not a benign addition. It appears to  
16       be designed to prevent Verizon from charging an Intrado-served PSAP  
17       for anything—even services Verizon continues to provide. The  
18       foundation of Intrado’s positions in this arbitration is that other carriers  
19       and their end users who call 911 should bear the cost of Intrado’s  
20       proposed 911 system. By qualifying the statement of Verizon’s right to  
21       charge for specified services provided to PSAPs with a reference to  
22       Intrado’s own tariffs, Intrado will have the opportunity to—and no doubt,  
23       will—insert language in its tariff reflecting its view that Verizon cannot  
24       charge PSAPs anything when Intrado is serving the PSAP.

25



1     **Q.     HAS INTRADO TRIED TO ADVANCE THIS OBJECTIVE BEFORE IN**  
2     **FLORIDA?**

3     A.     Yes. Intrado sought a declaratory order that neither Intrado nor PSAPs  
4             would have an obligation to pay the ILECs' tariffed 911 charges when  
5             Intrado served the PSAP. There was no dispute in that case about the  
6             obvious fact that the law does not permit carriers to charge for services  
7             they don't provide; instead, Intrado's objective to deny other carriers  
8             compensation for services provided to Intrado-served PSAPs was clear  
9             to the intervenors and the Commission. As the Commission stated in  
10            denying Intrado's request:

11                   Intrado either assumes that once it becomes the  
12                   primary E911 provider to a PSAP, all ILEC 911  
13                   services to that PSAP will necessarily cease or it  
14                   fails to consider the possibility that the ILECs may  
15                   have to continue to provide certain ancillary 911  
16                   services to Intrado or to the PSAP in order for  
17                   Intrado's primary E911 service to properly function,  
18                   for which the ILECs are entitled to compensation  
19                   pursuant to their tariffs. AT&T provided four  
20                   examples of when it would arguably have to  
21                   continue to provide compensable 911 service to  
22                   PSAPs when Intrado is the primary E911 provider.  
23                   Intrado's Response to AT&T's Motion to Dismiss  
24                   and Response is silent with regard to that

1                   assertion.<sup>22</sup>

2

3           The Commission has already refused to accept Intrado's position that  
4           once a PSAP designates Intrado as its 911 provider, there is never any  
5           reason for an ILEC to continue charging the PSAP for services the ILEC  
6           continues to provide. The Commission should, therefore, reject  
7           Intrado's contract language advancing the same position in this case.

8

9    **ISSUE 53    SHOULD 911 ATT. § 2.5 BE MADE RECIPROCAL AND**  
10                   **QUALIFIED AS PROPOSED BY INTRADO COMM? (911 Att. §**  
11                   **2.5.)**

12

13   **Q.    WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

14    A.    Verizon's proposed Section 2.5 provides that nothing in the agreement  
15           will limit Verizon's ability to deliver calls directly to a PSAP served by  
16           Intrado. Intrado proposes either to exclude this section from the  
17           agreement or to make it reciprocal and to qualify it by limiting the  
18           reservation of rights to situations where the PSAP has agreed to the  
19           direct interconnection. Verizon does not object to adding a new section  
20           2.6 as follows:

21                   2.6 Nothing in this Agreement shall be deemed to

---

<sup>22</sup> *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by' Intrado Comm. Inc., Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).*

1                    prevent Intrado Comm from delivering, by means of  
2                    facilities provided by a person other than Verizon,  
3                    911/E-911 Calls directly to a PSAP for which Verizon  
4                    is the 911/E-911 Service Provider.

5

6                    However, Verizon does not agree that these sections should be qualified  
7                    by language that interconnection must be authorized by the PSAP.  
8                    Whether a party has a right to deliver calls to a PSAP is a matter  
9                    between that party and the PSAP and is outside of the scope of the  
10                  parties' agreement. Because Intrado's language is an unwarranted  
11                  intrusion upon Verizon's rights with respect to third parties, it should be  
12                  rejected. The Commission should instead adopt Verizon's compromise  
13                  language.

14

15                    **IV.    CONCLUSION**

16

17    **Q.    DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

18    **A.    Yes.**

19

20

21

22

23

24

25

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Intrado, Inc.</b>	:	
	:	
<b>Petition for Arbitration pursuant to</b>	:	
<b>Section 252(b) of the Communications</b>	:	<b>08-0545</b>
<b>Act of 1934 as amended, to Establish</b>	:	
<b>an Interconnection Agreement with</b>	:	
<b>Illinois Bell Telephone Company.</b>	:	

**ARBITRATION DECISION**

DATED: March 17, 2009

08-0545  
Arbitration Decision

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## STATE OF ILLINOIS

**ILLINOIS COMMERCE COMMISSION**

<b>Intrado, Inc.</b>	:	
	:	
<b>Petition for Arbitration pursuant to</b>	:	
<b>Section 252(b) of the Communications</b>	:	<b>08-0545</b>
<b>Act of 1934 as amended, to Establish</b>	:	
<b>an Interconnection Agreement with</b>	:	
<b>Illinois Bell Telephone Company.</b>	:	

## **ARBITRATION DECISION**

**By the Commission:**

## I. PROCEDURAL HISTORY

On September 22, 2008, Intrado, Inc. ("Intrado"), filed a Petition for Arbitration ("Petition") pursuant to subsection 252(b)<sup>1</sup> of the federal Telecommunications Act of 1996 ("Federal Act")<sup>2</sup>. The Petition seeks to create an interconnection agreement ("ICA") between Intrado and Illinois Bell Telephone Company ("AT&T"), an incumbent local exchange carrier ("ILEC") in certain geographic areas of Illinois. Intrado has certificates of telecommunications operating authority in Illinois, issued by this Commission.<sup>3</sup> Intrado asserts that AT&T has a duty under subsection 251(c)(2) of the Federal Act<sup>4</sup> to interconnect with it, so that Intrado can provide telecommunications services in areas in which AT&T also provides local exchange services. Intrado's principal intention is to provide services related to 911/E911 telecommunications (for brevity, "911 service") to Emergency Telephone Systems Boards ("ETSBs") for the operation of Public Safety Answering Points ("PSAPs"). Intrado presents several issues for arbitration.

AT&T filed its Response to Intrado's Petition ("AT&T Response") on October 17, 2008. In that filing, AT&T notes that it has added two issues for arbitration, as it is permitted to do under subsection 252(a)(4)(A) of the Federal Act<sup>5</sup>. The parties have settled numerous issues over the course of this litigation and this Arbitration Decision addresses only the remaining unresolved issues.

<sup>1</sup> 47 U.S.C. § 252(b).

<sup>2</sup> 47 U.S.C. §§ 151 *et seq.*

<sup>3</sup> SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois, Dckt. 00-0606, Order, Dec. 20, 2000 & Amendatory Order, Jan. 31, 2001. SCC subsequently became Intrado, Inc. Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services.

<sup>4</sup> 47 U.S.C. § 25(c)(2).

<sup>5</sup> 47 U.S.C. § 252(a)(4)(A).

Two Administrative Law Judges ("ALJ's") of the Commission conducted a pre-arbitration conference on October 1, 2008 and an evidentiary hearing on December 3, 2008, each in Chicago, Illinois. Appearances were entered at each hearing on behalf of Intrado, AT&T and Commission Staff ("Staff"). At the December 3 hearing, Intrado presented the testimony of Thomas Hicks, and Carey Spence-Lenss. AT&T presented the testimony of Patricia Pellerin and Mark Neinast. Staff presented the testimony of Jeffrey Hoagg, Marci Schroll, and Kathy Stewart, each of the Commission's Telecommunications Division. The ALJ's marked the evidentiary record "heard and taken" on February 4, 2008.

Intrado, AT&T and Staff each filed an Initial Brief ("IB") on January 5, 2009 and a Reply Brief ("RB") on January 20, 2009. An ALJ's Proposed Arbitration Decision was served on all parties on February 13, 2008. Intrado and Staff each filed Briefs on Exceptions ("BOE") on February 20, 2009 and Intrado, AT&T and Staff each filed Reply Briefs on Exceptions ("RBOE") on February 27, 2009.

## **II. JURISDICTION**

Subsection 252 of the Federal Act provides that within a specified time period "after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." Both Intrado's Petition and AT&T's Response assert that there are open issues between the parties. There is no dispute that the Petition was timely filed. Consequently, the Commission has jurisdiction to arbitrate the issues presented.

Section 252 of the Federal Act proscribes certain procedures, standards and outcomes for arbitrations conducted under that section. In addition, the Commission has adopted rules and procedures for such arbitrations in 83 Ill. Adm. Code 761. The foregoing federal and state provisions apply to this proceeding.

## **III. PROPOSED SERVICES & CURRENT AGREEMENTS**

Intrado proposes to provide its 911 service through its Intelligent Emergency Network® ("IEN"), which would facilitate voice and data transmission and retrieve and deliver both Automatic Number Identification ("ANI") (the calling party's telephone number) and Automatic Location Information ("ALI") (the calling party's location) to PSAP customers. The three integrated elements of Intrado's system are switching (utilizing selective call routers or 911 tandems), call information databases (for ANI and ALI) and transport infrastructure between the PSAP and, respectively, the selective routers and the information databases.

Intrado's customers will be PSAPs and related public agencies, not the individual end-users that initiate 911 calls. With respect to wireline telecommunications, the physical components of Intrado's 911 service will not handle a 911 call until it has been relayed from the end office of the ILEC receiving the call. Consequently - and



regardless of whether Intrado is “interconnected” to AT&T within the meaning of subsection 251(c)(2) of the Federal Act - Intrado’s 911 service must be physically linked to the public switched telephone network (“PSTN”) in order to deliver wireline 911 calls to PSAPs. All telecommunications carriers have an interconnection duty under subsection 251(a)(1) of the Federal Act, and AT&T states that it would enter into a “commercial agreement” with Intrado, as it has with other carriers, to provide the necessary physical linkage. AT&T Ex. 1.0 (Pellerin) at 6. Intrado maintains that its 911 service qualifies for interconnection within the meaning of subsection 251(c)(2) and that Intrado is therefore entitled to the statutory benefits associated with such interconnection.

Intrado does not presently provide the 911 service involved in this proceeding in Illinois. Intrado Ex. 1 (Hicks) at 5. There are two current agreements between Intrado and AT&T for processing voice-over-Internet Protocol (“VOIP”) traffic from third parties, under which AT&T supplies telephone exchange service and other services to Intrado. AT&T Ex. 1.0, Sch. PHP-9 (Intrado response to AT&T Data Request 5). There is also an expired ICA, by which Intrado could have transported 911 calls aggregated from third parties. *Id.* Intrado did not conduct operations under that ICA. AT&T Ex. 1.0 at 5; Tr. 160-61 (Pellerin).

#### **IV. ISSUES FOR RESOLUTION**

##### **Issue 1:**

Does Intrado have the right to interconnection with AT&T under Section 251(c) of the Act for Intrado’s Provision of competitive 911/E911 services to PSAPs?

##### **A. Parties Positions and Proposals**

###### **1. Intrado**

Intrado maintains that AT&T is required by subsection 251(c)(2) of the Federal Act to provide interconnection to Intrado because, among other reasons, Intrado intends to furnish “telephone exchange service” within the meaning of subsection 251(c)(2)(A). There are two alternative definitions of “telephone exchange service” in the Federal Act<sup>6</sup>, and Intrado avers that its proposed services comport with either alternative (Parts A and B). According to Intrado, the Federal Communications Commission (“FCC”) has taken an expansive view of telephone exchange service, placing non-traditional arrangements such as DSL-based service and directory assistance call completion service within that category. Intrado contends that its proposed handling of 911/E911 transmissions should be similarly regarded as telephone exchange service. That result, Intrado believes, would further the pro-competitive policy reflected in the Federal Act.

Intrado relies on certain FCC decisions for the proposition that the “key component” of telephone exchange service is that it enables “intercommunication”

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<sup>6</sup> The definitions appear at 47 U.S.C. §153(47).



among a "community of subscribers" within an exchange area. Intrado asserts that its proposed 911 service will perform this intercommunicating function by connecting end-users and Intrado's PSAP subscribers. Intercommunication does not require that a proposed service supplant a subscriber's existing local service in order to qualify as telephone exchange service, Intrado argues.

Moreover, Intrado stresses, this Commission has already determined that Intrado provides "telephone exchange service," in a previous arbitration involving predecessors of, respectively, Intrado and AT&T<sup>7</sup>. In that proceeding, the Commission held that the service contemplated by Intrado's successor "falls within the definition of telephone exchange service found in 47 USC §153(47)."<sup>8</sup>

Intrado also emphasizes that AT&T, in effect, characterizes its own 911 service as telephone exchange service in its tariffs. Intrado alleges that its 911 service tariff is substantially similar to AT&T's and should also be regarded as telephone exchange service.

## 2. AT&T

AT&T argues that Intrado's proposed service is not "telephone exchange service" within the meaning of the Federal Act. For that reason, AT&T asserts, Intrado is not entitled to either subsection 251(c)(2) interconnection or an arbitrated ICA with AT&T. Specifically, AT&T contends that Intrado's 911 service does not permit subscribers to originate an outbound telecommunications transmission, as Part B of the federal definition requires (a requirement AT&T would also read into Part A). The public agencies using Intrado's service will need to subscribe to the telephone exchange service of another provider to initiate an outbound or non-911 call. AT&T emphasizes that the Florida Public Service Commission dismissed Intrado's arbitration requests with AT&T's Florida affiliate<sup>9</sup> and with another ILEC<sup>10</sup> precisely because, that Commission found, Intrado's 911 service does not enable call origination.

Intrado's 911 service also falls outside the definition of telephone exchange service, AT&T charges, because it is not the intercommunicating service explicitly required by Part A (and, according to the FCC, implicitly required by Part B) of §153(47). Intercommunication means that an end-user can call the other end-users in the exchange area, and not merely a pre-designated PSAP, AT&T maintains.

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<sup>7</sup> In the Matter of the Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc., Dckt. 00-0769 (March 21, 2000) ("SCC Arbitration"). As previously noted, SCC did not conduct operations under the ICA resulting from that proceeding.

<sup>8</sup> *Id.*, at 6.

<sup>9</sup> Petition by Intrado Communications, Inc., for Arbitration with BellSouth Telecommunications, Inc., d/b/a AT&T Florida, Fla. Pub. Serv. Comm'n. Dckt. 070736-TP, Final Order (Dec. 3, 2008).

<sup>10</sup> Petition by Intrado Communications, Inc., for Arbitration with Embarg Florida, Fla. Pub. Serv. Comm'n. Dckt. 070699-TP, Final Order (Dec. 3, 2008).

AT&T further avers that Intrado's planned service is not "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area," as expressly required by Part A of the pertinent definition. Nor, AT&T insists, is Intrado's service covered by the "exchange service charge," as Part A also specifies.

As for this Commission's conclusions in the SCC Arbitration, AT&T argues that the telecommunications services involved in the present case are different and that our earlier analysis was inconsistent with certain FCC orders issued prior to or contemporaneous with that arbitration decision.

AT&T additionally suggests that this Commission has the discretion to decline to arbitrate the unresolved issues in this case, and that we can use that discretion in order to await the results of arbitration decisions elsewhere.

### **3. Staff**

Staff maintains that Intrado is entitled to subsection 251(c) interconnection with AT&T, principally because the Commission previously reached that conclusion in the SCC Arbitration. As Staff sees it, "Intrado proposes to provide essentially the same service here as it proposed to provide in" that case. Staff IB at 10. Staff cautions, however, that the terms and conditions of Intrado's interconnection should closely conform to the requirements of subsection 251(c), despite Intrado's request, in certain instances, for non-traditional arrangements. In Staff's view, Intrado should not be permitted to claim the benefits of the Federal Act while simultaneously avoiding its requirements.

### **4. Analysis and Conclusions**

As framed by the parties, the fundamental question in Issue 1 is whether Intrado's 911 service constitutes "telephone exchange service" under Part A or Part B in §153(47). The full statutory definition of "telephone exchange service" is as follows:

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Given that §153(47) presents two alternative definitions conjoined by “or,” a provider’s service can constitute telephone exchange service under either alternative. The FCC has not commented on whether stand-alone 911 service like Intrado’s is telephone exchange service. For purposes of comparison, the FCC has held that directory assistance call completion<sup>11</sup> and xDSL-based advanced services<sup>12</sup> are telephone exchange service, but paging service is not<sup>13</sup>.

Although Intrado and AT&T dispute the meaning of several elements in the alternative definitions of telephone exchange service, two elements warrant particular emphasis – call origination and intercommunicating service. Call origination is significant because the Florida Commission rejected Intrado’s claim that 911 service is telephone exchange service, on the ground that the service does not include call origination<sup>14</sup>. Intercommunicating service is essential because, as Intrado correctly observes, the FCC has called it the “key criterion for determining whether a service falls within the scope of the telephone exchange service definition.”<sup>15</sup>

Intrado and AT&T have each commingled their discussion of call origination and intercommunicating service. Intrado addresses both elements in a single sub-heading in its Initial Brief, at 6. AT&T contends that call origination and termination are “part and parcel” of intercommunicating service. AT&T IB at 7, fn. 6. The Commission does not agree that call origination/termination and intercommunicating service are the same thing. When Congress added Part B to the §153(47) definition, it employed different language (origination/termination) rather than re-employing “intercommunicating

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<sup>11</sup> Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, 16 FCC Rcd. 2736 (2001) (“Directory Assistance Order”).

<sup>12</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd. 385 (1999) (“Advanced Services Order”).

<sup>13</sup> In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd (1996).

<sup>14</sup> See citations at footnotes 9 and 10, *supra*. In the briefs filed in this proceeding, the parties disputed whether the Florida Commission is the only state commission to decide this issue during the current round of Intrado interconnection filings. Intrado contended that the Ohio Commission “specifically determined that Intrado’s [911 service] is telephone exchange service.” Intrado RB at 10, citing Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services, P.U.C.O. Case No. 07-1199-TP-ACE, Finding and Order (Feb. 5, 2008) (“Ohio Certification Order”). AT&T rejoined that Intrado misrepresents the Ohio decision. AT&T RB at 21. We note that the Ohio proceeding was a certification proceeding, not an interconnection arbitration. The Ohio Commission concluded that end-users have “no relationship” with Intrado and that Intrado is not a CLEC. Ohio Certification Order, Finding 7. However, the Ohio Commission created a new carrier category for Intrado (“competitive emergency services telecommunications carrier”) and stated that “Intrado is a telecommunications carrier *engaged in* the provision of telephone exchange service pursuant to Section 251 of the [Federal Act]”. *Id.* (emphasis added). In later proceedings, parties debated whether “engaged in” meant only that Intrado’s 911 service performed a function within *other carriers’* telephone exchange service. Nevertheless, in a subsequent interconnection arbitration, Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Ohio Bell Telephone Company dba AT&T, P.U.C.O. Case No. 07-1280-TP-ARB, Arbitration Award (Mar. 4, 2009), the Ohio Commission expressly concluded (at p. 15) that Intrado’s 911 service is telephone exchange service. (The Ohio ruling is discussed later in this Arbitration Decision). Thus, both Ohio and Florida have now directly addressed whether Intrado’s 911 service is telephone exchange service, reaching opposite conclusions.

<sup>15</sup> Advanced Services Order, para. 26.

service” in the new sub-part. Moreover, the FCC would not have needed to read an intercommunicating service requirement into Part B, as it did in the Advanced Services Order<sup>16</sup>, if intercommunicating service already carried the same meaning as call origination/termination. In this Commission’s view, intercommunication pertains to the accessibility of end-users to each other, while origination/termination pertains to an individual end-user’s ability to initiate or receive a call<sup>17</sup>. Accordingly, these elements will be addressed separately here.

**a) Call Origination**

To analyze the call origination requirement in the context of emergency services, the Commission finds it helpful to describe 911 communications. The emergency response system is designed for urgent circumstances. Callers need only enter three universally recognized digits into a telecommunications path specifically created for those circumstances. To minimize the potential for error, failure or overload, the telecommunications path is not designed for calls in the opposite direction (from PSAPs to emergency sites). Indeed, in Illinois, 911 service is defined as “a terminating only service”<sup>18</sup> and outbound calls on 911 circuits are prohibited<sup>19</sup>.

Intrado has appropriately included these facts and policies in its proposed 911 service<sup>20</sup>. Intrado thus acknowledges that its 911 service does not include the capability to originate a call (except via transfer by the PSAP of an inbound call placed by a 911 end-user). A PSAP that subscribes to Intrado’s 911 service will need one or more additional telephone lines, not associated with 911 service, to originate calls<sup>21</sup>. The PSAP will not be able to return the call of a 911 end-user via Intrado’s 911 service if a call is dropped. AT&T Ex. 1.0 at 21.

Nevertheless, Intrado maintains that its 911 service furnishes call origination within the meaning of the federal definition. As Intrado sees it, the call transfer mechanism (which Intrado also refers to as “hookflashing”) is a form of call origination by the subscribing PSAP. As Intrado witness Spece-Lenss described in oral testimony:

[T]he call process has two parts. You have the consumer, the citizen who is dialing 911. The PSAP receives the call and then the PSAP originates the transfer. So it’s originating

<sup>16</sup> Advanced Services Order, para. 20.

<sup>17</sup> In the practical sense, of course, a telecommunications end-user must be able to originate or terminate communications with other accessible users. But for statutory construction, we are obliged to discern the intended meaning of each of the discrete terms chosen by the legislature.

<sup>18</sup> 83 Ill. Adm. Code 725.500(a).

<sup>19</sup> 83 Ill. Adm. Code 725.500(d).

<sup>20</sup> “Intrado has purposefully designed its 911 service to be unable to originate an outgoing call except in the instance of conferencing or call-transfer disconnect processes.” AT&T Cross-Ex. 3 (Intrado response to AT&T Data Request 18).

<sup>21</sup> “Illinois public safety agencies subscribe to local exchange service for administrative purposes, such as to receive other emergency or non-emergency calls, including any which might be relayed by operators or terminated on PSTN-accessible local exchange telephone lines.” Intrado IB at 21.

the call through the hook flash, either the selective transfer feature or the 10-digit transfer feature and it's originating the call.

Tr. 110.

The Florida Commission rejected this argument and denied Intrado's request for subsection 251(c)(2) interconnection on that basis. The Florida Commission did not elaborate upon its conclusion, perhaps because it found it self-evident. The Ohio Commission held that Intrado's 911 service does include call origination<sup>22</sup>. Ohio's half-sentence rationale was confined to this: the federal definition of telephone exchange service does not "quantify" the term "originate"<sup>23</sup>. We will expand upon our sister commissions' limited discussion of this issue, and we will reach the same conclusion as the Florida Commission.

Simply, hookflashing is not call origination. It is a call transfer procedure that reroutes a call *originated by the person placing the inbound 911 call to the PSAP*. While Intrado is correct that call transfer is commonly used, Intrado IB at 14, that does not mean it is a call origination mechanism. That is particularly so in the 911 context in Illinois, in which call transfer, as defined by our regulations, is limited to rerouting of the originated call to an emergency services provider or another PSAP ("Call Transfer" – a 9-1-1 service in which the PSAP telecommunicator receiving a call transfers that call to the appropriate public safety agency or another provider of emergency services"<sup>24</sup>). We believe that the reference to "that call" in our regulatory definition is significant, because it captures what in fact occurs during an emergency call transfer – the PSAP works collaboratively with an emergency responder or another PSAP to address the ongoing request for assistance. The Commission therefore disagrees with the viewpoint of Intrado's witness who "wouldn't consider it the same call when a PSAP [needs] to do a transfer." Tr. 112 (Spence-Lenss). Indeed, Intrado's own tariff characterizes call transfer as the "[t]he act of adding an additional party to an *existing call*."<sup>25</sup>

The call transfer capability in Intrado's planned service thus reflects the limited scope of transferability contemplated in the 911 architecture. Such transfers are confined to other PSAP's served by Intrado, although transfers to non-Intrado PSAPs and related public safety agencies are possible if certain infrastructure and

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<sup>22</sup> Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Ohio Bell Telephone Company dba AT&T, P.U.C.O. Case No. 07-1280-TP-ARB, Arbitration Award (Mar. 4, 2009) at 16 ("Ohio Arbitration").

<sup>23</sup> This Commission does not perceive call origination as a *quantitative* matter. The appropriate inquiry is qualitative – *can* the customer originate a call using Intrado's 911 service? The quantity of calls or call recipients is not relevant to this component of the federal definition of telephone exchange service (although it is relevant to the "intercommunication" component of the definition, discussed later).

<sup>24</sup> 83 Ill. Adm. Code 725.105.

<sup>25</sup> AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging") (emphasis added). Intrado describes its Illinois tariff, which was not offered for the record here, as "similar" to its Ohio tariff. Intrado IB at 20, fn. 85.



arrangements are in place with Intrado<sup>26</sup>. Moreover, PSAP-to-PSAP call transfer capability is not mandated by law, Staff Ex. 2 at 13, and Intrado (and AT&T) would only implement it (through interconnection of selective routers) upon customer request. Intrado Ex. 2 at 11. Thus, insofar as call transfer by an Intrado-served PSAP will be technically enabled, it will be appropriately limited to continuous handling of the caller-originated assistance request.

Although it is not entirely clear (given the parties' commingled analyses of call origination and intercommunication), Intrado apparently suggests an analogy between its 911 call transfer function and the DA services that the FCC found to be telephone exchange service in the Directory Assistance Order. If that is so, the Commission does not find the analogy apt. In the Directory Assistance Order, the FCC held that DA providers perform telephone exchange service when they furnish call completion service (that is, when they enable the party requesting number lookup to place a call to the requested number). Without call completion, "the competing directory assistance provider is not providing telephone exchange service within the meaning of section 3(47)."<sup>27</sup> In the Illinois 911 context, an Intrado-served PSAP (or any other PSAP) could not originate a new communication with a party of the 911 caller's choice for a purpose unrelated to the emergency at hand. The PSAP can only transfer the call, without terminating it, to a single authorized respondent<sup>28</sup>, and may continue to participate in the call<sup>29</sup>. That is not like DA call completion, which originates a new call to the end-user's selected destination somewhere in the exchange area, without further involvement by the DA provider (who may provision number look-up and call completion without live human participation).

Nonetheless, this Commission did conclude, in the SCC Arbitration, that Intrado (as SCC) provided a service "by which a subscriber can originate and terminate an emergency or 9-1-1 call."<sup>30</sup> However, the 911-related services SCC proposed to provide in 2001 are not the same as Intrado's proposed 911 service here and they differ meaningfully with respect to call origination. SCC customers included ILECs, CLECs and wireless carriers, for whom it intended to deliver originated 911 traffic to AT&T's

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<sup>26</sup> Specifically, Intrado can transfer calls to "any Intrado served PSAP, to other non-Intrado served PSAPs if the non-Intrado served PSAP's service provider has deployed the selective router-to-selective router feature and is interconnected with Intrado's national network, and to any authorized agency that is directly interconnected to the nationwide Intrado 911/E911 network." AT&T Cross Ex. 4 (Intrado response to AT&T Data Request 20).

<sup>27</sup> Directory Assistance Order, para. 22.

<sup>28</sup> "A 9-1-1 system should be designed so that a call will never be transferred more than once." 83 Ill. Adm. Code 725.505(g).

<sup>29</sup> Indeed, the transferring PSAP *must* remain involved with the call until it is safe to disengage. "At such time as the telecommunicator verifies that the transfer has been completed *and the telecommunicator's services are no longer required*, the telecommunicator may manually release himself from the call." *Id.* (emphasis added). Intrado's Ohio 911 tariff is consistent with this requirement and it reflects the fact that call handling by a PSAP does not usually end at transfer. "The term 'Call Bridging' is preferred because 9-1-1 call handlers rarely transfer calls without staying connected to ensure the call is effectively handled (no 'blind' transfers)." AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging").

<sup>30</sup> SCC Arbitration at 6.

(then, Ameritech's) selective routing tandems, for transmission to an appropriate PSAP<sup>31</sup>. SCC did not intend to serve PSAPs, the terminators of 911 traffic. AT&T Ex. 1.0 at 20 (Pellerin). In the present case, Intrado's service will begin at the selective router and proceed to the PSAP. Intrado does not intend to "aggregate originating 911 calls from other carriers for delivery to [AT&T's] selective routers," AT&T Ex. 1.0, Sch. PHP-9, and it does not intend to "provide non-wire line telephone exchange service to customers in Illinois." *Id.* Thus, Intrado will not enable 911 call origination for any party<sup>32</sup>, much less for its subscriber PSAPs (the relevant entity for purposes of Part B of the federal definition of telephone exchange service). Accordingly, the Commission will not repeat here our conclusion in the SCC Arbitration that Intrado originates telecommunications service.

In sum, the Commission finds that Intrado's 911 service does not enable a subscriber to initiate telecommunications service within the meaning of Part B of the federal definition of telephone exchange service.

**b) Intercommunicating Service (or "Intercommunication")**

As previously noted, while intercommunicating service is not an explicit element of Part B of the statutory definition of telephone exchange service, the FCC regards it as part of the requisite comparability among services under Parts A and B<sup>33</sup>. This Commission defers to the FCC's interpretation of the Federal Act. Therefore, Intrado's 911 service must provide intercommunicating service in order to constitute telephone exchange service under either part of the federal definition.

Despite their opposing views of Intrado's 911 service with respect to intercommunication, both Intrado and AT&T cite the same text in the Advanced Services Order: "a service satisfies the 'intercommunication' requirement of section 3(47)(A) as long as it provides customers with the capability of intercommunicating with other subscribers."<sup>34</sup> The parties also each rely on the same language in both the

<sup>31</sup> SCC Arbitration at 5. The Commission notes that its discussion of the SCC proceeding is based solely on the final Arbitration Decision there. Neither the Commission nor the parties can utilize other matter from that docket for decision-making purposes in this case, unless it has been admitted as record evidence here. One mechanism for admitting such matter is administrative notice, pursuant to 83 Ill. Adm. Code 640(2) & (3). Administrative notice was not utilized in this case, and matter filed in Docket 00-0769 did not enter the record here by other means. Consequently, Intrado's citation to its filing in Docket 00-0769 (which we understand to have been made in good faith), appearing in Intrado's RB at 11, fn. 52 (and any similar citation by any participant here), cannot be considered.

<sup>32</sup> We note that Intrado is not authorized to provide dial tone in Illinois. In its certification proceeding in this state (as SCC), Intrado expressly stated that it would not supply dial tone, SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in Illinois, Dckt. 00-0606, Order at 2 (Dec. 20, 2000) and Amendatory Order, (Jan. 31, 2001) (together, "SCC Certification Order"), and we included that fact in formal findings (Findings 6 & 8) in that case.

<sup>33</sup> "Because we find that the term 'comparable' means that the services retain the key characteristics and qualities of the telephone exchange service definition under subparagraph (A), we reject the argument that subparagraph (B) eliminates the requirement that telephone exchange service permit 'intercommunication' among subscribers within a local exchange area." Advanced Services Order, para. 30.

<sup>34</sup> Advanced Services Order, para. 23; cited at Intrado IB at 13 and AT&T IB at 6.

Advanced Services Order and the Directory Assistance Order that intercommunicating service “refers to a service that permits a community of interconnected customers to make calls to one another.”<sup>35</sup>

The parties interpret the quoted terms differently, however. AT&T asserts that virtually *all* customers in an exchange area must be able to intercommunicate with virtually *all other* customers in the exchange area via the requesting carrier’s service. AT&T IB at 6-7. Intrado argues that the interconnected community need only consist of the intended subscriber (a PSAP) and its potential “customers” (persons needing emergency services) with the exchange area. The issue thus framed by the parties is whether intercommunicating service must inter-link (like a traditional CLEC) all potential subscribers or just the providers and potential users of a niche service (in this case, 911 service).

While the FCC has not precisely defined the scope of intercommunication that a provider must offer to meet the definition of telephone exchange service, the inferences reasonably drawn from the cited FCC decisions do not favor Intrado. In the Directory Assistance Order, on which Intrado places considerable reliance, the FCC concluded that certain DA providers furnish the requisite intercommunication for telephone exchange service<sup>36</sup>. But, as discussed above, the key attribute of such DA service, the FCC found, is not the basic number look-up function. Rather, it is the call completion service (to the caller’s requested telephone number) that certain DA providers offer<sup>37</sup>. Call completion enables the end-user to reach telecommunications customers beyond the DA service provider.

Thus, nothing in the Directory Assistance Order suggests that performing traditional number look-up service, or establishing a part of the telecommunications pathway for performing that service, constitutes the requisite intercommunication for telephone exchange service. Intercommunication between callers and DA number retrieval systems (or live personnel) is not enough. The caller must be able to communicate, via the DA provider’s service, with other interconnected telecommunications customers. Is Intrado’s 911 service, then, sufficiently like the call completion service the FCC characterized as an intercommunicating service?

As discussed above, Intrado’s planned service permits the personnel of its PSAP customer to receive an inbound emergency call and transfer it, when necessary, to another PSAP. The transferring PSAP remains involved in the call, at least initially, via the conference function. Such transfers are limited to other PSAP’s served by Intrado

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<sup>35</sup> Advanced Services Order, para. 23; Directory Assistance Order, para. 17; cited at Intrado IB at 13 and AT&T IB at 6.

<sup>36</sup> The Commission notes that the Directory Assistance Order did not address interconnection under subsection 251(c)(2) of the Federal Act. Rather, the FCC considered whether DA providers furnish telephone exchange service for the purpose of determining their eligibility for nondiscriminatory access to ILEC DA databases under subsection 251(b)(3).

<sup>37</sup> Moreover, not all call completion falls within the statutory definition. Call completion has to occur through the DA’s own facilities or via resale, with a separate charge to the caller. Directory Assistance Order, para. 22.



(and to non-Intrado PSAPs and related agencies under certain circumstances previously described). Such transfers remain within the designated 911 network (Intrado's or - with connected selective routers - another 911 telecommunications provider's), in order to retain ALI and properly provide the emergency response that the caller seeks. Tr. 74 (Hicks).

The Commission therefore finds that Intrado's call transfer capability is not sufficiently like the call completion service that met the intercommunication test in the Directory Assistance Order. In the DA context, after the caller obtains information from the DA provider, s/he can elect to communicate with a large and diverse number of other telecommunications customers connected to the PSTN in the exchange area (at least those customers with published numbers), for purposes entirely different than the purpose of the initial call to the DA provider (*i.e.*, to obtain a telephone number). In contrast, Intrado's 911 service permits no more than a transfer to another PSAP for further (and joint) handling of the original purpose of the call. Thus, the "community of interconnected customers" made accessible to the DA caller is dramatically different than the single transferee made accessible through Intrado's 911 service<sup>38</sup>.

In the Advanced Services Order, on which Intrado also relies, the FCC held that telecommunications accomplished through xDSL-based advanced services provide intercommunication (and constitute telephone exchange service)<sup>39</sup>. The FCC rejected an ILEC's suggestion that the relevant xDSL-based service was analogous to private line service<sup>40</sup>, which is not telephone exchange service. Although an xDSL subscriber must initially designate an internet service provider or other third-party for receipt of high speed data transmissions, the FCC emphasized that the subscriber, "with relative ease," can "rearrange the service to communicate with any other subscriber on [the packet switched] network."<sup>41</sup> The FCC also stressed that the customer can perform that rearrangement without disconnecting service or requesting an additional line. In contrast, a private line subscriber would have to order an additional line to communicate with additional telecommunications customers.

A comparison between xDSL-based advanced services and Intrado's 911 service can be performed from the perspective of the end-user or the PSAP subscriber. For the end-user, 911 service enables communication only with a predetermined PSAP served by Intrado. At most, the PSAP can, in turn, transfer the call to another PSAP (also served by Intrado, unless there are connected selective routers). Transfer is not at the end-user's behest, and the end-user, by design, cannot communicate with any other person or entity via 911 dialing. From the PSAP's perspective, call transfer is the only

<sup>38</sup> Curiously, after repeatedly comparing 911 callers to DA callers, for the purpose of showing that its 911 service provides intercommunication, Intrado IB at 13-16, Intrado asserts on exceptions that "[a]nalysis of Intrado's 911 service should *not* be from the perspective of the 911 caller." Intrado BOE at 4 (emphasis added).

<sup>39</sup> Advanced Services Order, para. 24.

<sup>40</sup> Private line service is "a service whereby facilities for communications between two or more designated points are set aside for the exclusive use or availability of a particular customer and authorized users during stated periods of time." 47 CFR §21.2.

<sup>41</sup> Advanced Services Order, para's. 24 & 25.

the service "to communicate with *any other customer*" located on the packet-switched network.<sup>47</sup>

The Directory Assistance Order relies upon the Advanced Services Order without explicitly or implicitly altering the treatment of intercommunication contained in the latter decision. When the FCC says, in the Directory Assistance Order, that the call completion feature of some DA services allows "an interconnected community of customers to make calls to one another,"<sup>48</sup> it is plainly referring to call recipients other than the DA service itself (the functional equivalent of the PSAP in this analysis).

Consequently, the Commission does not agree with Intrado that "911 callers, PSAPs and first responders," Intrado IB at 14, constitute an interconnected community within the meaning of the FCC orders discussed here. We need not adopt AT&T's concept of the interconnected community - virtually *all* telephone subscribers in an exchange area (an effectively impossible standard for any carrier today) - to conclude that the interconnected community, for purposes of defining telephone exchange service, encompasses a more varied inter-customer communication than an inbound-only hub-and-spoke arrangement in which all calls must end with the hub PSAP (or another PSAP via call transfer).

This is not a question, as Intrado suggests (Intrado RB at 6), of whether intercommunication is limited to voice communication or whether non-traditional services or technologies can provide interconnection. The FCC decisions discussed here have already answered those questions. The real issue posed by the intercommunication requirement is whether telecommunications customers have access to a multiplicity of other customers of their own choosing within the exchange area. The x-DSL service in the Advanced Services Order and the call completion service in the Directory Assistance Order supply such access, while Intrado's 911 service does not.

The Florida Commission did not directly address intercommunication, since it rejected Intrado's petition for lack of call origination. The Ohio Commission found that intercommunication via Intrado's 911 service is "minimal" but nonetheless sufficient for telephone exchange service, because the Federal Act does not "quantify" intercommunication<sup>49</sup>. The FCC, however, *has* analyzed intercommunication quantitatively, in the sense of requiring inter-access among multiple customers through the telecommunications provider's system, not mere one-way communication to a single end-point. Again, in both the Advanced Services Order and the Directory Assistance Order, the FCC describes the intercommunication necessary for telephone exchange service as enabling "a community of interconnected customers to make calls to one another."<sup>50</sup> Thus, as the FCC has viewed it to date (and Intrado has premised its case in large measure on the FCC' construction of the Federal Act), intercommunication involves cross-communication among a multiplicity of end-points.

<sup>47</sup> *Id.*, para. 24 & para. 25, fn. 61 (emphasis added).

<sup>48</sup> Directory Assistance Order, para. 17.

<sup>49</sup> Ohio Arbitration, *supra*, at 15.

<sup>50</sup> Advanced Services Order, para. 23; Directory Assistance Order, para. 21.

virtue of being part of a 'connected system of exchanges,' and not a 'toll' service."<sup>57</sup> To that extent, the FCC seems to conflate the exchange service charge component of the federal definition with the telephone exchange boundary component discussed in the preceding section of this Decision.

The FCC also said in the Advanced Services Order that the name or title of a service in a carrier's bills does not determine whether it is an exchange service charge. "[I]n a competitive environment, where there are multiple local service providers and multiple services, there will be no single 'exchange service charge.'"<sup>58</sup> The FCC adopted this approach to preclude ILECs from distorting the nature of a charge by simply calling it something other than an exchange service charge<sup>59</sup>. However, the FCC also noted that it was describing a service that "otherwise satisfies the telephone exchange service definition."<sup>60</sup> Thus, while billing nomenclature does not determine the nature of the service, the functionality of the service does. Charges associated with a service that is equivalent to the service a subscriber receives for a traditional exchange service charge satisfy the federal definition.

Applying the foregoing principles in the Advanced Services Order, the FCC concluded that an x-DSL charge constituted an exchange service charge, because "an end-user obtains the ability to communicate within the equivalent of an exchange area as a result of entering into a service and payment agreement with a provider of a telephone exchange service."<sup>61</sup> In the Directory Assistance Order, the FCC, relying expressly on the principles articulated in the Advanced Services Order, found that the per-call charge paid by an end-user for DA call completion was also an exchange service charge, primarily because call completion was "unquestionably local in nature."<sup>62</sup>

In the present case, Intrado's potential customers would be PSAPs, not end-users. Are the rates that an Intrado-served PSAP would pay for 911 service analogous to an end-user's exchange service charge? Because Intrado's 911 service does not "otherwise satisf[y] the telephone exchange service definition" (because it does not enable call origination or intercommunication), it is not analogous. However, if Intrado's 911 service did satisfy the other elements of the federal definition, the Commission, mindful of the FCC's particularly flexible treatment of the exchange service charge in the Advanced Services Order and the Directory Assistance Order, would likely take a different view of Intrado's 911 charge. That is, if a service that enables only inbound calls from points throughout an exchange area to a single termination point were deemed to provide call origination and intercommunication, we would likely hold that the associated rate constitutes an exchange service charge.

<sup>57</sup> Advanced Services Order, para. 27. (The FCC reiterated this principle in the Directory Assistance Order, at para. 19.)

<sup>58</sup> *Id.*, para. 28.

<sup>59</sup> Again, as mentioned in an earlier footnote, the Advanced Services Order involved an ILEC's services, not a competitor's.

<sup>60</sup> Advanced Services Order, para. 28.

<sup>61</sup> *Id.*, para. 27. (The FCC also repeated this principle in the Directory Assistance Order, at para. 19.)

<sup>62</sup> Directory Assistance Order, para. 19.

would likely reach the same conclusion it reaches today concerning Intrado's 911 service<sup>66</sup>.

**f) The Pro-Competitive Policy in Applicable Law**

More generally (as we noted earlier), Intrado has called upon this Commission to consider its arbitration Petition in light of the pro-competitive policies and intentions embedded in both federal and Illinois law. Additionally, Intrado stresses the critical importance of reliable 911 service, emphasizing the technological innovations Intrado's 911 service ostensibly includes. The Commission agrees with Intrado's view of applicable telecommunications and public safety policies, and we have no reason to doubt the quality of Intrado's 911 services (or, for that matter, the quality of AT&T's 911 services). The Commission is therefore receptive to statutory interpretation that advances the law's intentions and enhances public safety.

Nevertheless, the Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that *any* market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.

The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily. It may also occur that the FCC, whether in its own right or through its Wireline Bureau, will construe the Federal Act differently than we do here. In either case, this Commission would certainly consider another interconnection request with those new circumstances in mind. Today's result is limited to the record in this particular case and the current state of the law, including the absence of an FCC ruling regarding the status of stand-alone 911 service as "telephone exchange service."

**g) Commission Discretion to Arbitrate**

As an alternative to its preferred outcome (rejection of Intrado's request for interconnection under subsection 251(c)(2)), AT&T contends that the Commission has discretion under the Federal Act to decline to entertain Intrado's interconnection Petition. AT&T IB at 14. Intrado disagrees. Intrado RB at 13, fn. 62. AT&T does not cite authority expressly conferring discretion on the state commissions. Instead, AT&T apparently relies on what it believes to be the absence of compulsory language in subsection 252(b) of the Federal Act (even though the title of that subsection is "Agreements Arrived at Through Compulsory Arbitration"). However, AT&T overlooks subsection 252(b)(4)(C), which provides that "[t]he State commission *shall* resolve each

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<sup>66</sup> Indeed, AT&T states (albeit for purposes of this litigation) that its 911 service is not a telephone exchange service. AT&T RB at 15.

issue set forth in the petition and the response...and *shall* conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.” (Emphasis added). “Shall” is a compulsory term in a statute. It precludes discretion with regard to what “shall” be done. Unless there is precedent from the FCC or a superior court that interprets the Federal Act differently on this point (and AT&T has not cited any), the Commission cannot decline to consider Intrado’s Petition.

That said, the Commission recognizes that the State Corporation Commission of Virginia “deferred” Intrado’s comparable interconnection petitions in that state to the FCC<sup>67</sup>. The Virginia Commission concluded that the FCC was “the more appropriate agency” to determine the threshold issue of Intrado’s right to interconnection under Section 251<sup>68</sup>. That commission cited a Virginia statute that apparently provides discretion to defer arbitration issues. It is not clear how a state statute trumps the mandatory federal provision quoted above, but, in any event, the Virginia Commission dismissed the petitions there (an action that arguably constitutes the resolution of issues contemplated by subsection 252(b)(4)(C)). After dismissal, Intrado successfully petitioned the FCC, under subsection 252(e)(5) of the Federal Act, to assume preemptive jurisdiction of Intrado’s Virginia interconnection petitions, on the ground that the state commission had “fail[ed] to carry out its [arbitration] responsibility,” as subsection 252(e)(5) stipulates. The FCC’s Wireline Competition Bureau issued orders preempting the Virginia Commission<sup>69</sup>.

We will not defer this proceeding to the FCC. As stated above, this Commission does not possess the authority to refrain from resolving the issues framed by the parties. Intrado’s Virginia arbitrations were preempted by the FCC pursuant to Intrado’s petitions under subsection 252(e)(5), and we assume that deferral by us would be similarly regarded as a failure to arbitrate. Moreover, we believe that, like the Florida Commission, we have correctly interpreted and applied the Federal Act by concluding that Intrado’s proposed 911 service is not telephone exchange service within the meaning of the federal definition. And since the Virginia Commission’s deferral has already caused that threshold issue to be presented to the FCC, deferral by this Commission would add nothing to the process of discerning the Federal Act’s meaning. The FCC’s Wireline Competition Bureau will issue a decision and it will resonate among

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<sup>67</sup> *E.g.*, Petition of Intrado Comm. of Virginia Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Telephone-Southeast, Inc. d/b/a Embarq, under Sec. 252(b) of the Telecommunications Act of 1996, Order of Dismissal, Feb. 14, 2008.

<sup>68</sup> *Id.*, at 2. Although the Virginia Commission focused on the threshold issue of Intrado’s interconnection rights, it deferred to the FCC all of the issues presented by the arbitrating parties.

<sup>69</sup> The procedural history of the FCC’s preemption of Intrado’s Virginia petitions is summarized in the Wireline Competition Bureau’s December 9, 2008 Order that consolidates Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Co. of Virginia and United Telephone-Southeast, Inc., FCC WC Dckt. 08-33, and Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) 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., FCC WC Dckt. 08-185.

the state Commissions (including this one)<sup>70</sup>. Furthermore, by issuing a final arbitration decision, we enable Intrado to seek review in the federal District Courts under subsection 252(e)(6), thereby obtaining additional federal guidance on the meaning of the Federal Act.

#### **h) Summary – “Telephone Exchange Service”**

Intrado’s 911 service is not telephone exchange service within the meaning of the federal definition in §153(47). It does not enable its PSAP customers to originate calls, as required by Part B of that definition. It does not facilitate intercommunication, whether by its PSAP customers or by the end-users initiating emergency calls, as required by Parts A and B of that definition. It does provide service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area (even if it also provides service beyond an exchange area). It appears to furnish service under an exchange service charge (although the precise nature of its recurring charges cannot be confirmed by the evidentiary record). Based on the foregoing conclusions, the Commission resolves this issue as AT&T recommends, concluding that AT&T has no duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act.

#### **i) Subsection 251(a) of the Federal Act**

The ALJ’s Proposed Arbitration Decision (“PAD”) in this case contained the same summary and conclusions regarding subsection 251(c)(2) that appear in the immediately preceding subsection of this final Arbitration Decision. In its Exceptions to the PAD, Intrado argued that even if the Commission rules out arbitration under 251(c), it should nonetheless resolve the other arbitration issues in this case under the rubric of subsection 251(a)<sup>71</sup>. Intrado BOE at 6-10. Intrado correctly emphasizes that subsection 251(a) of the Federal Act requires all carriers to interconnect. Intrado also accurately recounts our prior decisions obligating ILECs to both negotiate<sup>72</sup> and arbitrate<sup>73</sup> under 251(a) to accomplish such interconnection with a telecommunications carrier. Intrado stresses that subsection 251(a) - unlike subsection 251(c) - does not oblige the carrier requesting interconnection to provide telephone exchange service.

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<sup>70</sup> When the FCC preempts a state arbitration under subsection 252(e)(5), it “assume[s] the responsibility of the State Commission...and act[s] for the State Commission,” not in its own right. Moreover, decisions are rendered by the FCC’s Wireline Competition Bureau, rather than by the FCC Commissioners. Nevertheless, the Bureau’s decisions are accorded considerable persuasive weight and frequent citation by the state commissions. Thus, with a successful outcome before the Bureau, Intrado would presumably re-petition for interconnection in states that had rejected its original request.

<sup>71</sup> Staff correctly points out that Intrado failed to comply with the requirement in 83 Ill. Adm. Code 761.430(b) that exceptions to a PAD must be accompanied by proposed replacement language. Staff RBOE at 1. Nonetheless, because Intrado’s request for application of subsection 251(a) raises important legal and policy issues, the Commission will address it despite the procedural deficiency.

<sup>72</sup> Cambridge Telephone Co. et al., Petition for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties Under Sections 251(b) and (c) of the Federal Telecommunications Act, Dckt. 05-0259, Order, July 13, 2005 (“Cambridge Telephone”).

<sup>73</sup> Sprint Communications LP, Petition for Consolidated Arbitration with Certain Illinois ILECs Pursuant to Section 252 of the Telecommunications Act of 1996, Dckt. 05-0402, Order, Nov. 8, 2005.



Intrado recites our own observation that subsection 251(a) “contains no restrictions on who may interconnect with whom.”<sup>74</sup> Based on these points, as well as on the subsection 251(a) negotiations and arbitrations required by other state commissions<sup>75</sup>, Intrado urges this Commission to exercise the authority conferred by subsection 251(a) to address the specific interconnection disputes in the other issues presented here.

The Commission cannot do what Intrado requests. Whether or not Intrado can request negotiation and arbitration under 251(a), and whether or not the Commission has the authority to conduct such arbitration, Intrado has not properly invoked that authority here. Under subsection 252(b)(4)(A) of the Federal Act, the “[s]tate commission *shall limit* its consideration...to the issues set forth in the petition and in the response.”<sup>76</sup> Issue 1 in this proceeding does not address subsection 251(a). Rather, it expressly asks whether Intrado has an interconnection right *under subsection 251(c)*. And that is, in fact, the question addressed by the parties. “Specifically, Intrado asks the Commission to find [that]...*Section 251(c) provides the appropriate framework for interconnection arrangements* between competitors like Intrado and ILECs like AT&T.” Intrado IB at 6 (emphasis added). “This case involves a petition for Section 252(b) arbitration between a requesting carrier and an ILEC regarding a request for interconnection *under Section 251(c)(2)*.” AT&T IB at 1 (emphasis added).

Consequently, both Staff and AT&T oppose Intrado’s recommendation to arbitrate issues under 251(a). “There are...no open issues under Section 251(a) properly before the Commission to resolve. The Commission should therefore decline Intrado’s eleventh-hour invitation to arbitrate Section 251(a) issues for which Intrado declined to seek arbitration.” Staff RBOE at 2-3. “Because there was no request to arbitrate any issue regarding Section 251(a) and no request for interconnection under Section 251(a), there is no ‘open issue’ regarding Section 251(a) and thus nothing that the Commission could lawfully decide.” AT&T RBOE at 8.

Indeed, Intrado has strenuously opposed any agreement other than a subsection 251(c) agreement throughout this proceeding. “AT&T’s proposal that Intrado can operate pursuant to a non-section 251(c) agreement with AT&T should likewise be rejected.” Intrado RB at 14. The entire thrust of Intrado’s presentation in this case is that it proposes to compete with AT&T for PSAP customers and that “ILEC-to-competitor relationships are governed by Section 251(c).” *Id.* at 27. Intrado could have, as an alternative basis for interconnection, framed an arbitration concerning its rights under subsection 251(a). It was certainly aware of prior state commission precedent with respect to subsection 251(a) arbitration<sup>77</sup>. Instead, Intrado placed its entire bet on

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<sup>74</sup> Cambridge Telephone, at 13.

<sup>75</sup> See, cases cited in Intrado’s BOE at 8, fn. 34 (from the public utility commissions in California, Indiana, Iowa, New York, North Dakota and Washington).

<sup>76</sup> 47 U.S.C. 252(b)(4)(A) (emphasis added).

<sup>77</sup> Footnote 14 to this Arbitration Decision discusses *Intrado’s own experience* regarding subsection 251(a) before the Ohio Commission. Footnote 66, above, concerns several state commission arbitration decisions discussing subsection 251(a), all cited in Intrado’s BOE. Footnote 64 identifies an arbitration conducted by *this Commission* under subsection 251(a), which Intrado also cites in its BOE. We note

the success of a request under subsection 251(c). Consequently, no issue regarding 251(a) arbitration was presented to satisfy the requirements of subsection 252(b)(4)(A) - and, as a matter of fair process, neither AT&T nor Staff were apprised of the need to address such an issue<sup>78</sup>.

Furthermore, the difference between the rights and duties of parties to subsection 251(a) arbitration, as contrasted with subsection 251(c) arbitration, are hardly trivial. Subsection 251(c) affords a requesting carrier certain rights that are more advantageous than the rights afforded by subsection 251(a). For example, subsection 251(c)(2)(B) of the Federal Act requires an ILEC to allow interconnection "at any feasible point within" the ILEC's network. This enables a competitor to choose the feasible interconnection point most favorable to its interests. Subsection 251(a), by its terms, does not impose the same duty on an ILEC<sup>79</sup>. Thus, certain disputes under 251(a) would be governed by different regulations, precedents and principles than those applicable to 251(c) disputes.

In the instant case, the parties in fact framed and argued their issues entirely under subsection 251(c). This is particularly so with respect to two of the most significant issues in this arbitration (as measured by the attention they have received in the parties' testimonies and briefs) - issues 7 and 10<sup>80</sup>. For Issue 7 (which pertains to selective E911 call routing when multiple PSAPs are served by a single AT&T end office), Intrado specifically relies on principles embedded in 251(c), particularly technical feasibility and the "equal in quality" requirement in subsection 251(c)(2)(C). Intrado IB at 41-49. AT&T's response is similarly grounded in 251(c). AT&T RB at 28-34. Likewise, Intrado's federal law arguments for Issue 10 (which concerns whether AT&T is required to establish points of interconnection on Intrado's network) are completely based on subsection 251(c)<sup>81</sup>, as is AT&T's reply<sup>82</sup>. Consequently, these specific issues are neither presented for resolution, nor argued in fact, under subsection 251(a).

Additionally, the Commission observes that Intrado does not acknowledge that its belated attempt to transform this proceeding into a subsection 251(a) arbitration contradicts Intrado's fundamental position in this and other states. Intrado expressly declared that it "cannot provide 911/E911 services in Illinois today...without interconnection to the PSTN *pursuant to 251(c)*." Intrado IB at 23 (footnote omitted)

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that the requesting carrier in that case expressly sought arbitration under 251(a); it was not an eleventh-hour or "fallback" request after recommended denial of 251(c) arbitration.

<sup>78</sup> Like Intrado, AT&T was also aware that subsection 251(a) might have been introduced in this arbitration, and AT&T relied - fairly - on its understanding that disputes under that subsection had not been presented to the Commission ("Neither Intrado nor AT&T has sought interconnection under Section 251(a) or arbitration of any issue related to Section 251 (a)," AT&T RB at 39, fn. 29).

<sup>79</sup> Subsection 251(a) contemplates direct or indirect interconnection. The precise contours of the subsection 251(a) interconnection requirement - as distinct from the subsection 251(c) interconnection requirement - were addressed (among other issues) in Docket 05-0402, cited above, at 23-29.

<sup>80</sup> The resolution of these issues would also affect the outcome of certain other issues (e.g., Issue 8).

<sup>81</sup> E.g., "[Intrado's preferred interconnection configuration] is the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPS." Intrado IB at 60 (emphasis added); and more generally, Intrado IB at 53-65.

<sup>82</sup> AT&T RB at 38-41.



(emphasis added). It would have been instructive for Intrado to explain why it now believes it can furnish competitive 911 service under the less generous terms and conditions available for subsection 251(a) interconnection. Similarly, Intrado could have constructively discussed why it now believes that subsection 251(a) interconnection is lawful for Intrado's proposed services. Intrado, which describes itself as AT&T's competitor<sup>83</sup>, told the Ohio Commission (in *opposition to* that commission's *sua sponte* application of subsection 251(a)) "that Section 251(c), not Section 251(a), governs all ILEC-competitor interconnections."<sup>84</sup> The absence of such explanation hardly compels this Commission to resort to subsection 251(a), particularly when specific disputed issues and Intrado's arbitration request in general are specifically predicated on subsection 251(c).

AT&T presents an additional and significant argument against subsection 251(a) arbitration – that the Federal Act does not authorize the state commissions to arbitrate disputes arising under that subsection. "[I]ssues purportedly arising under Section 251(a), which does not involve ILECs in particular or any of the special obligations imposed on ILECs...are not subject to compulsory arbitration under Section 252(b)." AT&T RBOE at 12. In fact, AT&T contends, the Federal Act (as least in subsection 251(c)(1)) does not even require an ILEC to *negotiate* with respect to the interconnection obligations imposed on carriers by subsection 251(a). *Id.* "[H]ence the only issues that can be subject to compulsory arbitration under Section 252(b), are those involving obligations on an ILEC under Sections 251(b) and (c)." *Id.* (relying in large measure on a U.S. District Court case in Texas)<sup>85</sup>.

Despite AT&T's arguments, the Commission will not render an opinion on the nature or scope of subsection 251(a) arbitration here. Doing so would contradict our determination that 251(a) arbitration is not part of this proceeding, having never been requested by either party for any issue in the Petition or Response. The fact that 251(a) arbitration was *first* discussed in briefs on exceptions does not merely support that determination; it also demonstrates that this critical threshold issue has not received the thorough analysis it would have undergone had it been framed as a disputed issue at the outset of the case (as it should have been to qualify for arbitration under the Federal Act).

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<sup>83</sup> "Intrado will be a direct competitor of AT&T in Illinois." Intrado Ex. 4 at 5.

<sup>84</sup> Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company, P.U.C.O. Case No. 08-537-TP-ARB, Entry on Rehearing (Jan. 14, 2009) at 3 (para. 5). The Commission notes that AT&T's RBOE in this case was accompanied by a document that Intrado filed in the cited Ohio proceeding, along with another document from a similar proceeding. Those documents were not offered as evidence in this proceeding, and administrative notice was not requested. Accordingly, they were not considered by the Commission in this docket. Our discussion of events in the cited Ohio proceeding is based solely on the Ohio Commission's orders.

<sup>85</sup> Sprint Communications Co. v. Public Utility Commission of Texas, 2006 WL 4872346 (W.D. Tex. 2006). AT&T also disagrees with Intrado's view of the meaning of several state commission decisions (cited in Intrado's BOE at 8, fn. 34) relating to arbitration under subsection 251(a). AT&T RBOE at 15, fn. 11. Additionally, AT&T cites two commission decisions rebuffing subsection 251(a) arbitration (Colorado and West Virginia). *Id.* at 17-18.

Thus, nothing in this Arbitration Decision is intended to preclude Intrado from requesting interconnection under subsection 251(a), from requesting negotiation of issues associated with such interconnection (or issues pertaining to any other matters governed by 251(a)), or from requesting arbitration before this Commission. Should Intrado seek such arbitration, the Commission would perform its duty to resolve issues properly framed in accordance with Section 252, including the threshold issue of whether interconnection disputes under subsection 251(a) can or must be arbitrated by a state commission pursuant to the Federal Act. Without intending to prejudge that threshold issue in any respect, the Commission notes (as mentioned above) that we have previously arbitrated interconnection issues under the rubric of subsection 251(a)<sup>86</sup>.

### **Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36**

The Commission resolved Issue 1, above, with the finding that AT&T has no duty to interconnect with Intrado pursuant to subsection 251(c)(2) of the Federal Act, because Intrado's proposed 911 service is not "telephone exchange service" within the meaning of the federal definition at 47 USC §153(47). Accordingly, no mandatory ICA will emanate from this arbitration. It necessarily follows that the ICA terms proposed by the parties in connection with the other issues in this proceeding cannot be approved. Therefore, in order to implement subsection 252(c)(1) of the Federal Act, which mandates that our resolution of open issues "meet the requirements of Section 251," the Commission resolves each of the other issues in this arbitration with the finding that no proposed ICA language is consistent with the requirements of Section 251, since no ICA is required under subsection 251(c)(2). All disputes regarding proposed ICA terms have been rendered moot and superfluous by our resolution of Issue 1.

## **V. STAFF'S REQUEST FOR A GENERIC PROCEEDING**

Staff requests a Commission directive to prepare a report and draft order initiating a generic proceeding for issues relating to competitive 911 service. Staff asserts that this arbitration "raises issues that implicate the rights and interests of numerous entities" outside the case. Staff IB at 36. Presumably, Staff is principally referring to the PSAPs/ETSBs that manage and fund the 911 system, and the incumbent 911 telecommunications providers whose systems might require modification as competitive providers emerge. Staff's testimony suggests some of the issues that might be constructively addressed in a generic proceeding (such as modification of existing ETSB system planning), and posits further that 83 Ill. Adm. Code 725 might need to be revised to accommodate competitive entry for 911 service. Staff Ex. 3 (Schroll).

