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 OF ERIC SORENSEN

ON BEHALF OF

INTRADO COMMUNICATIONS INC.

June 24, 2009

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SECTION I: INTRODUCTION

Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE RECORD.

A: My name is Eric Sorensen. My business address is 1601 Dry Creek Drive, Longmont, CO, 80503. I am Senior Director – Regulatory Affairs for Intrado Communications Inc. ("Intrado Comm").

Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR INTRADO COMM.

A: In my current role, I am responsible for the operational readiness of Intrado Comm as well as regulatory compliance, including certifications, tariffs, and compliance reporting. I maintain a familiarity with and knowledge of Intrado Comm products, services, and telecommunications technology in order to represent Intrado Comm at various state regulatory and policymaker meetings, and before state and local 911 organizations.

Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A: I am a graduate of Pepperdine University where I earned a bachelor of science degree in Business Administration. During my 14 years at Intrado Inc., Intrado Comm's affiliate, I held leadership positions in sales, marketing, product management, operations and technology planning. All told, I have more than 25 years of telecommunications experience focused on emergency communications systems, networks, and architectures. Before Intrado Inc., I worked at Pacific Bell Telephone Company for 15 years where I held management positions in sales and marketing and emergency communications. I served as a Regional Vice President for the National

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Emergency Number Association's ("NENA") western region. I participated in the Telecommunications Industry Association TR45.2 committee work that established initial industry standards for managing emergency calls in mobile networks.

Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?

A: No, I have not previously testified the Florida Public Service Commission ("Commission").

Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE OTHER REGULATORY COMMISSIONS?

A: Yes. I testified before the Indiana Utility Regulatory Commission in the Cause No. 43499, *In the Matter of the Joint Complaint of Communications Venture Corporation d/b/a INdigital Telecom, The Indiana Wireless Enhanced 9-1-1 Advisory Board; Benton County, Indiana, as the Benton County PSAP Operator; and Carroll County, Indiana, as the Benton County PSAP Operator; and Carroll County, Indiana, as the Carroll County PSAP Operator, Against Indiana Bell Telephone Company, Inc., d/b/a AT&T Indiana, Concerning Connection of Wireless Enhanced 9-1-1 Circuits and Related Services to Facilities Located at Public Safety Answering Points and AT&T's Refusal To Permit Such Connections for the Provision of Wireless Enhanced 9-1-1 Service, and Request for the Indiana Utility Regulatory Commission to Order the Necessary Connections and Determine Reasonable Terms, Conditions and Compensation Therefor.*

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to explain the history of Intrado Comm, its role in the public safety industry, and provide an overview of its current service offerings and customer relationships. I address Issues 3, 4, 12, and 14 from a policy perspective (Mr. Hicks addresses these issues from a technical perspective) as set forth in the Commission's November 12, 2008 *Order Establishing Procedure*. I also address Issues 34, 35, 36, 46, 47, 49, and 52 as set forth in the Commission's November 12, 2008 *Order Establishing Procedure*.

Q: ARE YOU AN ATTORNEY?

A: No, I am not an attorney. My review and interpretation of federal and state law affecting this arbitration proceeding is from a layperson's perspective.

SECTION II: BACKGROUND

Q: PLEASE PROVIDE THE HISTORY OF INTRADO COMM AND ITS ROLE IN THE COMPETITIVE 911 MARKETPLACE.

A: Intrado Comm was established in 1999 as a wholly-owned subsidiary of Intrado Inc., which was founded in 1979. Intrado Inc. is the nation's leading provider of sophisticated solutions that identify, manage, and deliver mission critical information for telecommunications providers and public safety organizations. For a quarter-century, Intrado Inc. has been the nation's premier provider of integrated data and emergency communications solutions and has played a key role in defining, building, and maintaining core emergency communications infrastructure and 911 technologies throughout the United States. Intrado Comm shares Intrado Inc.'s legacy in expertise, financial stability, and vast experience in delivering mission-critical performance in emergency communications networks and related data. Intrado Comm will use this

expertise to provide regulated telecommunications services over its Intelligent Emergency Network®. The Intelligent Emergency Network® enables the public safety community to transcend the limitations of the nation's legacy 911 infrastructure, making new applications and services available to public safety answering points ("PSAPs"), counties, and other public safety entities that will increase their efficiency and effectiveness in responding to emergency calls. Intrado Comm also intends to offer other 911-related local exchange services to PSAPs and enterprise customers. In addition, these local exchange services will facilitate, enhance, and advance the provision of emergency services throughout the United States to voice over Internet Protocol ("VoIP") service providers, and other wireline, wireless, and telematics (*e.g.*, OnStar) service providers, as well as to enterprise customers.

Q: IS INTRADO COMM AUTHORIZED TO PROVIDE SERVICE IN FLORIDA?

A: Yes, Intrado Comm is authorized to provide competitive local exchange services in Florida (*see* Docket No. 001751-TX, *In re: Application for certificate to provide alternative local exchange telecommunications service by SCC Communications Corp.*, Order No. PSC-01-0258-PAA-TX (January 30, 2001). At this time, Intrado Comm intends to focus its business plans on a competitive 911/E-911 service offering to Florida public safety agencies and PSAPs, and to enterprise end users. A copy of Intrado Comm's Florida Price List is attached to Mr. Hicks' testimony as Exhibit TH-1.

Q: IS INTRADO COMM PROVIDING ANY SERVICES IN FLORIDA AT THIS TIME?

A: No. Intrado Comm cannot offer its competitive 911/E-911 services to Florida customers without entering into a mutually beneficial interconnection agreement with Verizon Florida LLC ("Verizon") and other incumbent local exchange carriers ("ILECs") that control access to the public switched telephone network ("PSTN").

Q: IS INTRADO COMM AUTHORIZED TO PROVIDE LOCAL EXCHANGE SERVICE IN OTHER STATES AND HAS IT ENTERED INTO INTERCONNECTION AGREEMENTS WITH OTHER ILECS?

A: Intrado Comm and its affiliates hold authority to provide competitive local telecommunications services in thirty-nine other states. Intrado Comm and its affiliates have previously entered into two Section 251 interconnection agreements with AT&T in Illinois and California, as well as agreements with Qwest. In addition, the Public Utilities Commission of Ohio ("PUCO") has approved interconnection agreements between Intrado Comm and Embarq, and Intrado Comm and Cincinnati Bell Telephone Company for the state of Ohio. Intrado Comm has also entered into an interconnection agreement with Cincinnati Bell Telephone Company for Kentucky. Intrado Comm and AT&T will soon file a 251 interconnection agreement for approval in the states of Ohio and North Carolina. The Public Service Commission of West Virginia recently approved Intrado Comm's Section 251 interconnection agreement with Verizon for the State of West Virginia. Finally, Intrado Comm's 251 interconnection agreement with Verizon New England was filed with the Massachusetts Department of Telecommunications and Cable ("DTC") on

May 29, 2009.

Q. HOW HAVE OTHER STATES TREATED INTRADO COMM'S COMPETITIVE 911/E-911 SERVICES?

A. The benefits of Intrado Comm's local exchange services, including its competitive 911/E-911 service offering, have been recognized in other states. The West Virginia commission has supported competitive entry by other providers of 911/E-911 services because doing so would provide competitive choices to West Virginia PSAPs (*see* Exhibit ES-1 and Exhibit ES-23 at n.1). The PUCO, in approving Intrado Comm's certification, established a new Competitive Emergency Services Telecommunications Carrier ("CESTC") classification in recognition of competitive entry in the Ohio 911/E-911 services market (*see* Exhibit ES-2 and Exhibit ES-23 at n.2). The PUCO recently upheld its earlier arbitration award in Intrado Comm's arbitration against AT&T in Ohio, reiterating that Intrado Comm's services meet the definition of "telephone exchange service" pursuant to 47 U.S.C. § 153(47) of the Communications Act of 1934, as amended ("Act"), that Intrado Comm is entitled to Section 251(c) interconnection from AT&T, and that AT&T has to establish a point of interconnection on Intrado Comm's network when Intrado Comm is the 911 service provider in AT&T's service territory. The PUCO's original decision is set forth in Exhibit ES-3 and its order on rehearing its set forth in Exhibit ES-4 (*see also* Exhibit ES-23 at nn.3-4). Finally, a three-judge panel of the North Carolina Utilities Commission issued a Recommended Arbitration Order ("RAO") on April 4, 2009, which found that Intrado Comm's 911 service to PSAPs is a telephone exchange service and as such Intrado Comm is entitled to interconnection pursuant to Section

251(c) of the Act (*see* Exhibit ES-5 and Exhibit ES-23 at n.5).

Q: PLEASE EXPLAIN WHY INNOVATIVE 911/E-911 SYSTEMS ARE IMPORTANT TO FLORIDA CONSUMERS AND PUBLIC SAFETY AGENCIES.

A: The introduction of E-911 in 1972 represented a significant improvement in basic 911 service. Changes in 911 services largely have been driven by consumer demand for competitive options and new technology. The United States is actually in its fifth generation of 911 service, the progression being: (1) basic 911 service; (2) enhanced 911 service; (3) market entry by competitive local exchange carriers ("CLECs"); (4) wireless (real-time mobility); and (5) IP-enabled services, including VoIP. Today, consumer expectations, newer and less voice-centric technologies, and major world events are necessitating further changes in 911 service capabilities. The importance of public safety requires looking beyond the existing legacy structure towards a more robust and secure 911 network that can manage both voice and data delivered from multiple types of service providers and can adapt to accommodate new technologies as they evolve. Sophisticated E-911 systems expand the degree to which new, contextually appropriate information can be automatically provided to emergency service personnel on a real-time basis. As the diagram set forth in Exhibit ES-24 demonstrates, Intrado Inc.'s and Intrado Comm's own emergency service evolution reflects the need to adjust and adapt to meet public safety's growing critical response needs as well as consumers' expectations that their 911 calls will go to the right PSAP in the event of an emergency.

Q: CAN YOU EXPLAIN FURTHER?

A: Callers dialing 911 expect the call-taker to know who they are, where they are, and have access to their telephone number in case the call is interrupted and they need to be re-contacted. They also expect to receive help from emergency first responders, even in cases where the caller is unable to convey his or her location or the nature of the emergency due to their unfamiliarity of their location or disability. Some legacy 911 systems are unable to do this today and will continue to progressively decline in their ability to keep pace with the warp-speed changes in communications technology, new and multiple service providers, and consumer expectations for timely and accurate public safety emergency responses. Intrado Comm is able to respond to its Florida public safety customers and Florida consumers to address these limitations.

Q: WHAT IS THIS ARBITRATION PROCEEDING ABOUT?

A: This arbitration proceeding is about competition. Intrado Comm seeks to compete with Verizon in its provision of 911/E-911 services to Florida counties, other Florida public safety agencies, and enterprise customers. Competition currently does not exist for the provision of such services in Florida. Verizon and other ILECs have managed to maintain their monopoly provision of service to PSAPs in their defined geographic service territories despite the framework established by Congress in the 1996 amendments to the Act and the regulations promulgated by the Federal Communications Commission ("FCC") in its implementation of the 1996 amendments.

Q: HOW DID THE 1996 AMENDMENTS TO THE ACT CHANGE THE COMPETITIVE LANDSCAPE?

A: The 1996 amendments were intended to achieve competition in a market that Congress recognized would be hostile to competition. With that in mind, Congress crafted a specific framework to ensure that the monopolists, Verizon in this situation, could not deny competitors like Intrado Comm the rights that were essential for competition to evolve.

Q: HOW WILL INTRADO COMM'S SERVICE PROMOTE COMPETITION IN FLORIDA?

A: Intrado Comm will provide its competitive 911/E-911 service to Florida customers, which will give them access to voice, data, streaming media capabilities, etc. The Intelligent Emergency Network® will extend the usefulness of the 911 infrastructure to handle numerous 911 call types regardless of technology – wireline, wireless, Internet telephony, and other technologies in use today. Intrado Comm's network is designed to be dynamic and recognizes that all 911 calls are not and will not be relayed by the caller in the same way because existing and new technologies are different. Text messaging 911 from a wireless device or FDA-approved defibrillators embedded in a person's chest that can automatically call 911 as soon as a heart attack begins serve as good examples of communications needs that Intrado Comm's network is capable of handling. Thus, Intrado Comm's 911/E-911 service will enable Florida counties to better respond in a world that is quickly becoming more complicated as options for communicating explode and will ensure enterprise customers' 911 calls, no matter what device is used, are completed. Intrado Inc. recently demonstrated its text 911 call technology successfully at the NENA conference in Ft. Worth, Texas on June 8, 2009. A press release detailing the texting 911 technology is provided as Exhibit ES-6.

Q: WHAT TYPES OF RIGHTS ARE ESSENTIAL TO COMPETITION?

A: Interconnection is the linchpin to promoting competition. All consumers making calls are connected to the PSTN, predominantly through ILECs like Verizon. In order for those callers to reach even a single customer of a competitor, the competitor must be interconnected to the ILEC. Section 251(c) of the Act is the means to achieving the crucial interconnection needed for competitors like Intrado Comm to offer services in Florida.

Q: WHY IS INTRADO COMM SEEKING SECTION 251(C) INTERCONNECTION WITH VERIZON?

A: Intrado Comm must interconnect its network with the PSTN in order to provide its competitive 911/E-911 services in Florida. As Congress recognized, ILECs, such as Verizon, are the gatekeepers of access to the PSTN. Interconnection, at a minimum, will allow Verizon's end users to reach Intrado Comm's end users and vice versa. In the emergency services context, interconnection will permit the 911 caller, including the caller's information, to reach the appropriate PSAP whether served by Intrado Comm or Verizon. As the designated 911/E-911 service provider, Intrado Comm routes, transmits, and transports 911 and emergency call traffic from enterprise customers and end users of wireline, wireless, VoIP, and telematics service providers to the appropriate PSAP. The method of transmission of 911 and emergency call traffic to Intrado Comm's network is transparent to the PSAP.

Q: WHY ARE THE GOALS OF SECTION 251(C) IMPORTANT TO THIS PROCEEDING?

A: Section 251(c)(2)(C) requires ILECs like Verizon to provide interconnection that is equal in quality to the interconnection they provide themselves, affiliates, or any other carrier. Verizon's obligations under 251(c)(2)(C) are critical to promoting competition. As discussed in more detail below under Issues 1, 4, and 12, the interconnection arrangements Verizon has implemented for itself and with other carriers define the minimum interconnection arrangements that should be available to Intrado Comm for its provision of competitive 911/E-911 services to Florida customers.

Q: IS INTRADO COMM'S ELIGIBILITY FOR A SECTION 251(C) INTERCONNECTION AGREEMENT AN ISSUE IN THIS PROCEEDING?

A: No. While Intrado Comm's eligibility for a Section 251(c) interconnection agreement may be an open issue in other pending arbitration proceedings with other carriers, this issue has not been presented to the Commission for resolution by either Intrado Comm or Verizon. This is evidenced by the joint issues matrix submitted by the Parties on September 9, 2008, and the November 12, 2008 *Order Establishing Procedure*.

Q: IN ADDITION TO SECTION 251(C), IS INTRADO COMM ENTITLED TO INTERCONNECT WITH VERIZON PURSUANT TO OTHER PROVISIONS OF FEDERAL LAW?

A: Yes. Intrado Comm is a telecommunications carrier and I understand that interconnection is a duty of all telecommunications carriers under Section 251(a) of the Act regardless of the services offered by the telecommunications carrier. This issue will be addressed further in the Parties' legal briefs, but I understand that

several state commissions have determined that states have the authority to arbitrate and oversee Section 251(a) agreements. For example, the PUCO has found on several occasions that it has the authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c) (*see* Exhibit ES-23 at n.6). In addition to the Ohio commission, state commissions in California, Illinois, Indiana, Iowa, New York, North Carolina, North Dakota, and Washington have found that Section 252 applies to Section 251(a) as well as 251(c) (*see* Exhibit ES-23 at n.7).

Q: ARE THERE ANY OTHER PROVISIONS GIVING INTRADO COMM INTERCONNECTION RIGHTS?

A: Yes. I understand that Florida law provides an independent right for the interconnection and mutual exchange of traffic via an interconnection agreement, and provides the Commission with authority to negotiate and arbitrate those interconnection agreements.

Q: WILL INTRADO COMM COMPETE WITH VERIZON?

A: Yes. Intrado Comm will be a direct competitor of Verizon in Florida. Intrado Comm will provide an alternative to Verizon's 911/E-911 service offerings sold directly to PSAPs, other public safety agencies, and enterprise customers. The demand for competitive 911/E-911 services is growing. Despite the significant number of competitive providers in the local exchange market, competitive options and choices for the public safety industry do not exist today. Intrado Comm seeks to change that with its innovative, IP-based Intelligent Emergency Network®. In addition, Intrado Comm's Enterprise 9-1-1 Service will compete with Verizon's similar offerings to

provide emergency communications access to enterprise customers who originate 911 calls from telephone lines served by a multi-line private switch (*see, e.g.,* Verizon's General Services Tariff at A.24.1.5aa, which is attached as Exhibit ES-8).

Q: DOES INTRADO COMM HAVE CUSTOMERS IN FLORIDA TODAY?

A. Intrado Comm will be providing regulated telecommunications services in accordance with executed contracts for four Florida counties who are replacing their legacy E-911 data and network services with the Intelligent Emergency Network® -- Charlotte (July 10, 2008), Martin (November 26, 2008), St. Lucie (January 5, 2009), and Levy (January 12, 2009). These counties are under considerable scrutiny by the State 911 Board to utilize designated funds and deploy the proposed services during 2009. Lack of interconnection to Verizon and other ILECs is impeding the Florida counties' abilities to deploy, and previously committed funding may become jeopardized if interconnection delays persist. Intrado Comm will also provide its Enterprise 9-1-1 Service to requesting customers.

Q: WILL INTRADO COMM HAVE RETAIL END USERS IN FLORIDA?

A: Yes, the Florida counties and other public safety agencies that Intrado Comm will serve are considered retail end users. Today, PSAPs or municipalities are purchasing services from the ILECs at retail rates via a retail tariff and are accorded end user status by the ILEC. These users should be treated no differently when being served by Intrado Comm. Moreover, Intrado Comm's Enterprise 9-1-1 Service will directly serve end users of multiline telephone systems. These end users are typically business customers, and are viewed as retail end users.

Q: HAS VERIZON ENTERED INTO SECTION 252 INTERCONNECTION AGREEMENTS WITH OTHER COMPETITORS FOR THE COMPETITIVE PROVISION OF 911 SERVICE?

A. Yes. In Indiana, INdigital Telecom (a CLEC) won the wireless 911 state contract to replace the 911 network, database and services. In order for INdigital to provide competitive wireless 911 services, it has to enter into interconnection agreements with the ILECs. After other competitors protested the secret nature of an agreement between INdigital and Verizon, the Indiana Utility Regulatory Commission determined that the agreement is an interconnection agreement subject to the requirements of Section 252 of the Act and therefore must be filed with the Indiana commission and subject to review by competitors (*see* Exhibit ES-9 and ES-23 at n.8). This interconnection agreement demonstrates that Verizon has permitted access to its 911 systems so that a competitor, INdigital, may provide competitive 911 wireless communications in Indiana in place of the ILECs to fulfill its contract with the State of Indiana Wireless 911 Board. The Verizon interconnection agreement with INdigital is set forth in Exhibit ES-10.

Q: WHEN INTRADO COMM PROVIDES 911/E-911 SERVICES TO A FLORIDA PUBLIC SAFETY AGENCY OR COUNTY, WILL THE PUBLIC SAFETY AGENCY CONTINUE TO HAVE A RELATIONSHIP WITH THE ILEC?

A: Yes, if the public safety agency or county continues to purchase service from the ILEC. When a Florida public safety agency selects or "presubscribes" to Intrado Comm for its 911/E-911 services, the PSAP will no longer require these same

services from Verizon. As an example, while it is recognized that public safety may continue to purchase and/or lease PSAP-based equipment or perhaps subscribe to other customer premises equipment ("CPE") maintenance and support services from Verizon, once a Florida public safety entity has designated Intrado Comm as its 911/E-911 service provider, it would be inappropriate for Verizon to continue to bill public safety for such service. Intrado Comm sought clarification from this Commission on the issue of whether Intrado Comm or the counties could be charged for services by ILECs after the PSAP has designated Intrado Comm as its 911/E-911 service provider. Intrado Comm's public safety customers had expressed concern about being double-billed for services no longer needed and sought assurance that the billing would not be permitted under the law. It appears that Verizon is continuing to bill Florida counties for 911/E-911 related services, even after these counties have contracted with another service provider for those services. Consequently, it appears some Florida counties are paying for services they do not receive.

Q: PLEASE EXPLAIN THE COMMISSION'S DECISION CONCERNING A COUNTY'S RIGHT NOT TO BE CHARGED FOR TELECOMMUNICATIONS SERVICES IT IS NOT RECEIVING.

A: The Commission's decision confirmed that Florida counties may not be charged for services not received. The Commission found that "The law is clear that telecommunications companies may not charge for services they do not provide." While the Commission denied Intrado Comm's request for a petition for declaratory ruling, it addressed the primary issue and reason for the filing. The Commission's ruling is similar to a ruling by the Ohio commission that "[the ILEC] should have no

right to charge Ohio counties for services that the company no longer provides" (*see* Exhibit ES-12 at 42 and Exhibit ES-23 at n.9).

SECTION III: UNRESOLVED ISSUES

Issue 3: Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?

Issue 4: (a) Should the Parties implement inter-selective router trunking?

(b) If so, what terms and conditions should govern PSAP-to-PSAP call transfers using inter-selective router trunking?

Q: PLEASE EXPLAIN HOW INTRADO COMM'S PROPOSED PHYSICAL ARCHITECTURE ARRANGEMENT FITS WITHIN THE FRAMEWORK ESTABLISHED BY SECTION 251?

A: While ILECs have experienced virtually no competition in their provision of 911/E-911 services to PSAPs since the passage of the Act, the framework for local competition established in 1996 supports the arrangements proposed by Intrado Comm. A primary consideration for establishing interconnection with the PSTN for the competitive provision of 911/E-911 services to PSAPs is what policies and arrangements will best promote reliable and resilient services, and a diverse and redundant network for public safety agencies to most effectively respond to 911 callers. Thus, interconnection for the purposes of providing competitive 911/E-911 services must look beyond the traditional interconnection arrangements used for plain old telephone service ("POTS") and seek to establish physical architecture arrangements that specifically address the special needs of 911 callers and first responders. Interconnection for the purpose of allowing callers to make social or

business calls is different from interconnection that ensures 911 callers reach the right PSAP when they have an emergency and need help. The initial and current providers of 911/E-911 services to PSAPs (*i.e.*, ILECs like Verizon) recognized this as evidenced by the network arrangements they have established to provide service to PSAPs today.

Q: HAVE ANY OTHER STATE COMMISSIONS MADE ANY FINDINGS RELEVANT TO THE LOCATION OF THE POINT OF INTERCONNECTION FOR 911 SERVICES?

A: Yes. The Ohio commission has found in three separate arbitration proceedings 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 each party bears the cost of getting to the point of interconnection" and the ILEC is "responsible for delivering its traffic to an Intrado selective router" (Exhibit ES-12 at 33 (*Ohio Embarq Arbitration Award*); Exhibit ES-3 at 32 (*Ohio AT&T Arbitration Award*); Exhibit ES-21 at 14-15 (*Ohio CBT Arbitration Award*)). The Ohio commission exercised its broad authority over the deployment of competition and 911 services generally as well as its jurisdiction under Sections 251(c) and 251(a) of the Act to adopt Intrado Comm's interconnection proposals in order to maintain industry-standard interconnection practices in the competitive market for 911 services.