Staff's interest in a comprehensive approach to 911 competitive entry is patently sensible. In view of Intrado's revised contention that interconnection agreements between competitive 911 providers and ILECs can be formed under subsection 251(a),

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<sup>86</sup> Sprint Communications LP, Petition for Consolidated Arbitration with Certain Illinois ILECs Pursuant to Section 252 of the Telecommunications Act of 1996, Dckt. 05-0402, Order, Nov. 8, 2005.

and in view of AT&T's asserted willingness to accomplish interconnection through a commercial agreement (which AT&T apparently does not regard as a 251(a) agreement), additional competitive 911 providers might well seek to serve Illinois ETSBs. Given that likelihood, we concur with the Florida Commission that "there may be potential unintended consequences that affect more than just the current parties [to arbitration],"<sup>87</sup> and that "all potentially affected parties should be consulted and afforded an opportunity to weigh in."<sup>88</sup> Furthermore, as Staff correctly notes, we are charged by the terms of the Emergency Telephone Safety Act<sup>89</sup> with establishing technical and operational standards to govern the provision of 911 service, competitive or otherwise, within this state. Accordingly, we will approve Staff's recommendation for an appropriate 911 proceeding<sup>90</sup>.

## VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Intrado has petitioned this Commission for arbitration under subsection 252(b) of the Federal Act, for the purpose of executing an Interconnection Agreement with AT&T;
- (2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act; therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado and Issue 1 herein should be resolved accordingly;
- (5) based on Finding (4), above, no interconnection agreement should be required under subsection 251(c)(2), and all other issues presented in this proceeding (Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36), which pertain to the terms and conditions to be included in such an agreement, should be resolved by declaring them superfluous and moot.

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<sup>87</sup> Petition by Intrado Communications, Inc., for Arbitration with BellSouth Telecommunications, Inc., d/b/a AT&T Florida, Fla. Pub. Serv. Comm'n. Dckt. 070736-TP, Final Order (Dec. 3, 2008), at 8.

<sup>88</sup> *Id.* at 9.

<sup>89</sup> 50 ILCS 750.

<sup>90</sup> AT&T suggests that industry workshops might constructively *precede* a docketed proceeding. AT&T RBOE at 21. The Commission believes that would needlessly slow the process Staff envisions, particularly when workshops can be conducted *within* a docketed proceeding.

- (6) the Commission has authority under the Emergency Telephone Systems Act to determine the technical and operational standards for 911 systems, including interconnection, and should open a generic proceeding with the intent of promulgating regulations regarding the provision of competitive 911 services; Staff should be directed to prepare an appropriate report and draft Order initiating such a proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Issue 1 in this arbitration shall be resolved by determining that Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act and that, therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado.

IT IS FURTHER ORDERED that Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36 shall be resolved by determining that no interconnection agreement between Intrado and AT&T is required under subsection 251(c)(2), and that, therefore, those issues are superfluous and moot.

IT IS FURTHER ORDERED that the Staff of the Commission shall prepare a report concerning issues pertinent to the provision of competitive 911 service, and shall prepare and present to the Commission a draft order initiating a generic proceeding concerning those issues.

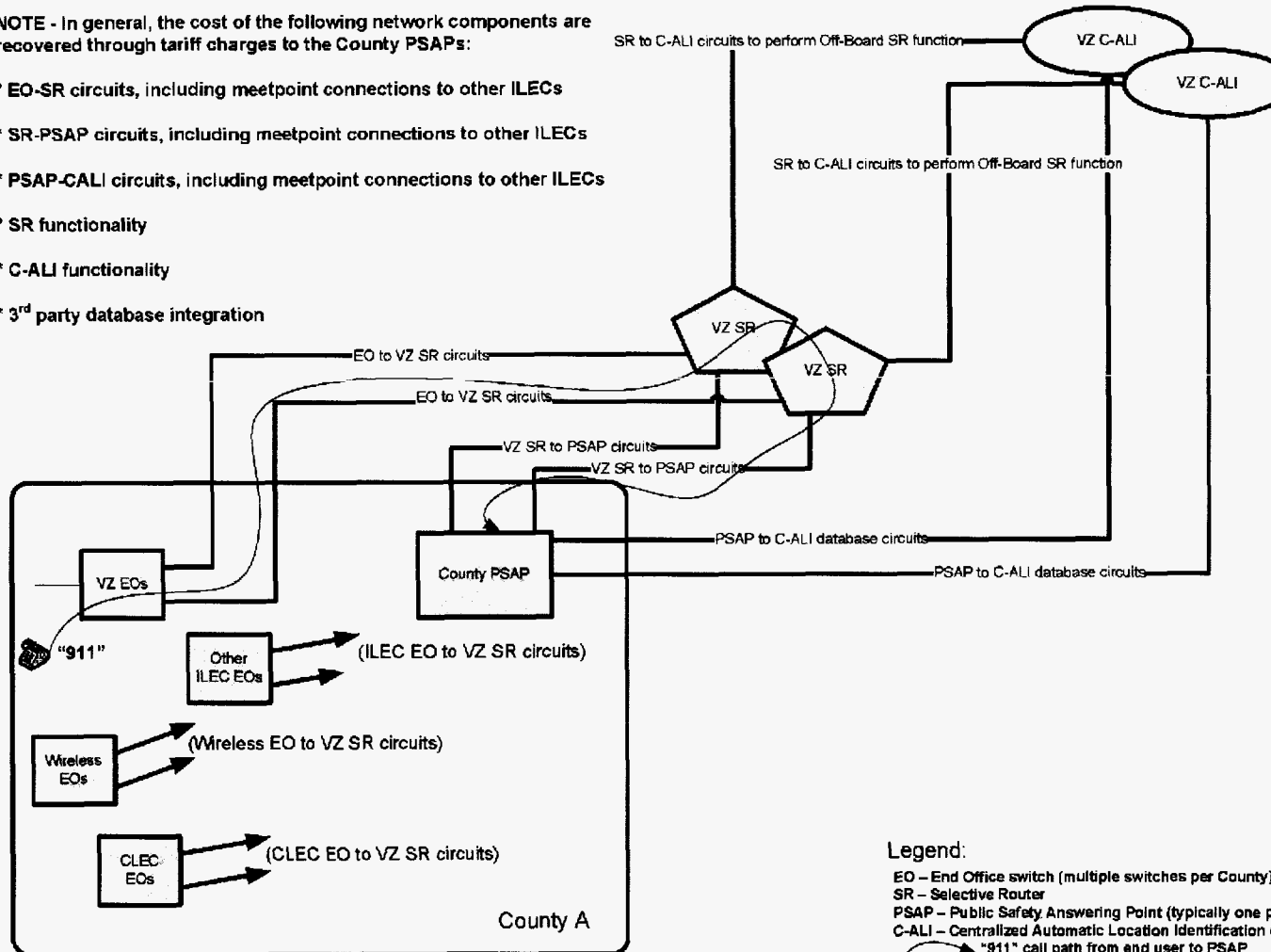
Entered this 17<sup>th</sup> day of March, 2009.

BY ORDER OF THE COMMISSION

## Existing FL E911 Network

**NOTE** - In general, the cost of the following network components are recovered through tariff charges to the County PSAPs:

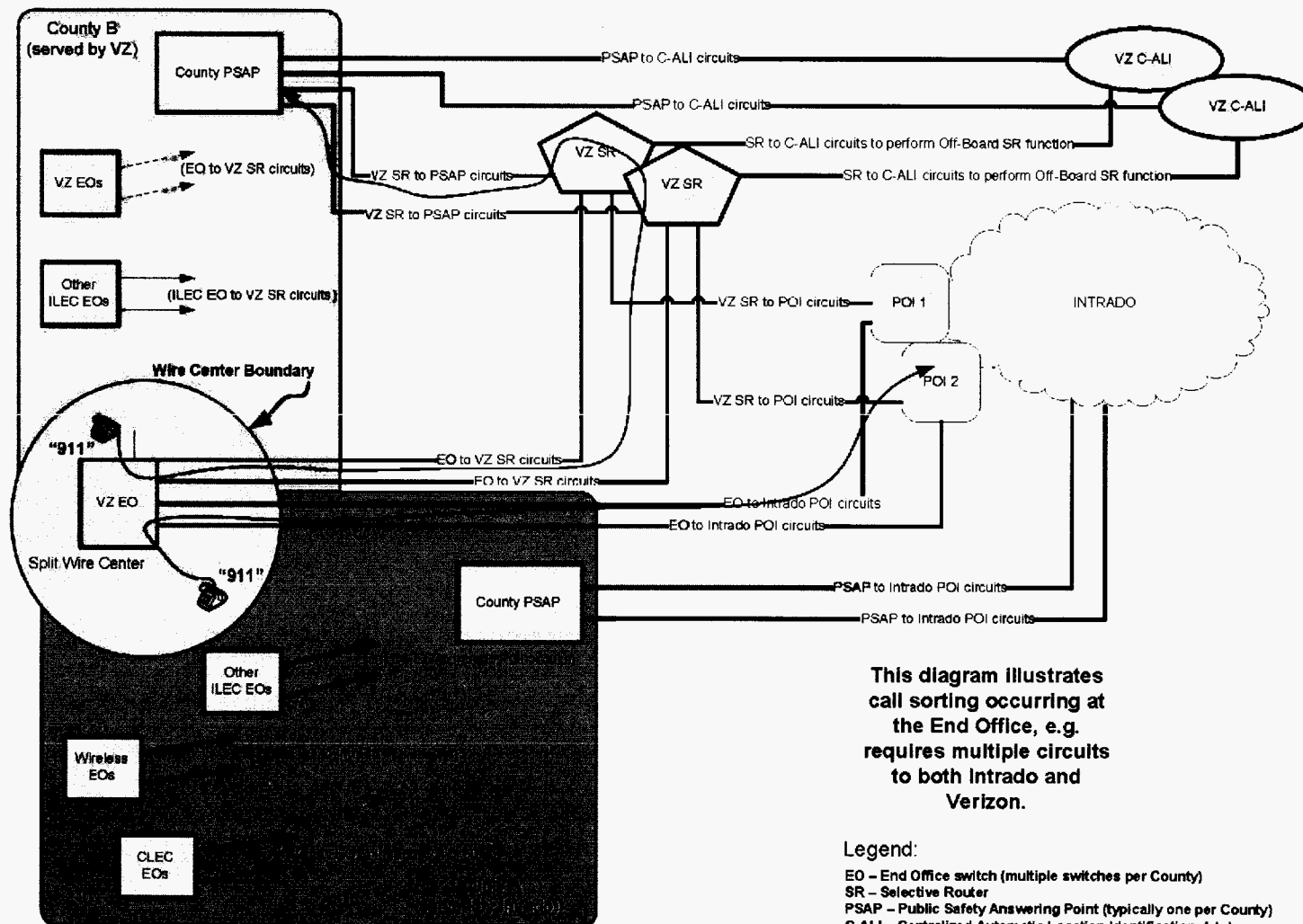
- \* EO-SR circuits, including meetpoint connections to other ILECs
- \* SR-PSAP circuits, including meetpoint connections to other ILECs
- \* PSAP-CALI circuits, including meetpoint connections to other ILECs
- \* SR functionality
- \* C-ALI functionality
- \* 3<sup>rd</sup> party database integration



### Legend:

EO – End Office switch (multiple switches per County)  
 SR – Selective Router  
 PSAP – Public Safety Answering Point (typically one per County)  
 C-ALI – Centralized Automatic Location Identification database  
 ▲ "911" call path from end user to PSAP

# Proposed Intrado E911 Network (as Verizon understands it)



This diagram illustrates  
call sorting occurring at  
the End Office, e.g.  
requires multiple circuits  
to both Intrado and  
Verizon.

## Legend:

- EO - End Office switch (multiple switches per County)
- SR - Selective Router
- PSAP - Public Safety Answering Point (typically one per County)
- C-ALI - Centralized Automatic Location Identification database
- POI - Point of Interconnection
- "911" call path from end user to PSAP

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PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: November 14, 2008

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and  
VERIZON WEST VIRGINIA INC.,  
Petition for Arbitration filed pursuant  
to §252(b) of 47 U.S.C. and 150 C.S.R.  
6.15.5.

ARBITRATION AWARD

PROCEDURE

On March 5, 2008, Intrado Communications, Inc. ("Intrado"), filed a petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon West Virginia Inc. ("Verizon"), pursuant to 47 U.S.C. §252(b).<sup>1</sup>

On April 3, 2008, Commission Staff ("Staff") filed a Memorandum stating that the parties reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) to file a joint petition for arbitration if issues remain unresolved at the end of the forty-five day period. Staff also stated that the parties agreed to report weekly to the Commission on the progress of the negotiations.

On April 8, 2008, Intrado and Verizon filed a letter stating that they supported Staff's recommendation to hold this proceeding in abeyance for forty-five days to give the parties the opportunity to participate in monitored negotiations with Staff.

On June 10, 2008, Staff filed its final memorandum recommending dismissal of this matter. Staff stated that it had not been involved in negotiations between Intrado and Verizon and that Intrado had not communicated with Staff since the Commission's April 9, 2008 Order.

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<sup>1</sup>47 U.S.C. §252(b) provides, in part, that state commissions may arbitrate disputes involving interconnection agreements between certain telecommunications carriers upon petition by one of the parties to the negotiation.



On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that a petition for arbitration was not properly before the Commission.

On June 23, 2008, Intrado filed a Petition to Reconsider requesting that the Commission reinstate the arbitration petition and establish a procedural schedule with a decision deadline of September 12, 2008. Verizon responded on July 3, 2008, in opposition to Intrado's Petition to Reconsider. Staff also argued against reopening the proceeding. See, Staff's July 7, 2008 Response. Intrado disputed the assertions of both Staff and Verizon. See, Intrado's July 25, 2008 Reply.

By Commission Order entered on August 1, 2008, the Commission granted Intrado's petition for reconsideration, appointed Chief Administrative Law Judge Melissa Marland, Esquire, or her designee, as the arbitrator in this matter, tolled the final decision deadline in this matter until September 12, 2008, and established procedural parameters. Among other things, the Commission Order required that the arbitrator issue the arbitration award on or before August 29, 2008. Intrado was ordered to fully answer all unanswered data requests propounded by Verizon within seven (7) days of the receipt of the Commission Order. Any motion requesting that the Commission reject the arbitrator's award under 47 U.S.C. §252(e) was to be filed on or before September 2, 2008.

On August 7, 2008, Intrado and Verizon filed a joint motion in this matter, requesting that the Commission extend the decision due date established in its Order of August 1, 2008. According to the joint motion, Intrado and Verizon have agreed to revise the renegotiation request date to re-set the statutory time frame for an arbitration decision in West Virginia until December 12, 2008. Accordingly, they proposed, inter alia, that hearings be held on September 24, 2008, continuing on September 25 and 26, 2008, if necessary; that briefs be filed on or before October 17, 2008; that the ALJ's proposed arbitration award be issued on or before November 7, 2008; that any exceptions to the arbitration award be filed on or before November 14, 2008; and that the Commission issue its decision on or before December 12, 2008. The parties stated that their proposed schedule would insure that the outstanding disputes would be expeditiously resolved while giving the parties, the Administrative Law Judge and the Commission adequate time to address the unresolved issues.

By Commission Order entered on August 12, 2008, the Joint Motion to Extend the Decision Due Date was granted and the Commission tolled the final decision deadline in this matter until December 12, 2008. The arbitrator was directed to establish a procedure schedule and the parties were directed to contact the arbitrator within ten (10) days of the entry of the Commission's Order and provide any information needed by the arbitrator to facilitate scheduling. The arbitrator was directed to issue the arbitration award on or before November 7, 2008. Intrado was directed to fully answer all unanswered Verizon data requests on or before August 12, 2008, and any motion requesting that the Commission reject the arbitrator's ruling was directed to be filed on or before November 14, 2008.



Also on August 12, 2008, Intrado filed applications for the pro hac vice admission of Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, to practice before the Public Service Commission in this matter. The applications were filed pursuant to Rule 8.0 of the Rules of Admission to the Practice of Law in the State of West Virginia (Rules for Admission) by E. Dandridge McDonald, of the law firm of Steptoe and Johnson PLLC, Intrado's local counsel. The affidavits with respect to each of the three out-of-state attorneys also indicated that Mr. McDonald had forwarded a copy of the three applications together with the required \$250 fee for each application to the West Virginia State Bar.

On August 13, 2008, Intrado filed a letter indicating that it had filed its responses to Verizon's discovery requests on August 12, 2008.

By Procedural Order entered on August 19, 2008, a procedural schedule was established for the processing and resolution of this case. Among other things, this matter was set for hearing to be held on September 24, 2008, at 10:00 a.m., at the Public Service Commission Building, in Charleston, West Virginia, and to continue at the same location and at the same time on September 25 and September 26, 2008, if necessary. A schedule for the filing of the transcript of the hearing, initial briefs and reply briefs was also established. Additionally, the motions for the admission pro hac vice to practice before the Commission for Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, were granted.

On September 9, 2008, Verizon filed a motion for leave to file and present panel testimony.

On September 16, 2008, Intrado filed a response which did not object to Verizon's request to file and present panel testimony and stated that, in light of Verizon's request, it also intended to use the panel format for some of its rebuttal testimony.

On September 19, 2008, Intrado and Verizon filed a Joint Motion for a modification of the procedural schedule and for an extension of the Administrative Law Judge's decision due date, as a result of a sudden illness in the family of Verizon's lead trial counsel. The parties had reached an agreement regarding a revised schedule, calling for hearing to be held on October 2, 2008, and extending by one week, each, the dates for filing initial briefs and reply briefs and the dates for the issuance of the ALJ recommendation, the filing of exceptions and the issuance of a Commission decision.

By Commission Order entered on September 22, 2008, the Commission granted the motion to extend the date for the issuance of the ALJ recommendation from November 7, 2008, to November 14, 2008, and the date for the issuance of the Commission decision from December 12, 2008, to December 19, 2008.

By Procedural Order issued on September 22, 2008, the procedural schedule established by the Procedural Order of August 19, 2008, including the hearing date of September 24, 2008, was cancelled. The

revised procedural schedule requested by the parties, including the hearing date of October 2, 2008, was adopted.

On September 30, 2008, Verizon filed a notice of witness substitution, substituting Maureen Napolitano for Kathleen Cerrati on its witness panel.

The hearing set for October 2, 2008, was held as scheduled, with Intrado represented by E. Dandridge McDonald, Cherie R. Kiser and Rebecca Ballesteros, Esqs.; Verizon represented by Joseph J. Starsick and Darrell Townsley, Esqs.; and Commission Staff represented by Staff Attorney C. Terry Owen, Esq. At the beginning of the hearing, the undersigned granted the motion for pro hac vice admission of Mr. Townsley upon the motion of Mr. Starsick. Intrado presented the testimony of three witnesses and introduced six exhibits into evidence, including packets consisting of the testimony and exhibits of its witnesses Thomas Hicks, Carey Spence-Lenss and Cindy Clugy, the disputed issues matrix and draft interconnection agreement, and two cross-examination exhibits. Verizon presented the testimony of three witnesses, Maureen Napolitano, Kathy Buckley and Peter D'Amico and introduced seven exhibits into evidence, including the direct and rebuttal testimony and testimony sponsor detail sheets for its witness panel, a rebuttal exhibit and two cross-examination exhibits. Commission Staff presented no testimony or witnesses, although the Staff Attorney cross-examined some of the witnesses of the other parties. At the conclusion of hearing on October 2, 2008, this matter was submitted for an arbitration award, pursuant to the procedural schedule established in the Order of September 22, 2008.

On October 6, 2008, the transcript of the hearing held on October 2, 2008, was filed, consisting of 224 pages and a reporter's certificate.

On October 24 and 31, 2008, Intrado and Verizon each filed initial and reply briefs in accordance with the established schedule, all of which have been considered by the undersigned in the course of rendering this decision.

On November 10, 2008, the West Virginia Enhanced 9-1-1 Council (Council) filed a letter in this matter, stating that it had been informed of the case and had discussed the case at a recent meeting. It specifically referred to Intrado's request to perform 911 call deliver using what the Council referred to as "line call attribution." The Council expressed concern about the reliability and effectiveness of this method of emergency call delivery. However, the Council also stated that it had no desire or intention to limit competition among the companies or to limit the free market in providing a more efficient or less costly product. It asked that its concerns with that particular method of 911 call delivery be included in the file.

On November 12, 2008, Intrado filed a response to the Council's letter and reiterated its position that it was not asking the Commission to rule that 911 call delivery should use line call attribution.

On November 13, 2008, Verizon filed a response to the Council's letter, reiterating its position in this proceeding regarding line attribute routing.

The Council's letter and Intrado's and Verizon's responses thereto have not been considered in the determination of the arbitration award granted herein.

### BACKGROUND

#### Basic 911/E911 Architecture in West Virginia

Emergency telephone service (911) and enhanced emergency telephone service (E911)<sup>2</sup> allow a caller to reach emergency services quickly in the event of fires, accidents, floods, etc., by dialing the three-digit emergency number of 9-1-1 to reach a public safety answering point (PSAP), also referred to as a 911 center or emergency services center. In basic 911 service, usually the PSAP receives only the voice call. In E911 service, the PSAP receives the call plus the caller's telephone number through a feature known as ANI (automatic number identification). Additionally, the PSAP receives ALI (automatic location identification), via a special ALI database which gives the PSAP the actual location of the caller, even if the caller cannot communicate or the call is disconnected for some reason. (Verizon Ex. 1.0, pp. 12-14).

Currently, 911/E911 service to PSAPs in West Virginia is provided by the two largest incumbent local exchange carriers (ILECs)<sup>3</sup> operating in West Virginia, Verizon and Frontier. Verizon serves the 41 PSAPs in Verizon's 45-county West Virginia service territory and is providing some 911/E911 service in Frontier's territory. (Verizon Ex. 1.0, p. 12; Tr., pp. 159-161).

For Verizon's own end user customers who are trying to reach their PSAP, the 911 call goes from the end office serving Verizon's end user to one of the two selective routers<sup>4</sup> in the end user's LATA (local access and

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<sup>2</sup>For the purposes of this decision, any general reference to either 911 or E911 service encompasses both types of service.

<sup>3</sup>An ILEC is the local exchange carrier who provided telephone exchange service to a particular area on February 8, 1996, or its successor. (47 U.S.C. §51(h)).

<sup>4</sup>A selective router is a mated pair of tandem switches which send 911 calls to the appropriate PSAP. Verizon has two selective routers in each LATA, or six throughout its West Virginia service territory. A selective router is basically an end office switch with the added features that allow it to transmit 911 calls to the correct PSAP. Basically, when a 911 call reaches the selective router, the selective router looks up the customer's telephone number and predetermined emergency service number, which tell it which trunk route the call needs to take to get to the proper PSAP. (Tr., pp. 190-191, 215-216; Verizon Ex. 1.0, pp. 12-13).

transport area).<sup>5</sup> (Verizon Ex. 1.0, Attachment 1). There are three LATAs covering West Virginia, the Charleston LATA, the Clarksburg LATA and the Hagerstown, Maryland LATA. There is also a small Independent Market Area covering part of Mercer and McDowell Counties. (Verizon Cross-Examination Ex. 2). The selective routers in each LATA are not interconnected. (Tr., p. 160).

The principal purpose of TA96 was to open the nation's telecommunications markets to competition. As a result, hundreds, if not thousands, of competitive local exchange carriers (CLECs) are now operating nationwide, including many in West Virginia. The CLECs compete with the ILECs to provide various types of telecommunication services in a given area, including local, long distance and data transmission. In order to provide for the termination of its customers' calls to destinations not served by it, a CLEC enters into interconnection agreements with the different ILECs and CLECs that also serve in a particular geographic area. The interconnection agreements cover all aspects of the exchange of traffic and include the point or points of interconnection (POIs) between the two networks, technical requirements, prices/rates and the rights and obligations of the two parties. (Intrado Initial Brief, pp. 3-4, 6-7; 47 U.S.C. §251).

All CLECs are required by TA96 to provide 911/E911 service to their customers. (Tr., p. 176). Accordingly, the interconnection agreements also cover the handling of the CLEC customers' 911 calls. With respect to 911 calls, the interconnection agreement that the CLECs enter into with Verizon in West Virginia requires that the points of interconnection be the two selective routers in the CLEC's LATA. If the CLEC serves on a statewide or close to statewide basis, it connects at all six of Verizon's selective routers. The CLEC constructs trunks directly to the selective routers from its network. When a 911 call from a CLEC customer reaches Verizon's selective router, the same process occurs as it does for a call from Verizon's own end users. The selective router looks up the caller's number and emergency service number and routes the call to the correct PSAP. (Verizon Ex. 1.0, pp. 14-15; Tr., pp. 168-170).

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<sup>5</sup>As a result of the 1982 Modified Final Judgment breaking up AT&T and separating the "Bell Companies" into the Regional Bell Operating Companies (RBOCs), the nation was divided into LATAs. RBOCs (including the West Virginia AT&T affiliate, Verizon, fka Bell Atlantic-West Virginia, fka The Chesapeake and Potomac Telephone Company of West Virginia), could only provide local service within LATAs (intraLATA). As a result of the Telecommunications Act of 1996 (TA96), these companies were allowed to provide long distance or interLATA service (service between two LATAs), if they met certain conditions established in §271 of TA96. Verizon filed a §271 petition with the Commission in 2002 and, in its consultative role pursuant to §271, the Commission concluded that Verizon was in compliance with the 14-point checklist in §271 and submitted its Commission Order and Consultative Report to the FCC. (Case No. 02-0809-T-PC, Commission Order and Consultative Report, January 9, 2003). The FCC granted Verizon's §271 application for Maryland, Washington, D.C., and West Virginia later in 2003. Application by Verizon..., 18 FCC Rcd 5212 (2003)).



At various points in West Virginia, Verizon's network is in close proximity or adjacent to the network of another ILEC and they may need to exchange traffic to allow the completion of 911 calls to the correct PSAPs. Verizon entered into agreements with the other ILECs in West Virginia prior to TA96 for this exchange of traffic, including 911 calls. These agreements are called "meet-point arrangements." Under a meet-point arrangement, Verizon and the other ILEC connect to each other's network at a point where their networks meet or are in close proximity to each other. If any facilities need to be constructed by either carrier to reach the meet-point, each carrier bears the responsibility for the construction of its own facilities. However, those arrangements entail little, if any, construction because the meet-point was chosen specifically for the proximity of the two networks to each other. (Verizon Ex. 1.0, p. 14; Tr., p. 167).

#### Case Background

Several provisions of TA96 address the interconnection of ILEC and CLEC networks. Section 251 of TA96 provides, in part, as follows:

SEC. 251. [47 U.S.C. 251] INTERCONNECTION.

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.-Each telecommunications carrier has the duty-

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.-Each local exchange carrier has the following duties:

(1) RESALE.-The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY.-The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY.-The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY.-The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224.

(5) RECIPROCAL COMPENSATION.-The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.-In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.-The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) in subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION.-The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

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Section 252 of TA96 establishes the process by which state commissions may arbitrate requests for interconnection. Section 252(c) provides as follows:

(c) STANDARDS FOR ARBITRATION.-In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Section 252(e) provides, in part, as follows:

(e) APPROVAL BY STATE COMMISSION.-

(1) APPROVAL REQUIRED.-Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION.-The State commission may only reject-

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Finally, Section 253(b) provides as follows:

(b) STATE REGULATORY AUTHORITY.-Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Additionally, Rule 15.3.a. of the Commission's Rules and Regulations for the Government of Telephone Utilities (Telephone Rules) (150 CSR 6) provides that any telecommunications carrier may request interconnection with an ILEC in accordance with Sections 251(b) and 251(c) of TA96.

Intrado Communications has been certificated as a CLEC in West Virginia<sup>6</sup>, although it isn't providing any service in the State at this time. (Intrado Ex. 1, Panel Rebuttal, p. 4; Tr., pp. 16, 21). Prior to providing service, Intrado must enter into interconnection agreements with the necessary carriers and file tariffs containing its rates and charges with the Commission. (Final Order, Case No. 06-1892-T-CN). Currently, Intrado is only attempting to provide competitive 911/E911 services in West Virginia, by which it means that it wants to compete with Verizon to provide service to the PSAPs. Intrado will not be serving end users under this agreement. (Verizon Ex. 1.0, p. 31). In order to provide service, Intrado requested an interconnection agreement with Verizon, pursuant to Section 251(c) of TA96. Ultimately, Intrado and Verizon could not agree on an agreement and Intrado filed the petition that generated this proceeding.

In its petition for arbitration filed on March 5, 2008, Intrado presented 44 issues for arbitration. In its response to the petition, Verizon added 3 additional issues. After further negotiations, Intrado and Verizon resolved all but 17 issues. Those issues were presented to

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<sup>6</sup>(Intrado Communications, Inc., Case No. 06-1892-T-CN, Commission Order, Final March 28, 2007).

the Commission in this proceeding in a Disputed Issues Matrix (Matrix) which was received in evidence as Intrado Exhibit 4. An interconnection agreement, containing all of the agreed-upon provisions and designating Intrado's and Verizon's respective proposals for the disputed issues, is also part of Intrado Exhibit 4. The issues in the Matrix are keyed to the specific provisions in the interconnection agreement to which they apply, to the extent possible. However, the Matrix specifically notes that, while the parties tried to list all of the affected provisions of the interconnection agreement with each issue, there may be other provisions which were missed by the parties that are also affected by a particular issue. (Intrado Exhibit 4, Matrix, p. 1).

#### PRELIMINARY JURISDICTIONAL ISSUE

While not raised directly by Verizon, Verizon referenced on several occasions in its testimony and its initial and reply briefs the issue of whether Intrado Communications is even entitled to an interconnection agreement, or to file a petition for arbitration for an interconnection agreement, regarding only 911/E911 services. It noted that the issue was currently pending before the Federal Communications Commission (FCC)<sup>7</sup> and several state commissions. Verizon stated that it, essentially, had waived the issue of jurisdiction and had agreed to enter into a negotiated interconnection agreement with Intrado, as it would any other CLEC. (Verizon Ex. 1.0, p. 9; Verizon Initial Brief, p. 4; Verizon Reply Brief, pp. 2-5 & Exhibits A-D).

Obviously, jurisdiction is a matter which can be raised at any time and which can be raised by a commission on its own. A fair reading of the applicable provisions of the Telecommunications Act of 1996 and the FCC's rules promulgated in response to TA96 would indicate that Intrado's right to request interconnection solely for the provision of 911/E911 service pursuant to Section 251(c) may be questionable. Section 251(c)(2)(A) provides that ILECs have an obligation to provide interconnection with a requesting telecommunications carrier for the transmission and routing of telephone exchange service and exchange access. The FCC's supporting rule, 47 CFR §51.305(b) states, as follows:

- (b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

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<sup>7</sup>For purposes of this decision, when the undersigned uses the term "Commission" in discussion, she is referring to the Public Service Commission of West Virginia. However, in TA96, the term "Commission" refers to the FCC. State regulatory authorities, including designated arbitrators, are referred to as "state commissions."



Under Intrado's proposal, providing service only to PSAPs, Intrado appears to be seeking solely to originate its interexchange traffic on an ILEC's (Verizon's) network.

However, since the issue is pending before the FCC; because Verizon did essentially waive that issue by entering into interconnection agreement negotiations with Intrado; and because the issue was not squarely presented to the parties in a fashion that would have allowed Intrado to recognize that it needed to file responsive testimony and briefing on the issue for the undersigned, she will not address the issue of Intrado's right to request interconnection or arbitration solely for its proposed 911/E911 service to PSAPs.

### DISPUTED ISSUES

As noted previously in this Order, there are seventeen disputed issues still remaining for resolution. The issues has been designated at all points throughout the prepared testimony, in the live testimony at hearing and in the Disputed Issues Matrix using the numbering that those issues had in the original list of over fifty disputed issues. Accordingly, that numbering will be retained in this decision. Therefore, the first issue to be addressed will be designated as Issue No. 3. The specific issues to be addressed in this matter are Issues 3, 4, 6, 9, 12, 13, 14, 15, 34, 35, 36, 46, 47, 49, 52, 53 and 54. Both Intrado and Verizon have acknowledged at numerous points that the determination of Issue No. 3 will impact or be dispositive of several subsequent issues, although they will still require discussion and an award.

### ISSUE NO. 3

Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?

In its proposed language, Intrado is demanding that, when Intrado is the E911 service provider for the PSAP, Verizon be required to construct facilities from Verizon's network to Intrado's two selective routers on Intrado's network, so that Verizon end users who are served by an Intrado PSAP can reach that PSAP when dialing 911. (Intrado Ex. 1, Hicks Direct, pp. 9-10; Tr. pp. 15-16, 22, 57). At this point, Intrado has not designated specific locations for its selective routers in West Virginia, although it represented that there would be a minimum of two selective routers located in West Virginia. (Intrado Ex. 1, Hicks Direct, p. 14; Tr. pp. 16-18). Intrado also indicated that, if it were more convenient, for Verizon or any other ILEC or CLEC who needed to transport 911 calls to an Intrado-served PSAP, any of Intrado's selective routers located outside the state could also be used, noting that it had at least two selective routers in Ohio, Pennsylvania and Virginia already in service. (Tr. pp. 23, 106, 109-110).

Intrado argues that Verizon should be required to transport 911/E911 calls to Intrado's selective routers where Intrado serves the PSAP, just as Verizon requires all CLECs to transport E911 traffic to Verizon's

selective routers for delivery to Verizon-served PSAPs. Intrado argues that the provision of 911/E911 service to a PSAP is sufficiently different from "plain old telephone service" or POTS, which is the usual subject of an interconnection agreement, that the Commission should feel free to go outside of traditional determinations on interconnection agreements. (Intrado Ex. 1, Hicks Direct, pp. 9-10, and Panel Rebuttal, p. 11; Intrado Ex. 2, Spence-Lenss Direct, pp. 11-12; Intrado Initial Brief, pp. 10-15, and Reply Brief, pp. 4-8). Intrado also argues that its proposal is supported by Section 251(c)(2)(C), which requires the ILEC to provide interconnection to the requesting telecommunications carrier that is at least "equal in quality" to that provided by the local exchange carrier to itself, any subsidiary, affiliate or any other party to which the ILEC provides interconnection. Intrado also argues that the fact that Section 251(c)(2)(B) specifically requires that the point of interconnection be at any technically feasible point on the ILEC's network cannot be used to eviscerate the subsequent subsection. (Intrado Ex. 1, Hicks Direct, p. 14 and Panel Rebuttal, pp. 6-7; Intrado Initial Brief, pp. 8-11; Intrado Reply Brief, pp. 4-5).

Verizon argues that Intrado's request and position are in violation of Section 251(c) of TA96 and pointed out that, in Section 251(c), which delineates additional obligations of incumbent local exchange carriers, ILECs, such as Verizon, are obligated to provide interconnection "at any technically feasible point within the carrier's network." The FCC's supporting rules are even more specific and state that the point of interconnection is to be provided at any technically feasible point within the incumbent LEC network. (See, 47 CFR §51.305(a)(2)). Verizon argues that the fact that CLECs have entered into interconnection agreements with it, which require them to transport 911 calls to Verizon's selective routers when Verizon is serving the PSAP to which those calls are destined, does not constitute a valid reason to require Verizon to transport its end users' 911 calls to Intrado's routers and interconnect on Intrado's network when Intrado serves the PSAP. Verizon argues that the statute and the law are clear; that what Intrado is requesting is simply not permitted; and that Verizon has no obligation to transport 911/E911 calls from Verizon's existing network to Intrado's network. (Verizon Initial Brief and Reply Brief generally).

Verizon also argues that Intrado's proposal potentially would require Verizon to transport calls across LATA boundaries from Verizon's network to a POI on Intrado's network and that Verizon has no such obligation. According to Verizon, for 911/E911 calls originated by Verizon end users to Intrado-served PSAPs, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon end user originates the call. For 911/E911 calls transferred between PSAPs served by the two Parties, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon-served PSAP, from which or to which the call is being transferred, is located. (Verizon Initial and Reply Briefs generally).

#### Arbitration Award

A great deal of time and effort was devoted by the parties to this issue in their prepared testimony, their live testimony and their initial and reply briefs. In fact, this issue is quite simple to decide. The

law is clear and unequivocal. Section 251(c) of the Telecommunications Act of 1996 obligates an incumbent local exchange carrier, such as Verizon, to provide, for the facilities and the equipment of any requesting telecommunications carrier, interconnection with the ILEC's network, at any technically feasible point within the ILEC's network. (See, 47 U.S.C §251(c) (2) (B); 47 CFR §51.305(A) (2)). Intrado's arguments are ludicrous on their face. On the one hand, Intrado argues that Verizon cannot use one obligation under Section 251(c) to "obliterate" another obligation under Section 251(c). That is certainly true enough. However, Intrado's own argument would require exactly that outcome.

Further, Intrado's argument that Section 251(c) (2) (C) requires Verizon to interconnect at a POI on Intrado's network, because otherwise it is not providing interconnection that is at least equal in quality to that which it provides itself, is simply unsupported by law or reason. First, as pointed out above, Section 251(c) (2) (B) is quite specific. Second, the FCC has already defined what the "equal in quality" subsection means, at 47 CFR §51.305(a) (3). That rule states the following with respect to the "equal in quality" provision: "At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network." The subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection. It simply means that the technical standards which apply at that point of interconnection must be equal in quality to those technical standards which the ILEC applies to itself throughout its network and to other carriers it has allowed to interconnect on its network.

Intrado also argued that, for the purpose of providing competitive 911/E911 services, the Commission must look beyond the traditional interconnection arrangements used for POTS and seek to establish a physical architecture that addresses the special needs of 911 callers and first responders. Intrado argues that 911/E911 services are unique and different and that the physical architecture it is seeking in this issue is critical to issues of reliability, redundancy and minimizing points of failure for 911/E911 services.

However, Intrado's argument on this point must fail for at least two reasons. First, Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection. If the provision of 911/E911 service on a competitive basis is a local exchange service, the same statutory language applies to interconnections to provide that service as for any other telecommunications exchange service. Second, and perhaps more importantly, even if there were a different standard, there is absolutely no evidence in the record of this proceeding to demonstrate that the current 911/E911 system architecture and provision of 911/E911 service in West Virginia are in any way deficient, flawed, substandard or even mediocre. (Verizon Ex. 2.0, pp. 3-4; Tr. pp. 152-153).

Intrado also argued that the provisions of Section 253(b) of TA96 provide the Commission with the requisite authority to modify the way interconnection is provided for 911/E911 services, because that Section

provides that, "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis, ... requirements necessary to ... protect the public safety and welfare ...." However, State regulatory authorities are still required to comply with all provisions of the Telecommunications Act of 1996. (Intrado Initial Brief, p. 19). Section 253(b) does not speak in any way to interconnection requirements between an ILEC and a CLEC. It is simply irrelevant to an interconnection determination.

In its argument on this issue, Intrado relied, in part, upon the arbitration award issued by the Public Utilities Commission of Ohio in Case No. 07-1216-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, pursuant to Section 252(b) of the Telecommunications Act of 1996, September 24, 2008 (Ohio Arbitration Award). Intrado correctly pointed out that, for situations when Intrado was the 911 service provider to the PSAP and Embarq was seeking to allow the completion of its customer's emergency service calls to that PSAP, the ILEC, Embarq, would be required to seek interconnection with Intrado and it was appropriate for the point of interconnection to be on Intrado's network. However, in the Ohio proceeding, Intrado and Embarq had actually agreed during voluntary negotiations that Embarq would interconnect at one point on Intrado's network. Intrado had requested in the arbitration that Embarq be required to have multiple points of interconnection on its network and the Ohio Commission specifically refused to approve that request. Importantly, in a subsequent issue in the same Order, the Ohio Commission clarified its ruling on interconnection by holding that Embarq was only responsible for delivering its traffic to an Intrado selective router located within Embarq's service territory. The Ohio Commission noted that its ruling did not preclude the Parties from mutually agreeing to an additional point or points of interconnection at any technically feasible point either inside or outside of Embarq's territory. In part, the Ohio Commission's clarification was based upon its recognition that Embarq was entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection. (Ohio Arbitration Award, pp. 8, 29, 33).

In a subsequent arbitration award involving Intrado and Cincinnati Bell Telephone Company (CBT), the Ohio Commission further refined its holding on these points to only require CBT to interconnect on Intrado's network at a single point of interconnection within CBT's LATA. (See, Case No. 08-537-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., October 8, 2008, pp. 9-10).

In one respect, however, the undersigned disagrees with the result reached by the Public Utilities Commission of Ohio. In the Ohio arbitration award involving Embarq, and in the subsequent arbitration award involving CBT, the Ohio Commission, apparently, recast Intrado's petition for arbitration from a petition requesting arbitration of its Section 251(c) interconnection request to a petition for arbitration regarding interconnection pursuant to Sections 251(a) and 251(c). The major difference between the two is that, under Section 251(c), the ILEC cannot be required to establish a point of interconnection on the CLEC



network, while, under Section 251(a), the carriers are free to enter into agreements without consideration of the requirements under Sections 251(b) and (c). It was that change that allowed the Ohio Commission to require the ILECs, Enbarq and CBT, to establish a point of interconnection on Intrado's network. The Ohio Commission has taken at least two steps back from the original broad statement, first to limit that point of interconnection to a location in the ILEC service territory and second to limit the POI to a specific LATA.

It is the opinion of the undersigned that, if a carrier files a petition for arbitration of its Section 251(c) interconnection request, the state commission is obligated to arbitrate that request as a Section 251(c) interconnection request. The route taken by the Ohio Commission is fraught with the potential for abuse. It is too easy for state commissions to avoid or modify the requirements established by Congress in TA96, and the more specific requirements established by the FCC in its rules and orders, if the state commission can unilaterally pick out different issues which it wishes to arbitrate in a manner different from what would be required under Section 251(c) and simply designate those issues as Section 251(a) issues. Such potential for abuse is untenable. A request for arbitration of a Section 251(c) interconnection request must be arbitrated in toto as a Section 251(c) arbitration request. The parties to that interconnection agreement certainly can include elements in the agreement which do not specifically relate to the Section 251(b) and (c) requirements; however, the inclusion of those elements in the agreement cannot change the overall characterization of the arbitration proceeding.

It should also be noted that the Telephone Rules adopted by the Commission regarding arbitration under Section 252 omit any reference to §251(a). Only §§251(b) and (c) are mentioned. See, Telephone Rule 15.3.a.

Accordingly, the Verizon-proposed language regarding point(s) of interconnection under the Interconnection Agreement, 911 Attachment §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1 and Glossary §§ 2.63, 2.64 and 2.67 are adopted, because Intrado must connect at points of interconnection on Verizon's network. Glossary §§ 2.94 and 2.95 will be addressed in Issue 6. Verizon cannot be required to interconnect on Intrado's network, as there is no legal obligation for it to do so.

Further, as was pointed out by Verizon in the Disputed Issues Matrix, the pricing provisions of the 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network.

#### ISSUE NO. 4

Whether the Parties should implement inter-selective router trunking and what terms and conditions should govern the exchange of 911/E911 calls between the Parties.

In the Disputed Issues Matrix, Intrado describes its position on this issue by saying that the establishment of inter-selective trunking will allow the ANI and ALI associated with an emergency call to remain with that call when it is transferred to the other selective router. It asserts that Verizon performs this type of routing within its own network and with other 911/E911 service providers. Intrado argues that inter-selective router calls should be exchanged by the parties at the POI established for the parties' exchange of other 911/E911 calls. Finally, Intrado argues that each party should be required to maintain appropriate updates and routing translations for 911/E911 services and call transfers. (Intrado Ex. 4, Matrix, p. 3).

Verizon initially described its position on this issue by stating that, on occasion, 911/E911 calls may be directed to the wrong PSAP. This can occur in the case of a wireless caller because of a lack of identification of the caller's exact location. In the case of a misdirected call, the PSAP that initially received the call may wish to transfer the call to the correct PSAP. Where the PSAPs served by Verizon and Intrado have agreed to transfer misdirected calls between them, Verizon is prepared to work with Intrado to establish appropriate arrangements for the transfer of those calls. Verizon argues that Intrado's proposed language specifies particular methods for the transfer of 911 calls between PSAPs, such as inter/911 tandem/selective routing. Intrado's proposed language also specifies particular activities to be undertaken by the parties in support of Intrado's proposed call transfer methodology, such as the requirement of inter-911 tandem/selective router dial plans. (Intrado Ex. 4, Matrix, p. 3).

The Verizon position statement in the Disputed Issues Matrix also stated that Verizon was still reviewing the technical feasibility of Intrado's proposed methods for inter-PSAP transfer of 911/E911 calls; that the methods proposed by Intrado may not be appropriate in all cases; and that a specification of the method of transfer of 911/E911 calls should not be included in the agreement. Verizon also pointed out that Intrado is proposing that Verizon be required to deliver the calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP at a POI on Intrado's network and Verizon is opposing that requirement for the same reasons set out in Issue No. 3. (Intrado Ex. 4, Matrix, pp. 3-4).

#### Arbitration Award

As a result of the decision on Issue No. 3, the vast majority of the disputes between Intrado and Verizon on this issue have already been resolved or eliminated. What remains for resolution are Section 1.4.4 of the 911 Attachment of the Interconnection Agreement and six definitions in the Glossary attached to the Interconnection Agreement. In point of fact, those disputes do not actually involve the issue originally described at Issue No. 4.

Section 1.4.4 of the 911 Attachment to the Interconnection Agreement consists entirely of Intrado's proposed language and reads as follows:

The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions or deletions to their inter-PSAP transfer dial plans.

Verizon does not dispute that dial plans are needed and appropriate. Verizon represented that is willing to provide that information to Intrado, just as it does for other providers. Verizon asserted that Intrado was seeking an excessive level of dial plan detail in the Interconnection Agreement that is not customary, appropriate, or workable. Therefore, Verizon asked that Section 1.4.4 of the 911 Attachment be deleted. (Verizon Initial Brief, pp. 20-21).

Given that both parties agreed that dial plans are needed, it appears that some language modification is all that is necessary to render Section 1.4.4 of the 911 Attachment acceptable. Accordingly, the parties shall incorporate in the Final Interconnection Agreement, in Section 1.4.4, the following language:

The Parties will maintain appropriate dial plans to support inter-PSAP call transfer and shall notify each other of changes, additions or deletions to those dial plans.

The Glossary definitions appear to be equally easy to address. Glossary Section 2.6 provides an Intrado-proposed definition of ANI. On its face, the definition does not appear to be inappropriate; however neither Intrado nor Verizon felt that a definition for ALI was needed. Therefore, the Interconnection Agreement required by this arbitration award shall delete Section 2.6 of the Glossary to be consistent.

Section 2.63 of the Glossary contains a definition of 911/E911 Service Provider. The dispute appears in subsection (a) and is related to the issue resolved in Issue No. 3. The only reason for the last three lines of subsection (a) not being identical to the last three lines of subsection (b) is the dispute in Issue No. 3. Accordingly, neither Party's language will be adopted. The Interconnection Agreement required by this arbitration award shall modify Section 2.63(a) so that the last phrase of that subsection reads as follows: "and provide transmission and routing of 911/E911 calls from Verizon's network to the PSAP(s)."

Section 2.64 of the Glossary, a definition for 911 Tandem/Selective Router, involves disputes over both Intrado's and Verizon's proposed language. Verizon's proposed language more accurately reflects the function of the equipment and Verizon's language shall be used in the Interconnection Agreement required by this arbitration award.

Section 2.67 of the Glossary is a definition of Point of Interconnection. Again, this definition is directly associated with Issue No. 3. Accordingly, Verizon's proposed language is approved.

Sections 2.94 and 2.95 of the Glossary provide definitions for "Verizon 911 Tandem/Selective Router and Verizon 911 Tandem/Selective

Router Interconnection Wire Center." The definition contained in Section 2.94 is completely superfluous since there is already a definition for 911 tandem/selective router. Accordingly, Section 2.94 of the Glossary will be omitted from the Interconnection Agreement required by this arbitration award. Section 2.95 of the Glossary also is unnecessary and shall be deleted from the Interconnection Agreement required by this arbitration award.

ISSUE NO. 6

Whether the forecasting provisions should be reciprocal

Section 1.6 of the 911 Attachment to the Interconnection Agreement addresses trunk forecasting requirements. Section 1.6.1 is not in dispute and requires that Intrado provide Verizon a two-year traffic forecast that complies with Verizon's trunk forecast guidelines, as revised from time to time, as least ninety days before initiating interconnection in a LATA. Section 1.6.2 is entitled "Ongoing Trunk Forecast Requirements." Verizon's proposed language would require Intrado to submit a good faith forecast on the number of trunks it anticipates Verizon will need to provide during the ensuing two-year period for the exchange of traffic between Intrado and Verizon on a semi-annual basis. It also requires Intrado to provide a new or revised traffic forecast when Intrado develops plans or becomes aware of information that will materially affect the Parties' interconnection. Intrado's proposed language makes this forecasting requirement reciprocal and requires Verizon to also file a two-year forecast on the number of trunks it believes it will need on a semi-annual basis. Obviously, at least in part, Intrado's proposed language was based on its position that Verizon should be required to interconnect on Intrado's network when Intrado is providing 911 service to the PSAP. (See, Intrado Exhibit No. 4, Interconnection Agreement, 911 Attachment, p. 103).

Verizon asserts that Intrado's proposal serves no useful purpose and imposes an unnecessary burden on Verizon. Verizon argues that Intrado will be in the best position to forecast the number of trunks necessary for traffic flowing from Verizon to Intrado. Those trunking needs will depend on Intrado's success in the market and Intrado will be able to track the volume of traffic passing through its network to the PSAP. Additionally, any PSAPs which Intrado signs up as customers will have the best knowledge of call volumes from Verizon's serving area to those PSAPs. (Verizon Exhibit 1.0, pp. 46-47).

Verizon also argues that the agreed-upon language in 911 Attachment §1.5.5 should address any legitimate need Intrado has for forecasts from Verizon. Section 1.5.5 of the 911 Attachment provides that, on request, the Parties will meet to review traffic and usage data on trunk groups and determine whether the Parties should establish new trunk groups, augment existing trunk groups or disconnect existing trunks. Verizon believes that this section should provide Intrado with all of the information it will need to assure there is adequate trunking between the Parties' networks. (Verizon Exhibit 2.0, p. 25).



In its Reply Brief, Intrado argues that there are likely to be numerous 911 calls flowing between the Parties' networks because of misdirected cell phone calls. Intrado asserted that it has a legitimate need for trunk forecasts.

#### Arbitration Award

The Arbitrator finds Verizon's arguments reasonable. The PSAPs themselves are in the best position to assess the number of misdirected calls which they receive. Accordingly, the PSAPs which Intrado signs up as customers for its competitive 911/E911 service should be able to assess, at least as well as Verizon, the amount of misdirected call volume from Verizon that came to them instead of going to PSAPs served by Verizon. Further, if there is ever a point when Intrado believes that it is not receiving adequate traffic and usage data on trunk groups, it can avail itself of the opportunity provided by Section 1.5.5 of the 911 Attachment. Accordingly, the Interconnection Agreement shall contain Verizon's proposed language for Section 1.6.2 of the 911 Attachment.

#### ISSUE NO. 9

#### What terms and conditions should govern how the parties will initiate interconnection

Both parties acknowledged that this issue was related to Issues 3 and 12. The bulk of Intrado's language associated with Issue 9 assumes that Verizon will interconnect at 2 points on Intrado's network. Verizon's position is that, because Intrado is required to interconnect with Verizon at a POI on Verizon's network, rather than the other way around, all of Intrado's proposals which assume that Verizon will build out to Intrado's network must be rejected.

#### Arbitration Award

For all of the reasons set out in Issue No. 3, it is equally appropriate to reject Intrado's arguments and language on Issue 9. It has been determined that Intrado must interconnect with Verizon at a point or points on Verizon's network. Therefore, Intrado's proposed language for 911 Attachment, Section 1.5, must be rejected.

#### ISSUE NO. 12

#### HOW THE PARTIES WILL ROUTE 911/E911 CALLS TO EACH OTHER.

In large measure, the elements in dispute under this issue were resolved by the decisions on Issues 3 and 4. The affected sections set forth in the Disputed Issues Matrix are 911 Attachment Sections 1.3, 1.4 and 1.73 and Glossary Sections 2.6, 2.64, 2.94 and 2.95. 911 Attachment Sections 1.3 and 1.4 and all of the designated Glossary sections have already been addressed. The one remaining section designated by the parties under Issue 12 that has not been addressed is Section 1.7.3 of the 911 Attachment, under the Compensation heading. In fact, much of the disputed language in Section 1.7.3 has also already been resolved by the decisions on Issues 3 and 4. The remaining tariff issue in that section

will be deferred to Issues 34 and 35. In fact, Section 1.7.3 of the 911 Attachment is listed again under Issue 35.

This issue originally involved whether or not it was appropriate under the Interconnection Agreement to require Verizon to utilize direct trunks from Verizon's end offices to the point of interconnection selected by Intrado, which, under Intrado's proposal, would be on Intrado's network, rather than on Verizon's. Intrado also sought to prohibit Verizon from using 911 tandem/selective routers to route 911/E911 calls from the end user to the point of interconnection. Originally, Intrado also specifically requested that Verizon be required to implement "line attribute routing." (See, Intrado Exhibit No. 4, Matrix, pp. 6-7).

Intrado's position on line attribute routing has changed fairly significantly since the filing of the Disputed Issues Matrix. In Intrado's filed testimony, line attribute routing was still recommended as a requirement. However, in the Intrado Reply Brief and in the Intrado response to the Council letter filed on November 12, 2008, Intrado has stated explicitly that it is not recommending the use of line attribute routing and only had suggested it as an alternative to direct trunking. With the decision on Issue No. 3, Intrado's proposal under Issue No. 12 no longer makes sense. With the point of interconnection established on Verizon's network, it is not Intrado's business how Verizon routes the 911 and E911 calls made by its end users on its network to its selective routers. Verizon is entitled to engineer its system on its side of the point of interconnection in the manner it deems to be the most efficient and secure.

#### Arbitration Award

Accordingly, Intrado's proposals for direct trunking, line attribute routing and the elimination of the use of Verizon's selective routers are all rejected, since, with the establishment of the point of interconnection on Verizon's network, those requests by Intrado intrude upon Verizon's right to engineer its own system in the manner that it deems best. The Glossary sections shall be revised as previously set forth under Issue 4. The pricing issue contained in 911 Attachment Section 1.7.3 is deferred to Issue 35.

#### ISSUE NO. 13

Whether 911 Attachment Section 1.1.1 should include the Intrado Comm proposed sentence describing Verizon's 911 facilities.

The Intrado sentence which is at issue in this matter simply restates with respect to Verizon an identical sentence regarding Intrado in that section. Subsequently, in Section 1.1, at 1.1.2 and 1.1.3, reciprocal information regarding Intrado and Verizon is set forth on other issues. The sentence is benign and there is no reason for it not to be included in Section 1.1.1 of the 911 Attachment.

### Arbitration Award

Section 1.1.1 of the 911 Attachment to the Interconnection Agreement, including the Intrado-proposed language, is approved and incorporated in the Interconnection Agreement established through this arbitration award.

### ISSUE NO. 14

Whether the agreement should contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what those provisions should be.

This issue involves Intrado's proposed Section 1.2.1 of the 911 Attachment. Section 1.2 of the 911 Attachment regarding the ALI database provides that, where Intrado is the 911/E911 service provider and manages the ALI database, Verizon and Intrado will establish mutually acceptable arrangements and procedures for inclusion of Verizon end user data in the ALI database. Intrado-proposed Subsection 1.2.1 states, "The parties shall work cooperatively to maintain the necessary ALI steering tables to support display of ALI between the Parties' respective PSAP customers upon transfer of 911/E911 calls."

Verizon objects to this language because it believes that Intrado's language could require Verizon to actually maintain the ALI database, even when it is Intrado's obligation to do so. Intrado, on the other hand, argues that the parties need to work together as co-carriers to support call transfer capabilities and that each party should be required to maintain appropriate updates in routing translations for 911/E911 services and call transfers. (See, Intrado Exhibit No. 4, Matrix, p. 9). Verizon also pointed out that it already had a commercial agreement with Intrado which addressed the creation of steering tables and Verizon argued that, as a result, there is no need to include Intrado's language in the Interconnection Agreement. (See, Verizon Initial Brief, p. 33; Verizon Exhibit No. 2.0, pp. 45-46).

Intrado argues that the ALI database is one of the three integrated components necessary to provide 911/E911 service. It points out that the switching and transmission components of providing emergency telecommunications service would be useless without the ALI function and appropriate routing of 911 calls to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records. (See, Intrado Initial Brief, pp. 36-37; Intrado Exhibit 1, Hick's Direct, pp. 7-8).

### Arbitration Award

Intrado's proposed Section 1.2.1 must be rejected. If Intrado is managing the ALI database, Verizon should not be compelled to perform functions which are Intrado's obligation. The Interconnection Agreement already provides that Verizon and Intrado will establish mutually acceptable arrangements and procedures to include Verizon's end user data in the ALI database, and that language should be more than sufficient.

Accordingly, Verizon's version of Section 1.2 is approved and Intrado's proposed language is rejected.

#### ISSUE NO. 15

Whether certain definitions related to the Parties' provision of 911/E911 service should be included in the interconnection agreement and what definitions should be used.

This issue involves Glossary Sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95, all of which were already revised in Issue No. 4. Accordingly, there is no need to address these definitions.

#### Arbitration Award

Glossary Sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95 shall be revised as previously determined in Issue No. 4.

#### ISSUE NO. 34

What Verizon will charge Intrado Comm for 911/E911 related services and what Intrado Comm will charge Verizon for 911/E911 related services.

#### ISSUE NO. 35

Whether all "applicable" tariff provisions shall be incorporated into the agreement, whether tariffed rates shall apply without a reference to the specific tariff, whether tariffed rates may automatically supercede the rates contained in Pricing Attachment, Appendix A, without a reference to the specific tariff, and whether the Verizon proposed language in Pricing Attachment Section 1.5 with regard to "TBD" rates should be included in the agreement.

Issues 34 and 35 will be addressed together, since they both deal with similar issues regarding the pricing language and charges to be included in the Interconnection Agreement.

Issue 34 addresses 911 Attachment Sections 1.3, 1.4 and 1.7 and Pricing Attachment Sections 1.3, 1.5, and Appendix A. Issue 35 addresses General Terms and Conditions Section 1.1, 911 Attachment Sections 1.3, 1.33, 1.36, 1.42 and 1.73 and Pricing Attachment Sections 1.3, 1.5 and Appendix A. In the Disputed Issues Matrix, Intrado states, with respect to Issue 34, that state retail tariffs governing 911/E911 services are not appropriate for Verizon's provision of service to Intrado under the Interconnection Agreement and that any charges to be assessed to Intrado should be developed pursuant to the Section 251/252 process and set forth in the Interconnection Agreement. Likewise, Intrado should have reciprocal rights to charge Verizon "port" or "termination" charges when Verizon interconnects with Intrado's network. With respect to Issue No. 35, Intrado states that tariff charges should not be permitted to trump the charges contained in the Pricing Appendix, unless those tariffs are specifically referenced in the Pricing Appendix. Any new rates to be developed by Verizon for services under the Interconnection Agreement

should be developed as part of the Section 251/252 process with Commission approval. Unspecified tariff terms and conditions deemed by Verizon to be applicable should not be incorporated into the Interconnection Agreement. Only those tariffs specifically referenced in the Interconnection Agreement should be applied to Intrado. (See, Intrado Exhibit No. 4, Matrix, pp. 11-13).

Verizon, on the other hand, states that its proposed 911 Attachment and Pricing Attachment set out the charges that will be billed by it for services provided under the Agreement. Verizon states that Intrado must pay Verizon the appropriate charges for interconnection at the POI on Verizon's network, such as collocation charges, and must pay Verizon for any facilities and services provided by Verizon to carry 911/E911 calls between the POI on Verizon's network and Intrado's network. Transport and termination of 911/E911 calls will be handled on a non-charged bases and Verizon won't bill Intrado any charges for the transport and termination from the POI to the Verizon-served PSAP of 911/E911 calls that are being transferred from an Intrado-served PSAP to a Verizon-served PSAP. The Pricing Attachment provides for the rates for Verizon's services to be as set out in its tariffs and, in the absence of a tariff rate, as set out in Appendix A to the Pricing Attachment. Verizon asserted that the rates set out in Appendix A are its standard rates for the services listed in that Appendix that are offered to other CLECs. Verizon also asserted that Intrado should not be billing Verizon any charges in connection with 911/E911 calls or interconnection or facilities used to carry those calls. Intrado should not bill Verizon any charges for transport and termination of 911/E911 calls from Verizon end users to Intrado-served PSAPs or for the transport and termination of calls transferred from Verizon-served PSAPs to Intrado-served PSAPs. Further, since Intrado is obligated to interconnect at a POI on Verizon's network, there should be no Intrado charges for Intrado-provided facilities that carry 911/E911 calls and no charges for interconnection to Intrado's network.

With respect to Issue 35, Verizon states that it files tariffs for the services it provides. Applying those tariff rates to the services which Verizon will provide to Intrado, and vice-versa, is appropriate because those rates are subject to review and approval by the Public Service Commission in accordance with applicable legal standards. Further, under the Communications Act, Verizon has a duty of nondiscrimination with regard to the pricing of its services and the use of tariff rates helps it fulfill this obligation. Intrado's proposal to limit the tariffs and apply to the services under the Agreement only those tariffs that are specifically cited either in the Agreement or in Appendix A of the Pricing Attachment is unreasonable because it simply is not feasible to identify in advance each of the tariffs, tariff rates and sections that might apply to services offered under the Agreement. Verizon has proposed language at Section 1.5 of the Pricing Attachment to address the question of how "TBD" (to be determined) rates will be replaced with actual rates. It requested that the Commission adopt its proposed language. (See, Intrado Exhibit No. 4, Matrix, pp. 11-13).