Q: HAVE THERE BEEN ANY OTHER RELEVANT STATE COMMISSION RULINGS WITH RESPECT TO THE LOCATION OF THE POINT OF INTERCONNECTION FOR 911 SERVICES?

A: Yes. The North Carolina RAO also found that when an ILEC interconnects with a competitor, that interconnection is governed by Section 251(a) of the Act, and thus Section 251(a) applies when "AT&T seeks to interconnect with Intrado [Comm] to allow AT&T's customers to complete calls to the Intrado [Comm] PSAP" (Exhibit ES-5 at 40, 46). Further, the North Carolina commission recognized that it has the discretion to determine both the number and the location of the POI under Section 251(a) (Exhibit ES-5 at 40).

Q: HAS THE FCC MADE ANY FINDINGS RELEVANT TO THE LOCATION OF THE POINT OF INTERCONNECTION FOR 911 SERVICES?

A: Yes. To my understanding, the FCC has determined that the cost-allocation point for the exchange of 911/E-911 traffic should be at the selective router. Additional discussion of the FCC's findings will be contained in Intrado Comm's legal briefs.

Q: HAVE ANY STATE COMMISSIONS MADE FINDINGS REGARDING THE IMPLEMENTATION OF INTER-SELECTIVE ROUTER TRUNKING?

A: Yes. The Ohio commission has specifically recognized that interconnection between 911 service providers is necessary to ensure transferability across county lines and call/data transferability between PSAPs (Exhibit ES-2 at Finding 12). For this reason, the Ohio commission has determined that interconnection agreements "should contain the framework for interconnection and interoperability of the parties' networks through inter-selective routing" (Exhibit ES-12 at 36 (*Ohio Embarq Arbitration Award*); Exhibit ES-3 at 38 (*AT&T Ohio Arbitration Award*)). The Ohio commission also rejected a requirement that PSAPs be forced to provide input into the inter-selective router arrangements to be established (Exhibit ES-12 at 36 (*Ohio Embarq*

Arbitration Award); Exhibit ES-3 at 38 (*AT&T Ohio Arbitration Award*)). Citing Section 256(a)(2) of the Act, the North Carolina RAO similarly found that "in light of 'technology neutrality,' AT&T and Intrado [Comm] are obligated to provide for the seamless and transparent exchange of information 'between and across telecommunications networks'" (Exhibit ES-5 at 55).

Q: ARE THERE PUBLIC INTEREST CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT WHEN REVIEWING INTRADO COMM'S INTERCONNECTION PROPOSALS?

A: Yes. 911/E-911 services are unique and different. This is demonstrated by the interconnection and routing arrangements ILECs have established for themselves and the interconnection arrangements ILECs impose on CLECs today for their access to ILEC PSAP customers. The physical architecture arrangements Intrado Comm seeks are critical to issues of reliability, redundancy, and eliminating points of failure for 911/E-911 services. They are designed to establish physical architecture arrangements that specifically address the special needs of 911 callers and first responders. These are the key considerations when establishing interconnection arrangements for public safety providers.

Q: DOES THE COMMISSION HAVE THE AUTHORITY TO INCORPORATE PUBLIC INTEREST CONSIDERATIONS INTO THIS ARBITRATION PROCEEDING?

A: Yes. Section 253(b) of the Act allows the Commission to adopt regulations to "protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." The grant of

this authority to the Commission supports and necessitates the adoption of Intrado Comm's proposed physical interconnection arrangements in their entirety.

Q: HAVE ANY OTHER STATE COMMISSIONS MADE FINDINGS REGARDING SECTION 253(B) OF THE ACT IN ARBITRATION PROCEEDINGS?

A: Yes. In an arbitration proceeding between AT&T and a predecessor of Intrado Comm, the Illinois Commerce Commission determined that 911 calls are a matter of the utmost public interest (Exhibit ES-13 at 8 and Exhibit ES-23 at n.10). The Illinois commission therefore found it had the discretion under Section 253(b) to protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers (Exhibit ES-13 at 8).

Q: ARE THERE OTHER SOURCES THAT GIVE THE COMMISSION AUTHORITY TO ADOPT INTRADO COMM'S POSITIONS?

A: Yes. The Commission has a critical role in the oversight of the rollout of 911 services. As the FCC has found, Sections 251(e) and 706 of the Act give the FCC, as well as state commissions, authority to oversee the deployment of 911 services (*see* Exhibit ES-23 at n.11). The "uniform availability of E911 services may spur consumer demand" for broadband services, which accomplishes the goals of the Act (*see* Exhibit ES-23 at n.11). 911/E-911 services play a "critical role" in achieving the Act's goal of promoting safety of life and property because "'improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce'" (*see* Exhibit ES-23 at n.11). The Commission's finding that Intrado Comm is entitled to have Verizon

deliver its traffic to Intrado Comm's network when Intrado Comm is the designated 911/E-911 service provider is consistent with these principles, which will be discussed in more detail in Intrado Comm's legal briefs.

Issue 12: How will the Parties route 911/E-911 calls to each other?

Q: WHY IS IT IMPORTANT THAT VERIZON ROUTE 911/E-911 SERVICE TRAFFIC DESTINED FOR INTRADO COMM'S PSAP CUSTOMERS IN THE SAME WAY THAT VERIZON ROUTES 911/E-911 SERVICE TRAFFIC WITHIN ITS OWN NETWORK?

A: The routing technique proposed by Intrado Comm – dedicated, direct routing to the selective router serving the PSAP to which the call is destined – is the best and most reliable method for routing 911 calls as Verizon has acknowledged and implemented. The primary reason for the use of dedicated trunking is service quality. A Verizon witness acknowledged this in an arbitration hearing in West Virginia:

Q: That the network design that Verizon has in place today, competitors interconnecting to the selective routers, via dedicated trunks is reliable and efficient?

A: I don't know if that was my exact testimony, but I would agree with that, yes.

. . .

Q: So Verizon's determined and the competitors seem to have accepted that dedicated trunking to selective routers for delivery of 9-1-1 calls achieves a certain technical criteria and service quality standard that provides the most reliable 9-1-1 delivery network. Would you agree with that?

A: Sounds like a fair statement. . . .

The relevant portions of the West Virginia transcript are set forth in Exhibit ES-14. It is for this reason that Staff of the Illinois Commerce Commission recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router" (Exhibit ES-15 at 10, lines 221-23 (Hoagg); Exhibit ES-16 at 4, lines 98-100 (Stewart)).

Q: ARE THERE OTHER REASONS VERIZON SHOULD ROUTE 911/E-911 SERVICE TRAFFIC DESTINED FOR INTRADO COMM'S PSAP CUSTOMERS OVER DIRECT, DEDICATED TRUNKING?

A: Yes. As Congress and the FCC recognized, there are numerous operational barriers faced by competitors, which require that all aspects of local services be available to all competitors on an equal basis. Thus, they determined equal access was necessary for competition in the local market to succeed. Florida public safety entities must have assurances that 911/E-911 service traffic destined for their first responders will be treated equally. Likewise, the 911 calls of all Florida citizens should be routed using the most reliable process available – direct dedicated trunking to the selective router serving the PSAP.

Q: DOES VERIZON'S PREFERRED METHOD OF CALL ROUTING DISADVANTAGE COMPETITIVE CARRIERS SEEKING TO PROVIDE 911/E-911 SERVICES?

A: Yes. Intrado Comm recognizes that Verizon may incur some initial costs when it no longer is the monopoly provider of 911/E-911 services to PSAPs and needs to deliver its customers' 911 calls to Intrado Comm's PSAP customers. The costs associated with providing this end user access to 911/E-911 services, however, today is borne by other providers in the competitive market: traditional wireline carriers, wireless carriers, and VoIP service providers in most cases without any form of reimbursement. It is only incumbent wireline carriers who also provide 911/E-911 services, such as Verizon, that have tariffs that allow them to recover costs associated with their end users' access to 911/E-911 services. The ability to recover costs associated with providing access to 911/E-911 services gives Verizon a competitive advantage over other competitive telephone exchange service providers.

Q: DOES VERIZON'S PREFERRED METHOD OF CALL ROUTING AFFECT FLORIDA CONSUMERS DIALING 911?

A: Yes. When Verizon is the designated 911/E-911 service provider, Verizon's customers' 911 calls are directly trunked to the selective router serving the relevant PSAP. Verizon's refusal to utilize dedicated trunking when Intrado Comm is the designated 911/E-911 service provider means that some Verizon customer 911 calls (*i.e.*, those calling a Florida county or PSAP served by Intrado Comm) will be treated differently than other Verizon customer 911 calls (*i.e.*, those calling a Florida county or PSAP served by Verizon). All Florida consumers' 911 calls should be treated in the same manner – directly trunked from the end office to the selective router serving the PSAP – regardless of who is the service provider for the PSAP. Dedicated trunking to the selective router serving the PSAP is the interconnection method that

Verizon and other ILECs have developed for themselves and require of other competitive carriers that need to complete their customers' 911 calls to Verizon's PSAP customers. If Verizon is permitted to relegate Intrado Comm to a different and lesser form of interconnection than what it provides itself, Verizon is discriminating against its customers who dial 911.

Q: PLEASE EXPLAIN.

A: Verizon customers trying to reach a PSAP served by Intrado Comm will be treated differently than Verizon customers trying to reach a PSAP served by Verizon, which is a violation of the non-discrimination requirements found in Section 202 of the Act. Verizon is engaging in discrimination through the form of interconnection that Verizon seeks to dictate to Intrado Comm. Intrado Comm's interconnection method, by contrast, is consistent with the method Verizon uses for itself, that ILECs have developed for themselves, and that ILECs require CLECs to utilize in a competitive market.

Q: IF THE COMMISSION DETERMINES VERIZON MAY USE ITS EXISTING SELECTIVE ROUTER TO ROUTE 911 CALLS TO INTRADO COMM IN LIEU OF DEDICATED TRUNKING, SHOULD VERIZON BE PERMITTED TO RECOVER ITS COSTS FROM THE PSAPS WHO RECEIVE THE 911 CALLS?

A: No. The establishment of call routing from a switch or end office over a particular trunk group to a selective router is on the local exchange service provider's side of the demarcation point. Delivery of a 911 call to the appropriate selective router is part of local exchange service to POTS customers and a function of providing those

customers with access to 911/E-911 calling capabilities. Delivery of the 911 call to the appropriate PSAP and the delivery of the caller's associated location information is part of 911/E-911 services to PSAPs, not access to 911/E-911 calling capabilities for those needing emergency assistance.

Q: CAN YOU PLEASE EXPLAIN THE DISTINCTION?

A: The costs associated with a service provider's delivery of an end user's 911 call to the appropriate selective router is for the purpose of obtaining access to 911/E-911 services for the benefit of its end user subscriber. This cost should be borne by the communications service provider and recovered from the base rate charged to local exchange service subscribers unless funding mechanisms exist that apply to all communications service providers. Thus, even if the Commission were to allow Verizon to sort its customers' 911 calls using its selective router to determine the "designated" selective router the call needs to be routed to, it would still be inappropriate for Verizon to receive cost recovery from PSAPs for that sorting function.

Q: SHOULD VERIZON BE COMPENSATED THROUGH 911 FEES COLLECTED FOR THE USE OF ITS SELECTIVE ROUTER FOR ROUTING CALLS TO INTRADO COMM'S PSAP CUSTOMERS?

A: No. When Verizon is using its selective router for call segregation purposes, it is not providing selective routing services to the PSAP. Once a public safety agency selects its 911/E-911 service provider, that provider and no other entity is responsible for selectively routing 911 calls to that PSAP. Public safety pays the designated 911/E-911 service provider for that function. Any charges by Verizon for selective routing

when it is not the designated 911/E-911 service provider amount to an unnecessary and inappropriate duplication of routing functionality, having the potential of usurping public safety's choice of a 911/E-911 service provider and needlessly increasing the cost of 911 service.

Q: WHY SHOULD INTRADO COMM'S DEDICATED TRUNKING PROPOSAL BE ADOPTED?

A: Intrado Comm's proposals support competition for the provision of service to PSAPs. Competition should be about improving service quality on as many levels as possible rather than maintaining the status quo of the legacy system simply because Verizon claims that is the way it has always been done. All carriers are required to provide 911 calling capabilities to their end user customers, which require those carriers to interconnect with the entities that provide service to PSAPs.

Q: HOW DOES THAT INTERCONNECTION OCCUR?

A: Service quality and industry standards call for the use of dedicated connections. Verizon requires competitive providers to directly interconnect to its selective router serving the PSAP to which the 911/E-911 call is directed.

Issue 14: Should the ICA include a provision for maintaining ALI steering tables? If so, what provisions should be included?

Q. PLEASE EXPLAIN WHY PROVISIONS REGARDING AUTOMATIC LOCATION INFORMATION ("ALI") STEERING ARE APPROPRIATE FOR A SECTION 251(C) INTERCONNECTION AGREEMENT?

A: The comprehensive 911/E-911 service offering to be provided by Intrado Comm in Florida includes the 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 call to the PSAP. An effective 911 service requires the caller to be mapped to the closest PSAP (this is done at the selective router) to ensure emergency personnel closest to the caller can be dispatched. The Master Street Address Guide ("MSAG") maps the emergency personnel in the area to the relevant PSAP. The ALI database contains customer information associated with the telephone number to assist the PSAP. The perception of the consumer, whether a 911 caller or PSAP, is that 911 service once dialed will ensure a caller's location is identified, the correct PSAP is reached, and sufficient information is available to deploy the geographically relevant emergency personnel to the caller's location. Under a traditional end-to-end analysis, where a 911 call originates and where the call ultimately terminates will be in close proximity. The technology used to place the call is irrelevant to this analysis. Mr. Hicks addresses why language regarding ALI steering arrangements is necessary in the Parties' interconnection agreement.

Q: PLEASE EXPLAIN MORE ABOUT HOW ALI STEERING IS AN INTEGRAL PART OF INTERCONNECTION FOR THE EXCHANGE OF 911/E-911 SERVICE TRAFFIC.

A: ALI is an inextricable part of the 911/E-911 service provided to PSAPs as demonstrated by the FCC's definition of 911 services and the unbundled access requirement imposed on ILECs to make the 911 databases available as telecommunications services in the interest of promoting local competition. The language proposed by Intrado Comm with respect to ALI steering tables cannot be viewed in isolation of the 911/E-911 service offering. Without the necessary ALI

steering tables and the associated exchange of information between the Parties, the mutual exchange of 911/E-911 service traffic cannot occur when 911/E-911 calls need to be transferred between PSAPs. Interconnection and the Parties' Section 251(c) interconnection agreement are intended to specifically address the mutual exchange of traffic between the Parties' networks, and ALI steering provisions are an integral part of the Parties' interconnection relationship.

It is important to recognize that in its interconnection agreement with INdigital, Verizon accepted ALI steering language that would permit the passing of wireless ALI (*see* Exhibit ES-10).

Q: DOES THE EXISTING COMMERCIAL AGREEMENT BETWEEN VERIZON AND INTRADO COMM'S AFFILIATE ADDRESS THE ARRANGEMENTS INTRADO COMM SEEKS HERE?

A: No, the existing commercial agreement between Intrado Comm's affiliate and Verizon does not address the arrangements Intrado Comm seeks here. As an initial matter, Intrado Comm is not a party to that agreement and cannot avail itself of the provisions of that agreement. More importantly, that commercial agreement does not govern the exchange of 911/E-911 service traffic pursuant to Section 251(c) for the provision of competitive 911/E-911 services like the instant interconnection agreement under review by the Commission. Interoperability between the Parties' networks, including the exchange of ALI, is a key component of ensuring Florida counties have adequate call transfer capabilities and that Florida consumers' 911 calls reach the appropriate PSAP.

Issue 34: (a) What will Verizon charge Intrado Comm for 911/E-911 related services?

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?

Q: CAN YOU PLEASE SUMMARIZE THE DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THESE TWO ISSUES?

A: The disputes between the Parties address what rates for Verizon services should appear in the interconnection agreement, what are the appropriate rates, how tariffs will be incorporated into the interconnection agreement, and whether tariff charges may trump charges set forth in the interconnection agreement.

Q: WHAT RATES FOR VERIZON SERVICES SHOULD APPEAR IN THE AGREEMENT AND WHAT ARE THE APPROPRIATE RATES?

A: Verizon should not be permitted to impose unspecified tariffed rates on Intrado Comm. Verizon's proposed language would allow Verizon to charge for certain services based on "applicable" Verizon tariffed rates. As a CLEC, Intrado Comm is entitled to interconnection facilities and unbundled network elements ("UNEs") at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act.

Q: WHY IS INTRADO COMM OPPOSED TO THE REFERENCE TO TARIFFED CHARGES AS PART OF THE INTERCONNECTION AGREEMENT?

A: Tariffs may not be the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection-related services. Pricing for interconnection and network elements is to be developed pursuant to the pricing standards contained in Section 252(d) of the Act. If Verizon can identify with specificity co-carrier interconnection pricing that has been established pursuant to Section 252(d)(1) standards and set forth in interconnection tariffs, Intrado Comm could accept a reference to relevant, applicable tariffs. But Verizon has not. Indeed, when Intrado Comm asked Verizon to provide basic references to the applicable state tariffs, Verizon could not identify all of the tariffs that would apply. If there are non-252(d)(1) services that Intrado Comm would purchase from Verizon, the pricing for those services must be identified in the interconnection agreement. If the relevant pricing for non-252(d)(1) services is set forth in a tariff, the interconnection agreement should contain a specific reference to the tariff for that service rather than a generic reference to "applicable" tariffed rates as Verizon suggests.

Q: DOES VERIZON'S PROPOSED LANGUAGE AFFECT INTRADO COMM'S ABILITY TO COMPETE?

A: Yes. Without pricing or specific tariff references explicitly spelled out in the interconnection agreement, Intrado Comm cannot effectively compete with Verizon because it will not know its operating costs. Intrado Comm must have prior knowledge of the rates it will be charged for services received from Verizon.

Q: WHAT LANGUAGE HAS INTRADO COMM PROPOSED TO ADDRESS THIS DISPUTE?

A: Intrado Comm has eliminated references to Verizon's unspecified tariffs where applicable and included language that the only rates to be charged by the Parties will be those set forth in the interconnection agreement. Intrado Comm's proposed language ensures that each Party's ability to bill the other Party is limited to the requirements in the interconnection agreement and the rates or tariffs explicitly referenced in the Pricing Attachment to the agreement to the extent tariffs are the appropriate pricing mechanism for the service to be purchased.

Q: IS INTRADO COMM TAKING THE POSITION THAT EVERYTHING MUST BE PRICED AT TELRIC OR 251/252 RATES?

A: No. Intrado Comm recognizes that some services may not be subject to TELRIC pricing (*i.e.*, outside of Section 252 pricing parameters). In those cases, tariffed rates may be appropriate and, if so, the specific tariff reference must be contained in the interconnection agreement.

Q: CAN YOU PLEASE EXPLAIN THE SPECIFIC DISPUTE WITH RESPECT TO SECTION 1.1 OF THE GENERAL TERMS AND CONDITIONS?

A: Intrado Comm objects to Verizon's proposed language that would incorporate all "applicable" tariff provisions into the interconnection agreement even if those tariffs are not otherwise referenced or mentioned in the interconnection agreement.

Q: WHY IS VERIZON'S PROPOSED LANGUAGE UNACCEPTABLE?

A: Intrado Comm understands that it is efficient to refer to the Parties' tariffs for specific services rather than repeat those terms and conditions in the interconnection agreement. Intrado Comm, however, 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. If Verizon seeks to have a tariff apply to the interconnection agreement, it should specifically reference that tariff in the agreement. And as explained above, any pricing for interconnection-related services should be based on the pricing standards established under Section 252(d), not retail tariffs. Specific tariff references, however, would be appropriate for non-252(d) services.

Q: CAN YOU PLEASE EXPLAIN THE SPECIFIC DISPUTE WITH RESPECT TO SECTION 1.3 OF THE PRICING ATTACHMENT?

A: Verizon's proposed language states that the rates to be charged for a service are contained in "applicable" tariffs. If there is no rate in an "applicable" tariff, then the rate contained in the interconnection agreement would apply. Thus, Verizon's language would allow tariffs to control over specifically-stated rates in the interconnection agreement even if those tariffs are not otherwise referenced or mentioned in the interconnection agreement.

Q: WHY IS VERIZON'S PROPOSED LANGUAGE UNACCEPTABLE?

A: Any charges to be imposed on either Party should be specifically set forth in the Pricing Appendix to the interconnection agreement, including any references to a particular tariff charge. As stated above, Intrado Comm needs certainty in the Parties' interconnection relationship with respect to the rates Verizon seeks to impose on it.

Q: CAN YOU PLEASE EXPLAIN THE SPECIFIC DISPUTE WITH RESPECT TO SECTION 1.5 OF THE PRICING ATTACHMENT?

A: Verizon's proposed language would allow Verizon to automatically supersede any rates marked as "TBD" in the Pricing Attachment with tariff charges, which may or may not be developed pursuant to the requirements of Sections 251 and 252 of the Act.

Q: WHY IS VERIZON'S PROPOSED LANGUAGE UNACCEPTABLE?

A: Any charge listed as "TBD" in the Pricing Appendix should be developed pursuant to the pricing methodologies set forth in Section 251 and 252 of and be subject to Commission approval unless the charge is not subject to 252(d) pricing standards.

Q: HAVE OTHER STATE COMMISSIONS MADE RULINGS ON THESE ISSUES?

A: Yes. The West Virginia commission found that:

> 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.

The West Virginia commission also determined, based on prior FCC rulings, that charges stated in the interconnection agreement cannot be automatically superseded by subsequent tariff changes as would be permitted by Verizon's proposed language, and that references to tariffs in phrases such as "notwithstanding any other provision of this Agreement **or tariff**" or "as set out in **Verizon's applicable tariffs**" must be eliminated from the interconnection agreement. The West Virginia ALJ's recommended decision and the West Virginia commission's adoption of the recommended decision are set forth in Exhibit ES-17 and Exhibit ES-18 (*see also* Exhibit ES-23 at n.12).

Q: HAVE ANY OTHER STATE COMMISSIONS MADE SIMILAR FINDINGS?

A: Yes. The Massachusetts DTC ordered Verizon to specify which Verizon tariffs would apply because "incorporation of additional terms and conditions from tariffs, or other documents, by mere reference to the tariff or 'applicable' tariff is inconsistent with" Massachusetts law (Exhibit ES-19 at 76-77 and Exhibit ES-23 at n.13).

Issue 34: (b) What will Intrado Comm charge Verizon for 911/E-911 related services?

(c) Should Intrado Comm's proposed interconnection rates be adopted?

Q: WHY HAS INTRADO COMM PROPOSED RATES TO BE APPLIED TO VERIZON?

A: When Intrado Comm acts as the 911/E-911 service provider, it imposes charges for access or "interconnection" ports on its network on all providers interconnecting to Intrado Comm's Intelligent Emergency Network®. Intrado Comm has therefore proposed rates to govern Verizon's interconnection to Intrado Comm's Intelligent Emergency Network®. Intrado Comm's proposed rates are attached as Exhibit ES-20.

Q: DOES VERIZON CHARGE FOR TRUNK PORTS?

A: Yes, it is Intrado Comm's understanding that Verizon does impose trunk port charges on carriers seeking to terminate 911/E-911 service traffic on Verizon's network.

Q: IF VERIZON IS ABLE TO RECOVER ITS COSTS, SHOULDN'T INTRADO COMM BE ABLE TO DO THE SAME?

A: Yes. If Verizon is able to recover its costs, Intrado Comm should also be able to recover its costs.

Q: ARE INTRADO COMM'S RATES SIMILAR TO VERIZON'S RATES FOR TRUNK PORTS?

A: Yes, the rates are similar. Intrado Comm, however, is under no obligation to mirror or match Verizon's rates for trunk ports. In addition, these charges may not be separately stated by Verizon and may be contained in other rates Verizon imposes on competitors for 911/E-911 services.

Q: ARE INTRADO COMM'S PROPOSED RATES RELATED TO TRANSPORT AND TERMINATION CHARGES?

A: No. Intrado Comm's proposed rates are for interconnection to Intrado Comm's network.

Q: IS THERE A DIFFERENCE BETWEEN INTERCONNECTION-RELATED RATES AND RATES FOR TRANSPORT AND TERMINATION?

A: Yes. I understand that Section 252(d) of the Act sets forth the pricing standards for three types of service: (1) interconnection and network element charges; (2) transport and termination charges; and (3) wholesale charges. Interconnection charges are separate and distinct from charges for transport and termination (*i.e.*, access, reciprocal compensation, or other intercarrier compensation charges).

Q: IS INTRADO COMM REQUIRED TO PROVIDE COST SUPPORT FOR ITS PROPOSED RATES?

A: No. It is my understanding that Section 252 only authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable and provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding. If Verizon seeks to challenge the reasonableness of Intrado Comm's rates, it should do that in a separate proceeding before this Commission.

Q: HAVE ANY OTHER STATE COMMISSIONS MADE FINDINGS WITH RESPECT TO INTRADO COMM'S RATES?

A: Yes. The Ohio commission has determined that Intrado Comm's proposed port or termination rates are "reasonable" and "are not beyond the range of other companies" (Exhibit ES-21 at 21 and Exhibit ES-23 at n.14).

Issue 36: May Verizon require Intrado Comm to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements?

Q: CAN YOU PLEASE EXPLAIN THE DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THIS ISSUE?

A: Verizon has proposed language that would require Intrado Comm to charge Verizon the same rates as, or lower rates than, what Verizon charges Intrado Comm for the same services, facilities, and arrangements. Intrado Comm objects to Verizon's attempt to cap Intrado Comm's rates.

Q: WHY DOES INTRADO COMM OBJECT TO VERIZON'S LANGUAGE?

A: Verizon's proposed language is one-sided and could have the effect of forcing Intrado Comm to lower its rates without competitive justification. Intrado Comm, like other competitive providers in Florida, is entitled to operate independently of Verizon. No competitive provider can conduct business where its business model is determined by the price setting whims of its competitor, particularly the incumbent.

Q: IS INTRADO COMM REQUIRED TO CHARGE THE SAME RATES AS VERIZON OR DEMONSTRATE THAT ITS HIGHER RATES ARE REASONABLE?

A: No. Other than rates for reciprocal compensation and possibly access charges, Intrado Comm is under no obligation to charge the same rates as Verizon with respect to other interconnection-related services. Neither reciprocal compensation nor access charges are applicable in the context of the Parties' interconnection agreement as the Parties have agreed that intercarrier compensation does not apply to the exchange of 911/E-911 service traffic. The pricing standards set forth in the Act apply only to incumbent carriers like Verizon. As a competitor, Intrado Comm has flexibility with respect to its proposed rates and charges, as long as Intrado Comm's rates are reasonable. Intrado Comm's proposed rates are consistent with industry norms, are comparable to similar charges imposed by other carriers, and are applied equally to all carriers regardless of with whom Intrado Comm is interconnecting.

Q: HAVE OTHER STATE COMMISSIONS MADE A DETERMINATION WITH RESPECT TO VERIZON'S PROPOSED LANGUAGE?

A: Yes. The Wireline Competition Bureau of the FCC (standing in the shoes of the Virginia State Corporation Commission) and several other state commissions (such as the commissions in New York, Connecticut, and New Jersey) have rejected Verizon's attempt to cap the rates of competitors through such language in other interconnection agreements. In addition, the West Virginia and Massachusetts commissions have also rejected Verizon's proposed language in Intrado Comm's arbitrations with Verizon in those states (*see* Exhibit ES-17 at 25 (*West Virginia Arbitration Award*); Exhibit ES-19 at 80-81 (*Massachusetts Arbitration Award*)). A more detailed analysis of these decisions will be contained in Intrado Comm's legal briefs.

Issue 46: Should Intrado Comm have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E-911 calls?

Q: CAN YOU PROVIDE SOME BACKGROUND INFORMATION WITH RESPECT TO THIS ISSUE?

A: While Intrado Comm is certified to provide any type of local exchange service in Florida, Intrado Comm's initial focus will be the provision of competitive 911/E-911 telephone exchange services. The interconnection agreement being negotiated by the Parties prior to the filing of Intrado Comm's Petition for Arbitration addressed interconnection for the exchange of competitive 911/E-911 services traffic as well as other local exchange services. In an effort to reach a negotiated agreement, the Parties determined that they would limit the interconnection agreement to only the interconnection arrangements necessary for Intrado Comm's provision of competitive 911/E-911 telephone exchange services in Florida given that those services were Intrado Comm's initial focus in the Florida market. Recognizing that it might offer additional telephone exchange services in the future, Intrado Comm has proposed language that would allow Intrado Comm to seek to amend the interconnection agreement to include any additional arrangements that would be necessary to facilitate Intrado Comm's provision of other telephone exchange services. Verizon has objected to that language.

Q: IF INTRADO COMM WERE TO OFFER ADDITIONAL LOCAL EXCHANGE SERVICES, WHY DOES INTRADO COMM SEEK TO AMEND THE INTERCONNECTION AGREEMENT RATHER THAN NEGOTIATE AN ENTIRELY NEW AGREEMENT?

A: The negotiation and arbitration of interconnection agreements requires a significant amount of time and resources, both from the parties to the interconnection agreement and from state regulators. The Parties have made significant progress in their current negotiations. Negotiating an entirely new agreement would eliminate the past progress the Parties have made. Instead, if Intrado Comm decides to offer additional telephone exchange services, the Parties should build on what they have accomplished already and incorporate any additional provisions necessary to support the provision of the additional services to be offered by Intrado Comm.

Q: IS INTRADO COMM TRYING TO "PICK AND CHOOSE" FAVORABLE CONTRACT PROVISIONS?

A: No. Intrado Comm is trying to save the time and resources of the Parties and the Commission. To the extent Intrado Comm took issue with Verizon's proposed language in this round of negotiations, it is likely that Intrado Comm would again seek to revise the language in subsequent negotiations. Similarly, if Verizon agreed to make certain revisions in this round of negotiations, Verizon should be willing to make those same revisions in another interconnection agreement.

Q: WILL VERIZON HAVE INPUT INTO ANY AMENDMENT REQUESTED BY INTRADO COMM?

A: Yes. Any amendment to the 251(c) interconnection agreement would need to be negotiated and accepted by both Parties as well as approved by the Commission. To the extent the Parties cannot agree to an amendment, either Party can avail itself of the dispute resolution provisions of the interconnection agreement, including seeking Commission assistance to resolve any outstanding disputes.

Q: WHY SHOULD INTRADO COMM'S PROPOSED LANGUAGE BE ADOPTED?

A: Intrado Comm's proposed language ensures that the Parties are able to build on the language already negotiated. In addition, Intrado Comm's language ensures that Intrado Comm is not forced to re-litigate or re-arbitrate provisions that have already been determined by the Commission.

Issue 47: Should the term "a caller" be deleted from Section 1.1.1 of the 911 Attachment to the ICA?

Q: WHY IS INTRADO COMM PROPOSING TO DELETE THIS TERM?

A: Section 1.1.1 of the 911 Attachment contains general statements about 911/E-911 arrangements. Verizon's proposed language states that 911/E-911 arrangements provide ***a caller*** access to the appropriate PSAP. Intrado Comm views inclusion of the phrase "a caller" as unnecessary and has requested that the language be deleted. Verizon's inclusion of the term appears to be an attempt to inappropriately limit the definition of 911/E-911 arrangements. The Verizon-proposed inclusion of "a caller" is too restrictive.

Q: HAS VERIZON INDICATED THE REASONS WHY IT SEEKS TO INCLUDE THE TERM?

A: Yes. In Ohio, Verizon's witness admitted that its proposed term is intended to "clarify" that 911 arrangements are limited to "fixed line subscriber dial tone." Thus, under the Verizon interpretation of "a caller," not even 911 calls from wireless devices or interconnected VoIP services would be able to be completed to Intrado Comm customers. This so called "clarification" is inconsistent with the

types of 911/E-911 calls that PSAP customers expect to be able to receive from their 911 service provider. The relevant portions of the Ohio transcript are set forth in Exhibit ES-22.

Q: HOW HAVE OTHER STATE COMMISSIONS RULED ON THIS ISSUE?

A: The Massachusetts DTC agreed with Intrado Comm and ordered that the term be deleted from the provision (Exhibit ES-19 at 54-55).

Issue 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?

Q: CAN YOU PLEASE EXPLAIN THE DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THIS ISSUE?

A: Intrado Comm has proposed language that would ensure each Party's ability to bill the other Party would be limited to the requirements contained in the interconnection agreement and the rates contained in the Pricing Attachment, to the extent such requirements or rates applied.

Q: IS INTRADO COMM USING THIS PROVISION TO BILL VERIZON FOR TRANSPORT OF 911/E-911 CALLS?

A: No. The Parties have agreed that intercarrier compensation for transport and termination does not apply to 911/E-911 calls.

Q: HAVE OTHER STATE COMMISSIONS RULED ON THIS ISSUE?

A: Yes. The Massachusetts DTC adopted Intrado Comm's proposed language (Exhibit ES-19 at 82-83).

Issue 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"?

Q: WHY SHOULD THE PARTIES' ABILITY TO CHARGE PUBLIC SAFETY FOR SERVICES BE LIMITED BY APPROVED TARIFFS AND APPLICABLE LAW?

A: Intrado Comm's proposed language ensures that neither Party may step outside Commission-approved rates or Commission regulations for their retail services to PSAPs and public safety agencies. Without the qualification suggested by Intrado Comm, Verizon would have free reign to bill Florida public safety agencies for a range of services even if those services were no longer being provided by Verizon. Intrado Comm's proposed language ensures that both Parties operate within Commission-sanctioned parameters.

Q: IS INTRADO COMM USING THE INTERCONNECTION AGREEMENT TO LIMIT VERIZON'S RIGHTS TO CHARGE THIRD PARTIES?

A: No. To the extent a Commission-approved tariff or Florida statute, rule, or regulation permits Verizon to impose certain charges, those charges would be permissible under Intrado Comm's proposed language. Intrado Comm's proposed language only seeks to clarify that Verizon may only impose such charges when permitted to do so by Commission-approved tariff or Florida statute, rule or regulation.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes.

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 20th day of November, 2007.

CASE NO. 04-0102-T-GI

FRONTIER COMMUNICATIONS OF WEST VIRGINIA; VERIZON WEST VIRGINIA INC.; ARMSTRONG TELEPHONE COMPANY; ARMSTRONG TELEPHONE COMPANY- NORTHERN DIVISION; HARDY TELECOMMUNICATIONS INC.; SPRUCE KNOB SENECA ROCKS TELEPHONE INC.; WAR TELECOMMUNICATIONS COMPANY; and WEST SIDE TELECOMMUNICATIONS

General investigation into the provision of Data Base Management Services and into who pays the costs of such services.

COMMISSION ORDER

INTRODUCTION

This Order approves Verizon West Virginia, Inc.'s (Verizon-WV) revised tariff filing proposing to provide enhanced 911 data base management services statewide (DBMS), waives the necessity of filing a full *Tariff Rule* 42 Exhibit in support of its proposed tariff, approves Verizon-WV's proposed tariff filing after revision, clarifies that enhanced 911 DBMS are a competitive service offering, allows for the provision of statewide, averaged E911 rates, and requires Verizon-WV to make an unbundled rate offering - all in the interest of public safety and welfare.

BACKGROUND

Factual Background

Enhanced 911 (E911) services allow the transmission of the name, telephone number and physical location of the person making an emergency call to a public safety answering point (PSAP), commonly known as a "911 Call Center."

Verizon-WV has offered E911 services in a bundled package containing all components of E911 services at uniform rates throughout its service territory since 1994. Initially, Verizon-WV's E911 monthly rate was $85 per thousand ($85/1000) access lines. This rate was adopted by

Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia (Frontier) in its West Virginia service territory. In 2001, Verizon-WV increased its monthly E911 rate to $110 per thousand ($110/1000) access lines to pay for the upgrade of facilities necessary to handle wireless calls. Once again, Frontier adopted Verizon-WV's rate. Verizon-WV currently provides E911 service to 42 PSAPs operating in 45 West Virginia counties and Frontier provides E911 service to 10 PSAPs in the State's remaining counties. Frontier's service territory is predominantly rural and includes Hardy, Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, and Webster Counties.

With the passage of the Telecom Act in 1996, the Federal Communications Commission (FCC) established two phases to allow E911 information to be transmitted to PSAPs for wireless calls. During Phase I, equipment is to be upgraded to provide for the transmission of the wireless caller's telephone number (Automatic Numbering Information or ANI). During Phase II, the physical location of the wireless caller is to be identified (Automatic Location Information or ALI). All counties served by Verizon-WV are Phase I and II compliant.

PSAPs in those counties served by Frontier have been paying the same higher rate as Verizon-WV; however, they have not been receiving the same service. With the exception of Mercer County, no Frontier county can identify the name, number or location of calls from wireless phones. The same is true for calls to PSAPs from customers of competitive local exchange carriers (CLECs) and calls from customers using Voice over Internet Protocol (VoIP). PSAPs in the Frontier counties currently lack access to E911 DBMS and selective routing facilities that are necessary to provide full E911 service.

Procedural Background

On January 28, 2004, the Staff of the Commission (Staff) filed a petition to initiate a general investigation into the provision of DBMS for E911 services. The petition was filed as a result of a settlement reached in Case No. 03-1188-T-T, *Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia.*

In the 2003 *Citizens* case, Frontier, an incumbent local exchange carrier (ILEC), filed a tariff seeking Commission approval to establish a monthly rate of $210 per thousand ($210/1000) access lines for managing the DBMS used for E911 services, including the provision of ANI and ALI services. As the *Citizens* case proceeded, the parties disagreed on what the law required, on who should bear DBMS costs, and on whether an ILEC is the only entity that could reasonably provide DBMS. The parties recommended that the Commission initiate a general investigation to explore the issues from a statewide perspective, considering the effect of multiple CLECs, wireless carriers, and other telecommunications providers on the ability of the PSAPs to provide DBMS.

Task Force Recommendations, Initial Interventions and Related Filings

On June 1, 2004, the Commission granted the Staff's petition for a general investigation and ordered the filing of a proposed procedural schedule.

On June 16, 2004, the West Virginia E911 Council (E911 Council) filed a petition to intervene in this proceeding. On July 1, 2004, Washington/Baltimore Cellular Limited Partnership dba Cingular Wireless, LLC (Cingular) filed a petition to intervene. Also on July 1, 2004, Staff filed its Further Staff Memorandum.

On August 10, 2004, the Commission issued a Procedural Order establishing a procedural schedule in this proceeding. On September 27, 2004, Staff requested that the established procedural schedule be suspended and that a Task Force be established to investigate the issues and make recommendations to the Commission. On October 12, 2004, the Commission issued an order establishing the Task Force and requiring that the Task Force file a final report on or before March 31, 2005.

After two extensions of time, the Task Force, comprised of telecommunications carriers, PSAPs, and Staff, filed its Final Report, including a proposed Verizon-WV E911 Tariff on January 6, 2006. Essentially, the Task Force Report recommended that: (1) the Commission direct a full financial analysis of the proposed Verizon-WV's E911 DBMS tariff rates and of the cost information supplied to Verizon-WV by the independent ILECs; (2) a public hearing be held no later than April 2006 to review the audit results and to take comments of interested parties; (3) public notice of the hearing be provided to all ILECs, CLECs, West Virginia wireless carriers and county commissions; (4) Verizon-WV be granted the authority to serve outside its normal service area; and (5) the independent ILECs be required to modify their tariffs regarding the provision of E911 service.

By Order entered on February 7, 2006, the Commission directed Staff to conduct a complete financial analysis of the proposed Verizon-WV E911 DBMS tariff rates and the cost information supplied to Verizon-WV by the independent ILECs. Staff was ordered to file its report and recommendations on or before April 4, 2006. On March 31, 2006, Staff filed motions to extend the due date of Staff's Financial Report and to approve the Verizon E911 Tariff as emergency interim rates, subject to refund. At that time, Staff had initiated the financial analysis as ordered. Additional information was required by Staff and discovery had been initiated to obtain the data necessary for Staff to complete its Report.

On April 3, 2006, Verizon-WV filed a response in opposition to Staff's recommendation that the proposed Verizon-WV E911 DBMS tariff be approved immediately on an emergency interim basis, subject to refund. The Commission, by Order entered on April 7, 2006, deferred ruling on Staff's motion for approval of Verizon-WV's proposed E911 DBMS Tariff on an emergency interim rate basis, but extended the deadline for the filing of Staff's Financial Report to June 5, 2006. On April 10, 2006, Verizon-WV filed a more detailed opposition to Staff's motion for approval of interim rates. Verizon-WV challenged the jurisdiction of the Commission to order it

to provide E911 DBMS outside its service territory. Verizon-WV also argued that it would not be financially responsible for assuming the cost of implementing such a statewide E911 DBMS offering without assurances of final approval.

On April 10, 2006, Metro Emergency Operations Center of Kanawha County (Kanawha Metro) also filed a petition to intervene in this proceeding, and on April 14, 2006, Kanawha Metro filed a response in opposition to the Staff motion for interim rates. In support of its opposition, Kanawha Metro argued that: (1) Verizon-WV's proposed tariff would violate the statutory right of each West Virginia county to implement its own E911 service; and (2) the plan was discriminatory in that it was not based primarily upon the costs of providing E911 DBMS and would create a subsidy flow from some counties to others.

On April 11, 2006, Frontier filed a response in opposition to the Staff motion for interim rate approval and asserted that it would be inappropriate to require major reconfiguration of the existing E911 network prior to final approval of all associated rates and charges.

On May 22, 2006, the County Commission of Jefferson County, West Virginia (Jefferson County) petitioned to intervene. Jefferson County requested that the Commission approve the proposed Verizon-WV E911 DBMS tariff prior to December 21, 2006. Jefferson County asserted that Motorola's technical support for Jefferson County's Customer Premise Equipment (CPE) would end at 11:59 p.m., on December 31, 2006. Because of the age of the Jefferson County CPE, the equipment regularly malfunctions. Jefferson County argued that it is essential for the Commission to provide both interim and final relief at the earliest possible date.

On June 8, 2006, Staff again requested that it be granted an extension of time to file the Staff Financial Report. Staff asserted that discovery was still proceeding and that not all of the information necessary for the Staff Report had been received. On June 19, 2006, the Commission entered an Order: (1) denying the motion of Staff to implement emergency interim rates; (2) granting the motions of Kanawha Metro and Jefferson County to intervene; and (3) extending the due date of the Staff Financial Report until August 4, 2006.

On June 21, 2006, the Commission received a letter from the County Commission of Tucker County, West Virginia (Tucker County). The letter stated that in 2005, Tucker County had purchased E911 equipment, but could not provide E911 services to its residents because of limitations in the service provided by Frontier. Tucker County objected to having to pay the same rate for E911 services as the counties in which E911 DBMS are available. Tucker County urged the Commission to act expeditiously.

On August 4, 2006, Staff filed its Financial Report and recommendation. An error in this Report was corrected by a subsequent filing on August 8, 2006. The Report presented E911 DBMS rates for both Verizon-WV and Frontier. Staff asserted that both sets of rates were cost-based. Frontier's cost-based rate per month was higher than the Verizon-WV rate of $210/1000 access lines because Frontier had included certain cost elements not included by Verizon-WV in its rate determination. Although Verizon-WV agreed that the cost elements included by Frontier

were proper, Verizon-WV stated that it would honor its rate as submitted and analyzed by Staff. Although other telephone utilities had submitted tariff rates, Staff indicated that these rates were not cost-based, and Staff recommended that the other telephone utilities use the lower cost-based rates, unless good cause could be shown for using the higher tariff rates. On August 18, 2006, Verizon confirmed by letter that it was committed to the rates as submitted, but only in the context of a settlement of this proceeding.

On November 1, 2006, Staff filed its Fourth Final Joint Staff Memorandum, noting that none of the remaining ILEC's had filed cost evidence in support of their higher E911 DBMS rates and charges. Staff recommended that (1) Verizon-WV immediately update its previously filed E911 DBMS tariff to reflect the rates finally agreed upon through negotiations and (2) the Commission order all ILEC's to file updated E911 DBMS tariffs.

On November 3, 2006, the Commission entered an Order requiring each of the remaining ILECs to either accept the Frontier E911 DBMS tariff rates as their own or to submit their own cost-based rates. Staff was ordered to work with Jefferson County to ameliorate the impact of the loss of technical support if possible. Finally, this matter was set for hearing to be held on January 18, 2007. The Commission ordered public notice of the hearing through a statewide Class I legal publication.

On November 13, 2006, Verizon-WV responded to the Staff Fourth Final Joint Staff Memorandum. Verizon-WV stated its agreement in principle with the Staff recommendations. Verizon asked that it be allowed until December 14, 2006, to file updated E911 DBMS tariff rates, acknowledging that the Commission had entered an order on November 3, 2006, requiring the remaining ILECs to file their own cost-based rates by December 4, 2006, or accept the Frontier rates as their own.

Only Hardy Telecommunications, Inc., and West Side Communications responded to the Commission Order of November 3, 2006. Both ILECs stated that they would accept the Frontier cost-based E911 DBMS rates as their own.

On December 22, 2006, Verizon-WV filed its revised tariff, noting that the rates are based on the assumption that the non-responding ILECs would accept the Frontier rates as their own.

Continuance of the Hearing and Subsequent Efforts to Set a Procedural Schedule

On December 28, 2006, Kanawha Metro filed a motion to continue the hearing scheduled for January 18, 2007. In support of its motion, Kanawha Metro stated that additional time was necessary in order to have a forensic accountant review the cost data submitted in support of the Verizon-WV E911 DBMS proposed tariff rates. Kanawha Metro also indicated that the State 911 Conference was scheduled during the week of the hearing. On January 8, 2007, the Commission granted the Kanawha Metro motion and ordered that public notice of the continuance be made by statewide publication.