With respect to its own proposed rates, Intrado argues that its rates are reasonable and should be included in the Interconnection Agreement and noted that, in the Ohio Arbitration Award, the Ohio

Commission determined that Intrado's proposed port and termination rates were reasonable and not beyond the range of other companies. (See, Intrado Initial Brief, pp. 33-34).

However, as previously noted, in the Ohio Arbitration Award, Embarq and Intrado had actually agreed that Embarq would have a point of interconnection on Intrado's network. Therefore, it was appropriate for there to be charges for Intrado's services to Embarq in that agreement.

#### Arbitration Award

With respect to Appendix A of the Pricing Attachment, which is listed as an issue under both Issues 34 and 35, the only disputed language involved the last page of Appendix A (page 139 of the Interconnection Agreement), which sets forth Intrado's proposed rates to charge Verizon. Since it has been determined that there will be no Intrado charges to Verizon because of the decision on Point of Interconnection, the last page of Appendix A to the Pricing Attachment shall be deleted.

With respect to the remainder of the disputed provisions, to the extent that they have not already been resolved by decisions in prior issues, Intrado is incorrect in its arguments that tariff rates are an inappropriate guide for the charges to be assessed by Verizon under the Interconnection Agreement. The FCC has certainly not prohibited the use of state tariffs as a pricing mechanism in Interconnection Agreements. However, the FCC has prohibited Verizon's proposed language that would allow subsequent tariff changes to supercede rates or tariffs listed in the Interconnection Agreement. (See, In the Matter of Petition of WorldCom, Inc., (Virginia Arbitration Order), 17 FCC Rcd 27039 (2002) paras. 599-603). The FCC concluded that allowing subsequent tariff changes to supercede rates and tariffs specifically identified in an Interconnection Agreement would undermine the process established in Sections 251 and 252 of TA96 and could allow state commissions to supercede rates arbitrated under TA96. Accordingly, Sections 1.3.5, 1.3.6, 1.4.2, 1.7.2, 1.7.3, 2.3 and 2.4 of the 911 Attachment to the Interconnection Agreement; Sections 1.3 and 1.5 of the Pricing Attachment; and Section 1.1 of General Terms and Conditions shall be modified to reflect that no charges stated in the Agreement will be automatically superceded by subsequent tariff change and to eliminate phrases such as "notwithstanding any other provision of this agreement or a tariff" or "as set out in Verizon's applicable tariffs and to this agreement."

Finally, with respect to Verizon's argument that it is too burdensome to identify in the Agreement the tariffs which might be applicable to the provision of 911/E911 services to Intrado, the Arbitrator concludes that the burden is irrelevant. If Verizon intends to charge Intrado for a particular service, it ought to be able to figure out what tariff contains that charge or service. All tariffs which might generate charges to Intrado must be specifically listed in the Agreement or the Pricing Attachment.



### ISSUE NO. 36

Whether Verizon may require Intrado Comm to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities and arrangements?

This issue involves Section 2 of the Pricing Attachment, at page 108 of the Interconnection Agreement in Intrado Exhibit 4. Verizon's proposed section, entitled "Intrado Comm Prices," provides that the charges that Intrado can bill Verizon for Intrado services shall not exceed the charges for Verizon's comparable services, unless Intrado has demonstrated to Verizon or the Commission or the FCC that its costs to provide those services exceed Verizon's costs.

Verizon argued in support of its language that its rates are subject to review and approval by the Commission and are subject to a presumption of reasonableness. It argues that, if Intrado wants to charge higher rates to Verizon, it should be required to show, based on its costs, that its proposed rates are reasonable. (Intrado Ex. 4, Matrix p. 13). Intrado argues that its rates should not be capped at the rate that Verizon charges for comparable services. (Id.).

### Arbitration Award

The FCC has previously addressed this issue. In the Virginia Arbitration Order, the FCC noted that, with the exception of reciprocal compensation, which is not at issue in this arbitration proceeding, the pricing provisions in §252 of TA96 apply only to ILECs. The FCC noted that it had previously ruled that it would be inconsistent with TA96 for a state commission to impose §251(c) obligations on CLECs. (Virginia Arbitration Order, 17 FCC Rcd 27039 (2002), paras. 587-589). In actuality, however, the issue, though decided in favor of Intrado, is moot, because all of Intrado's rates have previously been stricken from the Interconnection Agreement.

### ISSUE NO. 46

Should Intrado Comm have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E911 calls?

This issue involves Section 1.5 of the General Terms and Conditions of the Interconnection Agreement. Intrado argues that it should have the right to amend the Agreement to include interconnection arrangements for services other than 911/E911 services, without having to re-litigate all of the provisions of the Agreement. Intrado noted that the FCC has determined that it is bad faith to require competitors to re-arbitrate issues and contract language that already had been arbitrated. (Intrado Ex. 4, Matrix, p. 14). Verizon argues that Intrado is seeking to retain the benefits of any provisions already obtained by it through negotiation or arbitration and then add additional provisions associated with the exchange of traffic other than 911/E911 calls. Verizon argues that this is unfair and inconsistent with the approach contemplated by Congress, i.e., that all of the provisions of the agreement should be subject to negotiation by the parties. Verizon also argued that Intrado's proposal

is inconsistent with 47 C.F.R. §51.809, which prohibits CLECs from being able to "pick and choose" favorable contract terms and conditions. Verizon argued that, if Intrado wants to greatly expand the scope of the agreement, it should terminate the agreement and negotiate an entirely new agreement in which all of the provisions will be at issue and the parties will be able to engage in a fair and balanced negotiation. (Intrado Ex. 4, Matrix, pp. 14-15; Verizon Initial Brief, pp. 41-42).

#### Arbitration Award

Section 252(i) of TA96 provides that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under §252, to which it is a party, to any other requesting telecommunications carrier, upon the same terms and conditions as those provided in the agreement. The FCC's supporting rule for that statute, 47 C.F.R §51.809 provides, in part, that an ILEC shall make available to any requesting telecommunications carrier, any agreement in its entirety, to which the ILEC is a party that is approved by a state commission pursuant to §252 of TA96, upon the same rates, terms and conditions as those provided in the agreement.

The Arbitrator concludes that Verizon's position is well-taken and will be incorporated in the Interconnection Agreement. Accordingly, Intrado's proposed language, constituting the last sentence of Section 1.5 of the General Terms and Conditions of the Interconnection Agreement, shall be deleted from the Interconnection Agreement established pursuant to this arbitration award.

#### ISSUE NO. 47

Should the Verizon proposed term "a caller" be used to identify what entity is dialing 911 or should this term be deleted as proposed by Intrado Comm?

This issue involves Section 1.1.1 of the 911 Attachment to the Interconnection Agreement. The sentence, including Verizon's language, reads as follows, "911/E911 arrangements provide a caller access to the appropriate PSAP by dialing a three-digit universal telephone number, '911'."

#### Arbitration Award

Since Verizon's language is accurate, there is no legitimate reason to eliminate the phrase "a caller" from the sentence. Verizon's language is adopted.

#### ISSUE NO. 49

Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI database and MSAG, be qualified as proposed by Intrado Comm by other provisions of the Agreement?

This issue involves Sections 1.7.2 and 1.7.3 of the 911 Attachment to the Interconnection Agreement. Intrado argues that each party's ability to bill the other party should be limited to the requirements in



the Interconnection Agreement and the rates contained in the Pricing Attachment. Verizon argues that the qualification on the waiver of charges proposed by Intrado is not appropriate and shouldn't be adopted. Verizon argues that Intrado's language potentially undercuts the parties' agreement that neither will bill the other for transport of 911/E911 calls. Verizon also noted that, since Intrado should be connecting with Verizon at a POI on Verizon's network, Intrado shouldn't be billing Verizon any charges for interconnection or facilities for transport of 911/E911 calls and should not be billing Verizon charges in connection with the ALI database or the MSAG, but should recover those costs from the applicable government agency as part of the 911 services Intrado provides to the PSAP. (Intrado Ex. 4, Matrix, p. 16). In both sections, Verizon proposes that the substantive provision be prefaced with the phrase, "Notwithstanding any other provision of this Agreement or a Tariff or otherwise," while Intrado would preface the same provisions with the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment."

#### Arbitration Award

Verizon's language is more accurate and reflective of the parties' intent with respect to the subsequent provisions in the Interconnection Agreement. Accordingly, Verizon's language is adopted, with the deletion of the phrase "or a tariff." Intrado's proposed language is deleted from the interconnection agreement required pursuant to this arbitration award.

#### ISSUE NO. 52

Should the reservation of rights to bill charges to 911 controlling authorities and PSAPs be qualified as proposed by Intrado Comm by "to the extent permitted under the parties' tariffs and applicable law"?

#### ISSUE NO. 53

Should 911 Att. Section 2.5 be made reciprocal and qualified as proposed by Intrado Comm?

Issue 52 involves the ability of Verizon to assess charges against a government agency or PSAP which receives its 911/E911 service from Intrado, but which still may utilize some services provided by Verizon. The provision in dispute in Issue 53 would permit Verizon to deliver 911/E911 calls directly to Intrado's PSAP customer, notwithstanding other provisions in the Agreement.

With respect to Issue 52, Intrado argues that Commission-approved tariffs, state and federal statutes and other regulations should govern whether either Verizon or Intrado may impose charges on 911 Controlling Authorities or PSAPs and asserted that the Interconnection Agreement should not be permitted to usurp existing tariffs and applicable laws. Verizon, on the other hand, noted that Section 2.0 of the Interconnection Agreement is a reservation of rights between the parties and Intrado's proposed qualification is not appropriate. Verizon argued that the Agreement should leave the parties free to bill appropriate charges to

the government agencies. Whether a party is able to do so under its tariffs and applicable law is a matter between that party and the government agencies and is outside the scope of the Agreement.

With respect to Issue No. 53, Intrado argued that such direct routing should only be allowed if the government agency has authorized it and that, if Verizon is permitted to deliver 911/E911 calls directly to a PSAP served by Intrado, Intrado should have the ability to deliver 911/E911 calls directly to a PSAP served by Verizon. Verizon stated that Intrado's request for reciprocity in that Section had been made only recently and was still being considered. Verizon objected to the Intrado proposal that the delivery must be authorized by the PSAP. Verizon stated that a party's right to deliver calls directly to a PSAP served by the other party is a matter between that party and the PSAP and is outside the scope of the agreement. (Intrado Ex. 4, Matrix, pp. 16-17).

#### Arbitration Award

Verizon's position on Issue 52 is appropriate and is adopted. It is inappropriate to attempt to assert or negotiate in this proceeding the rights of entities not parties to the Agreement. If applicable law or Commission-approved tariffs authorize a party to impose charges on PSAPs or 911 controlling authorities, that need not be stated in this Interconnection Agreement, which is, after all, only between Verizon and Intrado. Accordingly, Intrado's qualification to Sections 2.3 and 2.4 of the 911 Attachment is rejected. However, whether a party has a right to deliver calls directly to a PSAP served by the other party is directly relevant to the issues in this arbitration. Section 2.5 will be rejected. If there is a legitimate reason for either Verizon or Intrado to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the Interconnection Agreement.

#### ISSUE NO. 54

##### Should Intrado Comm's proposed interconnection rates be adopted?

This issue has already been resolved through several previous issues.

#### Arbitration Award

Since Intrado will be interconnecting at a POI on Verizon's network, there should be no charges to Verizon from Intrado for interconnection. Accordingly, Intrado's proposed Section 1.3.7 and 1.7.3 in the 911 Attachment and the Intrado rates at Part II of Appendix A to the Pricing Attachment are all deleted from the Interconnection Agreement arising out of this arbitration award.

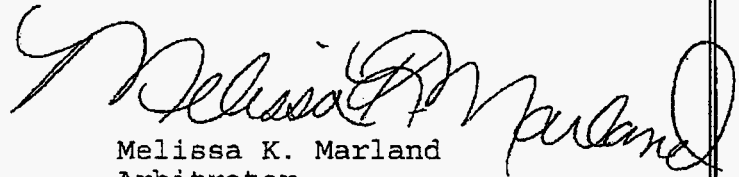
#### ORDER

IT IS, THEREFORE, ORDERED that Intrado Communications Inc. and Verizon West Virginia Inc. incorporate the directives set forth in this Arbitration Award in their Final Interconnection Agreement.

IT IS FURTHER ORDERED that Intrado and Verizon file the Final Interconnection Agreement resulting from this Arbitration Award with their exceptions to be filed with the Commission on or before November 21, 2008. If Intrado and Verizon are unable to generate a Final Interconnection Agreement to accompany their exceptions to the Commission, each party shall file for Commission review with its exceptions its version of the agreement that should be used in a Commission-approved interconnection agreement.

IT IS FURTHER ORDERED that nothing in this Arbitration Award shall be binding upon the Public Service Commission of West Virginia in any subsequent investigation or proceeding involving any rate, charge, rule or regulation.

IT IS FURTHER ORDERED that a copy of this Arbitration Award be served upon Intrado Communications Inc. and Verizon West Virginia Inc. by United States Certified Mail, return receipt requested, and upon Commission Staff and the Public Service Commission by hand delivery.



Melissa K. Marland  
Arbitrator

MKM:mal:bam:cdk  
080298ab.wpd

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 16th day of December 2008.

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and  
VERIZON WEST VIRGINIA INC.

Petition for Arbitration filed pursuant to §252(b)  
of 47 U.S.C. and 150 C.S.R. 6.15.5.

**COMMISSION ORDER**

The Commission approves the November 21, 2008 Interconnection Agreement.

**BACKGROUND**

On March 5, 2008, Intrado Communications, Inc., ("Intrado") petitioned for compulsory arbitration of open issues relating to an interconnection agreement with Verizon West Virginia Inc., ("Verizon") under 47 U.S.C. §252(b).

On April 3, 2008, Commission Staff ("Staff") filed a Memorandum stating that the parties had reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) that if issues remain unresolved at the end of the forty-five-day period, to file a joint petition for arbitration. Staff also stated that the parties agreed to report weekly to the Commission on the progress of negotiations.

On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that an arbitration petition was not properly before the Commission. It also found that the parties failed to file reports on the progress of negotiations. See, Commission Order.

On June 23, 2008, Intrado requested that the Commission reinstate the arbitration petition and establish a procedural schedule. The Commission granted the request, appointed Chief Administrative Law Judge Melissa Marland, or her designee, arbitrator, tolled the deadline in this matter until September 12, 2008, and established procedural parameters. See, August 1, 2008 Commission Order. Thereafter, the Commission extended the final decision deadline to December 19, 2008. See, August 12, 2008, and September 22, 2008 Commission Orders.

The arbitrator held a hearing on October 2, 2008, where both Intrado and Verizon presented witnesses for cross-examination. See, Transcript of October 2, 2008 hearing.

On November 14, 2008, the arbitrator issued her Arbitration Award ("Award") on seventeen unresolved issues. The arbitrator sided with Verizon on key issues including fixing the Point of Interconnection ("POI") on the Verizon network, rejecting the Intrado demand for dedicated trunk lines from each Verizon end office to a POI on its network and rejecting the Intrado proposal to restructure Verizon's network with a new routing system.

On November 21, 2008, Verizon and Intrado jointly filed a text of the Interconnection Agreement ("Agreement") reflecting the decisions in the Award.

Intrado separately objected to portions of the Award including (1) the POI and a portion of the underlying rationale discussing arbitration awards involving Intrado from Ohio<sup>1</sup> ("Ohio Awards"), (2) rejection of dedicated trunk lines from Verizon end offices to the Intrado network, (3) rejection of reciprocal forecasting of traffic, (4) rejection of language regarding Automatic Location Information<sup>2</sup> ("ALI"), (5) clarification of a provision in the Award regarding tariffs, (6) an objection to a discussion of the arbitrator's jurisdiction and (7) an objection to language implying that Public Safety Answering Points ("PSAPs") are not end users. Intrado did not submit a detailed brief on the last three objections. Intrado alleged that the arbitrator acted arbitrarily by rejecting language Intrado proposed in the areas it contests and requested that the Commission incorporate its proposed language in the Agreement. See, Intrado Exceptions.

Verizon responded on December 1, 2008, opposing the Intrado objections. Verizon argued that the Commission can only reject the Award if it conflicts with the interconnection statutes or regulations issued thereunder. See, 47 U.S.C. §252(e)(2)(B). Verizon urged the Commission to summarily reject the Exceptions because Intrado failed to allege that the Award violated the statutory standard. Id. Verizon also contended that the Award falls within the terms of the interconnection statutes, responded to each objection individually and urged the Commission to uphold the arbitrator's decisions. See, Verizon Response to Exceptions.

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<sup>1</sup>Public Utilities Commission of Ohio Case No. 07-1216-TP-ARB, Petition of Intrado Communications, Inc. For Arbitration on Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996 (Sept. 24, 2008), and Case No. 08-537-TP-ARB, Petition of Intrado Communications, Inc. for arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company (Oct. 8, 2008).

<sup>2</sup>ALI is information associated with a telephone number used by PSAPs to assist in directing responders to a caller's location.

## DISCUSSION

Verizon urged the Commission to summarily reject the Intrado arguments for rejecting portions of the Agreement under 47 U.S.C. §252(e)(2)(B) because Intrado did not allege that the Award failed to comply with the terms of the interconnection statutes or any regulation issued thereunder. Although, we agree that Intrado did not formally cite any error under the federal statute, the Commission nonetheless elects to consider the substance of the Intrado arguments.

The Commission will consider Issues 3 and 12<sup>3</sup> together, Issues 6 and 14 separately, the requests to strike various passages from the Award together and finally the request for clarification.

### POI and Dedicated Trunk Lines (Issues 3 and 12)

The foremost issue of disagreement is the location of the POI between the two networks (Issue 3). Location of the POI also substantially influences the proposal for direct trunking between Verizon end offices and the Intrado network (Issue 12). Intrado argues that provisions of 47 U.S.C. §251(c)(2) and 47 C.F.R. §51.305(a) fixing the POI on the Incumbent Local Exchange Carrier ("ILEC") (Verizon) network are superseded by a subsequent provision of the same statute and regulation mandating equal quality between service provided by the ILEC to itself and any party requesting interconnection. Intrado believes that the only possible means to provide equal quality service between itself and Verizon is for Verizon to build out to a point on the Intrado network with direct trunk lines from each end office. Intrado also argues that the Commission can place the POI on its network based on a public policy need for reliable emergency communications. See, Exceptions at 6-15.

The arbitrator rejected the Intrado argument based on the clear language of the statute and regulation requiring the POI to be on the Verizon network. The explicit mandate locating the POI cannot be avoided by a novel reading of the technical quality standards as Intrado suggested. In fact, a close reading of 47 C.F.R. §51.305(a)(3) supports the arbitrator's interpretation that the equal quality mandate refers to technical standards and not to location of the POI. The Commission finds that the arbitrator followed the law and directed that the POI be on the Verizon network. As a logical corollary to that finding, the arbitrator properly determined that Verizon may organize its call delivery to the POI as it sees fit and properly rejected the Intrado demand for dedicated trunk lines from every end office to the Intrado network. See, Award at 12-15, 20.

### Reciprocal Forecasting (Issue 6)

Intrado alleges that the arbitrator improperly rejected its proposed language for mutual traffic forecasting between the parties in Section 1.6.2 of the 911 Attachment to the Agreement. Intrado believes that forecasting data from Verizon is necessary to anticipate how many calls will originate on the Verizon network and terminate on the Intrado network. See, Exceptions at 16-17. The

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<sup>3</sup>The Commission will use the numbering contained in the Disputed Issues Matrix submitted by the parties and used in the Award for clarity. See, Intrado Hearing Exhibit 4.



arbitrator found that potential PSAP customers were in an equal or superior position to inform Intrado of expected call volume and therefore sided with Verizon on this matter. The arbitrator also noted that Section 1.5.5 of the 911 Attachment separately allows Intrado to meet with Verizon and discuss traffic flow if needed. See, Award at 18-19. Verizon essentially concurs in the arbitrator's reasoning. See, Verizon Response.

The Commission believes that the need for trunk lines between Intrado and the Verizon network will be directly proportional to the success Intrado has selling services to PSAPs in the marketplace. Those PSAP customers will be known to and will have a business relationship with Intrado, but not with Verizon. Thus, Intrado will be better positioned than Verizon to compile the data Intrado seeks. Therefore, the Commission finds that the arbitrator's decision was sound and declines to compel Verizon to provide forecasts. Further, the Commission will not reject any portion of the Award regarding Section 1.6.2 of the 911 Attachment.

#### ALI Tables (Issue 14)

Intrado disputes the arbitrator's adoption of language that Verizon proposed regarding Verizon providing data for ALI steering tables in Section 1.2 of the 911 Attachment. The adopted language requires the parties to cooperate when Intrado manages an ALI database "for inclusion of Verizon End User data in the ALI database." See, Award at 21. Intrado argued before the arbitrator that its language is needed to create interoperability between competing 911 systems and that the Verizon language is insufficient to protect wireless and VoIP callers who are transferred from a PSAP served by Verizon to one served by Intrado. See, Intrado Initial Brief at 36-38. Intrado now adds that its language would require storage of pseudo Automatic Numbering Identification<sup>4</sup> ("pANI") to accommodate a call transfer between PSAPs served by the competing parties. See, Exceptions at 18-20. Verizon argues that it is not obligated to provide the information Intrado seeks here and objects to any possibility of the Agreement requiring it to work to maintain an Intrado database. See, Verizon Response at 28-30.

The Commission finds that the arbitrator's decision strikes the correct balance between the interests of Verizon and public safety. Verizon correctly argues that Agreement should not impose a potential requirement on it to maintain an Intrado database or require it to provide Intrado with information beyond Verizon customers. Therefore, the Intrado language regarding ALI steering tables should be rejected.

#### Request to strike portions of the Award

Intrado requested that the Commission strike three passages from the Award including (1) a portion of the analysis of Issue 3 where the arbitrator analyzed the relevance of the Ohio Awards, (2) the arbitrator's discussion of Commission jurisdiction for making the Award and (3) the characterization on page nine of the Award that PSAPs are not end users. See, Exceptions at 3, 5-6.

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<sup>4</sup>pANI is a number used in wireless E-911 to properly route an emergency call. See, Newton's Telecom Dictionary.

The Commission disagrees with the request to strike the arbitrator's discussion of the Ohio Awards. The arbitrator correctly discussed the Ohio Awards because Intrado raised them in support of its position. See, Intrado Initial Brief at 9, 20. The Commission agrees that the discussion of those matters is only persuasive authority (or dicta as Intrado described it).

The Commission also declines to remove the arbitrator's discussion of Commission jurisdiction to hear this matter. The arbitrator correctly cites the circumstances surrounding this arbitration, including a pending matter before the Federal Communications Commission challenging the applicability of arbitration to the type of service Intrado proposes. See, Award at 10-11. The Commission believes that the arbitrator's discussion properly explained her ability to hear the matter and would prove helpful to any subsequent review.

Finally, the Commission rejects the objection from Intrado to a statement on page nine of the Award distinguishing PSAPs from end users. Once read in context, the arbitrator clearly meant that the Intrado business plan only includes service to PSAPs and not to residential or commercial customers.

Thus, the Commission finds that the passages cited by Intrado had no substantive effect on the Award and rejects the request to remove them.

#### Request for Clarification on Issues 34 and 35

Intrado also seeks clarification regarding the applicability of state tariffs to an interconnection agreement if the tariff was developed outside the interconnection process. See, Exceptions at 4-5. The Commission notes that Intrado did not substantially brief this issue nor specifically refer to a charge that it believes is inappropriately priced by an existing Verizon tariff. Intrado also does not allege that any existing Verizon tariff charge fails to comply with the pricing standards contained in 47 U.S.C. §252(d). Id. In the Award, the arbitrator rejected the Intrado position that existing tariffs are not an appropriate guide for interconnection charges, adopted the application of existing Verizon tariffs and directed Verizon to specify exactly what tariff applied to a particular service. See, Award at 24. The Commission believes that the Award satisfied the open issues presented to the arbitrator and declines to amend her ruling.

#### Conclusion

Thus, the Commission rejects the Exceptions to the Award and approves the Agreement pursuant to 47 U.S.C. §252(e) because the Award is consistent with the interconnection statutes and regulations issued thereunder.



### **FINDINGS OF FACT**

1. Intrado filed a Petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon. See, Petition for Arbitration.
2. The Commission reconsidered its initial dismissal of the matter and appointed an arbitrator. See, August 12, 2008 Commission Order.
3. The arbitrator issued an Award on seventeen contested open issues. See, Award.
4. Verizon and Intrado filed a complete text of the Agreement reflecting the decisions contained in the Award. See, Agreement.
5. Intrado objects to portions of the Award including the arbitrator's rulings on Issues 3, 6, 12 and 14; requests that the Commission strike portions of the discussion within the Award; and seeks a clarification regarding Issues 34 and 35. See, November 21, 2008 Exceptions.

### **CONCLUSIONS OF LAW**

1. The Commission shall reject the agreement, or any portion thereof, if the Award does not meet the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) or regulations promulgated thereunder. See, 47 U.S.C. §252(e).
2. The POI between Verizon and Intrado shall be at a point on the Verizon network. See, 47 U.S.C. §251(c) and 47 C.F.R. §51.305.
3. Locating the POI on the Verizon network obviates the need for dedicated trunk lines between Verizon end offices and the Intrado network. See, Award at 20.
4. The language adopted by the arbitrator regarding reciprocal traffic forecasting is reasonable because Verizon is not in the best position to anticipate trunk line needs for the POI with Intrado.
5. The language adopted by the arbitrator regarding ALI steering tables is reasonable because it provides for public safety without imposing burdens on Verizon beyond data regarding its end users.
6. Discussions of Commission jurisdiction to hear this matter, the Ohio Award or what constitutes an end user had no substantive effect on the Award. See, Award.
7. The Award decided all open issues presented to the arbitrator regarding pricing. Id.

8. The Award complies with the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) and the regulations promulgated thereunder.

**ORDER**

IT IS THEREFORE ORDERED that the Exceptions to the November 14, 2008 Award are rejected and the November 21, 2008 Interconnection Agreement filed by Verizon and Intrado is approved.

IT IS FURTHER ORDERED that on entry of this Order, this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order on all parties of record by United States First Class Mail and on Staff by hand delivery.

A True Copy, Testes:

  
Sandra Squire  
Executive Secretary

MJM/lcw  
080298cg.wpd



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 08-9

May 08, 2009

Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc.  
and Verizon New England Inc. d/b/a Verizon Massachusetts

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**ARBITRATION ORDER**

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FOR: VERIZON NEW ENGLAND INC.,  
d/b/a VERIZON MASSACHUSETTS  
Respondent

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<sup>1</sup> The interconnection agreement “ICA” sections referenced are taken from the Parties’ Second Stipulation – Joint Issues Matrix. These ICA sections are not intended to be exhaustive and an issue may apply to ICA sections other than those that are listed.

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Whether all “applicable” tariff provisions shall be incorporated into the agreement; whether tariffed rates shall apply without a reference to the specific tariff; whether tariffed rates may automatically supersede the rates contained in the *Pricing Attachment*, Appendix A, without a reference to the specific tariff; and whether the Verizon proposed language in the *Pricing Attachment* § 1.5 with regard to “TBD” rates should be included in the agreement?

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## I. INTRODUCTION

This arbitration proceeding between Intrado Communications Inc. (“Intrado”) and Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon”) (collectively “Parties”) is held pursuant to the Communications Act of 1934, as amended (the “Act”). 47 U.S.C. § 252. Pursuant to § 252(b) of the Act, a carrier is permitted to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. *See* 47 U.S.C. § 252(b)(1). Intrado seeks interconnection with Verizon under § 251(c) of the Act in order to provide competitive 911/E-911 services to Public Safety Answering Points and other public safety agencies in Massachusetts. Intrado and Verizon have been involved in similar interconnection arbitrations in seven other states<sup>2</sup> and at the Federal Communications Commission’s (“FCC”) Wireline Competition Bureau (arbitrating a Virginia agreement), and the Parties recently completed an interconnection arbitration in West Virginia.<sup>3</sup> *See* IR Resp. D.T.C.-INT. 1-3. In addition to its arbitrations with Verizon, Intrado is also involved in various stages of interconnection arbitrations with AT&T, Embarq, and Cincinnati Bell Telephone (“CBT”).<sup>4</sup>

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<sup>2</sup> The Parties are currently involved in arbitrations in Delaware, Florida, Illinois, Maryland, North Carolina, Ohio and Texas.

<sup>3</sup> The issues presented in the other jurisdictions parallel those currently in dispute in the instant proceeding.

<sup>4</sup> The Department is aware of Intrado/AT&T arbitrations in Florida, Illinois, North Carolina and Texas; an Intrado/CBT arbitration in Ohio; and Intrado/Embarq arbitrations in Florida, Ohio, and at the FCC’s Wireline Competition Bureau. The FCC’s Wireline Competition Bureau consolidated the Intrado/Embarq arbitration with the Intrado/Verizon arbitration. *See* VZ Abey. Mot. at 1; IR Resp. D.T.C.-INT. 1-3. *See generally, In re Petition of Intrado Commc’ns Inc. for Arbitration Pursuant to §252(b) of the Commc’ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Del. LLC*, Del. Pub. Serv. Comm’n, Docket No. 08-61 (filed Mar. 5, 2008) (“INT/VZ Del. Arb.”); *Petition by Intrado Commc’ns, Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Fla. LLC, Pursuant to § 252(b) of the Commc’ns Act of 1934, as amended, and § 364.162, F.S.*, Fla. Pub. Serv. Comm’n, Docket No. 080134-TP (filed Mar. 5, 2008) (“INT/VZ Fl. Arb.”); *Petition by Intrado Commc’ns, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomms., Inc. d/b/a AT&T Fla, Pursuant to § 252(b) of the Commc’ns Act of 1934, as amended, and §§ 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.*, Fla. Pub. Serv. Comm’n, Docket No. 070736-TP (filed Dec. 21, 2007) (“INT/AT&T Fl. Arb.”); *Petition by Intrado Commc’ns, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Fla., Inc., Pursuant to § 252(b) of the Commc’ns Act of 1934, as amended, and § 364.162, F.S.*, Fla. Pub. Serv. Comm’n, Docket No. 070699-TP (filed Nov. 27, 2007) (“INT/EMB Fl. Arb.”); *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Commc’ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts ("Massachusetts"). *See generally*, VZ Init. Br. and VZ Rep. Br. Intrado is a common carrier authorized to provide competitive local exchange telecommunications services throughout Massachusetts. *See* INT. Pet. at 5.

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*and Verizon South Inc.*, Ill. Commerce Comm'n, Docket No. 08-0550 (filed Sept. 24, 2008) ("INT/VZ Ill. Arb."); *Petition of Intrado Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Ill. Bell Tel. Co. d/b/a AT&T Ill.*, Ill. Commerce Comm'n, Docket No. 08-0545 (filed Sept. 22, 2008) ("INT/AT&T Ill. Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Md. Inc.*, Md. Pub. Serv. Comm'n, Case No. 9138 (filed Mar. 5, 2008) ("INT/VZ Md. Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. d/b/a Verizon N.C.*, N.C. Utils. Comm'n, Docket No. P-1187 Sub 3 (filed Mar. 5, 2008) ("INT/VZ NC Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, with BellSouth Telecomms., Inc. d/b/a AT&T N.C.*, N.C. Utils. Comm'n, Docket No. P-1187 Sub 2 (filed Dec. 21, 2007) ("INT/AT&T NC Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*, Ohio Pub. Utils. Comm'n, Case No. 08-0198-TP-ARB (filed Mar. 5, 2008) ("INT/VZ Oh. Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Ohio Pub. Utils. Comm'n, Case No. 08-537-TP-ARB (filed Apr. 21, 2008) ("INT/CBT Oh. Arb."); *Petition of Intrado Commc'ns Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Tel. Co. of Ohio d/b/a Embarq and United Tel. Co. of Ind. d/b/a Embarq*, Pursuant to § 252(b) of the Telecomms. Act of 1996, Ohio Pub. Utils. Comm'n, Case No. 07-1216-TP-ARB (filed Nov. 28, 2007) ("INT/EMB Oh. Arb."); *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Inc. d/b/a Verizon Southwest*, Tex. Pub. Util. Comm'n, Control No. 36185 (filed Sept. 24, 2008) ("INT/VZ Tx. Arb."); *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Southwestern Bell Tel. Co. d/b/a AT&T Tex.*, Tex. Pub. Util. Comm'n, Control No. 36176 (filed Sept. 22, 2008) ("INT/AT&T Tx. Arb."); *Intrado Commc'ns, Inc., and Verizon W. Va. Inc. Petition for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with Verizon W. Va.* Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, and Commission Rule 150-6-15, W. Va. Pub. Serv. Comm'n, Docket No. 08-0298-T-PC (filed Mar. 5, 2008) ("INT/VZ WV Arb."); *Petition of Intrado Commc'ns of Va. Inc. Pursuant to § 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Va. Inc.* (collectively, *Verizon*), FCC Wireline Competition Bureau, WC Docket No. 08-185 (filed July 18, 2008) ("INT/VZ FCC Arb."); *Petition of Intrado Commc'ns of Va. Inc. Pursuant to § 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Tel. Co. of Va. and United Tel. – Southeast, Inc.* (collectively, *Embarq*), FCC Wireline Competition Bureau, WC Docket No. 08-33 (filed Mar. 6, 2008) ("INT/EMB FCC Arb.").

## II. **BACKGROUND - 911/E-911 Network Architecture**

Emergency telephone service (“911”) and enhanced emergency telephone service (“E-911”) allow a caller to reach emergency services quickly during emergencies like fires, accidents, floods, etc. The caller dials the three-digit emergency number of 9-1-1 to reach the assigned public safety answering point (“PSAP”), which is also referred to as a 911 center or emergency services center. *See* VZ Panel Pref. Test. at 15. The E-911 service provides more functionality than basic 911 service by providing the PSAP with the caller’s telephone number (automatic number identification or “ANI”) and actual location of the caller (automatic location identification or “ALI”), even if the caller cannot communicate or the call is disconnected for some reason. *Id.*

A statewide E-911 plan is required by G. L. c. 6A, § 18D(c), and Verizon currently provides statewide E-911 services to the State 911 Department pursuant to a contract with the state. *Id.*; Tr. at 74. The State 911 Department (formerly the Statewide Emergency Telecommunications Board) is the agency responsible for coordinating, administering and promulgating standards for the implementation of E-911 services. *See* G. L. c. 6A, § 18B(d); VZ Panel Pref. Test. at 17. The E-911 system in Massachusetts is funded by a surcharge on all wireline phones and wireless subscribers in the state. *See* G. L. c. 6A, § 18H; VZ Panel Pref. Test. at 17.

Verizon currently provides 911/E-911 service to each of the 273 PSAPs in Massachusetts. *See* VZ Init. Br. at 4. All 911 calls made by Verizon end users are identified as such by the Verizon end office serving them and are then routed to the selective routers of the 911/E-911 network. *See* VZ Panel Pref. Test. at 15; IR Resp. D.T.C.-VZ 1-3. In Massachusetts, Verizon operates two pairs of selective routers. *See* VZ Panel Pref. Test. at 15; Tr. at 74. A selective router is essentially a tandem switch with the added features that allow it to transmit 911 calls to the

correct PSAP. *See* IR Resp. D.T.C.-VZ 1-3. When a 911 call reaches the selective router, the selective router's database identifies the customer's telephone number and associates that number with the emergency services number of the PSAP serving that customer. *Id.*; VZ Panel Pref. Test. at 15. These numbers indicate which trunk route the call needs to take to get to the proper PSAP. *See* IR Resp. D.T.C.-VZ 1-3; VZ Panel Pref. Test. at 15. The selective routers are paired (or "mated"), so if the circuits from one selective router to a PSAP are busy, that selective router will automatically transfer the call to the other (mated) selective router that has direct circuits to the PSAP. *See* VZ Panel Pref. Test. at 16; IR Resp. D.T.C.-VZ 1-3; Tr. 116-118. One pair of selective routers is located in Wakefield and Medfield, and the other pair is located in Westborough and Northampton. *See* VZ Hearing Exh. 3; Tr. at 118. These selective routers aggregate 911 calls from the end offices and send them over dedicated circuits to the appropriate PSAPs. *See* VZ Init. Br. at 36, 37; VZ Rep. Br. at 17.

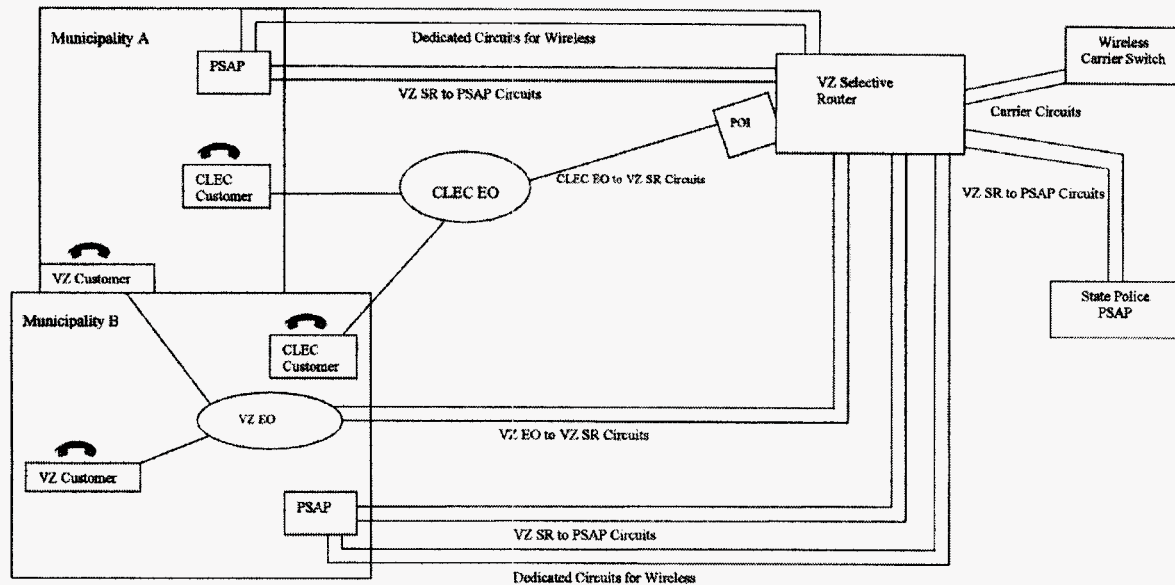
More specifically, when a Verizon end user dials 911, the 911 call travels from the Verizon end office serving the end user through dedicated and redundant trunks to one of the two pairs of selective routers operated by Verizon in Massachusetts. *See* VZ Panel Pref. Test. at 15; IR Resp. D.T.C.-VZ 1-3. In addition, all other carriers located in Massachusetts, including competitive local exchange carriers ("CLECs") and wireless carriers, generally have service areas that overlap Verizon's and typically directly trunk their customers' 911 calls to Verizon's selective routers using similar dedicated circuits. *See* VZ Panel Pref. Test. at 16-17. Diagram No. 1 shows the typical interconnection arrangements between these carriers and Verizon on Verizon's 911/E-911 network. *See* RR Resp.-2 D.T.C.-VZ.

When a 911 call from a CLEC end user reaches a Verizon selective router, the same process occurs as it does for a call from Verizon's own end users. *See* VZ Panel Pref. Test. at 16-

17. The selective router looks up the caller's number and emergency service number and routes the call to the correct PSAP. *Id.* In the case of wireless calls, however, the database search is not performed on the caller's actual telephone number, but on a pseudo-ANI ("pANI") assigned by the carrier or its contracted third-party database provider in order to route the call to the appropriate PSAP. *Id.* This is because "[w]ireless call routing is typically accomplished based on the cell tower and sector detecting the greatest signal strength from the wireless caller's device [and] [w]ireless service boundaries do not perfectly align with the jurisdictional boundary of the PSAP receiving the initial 911 call." INT. Hicks Pref. Test. at 52-53

When a PSAP receives a call, the receiving system automatically sends a request to one of Verizon's two redundant ALI databases via dedicated, diverse digital circuits. *Id.* at 16. The address or location information of the caller is returned to the PSAP, which sends the appropriate public safety personnel in response to the emergency call. *Id.*

### Current Verizon (VZ) Landline and Wireless E-911 Network

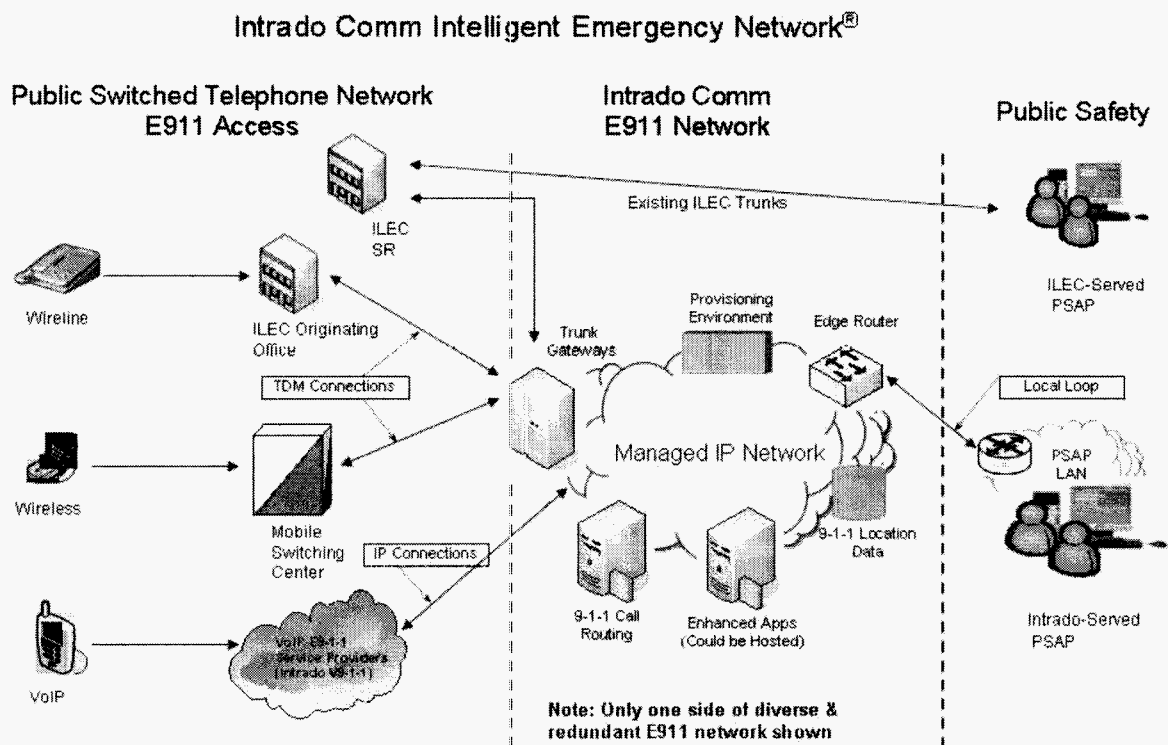


**Diagram No. 1**

In Massachusetts, Intrado plans to provide an alternative to Verizon's 911/E-911 service by offering competitive 911/E-911 services directly to PSAPs and other public safety agencies. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2. Intrado proposes to provide its 911 service through its Intelligent Emergency Network® ("IEN"), as shown in Diagram No. 2 below. *See* INT. Currier Pref. Test. at 4; INT. Hicks Pref. Test. at 6. Intrado's customers will be PSAPs and related public agencies, not the individual end users that initiate 911 calls. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5. The physical components of Intrado's 911/E-911 service will not handle a 911 call until it has been relayed to Intrado. *See* INT. Hicks Pref. Test. at 6. Intrado asserts that it needs to enter into a mutually beneficial interconnection agreement with Verizon to

obtain access to the public switched telephone network (“PSTN”) before it can offer its competitive 911/E-911 service to Massachusetts PSAPs. *Id.* at 8; INT. Init. Br. at 2.

According to Intrado, its Internet Protocol (“IP”) based network is designed to “interoperate” with existing legacy PSAP equipment and incumbent networks, as well as the capability to use and receive calls from newer technologies. *See* INT. Hicks Pref. Test. at 6. Consequently, Intrado asserts that this will permit it to provide “meaningful [ALI] information that permits first responders to render aid, regardless of the technology or platform employed” by the caller. *See* INT. Init. Br. at 2.



**Diagram No. 2**



### **III. PROCEDURAL HISTORY**

On November 4, 2008, Intrado filed a Petition for Arbitration of an interconnection agreement (“ICA”) with Verizon. *See* INT. Pet. Verizon responded to Intrado’s Petition on December 1, 2008. *See* VZ Resp. On December 5, 2008, the Department of Telecommunications and Cable (“Department”) issued the arbitration ground rules and an initial procedural schedule. *See* Dec. 5 Memorandum.

Pursuant to the Parties’ proposed changes to the procedural schedule and an agreement reached during a December 12, 2008, conference call, the Department stayed the initial procedural schedule pending a Joint Motion. *See* D.T.C. Docket 08-9. On December 18, 2008, the Parties filed a Joint Motion Concerning Deadline for Arbitration Decision in which Verizon stipulated that it received Intrado’s request for negotiation on July 10, 2008, and both Parties requested that the Department acknowledge the final decision date in this proceeding to be April 10, 2009.<sup>5</sup> *See* December 18 Jt. Mot. On December 23, 2008, the Department acknowledged the statutory deadline for Department action and issued a revised arbitration schedule. *See* D.T.C. Docket 08-9.

On December 29, 2008, the Parties submitted prefiled testimony.<sup>6</sup> *See* VZ Panel Pref. Test.; INT. Hicks Pref. Test.; INT. Currier Pref. Test. The Department held an informal technical session on January 9, 2009. *See* D.T.C. Docket 08-9. The Parties filed a First and Second Stipulation of Issues – Joint Issues Matrix on December 29, 2008, and January 23, 2009,

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<sup>5</sup> The Act requires that state commissions “conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request[.]” 47 U.S.C. § 252(b)(4)(C).

<sup>6</sup> Verizon submitted prefiled panel testimony by Peter J. D’Amico, Maureen Napolitano, and John Conroy. *See* VZ Panel Pref. Test. Peter J. D’Amico is a Product Manager in the Switched Access and Interconnection Product Management Group for Verizon Services Corporation; Maureen Napolitano is the National Director for E-911 Customer Service for Verizon Business; and John Conroy is Regulatory Vice President for Verizon Massachusetts. *See* VZ Panel Pref. Test. at 1-4. Intrado submitted separate prefiled testimony by Robert C. Currier and Thomas W. Hicks. *See* INT. Hicks Pref. Test.; INT. Currier Pref. Test. Thomas W. Hicks is Director, Carrier Relations, for Intrado and its affiliate, Intrado Inc. *See* INT. Hicks Pref. Test. at 2. Robert C. Currier is Manager, Regulatory and Government Affairs, for Intrado and its affiliate, Intrado Inc. *See* INT. Currier Pref. Test. at 2.

respectively.<sup>7</sup> *See* First Jt. Iss. Mat.; Second Jt. Iss. Mat. On January 26, 2009, the Parties filed responses to the Department's information requests.<sup>8</sup> *See* IR Resp. D.T.C.-VZ; IR Resp. D.T.C.-INT. The Department held the arbitration hearing on January 28, 2009, during which both Parties presented their witnesses and testimony for questioning.<sup>9</sup> *See* Tr. On February 6, 2009, Verizon filed record request responses. *See* RR Resp. D.T.C.-VZ.<sup>10</sup> On February 26 and March 12, 2009, the Parties filed their initial and reply briefs, respectively. *See* VZ Init. and Rep. Brs.; INT. Init. and Rep. Brs.

On April 6, 2009, the Parties filed a second Joint Motion Concerning Deadline for Arbitration Decision in which Verizon stipulated that it received Intrado's request for negotiation on August 8, 2008, and both Parties requested that the Department acknowledge the final decision date in this proceeding to be May 8, 2009. *See* April 6 Jt. Mot. On April 13, 2009, the Department acknowledged the statutory deadline for Department action to be no later than May 8, 2009. *See* D.T.C. 08-9.

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<sup>7</sup> The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

<sup>8</sup> The Parties waived discovery between themselves.

<sup>9</sup> At the hearing, Kathleen Cerrati appeared as a replacement witness for Maureen Napolitano on Verizon's witness panel. *See* Tr. at 51-52.

<sup>10</sup> Neither the Department nor Verizon made record requests to Intrado.

#### **IV. SUPPLEMENTAL FILINGS AND RESOLUTION OF PENDING MOTIONS**

On March 10, 2009, Verizon filed a Motion for Abeyance of the current proceeding. *See* VZ. Abey. Mot. Intrado filed its opposition to Verizon's motion on March 18, 2009. *See* INT. Abey. Opp. On March 20, 2009, Verizon filed a Notice of Recent Decisions ("VZ March 20 Not."), to which Intrado filed a response on March 23, 2009 ("INT. March 23 Resp."). On April 14, 2009, Verizon filed a Notice of Recent Decision specifically as support for its Motion for Abeyance. *See* VZ April 14 Not. Intrado responded on April 15, 2009, with a Motion to Strike Verizon's April 14 Notice. *See* INT. Mot. to Str. On April 29, 2009, Intrado submitted a letter with supplemental authority for the record. *See* INT. April 29 Letter. For the reasons outlined below, the Department denies Verizon's Motion for Abeyance and grants Intrado's Motion to Strike Verizon's April 14 Notice. Furthermore, the Department strikes Verizon's March 20 Notice.

Verizon requests abeyance pending a ruling from the FCC's Wireline Competition Bureau expected to be issued in early May, involving the same issues disputed by the Parties here with an additional "threshold" issue involving the applicability of § 251(c) of the Act (discussed more fully below). *See* VZ Abey. Mot. at 1. Verizon asserts that the FCC Wireline Competition Bureau's ruling will "provide useful guidance on the same issues now before the Department" and will allow the Department a more efficient use of resources. *Id.* at 1-2.

Although the Parties have jointly agreed to abeyance in the arbitration proceedings before commissions in North Carolina and Delaware, Intrado opposes an abeyance in the instant proceeding. *See* INT. Abey. Opp. at 1. Intrado distinguishes this proceeding from those in North Carolina and Delaware and specifies that those proceedings are not as far along as the current arbitration. *Id.* at 3. Specifically, Intrado emphasizes that neither of those commissions have yet

conducted a hearing or established a Final Order date, and the Parties have not yet filed legal briefs in either proceeding. *Id.* Intrado also points out that the FCC Wireline Competition Bureau will be resolving a “threshold” issue not currently before the Department – whether or not Intrado is entitled to § 251(c) interconnection – and that the Bureau will be deciding *only* this issue in early May. *Id.* at 2. Intrado asserts that, therefore, there will be no guidance for the Department on the remaining issues. *Id.* at 2-3. Finally, Intrado contends that abeyance would only be appropriate if it “would be an ‘inefficient use of the Department’s and [P]arties’ resources’ to move forward with the proceeding.” *Id.* According to Intrado, no such inefficiency is presented here, because a decision on the “threshold” issue from the Bureau would not change the Department’s evaluation of the current issues before it. INT. Abey. Opp. at 3.<sup>11</sup>

In support of its abeyance motion, Verizon offers an exhibit included with its April 14 Notice. *See* VZ April 14 Not. The April 14 Notice includes a copy of an April 8, 2009, scheduling notice issued by the Hearing Examiner for the Intrado/Verizon arbitration at the Maryland Public Service Commission. *Id.*, Exh. 1. In the notice, the Hearing Examiner ruled that the Maryland arbitration proceeding should be held in abeyance pending the anticipated May ruling by the FCC’s Wireline Competition Bureau, based on the determination that “eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case.” *Id.*, Exh. 1 at 1.

Verizon contends that the Maryland Hearing Examiner’s decision is relevant to Verizon’s Motion for Abeyance, since the Maryland arbitration involves the same list of issues as the instant

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<sup>11</sup> In support of its position, Intrado relies on *Proceeding by the Dep’t of Telecomms. & Energy on Its Own Motion to Implement the Requirements of the Fed. Commc’n’s Comm’n’s Triennial Review Order Regarding Switching for Mass Market Customers*, D.T.E. Docket 03-60 Track A and Track B, *Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Mass.*, at 17 (Apr. 2, 2004) (“2004 Interlocutory Order”). In the 2004 *Interlocutory Order*, the Department granted Verizon’s motion to stay the proceeding because it would otherwise be an inefficient use of the Department’s and parties’ resources. *See* 2004 *Interlocutory Order* at 16-17 (“[T]he D.C. Circuit Court’s action [in its *USTA II* decision] and the present uncertainty of the FCC’s response makes [the Department] reluctant to proceed with evidentiary hearings and to evaluate parties’ legal arguments until we are certain what rules apply. To act otherwise would be an inefficient use of the Department’s and parties’ resources.”).

proceeding, noting that, in Maryland, neither of the Parties presented for dispute the “threshold” issue of § 251(c)’s applicability. *See* VZ April 14 Not. at 1-2.

Similarly, Verizon filed its March 20 Notice to inform the Department of recent state commission determinations that Intrado is not entitled to § 251(c) interconnection. *See* VZ March 20 Not. and Exhs. The Florida Public Service Commission and the Illinois Commerce Commission issued their non-Verizon arbitration decisions on March 16 and 17, 2009, respectively, just days after the Parties in the instant proceeding filed their Reply Briefs. *See* VZ March 20 Not. at 1-2. Verizon specifies that the Florida and Illinois commission decisions are “relevant to the threshold jurisdictional question of Intrado’s right to request arbitration....” *Id.* at 2.

Intrado requests that the Department reject Verizon’s March 20 Notice, arguing that its entitlement to § 251(c) interconnection was never raised as an issue for dispute by the Parties. *See* INT. March 23 Resp. at 1-2. Furthermore, Intrado requests that the Department strike Verizon’s April 14 Notice from the record because it is a “poorly disguised, improperly filed, [and] untimely supplement” to Verizon’s Motion for Abeyance. INT. Mot. to Str. at 1. Intrado does not dispute the Department’s authority to take administrative notice of rulings from other jurisdictions and does not object to the Department “taking administrative notice of the [Maryland Hearing Examiner’s] Scheduling Notice to which Verizon refers.” INT. Mot. to Str. at 2.<sup>12</sup> Instead, Intrado disputes Verizon’s explanation for its March 20 Notice and argues that it is an untimely

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<sup>12</sup> In support of its position, Intrado relies on *New England Tel. & Tel. Co.*, D.T.E. 99-105 at 2 (2000) (“The Hearing Officer also took administrative notice of an Order Granting in Part and Denying in Part Petition for Reconsideration of the State of New York Public Service Commission dated December 23, 1998.”); *Complaint of WorldCom Techs., Inc. (successor-in-interest to MFS Intelenet Serv. of Mass., Inc.) against New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass. for Alleged Breach of Interconnection Terms Entered Into Under §§ 251 and 252 of the Telecomms. Act of 1996*, D.T.E. 97-116, at 2 n.8 (1998), *opinion vacated on denial of reconsideration*, *MCI WorldCom, Inc. v. New England Tel. & Tel. Co.*, D.T.E. 97-116-C (1999) (“the Department is obligated to take administrative notice of relevant legal precedent from other jurisdictions”). *See* INT. Mot. to Str. at 1 n.1.

supplemental brief filed by Verizon. *Id.*; INT. March 23 Resp. at 1 (opposing the “supplemental authority” provided by Verizon with its March 20 Notice). Intrado, however, filed its own supplemental authority on April 29, 2009. *See* INT. April 29 Letter. The supplemental authority is a Recommended Arbitration Order issued by the North Carolina Utilities Commission on April 24, 2009, regarding the Intrado/AT&T arbitration in that state, whereby the commission rules, in part, that Intrado is entitled to § 251(c) interconnection with AT&T. *See* INT. April 29 Letter Exh. 1 at 14; *INT/AT&T NC Arb.*

Because the Parties have not mutually agreed to extend past May 8, 2009, the deadline for the Department’s decision, then the Department is barred by 47 U.S.C. § 252(b)(4)(C) from granting Verizon’s Motion for Abeyance. Pursuant to § 252(b)(4)(C) of the Act, the Department is required to “conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier [Verizon] received the request....” Although the Parties previously agreed to extend the requisite nine month period by stipulating to a new start date for negotiations (*see* December 18 and April 6 Jt. Mots.) and have agreed to request abeyance in other state arbitration proceedings (*see* VZ. Abey. Mot. at 2), Intrado opposes Verizon’s Motion for Abeyance in the instant proceeding. Without mutual assent by the Parties, the Department will not contravene the federally-mandated statutory requirement, which requires the Department to issue an Order no later than May 8, 2009. *See* 47 U.S.C. § 252(b)(4)(C).

Furthermore, as discussed more fully below, the “threshold” issue has not been presented to the Department for arbitration, and, although the FCC Wireline Competition Bureau’s anticipated May ruling will decide only this “threshold” issue (*see* VZ Abey. Mot. at 1; INT. Abey. Opp. at 1), Bureau arbitration decisions are only persuasive authority and not binding on the Department. *See* Section VII.A.2.c below. In addition, the Bureau has not met its anticipated decision date as of the

date of this Order, and there is no guarantee as to when the Bureau will issue a final decision on this issue. *See INT/EMB FCC Arb.; INT/VZ FCC Arb.* For these reasons, the Department denies Verizon's Motion for Abeyance.

For similar reasons, the Department rejects Verizon's March 20 Notice and approves Intrado's Motion to Strike Verizon's April 14 Notice. In these Notices, Verizon argues that the submitted exhibits are relevant to the "threshold" issue of § 251(c). Since, as more fully discussed below in Section VI, the § 251(c) "threshold" issue was not presented to the Department as a disputed issue for resolution, the Department finds that Verizon's March 20 and April 14 Notices are improperly filed pleadings, and agrees with Intrado that these Notices are irrelevant to the issues to be decided by the Department. Therefore, these Notices shall be stricken from the record.

The Department, however, may take official notice "of such matters as might be judicially noticed by the courts of the United States or of the Commonwealth[.]" 220 C.M.R. § 1.10. Intrado does not object to the Department taking administrative notice of the Maryland Arbitrator's Scheduling Notice, which was submitted with Verizon's April 14 Notice. Intrado also does not ask the Department to strike from the record or reject the Illinois Commerce Commission Arbitration Decision or the Florida Public Service Commission Orders filed with Verizon's March 20 Notice. In addition, Verizon did not respond or object to Intrado's April 29 Letter with the attached North Carolina Utilities Commission Recommended Arbitration Decision. For these reasons, and pursuant to 220 C.M.R. § 1.10, the Department takes official notice of the aforementioned Maryland, Illinois, Florida, and North Carolina decisions.

**V. STANDARD OF REVIEW**

The procedures for negotiation, arbitration, and approval of agreements are set forth in § 252 of the Act. The general procedural guidelines for agreements arrived at through compulsory arbitration are specifically set forth in § 252(b), and state commission actions are guided by § 252(b)(4), which states in relevant part:

(A) [t]he State commission shall limit its consideration of any [arbitration] petition...(and any response thereto) to the issues set forth in the petition and in the response, if any, filed [within 25 days after the State commission receives the petition.]

The standards for arbitrations by state commissions are set forth in 47 U.S.C. § 252(c), which states that a state commission shall:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
- (2) establish any rates for interconnection, services, or network elements according to [section 252(d)]; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Furthermore, § 252(e)(3) provides that “subject to section 253 ... nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements.” Finally, § 253(b) specifies that “[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis ... requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”



## VI. “THRESHOLD” ISSUE

During the pendency of the instant proceeding, Verizon has discussed, but never raised for dispute, a “threshold” issue that has been asserted against Intrado in non-Verizon arbitrations, that is, whether Intrado is even entitled to interconnection under § 251(c) of the Act. *See* VZ Resp. Exhs. 1 and 3-5; VZ Panel Pref. Test. Exh. 4; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.* According to Verizon, it “has never conceded that Intrado is entitled to section 251(c) interconnection” (VZ Init. Br. at 1) and that “the Department may determine that it lacks the authority to address Intrado’s section 251(c) interconnection request, regardless of whether it was presented as a specific issue by the parties.” *Id.* at 1 n.3. Verizon asserts that this presents a threshold jurisdictional question. *Id.* at 4. In support of its position, Verizon relies on arbitration decisions issued from other state commissions regarding Intrado’s eligibility for § 251(c) interconnection. *Id.* at 1-4; VZ Rep. Br. at 1-3. In response, Intrado states that “Verizon’s attempt to challenge Intrado[‘s] right to a Section 251(c) interconnection agreement should be rejected” in large part because Verizon never raised the issue for dispute in its response to Intrado’s petition, and § 252(b)(4)(A) of the Act is clear that “the State commission shall limit its consideration of any petition...to the issues set forth in the petition and in the response, if any[.]” INT. Rep. Br. at 5.

The premise behind the “threshold” issue is that a requesting carrier seeks interconnection with an ILEC under § 251(c) in order to provide “telephone exchange service” or “exchange access.” 47 U.S.C. § 251(c)(2)(A); 47 C.F.R. § 51.305(a)(1). Unlike Verizon in the instant proceeding, AT&T, Embarq, and CBT each disputed Intrado’s entitlement to § 251(c) interconnection in their arbitrations. *See* VZ Resp. Exhs. 1 and 3-5; VZ Pref. Test. Exh. 4; VZ Init.

Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.*

In their proceedings, AT&T, Embarq, and CBT each argued, with varying results, that Intrado's proposed 911/E-911 service did not meet the definition of a "telephone exchange service" or "exchange access" and, therefore, was not entitled to § 251(c) interconnection. *See* VZ Resp. Exhs. 1 and 3-5; VZ Pref. Test. Exh. 4; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.* The Florida and Illinois commissions ruled in their respective non-Verizon arbitrations that, based on Intrado's proposed services, it is not entitled to § 251(c) interconnection and dismissed the remaining issues presented for arbitration. *See* VZ Panel Pref. Test. Exhs. 1 and 2; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.* In contrast, the Ohio Public Utilities Commission ruled in its non-Verizon arbitrations that Intrado is entitled to § 251(c) interconnection. *See* INT. Currier Pref. Test. Exh. 6; INT. Rep. Br. Exh. 3; VZ Resp. Exhs. 4 and 5; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.* Similarly, the North Carolina Arbitrator determined that Intrado is entitled to § 251(c) interconnection with AT&T. *See* *INT/AT&T NC Arb.* The Texas Public Utility Commission and the FCC's Wireline Competition Bureau have not yet ruled on this issue in these non-Verizon arbitrations.<sup>13</sup> *See* *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.*

In contrast to the AT&T, Embarq, and CBT arbitration proceedings, the "threshold" issue was not a disputed issue in any of its arbitration proceedings with Intrado. *See* *INT/VZ Del. Arb.*; *INT/VZ Fl. Arb.*; *INT/VZ Ill. Arb.*; *INT/VZ Md. Arb.*; *INT/VZ NC Arb.*; *INT/VZ Oh. Arb.*; *INT/VZ Tx. Arb.*; *INT/VZ WV Arb.*; *INT/VZ FCC Arb.* Subsequent to the Florida and Illinois decisions

<sup>13</sup> Both Intrado and Verizon indicate that the FCC Wireline Competition Bureau's target date for a decision was May 2, 2009. *See* INT. Abey. Mot. Opp. at 1 n.1; VZ Init. Br. at 3.

relating to the non-Verizon arbitrations, Verizon has requested that the Florida and Illinois grant it similar relief.<sup>14</sup> *See* VZ Init. Br. at 1-2; VZ Rep. Br. at 2; *INT/VZ Fl. Arb.*; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/VZ Ill. Arb.*; *INT/AT&T Ill. Arb.* Finally, as Embarq has raised this issue in the Virginia arbitration, and the FCC's Wireline Competition Bureau consolidated the Intrado/Embarq and Intrado/Verizon arbitrations, the Bureau will decide the issue for those arbitrations. *See* INT. Abey. Mot. Opp. at 2; *INT/VZ FCC Arb.*; *INT/EMB FCC Arb.*

Arbitration proceedings between Intrado and Verizon in other states offer no useful guidance because of their differing treatments of the "threshold" issue.<sup>15</sup> For instance, although indicating that there may have been a jurisdictional question, the West Virginia Arbitrator addressed only the disputed issues between the Parties and not Intrado's right to request interconnection or arbitration solely for its proposed 911/E911 service to PSAPs since:

the issue is pending before the FCC; because Verizon did essentially waive that issue by entering into interconnection agreement negotiations with Intrado; and because the issue was not squarely presented to the parties in a fashion that would have allowed Intrado to recognize that it needed to file responsive testimony and briefing on the issue for the undersigned.

VZ Resp. Exh. 7, *WV Arb. Award*, at 11. In contrast, the Texas commission took a different approach and requested that Intrado and Verizon file initial and reply briefs on the "threshold issue." *See* VZ Resp. Exhs. 6 and 8. The briefs in the Texas proceeding were filed on October 31 and November 7, 2008, respectively, but, to date, the Texas Public Utility Commission has not yet

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<sup>14</sup> In addition, both Parties filed a joint motion for abeyance pending resolution of the Florida Public Service Commission's decision in the Intrado/AT&T and Intrado/Embarq arbitrations, which the commission granted. *See INT/VZ Fl. Arb.*

<sup>15</sup> The Department does not generally find other state commission decisions to be dispositive on its arbitration proceedings. *See Petition of Global NAPs, Inc., Pursuant to § 252(b) of the Telecomms. Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Mass. f/k/a New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass., D.T.E. 02-45, Order*, at 12 (Dec. 12, 2002) ("*GNAPs Arb. Order*"). Indeed, the Department "ordinarily place[s] little weight on the decisions reached in other states, since we rely for our decisions on the record presented here." *Id.* (citing *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 4), *Order*, at 23 (December 4, 1996) ("*Phase 4 Order*").

issued a decision. *See* VZ Resp. Exh. 6 at 1; *INT/VZ Tx. Arb.* The Hearing Examiner in the Maryland arbitration recently issued a notice specifying that “eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case, and I will therefore refrain from issuing any Proposed Order in this matter until the relevant FCC order is issued and [sic] case be reviewed.” *See INT/VZ Md. Arb., Hearing Officer Scheduling Notice* (issued Apr. 8, 2009). Finally, the Delaware and North Carolina commissions have thus far been silent on this issue. *See INT/VZ Del. Arb.; INT/VZ NC Arb.*

The Department is bound by the express terms of the statute, which requires that a state commission “limit its consideration of any petition ... to the issues set forth in the petition and in the response[.]” 47 U.S.C. § 252(b)(4)(A). Because the Parties did not present the “threshold” issue as a disputed issue to the Department, pursuant to § 252(b)(4)(A) of the Act, the Department is therefore precluded from addressing Intrado’s entitlement to § 251(c) interconnection in the instant proceeding. Accordingly, the Department does not make any determinations as to whether Intrado’s proposed 911/E-911 service is a telephone exchange or exchange access service, nor does the Department make any determinations as to whether the “threshold” issue is, according to Verizon, jurisdictional in nature. *See* VZ Init. Br. at 4.

## **VII. UNRESOLVED ISSUES**

The Parties presented sixteen issues to be resolved by the Department. Resolution of these issues will determine the final language to be incorporated in the Parties' interconnection agreement. The sixteen issues presented to the Department involve: (1) the location of Point(s) of Interconnection ("POIs") on each Parties' 911/E-911 network; (2) inter-selective router trunking; (3) trunk forecasting requirements; (4) how the Parties will initiate interconnection; (5) how the Parties route 911/E-911 calls to each other; (6) description of both Parties' 911/E-911 facilities; (7) ALI databases and steering tables; (8) incorporation into the agreement of certain definitions; (9) direct interconnection to PSAPs served by the other Party; (10) rates to be charged for 911/E-911 services; (11) incorporation and application of tariff rates; (12) capping Intrado rates at Verizon rates; (13) express language regarding the waiver of charges; (14) charges billed to a Controlling 911 Authority or PSAP; (15) the right to amend the Agreement to permit the exchange of traffic other than 911/E-911 traffic; and (16) the use of the term "a caller."

According to Intrado, these sixteen issues generally fall into one of four broad categories: (1) general physical architecture issues (Arbitration Issues 1 through 4); (2) specific 911/E-911 services issues (Arbitration Issues 5 through 9); (3) pricing issues and related language (Arbitration Issues 10 through 14); and (4) miscellaneous issues (Arbitration Issues 15 and 16). *See* INT. Pet. at 10-11. Arbitration Issue 1 is a central issue to this proceeding. Both Parties acknowledge that the resolution of this issue will be dispositive in whole or in part to several of the other outstanding issues in this proceeding. Specifically, resolution of Arbitration Issue 1 regarding POIs will be dispositive to resolution of disputed language in Arbitration Issues 2, 4, 5, 8, and 10. Thus, we turn first to Arbitration Issues 1, 4 and 5.

- A. Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?  
Arbitration Issue 1 - Point of Interconnection and Interconnection of Verizon's Network to Intrado's Network (*911 Attachment* §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1)<sup>16</sup>

What terms and conditions should govern how the Parties will initiate interconnection?

Arbitration Issue 4 - Initiating Interconnection (*911 Attachment* § 1.5)

How should the Parties route 911/E-911 calls to each other?

Arbitration Issue 5 - 911/E-911 Call Routing (*911 Attachment* §§ 1.3, 1.4, 1.7.3)

1. Introduction

The crux of the Parties' interconnection dispute involves Arbitration Issue 1 and the appropriate placement of the POI(s). Resolution of Arbitration Issue 1 determines the resolution of Arbitration Issues 4 and 5 since the disputed language of Arbitration Issues 4 and 5 are fully incorporated into the disputed language of Arbitration Issue 1. The placement of the POI(s) is tied to how the Parties interconnect and how the Parties will transport and route 911/E-911 traffic. The Parties do not dispute the POI(s) on Verizon's network when Verizon serves a PSAP or is the 911/E-911 service provider. The dispute stems from whether or not the POI(s) should be on Intrado's network when Intrado serves a PSAP or is the 911/E-911 service provider. In addition, the Parties dispute whether Local Access and Transport Area ("LATA") language is appropriate. Finally, although Arbitration Issues 1 and 5 incorporate disputed Glossary language, the Department will address the Glossary language in its Arbitration Issue 8 analysis.

As explained more fully below, the Department finds that (1) any POIs established under this agreement shall be on Verizon's network; (2) certain LATA language is unnecessary and shall

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<sup>16</sup> The ICA sections referenced are taken from the Parties' Second Stipulation – Joint Issues Matrix. These ICA sections are not intended to be exhaustive and an issue may apply to ICA sections other than those that are listed.

be deleted from the agreement; and (3) the disputed reciprocal language in *911 Attachment* § 1.5 is unnecessary and shall, therefore, be deleted from the agreement.

2. Point(s) of Interconnection

a. Intrado

When Intrado serves a PSAP, Intrado seeks an interconnection arrangement with Verizon that it asserts is essentially the same as that which currently exists between Verizon and other carriers for the transport and delivery of 911/E-911 traffic within Massachusetts when Verizon serves a PSAP. *See* INT. Pet. at 16; INT. Init. Br. at 19. When Intrado serves a PSAP, Intrado seeks to have Verizon build out dedicated trunk lines from each Verizon end office located within an Intrado-served PSAP's territory to a minimum of two "geographically diverse" POIs on Intrado's network. INT. Init. Br. at 23. This will permit 911/E-911 calls from Verizon end users to be directly routed from Verizon end offices to Intrado's selective routers, bypassing Verizon's own selective routers. *See* Intrado-proposed language ICA *911 Attachment* §§ 1.3.4(i) and (ii). Intrado indicates that it will have at least two selective routers located in Massachusetts, although its proposed language would also permit Verizon (or any other carrier) to interconnect with Intrado's network at selective routers located outside of Massachusetts. *See* INT. Init. Br. at 23. Intrado would require certain technical and delivery requirements on Verizon's side of the POI(s). *See* Intrado-proposed language ICA *911 Attachment* §§ 1.3.4(i)-(viii). Intrado asserts that its 911/E-911 interconnection network architecture proposal "is consistent with the purpose of Section 251(c), the way in which ILECs compel CLECs to interconnect on their networks, and industry recommendations and guidelines" for 911/E-911 traffic. INT. Init. Br. at 14.

Intrado's primary POI arguments stem from its analyses regarding the applicability of 47 U.S.C. §§ 251(c)(2)(B) and (C), and its contention that § 251(c), when viewed in relation with

Verizon's own 911/E-911 network architecture, permits Intrado's interconnection proposals when it is the 911/E-911 service provider. *Id.* at 8-9, 14-23. It is under § 251(c) that Intrado seeks interconnection with Verizon. *Id.* at 3-5; Tr. at 18. Intrado asserts that its interconnection proposals for when it is the 911/E-911 service provider are consistent with the purpose of § 251(c), which is "to ensure that new entrants could effectively compete" with the ILEC. INT. Init. Br. at 14. Of the four obligations required of ILECs under § 251(c), Intrado contends that § 251(c)(2)(B)'s requirement that the POI be on the ILEC's network "was established for the benefit of the competitor, not the ILEC" (*id.* at 15) and that § 251(c)(2)(C)'s "equal in quality" requirement, when coupled with Verizon's 911/E-911 interconnection arrangements with other carriers when Verizon is the 911/E-911 service provider, requires that the POI(s) be on Intrado's network when Intrado is the 911/E-911 service provider. *Id.* at 8-9, 20-21. According to Intrado, POIs for 911/E-911 traffic are separate and distinct from POIs established for Plain Old Telephone Service ("POTS") traffic, as evidenced by Verizon's interconnection arrangements with other carriers for 911/E-911 traffic. *Id.* at 16-17, 19-20.

Intrado relies on FCC determinations in the *King County Order*<sup>17</sup> and *Local Competition Order*<sup>18</sup> and the Ohio Public Utilities Commission's decisions in the Intrado/Embarq and Intrado/CBT arbitrations<sup>19</sup> to support its position. Intrado states that the FCC established selective routers to be the appropriate "cost-allocation point[s]" when carriers exchange 911/E-911 traffic, even if those points are beyond the carrier's switch. *Id.* at 17-18 (citing *King County*). Pointing to

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<sup>17</sup> *Revision of the Comm'n's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys. – Request of King County*, 17 FCC Rcd 14789, CC Docket No. 94-102, FCC 02-146 (rel. July 24, 2002) ("*King County Order*").

<sup>18</sup> *Implementation of the Local Competition Provisions in the Telecomms. Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (rel. Aug. 8, 1996) ("*Local Competition Order*").

<sup>19</sup> *See generally*, INT/EMB Oh. Arb.; INT/CBT Oh. Arb.



Verizon's interconnection arrangements when Verizon is the 911/E-911 service provider, Intrado also asserts that under the FCC's *Local Competition Order*, "successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point or at substantially similar points in networks employing substantially similar facilities." INT. Init. Br. at 22-23 (emphasis omitted). Relying on the *Local Competition Order*, Intrado states that parties may agree to have the ILEC deliver its traffic to a different point(s) than the point(s) used by the interconnecting carrier, since "carriers do not always deliver originating traffic and receive terminating traffic at the same place." *Id.* at 15.

According to Intrado, the Ohio Public Utilities Commission determined that when Intrado serves a PSAP, then Embarq and CBT are each responsible for establishing POIs at Intrado's selective routers based on the *King County* precedent. *Id.* at 18-19. Furthermore, in addition to applying § 251(c), Intrado contends that the Ohio Public Utilities Commission found additional support for Intrado's POI proposal under § 251(a) of the Act and the Commission's "broad authority over 911 service." *Id.* at 18-19. Intrado argues that if the Department does not uphold its interconnection proposals under § 251(c), the Department may also approve its proposals pursuant to § 251(a) of the Act. *See* INT. Rep. Br. at 3-4. Intrado also asserts that the Department has the additional authority to adopt its interconnection proposals based on authority granted to state commissions pursuant to §§ 253(b), 251(e) and 706 of the Act. *See* INT. Init. Br. at 10-11.

Intrado also states that a minimum of two geographically diverse POIs on its network provides reliability and redundancy, benefitting public safety, and is consistent with industry recommendations and guidelines. *Id.* at 23. Intrado cites to an FCC recommendation in a Notice of Proposed Rulemaking ("NPRM") that 911 calls be "diversely routed" and a later NPRM where

the FCC inquired “whether it should require the deployment of redundant trunks to each selective router or require that multiple selective routers be able to route calls to each PSAP.” *Id.* at 24. Intrado next states that its proposed language “implements best practices for diversity and redundancy,” citing both the FCC’s Network Reliability and Interoperability Council (“NRIC”) recommendation that 911 circuits be established over “multiple, diverse interoffice facilities” rather than “over a common interoffice facility route” and the National Emergency Number Association (“NENA”) 911 recommendation that “[r]eliability...is achieved through diversity and redundancy [and] [o]ne method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to [sic] its 9-1-1 tandem.” *Id.* (citations omitted). Intrado also refers to Verizon’s own use of diversity and redundancy within its 911/E-911 network through Verizon’s establishment of “dedicated trunks from each of its end offices to each selective router” and competitors’ interconnection to Verizon’s selective routers. *Id.* at 25.

Finally, Intrado argues that its POI proposal will not disadvantage other Massachusetts carriers and does not justify Verizon’s planned use of transit arrangements to send third-party carrier 911/E-911 traffic from its selective routers over a common trunk group to Intrado. INT. Init. Br. at 27, 29. Intrado states that other Massachusetts carriers will be able to connect at any Intrado selective router in order to connect to Intrado’s Massachusetts PSAP customers. *Id.* at 27. Intrado voices concern over Verizon’s planned use of transit service arrangements for third-party carrier 911/E-911 traffic, claiming that “Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement...and... Verizon only ‘voluntarily provides these services.’” *Id.* at 28.<sup>20</sup> In addition, according to Intrado, a transit service

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<sup>20</sup> Citing Verizon Reply Comments, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, at 25, 26-27 (Nov. 5, 2001).

arrangement for 911/E-911 traffic would affect “quality of service, network reliability, and network efficiency.” *Id.* at 29.

b. Verizon

Verizon does not dispute the general interconnection arrangement between Intrado and Verizon when Verizon is the 911/E-911 service provider. *See* VZ Pet. at 7. In fact, the Parties agree that the POIs will be on Verizon’s network when Verizon is the 911/E-911 service provider. *Id.* Verizon’s dispute is with Intrado’s proposal that Verizon connect at (and build out to) POIs on Intrado’s network when Intrado is the 911/E-911 service provider and asserts that it has no obligation under § 251(c) of the Act to establish POIs on Intrado’s network. *See* VZ Init. Br. at 9-12; VZ Rep. Br. at 7-11.

Verizon responds that the POI issue “is quite simple to decide,” because “[t]he law is clear and unequivocal.” VZ Init. Br. at 10 (citing *WV Arb. Award* at 12-13). Verizon points out that Intrado seeks interconnection only under § 251(c) of the Act, and that Intrado’s POI proposal would directly violate that statutory provision and the corresponding FCC rule, 47 C.F.R. § 51.305, which implements that provision, stating that POIs must be “at any technically feasible point” on the incumbent’s network. VZ Init. Br. at 10-12. According to Verizon, “[t]o accept Intrado’s position, the Department will have to find that there are different requirements for Section 251(c) interconnection for 911[E-911] traffic than there are for all other traffic,” since neither § 251(c) nor the FCC’s implementing rules for that portion of the statute distinguish between different types of traffic. *Id.* Verizon further asserts that the FCC rule that defines “interconnection,” 47 C.F.R. § 51.5, requires that carriers must exchange their traffic at the same POI. *Id.* at 12.

Verizon also contends that the four ILEC obligations established under § 251(c) each addresses “a different aspect of the interconnection relationship,” and one obligation cannot cancel out the express terms of another. *Id.* at 13-15. Contrary to Intrado’s assertions, Verizon contends that § 251(c)(2)(C)’s requirement does not apply to POI placement. *Id.* at 13. Specifically, Verizon asserts that § 251(c)(2)(B) addresses POI placement whereas § 251(c)(2)(C) addresses “equal in quality” requirements for technical criteria and service standards. *Id.* at 13-14. Verizon states that the language of the FCC’s rules which implement §§ 251(c)(2)(B) and (C), 47 C.F.R. §§ 51.305(a)(2), (3), the FCC’s determinations in the *Local Competition Order*, and the West Virginia Arbitrator’s determinations further bolsters its position. *Id.* at 14-16.<sup>21</sup>

Furthermore, Verizon asserts that the FCC has never ruled on POIs for 911/E-911 traffic. *Id.* at 21. Responding to Intrado’s use of the FCC’s *King County Order*, Verizon argues that the *King County Order* cost allocation point determinations were unrelated to interconnection rights and agreements or POIs, and, in fact, the *King County Order* settled “a dispute between wireless carriers and PSAPs with respect to the allocation of costs between them” and did not address ILEC relationships with interconnecting carriers. VZ Rep. Br. at 14.

Verizon contends that there are no alternative statutory or other sources that would permit the Department to approve Intrado’s POI proposals. *See* VZ Init. Br. at 21. According to Verizon, neither the general reservation of rights nor the authorized ability to “protect the public safety and

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<sup>21</sup> According to the West Virginia Arbitrator,

Intrado argues that Verizon cannot use one obligation under Section 251(c) to ‘obliterate’ another obligation under Section 251(c). That is certainly true enough. However, Intrado’s own argument would require exactly that outcome...The subsection on which Intrado has hung so much of its argument [Section 251(c)(2)(C)] doesn’t even apply to the location of the point of interconnection...[In addition,] Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection.

*WV Arb. Award* at 13.

welfare” granted to state commissions under § 253(b) of the Act can override the express provisions of § 251(c) which require the POI to be on the ILEC’s network. *Id.* at 18-19. In addition, Verizon states the additional statutory authorities cited by Intrado, §§ 251(e) and 706 of the Act, are inapplicable to the placement of POIs, since “Section 251(e) addresses FCC authority over numbering administration; [and] section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability.” *Id.* at 21.

Verizon asserts that Intrado’s contention that the Department may use § 251(a) of the Act as authority to adopt Intrado’s interconnection proposals is wrong. *See* VZ Rep. Br. at 3. Verizon argues that the Parties did not negotiate any terms under § 251(a) nor did the Parties brief their arguments regarding the applicability of § 251(a). *Id.* at 4. According to Verizon, the Department may only arbitrate issues “outside of the ILEC’s obligations under [S]ections 251(b) and (c) only if the [P]arties agreed to include those issues in their negotiations”<sup>22</sup> and, since “Intrado did not seek negotiation of any [S]ection 251(a) terms in negotiations, so Verizon certainly could not have agreed to arbitrate any such terms.” *Id.* (emphasis omitted). In other words, whether Intrado is entitled to its interconnection proposals under § 251(a) was not negotiated by the Parties and is not a disputed issue presented to the Department for arbitration.

Verizon argues that the POI issue is a legal issue and not a policy issue, that federal law requires that the POI(s) must be on Verizon’s network, and that an interconnection arbitration is not the proper forum to alter the underlying 911/E-911 network infrastructure in Massachusetts. *See* VZ Init. Br. at 21-24; VZ Rep. Br. at 5. More specifically, Verizon states that the State 911

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<sup>22</sup> Referring to the Fifth Circuit decision referenced by Intrado in its Initial Brief at 13 n.51. *CoServ Ltd. Liab. Corp. v. Southwestern Bell Tel. Co., P.U.C. of Tex.*, 350 F.2d 482, 487 (5th Cir. 2003)(“[A state commission at arbitrator] is limited by the actions of the parties in conducting voluntary negotiations. It may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations.”).

Department is “the agency responsible for coordinating and administering the implementation of E911 services and promulgating and verifying compliance with standards to ensure a consistent statewide approach for E911” within Massachusetts. VZ Rep. Br. at 5.

Finally, Verizon states that, contrary to Intrado’s assertions, it does not plan to use “transit arrangements” to transport third-party carrier 911/E-911 traffic to Intrado, since “transit arrangements” are not used to transport third-party carrier 911/E-911 traffic. *Id.* at 19-20.

According to Verizon:

Transit service is a specifically defined offering in Verizon’s interconnection agreements, under which Verizon agrees to allow an originating carrier to send traffic through Verizon’s tandems for delivery to a third party carrier with which the originating carrier has no direct connection. The transit provisions for local exchange traffic are completely separate from the 911 call delivery provisions in Verizon’s interconnection agreements. In fact, the transit service provisions were removed from the Intrado/Verizon draft agreement under arbitration, because the [P]arties agreed they were not relevant to Verizon’s and Intrado’s interconnection for 911[E-911] service.

*Id.* at 19. Verizon states that, unlike “transit arrangements,” it is obligated to provide “nondiscriminatory access to 911[E-911] services,” and “delivery of other carriers’ 911[E-911] traffic is...not voluntary” pursuant to § 271(c)(2)(B)(vii)(1) of the Act. *Id.* at 19-20. Furthermore, according to Verizon, the requirement to provide nondiscriminatory access to 911/E-911 services “is provided today in most cases through Verizon’s selective routers ... [and] Intrado’s proposal would remove this option for CLECs, disrupt Verizon’s agreements reflecting this option, and thus compromise Verizon’s ability to meet its obligation to provide [this] access to 911 services.” *Id.* at 20.

c. Analysis and Findings

Pursuant to § 251(a) of the Act, all telecommunications carriers have the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications

carriers.” 47 U.S.C. 251(a)(1). The Act imparts four additional obligations on incumbent carriers specifically and requires incumbents to provide for interconnection with the requesting carrier’s network:

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier’s network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

47 U.S.C. §§ 251(c)(2)(A)-(D). Furthermore, the FCC rules implementing § 251(c)(2) state that:

An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC’s network:

- (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
- (2) At any technically feasible point within the incumbent LEC’s network including, at a minimum: (i) The line-side of a local switch; (ii) The trunk-side of a local switch; (iii) The trunk interconnection points for a tandem switch; (iv) Central office cross-connect points; (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and (vi) The points of access to unbundled network elements as described in § 51.319;
- (3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC’s network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and
- (4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission’s rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself.

47 C.F.R. § 51.305(a)(1)-(4). Regarding technical feasibility, the FCC rule states that:

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

47 C.F.R. §§ 51.305(c)-(e).

The FCC also has rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier. *See GNAPS Arb. Order* at 11. These rules, which were adopted in earlier FCC orders and discussed by the FCC's Wireline Competition Bureau in its *Virginia Arbitration Order*,<sup>23</sup> state that:

- (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network;
- (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;
- (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and
- (4) competitive LECs may refuse to permit other ILECs to collocate at their facilities.

*Virginia Arbitration Order* at ¶ 67 (footnotes omitted). *See GNAPS Arb. Order* at 11-12.

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<sup>23</sup> *In re Petition of WorldCom, Inc. Pursuant to § 252(e)(5) of the Commc 'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm 'n Regarding Interconnection Disputes with Verizon Va. Inc., and for Expedited Arbitration, Petition of Cox Va. Telecom, Inc. Pursuant to Section 252(e)(5) of the Commc 'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm 'n Regarding Interconnection Disputes with Verizon-Va., Inc. and for Arbitration, and Petition of AT&T Commc 'ns of Va., Inc., Pursuant to Section 252(e)(5) of the Commc 'ns Act for Preemption of the Jurisdiction of the Va. Corp. Comm 'n Regarding Interconnection Disputes with Verizon Va. Inc., Memorandum Opinion & Order*, CC Docket Nos. 00-218, 00-249 and 00-251, 17 FCC Rcd 27039 (rel. July 17, 2002) ("*Virginia Arbitration Order*").



The application of §§ 251(c)(2)(B) and (C) of the Act are at the crux of the Parties' POIs dispute for Arbitration Issues 1, 4 and 5. Although the FCC has not addressed interconnection of competing 911/E-911 providers, the express language of the statute, the FCC's *Local Competition Order* and corresponding rules, and the Wireline Competition Bureau's *Virginia Arbitration Order*<sup>24</sup> provide clear guidance.

Intrado seeks interconnection with Verizon under § 251(c) of the Act. *See* Tr. at 18; INT. Init. Br. at 3-5. Pursuant to 47 U.S.C. § 251(c)(2)(B) and 47 C.F.R. § 51.305(a), a requesting carrier seeking interconnection is entitled to interconnect directly at any technically feasible point *on the incumbent's network*. *See* 47 U.S.C. § 251(c)(2)(B) (requiring ILECs to interconnect with requesting carriers "at any technically feasible point within the carrier's network") and 47 C.F.R. § 51.305(a) (stating "[a]n incumbent LEC shall provide, for the facilities and equipment of any

<sup>24</sup> Given that the *Virginia Arbitration Order* was an FCC Bureau decision rather than a Commission decision, it is necessary for the Department to comment on the weight that it is given in this case. The FCC's Wireline Competition Bureau preempted the jurisdiction of the Virginia Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WorldCom, Inc. ("WorldCom"), Cox Virginia Telecom, Inc. ("Cox"), and AT&T Communications of Virginia, Inc., and issued its *Virginia Arbitration Order* standing in place of the Virginia Corporation Commission. Thus, the *Virginia Arbitration Order* is more analogous to a state commission decision than an order issued by the FCC. *See GNAPs Arb. Order* at 12. As indicated in Section VI, the Department generally does not find other state commission decisions to be dispositive to arbitration proceedings conducted in Massachusetts. *Id.* Although the Wireline Competition Bureau explicitly stated that it was acting in place of the Virginia Corporation Commission, the Department nonetheless finds it reasonable to place greater weight on the Bureau's interpretation of the intent and application of FCC rules than it would for another state commission's interpretation of the same FCC rules because the FCC Bureau's staff have access to institutional knowledge of the development of the rules, which is invaluable in interpreting them. *Id.* at 13. The FCC's Wireline Competition Bureau also did not consider Virginia law when it rendered its decision. *Id.* Thus, potential conflicts between another state's law and Massachusetts law are absent. *Id.* Accordingly, the Department finds the *Virginia Arbitration Order* to be persuasive authority. *Id. See Investigation by the Dep't of Telecomms. & Energy on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order*, at 20 n.13 (rel. Jan. 30, 2007) ("The *Virginia Arbitration Order* was issued by the Wireline Competition Bureau of the FCC acting in place of the Virginia State Corporation Commission and, therefore, does not have the same precedential effect as an FCC commission-level Order."). It is not, however, binding on the Department because it is not an FCC mandate. *GNAPs Arb. Order* at 12. In contrast, in D.P.U./D.T.E. 97-88/97-18-A [Phase II] (Aug. 8, 2001) ("Payphone Reconsideration Order"), the Department found that the FCC Common Carrier Bureau's decision in *In re Wisconsin Pub. Serv. Comm'n Order Directing Filings*, 14 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("Wisconsin Order") was binding on state regulators, unless stayed or reversed. Unlike the *Wisconsin Order*, the *Virginia Arbitration Order* is an arbitration decision issued by the Wireline Competition Bureau acting on behalf of the Virginia Corporation Commission. Thus, it is appropriate to consider the *Virginia Arbitration Order* persuasive, but not binding, authority.

requesting telecommunications carrier, interconnection with the incumbent LEC's network ... [a]t any technically feasible point *within the incumbent LEC's network[.]*”(emphasis added). Neither the statute nor the FCC's implementing rules differentiate between different types of traffic, including 911/E-911 traffic.<sup>25</sup> Contrary to Intrado's assertions, there is no ambiguity within this statutory provision and implementing rules, which require that the POI must be within the incumbent's network, unless the parties agree otherwise.<sup>26</sup>

In addition, we find that the “equal in quality” requirement imposed upon an incumbent under § 251(c)(2)(C) of the Act, which Intrado cites as support for its POI proposal, does not override the § 251(c)(2)(B) POI obligation, which requires that interconnection be on the incumbent's network. *See* 47 U.S.C. § 251(c)(2)(C) (stating that the ILEC must provide interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection”); 47 C.F.R. § 51.305(a) (“An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network ... [t]hat is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a

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<sup>25</sup> Verizon is correct that the *King County Order* is inapplicable to the current arbitration. *See* VZ Rep. Br. at 14. The situations are not analogous. *King County* resolved a dispute between wireless carriers and PSAPs with respect to the allocation of 911/E-911 traffic costs between them and is, contrary to Intrado's assertions, unrelated to interconnection obligations between carriers. *See King County Order* at ¶ 1.

<sup>26</sup> Competitive carriers also can request to establish meet-point arrangements for interconnection, whereby some build-out by the ILEC may be required. *See Local Competition Order* at ¶ 553 (“[A]lthough the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3).”). However, Intrado did not agree to this type of interconnection. *See* INT. Hicks Pref. Test. at 17; Tr. at 44-50.

consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier.”).

As noted above, § 251(c) of the Act imposes four obligations on incumbent carriers. Contrary to Intrado’s claims, those obligations are not interchangeable. The Department agrees with Verizon that those obligations each address “a different aspect of the interconnection relationship” between ILECs and requesting carriers. VZ Init. Br. at 13. The Department further agrees with Verizon that 47 U.S.C. § 251(c)(2)(B) and 47 C.F.R. § 51.305(a)(2) address the placement of POIs, whereas 47 U.S.C. § 251(c)(2)(C) and 47 C.F.R. § 51.305(a)(3) address *technical criteria* and *service standards* (i.e., service quality). *Id.* at 13-18 (emphasis added). This is further bolstered by the fact that the FCC addresses these two statutory provisions separately in its *Local Competition Order*. See *Local Competition Order* at ¶¶ 181-225. As Verizon points out,

The FCC’s *Local Competition Order*, where the FCC adopted Rules 51.305(a)(2) and (a)(3), further confirms that the Act’s equal-in-quality interconnection requirement is distinct from its requirement for the POI to be on the ILEC’s network. The latter requirement is discussed within the “Technically Feasible Points of Interconnection” portion of the Order [and the] equal-in-quality requirement is discussed later, in the “Interconnection that is Equal in Quality” portion of the Order.

VZ Init. Br. at 14. The “equal in quality” obligations require that the incumbent maintain the same quality of service at the POI(s) as the incumbent maintains for itself and others. Thus, the Department finds that Intrado’s position that the “equal in quality” statutory requirement imposed by 47 U.S.C. § 251(c)(2)(C) overrides the statutory POI requirement imposed by 47 U.S.C. § 251(c)(2)(B) is an unreasonable interpretation.

The Department is not persuaded by Intrado that the authority granted to the Department pursuant to 47 U.S.C. §§ 251(3), 706 and 253(b) supports Intrado’s interconnection proposals. See INT. Init. Br. at 10-11. The Department agrees with Verizon that we are bound by the express

provisions concerning interconnection set forth elsewhere in the Act (i.e., § 251(c)(2)(B)). *See* VZ Init. Br. at 19. In addition, the Department agrees with Verizon that §§ 251(e) and 706 of the Act are inapplicable to the placement of POIs and interconnection obligations under § 251(c), since “Section 251(e) addresses FCC authority over numbering administration; [and] section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability.” VZ Init. Br. at 21. Moreover, regarding § 253(b) of the Act, this Section grants to states the authority to adopt “requirements necessary to...protect the public safety and welfare.” 47 U.S.C. § 253(b). According to Intrado, “911/E-911 services are unique” and the interconnection arrangements that it seeks “are critical to issues of reliability, redundancy, and minimizing points of failure for 911/E-911 services.” INT. Init. Br. at 13. Specifically, Intrado states that a minimum of two geographically diverse POIs on its network provides reliability and redundancy, benefits public safety, and is consistent with industry recommendations and guidelines. *Id.* at 23-25. The Department agrees that reliability and redundancy for 911/E911 traffic may be critical for public safety and that interconnection arrangements should not be inconsistent with industry standards, but the Department is bound by the express provisions concerning interconnection set forth elsewhere in the Act (i.e., § 251(c)(2)(B)). Even if the Department was not bound by the express provisions of the Act, the Department agrees with Verizon that the record does not establish that requiring the POI(s) on Verizon’s network harms public safety or is inconsistent with industry standards.

As Verizon points out, issues of public safety in the design of the 911/E911 network in Massachusetts are the responsibility of the State 911 Department. *See* VZ Init. Br. at 4; G. L. c. 6A, § 18B-I. The State 911 Department is responsible for the overseeing the design, construction, and maintenance of the 911/E911 network, as well as for promulgating and administering

standards for the provision of 911/E-911 services. *See* VZ Panel Pref. Test. at 17; G. L. c. 6A §§ 18B(d) and 18D(c); 560 CMR App. A “Standards for Enhanced 911.” In contrast, the Department’s role is to oversee the funding of 911/E-911 services to ensure that the surcharge on wireline and wireless carriers is reasonable and balances the interests of telephone customers and the State 911 Department. *See* G. L. chs. 6A, 159 and 166.

The Department is also not persuaded by Intrado’s arguments that the Department can alternatively rely on § 251(a) of the Act to support Intrado’s interconnection proposals. *See* INT Init. Br. at 18-19; INT Rep. Br. at 3-4. Intrado specifically seeks § 251(c) interconnection, not interconnection under § 251(a). *See* Tr. at 18; INT Init. Br. at 3-5. Therefore, as it will not address Verizon’s “threshold” issue since it was not raised as a disputed issue, neither will the Department address the applicability of § 251(a) for the same reasons. The Department does not dispute that it has the “authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c)” (INT. Rep. Br., at 7), but it notes that the West Virginia Arbitrator is correct that “[a] request for arbitration of a Section 251(c) interconnection request must be arbitrated *in toto* as a Section 251(c) arbitration request.” *WV Arb. Award* at 15.

Finally, the Department finds Intrado’s “transit arrangement” concerns to be without merit since Verizon is required to transport 911/E-911 traffic from third-party carriers to the Parties’ POI(s). As Verizon concedes, “transit arrangements” are not used to transport third-party carrier 911/E-911 traffic, and it is required to provide “nondiscriminatory access to 911[E-911] services,” and “delivery of other carriers’ 911[E-911] traffic is...not voluntary” pursuant to 47 U.S.C. § 271(c)(2)(B)(vii)(1). VZ Rep. Br. at 19, 20. The Department notes that pursuant to § 251(a) of the Act, all telecommunications carriers have “the duty ... to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. § 251(a)(emphasis

added). The FCC has found that “indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an [ILEC’s] network) satisfies a telecommunications carrier’s duty to interconnect pursuant to section 251(a).” *Local Competition Order* at ¶ 997. Thus, unless and until Intrado establishes direct interconnection with third-party carriers that currently send 911/E-911 traffic through Verizon’s network, then those carriers are permitted to continue to indirectly interconnect with Intrado through Verizon’s selective routers, pursuant to 47 U.S.C. § 251(a) and the FCC’s *Local Competition Order*.

For all of the reasons discussed above, the Department rejects Intrado’s network architecture proposals and adopts Verizon’s proposals for Arbitration Issues 1, 4 and 5, unless otherwise indicated below. Specifically, the Department adopts Verizon’s proposed POI language in *911 Attachment* §§ 1.3.1, 1.4.1, 1.4.2, 1.5.2, and 1.7.3. In addition, the Department rejects Intrado’s proposed *911 Attachment* §§ 1.3.2, 1.3.2.1-1.3.2.3, 1.3.4(i)-(viii), 1.3.5, 1.3.6, 1.4.2.1, and 1.4.2.2, and adopts Verizon’s proposed §§ 1.3.2, 1.3.3.<sup>27</sup> Finally, because the Parties indicate that there may be instances where misrouted 911/E-911 calls may need to be transferred between the Parties’ networks, the Department adopts Intrado’s proposed heading for *911 Attachment* § 1.3, which states “Interconnection for Exchange of 911/E-911 Calls between the Parties.”

### 3. Applicability of LATA Language

#### a. Intrado

Intrado asserts that “LATA boundaries are inapplicable” to 911/E-911 services and traffic. INT. Init. Br. at 25. Intrado points to an FCC and federal district court decision subsequent to the Modification of Final Judgment (“MFJ”) (where the Bell Operating Companies (“BOCs”) were

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<sup>27</sup> This determination does not apply to incorporation of Intrado’s proposed “ANI” language within the agreement, which is discussed under Arbitration Issue 8.

divested from AT&T) permitting the BOCs to provide ““using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary.”” *Id.*<sup>28</sup> In addition, Intrado points to the fact that Verizon is not restricted from carrying *any* traffic, and currently carries 911/E-911 traffic, across LATA boundaries. *Id.* at 26.<sup>29</sup>

b. Verizon

For Verizon, the LATA language in the agreement is inherently linked to the POIs issue. *See* Tr. at 122-123. It is Verizon’s assertion that, since a § 251(c) interconnection agreement requires that POIs be on the incumbent’s network and not on a competitor’s network, language specifying the Parties’ obligations for establishment of POIs in different LATAs is necessary. *See* VZ Rep. Br. at 16-17. Verizon’s witness D’Amico stated that Verizon’s network architecture is LATA-based, and when CLECs seek interconnection for their local exchange traffic on Verizon’s network, then CLECs interconnect in each LATA. *See* Tr. at 122-123. Consistent with this position, Verizon’s template interconnection agreement requires a CLEC “to interconnect with Verizon at a technically feasible point of interconnection on Verizon’s network in each LATA or at a fiber meet point in each LATA.” RR Resp.-3 D.T.C.-VZ.

With regard to Verizon’s proposed ICA provisions, POI(s) are established:

on Verizon’s network in each LATA in which Verizon End Users originate 911/E-911 Calls bound to a PSAP for which Intrado Comm is the 911/E-911 Service Provider, so that Verizon may deliver such Verizon End User 911/E-911 Calls to

<sup>28</sup> Intrado incorrectly cites to a district court’s 1984 decision for this quote. *See* INT. Init. Br. at 25 n.122. According to the FCC decision cited by Intrado in its Initial Brief at 25 n.121, this statement actually comes from the district court’s 1989 decision. *Bell Operating Cos.; Petitions for Forbearance from the Application of § 272 of the Commc’ns Act of 1934, as amended, to Certain Activities*, Memorandum Opinion & Order, 13 FCC Rcd 2627, CC Docket No. 96-149, DA 98-220, ¶ 25 (rel. February 6, 1998)(“FCC 1998 BOC Order”), citing *U.S. v. Western Elec. Co.*, Civil Action No. 82-0192, slip op. at 1 (D.D.C. Feb. 2, 1989).

<sup>29</sup> Citing *Application of Verizon New England Inc., Bell Atlantic Commc’ns, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Co. (d/b/a Verizon Enter. Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Mass.*, Memorandum Opinion & Order, 16 FCC Rcd 8988, CC Docket No. 01-9, FCC 01-130 (rel. Apr. 16, 2001).

Intrado Comm in the LATA in which the 911/E-911 Calls originate. Verizon shall have no obligation, and may decline: (a) to transport 911/E-911 Calls from one LATA to another LATA; and, (b) to provide interLATA facilities or services to transport 911/E-911 Calls.<sup>30</sup>

Verizon's witness Conroy testified that this language is included only in relation to where Intrado will place its POI(s). Tr. at 126-127. In addition, Verizon's attorney specified that:

because Intrado would be interconnecting on Verizon's network, at the moment that the call reaches Intrado's network it would be by definition impossible for [Verizon] to be crossing a LATA. To the extent that a LATA needs to be crossed, it would be Intrado that would be doing the crossing ... [b]ecause now it's on Intrado's network.

*Id.* at 128-129. In its Record Request responses to the Department, however, Verizon indicates that it operates:

what are in practice two separate 911[/E-911] network[s]...The Verizon 911[/E-911] network in eastern and central MA serves primarily LATA 128. The Verizon 911[/E-911] network in western MA serves primarily LATA 126...there is some limited cross LATA coverage by each network, each network is largely coextensive with the LATA it serves and Intrado will need to interconnect with Verizon in each LATA.

RR Resp.-3 D.T.C.-VZ.

c. Analysis and Findings

The Department disagrees with Intrado that "LATA boundaries are inapplicable" to 911/E-911 services and traffic, in that LATAs are the established demarcation points for interconnection on carrier networks. Verizon is correct that while 911/E-911 calls and services "may cross LATA boundaries," this has "nothing to do with placement of POIs in a section 251(c) interconnection agreement." VZ Rep. Br. at 16-17. The FCC has determined that competitive carriers intending to provide service must interconnect with the incumbent's network at a single point *in each LATA*.

*See Developing a Unified Inter-carrier Compensation Regime, Notice of Proposed Rulemaking,*

<sup>30</sup> This language is found in the *911 Attachment* §§ 1.3.3 and 1.4.1. Any analysis referencing this particular language applies equally to these sections as well as to any other sections in which this language may be located.



*Notice of Proposed Rulemaking*, 16 FCC Rcd 9610, 9634, 9650, CC Docket No. 01-92, FCC 01-32, ¶¶ 72, 112 (rel. Apr. 27, 2001)(“*Intercarrier Compensation NPRM*”); *Virginia Arbitration Order* at ¶¶ 52, 67. Since the Department has already determined that Intrado is required to establish its POI(s) on Verizon’s network, then Intrado will be required to interconnect to Verizon’s network at POI(s) in one or both Massachusetts LATAs.

Verizon indicates that some cross-LATA coverage of certain 911/E-911 calls exists. *See* RR Resp.-3 D.T.C.-VZ. In Massachusetts, for instance, some Verizon end users are located in a LATA different from that of the PSAP(s) that serve them. *See* Tr. at 125-129. Furthermore, one mated pair of Verizon’s selective routers is located in two different LATAs. *See* Tr. at 146. For this pair of selective routers, Verizon’s negotiated routing plan with the State 911 Department indicates that if calls are blocked to the “primary” selective router in one LATA, then those calls will be routed to the “secondary” selective router in the other LATA.<sup>31</sup> *See* Tr. at 117. In addition, wireless calls are more likely than wireline calls to be misrouted to the incorrect PSAP, therefore needing to be rerouted. *See* VZ Panel Pref. Test. at 33; INT. Hicks Pref. Test. at 52-53; Tr. at 125-133.<sup>32</sup> If this occurs near a LATA boundary, then, these wireless calls are likely to be routed between different LATAs. *See* INT. Hicks Pref. Test. at 52-53.

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<sup>31</sup> Verizon’s Northampton selective router is “mated” with Verizon’s Westboro selective router as a mated pair, and the Wakefield and Medfield selective routers are the other mated pair within Massachusetts. Tr. at 82 and 146-147. The Northampton selective router is located in LATA 126, whereas the Westboro selective router is located in LATA 128. Tr. at 146. If, for instance, a Verizon end user in Chester dialed “911,” then the Northampton selective router would be the “primary” selective router to the end office connected to that end user, and the Westboro selective router would be the “secondary” selective router to that end office. That is, if all of the trunks connecting the end office to the “primary” selective router in LATA 126 were busy when trying to route the 911 call, then the system would next try to route the Chester call to the “secondary” selective router in LATA 128. *Id.* at 117. Therefore, the 911/E-911 call would be transported to a LATA different from that which the 911/E-911 call originated, and Verizon would have transported the call from one LATA (LATA 126) to another LATA (LATA 128).

<sup>32</sup> For instance, Intrado’s witness Hicks specifies that:

Wireless call routing is typically accomplished based on the cell tower and sector detecting the greatest signal strength from the wireless caller’s device. Wireless service boundaries do not perfectly align with the jurisdictional boundary of the PSAP receiving the initial 911 call. The caller

As indicated above, Verizon has proposed language whereby POI(s) are established:

on Verizon's network in each LATA in which Verizon End Users originate 911/E-911 Calls bound to a PSAP for which Intrado Comm is the 911/E-911 Service Provider, so that Verizon may deliver such Verizon End User 911/E-911 Calls to Intrado Comm in the LATA in which the 911/E-911 Calls originate. Verizon shall have no obligation, and may decline: (a) to transport 911/E-911 Calls from one LATA to another LATA; and, (b) to provide interLATA facilities or services to transport 911/E-911 Calls.

*911 Attachment* § 1.3.3; *911 Attachment* § 1.4.1.<sup>33</sup> Verizon's witness D'Amico indicated that this language was a response to Intrado's POI proposals,<sup>34</sup> and Verizon's attorney stated that "at the moment that the call reaches Intrado's network it would be by definition impossible for [V]erizon to be crossing a LATA." Tr. at 126-129. If, as Verizon's witness and attorney state, this language is unnecessary in the event the Department adopts Verizon's POI(s) language, which the Department has done, then this language need not be incorporated into the agreement. As such, the Department finds that the Parties shall delete these provisions from *911 Attachment* §§ 1.3.3 and 1.4.1 and any other corresponding language that mirrors them.

Accordingly, the Department rejects Intrado's LATA proposals and adopts Verizon's proposed LATA position and adopts Verizon's proposed LATA language for Arbitration Issues 1, 4 and 5, except as otherwise specified. Specifically, the Parties shall incorporate Verizon's proposed LATA language in *911 Attachment* §§ 1.3.2, 1.3.3 (first paragraph), 1.4.1 (first paragraph), 1.4.2, 1.5, 1.6.2, 1.7.3, and 2.3.1.

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may be mobile and may move into another PSAP's serving area during the duration of the call. It is not uncommon for the PSAP receiving this transient type of call to transfer the caller to the PSAP that would be responsible for delivering emergency assistance to the caller's final location.

INT. Hicks Pref. Test. at 52-53.

<sup>33</sup> Although the Department indicates that this language is found in the *911 Attachment* §§ 1.3.3 and 1.4.1, any analysis referencing this particular language applies equally to these sections as well as to any other sections in which this language may be located.

<sup>34</sup> The particular provision that Verizon's witness D'Amico addressed was *911 Attachment* § 1.3.3. However, since this language is almost identical to one paragraph in § 1.4.1, then this analysis is equally applicable to both.

4. Reciprocity

a. Intrado

Intrado indicates that resolution of the POI(s) issue in Arbitration Issue 1 will determine the appropriate POI(s) language in Arbitration Issue 4. *See* INT. Init. Br. at 37 n.181. If the Department permits POI(s) to be on Intrado's network, then Intrado seeks reciprocity for the type of notices and information required by Verizon for when Intrado interconnects on Verizon's network. *Id.* at 37. The LATA language would still be in dispute. *Id.* at 26, 37 n.181.

b. Verizon

Verizon's Arbitration Issue 4 arguments correspond to Intrado's recognition that resolution of the POI(s) issue in Arbitration Issue 1 determines the resolution of the reciprocity issue of Arbitration Issue 4. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25. Verizon contends that Intrado's proposed language is based on the premise that the Department will permit POI(s) to be established on Intrado's network under the agreement. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25. According to Verizon, if the Department approves Verizon's proposed POI(s) language under Arbitration Issue 1, then it must also approve Verizon's POI(s) language in Arbitration Issue 4. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25.

c. Analysis and Findings

Intrado seeks reciprocity of language to the extent that its interconnection proposals are adopted. *See* INT. Init. Br. at 37. Because the Department adopts Verizon's proposed POI(s) and LATA language, the inclusion of reciprocal language in *911 Attachment* § 1.5 is unnecessary. Accordingly, the Department rejects Intrado's proposed language and the Parties shall adopt Verizon's language for this section.

B. Whether the Parties should implement inter-selective router trunking and what terms and conditions should govern the exchange of 911/E-911 calls between the Parties?

Arbitration Issue 2 - Inter-Selective Router Trunking (*911 Attachment* § 1.4)

1. Introduction

Arbitration Issue 2 is essentially resolved by the Department's determinations for Arbitration Issue 1. However, the issue involving dial plan language under Intrado's proposed *911 Attachment* § 1.4.4 still requires resolution. Accordingly, several of the Parties' inter-selective routing arguments need not be addressed, and the Department's analysis of Arbitration Issue 2 will focus on the disputed dial plan language. For the reasons set forth below, the Parties shall incorporate modified dial plan language into their ICA.

2. Positions of the Parties

a. Intrado

Intrado recognizes that resolution of Arbitration Issue 1 essentially determines the resolution of Arbitration Issue 4 to the extent that the Parties' language "refers to the location of the POI[s]." INT. Init. Br. at 30 n.144. Intrado notes, however, that the Department's resolution of Arbitration Issue 1 does not affect the Parties' dispute in regards to the exchange of dial plan information. *Id.*

According to Intrado, inter-selective router trunking allows 911/E-911 calls to be transferred between PSAPs through selective routers. *Id.* at 30. In addition, Intrado asserts that inter-selective router trunking permits the identifying ANI and ALI information of a 911/E-911 call to be transferred between PSAPs. *Id.*; Second Jt. Iss. Mat. at 12. Intrado states that both Parties "should be required to maintain appropriate updates and routing translations for 911/E-911 services and call transfers." Second Jt. Iss. Mat. at 13.

Through its proposed *911 Attachment* § 1.4.4, Intrado seeks to have both Parties “maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions, or deletions to their inter-PSAP transfer dial plans.” Intrado asserts that these dial plans are used to determine which PSAP the 911/E-911 calls are to be routed to based upon the route number sent with the transferred call. *See* INT. Init. Br. at 33. According to Intrado, notification by each Party of dial plan changes “ensures interoperability between the Parties’ networks.” *Id.* at 34. Intrado states that, contrary to Verizon’s assertions, its proposed dial plan language is not excessive and points out that the West Virginia Arbitrator’s decision and the Illinois Commerce Commission’s staff recommendations support Intrado’s position on this particular issue. *Id.*; *WV Arb. Award* at 16-17 (finding “[g]iven that both parties agreed that dial plans are needed, it appears that some language modification is all that is necessary to render [that section] of the *911 Attachment* acceptable.”); Illinois Stewart Staff Test., *INT/VZ Ill. Arb.*, at 8 (filed Dec. 19, 2008) (determining that Intrado’s proposed language “seems reasonable and not ‘excessive’”).

b. Verizon

Verizon contends that Intrado’s proposed language assumes that POIs will be established on Intrado’s network. *See* VZ Init. Br. at 25. Like Intrado, Verizon agrees that resolution of Arbitration Issue 1 will determine the resolution of Arbitration Issue 2, to the extent that the language involves POI placement. *Id.*; Second Jt. Iss. Mat. at 13.

Verizon supports inter-selective router trunking between the Parties’ networks, as long as the POIs are on Verizon’s network, and agrees that inter-selective router trunking “permits PSAPs to communicate with each other to allow misdirected calls to be efficiently routed to the appropriate PSAP.” VZ Init. Br. at 24. In fact, Verizon states that, “[t]he parties do not disagree

about the merits of selective router trunking ... interconnection between Verizon and Intrado for *all* 911[/E-911] calls can and should be accomplished by means of trunking between selective routers.” VZ Rep. Br. at 20. Verizon agrees that there is a need for both Parties “to maintain a comprehensive dialing plan to enable the transfer of 911[/E-911] calls among PSAPs.” IR Resp. D.T.C. – VZ 1-5(a).

Verizon’s main contention is that Intrado seeks an “excessive level” of dial plan detail. VZ Rep. Br. at 21, 22, 23; Second Jt. Iss. Mat. at 14. According to Verizon, Intrado’s proposed language is “excessive,” since “establishment and maintenance of an inter-Selective Router dialing plan is complex and will require collaboration between the State 911 Department, PSAPs, Verizon and Intrado.” IR Resp. D.T.C. – VZ 1-5(a). Verizon states, however, that it “does not object to participating in this collaborative effort; maintaining documented dialing plans; sharing such documentation with Intrado or notifying Intrado if a Verizon served PSAP initiates changes.” *Id.* Verizon also indicates that it is willing to provide the same type of dial plan information that it currently shares with other providers that do not have express interconnection agreement provisions. *See* VZ Init. Br. at 26; VZ Rep. Br. at 21. Finally, Verizon states that it “understood Intrado’s proposal to require Verizon to incorporate into the Interconnection Agreement the specific details of very customized and ever-changing dialing plans specific to end users” and that “if Intrado’s proposed language is solely its proposed *911 Attachment* [S]ection 1.4.4, and if Intrado does not interpret that language to require actual dial plan details in the contract, it may be acceptable to Verizon.” IR Resp. D.T.C. – VZ 1-5(b).

### 3. Analysis and Findings

Here, the issue is not whether the Parties should share dial plan information. Rather, the issue is the specific dial plan language that Intrado has proposed. *See* INT Init. Br. at 30; VZ Rep.

Br. at 21, 22, 23; Second Jt. Iss. Mat. at 14; IR Resp. D.T.C. – VZ 1-5(b). Both Parties support inter-selective routing between their networks in order to facilitate inter-PSAP call transfers (*See* INT Init. Br. at 30; VZ Init. Br. at 24); and both Parties specify that maintenance of dial plans is necessary in order to enable inter-PSAP 911/E-911 call transfers. *See* INT Init. Br. at 33-34; IR Resp. D.T.C. – VZ 1-5(a). In addition, the Parties have agreed to language to work together to transfer 911/E-911 calls between PSAPs where PSAPs have agreed to transfer 911/E-911 calls between themselves. *See 911 Attachment* § 1.4.1. Furthermore, Verizon already shares dial plan information with other carriers.<sup>35</sup> *See* VZ Init. Br. at 26; VZ Rep. Br. at 21.

For these reasons, and since Verizon indicates that it is not opposed to incorporation of dial plan language within the contract, the Department determines that inclusion of certain dial plan language within the interconnection agreement is appropriate. The West Virginia Arbitrator required that the Parties incorporate modified dial plan language into their West Virginia interconnection agreement, and that modified language was not deemed by Verizon to be “excessive” in either the instant proceeding or in the West Virginia arbitration. *See WV Arb. Award* at 16-17; *INT/VZ WV Arb.* In addition, Intrado relies on the West Virginia Arbitrator’s decision as support for its dial plan language position. *See* INT. Init. Br. at 34. As a result, the Department finds that the language approved by the West Virginia Arbitrator is reasonable. Therefore, the Parties shall incorporate the following language as § 1.4.4 in the *911 Attachment* of their interconnection Agreement:

The Parties will maintain appropriate dial plans to support inter-PSAP call transfer and shall notify each other of changes, additions or deletions to those dial plans.

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<sup>35</sup> The Department does note a key difference between Verizon’s typical § 251(c) arrangements in Massachusetts and the arrangement that will exist with Intrado. Unlike Verizon’s typical carrier arrangements where carriers transport all of their end users’ 911/E-911 calls to Verizon, Verizon will likely be transferring, at a minimum, misdirected 911/E-911 calls to Intrado’s network, and vice versa.

C. Whether the forecasting provisions should be reciprocal?  
Arbitration Issue 3 - Joint Forecasting (*911 Attachment* § 1.6.2)

1. Introduction

The Parties' proposed interconnection agreement includes a section entitled "Trunk Forecasting Requirements." *911 Attachment* § 1.6. The Parties do not dispute the language in *911 Attachment* § 1.6.1 entitled "Initial Trunk Forecasting Requirements," whereby Intrado is required to provide to Verizon a two-year traffic forecast before initiating interconnection with Verizon in a LATA. The dispute arises from Verizon's proposed language in *911 Attachment* § 1.6.2 entitled "Ongoing Trunk Forecast Requirements," whereby Intrado modified the language in order to make reciprocal Verizon's semi-annual trunk forecast requirements. For the reasons set forth below, the Department finds that the Parties shall incorporate Verizon's proposed language for *911 Attachment* § 1.6.2.

2. Positions of the Parties

a. Intrado

Intrado states that resolution of this issue is unrelated to the Department's resolution of Arbitration Issue 1. *See* INT. Init. Br. at 34 n.171. Intrado asserts that it has a "legitimate need" for Verizon trunk forecasts since it is important for Intrado to be able to "size trunk groups properly." *Id.* at 35-36. According to Intrado, Verizon's trunk forecasts would alert Intrado to any Verizon switch consolidation plans and anticipated line growth expectations, which "can significantly affect 911[E-911] trunk quantity needs," in order to enable Intrado to "engineer, furnish, and install the equipment necessary to accommodate such growth." *Id.* at 35. Intrado also asserts that such forecasting is necessary because 911/E-911 calls will flow between the Parties' networks due, in large part, to misrouted wireless calls, and because it would account for possible



call blockages to Intrado's network from Verizon's network. *Id.* at 36-37. Intrado contends that this latter information (call blockages) is especially necessary for appropriately sizing trunk groups since, otherwise, many 911/E-911 callers fail to report any uncompleted calls. *Id.*; INT. Rep. Br. at 15. Intrado relies on Illinois staff recommendations, which supported Intrado's proposed language. *See* INT. Init. Br. at 36; *INT/VZ Ill. Arb.*

Intrado also argues that other interconnection agreement provisions, namely *911 Attachment* § 1.5.5, are not sufficient to cover the information that Intrado would otherwise be able to garner through reciprocal forecasting under *911 Attachment* § 1.6.2. *See* INT. Init. Br. at 35-36.

b. Verizon

Verizon argues that reciprocal language would serve “no useful purpose and would impose an unnecessary burden on Verizon.” VZ Init. Br. at 27. Verizon asserts that Intrado is better positioned to determine the number and size of trunk groups that it will require on Verizon's network because Verizon is unable to predict what Intrado's market success will be and, furthermore, Intrado's PSAP customers will best know the call volumes based on historical data when Verizon served the PSAPs. *Id.*; VZ Rep. Br. at 24. Verizon relies on the West Virginia Arbitrator's determination in support of its position. *See* VZ Init. Br. at 27; VZ Rep. Br. at 24; *WV Arb. Award* at 19 (finding Verizon's arguments “reasonable” and that PSAPs “are in the best position to assess the number of misdirected calls which they receive” and, further, “if there is every a point when Intrado believes that it is not receiving adequate traffic and usage data on trunk groups, it can avail itself of the opportunity provided by Section 1.5.5”). Finally, Verizon points out that it submits monthly and quarterly service reports, including network performance reports, to the State 911 Department pursuant to its 911/E-911 contract with the state, and that these reports

are available to the public at the discretion of the State 911 Department. *See* RR Resp.-4 D.T.C.-VZ.

Verizon also argues that Intrado's needs will be fully met through the Parties' agreed upon language in § 1.5.5 of the *911 Attachment*. *See* VZ Init. Br. at 28.

### 3. Analysis and Findings

The Parties have agreed upon language in *911 Attachment* § 1.5.5, which states:

Upon request by either Party, the Parties shall meet to: (a) review traffic and usage data on trunk groups; and (b) determine whether the Parties should establish new trunk groups, augment existing trunk groups, or disconnect existing trunks.

In addition, the record indicates that Verizon submits monthly and quarterly service reports, including network performance reports, to the State 911 Department pursuant to its 911/E-911 contract with the state, and that these reports are available to the public at the discretion of the State 911 Department. *See* RR Response-4 D.T.C.-Verizon. Intrado may obtain this data from the State 911 Department as necessary.