On January 10, 2007, the Commission received a letter from the E911 Council indicating that at a special meeting held on January 5, 2007, the E911 Council had unanimously approved a motion to approve the Verizon-WV proposed E911 DBMS tariff on a statewide basis. The motion also argued against continuing the January 18, 2007, hearing. The E911 Council emphasized the emergency nature of the action by indicating that both Mercer and Jefferson Counties needed to update their CPE and would not have emergency maintenance service on their systems after December 31, 2006. The E911 Council also voiced concern that it would take Verizon-WV six to nine months to establish a fully operational system after all final approvals are received.

Similarly, on January 11, 2007, Jefferson County filed its opposition to the continuance of the January 18, 2007 hearing date, arguing that it would actually be more convenient to hold the hearings when the State 911 conference is in session because many parties would be in Charleston. Jefferson County also asserted that any further delay of a case that was already three years old would be detrimental to those counties without E911 service. Jefferson County moved the Commission to rescind its Order dated January 8, 2007, and allow the hearing to take place as previously scheduled. On January 17, 2007, the Commission denied the E911 Council request to hold the January 18, 2007 hearing as previously scheduled. By that same order, the Commission denied the Jefferson County motion to rescind the January 8, 2007 Order.

On January 22, 2007, Kanawha Metro filed a letter by counsel suggesting that the Commission consider the time required for Kanawha Metro to review responses to data requests when rescheduling the hearing date.

On February 12, 2007, Staff, the E911 Council, Jefferson County, Verizon-WV and Frontier filed a joint motion requesting that the Commission establish a new procedural schedule. The week of March 5, 2007 was suggested as a new hearing date. Kanawha Metro opposed that joint motion. Kanawha Metro stated that it had received cost information from Frontier on February 5, 2007, and that meaningful review would require more time than the joint motion would provide.

On March 5, 2007, the Commission entered a Procedural Order which denied the procedural schedule as presented in the February 12, 2007 joint motion. All parties were directed to confer and file a joint proposal for a mutually agreeable procedural schedule.

Kanawha Metro Motion to Dismiss and Responses Thereto

On March 9, 2007, Kanawha Metro filed a motion to dismiss this proceeding for lack of subject matter jurisdiction. Kanawha Metro argued that *W. Va. Code* § 7-1-3cc granted the authority to create enhanced 911 systems to the counties of the State of West Virginia. Kanawha Metro asserted that the Commission was exceeding its jurisdiction by creating a statewide E911 system through the approval of tariff rates and charges for telephone utilities.

Staff filed a response in opposition to the Kanawha Metro motion to dismiss on March 13, 2007. Staff argued that *W. Va. Code* § 24-6-3(a) requires that the Commission develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to

be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems. County E911 systems must be consistent with the comprehensive plan. If disputes arise among the counties, the Commission is obligated statutorily to centralize any multiple enhanced emergency telephone systems. The Staff also argued that the jurisdiction of the Commission to regulate services and rates of public utilities is clear under controlling authority.

Verizon-WV responded to the Kanawha Metro motion to dismiss for lack of jurisdiction on March 16, 2007. On March 20, 2007, Frontier filed a response in opposition to that same motion.

The Kanawha Metro Motion to Enjoin Ex Parte Communications and the Staff Response

On March 13, 2007, Staff received correspondence from Jimmy Gianato, Director of the West Virginia Division of Homeland Security and Emergency Management, asking that the correspondence be forwarded to the Chairman of the Commission. Mr. Gianato encouraged the Commission to schedule a hearing in this matter at the earliest possible date. This correspondence was docketed in this proceeding as part of the official case file by Staff on March 14, 2007. On March 19, 2007, Kanawha Metro filed a motion for an order enjoining the parties and interested entities/individuals from attempting to communicate *ex parte* with the Commission. Staff opposed the motion as unnecessary, arguing that the protections sought by Kanawha Metro were already afforded by law.

Proposed Hearing Schedules, Additional Filings and Intrado's Petition to Intervene

On March 22, 2007, Kanawha Metro filed a Reply to the Response of Staff and Verizon-WV. Kanawha Metro requested an immediate hearing or ruling on the issue of jurisdiction.

On March 26, 2007, Verizon, the E911 Council, Jefferson County, Frontier, the Consumer Advocate Division of the West Virginia Public Service Commission (CAD) and Cingular filed a jointly proposed procedural schedule. On March 26, 2007, Washington/Baltimore Cellular Limited Partnership dba Cingular Wireless LLC also filed a request that its name as a petitioner to intervene be changed to New Cingular Wireless PCS (New Cingular).

On March 27, 2007, Kanawha Metro filed a proposed procedural schedule that sought to have this matter set for hearing during the week of June 25-30, 2007. This proposed schedule was amended by a filing received on March 28, 2007.

On April 2, 2007, Intrado Communications, Inc.(Intrado) filed a petition to intervene in this proceeding.

Verizon-WV filed a letter with an attached e-mail message on April 2, 2007, to supplement the record regarding the jointly proposed procedural schedule.

On April 12, 2007, Kanawha Metro filed a motion in support of the Intrado intervention, and on April 13, 2007, Kanawha Metro filed a motion to stay this proceeding pending resolution of its

outstanding motion to dismiss. On April 13, 2007, Verizon-WV filed a letter stating that it had no objection to the intervention of Intrado.

Verizon-WV also filed a response on April 23, 2007, to the Kanawha Metro motions to further delay the proceeding.

Revised Verizon Cost Study

On April 4, 2007, Verizon-WV made a revised cost study available to all parties who had signed a proprietary agreement. According to Verizon-WV, the revised study contained certain changes including: (1) corrected mileage calculations and channel termination costs on certain circuit costs; (2) annuity factors applied to net present value expenses in several cost components; (3) power and engineered, furnished and installed (EF&I) factors applied for several cost components; and (4) installation services investments added to certain cost components. The new cost study supported a rate of $196.14 per thousand ($196.14/1000) access lines, but Verizon again stated that it would continue to honor its commitment to the initially proposed rate of $182 per thousand ($182/1000) access lines and its agreement to phase in the proposed increase.

April 24, 2007 Procedural Schedule

By Order entered on April 24, 2007, the Commission entered an order: (1) setting a procedural schedule; (2) dismissing the Kanawha Metro motion to enjoin ex parte communication as unnecessary; (3) granting the Intrado motion to intervene; and (4) denying the Kanawha Metro motion to stay. The following procedural deadlines were established and statewide public notice as a Class I legal advertisement was required:

Pre-filed direct testimony	To be filed on or before May 31, 2007
Pre-filed rebuttal testimony	To be filed on or before June 11, 2007
Hearing	To be held on June 21-22, 2007
Initial Briefs	To be filed on or before July 20, 2007
Reply Briefs	To be filed on or before July 30, 2007

Because the Commission concluded that a factual hearing would assist it in ruling on the jurisdictional issue, the Commission deferred ruling upon the Kanawha Metro motion to dismiss until after the hearing.

Pre-hearing Motions, Filings and Orders

New Cingular filed a motion on May 29, 2007, for additional time within which to file rebuttal testimony. New Cingular's counsel was scheduled to be out of the United States from June 1, 2007 until June 11, 2007. Additional time beyond June 11, 2007, would be required to review the prepared direct testimony and to prepare rebuttal, if necessary.

On May 31, 2007, Verizon-WV, Frontier, the E911 Council, Kanawha Metro, Intrado, Jefferson County, and Staff filed prepared direct testimony in support of their respective positions.

Verizon-WV prepared direct testimony in panel format. Cingular and CAD filed letters stating that they would not file prepared direct and reserved the right to cross-examine and to file rebuttal testimony.

On May 31, 2007, Verizon-WV filed a motion for a protective order, seeking protection of certain pre-filed direct testimony as proprietary in nature. As required by Commission practice, Verizon filed both public and proprietary versions of its prepared direct testimony. Verizon relied upon the trade secrets exception of the West Virginia Freedom of Information Act, *W. Va. Code* § 29B-1-1, et seq. (WVFOIA), stating that the information provided and identified as proprietary in nature was known to few individuals and that disclosure of the information to competitors would give those competitors a business advantage and harm Verizon-WV.

On June 4, 2007, Intrado filed a letter stating that it had no objection to the additional time requested by Cingular to prepare rebuttal testimony, and on June 7, 2007, Frontier filed a response to the Verizon motion for a protective order.

By Order entered on June 8, 2007, the Commission extended the time deadline for all parties to pre-file rebuttal testimony to June 15, 2007.

On June 11, 2007, Kanawha Metro filed a motion to strike the prepared direct testimony of Verizon-WV on the basis that the testimony in panel format hampered cross-examination. Kanawha Metro requested that Verizon-WV either identify each respondent in its prepared direct testimony or that the testimony be stricken.

The Mercer County Communications Center (Mercer County) filed a letter with the Commission on June 11, 2007. In the letter, Mercer County discussed the Jefferson County petition to intervene and explained that most of the statements made by Jefferson County were true for Mercer County and any other E911 centers using Motorola CPE in counties served by Frontier. Mercer County listed many of the difficulties it had encountered in providing E911 service and expressed concern about further delays in this proceeding. On June 11, 2007, the CAD filed a motion for additional time to respond to the Verizon-WV motion for protective order.

Verizon-WV responded on June 13, 2007, to the Kanawha Metro motion to strike the Verizon-WV prepared direct testimony in panel format. Verizon-WV pointed out that this form of presentation of prepared testimony had been approved by the Commission on multiple occasions since 1998 and requested that it be allowed to proceed using the panel format. Verizon-WV had updated its testimony on June 13, 2007 to identify which of its panel witnesses were sponsoring which portions of its pre-filed direct testimony.

On June 15, 2007, Verizon-WV, Frontier, Kanawha Metro, and Staff filed prepared rebuttal testimony.

The Kanawha Metro motion to strike the testimony of Verizon-WV was denied by Commission order on June 15, 2007. Recognizing that the Commission has previously permitted the use of panel testimony in order to expedite complex hearings, the Commission allowed Verizon-WV to proceed with its panel presentation.

On June 15, 2007, the Commission also granted the CAD motion for an extension of time to file a response to the Verizon May 31, 2007 motion for a protective order. CAD was given until June 19, 2007, to file a response and CAD filed its response in opposition to the Verizon-WV motion for a protective order on June 19, 2007.

On June 15, 2007, CAD filed a letter indicating that CAD had opted not to file rebuttal testimony, and reserving the right to cross-examine at the hearing. On that same date, Frontier informed the Commission by letter that it would not file rebuttal testimony for Randall J. Brockman. On June 15, 2007, Cingular also filed a letter indicating that it would not file rebuttal testimony and reserving the right to cross-examine and present testimony at the hearing.

Evidentiary Hearing

On June 21 and June 22, 2007, the Commission held the hearing as scheduled in the Howard M. Cunningham Hearing Room in the Public Service Commission in Charleston, West Virginia. At the hearing, Intrado filed a motion for *pro hac vice* admission of Rebecca Ballesteros to appear as counsel to Intrado. The Commission granted the motion. Verizon, Frontier, Cingular, the E911 Council, Kanawha Metro, Intrado, Jefferson County, CAD, and Staff appeared by counsel. Seven representatives of the public appeared at the hearing to voice their concerns about the current state of E911 service in West Virginia. They appeared on behalf of seven county PSAPs, including Preston, Summers, Ritchie/Doddridge, Logan, Webster, Tucker and Cabell Counties. Testimony was taken and evidence introduced, at the close of which this matter was submitted for a decision pending completion of a briefing schedule.

Post-hearing Filings and Orders

On June 28, 2007, Verizon-WV filed a motion for interim relief. Verizon-WV sought to maintain the status quo pending final resolution of this matter by seeking the Commission authorization for Verizon to continue charging monthly $110/1000 line rate for E911 DBMS. Verizon-WV's $110 rate was scheduled to drop to $85 on July 1, 2007, in accordance with the Commission Final Order in Case No. 01-1117-T-T, *Verizon West Virginia Inc.*, September 13, 2001. Verizon-WV had refrained from assessing the E911 rate to CLECs and wireless telecommunications providers until this case is finally resolved. Even with the additional revenue from the CLECs and wireless telecommunications providers, the Verizon-WV rate would need to increase to over $170/1000 lines. Verizon-WV indicated that it would be difficult to implement the required billing system changes to first reduce the rate from $110 to $85, then to increase it to a much higher rate within a short period of time. Verizon-WV thus sought authorization to continue to charge the $110/1000 line rate as currently being billed until this case is finally resolved.

On July 2, 2007, Frontier also filed a motion for interim relief. Despite higher underlying costs, Frontier has been adopting the Verizon-WV rates for the provision of E911 DBMS. For the same reasons provided by Verizon in support of its motion for interim relief, Frontier moved the Commission to authorize Frontier to maintain the status quo insofar as E911 charges are concerned, pending final resolution of this case.

On July 2, 2007, the Commission entered an order approving the Verizon-WV June 28, 2007 motion for interim relief. Verizon-WV was authorized to continue charging monthly $110/1000 lines for E911 DBMS until the final resolution of this proceeding. The Commission also amended the briefing schedule to extend the time for filing initial briefs until July 26, 2007, with reply briefs due on August 6, 2007. On July 3, 2007, the Commission granted Frontier interim relief on its rates for the same reasons as it granted the Verizon-WV motion for interim relief.

Verizon-WV filed a motion to extend the briefing schedule on July 20, 2007. The motion was granted by Commission Order entered on July 24, 2007. It was ordered that post-hearing Initial Briefs would be filed on August 9, 2007, and post-hearing Reply Briefs would be filed on August 20, 2007.

Post-hearing Initial Briefs, including proposed Commission Orders, were filed by Commission Staff, Verizon-WV, Frontier, Intrado, Kanawha Metro, Jefferson County, and CAD. Post-hearing Reply Briefs were filed by Verizon-WV, Frontier, Intrado, Kanawha Metro, and CAD.

For discussion purposes, references to the exhibits will be by exhibit identification number made at the hearing, such as VZ Exh. 1, p. 1. All references to the transcript will be reflected as follows: Tr. Vol. . pp.

DISCUSSION

As part of this proceeding the Commission reviewed the pre-filed and direct and rebuttal testimonies, observed the witnesses presented during the two-day evidentiary hearing, and read the initial and reply post-hearing briefs.

Currently, in West Virginia counties outside the Verizon-WV service area, if a PSAP receives an emergency call from a CLEC, wireless, or VoIP customer, the only information received is that similar to Caller ID information. If the call is lost, there is no number to call back. Further, the location of the caller is unknown and valuable time is lost in responding to the caller (if a response can be made at all).

With full Phase I and II E911 functionality, county PSAPs will automatically receive information about the number from which each 911 call is made, the number to call back in case the call is disconnected or additional information is needed, and the location of the caller. The public safety, security and health benefits of fully enhanced E911 services are enormous to citizens currently living without such service. These benefits, however, also extend to all citizens of the State and to tourists as they travel throughout West Virginia.

The lives and property of West Virginia residents and visitors are substantially more at risk when located in the Counties of Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, Webster and McDowell as the result of the unavailability of E911 DBMS.

Preliminary Matter (1):

Whether the Commission should grant the Kanawha Metro motion to dismiss for lack of subject matter jurisdiction over this proceeding?

In its Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed March 9, 2007, Kanawha Metro argues that the Commission lacks subject matter jurisdiction to create and implement an E911 system because under *W. Va. Code* § 7-1-3cc only a county commission has that authority. Kanawha Metro also argues that the Commission lacks the authority to compel any county to participate in an E911 system without its agreement.

W. Va. Code § 7-1-3cc in relevant part states:

> In addition to possessing the authority to establish an emergency telephone system pursuant to section four [§ 24-6-4], article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six [§§ 24-6-1 et seq.] of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia Enhanced 911 Council concerning the operation of all county emergency communications centers or emergency telephone systems centers in the state[.]

The statute is clear that a county commission or a group of county commissions may establish an E911 emergency telephone system or convert an existing system to an enhanced system, but *must* comply with the statutory requirements of *W. Va. Code* §§ 24-6-1, et seq., as specified in *W. Va. Code* §7-1-3cc.

W. Va. Code § 24-6-3(a) requires that the Commission develop a comprehensive enhanced 911 plan. In relevant part, the *Code* provision states: "The public service commission shall develop, review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems." Additionally, the Commission must review the construction and switching replacement projections of each operating telephone company . See *W. Va. Code* § 24-6-3(c).

Once a comprehensive plan is adopted by the Commission, county governments have the discretion to establish an emergency telephone system within their jurisdictions. However, the county plan must be consistent with the comprehensive plan. While there is no statutory mandate that there be a single system, the systems should be centralized. See *W. Va. Code* § 24-6-4. Subsequently, however, if a conflict arises among county commissions, among telephone

companies, between a telephone company or companies and a county commission or commissions, or between the department of public safety [West Virginia State Police] and any of the foregoing entities concerning an enhanced 911 system or systems, the Commission has been given the statutory duty by the Legislature to resolve those conflicts. Among the statutory remedies provided to the Commission is the authority to centralize any multiple enhanced emergency telephone systems. See *W. Va. Code* §24-6-7.

The statutory authority of the Commission to adopt and periodically review a comprehensive plan for establishing and maintaining emergency and enhanced emergency telephone systems is in addition to the authority of the Commission to regulate services and rates of public utilities. The general powers of the Commission to approve tariffs and rates under *W. Va. Code* § 24-2-3 extend to the tariffs and rates for E911 services provided by telecommunications carriers. See, *W. Va. Code* §§ 24-1-1(a), 24-2-2(a), 24-2-4a, 24-2-4b, and 24-2-4c.

In its motion to dismiss, Kanawha Metro challenges the Commission authority to compel county participation in an E911 system. The Commission authority to review and consider the Verizon-WV proposed statewide rates for E911 service does not diminish the opportunity for other providers to offer E911 service in the State. Section 253(a) of the Telecommunications Act of 1996 specifically states:

> (a) IN GENERAL.—No State or local statute, or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Accordingly, all competitors remain free under federal law to enter the market to offer competing services.

Considering the evolution of this proceeding, the Commission has: (1) considered a proposed tariff filing by a regulated telecommunications provider; (2) created a task force and designated its responsibilities, all of which fall within the statutory mandate that the Commission adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems; (3) been advised concerning the reasonableness of the Verizon-proposed statewide DBMS rates and charges; and (4) considered these and other related issues in an extensive and well presented hearing by the parties.

The Commission finds that it has not only the authority, but the duty to establish, review, and update the comprehensive enhanced 911 plan and to review all utility rates and charges. Further, in exercising its statutory authority, the Commission is not compelling county participation in a statewide E911 system, as Kanawha Metro maintains in its motion to dismiss and Proposed Findings of Fact and Conclusions of Law. See, Kanawha Metro Proposed Finding of Fact 5. The Verizon-WV proposed E911 service is, in fact, not mandatory and not exclusive. The Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

Issues:

1. Whether the Commission should reject the Verizon-WV proposed statewide, phased-in tariff on the grounds that Verizon-WV did not file a Tariff Rule 42 Exhibit?

Kanawha Metro and Intrado claim that although cost data supporting the proposed E911 rate was filed with the Commission in this proceeding, Verizon-WV did not comply with *Rule* 42 of the Commission *Rules for the Construction and Filing of Tariffs,* 150 *C.S.R.* 2 *(Tariff Rules)* in that total company financial data included in a *Tariff Rule* 42 Exhibit was not filed as part of the proposed tariff change. Tr. Vol. II, p. 286. They also argue that Verizon-WV did not apply for or receive a waiver of such filing requirements. Tr. Vol II, p. 375.

The telecommunications industry, however, has not been regulated on a rate-base/rate-of-return basis for nearly two decades. Tr. Vol II, pp. 372-373. Consequently, telecommunications carriers routinely make filings without including full *Rule* 42 Exhibits, pursuant to the Commission *Tariff Rules. Id.* As Staff witness Dannie Walker explained at hearing, Verizon-WV has not had a general rate case in West Virginia since 1984. Tr. Vol. II, pp. 372-373; *C & P Telephone Co. of W. Va.,* Case No. 84-747-T-42T, Final Order (Sept. 6, 1985).

Since that time and because of the tremendous changes within the telecommunications industry, the Commission has regulated Verizon-WV and other telecommunications providers in West Virginia by a series of incentive regulation plans, commonly known as alternative rate plans. Alternative rate plans allow for a relaxation of traditional rate-base/rate-of-return regulation in telecommunications. The State Legislature specifically endorsed this regulatory approach in 1990 when it adopted *W. Va. Code* § 24-2-3c, allowing the Commission to cease regulation of "workably competitive" telecommunications services. Subsection (e) of that statute states "[n]othing in this section limits the commission's power to continue to engage in incentive or other innovative forms of rate-making in connection with its regulation of those services which it has not determined to be subject to workable competition."

During the course of this proceeding, Verizon-WV, CAD and Staff in fact were negotiating in a different Commission proceeding, a joint petition for review and approval of a Market Transition Plan ("MTP"), an alternative rate plan governing the Verizon-WV services and rates through 2010. On December 15, 2006, the parties filed the joint petition, which the Commission thereafter approved. See, Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

Under Paragraph 4(a)(I) of the MTP, the Commission allowed Verizon-WV to raise E911 rates to the level to be determined by the Commission in this proceeding. The same paragraph also provided for the four-step phase in of the Verizon-WV E911 rates. On page 2 of the December 21, 2006 Order approving the MTP Joint Stipulation, the Commission stated that any rate changes contemplated by the MTP would not become effective until after proper notice and future order of the Commission. Verizon-WV filed a copy of the required notice with the Commission on February 13, 2007. That notice read in pertinent part:

The MTP includes rate caps on basic and discretionary services. Allowed rate changes under the rate caps include:

> Subject to phase-in provisions specified in the MTP, Verizon WV may (1) introduce a new pricing structure for Enhanced 911 services in accordance with any order that may be entered by the Commission in Case No. 04-0102-T-GI or related case concerning the provision of Enhanced 911 database management services, or (2) to request by appropriate filing with the Commission that the rates and charges for Enhanced 911 services be increased, if necessary, to a level that is sufficient to recover the costs of providing such services.

Following the publication of the required notice and review of the proposed rate changes, on March 26, 2007, the Commission entered an Order approving the rate changes proposed in the MTP. *Verizon West Virginia Inc.*, Case No. 06-1935-T-PC, Commission Order (Mar. 26, 2007).

The record clearly shows that Kanawha Metro and Intrado have been afforded actual notice of the Verizon-WV proposed E911 rate changes as witnessed by their intervention and participation in this case. The same is true of the West Virginia E911 Council and numerous other county PSAPs that actually intervened or appeared as part of this proceeding. In addition, Kanawha County and other county PSAPs have had constructive notice of the same E911 rate changes through publication of the notice in Case No. 06-1935-T-PC. All parties willing to review cost data, subject to a confidentiality agreement, have had an opportunity to review that data and to file testimony rebutting the filings submitted by Verizon-WV. Kanawha Metro and Intrado have fully availed themselves of this opportunity.

The Verizon-WV tariff proposal and proposed rates have been properly noticed to the public, and submitted by Verizon-WV as required by the Commission in this proceeding. The review of the proposed tariff change for E911 service in this case is consistent with the MTP approved by the Commission on March 26, 2007. The Commission concludes that *Tariff Rule* 42 does not create a procedural impediment preventing the review by the Commission of the Verizon-WV proposed rates for E911 service in this case.

The Commission may waive *Tariff Rule* 42 filings and frequently does so for good cause shown.[1] *Tariff Rule 42*. Good cause exists because for many years, Verizon-WV has transitioned in the telecommunications market through a series of Commission approved plans in Case Nos.

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[1] See *West Virginia-American Water Company and the Regional Development Authority of Charleston – Kanawha County*, Case No. 06-1858-W-CN-PC (Mar. 15, 2007); *City of Cameron*, Case No. 06-1487-W-CN (Jan. 23, 2007); *Cave Road Utilities, Inc.*, Case No. 06-1823-WS-ACN-PW (Jan. 22, 2007); *Town of Farmington*, Case No. 06-1491-W-CN, (Jan. 10, 2007); *Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power*, consolidated Case Nos. 05-0402-E-CN and 05-0750-E-PC (Apr. 7, 2006). See also *Liberty Gap Wind Force*, LLC, Case No. 05-1740-E-CS (June 22, 2007).

83-259-T-SC, 90-613-T-PC, 94-0725-T-PC, 97-1461-T-PC, 00-0705-T-PC and 06-1935-T-PC. In addition, the Verizon-WV cost study and other evidence of record enables the Commission to make a determination as to the reasonableness of the Verizon-WV proposed rate.

2. Whether Verizon-WV proposed E911 tariff is reasonable with respect to cost?

Verizon-WV used a total service long-run incremental cost study, a forward-looking cost methodology, to develop proposed rates. For the past twenty years, the telecommunications industry has used forward-looking cost methodologies to develop prices for such services as 911, basic exchange service, vertical services, and data services. Tr. I, p. 94 The FCC requires the use of forward-looking costs for pricing unbundled network elements. Tr. II, p. 79.

Forward-looking cost study methodologies price a service based upon the total costs to provide a service, completely revising the entire pricing without reference to how those services previously were priced. In contrast, the Kanawha Metro cost analysis begins with complete acceptance of the historical rates and services Verizon-WV currently provides, and then attempts to identify those additional costs that Verizon-WV will incur to provide service outside of its existing incumbent service area. Metro Exh. 4, p. 4.

The bases of the Kanawha County claim are various critiques of the Verizon-WV cost study presented by the Kanawha Metro witness Morgan Winfree. However, each of these critiques was rebutted by the Verizon-WV witness. VZ Exh. R [Coates]. In addition, Kanawha Metro has never presented its position on what an appropriate rate should be.

The Verizon-WV tariff is reasonable when compared to its current tariff. Its proposed monthly rate for E911 service of $182/1000 access lines averages out to approximately a 65% increase over the current rate of $110/1000 access lines, although the actual increase varies by county. Under the terms of the Verizon-WV current tariff, however, the $110/1000 line rate can be applied to all access lines: ILEC, wireless, and CLEC, but Verizon-WV has only been billing for ILEC lines. Tr. Vol. I, p. 66. If Verizon-WV applied the current tariff as written, the bills for certain PSAPs would more than double because there are now more wireless phones in West Virginia than land line phones. *Id.* This would result in an effective rate per land line double the current rate.

The Verizon-WV proposed E911 rate was developed by including wireless costs. As a result, bills to PSAPs will only be based on the number of land lines served by each PSAP, as clarified by Verizon-WV at hearing. Tr. Vol. II, pp. 50-52. Footnote 4 on page 14 of the proposed tariff sets forth the method by which PSAPs will be billed for E911 service each month. Verizon-WV Exh. 1. Under the original language of footnote 4, the number of land line and wireless calls or lines in each county are assumed to be equal during the initial billing period. However, in subsequent years, footnote 4 stated that billing would be in proportion to the ratio of wire-line calls to wireless calls. Tr. Vol. II, p. 45. At hearing, Verizon-WV agreed to modify the language of footnote 4 to maintain the assumed equal ratio of land line and wireless calls for billing purposes. Tr. Vol. II, pp. 50-52. Thus, billing under the proposed tariff will be based solely on the number of land lines, including CLEC lines, served by each PSAP. Tr. Vol. I, p. 69. This stands in contrast to the current tariff that

allows billing of all lines. *Id.*, pp. 66; 74. When compared in this way, the effective rate per land line under the current tariff and the proposed tariff is almost identical, supporting the overall reasonableness of the Verizon-WV proposed rates.

Completely resetting the Verizon-WV prices, rather than building upon historical rates as Kanawha Metro advocates, is appropriate for several reasons. First, the Verizon-WV rates have not been adjusted since 2001. Tr. Vol. II, p. 40. Second, Verizon-WV began providing DBMS to PSAPs within its service area, including Kanawha Metro, without adjusting rates to reflect the additional service. Tr. Vol. II, pp. 92; 212-213. Third, the Verizon-WV service area under the plan will be increased significantly and its costs will change. Tr. Vol. I, pp. 72; 169-170; 176; Tr. Vol. II, p. 116; Frontier Exh. 1, p. 10. Fourth, Verizon-WV has not been assessing all of the charges that are provided in its current tariff. Tr. Vol. I, pp.70-71. Taken together, these factors favor completely revisiting the Verizon-WV rates. Using its cost methodology, Kanawha Metro would omit any correction of rates for the additional DBMS it has been receiving and continues to receive without charge and would omit any correction for tariff charges that Verizon-WV has not been assessing.

3. ***Whether approval of the Verizon-WV statewide averaged E911 tariff would unduly discriminate against Kanawha-Metro or any other PSAP?***

The Verizon-WV proposed tariff will charge PSAPs $182/1000 access lines monthly for the provision of E911 service throughout the State by averaging all of its costs for E911service across the entire State. Kanawha Metro already receives E911 DBMS from Verizon-WV. In fact, Kanawha County Commissioner Kent Carper diligently worked with the Verizon-WV predecessor, C & P Telephone Company, over twenty years ago to develop an E911 system for Kanawha County which was the first in the State and one of the first in the Eastern United States. Tr. Vol II, p. 322. At that time, the State of West Virginia did not assist in paying for E911 so the Kanawha County Commission and the City of Charleston subsidized the Kanawha County 911 system in the amount of $500,000 and $1 million per year, respectively. The amounts subsidized by the City and the County were in addition to the amount the citizens of Kanawha County contributed by supporting every requested increase necessary to build the system. Tr. Vol. II, pp. 320, 323-324.

Kanawha Metro has worked hard and spent dearly to develop E911 service for county citizens and maintains that it derives no additional benefit from the provision of E911 DBMS to the ten Frontier counties. Metro Exh. 1, p. 7. Kanawha County houses two major Verizon-WV switching centers and is opposed to subsidizing the more rural, less populated counties that are located at greater distances from the Verizon-WV switching centers. *Id.*

The Verizon-WV averaging of its costs across the State is a continuation of the current E911 tariff that has used statewide averaged rates since 1994. Tr. Vol. I, p. 59. This Commission has historically supported statewide and utility-wide rates for decades as a reasonable, non-discriminatory and equitable cost-based way to price service offerings:

> The Commission is of the opinion that the Company's STP [single tariff pricing] proposal results in a just, reasonable, sufficient and non-discriminatory rate for all of the customers of WVWC [West Virginia Water Company]. Each customer will pay the same rate for a like and contemporaneous service made under the same or substantially similar circumstances and conditions. ... A STP methodology... does not result in undue discrimination or favoritism between persons and between locations for a like and contemporaneous ...service.

(Emphasis in original).

West Virginia Water Company, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982); app. den. 70 ARPSCWV 480 (Sept. 21, 1982). See also, Pendleton County PSD, Case No. 94-1123-PWD-CN, Commission Order (Jan. 9, 1996).

Understandably, for the reasons set forth above, Kanawha Metro opposes the Verizon-WV proposed tariff. In today's computer and technology era, it is conceivable (but not practical) to price service individually. The question is whether that would be more equitable or efficient (or more accurate for that matter). It has long been the case that rates are averaged across a service area of a regulated carrier. All customers pay the same rate for the same class of telephone service from the same carrier, regardless of the cost to serve an individual customer. Tr. Vol. II, pp 160-161; 180; 337; Frontier Exh. 3, p. 5; Frontier Exh.1, p. 9. Just as the Verizon-WV rates for E911 services currently are averaged within its service area, it proposes that E911rates be the same throughout a newly-certificated E911 service area. Tr. Vol. I, p. 201. See also Frontier Exhibit 1, p. 9.

The record does not support overturning this long-standing regulatory principle or overturning the Commission policy of averaging rates for E911 service that has existed since 911 rates were first established in *General Investigation into the Practices of and Rates Charged by Certain Local Exchange Carriers with Respect to Emergency Telephone Systems service*, Case No. 93-0764-T-GI, Commission Order (Dec. 21, 1993). Tr. Vol. II, pp. 357-358; Frontier Exh. 2, pp. 2-3.

While Chapter 24 of the *W. Va. Code* is replete with prohibitions against undue discrimination, none of the statutory provisions preclude any and all discrimination, *per se.* See *W. Va. Code* §§ 24-1-1(a)(4); 24-2-2(a); 24-2-3; 24-2-4b(b); and 24-2-7(a). The approval of statewide or averaged rates to assure equal accessibility to essential E911 DBMS rates by all West Virginia PSAPs will not create undue discrimination against those county PSAPs who currently receive E911 DBMS.

4. Whether E911 rates should be bundled?

The Verizon-WV E911 tariff rate in West Virginia has been bundled since 1994. This means that there is a single rate for the entire E911 service. PSAPs cannot purchase individual pieces of

the E911 service on an a la carte basis. Intrado objects to the lack of unbundled rate elements in the proposed tariff as being anti-competitive.

Although Verizon-WV stated that it could unbundle its rates, it has resisted doing so because the PSAPs had requested the bundled rate. Tr. Vol. I, p. 160. Verizon offers unbundled E911 tariffs in other states. In fact, Verizon-WV witness Christopher Coates said that he could not compare rates in West Virginia to other Verizon states because those states had *unbundled* rate elements. *Id.*, pp.101-102. At hearing, Staff testified to the rates from the Verizon E911 tariff in Maryland that offered a bundled rate, but also had unbundled rate elements for selective routing and ANI services. Tr. Vol. II, pp. 340-341.

Verizon-WV has offered to make the separate components of E911 services available in a timely manner. Proposed Order of Verizon-West Virginia, p.111, Verizon-WV Findings of Fact 27-28. Additionally, Verizon-WV has modified its original proposal to make clear that counties could opt out, in whole or in part, from E911 service with Verizon-WV. VZ Exh. R, p. 4; Tr. Vol. I, p. 215.

The Commission will approve the Verizon-WV bundled averaged E911 tariff. Contrary to the concerns of Intrado, the Verizon-WV proposed tariff allows for competitive entry by other providers of E911 services. Nothing in the plan makes Verizon-WV the exclusive provider of E911 services. Instead, the rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates could change. Tr. I, pp. 21; 83; 209-211.

The Commission will also require Verizon-WV to supplement its E911 tariff with unbundled rate elements for selective routing and ANI/ALI services. Supporting cost information should also be filed with the unbundled rate elements. This will provide a foundation for competitive E911future offerings in the State and provide more purchasing options to PSAPs, either individually or collectively.

5. Whether the Verizon-WV proposed offset of implementation costs with Market Transition Plan public benefit grant funds in order to phase in its rates would be anti-competitive?

The Verizon-WV Commission-approved MTP is an alternative regulation plan that balances competing interests and viewpoints with a goal of benefitting the public interest by ensuring reasonable rates. See, e.g., Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia, Commission Order, Case No. 05-0040-T-PC, Attachment ¶¶ 11, 13 (May 4, 2005). Under Section 4 of the MTP, E911 services are classified as Category I services, the prices of which are normally set for the duration of the plan but were specifically

exempted because of the pendency of this proceeding. Verizon-WV agreed to phase in its proposed E911rates over four steps if the rates were approved as part of the resolution of this proceeding. Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (March 26, 2007).

The MTP includes a public benefits expenditure provision. Under Section 15 of the MTP, Verizon-WV is required to make annual grants totaling $1.7 million to the State, local agencies, or community-based non-profit groups for public benefits. However, Section 15 also states that if the phase in of E911 rates is approved, Verizon-WV can offset its annual public benefits' commitment by the amount of revenue forgone as a result of the phase in. *Id.*

The rate phase in would result in a monthly rate for E911 service of $128 per thousand ($128/1000) lines the first year; $146 the second; $164 the third; and $182/1000 lines the fourth year. Tr. Vol. I, p. 87. Verizon-WV has not sought a flash cut to the existing rate; on the contrary, with the rate phase in, Verizon-WV will receive approximately $900,000 less the first year than under full rates. Consequently, pursuant to the MTP, the Verizon-WV public benefits' commitment would be offset by $900,000 the first year, and lesser amounts the next two years. Tr. Vol. I, p. 89.

Intrado claims that the phase in of the Verizon new E911 rate is anti-competitive since the rates during the phase in will be below the costs indicated by the Verizon cost study. Proposed Commission Order Prepared by Intrado Communications, Inc., pp. 16-19. Intrado complains that the final rate of $182/1000 lines is too low, and therefore, anti-competitive. *Id.*, p. 3. Kanawha Metro complains that the proposed rate is too high and the rate increase of 65% or more is too large. Tr. Vol. II, pp. 285-286. Each of these concerns is defensible. A price set too low will stifle competition; a price set too high will impose unreasonable burdens on PSAPs and the public. The Commission is called to perform a balancing role in reconciling these two seemingly opposing interests. See W. Va. Code § 24-1-1(b).

The phase in of the new rate called for in the Verizon-WV MTP is an appropriate way for the Commission to strike this balance. PSAPs will see moderate predictable increases in the rate for E911 services over the next three years. At the same time, the rate will become increasingly higher with the passage of time, providing Intrado opportunities to make inroads with different county PSAPs, and ultimately the State as a whole. In this manner, rate impacts on customers can be mitigated, and market forces can be introduced into another area of telecommunications.

Parties to this proceeding have suggested that instead of phasing in the rate, that equivalent grants should be given to PSAPs so that they can make their own purchasing decisions or that the Commission should direct Verizon-WV to place the funds into a general fund administered by a third party. Intrado Exh. 1, p. 24. The Commission declines to do so. The MTP was a negotiated settlement in Case No. 06-1935-T-PC among the parties to that case. Changing the public benefit fund portion of the MTP affects other terms which likely would have been different had the parties known that public benefit funds would not be used to phase in E911 rates. Moreover, the MTP is

a Commission-approved plan that will use public benefit funds to facilitate the phase in of the Verizon-WV new E911 rates, and thereby provide a direct benefit to each and every PSAP in the State. The Commission finds that there is no sufficient basis for disturbing the MTP in this proceeding.

Staff argues that it would be unfair to the counties to eliminate the phase in of the Verizon E911 DBMS rates as long as there is no competition for the provision of E911 DBMS. See Initial Brief of Staff, Proposed Conclusion of Law 21, p. 35-36. Staff also argues that it would be anti-competitive for Verizon-WV to use its MTP technology grant funds to phase in its rates if there were a competitor in the market. See Initial Brief of Staff, Proposed Conclusion of Law 20, p. 35. The Commission notes that the Verizon-WV MTP governs its rates and services through 2010 only. See Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

As is obvious by the participation of Intrado in this case, other providers may offer competitive E911 services, and PSAPs are free to purchase E911 service from whichever provider best suits their needs. In fact, on March 28, 2007, Intrado was issued a certificate by the Commission to provide such statewide E911 services. See, Intrado Communications Inc., Case No. 06-1892-T-CN, Recommended Decision (March 8, 2007; final March 28, 2007). Intrado testified at hearing that it could offer a monthly rate of $231/1000 lines for E911 service. Tr. Vol II, p. 219, but has not yet made an appropriate tariff filing with the Commission proposing the rates, standards, terms and conditions for the E911 services that Intrado intends to offer in West Virginia.

Preliminary Matter (2):

Whether the Commission should grant the Verizon-WV motion for protective treatment?

On May 31, 2007, Verizon-WV filed a motion seeking protective treatment of certain exhibits attached to its direct testimony and portions of testimony referencing information contained in those exhibits. The exhibits in question were: (1) Exhibit 2, which Verizon-WV identifies as "Highly Proprietary" and describes as a "Diagram of Current Network and Proposed Network"; (2) Exhibit 5, described as the Verizon-WV "Price Change Breakdown Overview" and identified as "Proprietary"; and (3) Exhibit 6, which Verizon-WV describes as its "Cost Study" and claims is "Highly Proprietary." See VZ Exh. DP, Table of Exhibits. Portions of the Verizon-WV prepared direct testimony referencing information contained in these exhibits were also redacted. See VZ Exh. DP, pp. 14 (related to VZ Exh. 5); *Id.*, pp.19-25; 27 (related to VZ Exh. 2 and/or VZ Exh. 6).

Verizon-WV claims the information that was the subject of its motion for protective order is exempt from disclosure under the West Virginia Freedom of Information Act's ("WVFOIA") exemptions for "trade secrets" and/or Homeland Security-related information. See W. Va. Code §§ 29B-1-4(a)(1), (10), (13) and (15).

Frontier seeks to withhold certain information designated as "proprietary" in the prepared direct testimony of Randall Brockmann and in certain exhibits relating to the cost of the Frontier facilities used in the preparation of the Verizon-WV cost study. Frontier, however, did not file a motion for protective order regarding such information. Nor did Frontier make a motion for protective treatment during the hearing in this proceeding. Tr. Vol. I, pp. 35; 37.

As it is possible for the Commission to issue this Order without including any of the proprietary information, the Commission concludes that there is no need to rule upon the requests for protected treatment at this time as the Commission is addressing the protection of sensitive information dispositively in Case No. 07-0558-T-GI, *General Investigation into Procedures for the Protection of Confidential Information in Commission Proceedings*. The Commission shall direct its Executive Secretary to maintain the information separate and apart from the rest of the file. If there is a request filed with the Commission in the future to make such information public, the Commission shall require the entity seeking protective treatment to argue its request for protective treatment at that time.

FINDINGS OF FACT

1. Enhanced 911 (E911) services allow the transmission of the name, telephone number and physical location of the person making an emergency call to a PSAP.

2. Verizon-West Virginia, Inc. (Verizon-WV) has offered E911 services in a bundled package containing all components of E911 services at uniform rates throughout its service territory since 1994. Tr. Vol. I, pp. 57-59.

3. Verizon-WV currently provides E911 service to 42 PSAPs operating in 45 West Virginia counties and Frontier provides E911 service to 10 PSAPs in the State's remaining counties. The service territory of Frontier is predominantly rural and includes Hardy Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, and Webster Counties. Verizon's Initial Brief at p. 112.

4. Initially, the Verizon-WV E911 monthly rate was $85/1000 access lines. This rate was adopted by *Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia* (Frontier) in its West Virginia service territory. Tr. Vol. I, pp. 243-244, 247; Tr. Vol. II, pp. 24, 96; Tr. Vol. II, pp. 95-96.

5. In 2001, Verizon-WV increased its monthly E911 rate to $110/1000 access lines to pay for the upgrade of facilities necessary to handle wireless calls. Frontier also adopted that Verizon-WV rate. Tr. Vol. II, pp. 24, 96; Tr. Vol. II, pp. 93, 123.

6. PSAPs in those counties served by Frontier have been paying the same higher rate as Verizon-WV, however they have not been receiving the same service. Tr. Vol. I, pp. 55, 61; Tr. Vol. II, p. 123.

7. With the exception of Mercer County, no Frontier county can identify the name, number or location of calls from wireless phones. The same is true for calls to PSAPs from customers of competitive local exchange carriers (CLECs) and calls from customers using Voice over Internet Protocol (VoIP).

8. PSAPs in the Frontier counties currently lack access to E911 DBMS and selective routing facilities that are necessary to provide full E911 service.

9. A Task Force established by the Commission and comprised of telecommunications carriers, PSAPs, and Staff, filed its Final Report into DBMS for E911 services, including a proposed Verizon-WV E911 Tariff on January 6, 2006.

10. The Task Force recommended that: (1) the Commission direct a full financial analysis of the proposed Verizon-WV E911 DBMS tariff rates and of the cost information supplied to Verizon-WV by the independent ILECs; (2) a public hearing be held no later than April 2006 for review of the audit results and to take comments of interested parties; (3) public notice of the hearing be provided to all ILECs, CLECs, West Virginia wireless carriers and county commissions; (4) Verizon-WV be granted the authority to serve outside its normal service area; and (5) the independent ILECs be required to modify their tariffs regarding the provision of E911 service.

11. On January 6, 2006, the Task Force filed its Final Report. The Final Report included a proposed Verizon tariff establishing a statewide monthly rate of $198/1000 access lines to be charged by Verizon as the single E911 DBMS provider in West Virginia. See VZ. Exh. 1; Staff Exh. 1, pp. 4-8.

12. By Order entered on February 7, 2006, the Commission directed the Staff to review the financial analysis underlying the $198/1000 monthly rate of access lines and the cost information provided to Verizon by the ILECs. See Case No. 04-0102-T-GI, Commission Order, p. 7.

13. Subsequently, Verizon filed a cost study supporting an increase from its current monthly rate of $110/1000 access lines to a monthly rate of $182/1000 access lines. Tr. Vol. I, p. 60.

14. Verizon filed a Total Service Long Run Incremental Cost (TSLRIC) model, which used different cost components than its prior analyses. This study generated an E911 DBMS

monthly cost of $196.14/1000 access lines. However, Verizon continued to offer the service for the previously proposed $182 per month per thousand access lines. Tr. Vol. I, pp. 92-93.

15. Telecommunications carriers routinely make filings without including *Rule* 42 Exhibits, pursuant to the Commission *Rules for the Construction and Filing of Tariffs, 150 C.S.R.* 2. *Id.*

16. Verizon-WV did not file the company financial data included in a *Tariff Rule* 42 Exhibit under the *Rules for the Construction and Filing of Tariffs,* 150 *C.S.R.* 2 as part of its proposed tariff. Tr. Vol. II, p. 286. Nor did Verizon-WV apply for or receive a waiver of such filing. Tr. Vol II, p. 375.

17. Verizon-WV has not had a general rate case in West Virginia since 1984. Tr. Vol. II, pp. 372-373; *C & P Telephone Co. of W. Va.,* Case No. 84-747-T-42T, Final Order (Sept. 6, 1985).

18. On December 15, 2006,Verizon-WV, CAD and Staff filed a joint petition for review and approval of a Market Transition Plan ("MTP"), an alternative rate plan governing the Verizon-WV services and rates through 2010, which the Commission approved on December 21, 2006. Verizon West Virginia, Inc., Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

19. Under Paragraph 4(a)(I) of the MTP, the Commission allowed Verizon-WV to raise E911 rates to the level to be determined by the Commission in this proceeding. The same paragraph also provided for the four-step phase in of the Verizon-WV E911 rates. *Id.*

20. On page 2 of the December 21, 2007 Order approving the MTP Joint Stipulation, the Commission stated that any rate changes contemplated by the MTP would not become effective until after proper notice and future order of the Commission. Verizon-WV filed a copy of the required notice with the Commission on February 13, 2007. *Id.*

21. Following the publication of the required notice and review of the proposed rate changes, on March 26, 2007, the Commission entered an Order approving the rate changes proposed in the MTP. *Verizon West Virginia Inc.*, Case No. 06-1935-T-PC, Commission Order (Mar. 26, 2007).

22. For the past 20 years, the telecommunications industry has used forward-looking cost methodologies to develop prices for such services as 911, basic exchange service, vertical services, and data services. Tr. Vol. I, p. 94

23. Verizon-WV used a total service long-run incremental cost study, a forward-looking cost methodology, to develop proposed rates in this case. Tr. Vol. I, pp. 93-94.