The Department agrees with Verizon that PSAPs (or the State 911 Department) will be able to provide Intrado with misdirected call information. *See* VZ Init. Br. at 27; VZ Rep. Br. at 24. To the extent that Intrado will need certain other traffic and usage data, the Department finds that Intrado's need is sufficiently met through the agreed-upon language of *911 Attachment* § 1.5.5 and information that it may obtain from the State 911 Department. Therefore, the Department finds that Verizon's proposed language in *911 Attachment* § 1.6.2 is reasonable, and the Parties shall adopt it in the interconnection agreement.

D. Whether 911 Attachment § 1.1.1 should include reciprocal language describing both Parties' 911/E-911 facilities?

Arbitration Issue 6 - Components of 911/E-911 System (*911 Attachment* § 1.1.1)

Should the Verizon proposed term "a caller" be used to identify what entity is dialing 911, or should this term be deleted, as proposed by Intrado?

Arbitration Issue 16 - Use of Term "a caller" (*911 Attachment* § 1.1.1)

1. Introduction

Arbitration Issues 6 and 16, although unrelated, involve disputed language located in different portions of the same paragraph (*911 Attachment* § 1.1.1). Arbitration Issue 6 involves a description of components of each Party's 911/E-911 network. The Parties do not dispute the description of Intrado's network components. The dispute involves the description of components of Verizon's 911/E-911 network. Arbitration Issue 16 involves whether or not *911 Attachment* § 1.1.1 should incorporate the term "a caller." For the reasons set forth below, the Parties shall incorporate Intrado's proposed network components descriptive language and delete the term "a caller" from *911 Attachment* § 1.1.1.

2. Network Components Descriptive Language

a. Intrado

Intrado does not dispute Verizon's proposed language that describes components of Intrado's 911/E-911 network. *See* INT. Init. Br. at 47. Intrado disputes Verizon's description of components of its own 911/E-911 network architecture and contends that Verizon's description "erroneously describes the access from Verizon end users as part of the Verizon network." *Id.* In addition, Intrado argues that since there is a sentence "that describes the service, equipment, and software that Intrado ... will provide and maintain when [it] is the 911/E-911 service provider," then Verizon's descriptive language of its own network elements should be reciprocal and identical. *Id.*; Second Jt. Iss. Mat. at 21. Intrado relies on the West Virginia Arbitrator's

determination in support of its position. *See* INT. Init. Br. at 47; *WV Arb. Award* at 20-21 (finding that Intrado's proposed sentence "is benign and there is no reason for it not to be included").

b. Verizon

Verizon does not oppose inclusion of language which it views as "accurately" describing components of its 911/E-911 network. INT. Init. Br. at 42; Second Jt. Iss. Mat. at 21. However, Verizon opposes Intrado's language, arguing that it is "vague as to the function" of Verizon's selective routers and asserts that this vagueness is "in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement another routing method." VZ Init. Br. at 42. Verizon contends that its proposed language "accurately describes the key function" performed by its selective routers which is "routing calls from the Verizon end offices ... to PSAPs." *Id.*

c. Analysis and Findings

The undisputed portion of the Arbitration Issue 6 language in *911 Attachment* § 1.1.1 provides a general description of Intrado's proposed 911/E-911 service offering and network and states:

For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm provides and maintains such equipment and software at the Intrado Comm 911 Tandem/Selective Router(s) and, if Intrado Comm manages the ALI Database, the ALI Database, as is necessary for 911/E-911 Calls.

This language was proposed by Verizon. *See* INT Init. Br. at 47. Intrado seeks only the same general language to describe Verizon's 911/E-911 service offering and network. *Id.*; Second Jt. Iss. Mat. at 21. If the Department adopted Intrado's proposed language, it would read:

For areas where Verizon is the 911/E-911 Service Provider, Verizon provides and maintains such equipment and software at the 911 Tandem/Selective Router(s) or selective router(s) and, if Verizon manages the ALI Database, the ALI Database, as is necessary for 911/E-911 Calls.

(emphasis added). While Verizon does not oppose the incorporation of a description, Verizon is opposed to a similar general description of its own 911/E-911 network architecture and seeks to incorporate a more specific description of the “key function” of its selective routers. VZ Init. Br. at 42. Verizon proposes language in *911 Attachment* § 1.1.1 that states:

For areas where Verizon is the 911/E-911 Service Provider, Verizon provides and maintains (a) Verizon 911 Tandem/Selective Router(s) for routing 911/E-911 Calls from Verizon End Offices to PSAP(s) and (b), if Verizon manages the ALI Database, the ALI Database.

(emphasis added). The primary difference in the language between the two proposed versions are the underlined portions.

It is unclear to the Department why Verizon would agree to language -- language that it proposed -- for describing Intrado’s network architecture, but opposes substantially similar language to describe its network architecture on the grounds that it is “vague” in how it describes Verizon’s 911/E-911 selective routers. VZ Init. Br. at 42. Since the Department already determined above that federal law permits Intrado to interconnect at any technically feasible point in each LATA to Verizon’s network, and since Verizon’s own proposed language throughout this agreement repeatedly indicates that the Parties POI(s) can be “at technically feasible [POI(s)] on Verizon’s network in a LATA,”<sup>36</sup> incorporation of Verizon’s proposed language does not appear to serve any useful purpose to the remainder of *911 Attachment* § 1.1 or to the interconnection agreement as a whole. In addition, if Intrado decided to establish one of its POIs at a technically feasible point *other than* at one of Verizon’s selective routers (e.g., at a Verizon end office), then Verizon’s description of a function of its selective routers would not necessarily be accurate.

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<sup>36</sup> For instance, refer to Verizon’s proposed language in *911 Attachment* §§ 1.3.1-1.3.3, 1.4.1, 1.4.2, 1.5.2-1.5.4, 1.7.3, and 2.3.1, and *Glossary* §§ 2.63 and 2.67.

Therefore, the Department finds that the Parties shall incorporate Intrado's proposed language for this issue into *911 Attachment* § 1.1.1.

3. The Term "a caller"

a. Intrado

Intrado contends that the use of the term "a caller" in *911 Attachment* § 1.1.1 as the entity dialing 911 is unnecessary and argues that its inclusion may be used by Verizon to restrict the services that Intrado intends to provide to PSAPs. *See* INT. Init. Br. at 65-66; Tr. at 35, 38. Intrado points to a Verizon witness's testimony in Ohio that the term is intended to mean "fixed line subscriber dial tone." INT. Init. Br. at 65. Intrado argues that, under this definition, calls from wireless devices or interconnected VoIP services may not be completed by Verizon to Intrado-served PSAPs. *Id.* Intrado's witness Hicks testified that the term is restrictive to the extent that it implies that only a person will ever dial 911 and could restrict Intrado's ability to connect current and future "automated capabilities," such as calls from a defibrillator or automatic calling from an automobile, to the appropriate PSAP. Tr. at 35-36, 38.

b. Verizon

Verizon contends that the use of the phrase "a caller" is nothing more than "simple clarification" which "accurately describes the function of 911/E-911 arrangements" when 911 is dialed. VZ Init. Br. at 58; VZ Rep. Br. at 44. In addition, Verizon argues that Intrado seeks interconnection with Verizon in order to allow Verizon end users to be able to reach Intrado-served PSAPs, so "[n]o other 'entities' would call 911." VZ Init. Br. at 58; VZ Rep. Br. at 44. In order to place a 911 call, Verizon states that "a caller" dials 911. *Id.* Verizon relies on the West Virginia Arbitrator's adoption of Verizon's proposed language in support of inclusion of this term. *See* VZ

Init. Br. at 58; VZ Rep. Br. at 44; *WV Arb. Award* at 26 (finding that Verizon's proposed language "is accurate [and] there is no legitimate reason to eliminate the phrase").

c. Analysis and Findings

If the Department adopts Verizon's proposed language, then the first sentence of *911 Attachment* § 1.1.1 would read: "911/E-911 arrangements provide **a caller** access to the appropriate PSAP by dialing a 3-digit universal telephone number, '911.'" (emphasis added). The inclusion of "a caller" in the sentence would be grammatically correct and offer some clarification, which is essentially the argument that Verizon makes – "by dialing" 911, a Verizon customer is provided access to the appropriate PSAP. VZ Init. Br. at 58; VZ Rep. Br. at 44. "A caller" identifies the customer dialing 911. Verizon, however, offers this term only as "simple clarification" and does not indicate that this phrase is necessary. VZ Init. Br. at 58; VZ Rep. Br. at 44. In contrast, Intrado is concerned that use of the term "a caller" could restrict its provisioning of 911/E-911 services. *See* INT Init. Br. at 65-66; Tr. at 35-36, 38.

The Department was not provided with information sufficient for it to make a determination as to whether Intrado's concerns are well-founded. This issue, however, is one of grammar, because Verizon offers this term only as a "simple clarification" and presents no substantive or legal arguments for its inclusion. VZ Init. Br. at 58; VZ Rep. Br. at 44. Although the inclusion of the term "a caller" is grammatically correct, the Department agrees with Intrado that its inclusion is unnecessary in order for the reader to understand the sentence's meaning. *See* INT Init. Br. at 65-66; Tr. at 35-36, 38. Whether or not the term "a caller" is used, it is undisputed that 911/E-911 arrangements *do* provide access to PSAPs when 911 is dialed. Therefore, because Verizon offers this term only as "simply clarification" (VZ Init. Br. at 58; VZ Rep. Br. at 44) and presents no substantive or legal arguments for its inclusion, and Intrado presents a possible future

complication if the term is used (INT. Init. Br. at 65-66; Tr. at 35-36, 38), the Department directs the Parties to delete the phrase “a caller” from *911 Attachment* § 1.1.1.

E. Whether the agreement should contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what those provisions should be?  
Arbitration Issue 7 - 911 Databases (*911 Attachment* § 1.2)

1. Introduction

Intrado’s proposed *911 Attachment* § 1.2.1 states that “[t]he Parties shall work cooperatively to maintain the necessary ALI steering tables to support display of ALI between the Parties’ respective PSAP Customers upon transfer of 911/E-911 Call.” In Arbitration Issue 7, the Parties dispute whether this ALI steering table provision needs to be included in the interconnection agreement.

ALI steering tables are a function of the ALI system and provide caller ALI information for wireless, IP-enabled, and VOIP 911/E-911 calls. *See* INT. Hicks Pref. Test. at 52. According to Intrado’s witness Hicks:

Wireless and IP-enabled service providers provide 911 calling capabilities to their end users through the use of [pseudo] ANI numbers employed for use in determining which PSAP the 911 call is to be terminated to, as well as for the retrieval of the ALI associated with the caller. When a PSAP receives the pANI number over the PSAP trunks from the selective router, it queries the ALI system using the pANI number. The ALI system provider pre-provisions its ALI steering tables with the pANI numbers common to its serving area, and upon receiving a query from the PSAP, accesses those tables to identify the Mobile Positioning Center (“MPC”) or VoIP Positioning Center (“VPC”) where it must retrieve the “dynamic” ALI of the wireless or IP-connected caller. The “dynamic” ALI contains the caller’s telephone number, address and other supplementary information necessary for emergency response.

*Id.*

Verizon is currently the sole ALI service provider in Massachusetts. *See* VZ Panel Pref. Test. at 15; Tr. at 74. The information contained in Verizon’s ALI database includes both



Verizon's end user data and third-party provider records, and "with Verizon being the sole provider, those third parties or the carriers themselves ... load their pANI numbers, their ranges, as shell records to the ILEC, and then the ILEC has to build those tables. Of course, that [is] a function [the ILECs] have to do or they [are] not going to get Phase 1/Phase 2 data." Tr. at 24.

For the reasons set forth below, the Parties shall incorporate Verizon's language for *911 Attachment* § 1.2 and shall delete Intrado's proposed § 1.2.1.

2. Positions of the Parties

a. Intrado

Intrado argues that its proposed language will permit interoperability between the Parties' networks, which is "contemplated" under § 251(c)(5) of the Act. *See* INT. Init. Br. at 48; INT. Rep. Br. at 16. According to Intrado, interoperability will permit the inter-selective router transfer of 911/E-911 calls, with identifying ALI information, dialed from wireless and IP-enabled technologies. *See* INT. Init. Br. at 48. This interoperability will occur through synchronization of the Parties' steering tables (of the shell records or pANI numbers). *See* Tr. at 21. Intrado's witness Hicks testified that it is not feasible for Intrado to populate its own ALI steering tables from scratch and explains that, while it would be possible for Intrado to go out and get the necessary data:

[Y]ou're talking about having to deal and work with 20, maybe 15, 20 different companies...instead of cooperatively working between two companies...Further, it doesn't assure that both of us are getting the same data. A carrier that provides data to Intrado may have forgotten what they've provided to Verizon.

*Id.* at 28. Mr. Hicks pointed to a similar arrangement that Verizon already has with AT&T in California but conceded that the state of California's 911 program office "demanded that the companies work together to make that happen." *Id.* at 21-23. Mr. Hicks specified, however, that

Verizon has indicated that it is “willing to cooperate and to the synchronization of the ALI steering where it’s appropriate and where it’s applicable. [The] issue is ... [that] they don’t believe it’s 251(c).” *Id.* at 25.

Intrado offers FCC determinations in support of its position. Intrado states that, although the FCC has determined the ALI database function to be an information service when provided as a stand-alone service,<sup>37</sup> ALI “is not an information service when provided in conjunction with a complete 911/E-911 service.” INT. Rep. Br. at 15. In addition, Intrado states that the FCC “recognizes that...various components [the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the [Selective Router Database], the trunk line(s) between the ALI database and the PSAP, and the MSAG] come together to form an all-inclusive service offering known as the ‘wireline E-911 network.’”<sup>38</sup> INT. Init. Br. at 48-49; INT. Rep. Br. at 15-16. According to Intrado, the ALI database function is one of “three integrated components that are necessary to provide 911/E-911 service – the selective router, the database system that retains the ALI, and the transport of the 911[E-911] call to the PSAP,” which are “so intertwined that one would be useless without the other.” INT. Init. Br. at 48-49 (quotations omitted); INT. Rep. Br. at 15-16.

Finally, Intrado asserts that if the Department does not approve Intrado’s proposed language, then “Massachusetts PSAPs opting for a competitive 911 provider will lose the ability to receive a call transfer with ALI from a Verizon served PSAP” and vice versa. INT. Init. Br. at 49-50. In addition, Intrado states that a current commercial agreement mentioned by Verizon, which

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<sup>37</sup> Citing *FCC 1998 BOC Order* at ¶ 17 (rel. Feb. 6, 1998).

<sup>38</sup> Citing *In re IP-Enabled Servs. and E911 Requirements for IP-Enabled Serv. Providers, First Report & Order & Notice of Proposed Rulemaking*, WC Docket Nos. 04-36 and 05-196, FCC 05-116, 20 FCC Rcd 10245, at ¶ 15 (rel. June 3, 2005).

exists between Verizon and an Intrado affiliate, would be inapplicable to Intrado. *See* INT. Rep. Br. at 16; Tr. at 26-27.

b. Verizon

Verizon indicates that it will cooperate with Intrado with regard to ALI steering. *See* VZ Rep. Br. at 43. However, Verizon disagrees that an ALI steering provision belongs in an § 251(c) interconnection agreement, since, according to FCC determinations, it is an information service which falls “outside the scope of interconnection agreements.” *Id.* at 34; VZ Init. Br. at 43. Verizon notes that according to the FCC: “[b]ecause BOCs’ E911 services offer the capability for storing and retrieving information, they are information services, except to the extent they are used for the management, control, or operation of telecommunications systems or the management of telecommunications services.” VZ Rep. Br. at 35, citing *FCC 1998 BOC Order* at ¶ 17. According to Verizon, the ALI database does not qualify as a telecommunications service under this description, since it is a “storage and retrieval system.” VZ Rep. Br. at 35.

Verizon also contends that the commercial agreements it already has with Intrado would provide Intrado with anything it needs to conduct its business regarding its ALI database requirements and, if not, then Intrado can negotiate to modify those agreements. *See* VZ Init. Br. at 43-44.

3. Analysis and Findings

The Department recognizes that the ALI database is a critical component of a 911/E-911 system. For the reasons set forth below, however, the Department finds inclusion of Intrado’s language to be unnecessary and finds Intrado’s arguments that it can compel Verizon to provide the data to be unpersuasive. First, Verizon indicates that it will cooperate with Intrado with regard to ALI steering despite its opposition to Intrado’s proposed language. *See* VZ Rep. Br. at 43.

Second, pursuant to *911 Attachment* § 1.2, Verizon specifically agrees “to establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database.” Third, Intrado cannot compel Verizon to perform functions that would be Intrado’s obligation when Intrado manages an ALI database, and despite Intrado’s feasibility argument to the contrary, Intrado is capable of obtaining third-party provider data on its own accord. *See Tr. at 28.* Whether Intrado works solely with Verizon to obtain the data or with the multiple carriers is unimportant because there is no guarantee that the third-party data given to Intrado is accurate either way. The third-party data in Verizon’s possession is only as accurate as what it receives from those third-parties. Furthermore, it is assumed that third-party carriers would want to ensure that their customers’ calls are routed to the appropriate PSAP and, therefore, would provide Intrado with any necessary information. Fourth, it is within the discretion of the State 911 Department to ensure that the Parties transfer all applicable 911/E-911 data to the appropriate PSAP. *See G. L. c. 6A, § 18B(d); VZ Panel Pref. Test. at 17.* In fact, the State 911 Department has already established certain technical requirements within the 911/E-911 network. *See 560 C.M.R. 2.00, Appendix A.* For all of these reasons, the Department hereby rejects Intrado’s proposed language and directs the Parties to adopt Verizon’s *911 Attachment* § 1.2 language.<sup>39</sup>

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<sup>39</sup> Because there is a sufficient basis for rejecting Intrado’s proposed language, the Department need not address the Parties’ information service argument.

F. Whether certain definitions related to the Parties' provision of 911/E-911 Service should be included in the interconnection agreement and what definitions should be used?

Arbitration Issue 8 - 911 and E-911 Related Definitions (*Glossary* §§ 2.6, 2.63, 2.64, 2.67, 2.94, 2.95)

1. Introduction

The Parties dispute six definitions under Arbitration Issue 8: (1) "ANI" (*Glossary* § 2.6); (2) "911/E-911 Service Provider" (*Glossary* § 2.63); (3) "911 Tandem/Selective Router" (*Glossary* § 2.64); (4) "POI" (*Glossary* § 2.67); (5) "Verizon 911 Tandem/Selective Router" (*Glossary* § 2.94); and (6) "Verizon 911 Tandem/Selective Router Interconnection Wire Center" (*Glossary* § 2.95). For the reasons set forth below, the Parties shall incorporate into their interconnection agreement the definitions indicated for "POI," "ANI," "911/E-911 Service Provider," and "911 Tandem/Selective Router," and the Parties shall delete the definitions for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center."

2. Positions of the Parties

a. Intrado

Intrado specifies that the Department's resolution of Arbitration Issue 1 will determine the appropriate definitions to be applied to "POI" and "911/E-911 Service Provider." *See* INT. Init. Br. at 50 n.241.

Intrado proposes an "ANI" definition that comes directly from NENA's *Master Glossary of 9-1-1 Terminology*. *Id.* at 50. Intrado contends that Verizon has no issue with the substance of this definition and only disputes its inclusion in the *Glossary* to the extent that "Verizon disputes the reference to ANI in other sections of the interconnection agreement." *Id.* Intrado states that "ANI is a key component of 911 service" and that inclusion of ANI language within both the *Glossary*

and elsewhere within the interconnection agreement is unrelated to the Department's determinations for POIs in Arbitration Issue 1. *Id.*

Intrado asserts that its proposed "911 Tandem/Selective Router" definition accurately reflects the functions to be performed by those routers, which includes not only routing 911/E-911 calls, but also terminating and transferring those calls to the appropriate PSAPs. *Id.* at 51.

Finally, Intrado argues that Verizon's proposed definitions for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" are "unnecessary and repetitive of the general definitions for these terms" and, therefore, should be rejected. *Id.* at 51. Intrado indicates that there is "no reason for separate, Verizon-specific definitions for these terms" and contends that if the Department approves these definitions, then Intrado-specific definitions for these terms should also be included. *Id.* Intrado relies on the West Virginia Arbitrator's determinations in support of its arguments against Verizon-specific definitions. *Id.* at 51-52; *WV Arb. Award* at 17-18 (Verizon's proposed definitions were "superfluous since there is already a definition of 911 tandem/selective router" in the ICA).

b. Verizon

Verizon agrees that the Department's resolution of Arbitration Issue 1 will determine the appropriate definitions to be applied to "POI" and "911/E-911 Service Provider." *See* VZ Init. Br. at 44.

Contrary to Intrado, however, Verizon specifies that resolution of Arbitration Issue 1 will determine whether or not an "ANI" definition should be included in the interconnection agreement. *Id.* at 44-45. Verizon argues that it is unnecessary to have language in the *911 Attachment* that requires Verizon to deliver 911/E-911 calls to Intrado with ANI, "because

technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice.” *Id.* at 45.

Verizon agrees with Intrado that a “911 Tandem/Selective Router” is used to route 911/E-911 calls to appropriate PSAPs. *Id.* However, Verizon argues that Intrado’s proposed definition implies that those routers *always* perform the call transfer function, which is not the case. *Id.* Verizon is silent as to why it disputes Intrado’s “terminating” language for this definition. In addition, Verizon’s proposed “911 Tandem/Selective Router” definition includes a sentence describing “the location and function of a 911 Tandem/Selective Router in Verizon’s network, which is at a point between Verizon end offices and the PSAPs and which is to route traffic from Verizon end offices to PSAPs.” *Id.* at 46. Verizon argues that this additional description is necessary because it would otherwise incorrectly suggest “that a Verizon end office switch is a 911 Tandem/Selective Router, when Verizon’s end offices cannot perform selective routing functions.” *Id.*

Similar to its proposed sentence describing its network in the “911 Tandem/Selective Router” definition, Verizon also proposes a specific definition of “Verizon 911 Tandem/Selective Router” and argues that this definition “accurately describes the function of this equipment in Verizon’s network.” *Id.* Furthermore, Verizon states that a definition for a “Verizon 911 Tandem/Selective Router Interconnection Wire Center” “is appropriate because one of the POIs on Verizon’s network is specifically stated in the 911 Attachment to be” such a wire center. *Id.* at 47.

Finally, Verizon argues that its proposed definitions should be adopted by the Department because they add detail to the parties “obligations, rights and responsibilities” under the agreement and will help to “reduce the likelihood of future disputes between the parties that may arise as a result of definitions, like Intrado’s, that are vague and overly broad.” VZ Rep. Br. at 36.

3. Analysis and Findings

a. *“POI” and “911/E-911 Service Provider” Definitions*

The Department agrees with both Parties that resolution of Arbitration Issue 1 resolves the disputes with regard to the Parties’ proposed “POI” and “911/E-911 Service Provider” definitions. *See* INT. Init. Br. at 50 n.241; VZ Rep. Br. at 59. For that reason, the Parties shall adopt Verizon’s proposed language for the “POI” definition.

With regard to the POI language in the “911/E-911 Service Provider” definition, neither Party’s language shall be adopted. The Department determines that this language appears only to be a response to Intrado’s interconnection proposals and, therefore, is unnecessary. The applicable portion of the “911/E-911 Service Provider” definition states:

...For the purposes of this Agreement only, as between Intrado Comm and Verizon:

(a) Intrado Comm shall be deemed to be the 911/E-911 Service Provider for an area and the PSAP(s) serving that area, if Intrado Comm has been selected by the Controlling 911 Authority for that area to provide 911/E-911 network Telecommunications Services for that area and the PSAP(s) serving that area and to directly interconnect with the PSAP(s) and provide transmission and routing of 911/E-911 Calls from a Verizon’s End User network (*i.e., from the technically feasible [POI(s)] on Verizon’s network in a LATA where Intrado Comm interconnects with Verizon*) to the PSAP(s); and

(b) Verizon shall be deemed to be the 911/E-911 Service Provider for an area and the PSAP(s) serving that area, if Verizon has been selected by the Controlling 911 Authority for that area to provide 911/E-911 network Telecommunications Services for that area and the PSAP(s) serving that area and to directly interconnect with the PSAP(s) and provide transmission and routing of 911/E-911 Calls from Verizon’s network to the PSAP(s).

*Glossary* § 2.63. The italicized and underlined language is the disputed language. *See* Sec. Jt. Iss.

Mat. at 22. Verizon’s proposed language is italicized and Intrado’s proposed language is underlined.

*Id.* The proposed descriptions for *Glossary* §§ 2.63(a) and (b) are essentially identical *but for* the



disputed language added to *Glossary* § 2.63(a). Therefore, because the Parties' disputed language is unnecessary, the Parties shall instead mirror the undisputed language of the last sentence of *Glossary* § 2.63(b). Accordingly, the last sentence for the "911/E-911 Service Provider" in *Glossary* § 2.63(a) shall read:

... and provide transmission and routing of 911/E-911 Calls from Verizon's network to the PSAP(s).

b. "ANI" Definition

The Department agrees with Intrado that the resolution of Arbitration Issue 1 only determines the appropriate definitions of "POI" and "911/E-911 Service Provider" and is unrelated to the use and incorporation of "ANI" within the agreement. *See* INT. Init. Br. at 50 n.241. In addition, the Department concluded above that its determinations with regard to Arbitration Issue 1 did not address the use of "ANI" language and would, instead, be addressed under Arbitration Issue 8. Furthermore, the Department notes that the Parties only discuss incorporation of "ANI" language (both in the *Glossary* and elsewhere in the agreement) specifically under Arbitration Issue 8. For these reasons, the Department addresses all disputed "ANI" language, including the definition of "ANI," below.

Based on the Department's above determinations in Arbitration Issue 1, *911 Attachment* § 1.3.2 currently reads:

For areas where Intrado Comm is the 911/E-911 Service Provider, Verizon shall provide for transmission and routing of 911/E-911 Calls *with ANI* from Verizon End Users destined for Intrado Comm's PSAP Customers to the POI(s) established by the Parties at technically feasible Point(s) of Interconnection on Verizon's network in a LATA....

(emphasis added). In addition, Intrado's proposed "ANI" definition defines "ANI" as the "[t]elephone number associated with the access line from which a call originates."

*Glossary* § 2.6.

It is clear that the correct routing of a 911/E-911 call requires, at a minimum, use of ANI data. *See* INT. Init. Br. at 50; VZ Panel Pref. Test. at 15. Thus, ANI is an important component of 911/E-911 service. The record indicates that this data is available beginning at Verizon's end offices through SS7 signaling that "contains the dialed digits (911 and the calling party number)," which are sent from the end offices over 911/E-911 dedicated trunks to the designated selective routers where the SRDB utilizes the information in order to match the digits to the appropriate PSAP. *IR Resp. D.T.C.-VZ* 1-3. In addition, the State 911 Department's regulations require carriers to "provide data links to allow for the transfer of ANI and ALI data from the primary PSAP to secondary and limited secondary PSAPs." *E-911 Technical Standards*, "9-1-1 System Design - Technical Standards" at § 2(e).

Verizon's sole argument against incorporating Intrado's "ANI" language in the *911 Attachment* or requiring Verizon to deliver 911/E-911 calls to Intrado with "ANI" is that "technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice." *VZ Init. Br.* at 45. Verizon offers no substantive or legal arguments against "ANI" use and, moreover, only disputes the use of an "ANI" definition if the Department rejects Intrado's "ANI" language in the *911 Attachment*. Therefore, if the Department adopts Intrado's general ANI language, then the Department may adopt Intrado's "ANI" definition without opposition from Verizon.

As the Department found earlier, "applicable law" permits Intrado to connect at any technically feasible point on Verizon's network. 47 U.S.C. §§ 251(c)(2)(B); 47 C.F.R. §

51.305(a)(2). In addition, the Department finds that ANI data is necessary to route 911/E-911 calls to the appropriate destination. Intrado requires ANI data in order to route 911/E-911 calls from any technically feasible point on Verizon's network to the appropriate destination point.

For these reasons, the Parties shall incorporate Intrado's "ANI" language in *911 Attachment* § 1.3.2 and shall incorporate Intrado's "ANI" definition in the *Glossary*.

c. "911 Tandem/Selective Router" Definition

The Department finds that neither Parties' proposed language is appropriate for the "911 Tandem/Selective Router" definition. For example, if Intrado locates its POI on a Verizon 911 selective router, then Intrado's proposed definition is incorrect because that selective router will not be terminating the end user call to an Intrado-served PSAP. Instead, that call will be first directed through an Intrado selective router. In addition, Intrado's proposed definition will also be incorrect because, as Verizon correctly points out, a selective router may not always be used to transfer 911/E-911 calls between PSAPs. *See* VZ Init. Br. at 45. On the other hand, Verizon's description of the function of a Verizon selective router in its proposed definition would be inaccurate if Intrado established a POI at a Verizon end office in order to directly trunk Verizon end user traffic to Intrado's selective router.

The Department also is not persuaded by Verizon's concerns of a perceived suggestion "that a Verizon end office switch is a 911 Tandem/Selective Router." First, the *Glossary* includes separate and distinct definitions for "End Office" (§ 2.33) versus "Tandem" (§ 2.81), and the current definition at dispute relates to a 911 *tandem*, not a 911 *end office*. Second, the adopted "POI" definition (and elsewhere in the agreement) distinguishes between a Verizon Tandem Interconnection Wire Center, a Verizon End Office Interconnection Wire Center, and a Verizon

911 Tandem Selective Router.<sup>40</sup> Accordingly, the Parties shall incorporate the following “911 Tandem/Selective Router” definition into *Glossary* § 2.64:

Switching or routing equipment that is used for routing 911/E-911 Calls to a PSAP and may be used to transfer 911/E-911 Calls between PSAPs.

- d. “Verizon 911 Tandem/Selective Router” and “Verizon 911 Tandem/Selective Router Interconnection Wire Center” Definitions

Intrado argues that Verizon’s proposed definitions for “Verizon 911 Tandem/Selective Router” and “Verizon 911 Tandem/Selective Router Interconnection Wire Center” are “unnecessary and repetitive of the general definitions for these terms” and, therefore, should be rejected. INT. Init. Br. at 51. The Department agrees. Incorporation of either of these definitions is redundant relative to other definitions already incorporated in the *Glossary*.<sup>41</sup> Furthermore, Verizon’s proposed definition of its own selective routers would be inaccurate if Intrado established a POI at one of Verizon’s end offices.<sup>42</sup> Therefore, *Glossary* §§ 2.94 and 2.95 shall be deleted from the final interconnection agreement.

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<sup>40</sup> For example, refer to the undisputed language in *911 Attachment* § 1.3.1: “By way of example ... a technically feasible Point of Interconnection on Verizon’s network in a LATA would include an applicable Verizon Tandem Interconnection Wire Center, Verizon End Office Interconnection Wire Center, or Verizon 911 Tandem/Selective Router Interconnection Wire Center[.]”

<sup>41</sup> For example, *Glossary* § 2.47 defines “Interconnection Wire Center” as “[a] building or portion thereof which serves as the premises for one or more End Offices, Tandems, *911 Tandem/Selective Routers*, and related facilities.” (emphasis added). In addition, *Glossary* § 2.64 defines “911 Tandem/Selective Router.”

<sup>42</sup> Verizon’s proposed “Verizon 911 Tandem/Selective Router” definitions specifies that “[a] 911 Tandem/Selective Router in Verizon’s network which receives 911/E-911 Calls from Verizon End Offices and routes these 911/E-911 Calls to a PSAP.”

- G. Should 911 Attachment § 2.5 be reciprocal and qualified as proposed by Intrado?  
Arbitration Issue 9 - Verizon's Ability to Bypass Intrado and Directly Send 911/E-911 Calls to Intrado's PSAP Customer (911 Attachment § 2.5, § 2.6)

Should the reservation of rights to bill charges to 911 Controlling Authorities and PSAPs be qualified as proposed by Intrado "To the extent permitted under the Parties' Tariffs and Applicable Law"?

Arbitration Issue 14 - Reservation of Rights to Bill Charges (911 Attachment §§ 2.3, 2.4)

1. Introduction

Although not presented as such by the Parties, Arbitration Issues 9 and 14 are related because both Issues involve language regarding third-party entities. Arbitration Issue 9 involves language on whether and how calls may be directly routed to a PSAP served by the other Party, and Arbitration Issue 14 involves language regarding charges the Parties may impose on a Controlling 911 Authority or PSAP. For the reasons set forth below, the Department rejects incorporation of Verizon's proposed 911 Attachment §§ 2.5 and 2.6 and approves Verizon's proposed language in 911 Attachment §§ 2.3 and 2.4.

2. Positions of the Parties

a. Intrado

Regarding Arbitration Issue 9, Intrado argues that the 911 Attachment §§ 2.5 and 2.6 direct routing language should be "exactly reciprocal and qualified to reflect that such arrangements are driven by the PSAP" or should be deleted entirely. INT. Init. Br. at 52, 53. Intrado relies on the West Virginia Arbitrator's rejection of Verizon's proposed language in support of its position. *Id.* at 53; *WV Arb. Award* at 28 ("[W]hether a party has a right to deliver calls directly to a PSAP served by the other party is directly relevant to the issues in this arbitration[.] If there is a legitimate reason for either Verizon or Intrado to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the Interconnection

Agreement.”). Intrado, however, agrees with Verizon to the extent that whether a party has a right to deliver calls to a PSAP served by the other Party is a matter outside of a § 251(c) interconnection agreement. *See* INT. Init. Br. at 53.

With regard to the language proposed by Intrado in *911 Attachment* §§ 2.3 and 2.4 for Arbitration Issue 14, Intrado contends that it wants to ensure that the Parties will only impose lawful charges on Massachusetts counties or PSAPs “as authorized by state or federal law, Department-approved tariffs, or Department rules and regulations.” *Id.* at 62.

b. Verizon

With respect to Arbitration Issue 9, Verizon states that it proposed *911 Attachment* § 2.5 in order to provide that “nothing in the agreement will limit Verizon’s ability to deliver calls directly to a PSAP served by Intrado.” VZ Init. Br. at 47. Verizon asserts that it responded to Intrado’s reciprocity concerns through its proposed *911 Attachment* § 2.6 and disagrees that either § 2.5 or § 2.6 should incorporate language requiring express permission from the applicable PSAPs. *Id.* Verizon contends that whether or not a party has a right to deliver a call to a PSAP is outside the scope of the agreement. *Id.*; VZ Rep. Br. at 36.

Verizon states that *911 Attachment* §§ 2.3 and 2.4, regarding Arbitration Issue 14, are nothing more than reservations of rights between the Parties. *See* VZ Init. Br. at 55. Verizon asserts that Intrado’s proposed language is inappropriate, contending that charges to PSAPs or other third parties are between those third parties and Verizon and are not a matter for an interconnection agreement between Verizon and Intrado. *Id.* Verizon relies on determinations made by the West Virginia Arbitrator and the Florida Public Service Commission in support of its position. *Id.* at 56; VZ Rep. Br. at 42-43; *WV Arb. Award* at 28 (“It is inappropriate to attempt to assert or negotiate in this proceeding the rights of entities not parties to the Agreement. If

applicable law or Commission-approved tariffs authorize a party to impose charges on PSAPs or 911 controlling authorities, that need not be stated in this [ICA], which is, after all, only between Verizon and Intrado.”); *Petition for Declaratory Statement Regarding Local Exchange Telecomm. Network Emergency 911 Service*, by *Intrado Comm. Inc.*, Fla. Pub. Serv. Comm’n Order No. PSC-08-0374-DS-TP, Docket No. 080089-TP, *Order Denying Amended Petition for Declaratory Statement*, at 14 (rel. June 4, 2008) (“Intrado either assumes that once it becomes the primary E911 provider to a PSAP all ILEC 911 services to that PSAP will necessarily cease or it fails to consider the possibility that the ILECs may have to continue to provide certain ancillary 911 services to Intrado or to the PSAP ... for which the ILECs are entitled to compensation pursuant to their tariffs[.]”).

### 3. Analysis and Findings

The Department agrees with the Parties that the rights and obligations of third parties are not a matter for an interconnection agreement. *See* INT. Init. Br. at 52, 53; VZ Init. Br. at 55. This agreement is between Intrado and Verizon, and is not between Intrado, Verizon, and the state’s controlling 911 authorities. Any charges to be assessed on, or any connections to be made to, those authorities are properly left to negotiations between those authorities and the contracting parties (i.e., Verizon and Intrado). *See, e.g.*, G. L. c. 6A, § 18B(k) (“The [State 911] [D]epartment may enter into contracts and agreements with ... any individual, foundation, corporation, association or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work[.]”); IR Resp. D.T.C.-VZ 1-4 Attachment (a copy of the public version of Verizon’s current contract with the State 911 Department). They should not be addressed in this interconnection agreement. Accordingly, the Department rejects incorporation of *911 Attachment* §§ 2.5 and 2.6 and approves Verizon’s language in §§ 2.3 and 2.4.

H. What should Verizon charge Intrado for 911/E-911 related services and what should Intrado charge Verizon for 911/E-911 related services?

Arbitration Issue 10 - Rates to be Charged for 911/E-911 Services (*911 Attachment* §§ 1.3, 1.4, 1.7; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)

Whether all “applicable” tariff provisions shall be incorporated into the agreement; whether tariffed rates shall apply without a reference to the specific tariff; whether tariffed rates may automatically supersede the rates contained in the *Pricing Attachment*, Appendix A, without a reference to the specific tariff; and whether the Verizon proposed language in the *Pricing Attachment* § 1.5 with regard to “TBD” rates should be included in the agreement?

Arbitration Issue 11 - Tariff References and Development of New Rates (*General Terms and Conditions* § 1.1; *911 Attachment* §§ 1.3, 1.4.2, 1.7.3; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)

1. Introduction

Arbitration Issues 10 and 11 address variations of disputed pricing language and involve the issue of whether general “applicable” tariff references should be permitted. For the reasons set forth below, the Department approves incorporation of Verizon’s proposed *General Terms and Conditions* § 1.1, but rejects any disputed “applicable” tariff(s) language and other disputed pricing language in *911 Attachment* §§ 1.3, 1.4 and 1.7. In addition, the Parties shall delete Intrado’s proposed last sentence of *911 Attachment* § 1.7.3 as well as Intrado’s proposed interconnection charges in Appendix A of the *Pricing Attachment*. Finally, the Department approves for incorporation Intrado’s proposed language for *Pricing Attachment* §§ 1.3 and 1.5, as well as the first sentences for *911 Attachment* §§ 1.7.2 and 1.7.3.

2. Positions of the Parties

a. Intrado

Intrado asserts that state retail tariffs governing 911/E911 services are not appropriate for Verizon's provision of service to Intrado under the interconnection agreement and that any charges to be assessed to Intrado should be developed pursuant to the §§ 251/252 process under the Act



and set forth in the interconnection agreement. *See* Second Jt. Iss. Mat. at 24. Intrado states that tariff charges should not be permitted to trump the charges contained in the Pricing Appendix, especially those rates marked at “TBD,” unless those tariffs are specifically referenced in the Pricing Appendix. *See* INT. Init. Br. at 57. In addition, asserts Intrado, if there are non-§ 252(d)(1) services that Intrado would purchase from Verizon, then those services and the pricing for those services must be identified in the interconnection agreement. *Id.* at 54.

Furthermore, Intrado argues that any new rates to be developed by Verizon for services under the interconnection agreement should be developed as part of the §§ 251/252 process with Department approval. *Id.* at 57. According to Intrado, unspecified tariff terms and conditions deemed by Verizon to be “applicable” should not be incorporated into the interconnection agreement. *Id.* Instead, if tariffed rates are to apply, argues Intrado, then Verizon must specifically list or identify the tariff. *Id.* at 58; INT. Rep. Br. at 19-20. Intrado maintains that it seeks certainty in the Parties’ interconnection relationship and cannot agree to unspecified terms and conditions that Verizon may later determine are “applicable” to the services being offered in the interconnection agreement. *See* INT. Init. Br. at 57; INT. Rep. Br. at 20. Intrado relies on the determinations made by the West Virginia Arbitrator supporting Intrado’s proposed language and determinations made by the FCC’s Wireline Competition Bureau in the *Virginia Arbitration Order* in support of its position. *See* INT. Init. Br. at 58-59; *WV Arb. Award* at 24; *Virginia Arbitration Order* at ¶¶ 600, 601, and 608 (finding that it would be inappropriate for “a tariff to supersede an [ICA]” and tariffs “approved or allowed to go into effect” should not supersede rates approved in an arbitrated ICA).

Intrado also argues that if Verizon is to interconnect on Intrado’s network, then Intrado is entitled to impose on Verizon the same types of charges for interconnection that Verizon imposes

on Intrado. *Id.* at 56. With respect to its proposed rates, Intrado argues that the rates are reasonable and should be included in the interconnection agreement. *Id.* In support of its position, Intrado notes that, in the *Ohio Arbitration Award*, whereby the ILEC is required to interconnect at POIs on Intrado's network when Intrado is the 911/E-911 service provider, the Ohio Public Utilities Commission determined that Intrado's proposed port and termination rates were reasonable and not beyond the range of other companies. *Id.*

b. Verizon

Verizon maintains that the proposed attachments to the agreement set out the charges that Verizon will bill Intrado for services that Verizon provides under the agreement. *See* Second Jt. Iss. Mat. at 24. According to Verizon, Intrado must pay to Verizon charges for interconnection at the POI(s) on Verizon's network and must pay Verizon for any facilities and services provided by Verizon to carry 911/E911 calls between the POI on Verizon's network and Intrado's network. *Id.* Both Parties have agreed that transport and termination of 911/E911 calls will be handled on a non-charged basis. *Id.* at 25. Verizon states that the *Pricing Attachment* provides for the rates for Verizon's services to be as set out in its tariffs and, in the absence of a tariff rate, as set out in Appendix A to the *Pricing Attachment*. *Id.* at 24-25. Verizon also states that the rates set out in Appendix A are its standard rates for the services listed in that Appendix that are offered to other competitive carriers. *Id.* at 25.

Verizon contends that its generic tariff references are a standard part of its Department-approved interconnection agreements with competitive carriers. *See* VZ Init. Br. at 49; VZ Rep. Br. at 39. Verizon maintains that its proposed *911 Attachment* and *Pricing Attachment* would apply applicable tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. *See* VZ Init. Br. at 48. In addition, Verizon states that it cannot unilaterally

change its tariffed rates and applying those tariff rates to the services which Verizon will provide to Intrado is appropriate because those rates are subject to Department review and approval. *Id.* at 49. Further, Verizon contends that Intrado's proposal to limit the tariffs and apply to the services under the agreement only those tariffs that are specifically cited either in the agreement or in Appendix A of the *Pricing Attachment* is unreasonable because it simply is not feasible to identify in advance each of the tariffs, tariff rates and sections that might apply to services offered under the Agreement. *Id.* at 50. Finally, Verizon argues that its "TBD" rates proposed in Appendix A are appropriate because they provide for "TBD" rates to be replaced by applicable tariff rates, and since Verizon cannot specify rates that do not yet exist. *Id.*

Verizon claims that Intrado seeks to have all potential Verizon charges that may be assessed on Intrado to be subject to Total Element Long-Run Incremental Cost ("TELRIC") pricing. *See* VZ Init. Br. at 48-49; VZ Rep. Br. at 39. Verizon specifies that to the extent Intrado takes the position that any charges Verizon may assess on Intrado must be developed in accordance with § 252(d) of the Act, this position is incorrect because all charges are not subject to TELRIC pricing. *See* Second Jt. Iss. Mat. at 25; VZ Init. Br. at 48-49; VZ Rep. Br. at 39. According to Verizon, the FCC has determined what elements must be priced at TELRIC under § 252(d) and Verizon offers those elements at TELRIC, which is delineated in Appendix A of the *Pricing Attachment*. *See* VZ Rep. Br. at 39.

Finally, Verizon disputes the reasonableness of Intrado's interconnection charges and asserts that Intrado should not be billing Verizon any interconnection charges in connection with 911/E911 calls since Verizon should not be required to interconnect at POI(s) on Intrado's network. *See Id.* at 37-38; VZ Init. Br. at 50-51.

### 3. Analysis and Findings

The Department has addressed a similar issue in a previous arbitration. *See GNAPs Arb. Order* (Arbitration Issue 7: “Is it Appropriate to Incorporate by Reference Other Documents, Including Tariffs, into the Agreement Instead of Fully Setting out Those Provisions in the Agreement?”). As a matter of policy, the Department does not oppose the incorporation of documents, including tariffs, by sufficiently specific reference. *ATC Trunk Ports Order* at 22;<sup>43</sup> *GNAPs Arb. Order* at 50. In particular, the Department notes that cross-referencing Verizon tariffs for prices is reasonable. *See GNAPs Arb. Order* at 50. As Verizon notes, the tariff process is not unilateral. *See VZ Init. Br.* at 49; *VZ Rep. Br.* at 39. In fact, Intrado may always participate in the tariff process to protect its interests. For instance, Verizon is obligated to provide electronic notification of proposed tariff changes to all competitive carriers with whom it has resale and interconnection agreements. *Tariff No. 17 Order* at 22-23.<sup>44</sup> This notice is provided on or about the same day that the proposed tariff changes are filed with the Department. *Id.* As to the contention that tariff terms and conditions may supersede terms and conditions in the interconnection agreement, the Department previously determined that tariffs generally do not supersede negotiated or arbitrated terms. *Id.* at 19. Thus, the Department’s *Tariff No. 17 Order* already provides the protection that Intrado seeks. The *Tariff No. 17 Order* is consistent with the FCC Wireline Competition Bureau’s determinations in the *Virginia Arbitration Order*. *See*

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<sup>43</sup> *See Complaint of Choice One Comm’cs of Mass. Inc., Conversent Comm’cs of Mass., LLC, CTC Comm’cs Corp., and Lightship Telecom, LLC (collectively, “One Communications”), Concerning Alleged Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Mass. for Access Toll Connecting Trunk Ports and E911/911 Dedicated End Office Trunk Ports*, D.T.C. 08-3, *Order* (rel. Apr. 9, 2009) (“*ATC Trunk Ports Order*”).

<sup>44</sup> *Investigation by the Dep’t on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, Filed with the Dep’t on Aug. 27, 1999, to Become Effective on Sept. 27, 1999, by New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass., D.T.E. 98-57, Order* (Mar. 24, 2000) (“*Tariff No. 17 Order*”). *Tariff No. 17* contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

*Virginia Arbitration Order* at ¶¶ 599-608 (finding that it would be inappropriate for “a tariff to supersede an [ICA]” and tariffs “approved or allowed to go into effect” should not supersede rates approved in an arbitrated ICA”). Therefore, with regard to the Verizon language in § 1.5 addressing the “TBD” terms referenced in Appendix A (Part XII pricing chart), the Parties shall incorporate this language into the agreement with the requirement that Verizon shall add language to specify which Verizon tariff(s) would apply. If Verizon cannot identify which tariff(s) would apply, then the Parties shall delete this language from the agreement entirely. Moreover, the Department finds Verizon’s proposed *General Terms and Conditions* § 1.1 to be consistent with our policy, and approves this section accordingly.

On the other hand, the Department does not oppose Intrado’s suggestion to incorporate specific provisions of tariffs, or other documents, into the interconnection agreement directly.<sup>45</sup> However, the Parties’ failure to negotiate or identify specifically which tariff provisions they would agree to incorporate prevents the Department from properly evaluating this approach.

In the Department’s *Tariff No. 17 Order*, the Department stated that the “Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC.” *Tariff No. 17 Order* at 18. The Department therefore held that “[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering.” *Id.* at 19. Additionally, “the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which

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<sup>45</sup> Usually, rehearsal, in the body of a contract, of wording found in other, separate documents is unnecessary, because a contract “may incorporate other documents by reference and may indicate a method by which to determine the unstated terms that were actually agreed upon.” *Corbin on Contracts*, § 95, n.12. The parties, however, are free to incorporate specific provisions if they so choose. *GNAPs Arb. Order* at 52 n.39.

carriers may choose to purchase services not addressed in their interconnection agreements.” *Id.* at 21.

Consequently, the Department finds that incorporation of additional terms and conditions from tariffs, or other documents, by mere reference to the tariff or “applicable” tariff is inconsistent with the policy the Department set forth in the *Tariff No. 17 Order*, *GNAPs Arb. Order*, and *ATC Trunk Ports Order*, unless the Parties explicitly intend to incorporate each and every additional term by reference. *See Tariff No. 17 Order* at 19 (holding that “[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering”); *GNAPs Arb. Order* at 53; *ATC Trunk Ports Order* at 24 (holding that “the incorporation of additional terms and conditions from other documents by mere reference without sufficient specificity to the document or tariff and without reflecting an explicit intention by the parties to incorporate each and every additional term by reference is inconsistent with ... Department policy”). By “additional,” the Department means terms and conditions in the tariff, or other document, which are consistent with the terms and conditions in the interconnection agreement, and for which there may, or may not, be a corresponding provision contained in the interconnection agreement. *See GNAPs Arb. Order* at 54-55; *ATC Trunk Ports Order* at 27. Otherwise, according to the findings set forth in the *GNAPs Arb. Order*, permitting Verizon to impose all the terms and conditions from tariffs “incorporated by reference without the explicit assent of the [competitive carrier] would allow Verizon to achieve a level of conformity in its agreement with different [competitive carriers] that would be inconsistent with [the Department’s], and the Act’s, preference for contracts that reflect the individual business strategies and priorities of each [competitive carrier].” *GNAPs Arb. Order* at 54; *ATC Trunk Ports Order* at 27.

Accordingly, the Department rejects any disputed “applicable” tariff(s) language and other disputed pricing language in *911 Attachment* §§ 1.3, 1.4 and 1.7.<sup>46</sup> Moreover, the Department adopts Intrado’s proposed language for *Pricing Attachment* §§ 1.3 and 1.5, as well as the first sentences in *911 Attachment* §§ 1.7.2 and 1.7.3. Furthermore, in accordance with the *GNAPs Arb. Order*, the Department concludes that if “the Parties explicitly agree that an applicable tariff, or document, controls the terms and conditions of an offering, the [final interconnection] agreement shall make clear that the Parties explicitly agree that all provisions in the tariff, or other document, which are not inconsistent with provisions in the interconnection agreement, or that are not addressed at all in the interconnection agreement, are also controlling.”<sup>47</sup> *GNAPs Arb. Order* at 54. If there are services not listed in the agreement that Verizon will provide to Intrado under the agreement, then Verizon shall list those services in conjunction with the associated tariff(s).

Finally, because Verizon is not required to interconnect at POIs on Intrado’s network, then Intrado’s proposed interconnection charges in Appendix A are inapplicable as well as Intrado’s proposed language for the last sentence of *911 Attachment* § 1.7.3.<sup>48</sup> The Department does not need to address the reasonableness of Intrado’s proposed charges. Accordingly, the Parties shall

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<sup>46</sup> Verizon specifies that “Verizon’s generic tariff references are a standard part of Verizon’s Department-approved interconnection agreements with CLECs.” VZ Init. Br. at 49. The Department notes, however, that most of these agreements have been negotiated and agreed upon by the parties (or their successors), although, as the Department’s *ATC Trunk Ports Order* shows, disputes over this language have arisen since the time that the agreements were negotiated. With regard to arbitrated agreements, Verizon has not provided as evidence any arbitrated agreement or arbitration proceeding in which the Parties specifically disputed, and the Department approved, generic “applicable” tariff references.

<sup>47</sup> The Department notes that it does not directly address each and every provision in the interconnection agreement which contains a tariff reference; however, the Department expects that its findings above will allow the Parties to submit conforming contract language for all such provisions in the agreement.

<sup>48</sup> Intrado’s proposed last sentence for *911 Attachment* § 1.7.3 states: “When Intrado Comm is the 911/E-911 Service Provider, Verizon shall pay to Intrado Comm the full Intrado Comm rates and charges (as set out in this Agreement) for interconnection at the POI(s) established by the Parties on Intrado Comm’s network for any services, facilities and/or arrangement provided by Intrado Comm for such interconnection.”

delete Intrado's proposed charges in Appendix A and the proposed last sentence of *911 Attachment* § 1.7.3 from the interconnection agreement.

I. Whether Verizon may require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements?  
Arbitration Issue 12 - Restrictions on Intrado Rates (*Pricing Attachment* § 2)

1. Introduction

Arbitration Issue 12 involves the of inclusion of Verizon's proposed *Pricing Attachment* § 2, which would require Intrado to charge Verizon the same or lower rates than Verizon for comparable services, facilities, and arrangements provided by Verizon to Intrado, unless Intrado provides a cost justification for its prices. As explained more fully below, the Department finds that *Pricing Attachment* § 2 is unnecessary and, accordingly, the Parties shall delete it from the interconnection agreement.

2. Positions of the Parties

a. Intrado

Intrado argues that Verizon's proposed language is one-sided and could force Intrado to lower its rates without competitive justification. *See* INT. Init. Br. at 59. Intrado states that neither federal nor state law requires competitor's rates to be capped at the applicable ILEC's rates for interconnection (with the exception of intercarrier compensation charges, which are inapplicable here). *Id.*; INT. Rep. Br. at 18-19. Intrado contends that if Verizon seeks to challenge Intrado's rates, it should do so in a separate proceeding because § 252 does not apply to Intrado's rates. *See* INT. Init. Br. at 60. Intrado relies on the determinations made by the West Virginia Arbitrator and the *Virginia Arbitration Order* in support of its position. *Id.* at 59-60; *WV Arb. Award* at 25 (rejecting Verizon's proposed language based on determinations in the *Virginia Arbitration Order*); *Virginia Arbitration Order* at ¶¶ 581-589 (“[§ 251(c)] applies exclusively to [ILECs].



Accordingly, the Bureau ... is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners.... [T]he [FCC] has ruled that it would be inconsistent with the Act for a state commission to impose [§ 251 (c)] obligations on [CLECs][.]”).

b. Verizon

Verizon responds that its rates have historically been subject to thorough scrutiny by the Department and are therefore subject to a presumption of reasonableness. *See* VZ Init. Br. at 52. Verizon maintains that if Intrado wants to charge Verizon higher rates for comparable services, then Intrado should be required to show, based on its costs, that its proposed rates are reasonable. *Id.* at 53; VZ Rep. Br. at 40. Finally, Verizon asserts that using ILEC rates as a benchmark for competitor’s rates is a standard part of its interconnection agreements. *See* VZ Init. Br. at 53.

3. Analysis and Findings

Verizon’s proposed *Pricing Attachment* § 2 specifies:

Notwithstanding any other provision of this Agreement or a Tariff, or otherwise, the Charges that Intrado Comm bills Verizon for Intrado Comm’s Services shall not exceed the Charges for Verizon’s comparable Services, except to the extent that Intrado Comm’s cost to provide such Intrado Comm’s Services to Verizon exceeds the Charges for Verizon’s comparable Services and Intrado Comm has demonstrated such cost to Verizon, or, at Verizon’s request, to the Commission or the FCC.

The Department need not address the Parties’ arguments, since resolution of Arbitration Issue 12 is directly related to the Department’s resolution of Arbitration Issues 10 and 11. For example, the first sentence of proposed *Pricing Attachment* § 2 mirrors Verizon’s proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3, which the Department rejected in favor of Intrado’s proposed language for those sentences. In addition, in Arbitration Issue 10, the Parties, in part, disputed Intrado’s proposed interconnection rates. The Department determined that Intrado’s proposed interconnection rates should be deleted from the agreement

since Verizon would not be interconnecting on Intrado's network and the inclusion of those rates would be unnecessary. Likewise, inclusion of Verizon's proposed *Pricing Attachment* § 2 is unnecessary since there are no additional rates proposed by Intrado within the agreement. *See generally 911 Attachment* § 1.7.2. Therefore, since *Pricing Attachment* § 2 is unnecessary, the Parties shall delete it from the interconnection agreement.

- J. Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI Database, and MSAG be qualified as proposed by Intrado by other provisions of the Agreement?  
Arbitration Issue 13 - Waiver of 911 Related Charges (*911 Attachment* §§ 1.7.2, 1.7.3)

1. Introduction

This issue involves language already discussed and resolved by the Department under Arbitration Issues 10 and 11, but in order to avoid any possible confusion or ambiguity, the Department addresses the Parties' arguments for this particular issue as well.

2. Positions of the Parties

a. Intrado

Intrado maintains that it has proposed language to ensure that each Party may only bill to the other Party those services and items set forth in the interconnection agreement and the rates contained in the *Pricing Attachment* to the agreement. *See* INT. Init. Br. at 60-61; Second Jt. Iss. Mat. at 29. In response to Verizon's arguments, Intrado contends that its language does not address intercarrier compensation or create a "loophole" to assess those charges, as well as ALI database and MSAG charges, on Verizon, since undisputed language in the agreement specifies that reciprocal compensation, intercarrier compensation, exchange access service, ALI database, and MSAG are specifically excluded from the types of charges the Parties are permitted to impose on each other. *See* INT. Init. Br. at 61. Intrado also specifies that its language ensures that each

Party may bill the other Party appropriate interconnection-related charges for 911/E-911 calls to the extent such charges are permitted by or set forth in the interconnection agreement. *Id.*

b. Verizon

Verizon asserts that although the Parties have agreed to not charge each other intercarrier compensation for 911/E-911 calls, Intrado's proposed language in *911 Attachment* §§ 1.7.2 and 1.7.3, "[e]xcept as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment," would create a loophole that might permit such charges. VZ Init. Br. at 53. Verizon claims that Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network, which incorrectly assume that Intrado may designate POIs on Intrado's network. *Id.* at 54; VZ Rep. Br. at 41; Second Jt. Iss. Mat. at 29. Moreover, Verizon asserts that if Intrado's objective is to allow it to bill charges in connection with the ALI database or the MSAG, Intrado should recover these costs from the applicable government agency. *See* VZ Init. Br. at 54; Second Jt. Iss. Mat. at 29.

3. Analysis and Findings

The Department's determinations regarding POI placement, "applicable" tariffs language, Intrado's proposed rates, and, specifically, Arbitration Issues 10 and 11 address in whole the language to be adopted by the Parties in *911 Attachment* §§ 1.7.2 and 1.7.3. However, the Department notes that it finds Verizon's concerns to be unfounded and agrees with Intrado's position that its proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3, "[e]xcept as otherwise set forth in this Agreement[.]" does not change the Parties' express agreement that Intrado will not charge for the charges specified under § 1.7.2. It is quite clear to the Department that the certain charges listed under § 1.7.2 will *not* be assessed against Verizon *unless* "otherwise set forth in this Agreement," and Verizon has not presented to the Department

any evidence of, or pointed the Department to, specific other provisions in the agreement that would provide for these charges. Accordingly, the Department finds Intrado's proposed language to be reasonable and reaffirms its above determinations that the Parties shall incorporate Intrado's proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3.

- K. Should Intrado have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E-911 calls?  
Arbitration Issue 15 - Intrado's Right to Amend the Interconnection Agreement  
(*General Terms and Conditions* § 1.5)

1. Introduction

The Parties dispute incorporation of Intrado's proposed language which would permit Intrado to seek amendment of the interconnection agreement for traffic other than 911/E-911 traffic. For the reasons set forth below, the Department agrees with Verizon, and the Parties shall delete Intrado's proposed language in *General Terms and Conditions* § 1.5.

2. Positions of the Parties

a. Intrado

Intrado argues that it should have the right to amend the agreement to include services other than 911/E-911 services without having to re-negotiate, re-litigate, or re-arbitrate provisions already resolved by the Parties or by the Department. *See* INT. Init. Br. at 63, 64; Second Jt. Iss. Mat. at 30. As support for its position, Intrado asserts the FCC has determined that it is bad faith to require competitors to re-arbitrate issues and contract language that has already been arbitrated. *See* INT. Init. Br. at 64; Second Jt. Iss. Mat. at 30. In response to Verizon's argument that Intrado is seeking to be able to "pick-and-choose" favorable contract provisions, Intrado contends that Verizon fails to acknowledge that any amendment will first be subject to negotiations between the

Parties, dispute resolution before the Department, and possibly, under *General Terms and Conditions* § 4.6, arbitration before the Department. *See* INT. Init. Br. at 64-65.

b. Verizon

Verizon responds that Intrado is inappropriately seeking a unilateral right to amendment and counters that *General Terms and Conditions* § 4.6 is a change of law provision, which specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate *for a change of law*, as opposed to a general right to amendment. *See* VZ Init. Br. at 56-57. Furthermore, according to Verizon, Intrado seeks to be able to greatly expand the scope of the agreement by seeking to retain the benefit of any provisions it obtains through negotiation and arbitration associated with 911/E-911 calls and then add to them new provisions associated with services other than 911/E-911 services. *Id.* at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. Verizon argues that this strategy would violate the FCC's "pick-and-choose" rules and also asserts that its negotiations were based upon a much narrower scope of services (*only* 911/E-911 traffic) and operation than the usual § 251(c) negotiated agreement. *See* VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 31. Verizon states that if Intrado wishes to expand the scope of the agreement, then it should negotiate a completely new agreement in which all of the provisions will be at issue. *See* VZ Init. Br. at 57; VZ Rep. Br. at 44. Verizon relies on the West Virginia Arbitrator's determinations in support of its position. *See* VZ Init. Br. at 57; VZ Rep. Br. at 44; *WV Arb. Award* at 26 ("The FCC's supporting rule for [47 U.S.C. § 252(i)], 47 C.F.R. § 51.809 provides, in part, that an ILEC shall make available to any requesting telecommunications carrier, any agreement in its entirety, to which the ILEC is a party ... Verizon's position is well-taken and [its language] will be incorporated into the [ICA].").

3. Analysis and Findings

Pursuant to 47 U.S.C. § 252(i):

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Under the FCC's rule:

An incumbent LEC shall make available...to any requesting telecommunications carrier any agreement *in its entirety* to which the incumbent LEC is a party that is approved by a state commission...upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

47 C.F.R. § 51.809(a) (emphasis added). In other words, under § 51.809(a), requesting carriers are not permitted to “pick-and-choose” favorable contract provisions between different existing agreements; instead, requesting carriers, if they so choose, may only adopt an existing agreement “in its entirety.”

It is clear from the record that the Parties' negotiations, the Parties' arguments, and this arbitration concerned only interconnection related to the provision by Intrado's of 911/E-911 services to PSAPs. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2; VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. The only traffic involved is 911/E-911 traffic. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2; VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. The Department finds that it would be unreasonable if Intrado were permitted to require Verizon, upon Intrado's request, to expand the scope of the agreement to non-911/E-911-related traffic and services in the future. As Verizon notes, this was not a typical broad § 251(c) negotiation/arbitration that most CLECs undertake with Verizon. *See*

VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 31. In addition, the Department agrees that permitting Intrado to amend the agreement in such a way in the future may conflict with the FCC's "pick-and-choose" rule. *See* 47 U.S.C. § 252(i); 47 C.F.R. § 51.809(a). Therefore, the Department rejects Intrado's proposed language for *General Terms and Conditions* § 1.5, and the Parties shall delete it from the interconnection agreement.

**VIII. ORDER**

After hearing and due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the Parties incorporate these determinations into a final agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to § 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

/s/ Carol E. Foltz

Carol E. Foltz  
Interim Commissioner



**DOCKET NO. 36185**

**IN THE MATTER OF THE PETITION OF § PUBLIC UTILITY COMMISSION  
INTRADO, INC. FOR ARBITRATION §  
PURSUANT TO SECTION 252(b) OF THE §  
COMMUNICATIONS ACT OF 1934, AS § OF TEXAS  
AMENDED, TO ESTABLISH AN §  
INTERCONNECTION AGREEMENT §  
WITH GTE SOUTHWEST D/B/A §  
VERIZON SOUTHWEST §**

FILED  
OCT 17 PM 4:23  
FILING CLERK

**UNOPPOSED JOINT MOTION OF THE TEXAS COMMISSION ON STATE  
EMERGENCY COMMUNICATIONS, THE TEXAS 9-1-1 ALLIANCE, AND THE  
MUNICIPAL EMERGENCY COMMUNICATION DISTRICTS ASSOCIATION  
FOR LEAVE TO FILE A STATEMENT OF POSITION**

The Texas Commission on State Emergency Communications,<sup>1</sup> and the Texas 9-1-1 Alliance,<sup>2</sup> and the Municipal Emergency Communication Districts Association (collectively referred to herein as the "Texas 9-1-1 Agencies") jointly submit this motion for leave to file a statement of position in the above-referenced arbitration docket pursuant to Public Utility Commission of Texas ("PUC") Interconnection Rules 21.11(b), 21.41 and 21.95(d). The Texas 9-1-1 Agencies would respectfully show:

P.U.C. Interconnection R. 21.95(d) provides that only parties to the negotiation may participate as parties in the arbitration hearing. The rule further provides that the "presiding officer may allow interested persons to file a statement of position to be considered in the proceeding." The Texas 9-1-1 Agencies should be granted leave to file a position statement with respect to the 9-1-1 emergency service issues raised in this docket. Such a position statement would benefit the Arbitrators, the Parties, the public interest, and public safety by providing the perspective of otherwise disinterested entities who are charged with providing 9-1-1 service in Texas. By this joint motion, the Texas 9-1-1 Agencies seek only to ensure that public safety

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<sup>1</sup> The Texas Commission on State Emergency Communications is a state agency created pursuant to Texas Health and Safety Code Chapter 771, and is the State of Texas' authority via statute for 9-1-1 emergency communications.

<sup>2</sup> The Texas 9-1-1 Alliance is an interlocal cooperation act entity composed of Texas Emergency Communication Districts with E9-1-1 service public safety responsibility for approximately 53% of the population of Texas. The foregoing Emergency Communications Districts were created pursuant to Texas Health and Safety Code Chapter 772.

interests are not compromised via either a negotiated or arbitrated interconnection agreement between the Parties.

In addition P.U.C. INTERCONNECTION R. 21.11(b) provides that except where prohibited by statute, "the presiding officer or the commission may grant exceptions to any requirements ... for good cause." Rule 21.1(b) also provides that the arbitration award procedures cannot diminish or alter the rights of any person and that a substantive rule of the Commission controls over any arbitration award. Accordingly, it would not serve the interests of the Parties, the Arbitrators, the PUC, public safety, or the public interest for the 9-1-1 emergency services issues to be raised by the Texas 9-1-1 Agencies after conclusion of the arbitration proceeding.

The PUC has several rules that address aspects of 9-1-1 emergency services. (Cf., P.U.C. SUBST. R. 26.272, 26.433, and 26.435.) The Commission, for example, has previously adopted a declaratory order dealing with competitive 9-1-1 selective router services<sup>3</sup> and P.U.C. SUBST. R. 26.433 specifies that the 9-1-1 authority shall designate the appropriate certificated telecommunications utility (CTU) for selective routing.<sup>4</sup> Therefore, to the extent that a CTU were to seek to bypass or change such substantive requirements or route 9-1-1 call traffic through their own 9-1-1 selective router based merely on an arbitration award decision, then such

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<sup>3</sup> *Petition of the Advisory Commission on State Emergency Communications for Declaratory Rulings Against GTE Southwest, Inc.*, Docket No. 17972, Consolidated Order at 3 (Feb. 6, 1998). The Declaratory Order provides, in relevant part:

In accordance with these findings of fact and conclusions of law, and consistent with the stipulation of the parties, the Commission issues the following declaratory rulings:

1. PURA, GTE's 9-1-1 tariffs, and P.U.C. SUBST. R. 23.97(e)(1)(B) do not require that a 9-1-1 entity choose GTE as the appropriate CTU to provide facilities-based E9-1-1 tandem and/or database services.
2. Pursuant to the Texas Health and Safety Code and GTE's 9-1-1 tariffs, "selective routing" is a feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the PSAP serving the place from which the call originates.
3. PURA, GTE's 9-1-1 tariffs, and P.U.C. SUBST. R. 23.97(e)(1)(B)(i)(IV) do not authorize GTE to require a 9-1-1 customer to take and to pay for unnecessary 9-1-1 trunks and for unwanted and unneeded routing service from an end office to an E9-1-1 tandem.  
The Commission further orders that:
4. GTE, within 45 days of a future written request by Panhandle RPC, shall comply with the request and route its end office to the SWBT E9-1-1 tandem in Amarillo. Additional implementation time may be afforded only by the joint written agreement of ACSEC and Commission Staff.

<sup>4</sup> P.U.C. SUBST. R. 26.433(b)(5) provides: "9-1-1 network services provider – The CTU designated by the 9-1-1 administrative entity to provide 9-1-1 network services." PUC Subst. R. 26.433(b)(3) provides: "9-1-1 network services – Services purchased by the 9-1-1 administrative entity(ies) that routes 9-1-1 calls from a 9-1-1 tandem or its equivalent to a public safety answering point(s)."

would be contrary to law, the public interest, public safety, and be null and void as a matter of law.

Similarly, P.U.C. SUBST. R. 26.435(c)(4) makes clear that the 9-1-1 authority(ies) shall establish the specifications for the rate center.<sup>5</sup> Therefore, to the extent that an arbitration award would grant Intrado's request that Verizon deploy "line attribute routing"<sup>6</sup> in a split rate center, then such would be contrary to law, the public interest, public safety, and be null and void as a matter of law. Both line attribute routing and unnecessary 9-1-1 selective routing bypass (as may be urged by Verizon) are unacceptable and inconsistent with applicable laws, orders, rules, and requirements. The above examples are just two of the potential 9-1-1 emergency service issues of significance for which a statement of position by the Texas 9-1-1 Agencies is needed and appropriate and for which there is good cause to grant leave to file such a statement.

The Texas 9-1-1 Agencies are authorized to represent that Intrado and Verizon will not oppose this motion.

WHEREFORE, the Texas 9-1-1 Agencies request that this motion be granted, that they be permitted to file a statement of position as needed and appropriate in this arbitration, and for such other further relief to which they are justly entitled in order to promote and protect the public interest.

Date: October 17, 2008


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<sup>5</sup> P.U.C. SUBST. R. 26.435(c)(4) provides: "Service arrangement – Each particular arrangement for 9-1-1 emergency services specified by the 9-1-1 entity for the relevant rate center(s) within its jurisdiction."

<sup>6</sup> *In the Matter of the Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Incorporated d/b/a Verizon Southwest*, Docket No. 36185, Petition for Arbitration at 21 (Sept. 24, 2008) ("Intrado Petition").

Respectfully submitted,

TEXAS COMMISSION ON STATE EMERGENCY  
COMMUNICATIONS

  
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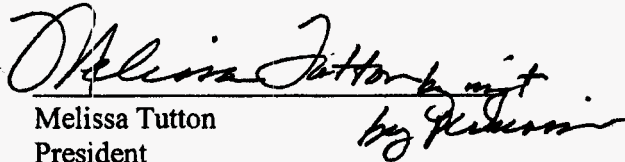
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Melissa Tutton

President

MUNICIPAL EMERGENCY COMMUNICATION  
DISTRICTS ASSOCIATION

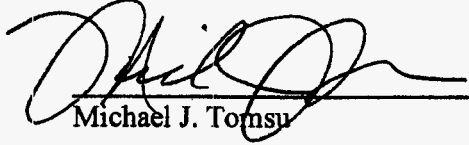
On the Filing:

Richard A. Muscat

Bexar Metro 9-1-1 Network District

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on all parties of record via regular mail, postage prepaid, hand-delivery, or facsimile on this 17th day of October, 2008.

  
\_\_\_\_\_  
Michael J. Tomsu



## WEST VIRGINIA ENHANCED 9-1-1 COUNCIL, INC.

420 BUCKHANNON PIKE  
NUTTER FORT, WEST VIRGINIA 26301-4343  
PHONE: (304)623-6558



November 7, 2008

Ms. Sandra Squire, Executive Secretary  
WV Public Service Commission  
PO Box 812  
Charleston, WV 25323

RE Case 08-0298-T-PC Intrado Communications, Inc and Verizon West Virginia, Inc

Dear Ms Squire,

The WV Enhanced 9-1-1 Council has been informed of the above case and has discussed this at a recent meeting. The members understand that Intrado has expressed a desire in this case to perform 9-1-1 call delivery using line call attribution. The 9-1-1 Council is concerned about the reliability and effectiveness of this method of emergency call delivery.

The Council has no desire nor intention to limit competition among the companies or to limit the free market in providing a more efficient or less costly product.

Please include our concerns with this method of emergency 9-1-1 call delivery.

Sincerely yours

Robert Hoge, Secretary  
WV Enhanced 9-1-1 Council

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COMMISSION  
SECRETARY'S OFFICE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado )  
Communications, Inc. for Arbitration of )  
Interconnection Rates, Terms, and )  
Conditions and Related Arrangements with )  
United Telephone Company of Ohio dba ) Case No. 07-1216-TP-ARB  
Embarq and United Telephone Company of )  
Indiana dba Embarq, Pursuant to Section )  
252(b) of the Telecommunications Act of )  
1996. )

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, posthearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES:

Cahill, Gordon & Reindel LLP by Ms. Cherie R. Kiser and Ms. Angela F. Collins, 1990 K Street, N.W., Suite 950, Washington, D.C. 20006, and Ms. Rebecca Ballesteros, 1601 Dry Creek Drive, Longmont, Colorado 80503, on behalf of Intrado Communications, Inc.

Mr. Joseph R. Stewart, 50 West Broad Street, Suite 3600, Columbus, Ohio 43215, and Ms. Susan S. Masterton, 1313 Blair Stone Road, Tallahassee, Florida 32301.

I. BACKGROUND

Under Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),<sup>1</sup> if parties are unable to reach an agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues which remain unresolved, despite voluntary negotiation under Section 252(a) of the Act.

On August 22, 2007, the Commission adopted carrier-to-carrier rules in Case No. 06-1344-TP-ORD, *In the Matter of the Establishment of Carrier-to-Carrier Rules*.<sup>2</sup> Under Rule 4901:1-7-09(G)(1), Ohio Administrative Code (O.A.C.) an internal arbitration panel is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

<sup>1</sup> The Act is codified at 47 U.S.C. Sec. 151 et. seq.

<sup>2</sup> The carrier-to-carrier rules became effective November 30, 2007.

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## II. HISTORY OF THE PROCEEDING

Rule 4901:1-7-09(A), O.A.C., specifies that any party to the negotiation of an interconnection agreement may petition for arbitration of open issues between 135 and 160 days after the date on which a local exchange carrier (LEC) receives a request for negotiation. According to the Petition for Arbitration filed by Intrado Communications, Inc. (Intrado), by letter submitted on May 18, 2007, Intrado formally requested United Telephone Company of Ohio and United Telephone Company of Indiana (collectively, Embarq) to commence negotiations for an interconnection agreement. The parties agreed to extend the arbitration deadline to November 28, 2007. Intrado timely filed a petition on November 28, 2007, to arbitrate the terms and conditions of interconnection with Embarq pursuant to Section 252 of the Act. In its petition, Intrado presented 33 issues for arbitration. Embarq filed its response to the petition for arbitration on December 21, 2007.

A prehearing conference was held on January 8, 2008, at which time the parties agreed to continue to negotiate for the purpose of reducing the number of issues in dispute. The parties also agreed to prepare a matrix of resolved and unresolved issues upon completion of the negotiations. The matrix was filed on March 10, 2008.

On December 21, 2007, Embarq filed a motion to dismiss and a memorandum in support or, in the alternative, a motion to hold in abeyance Intrado's petition for arbitration. In support of its motion, Embarq asserted that (1) Intrado failed to negotiate in good faith, (2) Intrado's petition is procedurally deficient, and (3) Intrado raises issues that are not subject to arbitration under the Act. Alternatively, Embarq requested that Intrado's petition be held in abeyance until such time that the Commission addressed Intrado's certification status in Case No. 07-1199-TP-ACE, *In the Matter of the Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio* (07-1199). On January 8, 2008, Intrado filed its opposition to the motion to dismiss as well as a motion for oral argument. On April 15, 2008, Embarq filed a notice of a partial withdrawal of its motion of December 21, 2007.

On March 10, 2008, Intrado filed a notice with the Commission reflecting that the parties had agreed to waive the statutory deadlines set forth in Section 252 of the Act in order for the attorney examiner to establish a procedural schedule in this matter. On April 23, 2008, the attorney examiner issued an entry scheduling a hearing from May 27-29, and establishing a briefing schedule.

On May 20, 2008, the parties filed arbitration packages containing exhibits and the written testimony of their respective witnesses. On the same date, the parties filed a matrix setting forth the issues to be arbitrated and the parties' respective positions regarding the identified issues. The arbitration hearing was held on May 27-29, 2008. Intrado presented the testimony of the following four witnesses: (1) Carey Spence-Lenss, (2) Thomas Hicks, (3)



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Cynthia Clugy, and (4) John Melcher. Embarq presented the testimony of (1) James Maples and (2) Edward "Ted" Hart.

Initial briefs were filed by the parties on June 12, 2008. Reply briefs were filed by the parties on June 20, 2008. Also on June 20, 2008, AT&T Ohio filed a reply brief<sup>3</sup> and Intrado filed a motion to strike AT&T Ohio's reply brief and memorandum in support.

### III. ISSUES FOR ARBITRATION

**Issue 1: Is Intrado entitled to Section 251(c) interconnection and Section 252 arbitration?**

Intrado asserts that all of its proposed interconnection arrangements and services are within the scope of Section 251(c) and, thus, are subject to Section 252 of the Act. In support of its position, Intrado contends that through its requests in this proceeding, it is seeking to exercise its rights to local interconnection for the purpose of provisioning telephone exchange services, as provided for pursuant to Section 251(c). In support of its position, Intrado points out that the Commission, pursuant to its Finding and Order in 07-1199, determined that Intrado is: (1) a telecommunications carrier offering telecommunications service under federal law, (2) a telephone company and a public utility company under state law, (3) entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act (See June 12, 2008, Joint Issues Matrix).

Intrado explains that, pursuant to its certification as a competitive emergency services telecommunications carrier, it seeks to offer Ohio counties and Public Safety Answering Points (PSAPs) with a competitive alternative for their 9-1-1/E9-1-1 services, which have traditionally been provided by incumbent local exchange companies (ILECs) such as Embarq (Initial Br. at 2). Intrado posits that it cannot offer its 9-1-1/E9-1-1 services to Ohio PSAPs without interconnecting to the public switched telephone network (PSTN) (Tr. II, 26, 137, 138; Tr. III, 74; *Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶10 [1996], *aff'd* by *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 [1999]) (*Local Competition Order*). Specifically, the company submits that it cannot offer its competitive 9-1-1/E9-1-1 service offering in Ohio until such time that it establishes a mutually beneficial interconnection and interoperability arrangement with the ILEC entities that controls access to the public switched telephone network and, thus, control access to a significant majority of the local exchange markets that make 9-1-1 calls to Intrado served PSAPs (Intrado Ex. 4 at 13). According to Intrado, such arrangements will allow Embarq's end users to reach the PSAPs served by Intrado and vice versa (*Id.* at 12).

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<sup>3</sup> This matter is subsequently addressed in the outstanding procedural matter section of this Arbitration Award.

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Rather than access to unbundled network elements being one of the primary reasons for seeking interconnection, Intrado states that it seeks interconnection pursuant to Section 251(c) of the Act in order to achieve interoperability between the networks and for connecting the networks for the mutual exchange of traffic (Reply Br. at 9 citing Tr. II, 49, 50, 86, 87). To the extent that it seeks unbundled network elements from Embarq, Intrado represents that it will meet the applicable eligibility criteria inasmuch as it will be offering an eligible telecommunications service over such facilities (*Id.* citing *In the Matter of the Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14853, ¶127 [2005]) (*Wireline Broadband Order*). According to Intrado, Section 251(c) of the Act provides the most suitable mechanism for ensuring that it obtains the interconnection and interoperability that it needs to provide its 9-1-1/E9-1-1 services to Ohio counties and PSAPs while, at the same time, promoting the reliability and redundancy critical to public safety (Initial Br. at 3).

Intrado submits that Section 251(c) of the Act was intended to facilitate "vigorous competition" and that this statutory provision and the Federal Communications Commission's (FCC) rules eliminate barriers to entry that would prevent a new entrant carrier, such as Intrado, from offering services and allowing them a fair opportunity to compete in the marketplace (*Id.* at 3 citing *Local Competition Order*, ¶¶16, 18). Consistent with this premise, Intrado submits that, just like other sectors in the telecommunications industry, PSAPs should similarly get to benefit from the competitive benefits of Section 251(c) of the Act (*Id.* at 3 citing Intrado Ex. 1 at 3, 4).

Intrado responds to Embarq's contention that determining whether Intrado is entitled to Section 251 rights depends on the type of service that it provides. Specifically, Intrado states that the Commission, in 07-1199, previously determined that the company is entitled to Section 251(c) rights with respect to the 9-1-1/E9-1-1 service that Intrado will provide to PSAPs. Therefore, Intrado concludes that there is no need for the Commission to address every service that Intrado provides in order to determine whether Intrado is entitled to Section 251(c) rights (*Id.* at 21, 22 citing Tr. III, 44). Further, Intrado submits that, regardless of the technology used by the end user to make the 9-1-1 call, the company's service should be considered as a complete 9-1-1/E9-1-1 service offering provided by Intrado to PSAPs and that such provisioning is a telecommunications service (Initial Br. at 24; Intrado Ex. 5, 15).

Further, Intrado questions why Embarq recognizes that Section 251(c) of the Act applies to competitors when Embarq is the 9-1-1/E9-1-1 service provider, but does not recognize that it applies when Intrado provides a competitive 9-1-1/E9-1-1 service (Reply Br. at 3, 4). Intrado asserts that there is no basis in law or public policy for such a distinction (*Id.* at 2, 3). Rather, Intrado opines that Section 251(c) governs ILEC/competitive local exchange company (CLEC) interconnection and that Section 251(a) is applicable to interconnection between two non-incumbent carriers (*Id.* at 4 citing *In the Matter of the Petition of WorldCom Inc., Pursuant to Section 252(e)(5) of the Communications Act for*

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*Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration et al.* 17 FCC Rcd 27039 [2002]) (*Virginia Arbitration Order*). Intrado insists that to conclude otherwise would undermine the intent of Sections 251 and 252 of the Act to ensure that all competitors get access to the public switched telephone network on equal terms. In support of its position regarding ILEC/CLEC interconnection, Intrado references the FCC's determination that commercial agreements are not feasible given the ILECs' incentives and superior bargaining power (*Id.* at 6, 7 citing *Local Competition Order*, ¶15).

Regarding Embarq's claim that 9-1-1 interconnection is governed by Section 251(a) of the Act, Intrado responds that Section 251(c) of the Act is the appropriate mechanism for Intrado to secure nondiscriminatory access to, and interconnection with, Embarq's networks for the provision of 9-1-1 and E9-1-1 services (*Id.* at 22, 23 citing *Revision of the Commission's Rules to Endure Compatibility with Enhanced 9-1-1 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282 [2002]). Intrado states that, pursuant to Section 251(c)(2) of the Act, Embarq must provide Intrado with interconnection that is at least equal in quality to the interconnection that Embarq provides to itself for the routing of 9-1-1 and E9-1-1 calls (*Id.* at 23 citing the *Virginia Arbitration Order*, ¶652). Intrado states that both the FCC's and Commission's rules likewise set forth a similar requirement (Intrado Reply Br. at 5 citing 47 C.F.R. §51.305(a)(3) and Rule 4901:1-7-06[A][5], O.A.C.).

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While Embarq agrees that Intrado is a telecommunications carrier entitled to interconnection pursuant to Section 251(a), Embarq disagrees with Intrado's assertions that each and every type of arrangement proposed by Intrado qualifies as a telephone exchange service entitling it to Section 251(c) interconnection and access to unbundled network elements (Embarq Reply Br. at 7). Embarq submits that a determination as to whether Section 251(a) or Section 251(c) applies in a given scenario is important for the purpose of establishing the applicable rights and obligations for providing and obtaining interconnection, as well as the appropriate pricing methodologies for such services (Embarq Initial Br. at 3). Embarq asserts that although Intrado presents its arbitration petition as a simple request for Section 251(c) interconnection in order to enable Intrado to provide competitive 9-1-1 services, the arbitration petition encompasses a variety of distinctive scenarios for interconnection between the two companies, each with its own unique ramifications (*Id.*). According to Embarq, these scenarios include:

- (1) When Embarq is the 9-1-1 service provider to the PSAP.
- (2) When Intrado is the 9-1-1 service provider to the PSAP.
- (3) When Intrado and Embarq each serve a different PSAP and transfer calls between each other.

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In support of its position, Embarq relies on the Commission's determination that decisions regarding the appropriateness and scope of any specific request for interconnection are to be addressed in the context of Intrado's ongoing arbitration proceedings, based on case-specific facts of Intrado's actual proposal (*Id.* at 5 citing 07-1199, Entry on Rehearing, at 14). Embarq notes that its standard agreement has a section which is devoted to non-Section 251 services and that the parties could have addressed some of Intrado's proposed scenarios in that section (*Id.* at 4).

While Embarq acknowledges that Section 251(c) applies in the first scenario delineated above, Embarq contends that it is not germane to this proceeding inasmuch as Intrado has indicated that it does not intend to provide services to individuals who would need access to 9-1-1 services (*Id.* citing Tr. I, 45). Specific to the second scenario described above, Embarq opines that Section 251(a) applies to Embarq's interconnection to Intrado's network when Intrado is the primary 9-1-1 provider to a PSAP and that interconnection should occur pursuant to commercial agreements (*Id.* at 5). Embarq explains that under this scenario, Embarq is the requesting carrier and seeks interconnection at a point on Intrado's network in order to fulfill its obligation to provide its end users with access to 9-1-1 service (Embarq Ex. 5 at 54). Therefore, Embarq asserts that Section 251(c) is not applicable in this situation due to the fact that it involves an ILEC interconnecting with a non-ILEC entity (Embarq Initial Br. at 6). In light of this position, Embarq does not believe that it is required, pursuant to Section 251(c), to provide the loop between the Embarq central offices and the PSAP as an unbundled network element (*Id.* at 8). In the event that Intrado seeks loops to each PSAP as an unbundled network element, Embarq explains that, pursuant to such a request, Intrado will be required to collocate at each central office where a specific PSAP's loop terminates (Embarq Reply Br., 14).

To the extent that Section 251(c) does apply to the second scenario, Embarq believes that the requirements imposed on ILECs under that provision do not support the type of interconnection arrangement requested by Intrado (*Id.*). For example, Embarq states that in a Section 251(c) interconnection arrangement, the requesting carrier is entitled to select the point of interconnection, within the ILEC's network and that each carrier is responsible for its facilities on its side of the point of interconnection (*Id.* at 6, 7 citing 47 C.F.R. §51.3; Rule 4901:1-7-06, O.A.C.); Embarq Ex. 5 at 91). Additionally, Embarq points out that, if Section 251(c) applies, it would only be required to provide access to existing copper loops, DS1 loops, DS3 loops, DS1 dedicated transport, DS3 dedicated transport, or dark fiber transport. Further, Embarq questions the practicality of Intrado's request given the requirements for obtaining unbundled network elements (e.g., collocation at Embarq's end offices) in comparison to the commercial arrangements that were offered to Intrado (*Id.* at 8, 9; Embarq Ex. 5 at 22).

In regard to the third scenario described above, Embarq asserts that Section 251(a) applies to inter-selective routing between PSAPs served by Embarq and Intrado. Embarq explains that inter-selective routing involves a "peering arrangement between two carriers,

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each of which is a primary provider of 9-1-1 services to a PSAP in a different geographic area" (Embarq Initial Br. at 7, Tr. III, 25). According to Embarq, peering arrangements involve the cooperative efforts of the affected PSAP customers for the purpose of connecting two wireline 9-1-1 networks without any involvement of the public switched network (Embarq Reply Br. at 18 citing Embarq Ex. 5 at 51, Tr. III, 70). Therefore, Embarq does not consider peering agreements to involve interconnection of a competing carrier's network with the ILEC's network for the purpose of facilitating ongoing competition (*Id.*). Based on this classification, Embarq believes that the proposed agreement should be treated as a Section 251(a) agreement, and not a Section 251(c) agreement (Embarq Initial Br. at 7, 8; Embarq Ex. 5 at 52, 53).

### ISSUE 1 ARBITRATION AWARD

Pursuant to its April 2, 2008, Entry on Rehearing in 07-1199, the Commission clarified its prior determination, in its February 5, 2008, Finding and Order, that Intrado is a telephone company pursuant to Section 4905.03, Revised Code, and Rule 4901:1-7-01(S), O.A.C., for purposes of Chapter 4901:1-7, O.A.C. and Sections 251 and 252 of the Act (07-1199, Entry on Rehearing at 13, 14). Specifically, the Commission stated that, while it recognizes that Intrado is entitled to the rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act, this determination addresses only the fundamental question as to Intrado's right as a telephone company under Rule 4901:1-7-01(S), O.A.C., to request an interconnection agreement pursuant to Chapter 4901:1-7, O.A.C., and Section 251 and 252 of the 1996 Act. The Commission further explained that its decision in the certification proceeding did "not address the appropriateness and scope of any specific request for interconnection and that such decisions are to be addressed in the context of Intrado's ongoing arbitration proceedings, based on the case-specific facts of Intrado's actual proposal" (*Id.* at 14).

Consistent with the above determination, in addressing Issue 1, the Commission must focus its attention on the conditions placed upon Intrado's certification and the specifics of its request in this arbitration proceeding. First, the Commission points out that, rather than being granted all of the rights and privileges of a competitive local exchange company, Intrado's certification was restricted to that of a competitive emergency services telecommunications carrier. As a result of this prior decision, the Commission notes that the scope of Intrado's certification was limited to the company's operations relative to "the routing, transmission, and transport of traditional and nontraditional emergency call traffic to the appropriate PSAP or to allow for the handoff to a different 9-1-1 service provider, such as an ILEC for call completion to the appropriate PSAP" (Finding and Order at 5).

In analyzing Issue 1 and determining the applicable portion of Section 251, the Commission focuses on the fact that, consistent with its language, Section 251(c) applies to the situation in which a telecommunications carrier seeks to interconnect with the ILEC for the purpose of the transmission and routing of telephone exchange service and exchange

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access. Based on the record in this case, the Commission agrees with Embarq that it is necessary to review the following three different scenarios under which Intrado will be provisioning telecommunications services in the state of Ohio in order to appropriately arbitrate the disputed issues:

- (1) When Embarq is the 9-1-1 service provider to the PSAP.
- (2) When Intrado is the 9-1-1 service provider to the PSAP.
- (3) When Intrado and Embarq each serve a different PSAP and transfer calls between each other.

Inasmuch as Intrado's certification is limited to the routing, transmission, and transport of traditional and nontraditional emergency call traffic to the appropriate PSAP that it is serving, and does not extend to the provisioning of end user traffic that would initially need to be transported to a selective router, the first scenario referenced above is not applicable to Intrado's current certification. In the second scenario whereby Intrado is the 9-1-1 service provider to the PSAP, the Commission notes that it is the ILEC (e.g., Embarq) that will be required to seek interconnection with Intrado for the purpose of allowing for the completion of Embarq's customers' emergency service calls to the PSAP. Therefore, Section 251(c) of the Act is not the applicable statutory provision for the purpose of interconnection under this scenario inasmuch as Section 251(c) establishes the obligations of ILECs with respect to satisfying the requests of other telecommunications carriers. The delineated obligations include those related to the interconnection of the requesting carrier with the ILECs' networks. Consistent with this discussion, the Commission determines that the disputed issues related to the scenario in which Intrado is the 9-1-1 service provider to the PSAP, should be addressed pursuant to Section 251(a) of the Act, which establishes the duty of a telecommunications carrier (e.g., Intrado) to interconnect directly or indirectly with the facilities of other telecommunications carriers. While reaching this determination, the Commission recognizes that Section 251(c) of the Act is applicable with respect to Intrado's request to obtain unbundled loops from Embarq for the purpose of serving each of the PSAPs situated in Embarq's service territory, which will be discussed in further detail in the context of Issue 19.

The Commission also determines that Section 251(a) of the Act is the applicable statute relative to the third scenario in which Intrado and Embarq each serve as primary provider of 9-1-1 service to a different PSAP and transfer calls between each carrier's selective routers in order to properly route a 9-1-1 call (inter-selective routing). In reaching this determination, the Commission relies on the fact that inter-selective routing involves a cooperative peering arrangement between the two carriers. Inasmuch as peering arrangements do not involve interconnection of a competing carrier's network with an ILEC's network, Section 251(c) does not apply. This issue will be discussed in further detail in the context of Issue 14.

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Consistent with the aforementioned determinations, the Commission concludes that Intrado is entitled to arbitration pursuant to Section 252(b) of the Act. In reaching this determination, the Commission notes that Section 252(b) of the Act delegates to state commissions the authority to arbitrate disputes pertaining to a request for interconnection, services, or network elements pursuant to Section 251 of the Act, not limited to disputes pursuant to Section 251(c) of the Act. Specifically, the Commission notes that once a request for voluntary interconnection is made pursuant to Section 251(a) of the Act, a petition for a Section 252(b) arbitration can be made 135 days following the interconnection request. In addition to the above discussion, the Commission opines that it is administratively efficient to address both requests pursuant to Sections 251(a) and (c) of the Act in the context of the same arbitration proceeding in order for the Commission to engage in the appropriate regulatory oversight and to ensure that the ultimate interconnection agreement is in the public interest.

**Issue 2: Can Embarq deny Intrado its rights under Sections 251(c) and 252 of the 1996 Act and Ohio law by claiming that Intrado: (1) does not offer telephone exchange services or exchange access and (2) does not serve retail end users?**

Intrado explains that the Commission has already ruled that the company is engaged in the provision of telephone exchange service when it provides 9-1-1/E9-1-1 service to Ohio counties and PSAPs (Intrado Initial Br. at 10 citing 07-1199, Finding and Order at 7). The company states that the service addressed in 07-1199 is the same service for which the company seeks interconnection with Embarq in this case. To the extent that Embarq is now seeking Commission reconsideration of its prior determination that Intrado's proposed service is a telecommunications service, Intrado submits that such an argument should be denied due to the fact that it is an inappropriate attempt by Embarq to seek rehearing of its prior determination (*Id.* at 15).

Specifically, Intrado states that when it provides its complete 9-1-1/E9-1-1 service offering to Ohio counties and PSAPs, Intrado is a telecommunications carrier providing telephone exchange service (*Id.* citing Intrado Ex. 5 at 13). In support of its position, Intrado references the FCC's determination that "telephone exchange service is not limited to traditional voice telephony, but includes[s] non-traditional means of communicating information within a local area" (*Id.* citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Red 385, ¶17 [1999]) (*Advanced Services Order*). Intrado also points to the FCC's determination that "a key component of telephone exchange service is the intercommunication among subscribers within a local exchange area" (*Id.* citing *Advanced Services Order*, ¶30). Specific to its operations, Intrado states that its services allow Ohio consumers to be connected with PSAPs and communicate with local emergency personnel (*Id.* at 15).



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Intrado also contends that the FCC has determined that other nontraditional telephone exchange services (e.g., data transmissions) are classified as telephone exchange services. For example, Intrado highlights the fact that the FCC has determined that certain advanced DSL-based services are telephone exchange services when used to permit communications among subscribers within an exchange or within a connected system of exchanges (*Id.* at 11 citing *Advanced Services Order*, ¶20). Additionally, Intrado references the FCC's determination that the call-completion services offered by many competing directory assistance providers constitute a telephone service because it permits a community of interconnected customers to make calls to one another in the manner prescribed by the Act (*Id.* citing *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001)). Further, Intrado avers that the fact that the wireline 9-1-1 network is interconnected to, but separate from, the public switched telephone network does not change the classification of the services provided by Intrado. In support of its position, Intrado references the FCC's determination that:

[T]he legislative text that Congress' redefinition of 'telephone exchange service' was intended to include in that term not only the provision of traditional local exchange service (via facilities ownership or resale), but also the provision of alternative local loops for telecommunications services, separate from the public switched telephone network in a manner 'comparable' to the provision of local loops by a traditional local telephone exchange carrier.

(*Id.* at 12 citing *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶54 (1998)).

Intrado opines that the classification of a service is dependent on the nature of the service being offered to customers, including what the customer perceives to be the integrated finished product (*Id.* at 18 citing *National Cable & Telecommunications Association v. Brand X Internet Services*, 125 S.Ct. 2688, 2704 (2005)). Intrado avers that it is eligible for interconnection under Section 251(c) to provide 9-1-1/E9-1-1 service to Ohio counties and PSAPs even if its 9-1-1/E9-1-1 service includes an information service, so long as it is offering telecommunications services through the same arrangement (*Id.* at 19 citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶995).

Intrado submits that the classification of the facilities that it utilizes should have no bearing on Intrado's rights for interconnection pursuant to Section 251(c) (Reply at 7). Notwithstanding Intrado's incorporation of Internet protocol within its network, Intrado rejects Embarq's claim that the services offered by Intrado should be considered as information, and not telecommunications, services (Intrado Initial Br. at 16 citing *Petition for Declaratory Ruling that AT&T's Phone-to -Phone IP Telephony Services are Exempt from*



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*Access Charges*, 19 FCC Rcd. 7457 [2004]). Intrado posits that the use of Internet Protocol-based network components does not transform its network into a "next generation" network (Tr. I, 34).

Intrado avers that the FCC has consistently focused on a "function over facilities" approach to regulation with the emphasis on the nature of the service provided to consumers, rather than an analysis that focuses on the technical attributes utilized to provide the service (Reply Br. at 8 citing *In the Matter of the Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14853, ¶5 [2005]). In particular, Intrado states that the FCC has specifically noted that "Congress did not limit the definition of telecommunications to circuit-switched wireline transmission but, instead, defined that term on the basis of the essential functionality provided to end users" (Intrado Reply Br. at 8 citing *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶98 [1998]; 47 U.S.C. §153[46]).

Intrado also dismisses any claim that it provides interconnected VoIP services. Intrado points out that the FCC has defined interconnected VoIP services as a service that: (1) enables real-time, two-way voice communications, (2) requires a broadband connection from the end user's location, (3) requires Internet protocol-compatible customer premises equipment, and (4) permits end users generally to receive calls that originate on the public switched telephone network and terminate to the public switched telephone network (Intrado Initial Br. at 19, 20 citing 47 C.F.R. §9.3). Intrado asserts that its service offering does not meet the definition of interconnected VoIP inasmuch as it does not require the PSAP to have a broadband connection or Internet protocol-compatible customer premises equipment. Therefore, Intrado concludes that its service offering is properly classified as a telecommunications service (*Id.* at 20 citing Intrado Ex. 4 at 9, 10).

As further support for its position that its service should be classified as a telephone exchange service, Intrado contends that Embarq cannot argue that Intrado's 9-1-1 service offering is not a telephone exchange service when Embarq classifies its own comparable service as a telephone exchange service and seeks to provide service to PSAPs in the same manner as Intrado (*Id.* citing United Telephone Company of Ohio dba Embarq, P.U.C.O. No. 5 General Exchange Tariff, Section 32, Original Sheet 5; Tr. III, 48, 146). In support of its position, Intrado cites to the FCC's general policy that "all telecommunications carriers that compete with each other should be treated alike regardless of the technology used" (Intrado Reply Br. at 8 citing *Local Competition Order*, ¶993). Intrado submits that, inasmuch as Ohio counties and PSAPs are receiving 9-1-1/E9-1-1 service from both Embarq and Intrado, there is no reason for Intrado's 9-1-1/E9-1-1 service offering to be treated differently simply because it may use different facilities than Embarq to offer its services (*Id.* at 8, 9).

Additionally, Intrado points out that Embarq's tariff reflects that PSAPs must "[s]ubscribe to additional local exchange service at the PSAP location for administrative purposes, for placing outgoing calls and for receiving other emergency calls, including calls

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which might be related by Telephone Company operators" (Intrado Initial Br. at 13 citing United Telephone Company of Ohio d/ba Embarq, P.U.C.O. No. 5 General Exchange Tariff, Section 32, Revised Sheet 2). While 9-1-1 calls are largely one-way in nature, Intrado notes that the 9-1-1 trunks may be used for two-way traffic purposes (*Id.* at 14). Intrado analogizes its 9-1-1 service to that of facsimile communications, which the FCC determined to be telephone exchange services even though they are predominantly one-way (*Id.* citing *Advanced Services Order*, ¶21).

With respect to Embarq's proposed Section 2.2, Intrado asserts that, inasmuch as the Commission determined that the company is entitled to all rights and obligations of Section 251, the resulting interconnection agreement should not be limited to Intrado's provision of 9-1-1/E9-1-1 services to PSAPs (Intrado Initial Br. at 28, 29 citing Tr. II, 57). Therefore, Intrado believes that Embarq's proposed Section 2.2 should be rejected (*Id.* at 28). In support of its position, Intrado represents that, due to the fact that it may seek to expand its certification and offer additional local exchange services in the future, there is no reason to limit the interconnection agreement to only those services that Embarq views as necessary for Intrado's provision of 9-1-1/E9-1-1 services to Ohio's counties and PSAPs. Intrado states that competitors often have provisions in their interconnection agreements that are not utilized by the competitor (*Id.* at 28, 29 citing Tr. III, 42). Further, Intrado argues that interconnection arrangements should not be restricted by ILECs based on the types of services that the competitor intends to initially provide (*Id.* at 29 citing *Local Competition Order*, ¶995). With respect to Embarq's proposed Section 2.2, Intrado believes that the proposed language will result in additional disputes between the parties (*Id.*). Specifically, Intrado states that it does not agree to the list of recommended deletions proffered by Embarq (*Id.* citing Embarq Ex. 5 at 13-15).

In regard to Intrado's contention that its combined, integrated service offering must be treated as a telephone exchange service on the basis that some of the components of the integrated service involve telecommunications, Embarq responds that providing a service that involves telecommunications is not the same as a providing a telecommunications service. Rather, Embarq considers Intrado's proposed service to be an information service (Embarq Reply Br. at 7, 8; Embarq Ex. 5, 56). In support of its position, Embarq points out "that the integrated services being purchased by PSAPs are not necessarily comprised, in their entirety and in all respects, as telephone exchange service" (Embarq Reply Br. at 8). Embarq conjectures that PSAPs know that they are not purchasing local dial-tone. Embarq also points out that emergency services are unique inasmuch as they are not subject to reciprocal compensation (*Id.*).

In support of its proposed Section 2.2, Embarq asserts that it does not have an obligation to provide services to Intrado which are inconsistent with Intrado's certification. To the extent that proposed Section 2.2 is not accepted, Embarq has alternatively identified specific provisions of the proposed interconnection agreement that it believes must be

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removed inasmuch as they extend beyond those authorized by Intrado's certification (Embarq Ex. 5 at 13-15).

## ISSUE 2 ARBITRATION AWARD

With respect to the arguments raised specific to the issue of whether Intrado is engaged in the provision of telephone exchange services or exchange access service, the Commission agrees with Intrado that this issue was already generically addressed in the context of Intrado's certification proceeding (07-1199) and that, for the most part, Embarq has reiterated its position as previously stated in 07-1199. Therefore, Embarq's arguments with respect to this issue are denied and the Commission determines that Embarq cannot generically deny Intrado its rights under Sections 251(c) and 252 of the 1996 Act and Ohio law by claiming that Intrado does not offer telephone exchange services or exchange access and does not serve retail end users. Each request for Section 251(c) unbundling and Section 252 arbitration is to be considered on an individual basis pursuant to an analysis of the issues as discussed *infra*.

Regarding Embarq's proposed language (Section 2.2) for the purpose of limiting the requisite interconnection agreement to just that which Intrado is certified to offer, the Commission agrees with Embarq that Intrado should not be allowed to avail itself of services or facilities that exceed the scope of Intrado's certification. Embarq's proposed Section 2.2 properly captures this limitation for the purposes of the final interconnection agreement to be entered into as a result of this proceeding. Such language is consistent with the Commission's Rule 4901:1-6-10(E)(3), O.A.C., which provides for the negotiation of an interconnection agreement prior to granting of certification. Although Intrado analogizes its position to that of CLECs that maintain provisions in their tariff despite the fact that they do not offer all such services, the Commission is not persuaded by Intrado's arguments. Specifically, the Commission notes that Intrado is currently certified as a competitive emergency services telecommunications carrier, and not as a CLEC. In light of its restricted certification, the scope of its permitted offerings is limited in nature and cannot be expanded until such time that its certification has been expanded accordingly. Therefore, the applicable clarifying interconnection agreement language (i.e., Section 2.2) is appropriate.

### **Issue 3: Is Intrado entitled to arbitration pursuant to Section 252 of the Act?**

Intrado believes that Section 251(c) of the Act is specifically suited to address the issues of unequal bargaining power and the need to protect competitive carriers from experiencing unreasonable delays in entering the marketplace (Intrado Ex. 4 at 13). Intrado asserts that consistent with Section 251 of the Act, ILECs must enter into interconnection agreements on just, reasonable, and nondiscriminatory terms in order to enable their competitors' customers to place and receive calls from ILEC's subscribers (Intrado Initial Br. at 9 citing *Local Competition Order* ¶¶10, 11, 13).

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In response to Embarq's contention that the requested interconnection arrangements should be treated as Section 251(a) agreements that are not subject to the requirements of Section 252 of the Act, Intrado states that use of a non-Section 252 agreement violates the Act's requirement that interconnection agreements be filed with state commissions pursuant to 47 U.S.C. §252(e)(1) and 47 U.S.C. §252(h) (Intrado Initial Br. at 26). Intrado explains that, unlike commercial agreements in which both parties have equal bargaining power and an incentive to reach an agreement, such is not the case relative to the interactions between ILECs and competitive emergency services telecommunications carriers. Therefore, Intrado requests that, pursuant to Sections 251(c) and 252 of the Act, the Commission should assert its jurisdiction over the interconnection agreement that is the subject of this proceeding (*Id.* at 8, 9, 24, 25). In support of its position, Intrado states that the FCC has determined that the 1996 Act requires that all interconnection agreements must be submitted to state commissions for approval pursuant to Section 252(e) of the Act. *Intrado believes that such action is necessary in order to promote Congress' stated goal of opening up local markets to competition, permit interconnection on just, reasonable, and nondiscriminatory terms, and to ensure that such agreements do not discriminate against third parties (Local Competition Order ¶¶ 165, 167, 168).*

Intrado seeks a single interconnection agreement with Embarq in order to cover the parties' entire interconnection relationship (Tr. II, 54). To the extent that an agreement contains provisions that do not squarely fall under Section 251(c) of the Act, Intrado believes that such provisions may still be included in a Section 251(c) interconnection agreement and remain subject to arbitration pursuant to Section 252 (Initial Br. at 27 citing *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 [5<sup>th</sup> Cir. 2003]). In support of its position, Intrado points out that Embarq's own interconnection template includes provisions that Embarq has identified as "non-Section 251 services." For example, Intrado points out that "Embarq has agreed to include the terms and conditions for interconnection with its Wireline E9-1-1 network along with the terms for other types of interconnection in a single Section 251 interconnection agreement" (*Id.* citing Embarq Ex. 5 at 45, 47).

In response to Intrado's contention that non-Section 251(c) obligations can be addressed in an interconnection agreement negotiated and arbitrated pursuant to Section 251(c) and Section 252, Embarq concurs with Intrado's position provided that the non-Section 251 provisions are clearly delineated as such in the interconnection agreement (Embarq Reply Br. at 19).

### ISSUE 3 ARBITRATION AWARD

As discussed *supra* in our discussion of Issue 1, the Commission finds that both the Section 251(a) and the Section 251(c) unresolved issues should be raised in the context of this arbitration proceeding. Consistent with this determination, the Commission concludes

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that the ultimate determinations reached by the Commission should be incorporated within the same interconnection agreement to be filed at the conclusion of this proceeding. Specifically, it is administratively efficient for the parties to bring both their Section 251(a) and 251(c) unresolved issues to the Commission for resolution in the context of one single, comprehensive interconnection agreement. In support of this determination, the Commission references the fact that, pursuant to Section 252(e), "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission" (Emphasis added). Furthermore, Section 252(c)(1) of the Act provides that state commissions shall: "ensure that such resolution and conditions meet the requirements of [S]ection 251, including the regulations prescribed by the Commission pursuant to Section 251." In referencing these provisions, the Commission highlights the fact that they encompass all Section 251 interconnection agreements, and not just those pertaining to Section 251(c) of the Act.

Commission oversight and resolution of disputes raised in this proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service in the state of Ohio. The submission of all unresolved issues to the Commission at one time and in the context of one interconnection agreement, will best allow for the development and Commission oversight of the competitive 9-1-1 emergency service market based on nondiscriminatory rates, terms, and conditions. Finally, as noted *supra*, Embarq, itself, agrees that it is appropriate to encompass the parties' entire interconnection relationship pursuant to a single interconnection agreement, provided that the non-Section 251(c) provisions are clearly delineated as such in the interconnection agreement. Consistent with the Commission's decision relative to this issue, the parties should properly delineate in the final interconnection agreement those provisions that are specifically Section 251(a)-related and those provisions that are specifically Section 251(c)-related.

**Issue 4: Whether the agreement should contain a definition of "end user" and what definition should be used?**

Intrado proposes a specific definition for "end user" because, while Embarq's template language contains the term "end user," it implies that an "end user" is only associated with the interconnection of traditional dial tone networks and the person who picks up a telephone to complete a call (Intrado Ex. 2 at 4; Tr. I, 170). Inasmuch as Intrado is interconnecting the competing 9-1-1 network with PSAPs, Intrado seeks to expand the definition of "end user" as follows: "'End user' means the individual that subscribes to (subscriber of record) and/or uses the telecommunications services provided by Embarq or Intrado Comm." Intrado opines that its proposed definition includes Intrado's current PSAP end user customers, as well as any other customers that Intrado may serve in the future with expanded certification (Intrado Ex. 2 at 4; Intrado Initial Br. at 54). According to the company, among other possible purchasers of its services, are governmental entities,



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other entities that purchase services from either of the parties at retail, and carriers that purchase services for their own use or consumption (Intrado Ex. 2 at 4).

Additionally, Intrado states that its proposed definition for "end user" is similar to the definition of "customer" in Rule 4901:1-7-01 (E), O.A.C., in that both definitions refer to an entity purchasing telecommunications services from the parties. Intrado observes that under Rule 4901:1-7-01(E), O.A.C.:

"Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company.

Intrado contends that the parties are co-carriers that will operate in Ohio under the Commission's carrier-to-carrier rules, which include Rule 4901:1-7-01(E), O.A.C. Therefore, given that its proposed definition is consistent with the Commission's definition of "customer," Intrado submits that its definition of "end user" should be adopted by the Commission (Intrado Initial Br. at 55, 56).

Intrado dismisses Embarq's argument that it cannot use the definition of "end user" or the proposed interconnection agreement itself for the purpose of serving wholesale customers. Rather, Intrado contends that the Commission has previously determined that ILECs, such as Embarq, must interconnect with competitors for the exchange of wholesale traffic. Specifically, Intrado references Case No. 06-1257-TP-ARB, *In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with The Chillicothe Telephone Company*, Arbitration Award (February 28, 2007) ("*Sprint Arbitration Award*") and Case No. 04-1494-TP-UNC, *et.al.*, *In the Matter of the Application and Petition in Accordance with Section II.A.2.b. of the Local Service Guidelines filed by: The Champaign Telephone Company, Telephone Service Company, The Germantown Independent Telephone Company and Doylestown Telephone Company*, Finding and Order (January 26, 2005); Order on Rehearing (April 13, 2005) (collectively, "*MCI Proceeding*"). In particular, Intrado asserts that the Commission has previously rejected the position that a wholesale provider is not acting as a telecommunications carrier when it provides wholesale services. Rather, Intrado asserts that the Commission has determined that a wholesale provider "is acting in a role no different from other telecommunications carriers whose network could interconnect with the [ILEC's] network so that traffic can be terminated to and from each network and across networks" (*MCI Proceeding*, Finding and Order at 4, 5).

Intrado adds that the Commission confirmed that a wholesale provider "offer[s] telecommunications for a fee directly to the public, regardless of the facilities used," and is, thus, entitled to interconnection under Section 251(c) of the Act (*Sprint Arbitration Award* at 9, 10). Consistent with these prior determinations, Intrado asserts that the Commission has

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previously approved an interconnection agreement definition of "end user" that is broad enough to include the provision of wholesale services. Therefore, Intrado submits that its definition is consistent with Commission precedent and is appropriate for adoption (Intrado Initial Br. at 56, 57).

As additional support for its position, Intrado avers that its proposed definition includes other entities that, under federal law, may appropriately be considered as "end users." Intrado notes that the FCC recognizes that wholesale services are included in the definition of "telecommunications service" and that the term "telecommunications service" was not intended to distinguish between retail and wholesale (e.g., *In the Matter of the Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended* 11 FCC Rcd 21905, ¶264 [1996]). Intrado points out that a provider of wholesale telecommunications service is a telecommunications carrier and is, therefore, entitled to interconnection under Section 251 of the Act (e.g., *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513, ¶15 (2007) (*Time Warner Order*). While the FCC, in the *Time Warner Order*, did not directly address the issue of Section 251(c) rights, Intrado states that the Act and the FCC rulings do not distinguish between a "telecommunications carrier" for purposes of Sections 251(a),(b), or (c) (Intrado Initial Br. at 57, citing *Time Warner Order* at fn. 18). Further, Intrado observes, as the Commission confirmed in the *MCI Proceeding* and *Sprint Arbitration Award*, that it will be acting as a "telecommunications carrier" that provides "telephone exchange service" when it provides wholesale service. Therefore, Intrado asserts that its definition of "end user" is appropriate (*Id.* at 57, 58).

Contrary to Embarq's contentions, Intrado asserts that entities like Vonage are properly classified as "end users" because they purchase service from telecommunications carriers similar to other businesses or persons that obtain local exchange services from a local exchange carrier (e.g., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151, ¶11 [2001]; *In the Matter of Amendments of Parts 60 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, fn. 8, 53 [1988]). Finally, Intrado notes that Vonage and other interconnected VoIP service providers have not been classified as carriers by the FCC and are, instead, considered to be "end users" for regulatory purposes (e.g., *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, ¶58 (2006)). In sum, Intrado believes that its proposed definition of "end user" is consistent with FCC rulings and reflects the concept that a wholesale purchaser or a carrier could be considered as an "end user" of one of the parties (Intrado Initial Br. at 57, 58).

Embarq states that its template agreement and many of its existing contracts do not define the term "end user," but, instead, determine its meaning through the context of the interconnection agreement (Embarq Initial Br. at 10). Embarq adds that, according to the

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National Emergency Number Association (NENA) Master Glossary of 9-1-1 Terminology, an "end user" means the individual that makes the 9-1-1 call (Embarq Ex. 5 at 61, 62). Embarq also observes that PSAPs purchase retail services and, like a government agency, can be classified an "end user" (*Id.* at 68). Finally, Embarq references Intrado's representation that the only "end users" it anticipates as purchasers of its tariffed services will be PSAPs (Embarq Initial Br. at 10, 11.) With the aforementioned in mind, Embarq proposes this definition of "end user":

For the purposes of this agreement "end user" means the individual that makes the 9-1-1 call or the PSAP receiving the call for the purpose of initiating the emergency or public safety response.

Embarq believes that the above definition includes the ultimate consumer who subscribes to and receives a retail service, as well as PSAPs which also purchase services at retail (Embarq Ex. 5 at 61, 62, 68; Embarq Initial Br. at 11).

Embarq opines that Intrado's proposed definition is overly broad, ambiguous, and exceeds Intrado's stated intent (*Id.* at 10). Embarq asserts that Intrado's definition "would improperly allow Intrado to consider its wholesale carrier customers as 'end users,' as well as carrier-like entities such as Vonage" (Embarq Ex. 5 at 62). If the term "end user" is permitted to refer to wholesale carriers and companies like Vonage, Embarq believes that there will be "additional and unnecessary confusion," because Intrado proposes to substitute the term "end user" into parts of the interconnection agreement where such language is not really applicable, given Intrado's limited certification (*Id.* at 63, 64).

Embarq also contends that, because a local loop is a facility between an Embarq wire center and an "end user," expanding the definition of "end user" to include carriers and carrier-like entities will provide Intrado with an opportunity to define facilities between Embarq and such companies as local loops. Embarq adds that a local loop is defined by the FCC as a transmission facility between an ILEC central office and the loop demarcation point at the "end user" customer premises. Thus, states Embarq, if Intrado convinces the Commission that a carrier is an "end user," Embarq will be forced to provide local loop network elements instead of transport (*Id.* at 64, 65). Embarq notes that the FCC has established pricing for network elements at cost, which may be less than tariffed alternatives. By seeking to improperly classify transport as a local loop network element, Embarq believes that Intrado will manipulate the regulations to secure a price advantage (*Id.* at 65, 66).

Finally, with respect to carriers like Vonage, which provide interconnected VoIP service to "end users," Embarq notes that in the FCC's VoIP 9-1-1 proceeding, the FCC ordered interconnected VoIP providers to provide 9-1-1 access to their "end users." Thus, Embarq contends that when Intrado sells 9-1-1 service to carriers like Vonage, Intrado is not selling service to an "end user," but is selling wholesale services to a company that acts like



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a carrier and sells telephone-like services to "end users." Embarq adds that this is consistent with the FCC's definition of wholesale and retail services, whereby a wholesale transaction refers to a transaction of a service or product as an input for further sale to an "end user," while a retail transaction is for the customer's own personal use or consumption. (Embarq Ex. 5 at 66, 67, referring to *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237, 19423, ¶13 [1999]).

#### ISSUE 4 ARBITRATION AWARD

The Commission finds that Intrado's proposed definition of "end user" is overly broad inasmuch as it includes customers that Intrado may possibly serve in the future conditioned upon an eventual expansion of its current certification. When granting certification for Intrado, the Commission determined that, at this time, Intrado is not a CLEC that "provides basic local exchange service to end user subscribers who have affirmatively selected Intrado or have other alternative providers available" (See 07-1199, Finding and Order, February 5, 2008, p. 5). Rather, Intrado was designated a competitive emergency services telecommunications carrier because of its stated intent to serve as a competitive 9-1-1 service provider, offering services that, in the Commission's words, "involve the routing, transmission, and transport of traditional and nontraditional emergency call traffic to the appropriate PSAP or to allow for the handoff to a different 9-1-1 service provider, such as an ILEC, for call completion to the appropriate PSAP" (*Id.*). While Intrado may, at some future time, apply for and receive expanded Commission certification for the purpose of becoming a CLEC, it currently does not have certification to provide services to carriers and carrier-like entities on a retail or wholesale basis.

In addition, the Commission notes that the decisions and rules cited by Intrado in support of its contention that wholesale customers are "end users" for the purpose of interconnection are not on point. The definition of "customer" as it appears in Rule 4901:1-7-01, O.A.C, must, as a matter of course, include wholesale customers, as it defines the term in the context of the Commission's rules governing carrier-to-carrier (i.e., wholesale) operations. In understanding how the term "end user" is generally interpreted in this context, it is useful to review the definitions under Rule 4901:1-8-01, O.A.C. (9-1-1 Service Program Rules). 4901:1-8-01(E), O.A.C., defines the E9-1-1 database as:

"E9-1-1 database" means the database maintained by each service provider which provides end user telephone number and location information for the initial load and ongoing updates to the [Automatic Location Identification] ALI database held by the database management system provider. (Emphasis added)

Therefore, in the context of 9-1-1 and related services, it is clear that the general understanding of the term "end user" in the Commission's rules is the customer making a

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9-1-1 call, for whom the 9-1-1 databases would need to provide telephone number and location information.

With regard to the decisions in the *MCI Proceeding* cited by Intrado, the Commission is not persuaded that these decisions support Intrado's position regarding expanding the term "end user" to encompass wholesale customers. In the *MCI Proceeding*, the question before the Commission was the extension of a rural exemption in the face of a bona fide request from a certified CLEC, and the question of whether that CLEC was entitled to use the interconnection agreement to terminate calls that were originated from or destined for the customers of upstream providers who were wholesale customers of the CLEC. While this decision has some bearing on this arbitration, it does not affect the definition of "end user," as none of the parties in that proceeding attempted to indicate that the definition of "end user" was at issue in the case. For all parties in that proceeding, "end user" continued to mean an end-user retail customer.

Similarly, Intrado's reliance on the *Sprint Arbitration Award* is misplaced. While that award addressed the term "end user," it did not consider expanding the term to encompass a wholesale customer. Rather, the decision addressed the issue of whether the interconnecting CLEC must provide the complete service to the "end user" or merely a portion of the service. The Commission concluded that the interconnecting CLEC could provide a portion of the "end user's" service to a wholesale customer, while the interconnecting CLEC's wholesale customer provided the complete service to an "end user" (*Sprint Arbitration Award* at 9, 10).

In sum, the Commission finds that, given Intrado's current certification, Intrado's proposed definition of "end user" is overly broad, particularly given Intrado's assertions during hearing that it seeks to currently serve only PSAPs. While Embarq agrees that the meaning of "end user" should include PSAPs in addition to the customary meaning of "end user," it appears that, given the Commission's Award in Issue 2, Embarq's definition may well be too narrow, requiring a future amendment if the nature of Intrado's certification changes. Therefore, the Commission finds the following definition of "end user" to be appropriate for the purpose of this interconnection agreement:

For the purposes of this agreement "End User" means the retail, end-use, dial tone customer of either party, or the PSAP served by either party receiving 9-1-1 calls for the purpose of initiating the emergency or public safety response. Where one or the other form of end-user is specifically required, "End User" shall refer to the retail, dial tone customer, while "PSAP End User" shall refer to the PSAP.

**Issue 6: Whether audits should be performed by independent, third-party auditors**

Intrado proposes the following language regarding audits:

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... Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party, at its own expense, may perform an audit through an independent third party of the other Party's books, records and other documents directly related to billing and invoicing in any twelve (12) month period for the purpose of evaluating the accuracy of the other Party's billing and invoicing. "Audit" shall mean a comprehensive review of bills for services performed under this Agreement. "Examination" shall mean an inquiry into a specific element of or process related to bills for services under this Agreement. Either party (the "Requesting Party") may perform one (1) Audit per twelve (12) month period commencing with the Effective Date . . . . (Emphasis added.)

Intrado asserts that an independent third-party requirement will ensure that Intrado "is not unduly burdened or exposed to audit abuse" (Intrado Initial Br. at 61). Intrado contends that audits are costly, forcing a carrier to direct resources toward the audit, thereby disrupting normal business activity and exposing its processes to a direct competitor. Intrado adds that in the event there is an audit by a third party, the auditing party should cover the cost of the audit. According to Intrado, such a provision in the interconnection agreement creates incentive to avoid frivolous audits (Intrado Initial Br. at 61). Intrado adds that audit power can be easily abused, particularly when the parties involved do not hold equal market positions. Further, Intrado opines that audits "can be used to stifle competition by creating financial burdens on new entrants and distracting resources to the audit" (Intrado Ex. 2 at 5). Intrado believes that the language requiring the use of a third party for audits "is especially appropriate where the parties to a contract are direct competitors" (*Id.* at 5).