24. Forward-looking cost study methodologies price a service based upon the total costs to provide a service, completely revising the entire pricing without reference to how those services previously were priced.

25. Kanawha Metro has never presented its position on what an appropriate rate should be.

26. Verizon-WV's proposed monthly rate for E911 service of $182/1000 access lines averages approximately a 65% increase over the current rate of $110/1000 access lines, although the actual increase varies by county.

27. The Verizon-WV current tariff can be applied to all access lines: ILEC, wireless, and CLEC, but Verizon-WV has only been billing for ILEC lines. Tr. Vol. I, p. 66.

28. If Verizon-WV applied the current tariff as written, the bills for certain PSAPs would more than double because there are now more wireless phones in West Virginia than land line phones. *Id.*

29. Verizon-WV has been providing DBMS to PSAPs within its service area, including Kanawha Metro, without adjusting rates to reflect the additional service. Tr. Vol. II, pp. 92; 212-213.

30. The Verizon-WV proposed E911 rate was developed by including wireless costs. As a result, bills to PSAPs will only be based on the number of land lines served by each PSAP. Tr. Vol. II, pp. 50-52.

31. The Verizon-WV proposed tariff sets forth the method by which PSAPs will be billed for E911 service each month. Verizon-WV Exh. 1, n. 4.

32. The Verizon-WV tariff will maintain the assumed equal ratio of land line and wireless calls for billing purposes. Tr. Vol. II, pp. 50-52. Billing under the proposed tariff will be based solely on the number of land lines, including CLEC lines, served by each PSAP. Tr. Vol. I, p. 69.

33. The Verizon-WV tariff proposes to charge PSAPs $182/1000 access lines monthly for the provision of E911 by averaging all of its costs for E911service across the entire State.

34. Verizon-WV's averaging of its costs across the State is a continuation of the current E911 tariff that has used statewide averaged rates since 1994. Tr. Vol. I, p. 59.

35. The Commission has historically supported statewide and utility-wide rates, which are common in the telecommunications industry. Tr. Vol. II, p.335, See also, West Virginia Water Company, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982).

36. The Verizon-WV E911 tariff rate in West Virginia has been bundled since 1994 and there is a single rate for the entire E911 service. PSAPs cannot purchase individual pieces of the E911 service on an a la carte basis.

37. Verizon-WV can unbundle its rates but has resisted doing so because the PSAPs had requested the bundled rate. Tr. Vol. I, p. 160.

38. Verizon offers unbundled E911 tariffs in other states.

39. Verizon-WV has offered to make the separate components of E911 services available in a timely manner. Proposed Order of Verizon-West Virginia, p.111, Verizon-WV Findings of Fact 27-28.

40. Additionally, Verizon-WV has modified its original proposal to make clear that counties could opt out, in whole or in part, from E911 service with Verizon-WV. VZ Exh. R, p. 4; Tr. Vol. I, p. 215.

41. Nothing in its proposed tariff makes Verizon-WV the exclusive provider of E911 services. The rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates could change. Tr. I, pp. 21; 83; 209-211.

42. The Verizon-WV Commission-approved MTP is an alternative regulation plan that balances competing interests and viewpoints with a goal of benefitting the public interest by ensuring reasonable rates. See, e.g., Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia, Commission Order, Case No. 05-0040-T-PC, Attachment ¶¶ 11, 13 (May 4, 2005).

43. Under Section 4 of the MTP, E911 services are classified as Category I services, the prices of which are normally set for the duration of the plan, but were specifically exempted because

of the pendency of this proceeding. Verizon-WV agreed to phase in its proposed E911rates over four steps if the rates were approved as part of the resolution of this proceeding. *Verizon West Virginia, Inc.*, Case No. 06-1935-T-PC, Commission Order (March 26, 2007).

44. The MTP includes a public benefits expenditure provision. Under Section 15 of the MTP, Verizon-WV is required to make annual grants totaling $1.7 million to the State, local agencies, or community-based non-profit groups for public benefits. Section 15 also states that if the phase in of E911 rates is approved, Verizon-WV can offset its annual public benefits' commitment by the amount of revenue forgone as a result of the phase in. *Id.*

45. The rate phase in would result in a monthly rate for E911 service of $128/1000 lines the first year; $146 the second; $164 the third; and $182/1000 lines the fourth year. Tr. Vol. I, p. 87. Verizon-WV will receive approximately $900,000 less the first year than under full rates and lesser amounts the next two years.

46. Pursuant to the MTP Verizon-WV's public benefits' commitment would be offset by $900,000 the first year, and lesser amounts the next two years. Tr. Vol. I, p. 89.

47. On May 31, 2007, Verizon-WV filed a motion seeking protective treatment of certain exhibits attached to its direct testimony and portions of testimony referencing information contained in those exhibits.

48. The exhibits in question were: (1) Exhibit 2, which Verizon-WV identifies as "Highly Proprietary" and describes as a "Diagram of Current Network and Proposed Network"; (2) Exhibit 5, described as the Verizon-WV "Price Change Breakdown Overview" and identified as "Proprietary"; and (3) Exhibit 6, which Verizon-WV describes as its "Cost Study" and claims is "Highly Proprietary." See VZ Exh. DP, Table of Exhibits. Portions of the Verizon-WV prepared direct testimony referencing information contained in these exhibits were also redacted. See VZ Exh. DP, pp. 14 (related to VZ Exh. 5); *Id.*, pp.19-25; 27 (related to VZ Exh. 2 and/or VZ Exh. 6).

49. Verizon-WV claims that the information that is the subject of its Motion for Protective Order was exempt from disclosure under the West Virginia Freedom of Information Act's ("WVFOIA") exemptions for "trade secrets" and/or Homeland Security-related information. See W. Va. Code §§29B-1-4(a)(1), (10), (13) and (15).

50. Frontier seeks to withhold certain information designated as "proprietary" in the prepared direct testimony of Randall Brockmann and in certain exhibits relating to the cost of the Frontier facilities used in the preparation of the Verizon-WV cost study.

51. Frontier did not file a motion for protective order regarding such information, nor did Frontier-WV make a motion for protective treatment during the hearing in this proceeding. Tr. Vol. I, pp. 35; 37.

CONCLUSIONS OF LAW

1. *W. Va. Code* § 24-6-3 requires the Commission to "develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems." County E911 systems must be consistent with the Commission comprehensive plan. *W. Va. Code* § 24-6-4(a). In addition, the Commission general powers to approve tariffs and rates of under *W. Va. Code* § 24-2-3 extend to the tariffs and rates for E911 services provided by telecommunications carriers.

2. The Commission finds that it has not only the authority, but the duty to establish, review, and update the comprehensive enhanced 911 plan and to review all utility rates and charges. Further, in exercising its statutory authority, the Commission is not compelling county participation in a statewide E911 system, as Kanawha Metro maintains in its Motion to Dismiss and Proposed Findings of Fact and Conclusions of Law. The Commission instead is approving the rates, terms and conditions for a service offered by a public utility subject to the Commission jurisdiction. Therefore, it is reasonable to deny the Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction.

3. The Verizon-WV tariff proposal and proposed rates have been properly noticed to the public and submitted by Verizon-WV as required by the Commission in this proceeding. The review of the proposed tariff change for E911 service in this case is consistent with the MTP approved by the Commission on March 26, 2007. *Tariff Rule* 42 of the Commission *Rules for the Construction and Filing of Tariffs*, 150 *W. Va. C.S.R.* 2 does not create a procedural impediment preventing the Commission review of the Verizon-WV proposed rates for E911 service in this case.

4. *Rule* 42 filing requirements are frequently waived by the Public Service Commission for good cause shown. See *Liberty Gap Wind Force, LLC* Case No. 05-1740-E-CS, June 22, 2007; *West Virginia-American Water Company and the Regional Development Authority of Charleston - Kanawha County*, Case No. 06-1858-W-CN-PC, March 15, 2007; *City of Cameron*, Case No. 06-1487-W-CN, January 23, 2007; *Cave Road Utilities, Inc.*, Case No. 06-1823-WS-ACN-PW, January 22, 2007; *Town of Farmington*, Case No. 06-1491-W-CN, January 10, 2007; *Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power, Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power*, consolidated Case Nos. 05-0402-E-CN and 05-0750-E-PC, April 7, 2006.

5. The Public Service Commission grants Verizon-WV a waiver of its *Rule* 42 Exhibit requirements. This waiver is granted because; (1) the submitted cost model is sufficient to determine the reasonableness of the proposed rate, (2) Verizon-WV is no longer rate-base/rate-of-return regulated, (3) the preparation of a *Tariff Rule* 42 Exhibit would prolong a final resolution of a threat which requires an expedient resolution, and (4) the expense of the preparation of a *Rule* 42 Exhibit would unnecessarily and substantially increase the cost of E911 DBMS in West Virginia. This waiver is granted in accordance with the provisions of Rule 1.6 of the Commission *Rules for the Construction and Filing of Tariffs*, 150 *W. Va. C.S.R.* 2.

6. The cost model submitted by Verizon-WV is sufficient to justify the proposed rate.

7. Completely resetting the Verizon-WV prices, rather than building upon historical rates as Kanawha Metro advocates, is appropriate. Using its cost methodology, Kanawha Metro would omit any correction of rates for the additional DBMS it has been receiving and continues to receive without charge and would omit any correction for tariff charges that Verizon has not been assessing.

8. Verizon-WV should, within ten days, file a revised tariff offering the proposed rate of $182/1000 access lines with the Commission. The revision should remove all references to the exclusive provision of E911 DBMS by Verizon and modify Footnote 4 of the proposed tariff, as agreed to by Verizon-WV in testimony at hearing, to maintain the assumed 50/50 ratio of land line and wireless calls for billing purposes until a subsequent new tariff is filed by Verizon-WV. See Footnote 4, Verizon's Miscellaneous Service Arrangements Tariff, P.S.C. W. Va. No. 211, Section 14, 2nd Revised Page 14, Canceling 1st Revised Page 14, marked at hearing as VZ Ex. 1.

9. This Commission has historically supported statewide and utility-wide rates for decades as a reasonable, non-discriminatory and equitable way to price service offerings on a cost-based methodology:

> The Commission is of the opinion that the Company's STP [single tariff pricing] proposal results in a just, reasonable, sufficient and non-discriminatory rate for all of the customers of WVWC [West Virginia Water Company]. Each customer will pay the same rate for a like and contemporaneous service made under the same or substantially similar circumstances and conditions. ... A STP methodology... does not result in undue discrimination or favoritism between persons and between locations for a like and contemporaneous ...service.

(Emphasis in original).

West Virginia Water Company, Case No. 81-126-W-42A, "Order Approving Single Tariff Pricing" (May 26, 1982); app. den. 70 ARPSCWV 480 (Sept. 21, 1982). See also, Pendleton County PSD, Case No. 94-1123-PWD-CN, Commission Order (Jan. 9, 1996).

10. The record does not support overturning this long-standing regulatory principle or overturning the Commission policy of averaging rates for E911 service that has existed since 911 rates were first established in *General Investigation into the Practices of and Rates Charged by Certain Local Exchange Carriers with Respect to Emergency Telephone Systems service*, Case No. 93-0764-T-GI, Commission Order (Dec. 21, 1993).

11. Although Chapter 24 of the *W. Va. Code* is replete with prohibitions against **undue** discrimination, none of the statutory provisions preclude any discrimination, *per se.* See *W. Va. Code* §§ 24-1-1(a)(4); 24-2-2(a); 24-2-3; 24-2-4b(b); and 24-2-7(a). The approval of statewide or postalized rates to assure equal accessibility to essential E911 DBMS rates by all West Virginia PSAPs will not create **undue** discrimination against those county PSAPs who currently receive E911 DBMS.

12. The Commission will approve the Verizon-WV bundled averaged E911 tariff. The Verizon-WV proposed tariff allows for competitive entry by other providers of E911 services. Nothing in the plan makes Verizon-WV the exclusive provider of E911 services. Instead, the rates Verizon-WV developed are based on the assumption that all counties in West Virginia participate in the plan and that Verizon-WV provides service to all counties in the State. If either of those assumptions does not accurately reflect how the plan is implemented, rates may change.

13. The Commission will also require Verizon-WV to supplement its E911 tariff Verizon-WV supplement its E911 tariff by filing proposed unbundled rate elements the individual components of E911 DBMS. Supporting cost information should also be filed with the unbundled rate elements. This will provide a foundation for competitive E911 future offerings in the State and provide more purchasing options to PSAPs, either individually or collectively, and will promote new technological development.

14. The Commission is called to perform its role in reconciling two seemingly opposing interests regarding the reasonableness of E911 service and competition in the marketplace. See, W. Va. Code § 24-1-1(b). The phase in of the new rate called for in the Verizon-WV MTP is an appropriate way for the Commission to strike this balance. PSAPs will see moderate predictable increases in the rate for E911 services over the next three years. At the same time the rate will become increasingly higher with the passage of time, providing Intrado opportunities to make inroads with different county PSAPs, and ultimately the State as a whole. In this manner, rate impacts on customers can be mitigated, and market forces can be introduced into another area of telecommunications.

15. As it is possible for the Commission to issue this Order without including any of the proprietary information, the Commission concludes that there is no need to rule upon the requests for protected treatment at this time as the Commission is addressing the protection of sensitive information dispositively in Case No. 07-0558-T-GI, *General Investigation into Procedures for the Protection of Confidential Information in Commission Proceedings.*

ORDER

IT IS THEREFORE ORDERED that the Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

IT IS FURTHER ORDERED that the Verizon-WV bundled averaged E911 tariff is approved, subject to the condition that within ten days Verizon-WV revise its E911 tariff filing to remove all references to the exclusive provision of E911 DBMS by Verizon-WV and to modify Footnote 4 of the proposed tariff, as agreed to by Verizon-WV in testimony at hearing, so that the assumed 50/50 ratio of land line and wireless calls for billing purposes is maintained until a subsequent new tariff is filed by Verizon-WV.

IT IS FURTHER ORDERED that the requirements to file a complete *Rule* 42 are waived.

IT IS FURTHER ORDERED that Verizon-WV supplement its E911 tariff by filing proposed unbundled rate elements for selective routing and ANI/ALI services with supporting cost information within 120 days.

IT IS FURTHER ORDERED that Verizon-WV may use public benefit funds to facilitate the phase in of the Verizon-WV new E911 rates as set forth in the Verizon-WV Market Transition Plan.

IT IS FURTHER ORDERED that the Executive Secretary will continue to maintain the documents for which the parties requested protected treatment separate and apart from the remainder of the file and in a protected manner.

IT IS FURTHER ORDERED that upon 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 serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:

Sandra Squire
Executive Secretary

MEB/lm

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

(1) On November 19, 2007, as amended on December 7, 2007, and January 28, 2008, Intrado Communications, Inc. (Intrado) filed an application seeking certification in the state of Ohio as a competitive local exchange carrier (CLEC) for the purpose of provisioning telecommunications services that facilitate, enhance, and advance the provision of emergency services for end users of wireline and wireless carriers and voice over Internet protocol (VoIP) providers. Intrado submits that it will offer its telecommunications services throughout the state of Ohio to a federal, state, or municipal or other local government unit legally authorized to subscribe to the service and which has public safety responsibility by law to respond to telephone calls from the public for emergency services, including police and fire. The applicant avers that its offerings in Ohio will provide public safety answering points (PSAPs) with competitive alternative options to their current 9-1-1 incumbent-based legacy systems that do not exist today. In particular, Intrado states that its next-generation solution will provide PSAPs with the capabilities to process, route, and deliver wireline, wireless, and VoIP calls allowing for more relevant information to be sent to first responders.

Intrado explains that its services permit calls originated by personal communications devices that dial 9-1-1 or another emergency number to be received by a PSAP. The company describes how its services support interconnection to other telecommunications service providers for the purpose of receiving emergency calls originated in their networks. Specifically, these services include 9-1-1 call routing services which use a call management system to perform the selective routing of an emergency call to the appropriate PSAP or to hand the call off to a different 9-1-1 service provider for call completion to the appropriate PSAP. Inasmuch as its services allow for access and usage of 9-1-1

services through the transporting of 9-1-1 and emergency call traffic to its subscribers, Intrado opines that it is engaged in the provision of Tier 1 noncore service.

As part of its service provisioning, Intrado describes that it requires the use of numbering resources in the state of Ohio. In particular, these numbering resources pertain to the use of pseudo automatic number identification (pANI) resources for the purpose of instructing switches where to route wireless and VoIP 9-1-1 calls. Intrado avers that prior to seeking such numbering resources it should be certified as a CLEC for the purpose of providing Tier 1 noncore services.

(2) Pursuant to the attorney examiner's Entry of December 18, 2007, AT&T Ohio, Cincinnati Bell Telephone Company, LLC (Cincinnati Bell),[1] and the Ohio Telecom Association (OTA) were granted intervention in this proceeding.

(3) AT&T Ohio questions why Intrado should be allowed to provide a limited service absent the broader obligations of other telecommunications carriers in the state of Ohio. Specifically, AT&T Ohio avers that Intrado is seeking a CLEC certificate for the purpose of interconnection while not intending to offer basic local exchange service as required by the Commission's rules. AT&T Ohio submits that, pursuant to Section 4905.041, Revised Code, Intrado's application for certification should be denied in light of the fact that the company does not qualify as a local exchange carrier consistent with federal law (AT&T Ohio Motion for Intervention at 3).

Further, AT&T Ohio asserts that Intrado's application is contrary to the Commission's long-standing policy requiring that 9-1-1 services be priced "at cost." Specifically, AT&T Ohio highlights the fact that Intrado's tariff provides for a "return" on certain charges (AT&T Ohio Reply Memorandum, December 18, 2007, at 2, referencing Intrado's proposed Tariff No. 1, Section 6, Original Pages 1 and 2).

(4) Cincinnati Bell objects to Intrado seeking certification as a CLEC despite the fact that it will not be offering dial tone or any other aspect of local exchange service other than 9-1-1 services to

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1 On December 4, 2007, Cincinnati Bell also filed objections in opposition to Intrado's application and a request for a suspension.

PSAPs. Cincinnati Bell opines that Intrado is seeking certification as a CLEC so that it can avail itself of interconnection and access to unbundled network elements (UNEs), despite the fact that it has no plans to actually operate as a CLEC. Cincinnati Bell also believes that Intrado is seeking to change the routing of certain 9-1-1 traffic and the relationship between Cincinnati Bell and other carriers and PSAPs in Cincinnati Bell's service area (Cincinnati Bell Motion for Intervention at 3).

(5) Similar to AT&T Ohio and Cincinnati Bell, OTA believes that Intrado is seeking to obtain the rights and privileges of interconnection, access to UNEs, and collocation, despite the fact that the applicant is not entitled to them pursuant to Ohio law inasmuch as Intrado does not provide all of the elements of basic local exchange service (OTA Motion to Intervene at 4). OTA opines that if Intrado is successful in gaining CLEC certification, OTA's members will be adversely affected and unlawfully burdened by other similarly situated providers (*Id.* at 2).

(6) Intrado considers the motions of AT&T Ohio, Cincinnati Bell, and OTA to be an attempt to create a barrier to entry for itself and other competitive 9-1-1 service providers to compete in Ohio for the purpose of serving the needs of the public safety community (Intrado Memorandum Contra at 1).

Specifically, Intrado dismisses the objections raised in response to its certification application inasmuch as it considers the identified issues and concerns to be either without merit or irrelevant to the issue of Intrado's fiscal, technical, or managerial qualifications as they relate to certification (*Id.* at). Intrado considers the stated objections to be nothing more than an attempt by the ILECs to protect their own turf from the services that Intrado believes are supported by the public safety community (*Id.* at 3). Additionally, Intrado believes that such services are supported by Section 253 of the Telecommunications Act of 1996 (1996 Act).

To the extent that there are technical issues relative to the offering of its advanced 9-1-1 services, Intrado believes that these issues are more appropriate in the context of interconnection negotiations, and should not be addressed in this certification proceeding. Intrado asserts that it services constitute telephone exchange service as defined in the 1996 Act inasmuch as it provides the routing, transmission, and transport of traditional

and nontraditional emergency call traffic to the appropriate PSAP. Therefore, Intrado avers that it is a telephone company subject to the Commission's jurisdiction in accordance with Section 4905.03(A)(2), Revised Code. As a result of its service offerings, Intrado asserts that it provides significant value to the public safety community, as well as residents of the state.

(7) Upon a review of Intrado's application for certification, the Commission determines that, although Intrado is seeking to be designated as a CLEC, based on the company's described services it is more appropriate to establish a new designation known as an "competitive emergency services telecommunications carrier" and to designate the applicant as such, rather than as a CLEC.

The Commission determines that competitive emergency services telecommunications carriers are telecommunications carriers pursuant to 47 U.S.C. 153. In reaching this determination, the Commission notes that, pursuant to Section 153(44) of the 1996 Act, a telecommunications carrier is:

> [A]ny provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in telecommunications services . . . .

Section 153(51) of the 1996 Act defines telecommunications service as:

> [T]he offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 153(48) defines telecommunications as:

> [T]he transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Applying these definitions to Intrado's proposed service offering, it is clear that Intrado is engaged in the provisioning of tele-

communications due to its transmission of 9-1-1 end user information from the end user's location to the PSAP. This offering is a telecommunications service in light of the fact that it will be contracted for by one or more Ohio counties for a fee, the effect of which is the availability of enhanced 9-1-1 service directly to the public.

Additionally, the Commission determines that emergency service telecommunications carriers are telephone companies pursuant to Section 4905.03, Revised Code and Rule 4901:1-7-01(S), O.A.C., and public utilities pursuant to Section 4905.02(B), Revised Code, inasmuch as they are engaged in the transmission of a telephonic message in their capacity of maintaining the selective router and directing 9-1-1 traffic to the appropriate PSAP. Accordingly, competitive emergency services telecommunications carriers are entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act.

In establishing the competitive emergency services telecommunications carrier designation, the Commission distinguishes between a CLEC that is engaged in the business of provisioning basic local exchange service to end user subscribers who have either affirmatively selected the carrier or have other alternative providers available, and a company such as Intrado, which intends to serve the needs of the public safety community as a "competitive 9-1-1 service provider" (Intrado Memorandum Contra, December 11, 2007, at 1), but with whom the end user has no relationship. In support of this distinction, the Commission notes that Intrado's services 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 (Application, Ex. 3). Therefore, while Intrado is a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the 1996 Act, its telephone exchange activities are restricted in scope and, thus, do not extend to the level of a CLEC.

The Commission notes that as a telecommunications carrier, the applicant has requested interconnection with the following Ohio ILECs pursuant to Section 251 of the 1996 Act: AT&T Ohio,

CenturyTel of Ohio, Cincinnati Bell Telephone Company, United Telephone Company of Ohio dba Embarq, Verizon North, and Windstream (Application, Ex. 19). Therefore, ILECs are obligated to negotiate with Intrado in good faith specific to the terms of interconnection. Additionally, pursuant to its designation as an emergency services telecommunications carrier, Intrado is entitled to access of pANI resources. Intrado shall obtain and utilize such pANI resources in an efficient manner consistent with the FCC's number optimization rules in 47 C.F.R. §52. The Commission directs Intrado to make available to the Commission's staff, upon request, information concerning Intrado's application for and/or utilization of pANI resources.

The Commission highlights the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provisioning of 9-1-1 service. As discussed in Intrado's application, its next-generation technology will provide PSAPs with the enhanced capability to process, route, and deliver wireline, wireless, and VoIP calls, enabling more relevant information to be sent to emergency personnel (Application, Ex. 5, at 3). By certifying competitive competitive emergency services telecommunications carriers, the Commission recognizes that it is providing PSAPs with competitive alternatives (e.g., Intrado) to the ILEC's traditional processing of 9-1-1 traffic. PSAPs will now have the opportunity to contract with entities that provide the most advanced 9-1-1 service available. This competitive environment will encourage the further development of 9-1-1 technology.

(8) In reaching the determination that Intrado should be certified as a competitive emergency services telecommunications carrier, the Commission has engaged in a comprehensive analysis of the company's compliance of the requirements of Rule 4901:1-6-10, O.A.C., including a demonstration of its technical, financial, and managerial capabilities.

A review of the record reflects that Intrado is certified to provide telecommunications services in more than 35 states (Application, Ex. 3, at 3). The company represents that along with its affiliate Intrado Inc., it owns and operates the largest 9-1-1 network in the world and that Intrado Inc. has operated 9-1-1 databases on behalf of three of the major ILECs for a number of years, and a

nationwide near real-time messaging network in support of wireless E9-1-1 for over 49 wireless carriers (*Id.*). Intrado describes its support for the industry's migration to Next Generation 9-1-1 services as evidenced by its active support and alignment with the United States Department of Transportation's Next Generation 9-1-1 Initiative (*Id.*, Ex. 5, at 3). According to the company, its expertise and commitment to E9-1-1 network security is reflected by its active participation in the Network Reliability and Interoperability Council (*Id.*, Ex. 3, at 3). In fact, Intrado submits that it is a secured and private IP-managed network. Intrado's systems that are accessible through the Internet, including the subscriber record management data exchange portal, database management interface toll, and metrics tool, are protected by a secure access process that requires authentication through a unique user name, unique user password, and a code randomly generated at time of access via a secure ID token. Further, firewalls and network infrastructure are always configured with network intrusion detection in place to warn dedicated network security personnel of abnormal traffic patterns as well as providing the needed forensics to follow up on any attempted attack. The record also demonstrates that Intrado's officers and directors have vast technical experience in the 9-1-1 industry (*Id.*, Ex. 3). Additionally, the financial information submitted for Intrado's parent corporation reflects that Intrado has sufficient funding sources from its ultimate parent corporation to support its operations in the state of Ohio (*Id.*, Ex. 10).

(9) Intrado acknowledges and agrees to abide by the requirements set forth in Rule 4901:1-5-13, O.A.C., which pertain to the emergency and outage operations impacting 9-1-1 service. Consistent with the intent of this rule, the Commission is particularly concerned that 9-1-1 service not be interrupted due to a business determination on behalf of the applicant or a county that Intrado no longer serve in the capacity of an competitive emergency services telecommunications carrier. Therefore, Intrado must obtain Commission approval pursuant to an order prior to discontinuing or disconnecting service in a specific county or throughout the entire state of Ohio. In other words, all such requests should be filed as nonautomatic approval abandonment cases. Additionally, the Commission directs that Intrado and the ILEC providing wireline emergency 9-1-1 service shall

operate in a cooperative manner to ensure that emergency 9-1-1 calls continue unimpeded between end users and PSAPs.

(10) The Commission recognizes that, pursuant to Rule 4901:1-6-01(B)(3), O.A.C., basic local exchange service includes access to and usage of 9-1-1 services, where such services are available. Due to the fact that the provision of emergency services is a component of basic local service, it shall be considered as a Tier 1 core service consistent with Rule 4901:1-6-04, O.A.C. Therefore, with the exception of those case types specifically addressed in Findings (11) and (16), all applications related to the provision of emergency services shall be filed and processed in accordance with the automatic approval time frames provided for in the Commission's rules applicable to the competitive provider provision of Tier 1 core services.

Certification of competitive emergency services telecommunications carriers should occur on a countywide basis in order to ensure that all PSAPs in a given county are served by the same competitive emergency services telecommunications carrier for the purpose of provisioning seamless 9-1-1 service. In addition, the 9-1-1 systems in Ohio are planned, structured, and established on a countywide-basis. Therefore, competitive emergency services telecommunications carriers should not serve individual PSAPs but, instead, the entire countywide 9-1-1 system.

(11) Pursuant to its application, Intrado is certified, at this time, as an competitive emergency services telecommunications carrier in all 88 counties in the state of Ohio. The company's tariff should be routinely updated to reflect the counties in which it is actually provisioning service.

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 countys, 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.

(12) In order to promote the notion of seamless 9-1-1 service, each designated competitive emergency services telecommunications carrier shall interconnect with each adjacent countywide 9-1-1 system to ensure transferability across county lines. In addition, 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 providers.

(13) Intrado also seeks to establish rules, and regulations governing its competitive emergency services telecommunications carrier offerings. After inspecting the applicant's proposed tariff, as amended on December 7, 2007, and January 28, 2008, the Commission finds the tariff to be in compliance with the Commission's rules and orders relevant to the service offerings proposed by the applicant. Accordingly, the Commission concludes that the tariff should be approved. While approving Intrado's tariff, the Commission notes that the tariff reflects that the services will be offered on an individual contract basis. The tariff itself is limited standard language regarding the rules and regulations pertaining to the service offering.

While AT&T Ohio is correct in its contention that the Commission previously expressed the intent that the price of 9-1-1 and related services shall be limited to the additional cost to provide the service, this limitation was in reference to the offering of traditional 9-1-1 services offered by the ILEC. Enhanced 9-1-1 services, such as those proposed by Intrado, were not contemplated at the time of the Commission's prior 9-1-1 pricing decision. See, *In the Matter of the Adoption of Guidelines Governing the Disclosure or Use of the Emergency 9-1-1 Database in Accordance with House Bill No. 244*, Case No. 94-1965-TP-ORD, Finding and Order, June 6, 1996, at 13.

(14) All contracts between Intrado and individual Ohio counties for the provision of enhanced emergency services should, within 30-days of their execution, be submitted to the 9-1-1 Coordinator for the state of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

(15) To the extent that Intrado ultimately seeks to engage in the provision of additional services that results in the company acting as a CLEC, the applicant should file for approval to amend its certificate to provide such services. Upon the filing of the application, the Commission will assess the company's designated status.

(16) Finally, the Commission has previously determined that the provisioning of outbound emergency notification messaging is not competitive due to the fact that the 9-1-1 database is compiled and held in "public trust and not able to be released to any outside third party. As a result, all tariffs filed by Intrado for the provisioning of outbound emergency notification messaging should be held at cost and will be considered on a nonautomatic basis. See Case No. 06-915-TP-ORD, *In the Matter of the Implementation of Rules Concerning Wireless Enhanced 9-1-1 Pursuant to H.B. 361*, Entry on Rehearing, January 17, 2007, at 8. Intrado is directed to amend its tariff to include outbound emergency notification messaging once the service is requested from any county it serves.

It is, therefore,

ORDERED, That Intrado is granted certification as an competitive emergency services telecommunications carrier in accordance with the above findings and shall be issued Certificate No. 90-8000. It is, further,

ORDERED, That Intrado's tariff filed on November 19, 2007, as amended on December 7, 2007, and January 28, 2008, is hereby approved. The earliest effective date of the approved tariff shall be the date upon which Intrado has filed with the Commission three copies of the approved tariff in the TRF docket No. 90-8000-TP-TRF. The tariff shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That Intrado must update its tariff to reflect its counties of operation consistent with Finding (11). It is, further,

ORDERED, That Intrado amend its tariff to incorporate outbound emergency notification messaging consistent with Finding (16). It is, further,

ORDERED, That all contracts between Intrado and an Ohio county should be informally submitted to the Commission staff in accordance with Finding (14). It is, further,

ORDERED, That Intrado must obtain Commission approval pursuant to an Order prior to discontinuing or disconnecting service. It is, further,

ORDERED, That Intrado cannot commence operations in a particular county until such time that it has filed the applicable countywide 9-1-1 plan adopting Intrado as its 9-1-1 system service provider, filed its amended tariff updating the counties it is serving, and submitted the applicable contract to the Commission staff. Additionally, Intrado must have approved interconnection agreement(s) for the counties it seeks to serve. It is, further,

ORDERED, That the ILEC shall continue to act as the 9-1-1 system service provider for those types of telecommunications services not designated to Intrado by the county. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

JSA;geb

Entered in the Journal

FEB 05 2008

Reneé J. Jenkins
Secretary

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Certification Reporting Form
30-Day Auto

Company Name: Intrado Communications Inc.
Company Contact: Eric Sorenson Contact Phone Number: 720-494-5800

Case Number: 07-1199-TP-ACE

Date Filed: 11/19/07 Auto Date: 12/19/07

Last day to Suspend:
Suspension issued as a Non-auto (F&O required)

TRF No.: 90-8000
File Date of TRF Tariffs:

Company Types
☐CTS
☐CLEC
☐AOS
☒Other (Explain) Emergency Service Telecommunications Carrier (E9-1-1 Services Provider)

Service Types
☒Local
☐CTS
☐Other types of service – Specify:

☐Waiver Requested (Toll Auto Clock) Describe Waiver
☐Approve ☐Disapprove

☒Objection Filed

Telecom Staff Submitted By: Marianne Townsend Submitted Date:
Telecom Reviewed By: Marianne Townsend/Karen Kalmar Reviewed Date:
Legal Submitted By: Jay Agranoff Legal Submitted Date:
RSAD Staff: Ken Rogiers
9-1-1 Coordinator Technical Review By: Shawn Smith
Financial Review: Mick Twiss

ROI Below:

REPORT OF INVESTIGATION

TO: The Commission

FROM: Marianne Townsend

DATE: January 30, 2008

SUBJECT: Intrado Communications, Inc.
Case No. 07-1199-TP-ACE

SUMMARY:

Staff is recommending that Intrado Communications, Inc. ("Applicant") be granted a new designation certification as an "Emergency Service Telecommunications Carrier" (ESTC) in the state of Ohio.

PROCESS:

On November 19, 2007, and amended on December 07, 2007 and January 28, 2008, the Applicant filed an application with the Commission seeking to be certified as a Competitive Local Exchange Carrier (CLEC) in the state of Ohio, pursuant to the Commission's Case No. 06-1345-TP-ORD, *In the Matter of the Review of Chapter 4901:1-6 O.A.C*, also known as the Retail Rules, as codified in 4901:1-6-10 of the Ohio Administrative Code (O.A.C.). Absent full or partial suspension, applicants seeking certification as a telephone company will be approved in accordance with the thirty-day automatic approval process described in Rule 4901:1-6-08 of the O.A.C. On December 4, 2007, Cincinnati Bell Telephone Company (CBT), AT&T Ohio (AT&T) and the Ohio Telecom Association (OTA) filed Motions to Intervene, written statements as to why the application should not be granted and request for suspension in this case. On December 18, 2007, by Attorney Examiner Entry, the Motions to Intervene were granted and the application was suspended in order to give the Commission Staff additional time to conclude its investigation.

DETAILED REPORT:

In this filing, the Applicant is seeking authority as a CLEC and is proposing to provide telecommunication services that facilitate, enhance and advance the provision of emergency services for end users of wireline, wireless, and Voice over Internet Protocol (VoIP) providers. The Applicant further proposes to offer its telecommunications services throughout the state of Ohio to a federal, state, or municipal or other local government unit legally authorized to subscribe to the service and which has public safety responsibility by law to respond to telephone calls from the public for emergency services, including police, and fire. The Applicant is not proposing to offer traditional basic local exchange services (BLES) but is proposing to offer a component of BLES (i.e. E9-1-1).

The Applicant states that its offerings in Ohio will provide public safety answering points (PSAPs) with competitive and enhanced options to its current 9-1-1 incumbent-based legacy systems that do not exist today. Furthermore, the Applicant states that its next-generation solution will provide PSAPs with the capabilities to process, route and deliver wireline, wireless, and VoIP calls allowing for more relevant information to be sent to first responders.

The Applicant has requested interconnection arrangements with AT&T, CenturyTel, CBT, and United Telephone, dba Embarq, Verizon North and Windstream.

ISSUES

1. Does the Applicant have the proper managerial, technical and financial ability to provide an emergency telecommunication service in Ohio?

2. Public Policy on Emergency Service Telecommunications Carrier" (ESTC)
   - Service Territory
   - Call delivery

3. Regulatory Framework
   - Tier 1 Core
   - Disconnect/Abandonment of Service
   - Outbound emergency notification messaging
   - pANI Resources and Number Optimization

RULES

- *4901:1-6-10 Ohio Administrative Code, Telephone Company Certification*

- *4901:1-6-01(B) (3) Definitions, "Basic local exchange service"...Access to and usage of 9-1-1 services...*

- *4901:1-6-04(1)(a)(i) Tier 1 core services...Basic local exchange service*

- *Case No. 06-915-TP-ORD, In the Matter of the Implementation of Rules Concerning Wireless Enhanced 9-1-1 Pursuant to H.B. 361, Entry on Rehearing, January 17, 2007*

- *4905.03(A) (2) Revised Code, Public Utility Company Definition*

  A) *Any person, firm, co-partnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:*

(2) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state and as such is a common carrier;

- Sections 251 and 252 of the Telecommunication Act of 1996

ANALYSIS

1. **Does the Applicant have the proper managerial, technical and financial ability to provide an emergency telecommunication service in Ohio?**

Staff believes that, as demonstrated in the exhibits to the application and upon its own review and in part acquired from additional data requests, the Applicant has extensive managerial, technical and financial ability to provide telecommunications services; specifically, competitive enhanced 9-1-1 services in Ohio. The Applicant is currently an underlying 9-1-1 network and database provider to several large ILEC's in the state of Ohio. In other words, the applicant manages the ILEC's customer information in the automatic location information database ("ALI") and utilizing that information selectively routes the 9-1-1 call to the proper public safety answering point ("PSAP").

Financial
The Applicant is a Delaware corporation located in Longmont, Colorado and is wholly owned by West Corporation (West), a public consortium founded in 1986 and headquartered in Omaha, Nebraska. In April of 2006, West purchased the Applicant's immediate parent, Intrado, Inc., which held assets of approximately $539 million including goodwill. Staff questioned the Applicant's financials noting that there was a significant amount of "goodwill" in relation to its total asset base. The goodwill was booked as a result of the company acquiring several companies over the past two years at prices greater than the book value of the assets of those companies. While this is a common accounting practice Staff was concerned because the goodwill and assets acquired in these transactions were ultimately financed with additional debt.

Due to this recent increase in debt Staff carefully analyzed the company's most recent operating cash flows and interest expense. Staff believes the calculated Earnings Before Interest Taxes Depreciation and Amortization (EBITDA) interest coverage ratio of 1.64 is more than adequate to make interest payments and continue to invest in the operations of the company.

Based on this thorough review, Staff believes that the Applicant will be a financially viable telecommunications carrier in Ohio.

Managerial
Through its managerial review, Staff discovered that the Applicant has earned a well respected reputation in the industry through both its products and services, and active and high level involvement in each of the national 9-1-1 associations. Most recently, the Applicant developed a proposed set of 9-1-1 service standards, which it has circulated throughout the 9-1-1 industry. The Applicant believes that these standards will serve as a foundation for delivering reliable and redundant emergency telecommunication services.

The Applicant states and Staff has verified that the Applicant has received authority to provide the exact services it seeks to provide as a competitive local exchange and interexchange service provider in approximately 35 states.

Technical
The Applicant states that since the 1990s, it has provided the core of the nations' 9-1-1 ALI and selective routing infrastructure and that each year, its services and systems support over 200 million 9-1-1 calls, including calls from wireline, wireless, VoIP and other alternative communication technologies.

Staff independently reviewed maintenance and emergency planning documents. These plans were designed to address power interruptions to network elements, responses to service interruptions, pandemic flu events and other homeland security scenarios. Staff found these documents to be thorough and well prepared. In addition, Staff reviewed the network design and functionality of the Applicant's proposed service called "The Intelligent Emergency Network" and found it to be robust due to its enhanced IP framework which will allow for real-time data delivery and diverse routing over alternate voice and or data paths to reduce the potential for service failure.

In reviewing whether the Applicants' bonafide requests for interconnection to the ILEC, specifically CBT, they are seeking collocation facilities, specifically for DS1 connections over DSO level facilities to the ILEC tandems employing SS7 signaling; the applicant is also seeking UNE loops for the provision of local exchange service to PSAPs from the ILECs end offices; and the use of numbering resources pertaining to the use of pseudo automatic number identification (pANI) resources for the purpose of instructing switches where to route wireless and VoIP 9-1-1 calls. Staff questioned the applicant as to how they intended to use the DSO/DS1 circuits for PSTN or IP traffic and if they intended to resell the UNE loops. The applicant responded that while the DSO/DS1 connections could be used for either form of traffic, it currently intends to use them for traditional PSTN based connections between their 9-1-1 routing service and the CBT selective routing tandem. The applicant further stated that it did not intend to resell UNE loops.

Staff finds that the Applicant's rationale associated with the use of interconnection facilities supports its request to be a telecommunications carrier under Sections 251 and 252 of the Telecommunications Act of 1996 and entitled to all rights and obligations under such Act.

2. Public Policy on Emergency Service Telecommunications Carrier" (ESTC)

Upon further review of the applicant's proposed application seeking authority to be a CLEC; and in light of the significant public interest surrounding the provisioning of the applicant's described services, specifically of 9-1-1 service, Staff believes that the Commission should establish a new designation known as an "emergency service telecommunications carrier" and to designate the applicant as such, rather than as a CLEC. Within the scope of this ESTC designation, Staff recommends the following criteria:

Service Territory
The applicant is proposing that it be granted statewide authority, however, due to the fact that the 9-1-1 systems in Ohio are planned, structured, and established on a countywide basis, Staff finds that within the scope of this new ESTC designation, the certification should occur on a countywide basis in order to ensure that all PSAPs in a given county are served by the same emergency service telecommunications carrier for purposes of provisioning seamless 9-1-1

service. Therefore, ESTCs should not serve individual PSAPs but, instead, the entire countywide 9-1-1 system and it would be more appropriate to certify the applicant in all 88 counties.

Call Delivery
In order to promote seamless 9-1-1 services as the applicant proposes, Staff recommends that the ESTC be required to interconnect with each adjacent countywide 9-1-1 system to ensure transferability across county lines. In addition, each ESTC 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.

Also, Staff finds that the applicant should also be required to carry all calls throughout the county for such types of telecommunications services designated by the county.

3. Regulatory Framework

The Applicant proposes to offer its services and pricing on an individual contract basis. Staff recommends that all contracts provisioning for enhanced emergency services, between the applicant and any Ohio county should be submitted to the Ohio 9-1-1 coordinator within 30 days of their execution.

Tier 1 Core
Due to the fact that the provision of emergency services is an essential component of basic local service with public interest and safety ramifications, Staff points out that these services are considered Tier 1 Core and not Tier 1 non-core as proposed by the Applicant. Therefore, as an Emergency Service Telecommunications Carrier the Applicant will be governed by the Commission's Telecommunications Rules, as its service pertain to Tier 1 Core E9-1-1 services. Further, except where otherwise ordered and as noted below, subsequent filings and requests should follow the process and procedures depicted in the Commission's Retail Rules and where applicable the Commission's MTSS and Carrier Rules.

Specifically, Staff felt it necessary to set up certain requirements because of the potential impact to public safety. Those requirements are as follows:

Disconnects and/or Abandonments of Service
In the proposed application, the Applicant agrees to abide by the requirements set forth in the minimum telephone service standards (MTSS) which pertains to emergency and outage operations impacting 9-1-1 service. Staff finds that consistent with this rule, are concerned that 9-1-1 service not be interrupted due to a business determination on behalf of the applicant or a county that the applicant no longer wishes to serve in the capacity of an ESTC, Staff finds that the applicant must obtain Commission approval prior to discontinuing or disconnecting service in a specific county or throughout the entire state of Ohio. All such requests should be filed as non-automatic approval abandonment cases.

Outbound emergency notification messaging
Staff notes that although the Applicant is not currently offering "outbound emergency notification messaging" service or also known as "Reverse 9-1-1", Staff expects the applicant to

file a tariff on this service once the service is requested from any county it serves. With respect to this particular service, the Commission previously determined that the provisioning of this service is not competitive due to the fact that the 9-1-1 database is compiled and held in "public trust" and not able to be released to any outside third party. As a result all tariffs filed by the Applicant for this service should be held at cost and will be considered on a non-automatic basis.

pANI Resources and Number Optimization

Pursuant to its designation as an emergency services telecommunications provider, the Applicant is entitled to access of pANI resources. Staff expects that such pANI resources will be obtained and utilized by the Applicant in an efficient manner consistent with the FCC's number optimization rules in 47 C.F.R §52. The Staff recommends that the Commission directs Applicant to make available to the Commission's Staff, upon request, information concerning the Applicant's application for and/or utilization of pANI resources.

CONCLUSION & STAFF RECOMMENDATION:

Staff has thoroughly reviewed this application and found that, as amended on December 7, 2007 and January 28, 2008, it is in compliance with Commission Rules and Regulations. Therefore, Staff recommends that this application be approved as discussed above via Commission Finding and Order.

"DRAFT-This document was created only for the purpose stated within. It is for staff discussion only and does not reflect the view of the Commission."

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) Pursuant to its February 5, 2008, Finding and Order, as clarified on February 13, 2008, the Commission determined that Intrado Communications Inc. (Intrado) is a telephone company pursuant to Section 4905.03, Revised Code, and Rule 4901:1-7-01(S), Ohio Administrative Code (O.A.C.), and a public utility pursuant to Section 4905.02(B), Revised Code, and certified Intrado to provide competitive emergency telecommunications services in Ohio.

(2) On March 6, 2008, applications for rehearing were filed by AT&T Ohio, Cincinnati Bell Telephone Company LLC (Cincinnati Bell), and the Ohio Telecom Association (OTA). AT&T Ohio, Cincinnati Bell, and OTA (hereafter collectively intervenors) were granted intervention in this proceeding pursuant to an attorney examiner's entry issued December 18, 2007.

(3) On March 14, 2008, Intrado filed a memorandum contra the applications for rehearing.

(4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

(5) AT&T Ohio alleges that the Commission's Finding and Order effectively establishes new rules without following the required steps for rulemaking under Ohio law and without affording interested parties due process. Specifically, AT&T Ohio asserts that, by creating the emergency services telecommunications carrier designation, the Commission established an entirely new category of certified carrier along with de facto rules without any prior notice and absent any opportunity for public

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comments or the stating of objections (AT&T Ohio Application for Rehearing at 2, 7). AT&T Ohio submits that Section 111.15, Revised Code, requires the Commission to follow a series of detailed, specific requirements when considering and establishing rules (e.g., advanced filing with the Joint Committee on Agency Rule Review) (*Id.* at 3, 6). AT&T Ohio avers that the requisite notice and filing requirements are intended to prohibit an agency from adopting industry-wide rules in an adjudicatory proceeding unless the potentially affected parties are afforded a full opportunity to be heard. AT&T Ohio submits that when adopting certification standards in the past, the Commission has always used the rulemaking process and permitted public notice and comment on the proposed rules (*Id.* at 4).