Intrado observes that Embarq's template language recognizes a distinction between an "audit" and an "examination," presenting a continuum for addressing billing disputes between the parties, with either party also able to use dispute resolution provisions of the interconnection agreement. Intrado explains that an "examination" is intended to be used for specific document requests or billing inquiries, while an "audit" is a comprehensive review of bills rather than a specific inquiry. Intrado adds that both parties have agreed that neither party may request an "audit" more frequently than once during any twelve month period, while an "examination" may be performed by either party as deemed necessary, with the assistance of the other party (*Id.* at 6; Intrado Initial Br. at 61). Further, Intrado opines that the dispute resolution process suggests that dispute resolution would be invoked first prior to any formal examination or audit process (*Id.* at 62). Therefore, Intrado concludes that the need for an independent third-party auditor would be rare, thus negating Embarq's concerns about the expense of a third-party audit (*Id.*).

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In support of its position, Intrado represents that "similar third-party audit provisions are common in incumbent interconnection agreements," including the template interconnection agreements of many ILECs operating in Ohio (*Id.* at 63). Further, Intrado asserts that "the Commission has found language for the use of a third-party auditor reasonable and the division of costs reasonable (See e.g., *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio*, Case No. 04-1822-TP-ARB, [January 25, 2000]). Similar to the Commission's concerns in 04-1822 regarding potential abuses by a competitor during an audit, Intrado believes that the Commission should adopt Intrado's proposed language (Intrado Initial Br. at 63).

Embarq's proposed language concerning audits is as follows:

. . . Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party, at its own expense, may audit the other Party's books, records and other documents directly related to billing and invoicing in any twelve (12) month period for the purpose of evaluating the accuracy of the other Party's billing and invoicing. "Audit" shall mean a comprehensive review of bills for services performed under this Agreement. "Examination" shall mean an inquiry into a specific element of or process related to bills for services under this Agreement. Either party (the "Requesting Party") may perform one (1) Audit per twelve (12) month period commencing with the Effective Date . . . (Emphasis added.)

Embarq asserts that a mandated, third-party audit is contrary to industry practice in Ohio. Further, states Embarq, it has negotiated many interconnection agreements that have been filed and approved in Ohio that do not contain a requirement that audits be conducted by independent third parties. In Embarq's opinion, Intrado has not established that such audits are consistent with industry practice in Ohio (Embarq Initial Br. at 13).

Embarq notes that Intrado's proposed language would require each party to hire an independent third-party auditor whenever a party wished to conduct an audit of the other party. Embarq considers such language to be unreasonable and states that Intrado's concerns regarding confidentiality and abuse of power to be "purely speculative" (*Id.* at 11). Embarq observes that although Intrado witness Clugy claims that audits can be abused, she was unaware of audits having been abused by any ILEC in Ohio or elsewhere (*Id.* at 12 citing Tr. 1 at 149). Embarq adds that its own witness Hart testified that no CLEC or other entity has ever complained that Embarq has used audits to financially intimidate or harass competitors (*Id.* citing Tr. II, 171). Further, despite Intrado's concerns that the parties do not hold equal positions in the competitive market, Embarq references the testimony of Intrado witness Spence-Lenss regarding the number of 9-1-1 calls made over Intrado's network and

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the number of subscriber records managed by Intrado (*Id.* at 12, citing Intrado Ex. 5 at 4). Embarq submits that this testimony demonstrates that Intrado is not a small operation that could be easily intimidated by an Embarq financial audit. Further, Embarq points out that, even if it wished to harass Intrado through an audit, the parties have already agreed that only one audit can be conducted during a twelve-month period (*Id.* at 13, citing Embarq Template Interconnection Agreement at Sec. 8.1).

Additionally, Embarq states that, to the extent that Intrado believes that it is being harassed through an audit, it could invoke the dispute resolution process under the interconnection agreement (Embarq Initial Br. at 12, 13). While not disagreeing that, under language agreed upon by both parties, an inquiry about one billing element is appropriate for an examination rather than an audit, Embarq witness Hart notes that the interconnection agreement does not specify whether dispute resolution must be used prior to an audit (Tr. II, 158, 159, 167). Embarq points out that mandated audits by third-party firms are "expensive and inefficient" and could cost from \$20,000 to \$30,000. With this in mind, Embarq believes that a party would be discouraged from pursuing an audit if the amount at issue was less than the predicted expense of the audit. Embarq also submits that audits conducted by independent third parties are not necessarily more effective than an audit conducted by one of the parties inasmuch as the parties' employees are more familiar than an outside firm with telecommunications billing system and how to extract the data (Embarq Initial Br. at 13, 14). In response to Intrado's concerns that an audit by Embarq representatives could jeopardize confidential information, Embarq states that the undisputed terms of the interconnection agreement "provide for maintaining the confidentiality of information exchanged between the parties" (*Id.* at 14). Additionally, Embarq witness Hart states that "the information subject to an audit would be information that would form the basis for an invoice [of Intrado bills to Embarq]. That's hardly secret information" (Embarq Ex. 4 at 8).

#### ISSUE 6 ARBITRATION AWARD

While cognizant of Intrado's concerns that an audit by a competitor introduces the potential for abuse, the Commission observes that Intrado failed to offer evidence of any such improper actions by an ILEC in Ohio or elsewhere. Indeed, language agreed upon by both parties states that an audit is "subject to each Party's reasonable security requirements . . . ." Further, the Commission takes notice of Embarq's contention that, under language already agreed upon by the parties, only one audit can be conducted during a twelve-month period and that, if Intrado believed that it was being harassed through an audit, Intrado could resort to dispute resolution under the interconnection agreement.

In addition, while Intrado's witness Clugy's prefiled testimony includes templates from different interconnection agreements with language regarding third-party audits, the Commission notes that she was unable to testify with certainty that such language is currently in an interconnection agreement approved by this Commission (Tr. I, 146). As for

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the Commission's decision in the *TelCove* arbitration, the Commission observes that the approved language allows an audit to be conducted either by the auditing party's employees or an independent auditor acceptable to both parties, and that if the audited party requests the use of an independent auditor and the auditing party agrees, the audited party must pay one-fourth of the independent auditor's fees and expenses. In contrast, Intrado's proposed language makes mandatory the use of a third party for an audit and would make the auditing party fully responsible for payment of such an audit.

Given that Intrado's proposed language would make mandatory the use of a third party for audits, the Commission must examine the issue of the audit's expense. In particular, the Commission notes that both parties agree that third-party audits are costly. Additionally, as noted by Embarq witness Hart, the Commission recognizes that audits conducted by third parties are not necessarily more effective than audits conducted by employees of a competing telecommunications carrier, who are more familiar than a third party with the telecommunications billing systems and how to extract the data. Therefore, in light of the aforementioned issues, and considering that both parties have agreed that an audit is subject to each party's reasonable security requirements, the Commission determines that Embarq's proposed language regarding audits is more reasonable.

**Issue 9-1:** Whether 9-1-1 Service and E9-1-1 Service should be included in the section regarding local interconnection? (Issue as defined by Intrado)  
Whether Section 55.1 of the interconnection agreement should include Intrado's proposed reference to 9-1-1 Service and E9-1-1 Service? (Issue as defined by Embarq)

**Issue 9-2:** Whether one-way trunks should be used by the parties for the interconnection of the parties' 9-1-1/E9-1-1 networks and E9-1-1 tandems through inter-selective router trunking?

**Issue 9-3:** Same as 9-2.

While the parties have described the various areas of dispute in Issues 9-1 through 9-3 as two or three different technological issues, their actual arguments, as reflected in the Joint Issues Matrix, in testimony and on brief, revolve around the central question of whether proposed language in Section 55.1 and its associated subsections are appropriate for inclusion in a Section 251(c) interconnection agreement. While the technical issues regarding interconnection are dealt with pursuant to Issues 10, 13, and 14, here the Commission will deal with the question of the inclusion of the specific language proposed in Section 55.1 in this interconnection agreement.

Additionally, the Commission has already addressed the overall question of whether language appropriate to a Section 251(a) agreement belongs in this interconnection agreement (Issue 1), how such language should be handled within a this agreement (Issue

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3), and the treatment of language regarding services that Intrado is not eligible to purchase under its current certification (Issue 2). Therefore, the Commission will deal here exclusively with arguments and discussion unique to Issues 9-1 through 9-3, and the implementation of the Commission's decisions in Issues 1, 2, and 3 and the proposed language in Section 55.1 and its subsections.

Intrado has proposed the following language for inclusion as Section 55.1 of the agreement:

55.1 The Parties shall reciprocally terminate Local Traffic, IntraLATA/InterLATA toll calls, and 9-1-1 service and E9-1-1 service calls originating on the other party's network as follows:

Intrado states that the proposed language is appropriate for inclusion in a Section 251(c) agreement inasmuch as 9-1-1 and E9-1-1 calls are like any other local exchange traffic and that the two-way call completion between Embarq and Intrado is "fundamentally no different than any other two-way communication occurring between two local carriers, one of which is the originating service provider and the other of which is the terminating carrier" (*Intrado Initial Br.* at 43). While acknowledging that a PSAP customer may have additional features, such as ANI (Automatic Number Identification) and ALI, Intrado states that fundamentally, ALI delivered to the PSAP is no different from a terminating customer who subscribes to Caller ID (*Id.*).

Embarq takes the position that the proposed language, though acceptable "in a commercial agreement," is inappropriate in an interconnection agreement, inasmuch as it is not applicable to the provisioning of service consistent with Section 251(c) (Joint Issues Matrix). Embarq states that the primary dispute between the parties pursuant to Issue 9 is the extent to which Section 251(c) applies when Intrado is the 9-1-1 service provider to the PSAP (*Embarq Initial Br.* at 14). Specifically, Embarq asserts that Intrado's proposed language is "entirely inappropriate" inasmuch as Intrado has attempted to insert 9-1-1 Service and 9-1-1 Service calls into a section of the interconnection agreement related to reciprocal termination of local traffic. Specifically, Embarq avers that the pertinent section of the interconnection for which Intrado is seeking inclusion of its language is intended to apply to nonemergency traffic that would be routed and exchanged in either direction (*Id.* at 14, 15). In support of its position, Embarq asserts that Intrado will not be sending any traffic to it due to the fact that is not certified to have any end users other than PSAPs. Therefore, Intrado will only terminate 9-1-1 calls that it receives from Embarq end users and will not originate any traffic for termination to Embarq (*Id.* at 15; *Tr. II*, 57). Finally, Embarq states that emergency calls are jurisdictionally "agnostic", and are not subject to reciprocal compensation. Therefore, Embarq concludes that inclusion of a reference to 9-1-1 traffic in the reciprocal termination section of an interconnection agreement is inappropriate. (*Id.*)

### ISSUE 9.1 ARBITRATION AWARD

In its consideration of the Issues 1, 2, and 3, discussed *supra*, the Commission has previously dealt with the following questions:

- 1) Whether this interconnection agreement should include language dealing with aspects of interconnection that relate to Section 251(a)?
- 2) Whether this agreement should include language relating to Intrado offering services not covered under its current certification?
- 3) How Section 251(a) language should be handled in this interconnection agreement?

With regard to these questions, the Commission has concluded that (1) this interconnection agreement appropriately includes both Section 251(a) and (c) obligations of the parties, (2) the relevant portions of Section 251(a) should be appropriately indentified, and (3) some of the interconnection agreement language is only applicable provided that Intrado obtains Commission approval to expand its current certification.

Relative to proposed Section 55.1, the Commission is not persuaded that the language proposed by Intrado should be excluded from the resulting interconnection agreement. As a matter of public policy, it would be unreasonable for the Commission to approve an interconnection agreement that, for whatever reason, reflected that 9-1-1 traffic would not be reciprocally terminated. The proposed language addressed in Section 55.1 is appropriate under an agreement pursuant to either Section 251(a) or (c).

The Commission also dismisses the argument that the language proposed by Intrado for Section 55.1 should be excluded on the basis that Intrado will not be terminating traffic on Embarq's network. Without completely reiterating our entire discussion relative to Issue 2, the Commission notes that it previously determined that Embarq's proposed Section 2.2 is proper for this agreement and provides the appropriate limitations as to the services or facilities that Embarq must provide to Intrado consistent with scope of Intrado's certification.

Finally, the Commission is not persuaded by Embarq's argument that 9-1-1 traffic is not subject to reciprocal compensation and, therefore, should not be discussed under a section pertaining to reciprocal termination. The Commission notes that the issue of reciprocal compensation is a distinguishable from that of reciprocal termination. The former is a mechanism for parties to compensate each other for any traffic they may terminate on each other's networks; the latter is an agreement to actually terminate said traffic when and if it exists. As noted *supra*, the Commission finds that, to the extent that reciprocal 9-1-1 traffic exists or may exist in the future, the terms of this interconnection



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agreement may explicitly allow for the termination of said traffic. Consistent with its conclusions elsewhere and the findings noted above, the Commission concludes that the language proposed by Intrado in Section 55.1 is appropriate for inclusion in this interconnection agreement.

With respect to the competing language in Issues 9-2 and 9-3, and Sections 55.1.3 and 55.1.4 of the interconnection agreement, the Commission finds that Embarq has indicated its willingness to include Intrado's entire proposed Sections 55.1.3 and 55.1.4 in a "commercial agreement" and has identified in both the Joint Issues Matrix and on the record (Joint Issues Matrix at 8-10; Tr. III, 108) that it uses the term "commercial agreement" in this context to refer to a 251(a) agreement. Further, the Commission has determined that Section 251(a) terms and conditions are appropriately included in an interconnection agreement resulting from this arbitration. Therefore, the Commission finds that Intrado's proposed language for Sections 55.1.3 and 55.1.4 should be included in the resulting interconnection agreement and clearly delineated as a Section 251(a) arrangement.

#### Issue 10: Point of interconnection

The initial question presented for the Commission's resolution relative to Issue 10 concerns the point of interconnection that Embarq must provide to Intrado on Embarq's network under scenario 1, in which Embarq is the 9-1-1/E9-1-1 service provider to the PSAP. According to the record in this case, it appears that Intrado and Embarq have agreed that Embarq's selective router can be used as the point of interconnection on Embarq's network when Embarq is the designated 9-1-1/E9-1-1 service provider and also as the point of interconnection for delivery of Intrado's non-9-1-1 traffic to Embarq (Intrado Initial Br. at 41, Embarq Initial Br. at 10). However, while Embarq agrees with a single point of interconnection on Embarq's network (at Embarq's selective router) for the exchange of non-9-1-1 traffic from Intrado, Embarq has included contract language at Sections 55.2.1 and 55.2.1(c) under Issue 10 which requires Intrado to establish additional points of interconnection at any Embarq end-office that subtends a non-Embarq tandem office (June 12, 2008, Joint Issues Matrix at 12, 15).

Intrado disagrees with portions of Embarq's proposed contract language that would require Intrado to establish additional points of interconnection on Embarq's network for the exchange of non-9-1-1 traffic (Intrado Initial Br. at 41). Further, Intrado contends that Embarq's proposed language is inconsistent with the requirements of Section 251 of the Act, the FCC's related rules, and the Commission's rules. Therefore, Intrado argues that Embarq's proposed contract language requiring multiple points of interconnection on Embarq's network should be rejected (Intrado Ex. 4 at 14). In support of its position, Intrado submits that, consistent with Rule 4901:1-7-06(a)(5), O.A.C., and federal law, CLBCs are entitled to a single point of interconnection on the ILEC's network (Intrado Initial Br. at 42). Therefore, Intrado advocates that the Commission should adopt Intrado's proposed language, which makes it clear that Intrado is not required to establish additional points of

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interconnection at Embarq's end offices for the exchange of non-9-1-1 traffic (Intrado Initial Br. at 42).

In response to Intrado's concerns with Embarq's proposed contract language regarding the requirement for an additional point of interconnection for the exchange of non-9-1-1 traffic under certain circumstances, Embarq points out that the disputed contract language exists in current contracts applicable to carriers that want to establish a point of interconnection with Embarq for the purpose of providing local and long distance calling. As such, Embarq is hesitant to strike this language, as an interconnection agreement without Embarq's current contract language could then be subject to adoption by any CLEC under Section 252(i) of the Act. Embarq does not believe that this language affects Intrado's right to a single point of interconnection on Embarq's network because the parties agreed, in Section 55.2.1(a) of the proposed interconnection agreement, to adopt a single point of interconnection at Embarq's selective router (Embarq Exhibit 5 at 90-93; June 12, 2008, Joint Issues Matrix at 15).

With respect to the issue of Embarq establishing points of interconnection on Intrado's network,<sup>4</sup> Intrado states that it is seeking to require Embarq to establish at a minimum, two points of interconnection on Intrado's network. Intrado claims this is for reliability and redundancy purposes when Intrado is the wireline 9-1-1/E9-1-1 service provider to the PSAP (Tr. II, 39). Intrado points out that the FCC is currently reviewing whether providers should be required to deploy redundant trunks to each selective router or require that multiple selective routers be able to route calls to each PSAP (Intrado Initial Br. at 35; *In the Matter of E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, adopted May 19, 2005, FCC Rcd. 10245) (*VoIP E9-1-1 Order*). Intrado further contends that its proposal is consistent with, and supported by, the FCC's Network Reliability and Interoperability Council standards, which recommend diversification of 9-1-1 circuits over multiple and diverse interoffice facilities (Intrado Ex. 4 at 27). Finally, Intrado points out that Embarq provides no technical, operational, or economic justification for its refusal to implement Intrado's proposal (Intrado Reply Br. at 18).

In regard to the question of the applicable section of the Act relative to the proposal to require Embarq to establish a minimum of points of interconnection on Intrado's network, Embarq argues that it does not believe Section 251(c) of the Act applies when Intrado is the 9-1-1/E9-1-1 service provider. Embarq further argues that, even if it did apply, there is nothing in Section 251(c) of the Act requiring Embarq to establish multiple points of interconnection on Intrado's network. Embarq asserts that it is well-established law that, pursuant to Section 251(c) of the Act, the CLEC may choose a point of

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<sup>4</sup> While the contract language concerning Embarq's establishment of points of interconnection on Intrado's network appears in Section 55.4 under Issue 13, through the course of the hearing and briefs, the parties generally presented all of their arguments regarding points of interconnection by both Embarq and Intrado under Issue 10. Therefore, the Commission will address the entirety of the issues regarding points of interconnection here as well.

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interconnection that is within the ILEC's network (Embarq Reply Br. at 10) Embarq contends that Intrado recognizes this requirement for non-9-1-1 purposes; however, Intrado appears to believe that it does not hold equally true for 9-1-1 traffic (*Id.*).

In support of its position, Embarq contends that in the *Virginia Arbitration Order*, 17 FCC Rcd 27039, fn 200, the FCC recognized that interconnection within the ILEC's network is governed by Section 251(c) of the Act while interconnection on a competing carrier's network is governed by Section 251(a) of the Act. Embarq further asserts that there is nothing in Section 251(a) that supports Intrado's request for Embarq to establish multiple points of interconnection on Intrado's network and, further, there is nothing in Section 251(a) of the Act requiring the Commission to grant Intrado's request. Lastly, Embarq believes that both parties must first mutually agree to terms and conditions for the establishment of multiple points of interconnection on Intrado's network (Embarq Initial Br. at 18).

#### **ISSUE 10 ARBITRATION AWARD**

As stated previously, the parties have agreed to a single point of interconnection within Embarq's network, at Embarq's selective router, for the exchange of 9-1-1 traffic with Intrado. With respect to Intrado's concern that Embarq's contract language may require it to establish more than one point of interconnection on Embarq's network, the Commission is not convinced that this provision should be deleted from the contract. The language appears to require an additional point of interconnection on Embarq's network only under the specific circumstance where an Embarq end office subtends a non-Embarq tandem for the exchange of non-9-1-1 traffic from Intrado. While the Commission recognizes that, consistent with the Commission's Award for Issue 2, this language would not apply to Intrado's current authority to provide 9-1-1/E9-1-1 network service to a PSAP, it is in Embarq's standard language relative to current CLECs and, therefore, there is no harm in leaving such language in the resulting interconnection agreement to the extent that the attending conditions become relevant at a later point in time.

As previously discussed in our award for Issue 1, Section 251(a) of the Act is applicable when Intrado is the 9-1-1/E9-1-1 service provider to the PSAP. The Commission agrees with Embarq that nothing in Section 251(a) of the Act requires Embarq to establish multiple points of interconnection on Intrado's network when Intrado is the 9-1-1/E9-1-1 service provider to the PSAP. While both parties agree that redundancy should result in a more reliable network, the Commission agrees with Embarq that the establishment of multiple points of interconnection on Intrado's network should be mutually agreed to and acceptable to both parties. The fact that the FCC is contemplating if it should require redundancy in the 9-1-1/E9-1-1 network, despite the fact that it is generally recognized that such redundancy improves network reliability, leads the Commission to believe that there are situations where mitigating factors, such as the trade off between increased reliability and increased cost, are at play. As such, the Commission will not require Embarq, at this

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time, to establish multiple points of interconnection on Intrado's network, where Intrado is the 9-1-1/E9-1-1 network provider to the PSAP.

**Issue 13: Whether Embarq should be required to use direct end office trunking to route its end users' 9-1-1 calls to Intrado's selective router when Intrado is the 9-1-1/E9-1-1 network provider to the PSAP.**

Intrado contends that Embarq's proposal to use its own selective router to direct 9-1-1 call traffic to Intrado, where Intrado is the 9-1-1/E9-1-1 service provider, is an unnecessary expense and increases the risk of failure by adding additional points of failure in the network. According to Intrado, this is due to the unnecessary switching of Embarq's originating office traffic by Embarq's selective router, as opposed to having Embarq's end users' 9-1-1 calls sorted at Embarq's end office and directly trunked to Intrado's selective router (Intrado Ex. 4 at 19).

Additionally, Intrado claims that Embarq's failure to provide it with arrangements comparable to those that Embarq uses in its own network for the routing of 9-1-1/E9-1-1 service traffic is a violation of Embarq's obligations under the law (Intrado Reply Br. at 15). In support of its position, Intrado submits that Embarq employs direct trunking from its end offices to its selective router when it is the 9-1-1 service provider and, therefore, it should employ the same type of trunking arrangement when Intrado is the 9-1-1 service provider in order to ensure that the service provided to Intrado is at least equal in quality to that which Embarq provides to itself (Intrado Ex. 4 at 17, 18). Further, Intrado avers that Embarq imposes direct trunking requirements on carriers seeking to terminate traffic on Embarq's 9-1-1 network. In particular, Intrado notes that Embarq's template interconnection agreement states that "[s]eparate trunks will be utilized for connecting CLEC's switch to each 9-1-1/E9-1-1 tandem." According to Intrado, this language requires CLECs to establish direct trunks to Embarq to terminate 9-1-1 traffic just as Intrado has requested of Embarq (Intrado Initial Br. at 41 quoting Attachment 1 of Intrado's Petition for Arbitration).

Embarq contends that Intrado's proposal requiring Embarq to use direct one-way trunks to connect to Intrado's selective router reflects an attempt by Intrado to preclude Embarq from using its existing selective router to route calls from Embarq end users when those calls originate from an Embarq end office served by multiple PSAPs (Embarq Ex. 5 at 79). In doing so, Embarq argues, Intrado is effectively trying to dictate how Embarq engineers its network on Embarq's side of the point of interconnection (*Id.*).

With respect to Intrado's fears that use of Embarq's selective routers, rather than direct trunks, to route 9-1-1 calls to Intrado will add an additional, potential, point of failure, Embarq submits that such concerns are not supported by the record. Based on its review of NENA documentation, and its own experience, Embarq avers that the likelihood of such a failure is rare (Embarq Ex. 5 at 82). Thus, for non-default calls, representing

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approximately 99.8 percent of 9-1-1 calls, Embarq submits that ANI would be routed over the inter-selective routing trunks to Intrado's selective router, which would use that information to route the calls properly. Embarq avers that if it determines that the arrangement does not provide its end user customers with satisfactory service, the company will implement the necessary measures to do so. Embarq contends that it takes its role in providing 9-1-1 service to its end users seriously and would not jeopardize that service simply to make life more difficult for another company seeking to compete in the provision of components of the wireline E9-1-1 network (*Id.* at 83).

Embarq further claims that there is no legal justification for requiring it to route all 9-1-1 traffic through direct end office trunks to Intrado's selective router when Intrado is the 9-1-1 service provider to the PSAP (Embarq Initial Br. at 16). While Embarq acknowledges that its standard interconnection language requires direct end office trunking, it contends that this reflects the way that many other carriers connect to Embarq's selective routers when Embarq provides the 9-1-1/E9-1-1 network. Embarq submits that this scenario does not mean that, if requested, it would be unwilling to allow other carriers to use inter-selective routing as an alternative. Rather, Embarq opines that due to the small number of access lines, it is unlikely that any CLECs would have invested in selective routers and implemented the processes and systems needed to operate the selective routers in an efficient manner (Embarq Ex. 5 at 81, 82).

Next, Embarq argues that Intrado's proposal would require Embarq to implement a more costly and less efficient alternative to allowing Embarq to use its existing selective routers, rather than direct trunks, to route 9-1-1 calls from Embarq's end users to Intrado's selective router (*Id.* at 80, 81). In particular, Embarq contends that Intrado's proposal to require Embarq to use direct end office trunks to Intrado's selective router will necessarily require "class marking", or "line attribute routing" as referred to by Intrado, to sort 9-1-1 traffic in order to properly route the end user's 9-1-1 calls to Intrado's selective router. Embarq explains that class marking is a manual process in which each end user's telephone number is programmed in the serving central office switch to correspond to a specific 9-1-1 trunk group. The 9-1-1 trunk group is then connected directly to a selective router, which takes the 9-1-1 call and switches it to the appropriate PSAP. Embarq contends that Intrado's proposed language would require Embarq to modify its local service provisioning processes nationwide and incur the additional cost of re-engineering and installing new 9-1-1 trunks and transport throughout its network for no legitimate reason (*Id.* at 79, 80). Embarq argues that the potential for failure using class marking is at least as great as and likely greater than, the potential failure when Embarq's selective router is used (*Id.* at 82). In addition, Embarq argues that Intrado's proposed use of class marking/line attribute routing for routing its end users' 9-1-1 calls would be very expensive for Embarq (Tr. II, 105; Tr. III, 115). Embarq contends that, to the extent Intrado's desired method of interconnection imposes extraordinary burdens on Embarq, Intrado must pay for those costs consistent with the FCC's Local Competition First Report and Order (Embarq Reply Br. at 12).



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Intrado avers that its witnesses have demonstrated that line attribute routing, is technically feasible and that similar processes are in use today for the routing of long distances calls or mapping wireless calls to tax codes (Intrado Ex. 1 at 9, 10; Intrado Ex. 4 at 21). Contrary to Embarq's assertions, Intrado asserts that Embarq would not be required to create any new information, and the level of effort on Embarq's part to program its switches would be minimal (Tr. I, 52). Intrado explains that class marking involves data that is not validated to the Master Street Address Guide (MSAG), while line attribute routing is based upon integration of MSAG data into Embarq's service provisioning process (Tr. II, 77, 78). Intrado's line attribute routing would require Embarq to validate its end users' address information against the MSAG or Street Information Guide during the service order process with customers to ensure that end user's 9-1-1/E9-1-1 calls are directed to the appropriate PSAP (*Id.*).

Finally, with regard to Issue 13, Embarq argues that in the situation where Intrado is the 9-1-1 service provider to the PSAP, Embarq is the "requesting carrier" for interconnection to Intrado's network in order to fulfill its obligation to provide 9-1-1 access to its own end user customers (*Id.* at 54). While Embarq avers that Section 251(a) is applicable when it is the requesting carrier, it notes that even in a Section 251(c) arrangement, the requesting carrier is entitled to select the point of interconnection, which must be within the ILEC's network (Embarq Initial Br. at 6, 7). Citing the *Virginia Arbitration Order* at ¶53, Embarq avers that the law is clear that it is solely responsible for its facilities on its side of the point of interconnection. Therefore, Embarq submits that if it interconnects at Intrado's selective router, it has sole responsibility for determining the method and manner of routing the call to the point of interconnection (*Id.* at 14).

Intrado agrees with Embarq that, consistent with the FCC's finding, the point of interconnection for connecting to the wireline E9-1-1 network is at the selective router and that each party bears the cost of getting to the point of interconnection (Intrado Initial Br. at 32, 33). Intrado contends, however, that in today's environment, when Embarq is not the 9-1-1/E9-1-1 service provider for a PSAP, Embarq takes its originating end users' 9-1-1 calls to a meet-point established with an adjacent carrier or all the way to the adjacent carrier's selective router for termination of its customer's 9-1-1 call. Intrado claims that this routing is similar to Intrado's proposal where Embarq would establish a trunk group from its end office switch to the adjacent carrier's selective router and 9-1-1 calls made by Embarq's end users to the PSAP, serviced by the adjacent carrier, in this case, Intrado, are terminated at the adjacent carrier's selective router (*Id.* at 33). Citing the FCC's *Local Competition Order* ¶554, Intrado argues that Embarq bears the burden of demonstrating that a particular method of interconnection or access at any particular point is not technically feasible (*Id.* at 34).

### ISSUE 13 ARBITRATION AWARD

The Commission agrees with the parties that, the point of interconnection to the wireline E9-1-1 network is at the selective router of the E9-1-1 network provider and consistent with the FCC's findings, *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Systems, Request of King County*, 17 FCC Rcd 14789, ¶1 (2002), each party bears the cost of getting to the point of interconnection. The Commission further agrees with Embarq that when the company is the requesting carrier, it is responsible for getting its end users' 9-1-1 calls to Intrado's selective router. However, as the Commission decided in its Award for Issue 10, Embarq is not required to establish multiple points of interconnection on Intrado's network. Therefore, the Commission clarifies that Embarq is only responsible for delivering its traffic to an Intrado selective router located within Embarq's service territory. This ruling does not preclude the parties from otherwise mutually agreeing to an additional point or points of interconnection, at any technically feasible point, inside and/or outside of Embarq's territory.

Consistent with the Commission's finding that, as the requesting carrier, Embarq is generally entitled to route its end user's 9-1-1 calls to the point of interconnection (i.e., Intrado's selective router) and engineer its network on its side of the point of interconnection, Embarq is not required to utilize direct end office trunking in conjunction with class marking/line attribute routing. The Commission notes that the requirement to provide network interconnection "that is at least equal in quality to that provided by the carrier to itself" and the requirement of the *Local Competition Order* at ¶554 are both imposed on Embarq under Section 251(c) of the Act. Inasmuch as the Commission has concluded that this portion of the agreement is to be addressed pursuant to Section 251(a) of the Act, the obligations cited by Intrado are not applicable. Additionally, as there is no FCC requirement that a requesting local exchange carrier must use direct end office trunking to the selective router of the E9-1-1 network provider, and given conflicting evidence concerning the reliability and expense of implementing such an arrangement, the Commission declines to require Embarq to use direct end office trunking to route its end users' 9-1-1 calls to Intrado's selective router, when Intrado is the E9-1-1 service provider.

Given the Commission's determination that Embarq is responsible for routing its end users 9-1-1 calls on its side of the point of interconnection, and the Commission's further determination that Embarq is not required to use direct end office trunking to Intrado's selective router, we now focus our attention to the requisite interconnection language associated with this issue. With respect to the competing proposed language for Issues 13-1, 13-2, 13-5, 13-6, 13-7, 13-8, and 13-9, the Commission has determined in Issue 1 and 3 that this type of arrangement is a 251(a) arrangement. Thus, the agreed upon contract language that is consistent with the Commission's Award for Issue 13 is to be included in the interconnection agreement, and clearly delineated as a Section 251(a) arrangement. The

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Commission further directs the parties to develop additional contract language for Issue 13, if necessary, to incorporate the Commission's findings herein.

**Issue 14: Whether the parties should implement inter-selective router trunking to allow emergency calls to be transferred between selective routers and PSAPs connected to those selective routers while retaining the critical information associated with the emergency call.**

The parties disagree on the fundamental question of whether the terms for inter-selective router trunking are governed by Section 251(a) or Section 251(c) of the Act and, if they are governed by 251(a) of the Act, whether they are appropriately contained in this interconnection agreement. A further disagreement arises as to whether terms for inter-selective routing require input from the relevant PSAP(s). Specifically, to the extent that PSAP input is required to implement inter-selective routing, the Commission must determine if the PSAP input should be included in the interconnection agreement. Finally, if the Commission finds that inter-selective router trunking terms are appropriate for this interconnection agreement, the Commission must determine whether ALI data for 9-1-1 calls needs to be transferred and the manner in which this should occur.

Intrado has proposed language that would require the parties to implement inter-selective router trunking upon request from an Ohio county or PSAP. For background, Intrado explains that to allow for 9-1-1 calls to be transferred between PSAPs, an inter-selective router trunk must be deployed between the selective routers of both carrier's networks (Intrado Ex. 2 at 8). Intrado points out that Embarq has similar arrangements within its own network and in place with other incumbent providers in Ohio. Intrado argues that to deny it the benefits of such arrangement would disadvantage both Intrado and its public safety customers. Therefore, Intrado requests that the Commission adopt its proposed terms and conditions regarding inter-selective router trunking (Intrado Initial Br. at 46).

Intrado further points out that the Commission, in its February 5, 2008, Finding and Order in 07-1199, already mandated call transferability between counties. This was mandated due to the Commission's certification of Intrado as a competitive emergency services telecommunications carrier. Intrado avers that the implementation of inter-selective router trunking falls within an interconnection arrangement contemplated by Section 251(c) of the Act (Initial Br. at 46; Intrado Ex. 4 at 26). Intrado argues that there is no need to include a provision in the interconnection agreement that requires parties to obtain a separate, formal agreement with the Ohio county or PSAP as a prerequisite to deploying inter-selective router trunking (Intrado Ex. 4 at 26). Intrado contends that local exchange carriers do not routinely design their interconnection arrangements or service offerings based on specific contract terms with their customers, and that service offerings to PSAPs are no different. Specifically, Intrado explains that, when it comes to designing and defining network architectures, most public safety agencies lack the necessary technical expertise



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(Intrado Initial Br. at 50). Notwithstanding its position, Intrado states that it strongly supports the involvement of the county or PSAP in defining 9-1-1 call routing requirements (Tr. II at 70, 71).

Embarq contends that the terms for inter-selective router trunking should not be included in a Section 251(c) arrangement (Embarq Initial Br. at 21). Embarq avers that inter-selective router trunking is a mutual and equal obligation of Intrado and Embarq as peers and, therefore, governed by Section 251(a) of the Act (Embarq Reply Br. at 17,18). Embarq notes that the "[i]nterselective router trunking arrangements are not between two carriers who are competing to provide service to customers within the same geographic territory at the same time. Rather, these arrangements are between PSAP customers of each carrier necessarily in two separate geographic areas" (*Id.* at 18). In support of its position, Embarq states that Intrado's witness Hicks appears to agree with Embarq's position (*Id.* citing Tr. II at 94, 95). Embarq further contends that inter-selective routing is only implemented at the request and with the cooperation of the interconnecting carriers' respective PSAP customers; it is not an arrangement dictated by interconnecting carriers for the purposes of facilitating ongoing competition (*Id.*). Embarq also contends that such arrangements are not developed in a vacuum but require the cooperative efforts of multiple parties, including the affected PSAPs, the 9-1-1 service provider, public safety authorities, and local governments. (Embarq Ex. 5 at 52).

With respect to the issue of the forwarding or "passing" of ALI data, Intrado does not believe Embarq passes ALI during call transfer between PSAPs today but, rather, only ANI. Intrado does believe, however, that it is critical that ALI information be passed with wireline calls to assist emergency personnel. Intrado states that this is especially true for wireless or VoIP calls, or even wireline calls where the caller is unable to communicate (Tr. II, 82). Embarq agrees that inter-selective routing may include ALI steering, which is the establishment of connectivity between each PSAP's ALI database so that the PSAP to which the call is transferred can also obtain ALI information (Embarq Ex. 5 at 52). Embarq's witness Maples acknowledged that he was unaware if Embarq currently sends ALI when calls are transferred between PSAPs (Tr. III, 88). While Embarq does not specifically address the issue of whether ALI data should be required to be transferred when PSAPs transfer 9-1-1 calls to each other, Embarq highlights paragraphs 199, 200, and 209 of the FCC's *Local Competition Order*, which states, in pertinent part, that requesting carriers that wish to interconnect at an "expensive," but technically feasible point, should be required to bear the cost of that interconnection. Further, Embarq opines that the FCC determined that competing carriers must usually compensate ILECs for the additional costs incurred by providing interconnection; and that as long as new entrants compensate ILECs for the economic cost of the higher quality interconnection, competition will be promoted (Embarq Ex. 5 at 84, 85).

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#### ISSUE 14 ARBITRATION AWARD

The Commission, as previously noted in its Award for Issue 1, concurs with Embarq that inter-selective routing agreements connecting two separate 9-1-1/E9-1-1 service providers networks serving two separate PSAPs are subject to Section 251(a), and, therefore, the obligations of the ILEC under Section 251(c) would not apply. The Commission further noted in its Award for Issue 1, that it is administratively efficient to address Section 251(a) and Section 251(c) requests in the context of the same arbitration proceeding in order for the Commission to engage in the appropriate regulatory oversight and to ensure that the ultimate interconnection agreement is in the public interest.

In its 07-1199 Finding and Order, the Commission required that each designated competitive emergency services telecommunications carrier shall interconnect with each adjacent countywide 9-1-1 system to ensure transferability across county lines (07-1199, Finding and Order at 9). Additionally, each competitive emergency services telecommunications carrier is required to ensure call/data transferability between Internet protocol (IP) enabled PSAPs and non-IP PSAPs within the countywide 9-1-1 systems it serves, and to other adjacent countywide 9-1-1 systems, including those utilizing non-IP networks which are served by another 9-1-1 system service provider (*Id.*). This call transfer capability is effectuated via inter-selective router trunking. Therefore, the Commission has required the availability of inter-selective router trunking between adjacent countywide 9-1-1 systems and between Intrado and other 9-1-1 carriers. Thus, the Commission concurs with Intrado that the interconnection agreement should contain the framework for interconnection and interoperability of the parties' networks through inter-selective routing.

While the Commission agrees with both parties that technical input from the PSAPs may ultimately be required in order to establish the network arrangements necessary to transfer 9-1-1 calls between PSAPs, it may also be true that some PSAPs will not desire to provide such input. Therefore, the Commission adopts Intrado's proposed interconnection language as the template for those scenarios in which a PSAP does not wish to provide technical input. The Commission further directs the parties to develop additional language that allows for the flexibility of alternative arrangements that may be requested by the affected PSAPs.

While the Commission has mandated that each competitive emergency services telecommunications carrier shall interconnect with each adjacent countywide 9-1-1 system in order to ensure transferability across county lines, the Commission notes that it has not mandated 9-1-1 call transferability between countywide 9-1-1 systems in non-adjacent counties. Therefore, the Commission directs the parties to develop language stating that the template inter-selective routing provisions only apply to 9-1-1/E9-1-1 service providers serving PSAPs in adjacent counties.

With respect to the issue of ALI transferability between 9-1-1 service providers, the Commission finds that the record is not clear regarding the extent to which Embarq provides such functionality today. Therefore, Embarq will only be required to transfer ALI between selective routers serving PSAP customers to the extent that: (1) Embarq deploys this functionality in its own network, (2) Intrado agrees to compensate Embarq for ALI transfer functionality, or (3) the parties come to a mutual agreement on ALI transferability between PSAPs.

**Issue 15:**                    **Should the process for Embarq ordering services from Intrado be included in the interconnection agreement?**

Intrado has proposed the following language for inclusion as 72.14 of the agreement:

**72.14 INTRADO COMM Ordering Processes**

**72.14.1**    Where Embarq is ordering interconnection to INTRADO COMM's Intelligent Emergency Network, Embarq will follow INTRADO COMM's ordering processes as posted on the INTRADO COMM website.

Intrado argues that its ordering process is similar to the Access Service Request (ASR) process that was developed by ILECs and is routinely in use by the industry today. Therefore, Intrado asserts that its proposed ordering process should be included in this interconnection agreement (Intrado Initial Br. at 59, 60; Tr. I at 168). Intrado points out that the Commission has already indicated that the parties are required to "operate in a cooperative manner" (07-1199, Finding and Order at 7, 8), and that "cooperation among carriers cannot take place unilaterally" (Intrado Initial Br. at 60). Intrado notes that the parties' interconnection agreement addresses the mutual exchange of traffic between their networks, as required by the Act and, therefore, the terms and conditions under which the parties will order services to enable the mutual exchange of traffic (*Id.* at 60). In support of its position, Intrado references the following testimony of its witness Clugy:

I am looking more globally at the 251, purposes of 251, which is for two competing local exchange networks to interconnect their networks for the mutual exchange of traffic. In the case of E911 services which I firmly believe are local exchange services in this arena, competitive local exchange services, there will be a need for Embarq as having end users of traditional dial tone services to have to interconnect and exchange that traffic with Intrado where Intrado is designated as the 911 provider in order for them to effect that interconnection and be able to exchange that traffic with

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Intrado, they will need to order services for termination of that traffic on the Intrado selective router

(Tr. I, 168).

Embarq states that the primary dispute between the parties regarding this issue is whether the terms and conditions for Embarq to order services from Intrado are appropriate for inclusion in a Section 251(c) interconnection agreement. Specifically, Embarq submits that such ordering terms and conditions should not be included within a Section 251(c) agreement (Embarq Initial Br. at 22). In support of its position, Embarq references Intrado's own testimony and submits that Intrado appears to agree that these processes are not governed by Section 251(c), but are covered more "globally" under Section 251 (*Id.* citing Tr. I, 168).

Embarq's witness Maples identifies the following additional concerns regarding the ordering processes proposed by Intrado for services purchased by Embarq:

- (1) Embarq has not investigated the process to determine if they are consistent with industry standards (Embarq Ex. 5 at 107; Tr. III, 111, 112);
- (2) They are (or may be) unique (Embarq Ex. 5 at 107);
- (3) They might be unilaterally changed (*Id.*).

Embarq also notes that the express terms of Section 251(c) apply strictly to the ILEC obligation to provide interconnection and unbundled network elements to a telecommunications carrier, and, therefore, do not apply to Intrado's non-ILEC provision of services to Embarq (Embarq Reply Br. at 17).

#### ISSUE 15 ARBITRATION AWARD

The Commission notes that Rule 4901:1-7-22, O.A.C., includes 9-1-1 listings in its definition of customer information, and that Rule 22(C) requires that "all telephone companies ...use industry developed standards and timelines, ...or a mutually agreed upon equivalent, for the exchange of customer account information between two telephone companies." This rule is applicable to the issue currently before the Commission, as both parties are "telephone companies" as defined under Rule 4901:1-7-01(5), O.A.C., and the information in question pertains to customer account information. The Commission also notes that the process by which Intrado would order services from Embarq is specified in

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the interconnection agreement, and there is no dispute between the parties with regard to that language.

The establishment of ordering processes via a website is consistent with industry standards. Therefore, Intrado's proposed language regarding the process by which Embarq will order services from Intrado is appropriate for inclusion in the interconnection agreement. Notwithstanding this determination, the Commission finds that Intrado's proposed language is overbroad inasmuch as it simply states "as posted on INTRADO COMM's website." The Commission is well aware how readily the information posted on a website can be changed. Therefore, consistent with Embarq's concerns, including those regarding unilateral changes to the ordering process, and the need for industry standard forms and procedures, the parties are directed to negotiate supplemental interconnection agreement language relative to the ordering process in order to provide more clarity and efficiency as to the implementation of the ordering process. In doing so, the parties should be mindful that all ordering processes should be consistent with existing industry standards, where applicable, consistent with Rule 4901:1-7-22(C), O.A.C., and that any changes to the ordering process will be subject to prior mutual agreement.

The question of whether certain areas of operations between Embarq and Intrado, whether governed by Section 251(a) or Section 251(c), should be covered in a single, arbitrated interconnection agreement is discussed in the Commission's Award for Issue 3, and will not be repeated here. Ultimately, the Commission is persuaded that, where applicable, language covering the ordering systems of both parties is appropriate for inclusion in a Section 251 interconnection agreement. With respect to Issue 15, the Commission determines that Section 251(c) is not applicable to the ordering processes of Intrado inasmuch as Section 251(c) applies to services provided by an ILEC (e.g., Embarq) to a requesting telecommunications carrier (Intrado) and does not apply to Intrado's provision of services to Embarq. Furthermore, Intrado does not appear to dispute that Section 251(c) does not apply to this issue. Therefore, consistent with the Commission's Award for Issue 3, the language described above pertaining to Issue 15 should be included in the final interconnection agreement and specifically designated as a Section 251(a) provision.

**Issue 17: Should the term "designated" or the term "primary" be used to indicate which party is serving the 9-1-1 authority?**

Intrado submits that in a competitive 9-1-1/E9-1-1 service market, an Ohio county has the right to designate the entity from which it seeks to purchase service. Therefore, Intrado believes that the Commission should adopt the company's proposed language relative to Issue 17-1, which provides that:

In government jurisdictions where Embarq has obligations under existing agreements as the designated provider of the 9-1-1 System to the county (Host Intrado Comm.), Intrado Comm. shall

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participate in the provision of the 9-1-1 System in accordance with this agreement or applicable tariffs, as appropriate.

Similarly, Intrado Comm. believes that the Commission should adopt the company proposed language relative to Issue 17-2, which provides that:

In government jurisdictions where Intrado Comm. has obligations under existing agreements as the designated provider of the 9-1-1 System to the county (Host Intrado Comm.), Embarq shall participate in the provision of the 9-1-1 System in accordance with this agreement or applicable tariffs, as appropriate.

In support of its proposed language, Intrado submits that the Commission itself utilized the term "designated" in the 07-1199, Finding and Order, when it stated that a competitive emergency service telecommunications carrier needs to be designated by the county in order to be the 9-1-1/E9-1-1 service provider and that such provider is permitted "to carry all calls throughout the county for such types of telecommunications services designated by the county" (Intrado Initial Br. at 51, citing 07-1199, Finding and Order at 8). Intrado asserts that once a county designates a 9-1-1 service provider for a particular type of traffic, that company is the 9-1-1/E9-1-1 service provider for that type of traffic and there is no secondary carrier involved (Intrado Ex. 4 at 31). Intrado opines that Embarq's use of the term "primary" results in the mistaken belief that there is also a secondary provider (Intrado Initial Br. at 52).

In response to Embarq's contention that the terms "primary" and "secondary" are necessary to ensure that Embarq can continue to charge counties for the services that Embarq provides when Intrado is the designated 9-1-1/E9-1-1 service provider, Intrado states that Embarq should have no right to charge Ohio counties for services that the company no longer provides (*Id.* at 53 citing *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service*, by *Intrado Communications Inc.*, Order No. PSC-8-0374-DS-TP [Fla. P.S.C. June 4, 2008]). Similarly, Intrado believes that an Ohio county should not be required to incur unnecessary costs simply because it chooses a competitive 9-1-1/E9-1-1 provider (Tr. I, 110). Intrado avers that by adopting its proposed term "designated" the Commission will ensure that Embarq does not attempt to seek compensation for services based solely on the use of descriptive terms rather than any service actually provided by Embarq (Intrado Reply Br. at 103).

Intrado points out that Embarq has failed to delineate the services that the company will continue to provide when Intrado is designated as the 9-1-1/E9-1-1 service provider (Initial Br. at 53, Reply Br. at 19). Intrado notes that if Intrado is designated as the 9-1-1/E9-1-1 service provider, Embarq should no longer be allowed to charge counties for selective routing inasmuch as it will no longer be terminating the call to the PSAP (Tr. II, 97). Similarly, Intrado believes that Embarq will no longer be providing ALI services or

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database management services once Intrado is designated as the 9-1-1/E9-1-1 emergency services provider (Intrado Ex. 4 at 31).

Embarq disagrees with Intrado's use of the term "designated" for a number of reasons. First, Embarq submits that the terms "primary" and "secondary" provider are well established in the 9-1-1 industry and that their definitions do not conflict with the Commission's Finding and Order in 07-1199 (Initial Br. at 22, 23; Embarq Ex. 5 at 109). Embarq defines a primary provider as the entity that has overall responsibility for providing the 9-1-1 service to a PSAP and generally provides the routing and/or database services to the PSAP (*Id.*). Embarq defines a secondary provider as the entity that provides support services to the primary provider to allow end users or subscribers served by the secondary provider to be integrated into the 9-1-1 system provided by the primary provider. Despite Intrado's contention to the contrary, Embarq believes that it can serve in a secondary provider capacity when Intrado is chosen as the emergency services provider. Embarq asserts that it is entitled to recover its costs that are related to the service that it performs in supporting 9-1-1 services (*Id.*). Additionally, Embarq points out that Intrado itself acknowledges that there may be some situations where Embarq is entitled to compensation even when it is not the primary provider (Embarq Reply Br. citing Intrado Initial Br. at 53).

Therefore, Embarq believes that the Commission should adopt the company's proposed language relative to Issue 17-1, which provides that:

In government jurisdictions where Embarq has obligations under existing agreements as the primary provider of the 9-1-1 System to the county (Host Embarq), Intrado Comm. shall participate in the provision of the 9-1-1 System in accordance with this Agreement or applicable tariffs, as appropriate.

Similarly, Embarq believes that the Commission should adopt the company proposed language relative to Issue 17-2, which provides that:

In government jurisdictions where Intrado Comm. has obligations under existing agreements as the primary provider of the 9-1-1 System to the county (Host Intrado Comm.), Embarq shall participate in the provision of the 9-1-1 System in accordance with this agreement or applicable tariffs, as appropriate.

#### **ISSUE 17 ARBITRATION AWARD**

Upon a review of the arguments presented, the Commission determines that Intrado's proposed language for Issues 17-1 and 17-2 is appropriate and best satisfies the intentions of the Commission's February 5, 2008, Finding and Order in 07-1199 relative to



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the concept of a county designating certain 9-1-1 traffic to a competitive emergency service provider for the purpose of transmitting the traffic to the PSAP. Specifically, the Commission notes that the February 5, 2008, Finding and Order, provides that:

Intrado, or any other competitive emergency services telecommunications carrier, may not operate as 9-1-1 system service provider in a countywide system until such time as the county has amended its 9-1-1 plan to identify that carrier as the 9-1-1 carrier of choice for the **designated** telecommunications (e.g., wireline, wireless, VoIP etc.). The ILEC shall continue to act as the 9-1-1 system service provider for those types of telecommunication services not **designated** to the competitive emergency services telecommunications carrier by the county. Any competitive emergency services telecommunications carrier authorized to act as a countywide system service provider must carry all calls throughout the county for such types of telecommunications services **designated** by the county. In addition to the ILEC, there may be no more than one competitive emergency services telecommunications carrier **designated** by the county per countywide 9-1-1 system.

Once the countywide 9-1-1 plan has been amended and the competitive emergency services telecommunications carrier is **designated** to operate within the specified county, the competitive emergency services telecommunications carrier shall file both the amended plan and an amended tariff listing both the county which has chosen it to provide 9-1-1 service and the telecommunication services **designated** by the county to be carried by the competitive emergency services telecommunications carrier (Emphasis added).

In reaching this determination, the Commission agrees with Intrado that the use of the term "primary" results in the unsupported assertion that there is also a secondary emergency services provider that will charge the PSAP for the provisioning of 9-1-1 service that has been designated to the competitive emergency services telecommunications carrier. Additionally, the Commission agrees with Intrado that Embarq should have no right to charge Ohio counties for services that the company no longer provides. The Commission notes that Embarq has failed to identify any specific charges that it believes a secondary emergency service provider may assess to a PSAP. To the extent that Embarq can, in the future, identify such a charge and can justify why it should be assessed to the PSAP, the Commission may consider such arguments at the appropriate time.

Notwithstanding the determination regarding this issue, the Commission recognizes that even in the scenario in which a county designates Intrado as the 9-1-1 emergency



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service provider for the purpose of transporting 9-1-1 traffic to the PSAP, Embarq is entitled to continue to receive the end user 9-1-1 surcharge assessed pursuant to Section 4931.47, Revised Code, inasmuch as such surcharge is intended to reimburse Embarq for its recurring charges associated with transmitting end user 9-1-1 traffic to the PSAP and is not a charge to the PSAP itself.

**Issues 18-3 through 18-10 Whether provisions regarding 9-1-1 database access when Intrado Comm. is the designated 9-1-1/E9-1-1 service provider are appropriate in what Intrado identifies as a Section 251(c) agreement, or as a "commercial agreement" identified by Embarq as a Section 251(a) agreement**

Issues 18-1 through 18-11 are each identified in the Joint Issues Matrix as "How the Parties will obtain access to each other's basic 9-1-1 and E9-1-1 databases." In addition, the issues remaining in dispute (18-3 through 18-10) all pertain to Section 75.2.7 of the proposed interconnection agreement. Therefore, the Commission will address this series of issues as a single, contiguous issue. With regard to the specific language of the proposed interconnection agreement, in each area of the Joint Issues Matrix that specifies language disagreement relative to these identified disputed issues, the Commission notes that, in actuality, the parties' proposed language in the Joint Issues Matrix is either identical in nature or Embarq has indicated that it would accept the language proposed by Intrado "in the context of a commercial agreement with Intrado," but would oppose it in the context of a Section 251(c) agreement (Joint Issues Matrix). Embarq has stated on the record that it is using the term "commercial agreement" in this context to refer to interconnection under Section 251(a) of the Act (Tr. III, 108).

Intrado asserts that provisions regarding database access when it is the designated provider to a PSAP are appropriate for inclusion in a Section 251(c) interconnection agreement (Initial Br. at 64). Intrado clarifies that it is not requesting Embarq's ALI database records at unbundled network element rates but, rather, is requesting that Embarq provide its subscriber data so that Intrado can create its own ALI records (Reply Br. at 10). In particular, Intrado states that it is seeking the service order data gathered by Embarq during its service order process. Intrado opines that providing this subscriber data is Embarq's obligation as a local exchange company and has nothing to do with the unbundling requirements of Section 251(c)(3) (*Id.*; Tr. II, 74). Additionally, Intrado notes that there is no technical issue between the parties with respect to the disputed provisions. Rather, the dispute pertains to the inclusion of the proposed language in a Section 251 interconnection agreement (Tr. I, 163; Intrado Ex. 2 at 11).

Embarq states that provisions regarding database access when Intrado is the 9-1-1 service provider should be addressed in a "commercial agreement" rather than a 251(c) interconnection agreement (Embarq Initial Br. at 23). Additionally, Embarq maintains that Intrado is inappropriately requesting access to Embarq's ALI database as an unbundled

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network element. Embarq maintains that the obligation to unbundle its ALI database does not apply in the situation where Intrado is the designated provider to a PSAP. The obligation to provide unbundled access to the ALI database is, according to Embarq, a "carrier facing" requirement that applies when Embarq is the designated provider to a given PSAP. Embarq also maintains that the fact that Intrado is limiting its service to one type of customer does not permit Intrado to use the requirements under Section 251(c) of the Act to require Embarq to create an ALI database for it at a discounted rate (Embarq Initial Br. at 9, Embarq Ex. 5 at 49).

Relative to Intrado's request that Embarq make its ALI records available at unbundled network element rates pursuant to Section 251(c) for incorporation into the ALI database created and maintained by Intrado as the 9-1-1 service provider to the PSAP, Embarq asserts that such a request should be denied (Embarq Ex. 5 at 58, 59). In support of its position, Embarq points out that in the relevant scenario in which Intrado is serving the PSAP, Embarq is not the database provider but, instead, is a contributor to Intrado's database, which is controlled by Intrado (Tr. III, 78). Based on this assertion, Embarq states that the relevant ALI database is not an Embarq network element and, therefore, the unbundling rules under Section 251(c) of the Act do not apply to Intrado's request for subscriber records (Embarq Reply Br. at 15, Embarq Ex. 5 at 49).

#### ISSUES 18-3 THROUGH 18-10 ARBITRATION AWARD

Issues 18-3 through 18-10, as presented in the Petition for Arbitration and in the Joint Issues Matrix, identify the issue at hand as; "How the Parties will obtain access to each other's basic 9-1-1 and E9-1-1 databases." However, the issue as presented in the parties' positions as outlined in the Joint Issues Matrix, as well as each party's testimony and briefs, centers around whether the language covering the sharing and transmission of database information is appropriate for consideration in this proceeding and whether the disputed language should be considered pursuant to Section 251(a) or Section 251(c) of the Act.

As is discussed in the Commission's Award for Issues 1 and 3, the Commission finds that, for reasons of both administrative efficiency and matters of public interest, this transaction should be covered by a single interconnection agreement incorporating both Section 251(a) and Section 251(c) provisions. As also discussed at length in the Commission's Award for Issue 1, the question of whether a given transaction between the parties falls under the duties imposed on both parties pursuant to Section 251(a) or upon Embarq pursuant to Section 251(c) depends upon the nature of the individual transaction. For the reasons noted above, the interconnection agreement should describe the complete range of Section 251 transactions between the parties.

With respect to the issue of the accessibility of the ALI database, two pertinent issues need to be addressed: (1) the creation of an ALI database by Intrado, and (2) the ongoing maintenance of the database. The parties appear to be in agreement as to the mechanics of

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both processes. The fact that Intrado plans on building its own ALI database was confirmed in the testimony of Intrado's witness Spence-Lenss:

That ALI database would have to -- the process that we go through, and I have direct experience in this as a client of Intrado's, is that they would take the existing [Master Street Address Guide] MSAG and they would create a new ALI database. It's almost an audit of the data to ensure accuracy. So we don't take any existing databases. They would create a database because it's a new client, and we feel that we owe them to create a new ALI database for that particular PSAP and Intrado, Inc. that we would be using. We would need to create a new ALI database for a new client (Tr. II, 110).

In addition, both parties observe that Intrado is dependent on Embarq, as well as other providers, for the data needed to maintain an accurate and up-to-date ALI database, and that the provision of this data is incumbent on all carriers, independent of ILEC unbundling obligations (Tr. III, 76; Intrado Reply Br. at 10).

With regard to the provision of the entire ALI database, the Commission agrees with Embarq, that its obligation to unbundle its ALI database under Section 251(c) does not apply in the scenario in which Intrado is the designated provider to a PSAP. While the Commission agrees with Embarq that the Section 251(c)(3) obligation and the FCC's current requirement in 47 C.F.R. §51.321(f) to provide access to Embarq's unbundled 9-1-1 databases applies where Embarq is the designated service provider to the PSAP, based on the record, it does not appear that Intrado is requesting that Embarq supply its ALI database as an unbundled network element.

Where Intrado is the designated service provider to the PSAP, Intrado agrees as stated *supra*, that Embarq and other telephone companies will contribute their subscriber information to Intrado so that it can build its own ALI database, which falls outside of Embarq's Section 251(c) obligations (Intrado Reply Br. at 10 citing Tr. II, 74). Embarq notes this as well, stating that Intrado is "entirely dependent" on Embarq and other providers for this data, but that it is not a Section 251(c) obligation (Embarq Initial Br. at 9; Tr. III, 76-78).

As noted *supra*, the parties appear to be in agreement as to the language under which database access should be provided. In addition, while the parties argued in testimony and on brief as to whether Section 251 (a) or (c) applies to such database access, the parties, in actuality, do not appear to be in significant dispute, agreeing that the obligation to provide service order data to build and/or maintain an ALI database is incumbent on all providers, and lies outside of the ILECs' Section 251(c) obligations (Joint Issues Matrix at 28-36; Intrado Reply Br. at 10 citing Tr. II, 74; Tr. III 76-78). The Commission therefore concludes that the language proposed by Intrado for these issues, including the ongoing provision of subscriber records by Embarq to Intrado, should be included in the resulting interconnection agreement, pursuant to Section 251(a) of the Act.

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**Issue 19: What Embarq will charge Intrado for interconnection and unbundled network element access?**

Intrado states that the rates that it has proposed for Embarq to interconnect to its network are similar to the entrance facility or port charges that Embarq assesses competitors for interconnection to Embarq's network. Therefore, Intrado submits that its proposed rates should be adopted for inclusion in the interconnection agreement. According to Intrado witness Hicks, there is no dispute between the parties with regard to the rates Intrado would pay Embarq for unbundled network elements (Tr. II, 88).

Further, Intrado states that it has provided Embarq with rates for ports on Intrado's network (Intrado Ex. 4, TH-10) and points out that it does not charge for MSAG downloads (Intrado Initial Br. at 59). Intrado opines that, based upon the testimony of Embarq's witness Maples, Embarq does not appear to have an issue with the proposed port rates (Intrado Initial Br. at 59 citing Tr. III, 132). Intrado points out that Embarq's witness Maples agrees that a competitor's provision of E9-1-1 services requires interconnection to the public switched telephone network (Intrado Initial Br. at 9; Tr. III, 74). Intrado explains that its interest in this proceeding is to obtain unbundled network element loops for the purpose of delivering traffic to the PSAP. Further, Intrado asserts that it will "meet the requirements of the law" with regard to its requests for unbundled network elements (Intrado Reply Br. at 9).

Finally, to the extent that Embarq has attempted to raise 9-1-1 funding issues in the context of this arbitration proceeding, Intrado submits that how each party recovers its costs from its end users is not an issue for this case. Intrado states that the question of how 9-1-1 funding mechanisms will apply in a competitive 9-1-1 environment is an issue that is beyond the scope of this proceeding (Intrado Reply Br. at 24).

Embarq argues that its unbundled network element price list should only be applied to unbundled network elements that Intrado is entitled to purchase under the interconnection agreement (Embarq Initial Br. at 24). Embarq states that it does not believe that Section 251(c) of the Act applies when Intrado is the designated provider to a PSAP inasmuch as it is not required to make unbundled network elements available to Intrado under this scenario (Embarq Initial Br. at 8). Embarq further argues that, to the extent that Section 251(c) of the Act is applicable, Embarq is only required to make available existing copper loops, DS1 loops, DS3 loops, DS1 and DS3 dedicated transport, and dark fiber to meet the unbundling obligation consistent with the Act (Embarq Initial Br. at 8; Embarq Reply Br. at 14; Embarq Ex. 5 at 58). Finally, Embarq questions the practicality of Intrado's request for unbundled network elements for the last mile connection to PSAPs. In support of its position, Embarq points out that collocation at its end offices is a requirement for the use of unbundled network elements. Therefore, Embarq submits that the facilities that it



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has offered Intrado pursuant to a commercial agreement are a more practical alternative (Initial Br. at 8, 9; Embarq Ex. 5 at 61).

Embarq additionally argues that all of the services provided by Intrado are not strictly telephone exchange services. Embarq states that while Intrado's provision of wireline 9-1-1 services may be considered as a telecommunication service, Intrado's provision of 9-1-1 terminations to IP-enabled services providers are information services, as are database administration and management services. Embarq argues that Intrado is not entitled to purchase unbundled network elements to either terminate calls from IP-enabled providers to the PSAPs Intrado serves, or to handle IP-based database administration and management services over those unbundled network elements (Embarq Reply Br. at 9). Embarq also argues that under those instances where a PSAP implements IP customer premise equipment, the service Intrado provides to that PSAP is not subject to the Commission's jurisdiction (*Id.* at 9, 10 citing Tr. III at 22). Finally, Embarq argues that "the facilities that are like[ly] to comprise Intrado's Next Generation 911 network are not available as [unbundled network elements] UNEs under current law" (Embarq Reply Br. at 14, 15).

Embarq further goes on to discuss cost recovery under Ohio's funding statutes. Embarq points out that Section 4931.47, Revised Code, details how participating telephone companies are to recover both their nonrecurring and their recurring costs for provision of the services required to operate the 9-1-1 network. Embarq notes that if Intrado was selected as the designated wireline 9-1-1 provider for a county, and that county amended their plan to reflect that selection, Embarq would make the needed changes to its system and would recover their costs in accordance with Section 4931.47, Revised Code (Initial Br. at 25, Embarq Ex. 5 at 122, 123). Embarq notes that Intrado would be similarly entitled to the cost recovery outlined in Ohio statutes. Therefore, Embarq concludes that it should not be required to pay for services that Intrado provides to their PSAP end users (Initial Br. at 25, Embarq Ex. 5 at 123).

#### **ISSUE 19 ARBITRATION AWARD**

Issue 19, as presented in the Petition for Arbitration and in the Joint Issues Matrix, identifies the issue at hand as; "What Embarq will charge Intrado for interconnection and unbundled network element access?" However, the issue as presented in the parties' testimony and briefs does not comport with that description of the issue. Instead, each party has presented proposed pricing for various services that it will make available under the interconnection agreement. There is no identified dispute with regard to the pricing *per se*, as neither party has indicated that it takes issue with the rates proposed by the other. Therefore, the Commission finds that the issue, as presented within the petition as Issue 19, is moot. However, the question of Intrado's request to purchase unbundled network element loops under Section 251(c) of the Act in order to terminate traffic to their PSAP

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customers remains as the only pricing issue that has not been resolved by the Commission elsewhere in this Award.

With regard to Intrado's use of unbundled network loops to deliver traffic to a PSAP, the Commission notes that Embarq's witness stated that "[u]nder current technology, it would probably be appropriate" (Tr. III at 126). Additionally, while Embarq maintains that only certain types of loops are available, and require collocation at Embarq's end offices (Initial Br. at 8, 9), Intrado asserts that it will be requesting unbundled network element loops on a basis consistent with current law (Intrado Reply Br. at 9). The Commission agrees with both parties that, pursuant to Section 251(c) of the Act, unbundled network elements are available subject to certain limitations, and notes that these limitations are found in the FCC's rules (i.e., 47 C.F.R. §§51.301 - 51.321).

The disputed interconnection agreement currently before the Commission for consideration is "based on current technology." Therefore, the Commission need not speculate as to whether some future technology, or future implementation of existing technologies by PSAPs, will change the current interpretation of the Act. While Embarq is correct in its assertion that, under current technologies, some of the traffic that would pass over unbundled network element loops connecting to the PSAPs served by Intrado would otherwise be classified as information services, the Commission notes that under the FCC's rules, "[a] telecommunication carrier that has interconnected or gained access under Section 251(a)(1), Section 251(c)(2), or Section 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well" (47 C.F.R. §51.100[b]).

Therefore, the Commission finds that the request by Intrado to purchase unbundled network element loops under Section 251(c) of the Act for delivery of traffic to PSAPs is appropriate, subject to the limiting provisions contained in 47 C.F.R. §§51.307 - 51.311. The parties are instructed to include in the interconnection agreement, all relevant prices for services to be provided under the agreement, subject to the constraints set forth in Section 2.2 of the interconnection agreement discussed *supra*. With regard to the individual parties' cost recovery from their respective customers, the Commission finds that the manner in which the parties recover their 9-1-1 costs was not presented as an issue for this arbitration, and is unrelated to the issue of what Embarq should charge Intrado for unbundled network elements.

#### IV. OUTSTANDING PROCEDURAL MATTERS

As noted *supra*, AT&T Ohio filed a reply brief in this matter on June 20, 2008. On July 7, 2008, Intrado filed a motion to strike AT&T Ohio's reply brief. In support of its motion, Intrado asserts that the AT&T Ohio's filing of its reply brief violates the Commission's procedural rules, the Commission's arbitration rules, and the Communications Act of 1934. Intrado emphasizes that AT&T Ohio has neither been

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granted "party" status pursuant to Rule 4901:1-1-10(A), O.A.C., nor has it requested such status. To the extent that AT&T Ohio would seek intervention at this late date, Intrado asserts that such an attempt would be untimely in accordance with Rule 4901:1-1-11(E), O.A.C., inasmuch as AT&T Ohio is only now attempting to interject itself in this hearing, more than three weeks after the hearing has occurred. Further, Intrado contends that AT&T Ohio has not demonstrated any extraordinary circumstances that would warrant its intervention in this proceeding and that acceptance of AT&T Ohio's reply brief would prejudice Intrado due to the fact that there is no support for the factual and legal arguments made by AT&T Ohio in either the petition or the corresponding response. Finally, Intrado asserts that acceptance of AT&T Ohio's reply brief would be a violation of both the Act and the Commission's own rules inasmuch as both limit the Commission's consideration of arbitration issues to those raised in the arbitration petition or the corresponding response (Intrado Memorandum Contra at 1, 2 citing 47 U.S.C. 252[b][4] and Rule 4901:1-7-09[B], O.A.C.). To the extent that AT&T Ohio considers its filing to be an *amicus* brief, Intrado highlights the fact that AT&T Ohio failed to seek leave to intervene and file its brief in a manner similar to those scenarios addressed in AT&T Ohio's cited cases (Reply Memorandum at 1, 2).

In support of the filing of its reply brief, AT&T Ohio explains that a number of the issues in this proceeding may be the same or overlap significantly with those in its pending arbitration proceeding with Intrado. AT&T Ohio points out that the instant case is a case of first impression regarding interconnection issues between a competitive emergency services telecommunications carrier and an incumbent local exchange company.

AT&T Ohio describes its filing as an *amicus curiae* brief that is intended to provide an additional perspective on some of the novel issues raised by Intrado in light of the fact that they raise new questions that may also affect other arbitrations. The company asserts that it merely seeks to comment on the issues as they have been framed by the parties and does not seek to add new issues or change any of the existing issues. AT&T Ohio submits that such briefs are not prohibited by the Commission's rules and that the submission of its brief is not inconsistent with the Commission ultimately basing its decision on the actual record before it. AT&T Ohio contends that the Commission has accepted *amicus* briefs in past proceedings, including other Section 252 arbitration proceedings (Memorandum Contra at 2).

Upon a review of the arguments raised with respect to this issue, the Commission finds that the Intrado's motion to strike should be granted and AT&T Ohio's reply brief shall be stricken in its entirety and shall not be considered for the purposes of this proceeding. In reaching this decision, the Commission agrees with Intrado's contention that at a minimum, AT&T Ohio was obligated to seek leave to file its reply brief, alternatively, or should have filed intervention in a timely manner in order to have properly protected its interests. To do otherwise, will result in the submission of late-filed arguments

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that may not provide any additional assistance to the Commission and, at the same time, may prejudice existing parties to this proceeding.

It is, therefore,

ORDERED, That Intrado and Embarq incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

ORDERED, That, within 30 days of this Arbitration Award, Intrado and Embarq shall docket their entire interconnection agreement for review by the Commission, in accordance with the Rule 4901:1-7-09, O.A.C. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file for the Commission to review its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement language and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon Intrado, Embarq, their respective counsel, and all interested persons of record.



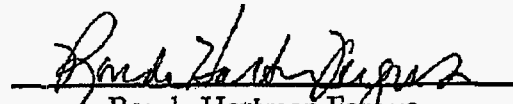
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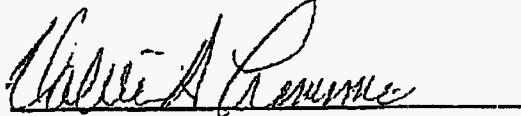
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THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Ronda Hartman Fergus

  
Valerie A. Lemmie

  
Cheryl L. Roberto

JA/JL/CK/MT/LS;geb

Entered in the Journal  
SEP 24 2008



Renee J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado )  
Communications, Inc. for Arbitration )  
Pursuant to Section 252(b) of the ) Case No. 08-537-TP-ARB  
Communications Act of 1934, as Amended, )  
to Establish an Interconnection Agreement )  
with Cincinnati Bell Telephone Company. )

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, posthearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES:

Cahill, Gordon & Reindel, L.L.P. by Ms. Chérie R. Kiser, Suite 950, 1990 K Street, NW, Washington, DC 20006, Ms. Rebecca Ballesterio, 1601 Dry Creek Drive, Longmont, Colorado 80503, on behalf of Intrado Communications, Inc.

Mr. Douglas E. Hart, 441 Vine Street, Suite 4192, Cincinnati, Ohio 45202, on behalf of Cincinnati Bell Telephone Company.

I. BACKGROUND

Under Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),<sup>1</sup> if parties are unable to reach an agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues which remain unresolved despite voluntary negotiation under Section 252(a) of the Act.

On August 22, 2007, the Commission issued its carrier-to-carrier rules in *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD. The rules came into effect on November 30, 2007. Rules 4901:1-7-08 and 4901:1-7-09, Ohio Administrative Code (O.A.C.), govern the negotiation and arbitration of interconnection agreements under 47 U.S.C. 252.<sup>2</sup> Under the rules, an internal arbitration panel is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

<sup>1</sup> The Act is codified at 47 U.S.C. 151 et seq.

<sup>2</sup> The rules supersede comparable provisions set forth in the Commission's Guidelines for Mediation and Arbitration issued in *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Case No. 96-463-TP-UNC (Entry issued July 18, 1996).

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## II. HISTORY OF THE PROCEEDING

On February 5, 2008, the Commission issued certificate number 90-8000 to Intrado Communications, Inc. (Intrado), granting it authority as an emergency services telecommunications carrier.<sup>3</sup>

In the Commission's carrier-to-carrier rules, Rule 4901:1-7-09, O.A.C., specifies that "[a]ny party to the negotiation of an interconnection agreement may, during the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which a local exchange carrier receives a request for negotiation, petition the commission to arbitrate any open issues." By mutual agreement, the parties established April 21, 2008, as the 160<sup>th</sup> day (Arbitration Petition p. 7, footnote 14).

On April 21, 2008, Intrado filed a petition for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Cincinnati Bell Telephone Company (CBT) pursuant to Section 252(b) of the Act. In its petition, Intrado presented six issues for arbitration.

On April 21, 2008, with its petition for arbitration, Intrado filed a motion pro hac vice to allow Chérie Kiser, Angela F. Collins, and Rebecca Ballesterio to practice before the Commission. The attorney examiner granted the motion by entry issued June 30, 2008.

CBT filed a response to Intrado's petition on June 16, 2008. In its response, CBT added three additional issues.

On June 30, 2008, after consultation with counsel, the attorney examiner issued an entry summarizing the schedule for the arbitration proceeding. The parties agreed to the following schedule:

Discovery Completion	July 1, 2008
Arbitration Package	July 22, 2008
Hearing	July 29-30, 2008
Initial Briefs	August 13, 2008
Reply Briefs	August 27, 2008

On July 22, 2008, the parties filed arbitration packages containing exhibits and the written testimony of their witnesses. On the same date, the parties jointly filed a matrix setting forth the issues to be arbitrated and the parties' respective positions.

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<sup>3</sup> *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE (Case No. 07-1199-TP-ACE).

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### III. ISSUES FOR ARBITRATION

In Intrado's arbitration package, Intrado and CBT presented the following issues for arbitration:

- (1) Whether CBT may deny Intrado its rights under Section 251(c) of the Act by claiming that Intrado does not offer telephone exchange service or exchange access service.
- (2) What is the most efficient point of interconnection (POI) for the exchange of E-911 calls to Intrado and CBT public safety answering point (PSAP) customers?
- (3) Should the parties be obligated to utilize the most efficient call setup and termination technologies that reduce points of failure in 911 call delivery?
- (4) Is Intrado required to accept third-party originated 911 service or E-911 service traffic from CBT over trunk groups installed exclusively for the mutual exchange of Intrado and CBT traffic?
- (5) Should the parties adhere to the National Emergency Number Association (NENA) and Federal Communications Commission (FCC) Network Reliability and Interoperability Council (NRIC) recommended standards for trunking?
- (6) What should each party charge the other party for facilities, features, and functions necessary for the mutual exchange of 911 service and E-911 service traffic?
- (7) Should Intrado be required to timely provision interconnection trunks?
- (8) Should the interconnection agreement address non-telecommunications traffic?
- (9) Should other redlined language be resolved?

In the matrix, the parties advised the panel that issues 7, 8, and 9 have been resolved and no longer need to be arbitrated.

**Issue 1**      **Whether CBT may deny Intrado its rights under Section 251(c) of the Act by claiming that Intrado does not offer telephone exchange service or exchange access service.**

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Intrado states that it wants to include language in the interconnection agreement specifying that the provision of competitive emergency telecommunications services has been deemed to be telephone exchange service by the Commission. CBT, on the other hand, does not want to include language that makes any reference to competitive emergency telecommunications services being telephone exchange service. The contested language, as it appears in the issues matrix, reads as follows:

Intrado has been granted authority to provide emergency telecommunications services (which have been deemed to be telephone exchange services by the Commission)...

In its initial brief, Intrado relies on the Commission's Finding and Order issued on February 5, 2008, in Case No. 07-1199-TP-ACE that states that Intrado provides telephone exchange service when it provides 911/E-911 services to Ohio counties and PSAPs (Intrado Br. 24). It is Intrado's belief that the Commission has already decided the issue as a matter of law (Intrado Reply Br. 3). Moreover, the service that the Commission considered in Intrado's certification proceeding is the same service that Intrado intends to provide when it interconnects with CBT. Intrado's opinion is that the Commission's order speaks for itself and the Commission's findings should be reflected in the parties' interconnection agreement (*Id.*). According to Intrado, CBT disagrees that the provision of competitive emergency telecommunications services, by itself, is tantamount to telephone exchange service (Intrado Br. 25).

Intrado states that it desires to include the language to memorialize the Commission's findings and to reduce the potential for future disputes concerning which services are covered by the interconnection agreement. Intrado points out that there are provisions in the interconnection agreement that govern telephone exchange services other than 911/E-911 services. It is Intrado's intent, by including the language, to address all telephone exchange services covered by the interconnection agreement (Intrado Br. 25-26).

It is CBT's argument that its proposed language does not involve any unnecessary characterizations of either Intrado's rights or the Commission's finding and order certifying Intrado as a competitive emergency telecommunications services carrier (CETSC). CBT points out that the Commission stated that Intrado, as a CETSC, would be engaged in the provision of telephone exchange service. However, CBT makes the distinction that the Commission did not expressly say that the service to be provided by Intrado is "telephone exchange service" itself. Clarifying its point, CBT emphasizes that Intrado only proposes to terminate 911 calls initiated by customers of other dial tone providers. Intrado will not provide a service that allows the origination of calls. Only by Intrado combining its service with originating carriers does CBT believe that Intrado is engaged in the provision of telephone exchange service. CBT states that Intrado's service is merely a component of such service. Without an originating dial tone provider, CBT

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doubts whether Intrado's service would qualify as "telephone exchange service" (CBT Initial Br. 4-5).

CBT emphasizes that, taking into consideration the terms of the interconnection agreement, Intrado has not been deprived of any rights under Section 251 of the Act (CBT Initial Br. 3, 5). Intrado's rights would remain the same with or without the proposed language (CBT Initial Br. 5). CBT believes that Intrado is attempting to clarify or expand the Commission's order indirectly. Moreover, CBT contends that this arbitration is not an appropriate venue to clarify the Commission's intent. The issue would be more appropriately argued in another case. Stating that there is no legitimate purpose for including Intrado's proposed language, CBT urges the Commission to reject Intrado's proposal (CBT Initial Br. 5).

In response to CBT's argument, Intrado replies that CBT is attempting to make a distinction where none exists. Intrado rejects CBT's assertion that an originating dial tone provider is necessary for Intrado's 911/E-911 services to qualify as telephone exchange services (Intrado Reply Br. 3-4). Intrado contends that the Commission made no such distinction in its certification order and that none exists under law. To substantiate its position, Intrado points out that the FCC has found that data transmissions and directory assistance providers may constitute telephone exchange service, notwithstanding an absence of dial tone. Citing these examples, Intrado concludes that dial tone is not required for telephone exchange service (Intrado Reply Br. 4-5).

Intrado states that it appears that the impetus behind CBT's language is that it seeks the ability to deny Intrado its interconnection rights in the future (Intrado Reply Br. 3-4). Intrado notes that CBT's witness acknowledges that there are provisions in the interconnection agreement that govern services beyond 911 and E-911 services. By refusing to acknowledge that Intrado offers telephone exchange services, CBT could prevent Intrado from taking full advantage of the interconnection agreement in the future (Intrado Reply Br. 4).

#### ISSUE 1 ARBITRATION AWARD

We agree with CBT that Intrado's proposed language should not be included in the parties' interconnection agreement. The language suggested by Intrado not only goes beyond what is necessary for the interconnection agreement, but it also unnecessarily raises the potential for undetermined consequences.

The finding and order issued in Case No. 07-1199-TP-ACE established Intrado's entitlements as a CETSC. The Commission determined that Intrado is a telephone company pursuant to Section 4905.03, Revised Code, and Rule 4901:1-7-01(S), O.A.C., and a public utility pursuant to Section 4905.02(B), Revised Code. Furthermore, the

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Commission concluded that Intrado is engaged in the provision of telephone exchange service pursuant to Section 251 of the Act. On this basis, the Commission determined that Intrado is entitled to the rights and obligations of telecommunications carriers pursuant to Sections 251 and 252 of the Act. In carving out Intrado's status as a CETSC, the Commission noted that Intrado's exchange activities are limited in scope and do not equate to those of a competitive local exchange carrier (CLEC). In fact, the Commission specifically advised Intrado that if it sought to engage in the provision of additional services that would cause the company to function like a CLEC, Intrado must obtain approval to amend its certificate.<sup>4</sup>

The Commission does not find it either necessary or useful for the interconnection agreement to attempt to summarize the Commission's decision in Case No. 07-1199-TP-ACE. It is sufficient and prudent simply to observe the authority granted to Intrado in Case No. 07-1199-TP-ACE. The Commission is concerned that including language summarizing its decision in this agreement may have unintended consequences, depending on how that summary may in the future be used. However, it is appropriate, in the context of this interconnection agreement to clarify the nature of Intrado's service offering. Therefore, the Commission will require the parties to use the following language, quoting the Commission's decision in Case No. 07-1199-TP-ACE, in Recital C.

INTRADO COMM. has been granted authority to provide competitive emergency telecommunications services within the areas of Ohio where it intends to provide services pursuant to this agreement. The Commission has deemed that "...while Intrado is engaged in the provision of telephone exchange services pursuant to Section 251 of the 1996 Act, its telephone exchange activities are restricted in scope...." Nothing in this agreement shall prevent INTRADO COMM from seeking expanded authority from the Commission to offer other services.

**Issue 2:      What is the most efficient point of interconnection (POI) for the exchange of E-911 calls to Intrado and CBT PSAP customers?**

Intrado explains that, where Intrado serves the designated PSAP in a particular geographic area, Intrado is proposing language requiring CBT to transport its end users' 911 calls, destined for Intrado's PSAP customer, to two geographically diverse points of interconnection on Intrado's network. As proposed by Intrado, these two points of interconnection would be physically located on Intrado's diverse selective routers (Hicks Testimony at 12). Intrado contends that two geographically diverse POIs on Intrado's network, for the delivery of CBT's end-users' 911 traffic, makes good business sense

<sup>4</sup> Case No. 07-1199-TP-ACE, Finding and Order issued February 5, 2008, Finding 15.



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because of the critical nature of the 911 network (Hicks Testimony at 16). Intrado argues that the physical architecture arrangements Intrado seeks are critical to issues of reliability, redundancy, and eliminating points of failure for 911/E-911 services (Hicks Testimony at 18).

Intrado contends that while an arrangement in which the POI is on the ILEC's network may have developed as the common network architecture arrangement for the exchange of plain old telephone service traffic, 911 traffic historically has been handled in a different manner (Hicks Testimony at 12-13). Intrado contends that, although the Act requires the POI to be on the ILEC's network, the Act also says that interconnection should be equal in quality. Intrado claims that its proposal is consistent with the way in which CBT interconnects with other 911 service providers today. Intrado further argues that its proposal is consistent with the requirements CBT imposes on CLECs (Hicks Testimony at 17).

Intrado explains that it plans to deploy at least two selective routers in Ohio. One of those selective routers will be within CBT's local access and transport area (LATA). Additional selective routers will be located at points outside of CBT's LATA (Hicks Testimony at 17). While CBT argues that this would require it to establish a POI outside of its service territory and LATA, Intrado argues that the concept of LATAs does not apply to CBT or in the context of 911 traffic. Intrado contends that this is so because CBT is permitted to, and routinely does, carry interLATA traffic. In addition, Intrado notes that the courts and the FCC have said that any restrictions on carrying interLATA traffic do not apply to 911 (Hicks Testimony at 17). Intrado avers that CBT has made no claim that it is legally prohibited from carrying traffic outside of the LATA (Intrado Initial Br. 12). This, Intrado claims, is because there are no restrictions on CBT's ability to carry 911 service traffic destined for Intrado's network outside the LATA. Accordingly, Intrado argues, Intrado's proposed language should be adopted (Intrado Initial Br. 13).

CBT contends that the issue as put forth by Intrado is not about the most efficient means of interconnecting the two networks. Instead, CBT believes that it is about Intrado's attempt to dictate the design of CBT's network and to impose requirements and costs on CBT that are not permitted by the Act. CBT explains that there are two contract provisions at issue. One is contract language deleted by Intrado that would require the placement of the POI to be within the LATA. The second is proposed language by Intrado that would require two geographically diverse POIs on Intrado's network for delivery of CBT's end users' 911 calls to PSAPs served by Intrado (CBT Initial Br. 6).

CBT argues that, legally, Intrado's demand is baseless (CBT Initial Br. 7). CBT avers that the FCC and Commission rules are clear that, in a Section 251(c) interconnection agreement, the requesting carrier is entitled to select the POI, but it must be within the ILEC's network (47 C.F.R. §51.305, Rule 4901:1-7-06(A)(5) O.A.C.). CBT avers that, since 47



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U.S.C. Section 251(c)(2)(B) requires the POI to be within CBT's network, the POI must therefore be in the LATA because CBT's entire service territory is contained within a single LATA (Tr. II at 9, CBT Initial Br. 7). Additionally, CBT argues that the requirements of Section 251(c)(2) are conjunctive; all must apply simultaneously. Thus, CBT argues, the requirements to provide interconnection that is "equal in quality" and "at any technically feasible point within the (incumbent) carrier's network" cannot be divorced and must be met simultaneously (CBT Reply Br. 3).

CBT avers that each carrier is responsible for facilities on its side of the POI. The type of interconnection Intrado is requesting, that requires CBT to establish points of interconnection at multiple locations on Intrado's network at CBT's cost, does not comport in any respect with the rights and obligations established under Section 251(c) of the Act (CBT Initial Br. 7). CBT argues that Intrado cannot designate a POI that is outside the ILEC's local serving area, or even more extreme, outside the single LATA where the ILEC provides local service (Tr. II at 36, 56). CBT explains that Intrado intends to locate a selective router in Columbus and demands that CBT provide the necessary facilities to deliver CBT's originating 911 traffic from Cincinnati to Intrado's selective router located in Columbus (Tr. I at 152-53). CBT argues that Intrado's proposal defies reason and claims that no ILEC has ever contended that CBT had to interconnect with it outside CBT's own LATA (Tr. II at 33). CBT contends that when it interconnects with an adjacent ILEC serving PSAPs outside CBT's territory, the adjacent ILEC provides connectivity from CBT's service area to that ILEC's selective routers (Tr. II at 74, 84).

CBT contends that Intrado's proposed language will force CBT to deliver traffic to multiple POIs at locations on Intrado's network that Intrado selects. CBT claims that there is nothing in Section 251 of the Act that supports Intrado's request that the Commission require CBT to establish multiple POIs on Intrado's network (CBT Initial Br. 10-11).

#### ISSUE 2 ARBITRATION AWARD

As presented in the record in this proceeding, there are two severable issues to be addressed: how many points of interconnection are required and where any point or points of interconnection will be located.

Consistent with its findings in Case No. 07-1216-TP-ARB<sup>5</sup>, the Commission agrees with CBT that the requirements found in Section 251(c) of the Act are applicable only to interconnection by a requesting carrier within the ILEC's network. The Commission, in Case No. 07-1216-TP-ARB, also found that, when Intrado is the 911/E-911 service provider

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<sup>5</sup> Arbitration Award in Case No. 07-1216-TP-ARB, *In the Matter of the Application of Intrado Communications Inc. for Arbitration Pursuant to Section 252 (b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with United Telephone Company of Ohio and United Telephone Company of Indiana (collectively, "Embarq")* issued September 24, 2008 (Intrado/Embarq Award).

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to the PSAPs in a county, the incumbent becomes one of many service providers, along with CLECs, wireless providers, and VoIP providers. Similarly, these providers must request interconnection with Intrado in order to terminate their 911 traffic to a PSAP served by Intrado. The reasoning behind those two findings in Case No. 07-1216-TP-ARB applies equally in this proceeding. Additionally, the Commission notes that there is no requirement under any part of Section 251 of the Act that the requesting carrier establish more than one point of interconnection.

In addition, even if this arrangement were subject to Section 251(c), CBT's selective routers are not as geographically diverse as Intrado states that its selective routers will be. Thus, to compel CBT to provision trunking to geographically diverse points of interconnection on Intrado's network would cause CBT to modify its network to provide interconnection that is superior in quality to that which it provides "to itself or any subsidiary, affiliate or any other party." While the Act requires the provision of interconnection "at least equal in quality," superior interconnection quality is not required. In addition, Intrado's proposal would require CBT to construct facilities that would not otherwise be deployed for its own use. Absent compensation from the carrier requesting the construction, this is neither required under the Act nor equitable [*In the Matter of the Petition of Worldcom, 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., and for Expedited Arbitration, FCC Memorandum Opinion and Order, CC Docket No. 00-218, 17 FCC Rcd. 27,039, F.C.C., July 17, 2002, at 155; see also Local Competition Order, 11 FCC Rcd at 15614-15, at 225 (henceforth, Local Competition Order)*].

Although the Commission acknowledges that there may be advantages, from both a technical and a business standpoint, to having multiple points of interconnection, each of the parties must weigh whatever advantage that arrangement provides them against other mitigating factors, such as their costs. For these reasons, the Commission will not require CBT, at this time, to establish multiple points of interconnection on Intrado's network where Intrado is the 911/E-911 network provider to the PSAP, though the parties are free to negotiate additional point(s) as set forth below.

Because Intrado has indicated its intention to establish one selective router within CBT's LATA, the question of whether the point of interconnection should be within or outside of CBT's service territory would appear to be moot. However, plans can and do change. In Case No. 07-1216-TP-ARB, the Commission clarified that Embarq was only responsible for delivering its traffic to a point of interconnection located within Embarq's service territory. The Commission similarly directs the parties to incorporate CBT's proposed language requiring the single point of interconnection to be within the LATA. Again, the Commission's ruling does not preclude the parties from otherwise mutually

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agreeing to an additional point or points of interconnection at any technically feasible point inside or outside of CBT's territory.

To the extent that, at some future point in time, Intrado's certification allows it to be the requesting carrier for the purpose of terminating 911 traffic on CBT's network, or for the mutual exchange of traffic as a CLEC, the Commission concurs with CBT that requirements under Section 251(c)(2) must all simultaneously be met.

**Issue 3      Should the parties be obligated to utilize the most efficient call setup and termination technologies that reduce points of failure in 911 call delivery?**

With regard to the disputed contract language for this issue, the primary disagreement is whether CBT, when Intrado is the E-911 service provider to the local PSAP, should be required to provision separate and identifiable trunk groups from each CBT end office to Intrado's selective router. This is referred to as direct end office trunking. Secondly, in a competitive 911 environment, where not all PSAPs in a service area may be served by the same 911 provider, the use of direct end office trunking requires the end office, in many instances, to determine which 911 provider should terminate a given 911 call. Intrado proposes that a methodology, which it refers to as line attribute routing, be used to enable the end office to make that determination (Hicks Testimony at 19).

Intrado claims that direct end office trunking and its requisite line attribute routing is technically feasible, and that similar processes, also known to CBT as "class marking," are in use today for the routing of long distance calls or mapping wireless calls to tax codes (Hicks Testimony at 26, Melcher Testimony at 11). Intrado explains that line attribute routing involves setting the appropriate line attributes in the central office line database for each line. The line attributes are set during the service provision and automated recent line change processes. The function of the line attributes is to direct 911/E-911 calls to the appropriate trunk and, ultimately, to the appropriate selective router. These calls would then be delivered over direct trunks from the CBT central office to the appropriate selective router (Hicks Testimony at 14).

In contrast to Intrado's proposal, CBT proposes using its existing end office trunks to connect to its existing selective router. CBT's selective router would handle the routing of calls to either a PSAP served by CBT or, over an inter-selective router trunk, to Intrado's selective router to be directed to a PSAP served by Intrado, CBT's selective router functioning in effect as a tandem switch (Joint Issue Matrix at 3, CBT Ex. 8 at 15, Peddicord Testimony at 16).

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Intrado contends that line attribute routing enables trunk route selection and transport configurations at the originating office level, thereby eliminating the need to introduce an additional and unnecessary stage of switching at CBT's selective router. Intrado argues that eliminating this unnecessary stage of switching via CBT's existing selective routers reduces the number of possible points of failure in the 911 call path. Intrado claims its proposal improves network reliability (Hicks Testimony at 19). Furthermore, Intrado argues, by retaining CBT's selective router in the call path, PSAPs motivated to choose a competitive provider to obtain improved service quality or enhanced control over originating office trunking are relegated to what they may perceive as sub-quality service and the limitations of the legacy 911 network provided by CBT. Intrado avers that, in order to deny Intrado its proposed manner of interconnection, CBT is required by the Local Competition Order at ¶¶198, 203 to demonstrate, by clear and convincing evidence, that utilizing direct trunks and line attribute routing is either not technically feasible or that specific and significant adverse impacts would result from Intrado's requested interconnection agreement. Intrado states that CBT has not met this burden (Intrado Initial Br. 14).

Intrado agrees with CBT that class marking is an inferior form of 911/E-911 call routing because it utilizes taxing authority data that are not validated to the Master Street and Address Guide (MSAG). Intrado proclaims that its proposed line attribute routing, while using similar line attributes in the originating end office as class marking, is a reliable method of performing accurate call routing to the appropriate selective router since the line attribute values are based on the MSAG-validated address of the caller (Hicks Testimony at 21-22).

Intrado recognizes that CBT may incur some initial costs to enable line attribute routing and direct trunking. Such investments, Intrado claims, will be offset by the savings that CBT will realize from reduced switch maintenance and repair costs. CBT would also avoid the need to correct downstream services address errors detected by Intrado's ALI database management process (Hicks Testimony at 25-26).

Intrado contends that CBT imposes similar direct trunking requirements on CLECs when CBT is the designated E-911 network service provider to the PSAP (Intrado Petition for Arbitration, Attachment 4 at Section s.8.2(a)). Intrado claims that it seeks the same arrangement with CBT (Tr. I at 176-177).

Intrado avers that CBT ignores the main reason Intrado supports the use of line attribute routing over direct trunks. According to Intrado, the main reason for line attribute routing is to ensure that critical 911 calls receive the highest quality of service when they are exchanged between the parties' networks (Tr. I at 206-07). Intrado contends that CBT's claims that line attribute routing is unnecessary is disingenuous because CBT admits that it currently utilizes the same types of direct trunking arrangements within its

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own network (Intrado Reply Br. at 11-12, citing CBT Br. at 12, 14). Intrado declares that CBT has not demonstrated any incremental costs for the establishment of line attribute routing (Tr. I at 200).

CBT contends that Intrado is seeking to insert itself into how CBT handles 911 calls originating on its network before the calls are delivered to Intrado. To CBT, that is unprecedented under a Section 251 interconnection agreement (Peddicord Testimony at 15). CBT argues that only CBT can determine the most efficient means to handle 911 calls within its network. CBT further argues that Intrado's proposal is unnecessary because CBT's selective router performs the call sorting function for all CBT subscribers and delivers all necessary call detail information to PSAPs or interconnected carriers (Peddicord Testimony at 14). CBT claims that no interconnecting carrier dictates how another carrier operates its network on its side of the POI so long as calls are handed off using a standard protocol that allows the receiving carrier to terminate the call properly (Peddicord Testimony at 15).

CBT contends that the way it proposes to deliver 911 calls to Intrado from CBT's selective routers is how CBT exchanges 911/E-911 traffic with other ILECs today. CBT directs all 911 traffic from its end offices to its selective router. The selective router, in turn, determines the ultimate destination of the call. CBT explains that if the call needs to be terminated to a PSAP serviced by another ILEC, CBT's selective router delivers that call over trunks to the other ILEC's selective router, which then delivers the call over its network to the PSAP it serves. CBT argues that there is no reason to treat traffic to a PSAP that may be served by Intrado any differently than traffic to a PSAP served by an adjacent ILEC. In either case, CBT argues, calls are efficiently routed through CBT's selective routers to the other carrier. There is no need for class marking or line attribute routing as suggested by Intrado (Peddicord Testimony at 16).

CBT points out that its standard interconnection agreement language, initially proposed by a CLEC (MCI Metro), requires CLECs to establish direct end office trunking for the delivery of its end users' 911 traffic to CBT's selective router. Because CBT had no objections to that arrangement if the CLEC or CLECs were willing to do it, there was no reason for CBT to change MCI Metro's proposal for direct trunks to CBT's selective routers. CBT states that over the past decade, involving over 50 interconnection agreements, no CLEC has ever raised an issue with CBT's standard language (Peddicord Testimony at 17). CBT notes that it would have no objection to a CLEC or other interconnecting carrier delivering 911/E-911 traffic to it from a tandem switch or utilizing its own selective router to deliver traffic to CBT's network (Peddicord Testimony at 18).

CBT explains that as a practical matter the architecture of CLEC networks is usually quite different from CBT's. CBT states that it is not aware of a CLEC that has multiple end office switches. Each CLEC that interconnects with CBT generally utilizes a single switch

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serving CBT's entire territory. Therefore, CBT claims it is a non-issue, and CBT has never required a CLEC to have more than one set of 911 interconnection trunks. As CBT points out, its network, on the other hand, consists of numerous end office switches that are all connected to a central tandem switch. CBT argues that installing direct end office trunks from each end office switch to another carrier's network is a vastly larger and more complex undertaking than installing a single set of interconnection trunks from the tandem switch. CBT avers that it would not insist on Intrado providing direct end office trunks to deliver its traffic to CBT (Peddicord Direct at 18).

Setting aside whether Intrado has a legal right to demand line attribute routing and direct trunks, CBT contends Intrado has not adequately demonstrated that it is either necessary or cost effective to do so (CBT Initial Br. 14). CBT contends that while Intrado relies on snippets of language from NENA guidelines regarding the efficacy of certain network arrangements, Intrado has not produced a single NENA reference describing the use of line attribute routing. Nor has Intrado produced a NENA guideline recommending or mandating line attribute routing (Tr. I at 210). In contrast, CBT contends that it has produced several NENA technical documents describing the interconnection and interoperation of multiple selective routers consistent with CBT's proposal (Tr. I at 218-23, CBT Exhibits 4 and 5).

CBT argues that Intrado's fears that CBT's use of its selective router to route 911 calls to Intrado will introduce an additional potential point of failure are not supported in the record. (CBT Initial Br. 15). CBT contends that, according to NENA documentation, as well as CBT's experience, such failures are rare (Tr. II at 81). CBT avers that even NENA recognizes that routing errors occur on a very small percentage of calls, so it recommends against enormous efforts to solve a small problem (Tr. I at 213-217, CBT Ex. 3). CBT contends that NENA recommends simple solutions over complex ones, as well as the application of cost-benefit analysis and common sense before implementing new systems (Tr. I at 213-14).

CBT contends that Intrado's position on introducing additional points of failure is also very inconsistent with Intrado's own network proposals. CBT highlights that Intrado touts the advanced and flexible features of its network by claiming that a national wireless carrier could deliver its Cincinnati 911 traffic to Intrado in Florida. CBT argues, however, that Intrado does not seem to care how many points of failure a wireless carrier might introduce in its network by hauling its 911 traffic from Cincinnati for delivery in Florida (Tr. I at 229-31). Nor does Intrado restrict CLECs, wireless, or VoIP carriers from using third parties to aggregate their 911 traffic before delivering it to Intrado's network, according to CBT (Tr. I at 231). CBT avers that NENA documents, relied upon by Intrado to support network redundancy, show 911 call paths potentially going through three switches. CBT further contends that Intrado recognizes that the greater distance telephone traffic travels, the more opportunities for failure are created (Tr. I at 171-73). Nevertheless,

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Intrado still demands that CBT haul its 911/E-911 traffic to Columbus for delivery to Intrado (Tr. I at 152-53).

CBT also argues that Intrado knows that CBT's network is not presently capable of performing "line attribute routing" as Intrado describes the term (Tr. I at 31-32). According to CBT, Intrado's use of 1+ dialing as an analogy for how line attribute routing could be implemented by CBT is inappropriate. Such an analogy, argues CBT, ignores the substantial work that was needed to implement 1+ dialing. Moreover, CBT points out, the analogy fails to consider that the costs of equal access were borne by the interexchange carriers for whose benefit it was implemented (Tr. I at 28-31). CBT notes that Intrado admits there would be costs to implement line attribute routing but that Intrado does not know how much those costs would be (Tr. I at 37-38). CBT argues that even though these costs would only be incurred because of Intrado's insistence upon line attribute routing and direct trunking, Intrado denies any responsibility for them (Tr. I at 298). CBT rejects Intrado's unsupported assertion that CBT would save switch maintenance costs if it implemented line attribute routing (Hicks Testimony at 26). CBT contends that it would incur more costs than it does today because line attribute routing would not eliminate CBT's need for a selective router (Tr. I at 200-01, Tr. II at 28). Intrado's suggestion would only add the cost of line attribute routing (Tr. II at 80). CBT contends that its solution is more cost effective because it only requires CBT to redirect trunks from the PSAPs it formerly served to Intrado's selective router (Tr. I at 205-06).

CBT avers that the Local Competition Order (at ¶¶199, 200, 209, 225, 552) requires the requesting carrier to be responsible for the cost of an expensive form of interconnection that it requests. In accordance with this principle, if the Commission were to require line attribute routing and direct trunking, Intrado would be responsible for CBT's costs because Intrado is the cost causer (CBT Initial Br. 21). CBT points out that Intrado has already agreed to the bona fide request procedure in Schedule 2.2, which also obligates it to pay the cost of special requests. CBT argues that Intrado cannot make wholesale demands that CBT change its network and operating practices without compensating CBT for its costs to do so. If Intrado is unwilling to pay the costs, CBT argues, then its demands do not have to be honored (CBT Reply Br. 12).

### ISSUE 3 ARBITRATION AWARD

Although the Commission finds that direct end office trunking used in conjunction with class marking/line attribute routing is technically feasible, the Commission notes that the requesting carrier is generally entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection. Further, consistent with the FCC's findings in *In the Matter of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Systems, Request of King County*, 17 FCC Rcd 14789, ¶1 (2002), the Commission finds that the point of



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interconnection to the wireline E-911 network is the selective router of the E-911 network provider. Each party bears the cost of getting to the point of interconnection. In both Case No. 07-1216-TP-ARB and in the current proceeding, the Commission observes that CBT is the requesting carrier when Intrado is the 911/E-911 service provider to the PSAP. In that situation, CBT will seek interconnection to send its customers' 911 calls to Intrado-served PSAPs. Therefore, the FCC requirements for interconnection, which originated in Section 251 (c) of the Act, and are also found in the paragraphs of the FCC's Local Competition Order, cited by Intrado, do not apply here.

Finally, considering the conflicting evidence concerning the reliability and expense of implementing such an arrangement, the Commission declines to order ILECs to use direct end office trunking to route their end users' 911 calls to Intrado's selective router when Intrado is the E-911 service provider. There is no FCC requirement that a requesting local exchange carrier use direct end office trunking to the selective router of the E-911 network provider. Moreover, given the lack of new evidence in this record, the Commission shall adhere to the precedent established in Case No. 07-1216-TP-ARB. Therefore, CBT is not required to utilize direct end office trunking, in conjunction with class marking/line attribute routing, to deliver its end users' 911 calls to Intrado where Intrado is the E-911 service provider to the PSAP. The Commission, therefore, recommends the adoption of CBT's proposed contract language in the Interconnection Agreement.

**Issue 4      Is Intrado required to accept third-party originated 911 service or E-911 service traffic from CBT over trunk groups installed exclusively for the mutual exchange of Intrado and CBT traffic?**

Intrado does not believe the parties' interconnection agreement should address the exchange of third-party 911 traffic and has proposed language that would prohibit either party from passing 911 transit traffic. Intrado explains that transit traffic is traffic that originates with one carrier, transits CBT's network, and terminates with another carrier. Neither the calling party nor the called party is CBT's customer (Hicks Testimony at 32). Intrado argues that allowing 911 service traffic to be exchanged via a transit service arrangement affects quality of service, network reliability, and network efficiency (Hicks Testimony at 30). Intrado argues that it is common for different call types, such as wireless, to be routed over separate PSAP trunks to ensure the incident-driving nature of wireless does not saturate all PSAP call takers at once over a common trunk group (Hicks Testimony at 31). Intrado contends that even though CBT claims that all traffic coming to Intrado will have identifying information (Fite Testimony at 12) that does not provide Ohio PSAPs with the ability to discern 911 calls by type, which removes or severely limits their call management control options (Hicks Testimony at 31, Tr. I at 116).



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Intrado avers that direct trunking is the best method of delivering 911 service traffic to the designated 911 service provider (Hicks Testimony at 18, Fite Testimony at 5) and points out that CBT requires CLECs to deliver their 911 service traffic to CBT's selective router over direct, dedicated trunking [Intrado Petition for Arbitration Attachment 4 at Section 3.8.2(a)]. Intrado avers that subjecting Intrado to trunking arrangements different from those CBT utilizes for itself and other carriers would violate CBT's requirement to provide interconnection that is equal in quality under Section 251(c)(2)(C) (Tr. I at 145). Intrado contends that it is not asking CBT to block third-party originated 911 calls. Instead, Intrado seeks to ensure that any traffic it will receive from a third party via its interconnection relationship with CBT is provisioned properly using a separate trunk group. In addition, Intrado wants to make sure that such traffic is subject to a separate agreement between Intrado and the third-party provider (Tr. I at 114). Such arrangements, Intrado avers, are required by the Commission's rules (Rule 4901:1-7-13(F), O.A.C.) and CBT's own template agreement language [Intrado Petition for Arbitration at Attachment 1 Section 8.3(a)]. Intrado argues that CBT is under no obligation, pursuant to Rule 4901:1-7-13, O.A.C., to carry transit traffic if the originating and terminating carriers do not have an arrangement in place.

Intrado avers that third-party carriers will have a myriad of options to interconnect with Intrado and may choose to connect directly with Intrado or indirectly connect via CBT's transit service. In either case, Intrado contends that Intrado and the third-party carrier will be required to negotiate appropriate interconnection arrangements to ensure 911 service traffic is handled in the most efficient and reliable manner (Tr. I at 227). Intrado claims that it is not refusing to interconnect or enter into compensation arrangements with third parties as CBT contends. Intrado claims that, in fact, entering into direct arrangements with third parties is Intrado's preferred method.

CBT contends that the contract language proposed by Intrado states that it does not have to terminate any traffic not originated by CBT (Tr. II, at 39, 51). CBT did not accept Intrado's proposed language because Intrado, according to CBT, does not have the right to refuse to interconnect indirectly with other carriers and CBT does not have the right under the Commission's rules to refuse to handle transit traffic if CBT and the end carrier agree on compensation for those calls. CBT argues it cannot put itself in the position of having to decide whether to block 911 calls that are delivered to it by other carriers (Tr. II, p 49). If a third-party originated 911 call is destined to a PSAP serviced by Intrado, CBT claims it would direct the call to Intrado. CBT avers that Intrado's proposed language would prohibit that action by CBT, so it is unacceptable to CBT and, for obvious safety reasons, ought to be unacceptable to the Commission (CBT Initial Br. 23).

CBT points out that it currently provides E-911 service to all of the PSAPs in its service area, so all other carriers serving that area, be they wireless, CLECs, or interconnected VoIP, deliver all their 911 calls to CBT for completion. Therefore, CBT

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contends, if Intrado enters the market as the 911 provider for one PSAP, other carriers will have to figure out how to get their calls to Intrado for completion. CBT further points out that Intrado does not presently have interconnection agreements with any carrier in CBT's service territory (Tr. I at 107). CBT contends that although Intrado wishes to require all other carriers serving that area to interconnect directly with Intrado, it is largely up to that other carrier whether it wants to interconnect directly or indirectly as permitted by the Act and the Commission's rules (CBT Initial Br. 24).

CBT contends that Intrado cannot legally refuse to interconnect with third-party carriers through CBT. CBT argues that under Section 251 of the Act, only an ILEC has an obligation to interconnect directly with a CLEC pursuant to 47 U.S.C. §251(c)(2). CBT avers that CLECs may interconnect with one another either directly or indirectly pursuant to 47 U.S.C. §251(a)(1) and the Local Competition Order, ¶997. While CBT realizes Intrado is not a CLEC, it contends that it certainly cannot have any greater right to require direct interconnection under Section 251 than a CLEC would have (CBT Initial Br. 24).

CBT argues that Intrado cannot refuse to negotiate a compensation arrangement with another telephone company, even if that company wants to interconnect indirectly with Intrado pursuant to the Commission rules (Rules 4901:1-7-02(B) and 4901:1-7-13(F), O.A.C. CBT also contends that under the Commission's rules, so long as a compensation arrangement exists between the carriers, an ILEC may not refuse to act as the transit carrier consistent with the Commission's rule (Rule 4901:1-7-13(C), O.A.C.).

#### ISSUE 4 ARBITRATION AWARD

To decide this issue, we shall rely upon Rule 4901:1-7-13(C), O.A.C., which reads as follows:

An intermediate telephone company may not refuse to carry transit traffic if:

- (1) It is appropriately compensated for the use of its network facilities necessary to carry transit traffic.
- (2) The originating and terminating telephone companies have a compensation agreement in place with the intermediate telephone company that sets the rates, terms and conditions for the compensation of such transit traffic.

The Commission agrees with CBT that the Commission's rules clearly require CBT to carry transit traffic if certain requirements are met. The Commission also notes that third-party carriers originating traffic destined to an Intrado PSAP customer are also obligated to establish a transport and termination agreement between the carrier and Intrado. In the Award for Issue 3, the Commission concluded that CBT, as the originating carrier, is

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responsible for getting its end users' 911 calls to the POI on Intrado's network. Intrado's proposed language would appear to be contrary to this finding because it would prevent CLECs from using CBT to transit their end users' 911 calls to Intrado. While Intrado argues it does not believe the parties' interconnection agreement should address the exchange of third-party 911 traffic, it has done precisely that by inserting its proposed language banning it. As the Commission has found that CBT is required to carry transit third-party 911 traffic and Intrado is obligated to terminate that traffic given certain criteria are met, the Commission finds that Intrado's proposed language should not be included in the interconnection agreement. As noted above, third-party carriers originating traffic destined to an Intrado PSAP customer are also obligated to establish a transport and termination agreement with Intrado, whether the network connection is direct to Intrado or indirect via CBT (or some other carrier). Furthermore, there is nothing preventing a third-party carrier from seeking direct interconnection with Intrado pursuant to a mutually acceptable arrangement.

**Issue 5      Should the parties adhere to National Emergency Number Association (NENA) and National Reliability and Interoperability Council (NRIC) recommended standards for trunking?**

Intrado is proposing language stating that both parties should comply with NENA and NRIC recommendations for trunking in their interconnected networks. Intrado claims that it actively participated in industry bodies to ensure that it remains at the forefront of 911 solutions in the marketplace and that its Intelligent Emergency Network has been designed to capture and comply with NENA guidelines for next generation IP-based solutions (Hicks Testimony at 94). While Intrado acknowledges that NENA is not a standards setting body, it claims that NENA does provide valuable guidance to standard setting bodies, such as Association of Public Safety Communication Officials (APCO) and Association for Telecommunications Industry Solutions (ATIS) (*Id.*).

Intrado points out that CBT claims that its network is compliant with industry recommendations (Intrado Br. at 27, citing Tr. II at 78). Both parties, Intrado claims, should be required to engineer their networks consistent with the recommendations and guidelines established by the 911 industry (Tr. I at 267).

CBT avers that NENA and NRIC guidelines and recommendations are not mandatory and each carrier should retain control over the engineering details of its own network (Fite Testimony at 11). CBT points out that even Intrado acknowledges that NENA's own documents indicate that compliance is voluntary and that its recommendations are subject to cost benefit analysis (Tr. I at 213-214). CBT further argues that NENA is not a standards setting organization and does not recommend single solutions to issues. Instead, it often recognizes a variety of possible actions, each having their own pluses and minuses (Tr. I at 39, 48). CBT claims that Intrado's proposed

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language is vague and could require CBT to comply with various NENA and NRIC guidelines and standards other than those applicable to the specific issue that is Intrado's true concern. If trunking arrangements are Intrado's true concern, then CBT contends that Intrado needs to justify the specific trunking arrangement that it desires (CBT Initial Br. 26). CBT further avers that its proposed means of handling 911 traffic is consistent with NENA publications on the interconnection of 911 networks (NENA Technical Reference NENA 03-003, CBT Exhibit 5).

CBT argues that given the almost limitless situations that individual companies may face in addressing particular engineering problems and the particular costs and benefits of a given situation, it would be meaningless to require the adoption of NENA standards. CBT points out that NENA does not recommend single solutions but rather a variety of possible actions. CBT avers that Intrado's proposed language would place CBT in the position where Intrado can second guess any engineering solution CBT implements within its own network. CBT concludes that the Commission should, therefore, adopt CBT's position on Issue 5 (CBT Initial Br. 25-26).

#### ISSUE 5 ARBITRATION AWARD

Given that NENA and NRIC guidelines and recommendations are not FCC requirements, the lack of specificity in Intrado's proposed language in this agreement, NENA's own recognition of the need for cost-benefit analyses, and the Commission's previous determination that CBT is responsible for the cost of delivering its end users' 911 calls to Intrado's selective router where Intrado is the 911 service provider to the PSAP, the Commission finds that a specific requirement to adhere to NENA and NRIC guidelines should not be incorporated into the interconnection agreement at this time.

**Issue 6      What should each party charge the other party for facilities, features and functions necessary for the mutual exchange of 911 Service and E-911 Service Traffic?**

Issue six concerns the pricing schedule in Section 3.8.7.1 of the parties' interconnection agreement. Intrado states that it, like CBT, seeks to impose reasonable port charges on CBT for connections to Intrado's network. Intrado further states that CBT should not be allowed to recover its costs while denying Intrado the opportunity to do the same (Joint Issues Matrix Page 8). Intrado states that it is entitled to charge for trunk ports and other incumbent companies do the same (Reply Brief at 20). Intrado states that CBT charges monthly per-line fees for 911 and E-911 services and states that Intrado seeks to impose reasonable port termination charges for CBT's connection to Intrado's network (Petition at 31-32, Hicks Testimony at 36). Intrado also states that CBT's proposed contract language at Section 3.8.2 indicates that it charges for trunking to its selective router, and



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notes that it is possible that this trunking charge includes port charges (Hicks Testimony at 36-37).

Intrado states that its proposed charges are appropriate and consistent with industry practice and cites interconnection agreements filed by Embarq and AT&T to support this statement (Intrado Reply Br. 21). Intrado additionally points out that the FCC has determined that "interconnection" refers to the physical linking of two networks to provide for the exchange of traffic and is distinguished from transport and termination of said traffic, a finding that was upheld on appeal (Intrado Initial Br. 22). Finally, Intrado states that CBT is incorrect in stating that trunk port charges are appropriately included in reciprocal compensation charges, noting that the FCC has determined that the interconnection of networks is distinct from transport and termination of calls and that this Commission has previously determined that "the costs will only include terminating usage" (Intrado Reply Br. 21).

CBT points out that it does not charge for interconnection trunk ports (CBT Initial Br. 27, Joint Issues Matrix at 8, CBT Reply Br. 18) and opines that Intrado does not have the right to charge for interconnection trunk ports (Joint Issues Matrix at 8, CBT Reply Br. 18). CBT points out that it does not require any CLEC to pay for interconnection trunk ports, nor does any CLEC require CBT to pay for such ports (CBT Initial Br. 28, Tr. II at 54-55, CBT Reply Br. 18). CBT also opines that Intrado seems to misunderstand CBT's pricing schedule as referenced in section 3.8.2 of the contract. CBT notes that the monthly 911/E-911 charge appearing in the pricing schedule is the per-line end user 911 charge. Other carriers are required to collect this charge from their end-use customers and remit it to CBT, where CBT is the carrier providing service to the relevant PSAP (CBT Response to Petition at Page 20). Additionally, CBT notes that Intrado's witness was unable to indicate how CBT recovers its costs (CBT Initial Br. 27, Tr. I at 236-238).

CBT additionally opines that the port termination charges that Intrado seeks to impose on CBT are not allowed under Section 251 of the Act. CBT states that, under the FCC's interconnection rules, a CLEC is to charge the ILEC the same rates for interconnection that the ILEC charges, unless it has a cost study supporting a higher rate (Petticord Testimony at 24, CBT Initial Br. 28, referring to Rule 4901:1-7-12(D)(2)(b) O.A.C.). Additionally, CBT states that the cost of interconnection trunk ports is to be covered by CBT's reciprocal compensation rates (CBT Initial Br. 28, Tr. II at 13-14, CBT Reply Br. 19). CBT also indicates that, since the reciprocal compensation for 911 traffic in this interconnection agreement is a "bill and keep" arrangement, each carrier has implicitly agreed to absorb the cost of trunk ports on its network that are required for interconnection (CBT Response to Petition at Page 21, Petticord Testimony at 25, CBT Initial Br. 28, referring to Section 4.7.4 of the interconnection agreement). CBT notes that in its TELRIC proceeding it included the cost of trunk ports as one of the cost elements to be recovered in the per minute rate. The cost of trunk ports is not being charged because of

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the bill and keep arrangement (Petticord Testimony at 25). Further, CBT indicates that, under its proposed language, it is not charging Intrado separately for trunk ports (Petticord Testimony at 25, CBT Reply Br. 19). Finally, CBT states that, if the Commission finds that Intrado is entitled to compensation for interconnection trunk ports, then it should find that CBT is similarly eligible to impose such charges (CBT Initial Br. 28, CBT Reply Br. 19).

#### ISSUE 6 ARBITRATION AWARD

CBT believes that it is not proper for Intrado to charge it for interconnection trunk ports, primarily because CBT believes the Commission approved CBT's TELRIC transport and termination rates as including the cost of interconnection trunk ports. Since the carriers have agreed not to employ reciprocal compensation for the transport and termination for 911 calls, CBT argues that a separate interconnection port charge, as proposed by Intrado, should not be allowed. The Commission, however, agrees with Intrado that reciprocal compensation for transport and termination of traffic is distinguishable from the compensation for physical interconnection. The Commission's Rule 4901:1-7-12, O.A.C., discusses the compensation for the transport and termination of traffic. The rule defines transport as "...the transmission, and any necessary tandem switching of telecommunications traffic..." and termination as "...the switching of the telecommunications traffic at the terminating telephone company's end office switch...and delivery of such traffic to the called party's premises." Inherent in these definitions is that there be traffic to transport and terminate in order for there to be compensation. Interconnection, on the other hand, is defined in Rule 4901:1-7-06, O.A.C., as the facilities and equipment physically linking two networks for the mutual exchange of traffic. Interconnection, and compensation for interconnection, may be required whether there is traffic or not. As proposed by Intrado, the trunk port would be the location of the point of interconnection on Intrado's network. As such, Intrado's trunk port is defined as an interconnection facility rather than a transport and termination facility. Consequently, the requirement that Intrado's rates be symmetrical to CBT's (i.e., the rates must be equal unless the non-ILEC provides a cost study) is not applicable here.

The question remains whether the rates for trunk-side ports proposed by Intrado are reasonable. Unfortunately, there is little in the record from either party that makes that answer apparent. CBT's assertion that the costs of interconnection trunk ports are included in its reciprocal compensation rates does not appear to be relevant to the question as to what Intrado can charge for its interconnection facility. CBT has otherwise not proposed a rate for trunk side interconnection ports. The Commission at this time only has in the record Intrado's assertion that its rates for trunk side interconnection ports are reasonable, though it does note that the proposed rates are not beyond the range of other companies. Based upon this somewhat limited record, the Commission concludes that Intrado's proposed rates are not unreasonable. The rates should be included in the

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interconnection agreement and applicable only on Intrado's network where CBT delivers its traffic to Intrado consistent with the Commission's award for Issue 2.

Additionally, the Commission has previously determined that interconnection for the delivery of an ILEC customer's 911 call to a PSAP served by Intrado falls under the general requirement to interconnect imposed on carriers by Section 251(a), rather than the ILEC-specific requirements of Section 251(c).<sup>6</sup> Under Section 251(a) of the Act, the terms, conditions and pricing of trunk side ports (the only services whose prices are in dispute) are open to negotiation between the parties. However, because CBT has not proposed rates that would be applicable to its interconnection trunk side ports under Section 251(a), the only rates appearing in the record are those of Intrado. Because there is nothing in the record to indicate that these rates are unreasonable and CBT has indicated a desire for reciprocity with regard to charging for trunk side ports, the Commission finds that Intrado's rates for trunk side ports are appropriate for both parties to the extent that the interconnection trunk ports are purchased under Section 251(a). Therefore, the parties are instructed to charge each other the same rate for each trunk side port purchased under Section 251(a), based on the rate proposed by Intrado.

It should be noted that if Intrado obtains a certification that would allow it to provide dial-tone services to end-use customers, interconnection, call transport, and termination, including access to CBT's 911 Selective Router where needed to terminate an Intrado end-use customer's call to the appropriate PSAP, would be under the auspices of Section 251(c). Whatever services or UNEs Intrado purchases from CBT in order to provide dial-tone services to Intrado's end-use customers would be under the auspices of Section 251(c) and shall be priced consistent with the rules in force implementing Section 251(c) at that time.

It is, therefore,

ORDERED, That Intrado and CBT incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

ORDERED, That, within 30 days of this Arbitration Award, Intrado and CBT docket their entire interconnection agreement for review by the Commission, in accordance with Rule 4901:1-7-09(G)(5), O.A.C. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file for Commission

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<sup>6</sup> See, *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq*, Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. 07-1216-TP-ARB (Arbitration Award issued September 24, 2008).

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review its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

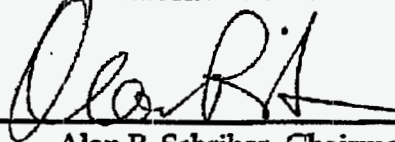
ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

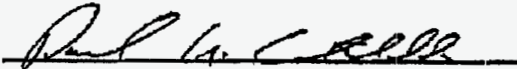
ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon Intrado, CBT, their counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

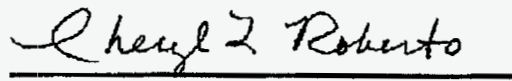


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Entered in the Journal

OCT 08 2008



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