AT&T Ohio considers the Commission's actions in this proceeding to constitute rules inasmuch as Section 111.15(A)(1), Revised Code, defines a rule as "any rule, regulation, bylaw, or standard having a general or uniform operation, adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule" (*Id.* at 5). AT&T Ohio opines that the Commission's Finding and Order in this proceeding constitutes rules inasmuch as the order extends beyond the limited consideration of Intrado's application and establishes an entirely new framework of presumptions, rights, and obligations for the regulation of all competitive emergency services telecommunications carriers on a going forward basis (*Id.* at 5-7).

AT&T Ohio also believes that the Commission's Finding and Order establishes rules governing incumbent local exchange carriers (ILECs) inasmuch as it requires ILEC interconnection with emergency services telecommunications carriers and sets forth the obligation that ILECs work cooperatively with Intrado to ensure that 9-1-1 calls are completed from end users to public safety answering points (PSAPs). AT&T Ohio asserts that, while the Commission's Finding and Order establishes rules applicable to ILECs, it fails to address generic implementation issues (e.g., compensation) that could have been addressed in the context of a notice and comment period for a rulemaking (*Id.*).

Additionally, AT&T Ohio asserts that it would be inappropriate to apply retroactively the obligations of the Commission's Finding and Order to the parties in this proceeding. Referencing

Retail Wholesale & Department Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972), AT&T Ohio claims that, in determining whether an agency has abused its discretion by retroactively applying a rule announced through adjudication, courts have generally considered the following factors:

(a) whether the particular case is one of first impression,

(b) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law,

(c) the extent to which the party against whom the new rule is applied relied on the former rule,

(d) the degree of the burden which a retroactive order imposes on a party, and

(e) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

(*Id.* at 4).

Based on these factors, AT&T Ohio asserts that the Commission abused its discretion by applying its decision retroactively, to the detriment of the company. AT&T Ohio explains that there was no indication that the Commission would deviate from its existing rules and create a completely new category of telecommunications carrier. AT&T Ohio also opines that the Commission's decision appears to subject the company to the significant burden of making its network available to a new category of telecommunications carrier (*Id.* at 7, 8).

(6) OTA also objects to the Commission's establishment of the classification of competitive emergency services telecommunications carriers and the associated rules in the context of the Commission's Finding and Order addressing Intrado's application for certification as a competitive local exchange company. OTA contends that no party was given notice of the Commission's intention to consider this new carrier designation and no party was given the opportunity to provide comment.

OTA submits that the Commission failed to comply with Section 111.15, Revised Code, which provides for the legislative review of Commission rules by the Joint Committee on Agency Rule Review and for the central filing and publication of rules by the Secretary of State. OTA asserts that the Commission's directives regarding competitive emergency services telecommunications carriers are subject to Section 111.15, Revised Code, and should be available in the Ohio Administrative Code in order to properly notify the public regarding the new obligations (OTA Application for Rehearing at 11-12).

OTA asserts that the Commission has no authority to establish, *sua sponte*, a classification of emergency service telecommunications carriers absent due process, which would include notice and the opportunity to be heard concerning both the classification and the associated regulatory framework. In support of its position, OTA references that Section 4927.03(A), Revised Code, requires that the Commission afford the public and any affected telephone company the opportunity for comment. OTA states that the Commission's alleged failure to provide notice and an opportunity to be heard are violations of both Ohio law and constitutional guarantees of procedural due process. Additionally, OTA considers the approach taken by the Commission in this proceeding to be inconsistent with the Commission's approach in every other classification established pursuant to the aforementioned statute (*Id.* at 7-10).

(7) Similar to AT&T Ohio and OTA, Cincinnati Bell contends that the Commission erred by creating a new classification (competitive emergency services telecommunications carrier) and establishing corresponding rules absent notice or opportunity for comment by the intervenors. Cincinnati Bell submits that no rules previously existed for competitive emergency services telecommunications carriers. In establishing rules for these entities, Cincinnati Bell asserts that the Commission failed to follow the statutorily required rulemaking process which provides for the opportunity of public notice and comment (Cincinnati Bell Application for Rehearing at 4).

(8) Intrado contends that, because AT&T Ohio, OTA, and Cincinnati Bell were all granted intervention and the Commission considered their arguments seeking dismissal of the certification application, it is inappropriate for these entities to now argue

that they were denied due process. Intrado opines that the Commission has more than satisfied the requirements of due process as required by Section 4927.03, Revised Code, and provided for a greater participatory process than the Ohio Supreme Court deemed sufficient (Intrado Memorandum Contra at 7 citing *Discount Cellular Inc. v. Pub. Util. Comm.*, 112 Ohio St. 3d at 360, 368, 369 [2007]). Furthermore, Intrado points out that the Commission's ruling that Intrado is not a competitive local exchange carrier (CLEC) is precisely what the intervenors argued for in their motions. Thus, to now posit that the intervenors were denied due process, says Intrado, is ludicrous.

Inasmuch as the Commission permitted the intervenors to participate in this case, Intrado believes that the Commission was not required to initiate a formal rulemaking in order to assure due process (*Id.* at 8). In support of its position, Intrado states that, in *Discount Cellular*, the Ohio Supreme Court determined that there is no constitutional right to notice and hearing in utility-related matters if no statutory right to a hearing exists (*Id.* at 9).

Intrado considers the arguments raised by AT&T Ohio and OTA to be misleading and inaccurate inasmuch as it believes that Section 4927.03, Revised Code, grants the Commission the power to establish, by order, alternative regulatory requirements including different classifications, procedures, terms, and conditions without regard to Section 111.15, Revised Code (*Id.* at 2). In support of its position, Intrado states that in *Discount Cellular*, the Ohio Supreme Court determined that the Commission had properly exercised its statutory authority under Section 4927.03(A)(1), Revised Code, and had not engaged in rulemaking subject to the requirements of Section 111.15, Revised Code (*Id.* at 6).

Intrado submits that the Commission properly determined that the establishment of the alternative regulatory classification (competitive emergency services telecommunications carrier) was in the public interest consistent with Section 4927.03(A)(1), Revised Code, and would provide PSAPs with competitive, reasonably available alternatives. Further, Intrado opines that the associated procedures, terms, and conditions that competitive emergency services telecommunications carriers are

required to comply with are reasonable and do not create any undue economic, competitive, or market advantage to Intrado (*Id.* at 7).

Additionally, Intrado opines that, consistent with Section 4927.02(A)(4), Revised Code, the Commission, in its Finding and Order, specifically considered the state's policy objective of promoting diversity and options in the supply of the public telecommunications services when the Commission authorized Intrado to provide competitive emergency telecommunication services in Ohio (*Id.* at 4).

(9) With respect to AT&T Ohio's, OTA's, and Cincinnati Bell's arguments regarding due process violations and the failure of the Commission to comply with Section 111.15, Revised Code, rulemaking requirements, the applications for rehearing are denied. Despite the intervenors' arguments to the contrary, we conclude that the Finding and Order appropriately considered Intrado's request for certification and, upon determining that the company was not a competitive local exchange carrier (CLEC) but still under our jurisdiction, we established what type of a carrier Intrado actually is. Such a determination is certainly within the Commission's general supervisory powers and is not tantamount to a rulemaking endeavor. Specifically, the Commission has the ability to determine whether a particular applicant falls under the jurisdiction of the Commission and the attending regulatory rights and obligations of such an entity in the context of a request for a certificate to operate in this state. Moreover, given constant advancements in technology, it is not unusual for the Commission to have to consider in certification cases whether and to what extent new and unique telecommunications service offerings fit into our regulatory framework (See, for example, Case No. 93-1370-TP-ACE, *Time Warner AxS of Western Ohio, LP*, Finding and Order issued December 9, 1993). To require the Commission to conduct a rulemaking every time a telephone company proposes a new and unique telecommunications service option would frustrate both the policy of the state to encourage innovation in the telecommunications industry as well as the policy to promote diversity and options in the supply of public telecommunications services and equipment throughout the state (Section 4927.02, Revised Code). We further point out that, with respect to this certification analysis, the Commission not

only considered the viewpoints filed by the intervenors in Intrado's CLEC certification application, but that the Commission also agreed with many of their stated arguments.

While it appears that the intervenors advocate that the Commission's analysis should simply begin and end with the issue of whether Intrado is a CLEC, the intervenors fail to recognize that simply because an applicant is not a CLEC does not signify that it is also not a telephone company subject to the Commission's jurisdiction pursuant to Sections 4905.02, 4905.03(A)(2), and 4905.04, Revised Code. Therefore, upon determining that Intrado is a telephone company that does not fit neatly into the existing carrier classifications, the Commission took the next logical and necessary step of determining the appropriate classification for the telephone company in order to determine the appropriate regulatory framework to apply to Intrado. Intrado requested certification as a CLEC for the purposes of providing Tier 1 noncore services. The Commission determined that Intrado, although providing a component of basic local exchange service, was not a traditional provider of basic local exchange service in the sense that its telephone exchange activities are restricted in scope to competitive emergency telecommunications services. Thus, rather than placing Intrado into a regulatory classification in which it did not neatly fit, we categorized Intrado as an emergency services telecommunications carrier and concluded that the existing regulatory framework for Tier 1 core service should apply.

The Commission asserts that this determination is entirely consistent with the Commission's existing rules. In particular, the Commission highlights the fact that Chapter 4901:1-6, O.A.C., sets forth the regulatory framework for all providers of competitive telecommunications services, not just CLECs (See Rule 4901:1-6-02, O.A.C.). Also, Rule 4901:1-6-06, O.A.C., sets forth the application process which must be followed by any telephone company desiring to offer telecommunications services in the state of Ohio. It was under this process that the Commission considered Intrado's application for certification, and it was the existing rules in Chapters 4901:1-5, 4901:1-6, and 4901:1-7, O.A.C., which we applied to Intrado's operating authority, once we determined what kind of telephone company Intrado is. Therefore, the Commission established no new rules as a result of our Finding and Order in this proceeding.

In our Finding and Order, we established specific additional conditions for Intrado's operating authority, due to the high level of public interest in ensuring uninterrupted 9-1-1 service to the public. AT&T Ohio maintains that the Commission clearly intended these findings to apply generally and uniformly to all emergency services telecommunications carriers and, therefore, by definition, they constitute new rules (AT&T Ohio Application for Rehearing at 5). The Commission grants AT&T Ohio's request for rehearing on this ground. The Commission agrees with AT&T Ohio that it would be improper to apply the determinations made in this case generally and uniformly to any future applicant for a certificate to provide competitive emergency telecommunications services. Thus, to the extent that our findings appeared to apply to all providers of the type of competitive emergency telecommunications services proposed by Intrado, we clarify that our findings are limited to the unique business plan and operation of Intrado, as set forth in its application in this case. The specific requirements we imposed on Intrado in its certification case apply only to Intrado, and are a condition of it receiving a certificate to operate in Ohio. Should other applicants request similar authority in the future, the Commission will consider those requests based on the individual facts and merits of any such applications and will allow interested persons an opportunity to intervene and express their views regarding the applications in those cases.

(10) As another ground for rehearing, AT&T Ohio asserts that the Commission's Finding and Order unlawfully creates discriminatory pricing in violation of Ohio's statutes (AT&T Ohio Application for Rehearing at 9). Specifically, AT&T Ohio points out that while the Commission has now determined that competitive emergency services telecommunications carriers can provide 9-1-1 services on an individual contract basis (Intrado Order at ¶13), the Commission previously stated in *In the Matter of the Adoption of Guidelines Governing the Disclosure or Use of the Emergency 9-1-1 Database in Accordance With House Bill No. 344*, Case No. 94-1965-TP-ORD (94-1965), Finding and Order, June 6, 1996, at 13, that "[t]o allow market pricing for 9-1-1 database service . . .would essentially allow LECs to profit from State and subscriber-funded investment" (*Id.* at 9, 10). AT&T Ohio asserts that if Intrado is providing the same or similar emergency services to that of another carrier, the same pricing standards should apply to both entities. AT&T Ohio submits that to do

otherwise would be a violation of Section 4927.02(A)(7), Revised Code (AT&T Ohio Application for Rehearing at 10).

(11) Similar to AT&T Ohio, OTA contends that the Commission's Finding and Order unlawfully and unreasonably discriminates between ILECs and competitive emergency services telecommunications providers regarding the pricing of emergency services and unreasonably imposes costs for which recovery is ordered. In support of its petition, OTA represents that, consistent with the policy set forth in 94-1965, Finding and Order, June 6, 1996, at 13, ILECs in Ohio have developed, filed, and implemented tariffs for 9-1-1 services that are based on the incremental costs alone (OTA Application for Rehearing at 15). In contrast, OTA submits that, pursuant to the Commission's Finding and Order in this proceeding, competitive emergency services telecommunications carriers are allowed to recover whatever the market will bear. OTA avers that such an outcome violates Section 4927.02(A)(7), Revised Code, which reflects that it is the policy of the state of Ohio to "not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services." Additionally, OTA objects to the Commission imposing costs on ILECs for the purpose of assisting in the migration of 9-1-1 traffic to a competitive emergency services telecommunications carrier while not providing a cost recovery mechanism subsequent to the migration of traffic (*Id.* at 16).

(12) In response to AT&T Ohio's and OTA's arguments that the Commission's Finding and Order results in discriminatory pricing standards relative to the pricing constraints applicable to ILECs, Intrado responds that the pricing structure set forth in 94-1965 was intended to address how traditional 9-1-1 services should be tariffed according to incumbent regulatory requirements and was not intended to apply to all new competitive services. In support of the Commission's decision to allow Intrado to offer service to counties pursuant to contract, Intrado references Section 4927.03(B), Revised Code, and asserts that the Commission may prescribe different classifications for different telephone companies and the services they provide (Intrado Memorandum Contra at 17).

Intrado submits that the Commission has continuously set forth different regulatory structures for ILECs, CLECs, and other

telecommunications providers. With respect to 9-1-1 service, Intrado believes that the disparity in regulatory treatment is appropriate in light of the fact that ILECs are providing service over ubiquitous legacy facilities, while Intrado does not have the benefit of embedded legacy facilities and a legacy cost structure (*Id.* at 18). In particular, Intrado submits that most of the ILEC facilities used to provide the traditional 9-1-1 services have been in place for many years and that the ILECs have likely recovered the cost of these facilities in full (*Id.* at 19). Intrado states that the pricing requirements implemented by the Commission in 94-1965 were applied to prohibit ILECs from "profit(ing) from State and subscriber-funded investment" (*Id.* at 17). Contrastingly, Intrado represents that it is financing this new technology, without ratepayer funding (*Id.* at 19). Thus, argues Intrado, it is only appropriate and reasonable that the Commission made a distinction in the pricing structure applicable to Intrado.

(13) In regard to AT&T Ohio's and OTA's arguments that the Commission's Finding and Order results in discriminatory pricing standards relative to the pricing constraints applicable to ILECs, the applications for rehearing are denied. Contrary to AT&T Ohio's and OTA's contention that the Commission's Finding and Order results in discriminatory pricing, the Commission determines that the arguments raised do not engage in a comparison of similar services. Specifically, whereas the Finding and Order in 94-1965 was limited in scope to the disclosure of the legacy 9-1-1 database information by the ILECs, the Finding and Order in this case addresses the pricing of an enhanced, next generation 9-1-1 system, which incorporates new costs not previously contemplated by the Commission and not currently being recovered by State and subscriber-funded investment. Based on the facts of this case, we believe that it is appropriate to allow Intrado a pricing structure for its proposed service different from the legacy service. To the extent that any ILEC seeks to similarly provision enhanced, next generation 9-1-1 service, the Commission would consider in the context of such application, the appropriateness of affording the same pricing flexibility as Intrado for those costs not already accounted for under its legacy 9-1-1 costs.

(14) As further grounds for rehearing, AT&T Ohio submits that the Commission unnecessarily decided issues not relevant to the issue of certification. Specifically, AT&T Ohio states that there

was no reason for the Commission to address the issue of the applicability of Sections 251 and 252 of the Telecommunications Act of 1996 (1996 Act) or Intrado's eligibility for pseudo automatic number identification (pANI) resources when the only issue before it was to determine whether Intrado was entitled to certification pursuant to Ohio law (AT&T Ohio Application for Rehearing at 11, 12). AT&T Ohio submits that the issue of the applicability of Sections 251 and 252 is more appropriate in the context of Intrado's pending arbitration cases with AT&T Ohio and Embarq (*Id.*). To the extent that the Commission's Finding and Order is also intended to unequivocally give Section 251 and Section 252 rights to other competitive emergency services telecommunications carriers, AT&T Ohio believes that such treatment is inappropriate in light of the fact that each individual competitive emergency services telecommunications carrier may have its own business plan and network architecture and may not offer services that are functionally equivalent to that offered by Intrado (*Id.* at 12-14).

At a minimum, AT&T Ohio seeks clarification that, pursuant to the Commission's Order, Intrado or any future competitive emergency services telecommunications carrier is not automatically granted greater rights than an actual CLEC or any other carrier under Sections 251 or 252 of the 1996 Act. For example, AT&T Ohio submits that, pursuant to the 1996 Act, interconnection is only available to a requesting carrier if it is used to provide exchange access or local exchange service and only if it is used for the mutual exchange of traffic. AT&T Ohio opines that decisions regarding the reasonableness of individual company requests for interconnection should occur on an individual case-specific basis in the context of a Section 252 proceeding (*Id.* at 13).

(15) Similar to AT&T Ohio, OTA asserts that the Commission's framework misconstrues the law and erroneously confers rights on Intrado to which it is not entitled. Specifically, OTA states that Intrado is not entitled to interconnection under either state or federal law (OTA Application for Rehearing at 10). First, OTA opines that the Commission should not have addressed this issue at all inasmuch as no party raised it for consideration (*Id.* at 13). Next, OTA submits that Intrado is not entitled to Section 251 interconnection due to the fact that the company is not engaged in the routing of telephone exchange service as defined

by 47 U.S.C. 153(47) or involved in the provisioning of exchange access (*Id.* at 13, 14). OTA also avers that the Commission may not lawfully extend interconnection rights as a matter of state law. In support of this position, OTA notes that Section 4905.041, Revised Code, provides that:

> (a) The public utilities commission shall not establish any requirements for the unbundling of network elements, for the resale of telecommunications services, or for network interconnection that exceed or are inconsistent with or prohibited by federal law, including federal regulations.
>
> (b) The commission shall not establish pricing for such unbundled elements, resale, or interconnection that is inconsistent with or prohibited by federal law, including federal regulations, and shall comply with federal law, including federal regulations, in establishing such pricing.

(*Id.* at 14, 15).

(16) Cincinnati Bell also asserts that the Commission erred in declaring that competitive emergency services telecommunications carriers are entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act. In support of its position, Cincinnati Bell asserts that this issue was irrelevant to the certification issue pending before the Commission in this proceeding. In particular, Cincinnati Bell states that it is not necessary to resolve these federal law issues when determining whether Intrado is qualified as a CLEC under Ohio law and that Intrado's status under Ohio law is not determinative of its rights under Sections 251 and 252 of the 1996 Act (Cincinnati Bell Application for Rehearing at 5, 6). Similar to AT&T Ohio, Cincinnati Bell asserts that it is inappropriate for the Commission to have determined that all companies designated as competitive emergency services telecommunications carriers are automatically entitled to all rights and obligations under those sections. Rather, Cincinnati Bell believes that it would have been more appropriate for the Commission to determine that such issues should be addressed in the individual arbitration proceedings (*Id.* at 6, 7).

(17) Intrado submits that it is a telephone company pursuant to Section 4905.03(A)(2), Revised Code, and that, consistent with Section 4905.041, Revised Code, the Commission must afford Intrado with the same rights and benefits under Ohio law that it enjoys under federal law, including the granting of the same interconnection rights as Ohio CLECs (Intrado Memorandum Contra at 3). Additionally, Intrado believes that telephone exchange service is not limited to voice communications provided over the public circuit-switched network (*Id.* at 11 citing *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11830 [1998]). Intrado states that its services have the same qualities as other telephone exchange services recognized by the Federal Communications Commission (FCC) including the communicating of information within a local area and the intercommunication among subscribers within a local exchange area (*Id.* at 9, *10* citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 [1999]).

Intrado believes that the Commission was well within its statutory authority to determine the company's interconnection rights pursuant to Sections 251 and 252 of the 1996 Act. In support of its position, Intrado asserts that Section 252 specifically designates state commissions as the proper entity to address issues concerning interconnection (*Id.* at 16). Further, Intrado avers that the Commission is not required to limit its discussion of interconnection issues solely in the context of interconnection agreement disputes or arbitration. Intrado believes that it was particularly appropriate for the Commission to address the issue of interconnection rights in light of the fact that AT&T Ohio and OTA, in this proceeding, had raised issues relating to Intrado's rights under Sections 251 and 252 (*Id.*).

(18) With respect to the arguments raised by the intervenors regarding the determination that Intrado is entitled to interconnection pursuant to Sections 251 and 252, the Commission finds that the applications for rehearing should be granted in part and denied in part. As discussed *supra*, the Commission certainly has the ability to determine whether a particular applicant falls under its jurisdiction and to set forth the attending regulatory rights and obligations of such an entity. Issues such as whether Intrado, as a telephone company, is generally subject to Sections 251 and 252 are encompassed within these attending regulatory obligations. Thus, the

Commission's determination 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 was proper and appropriate. However, consistent with our conclusion above, we grant rehearing to clarify that the Commission makes no determination in this proceeding as to the general applicability of Chapter 4901:1-7, O.A.C., and Sections 251 and 252 to other providers of competitive emergency telecommunications services. Our findings in this case are limited to the business plan and operation of Intrado, as set forth in its application in this case. Should other applicants request similar authority as Intrado in the future, the Commission will consider those requests based on the individual facts and merits of any such applications and will allow interested persons an opportunity to intervene and express their views in the context of those cases.

Furthermore, the Commission clarifies that we are not deciding in this case the issues pending in Intrado's arbitration proceedings. While the Commission recognizes its determinations that (a) Intrado is entitled to the rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act, (b) ILECs are obligated to negotiate with Intrado in good faith and (c) Intrado is entitled to access pANI resources (Finding and Order at 5, 6), these determinations address 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 Sections 251 and 252 of the 1996 Act. Our decision does not address the appropriateness and scope of any specific request for interconnection. 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.

(19) AT&T Ohio asserts that Intrado is not a telecommunications carrier pursuant to federal law inasmuch as it does not provide telecommunications as defined by 47 U.S.C. 153(43). In support of its position, AT&T Ohio states that 47 U.S.C. 153(43) requires that a telecommunications carrier provide "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." Since Intrado's customer is

the county PSAP, and not the end user, AT&T Ohio contends that Intrado is not engaged in the provision of telecommunications. Additionally, AT&T Ohio submits that the FCC has held that E911 services are not telecommunications services and, instead, are information services (AT&T Ohio Application for Rehearing at 14 citing *In the Matter of Bell Operating Companies, Petitions for Forbearance From the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd. 2627, ¶17 [1998]).

(20) Intrado submits that the Commission properly determined that the company is a telecommunications carrier offering telephone exchange service. Specifically, Intrado argues that its service provides PSAPs and municipalities with transmission between or among points specified by the user (the PSAP or municipality) of information of the user's choosing without change in the form or content of the information as sent and received. Intrado explains that when the PSAP receives an emergency call it directs the call to the appropriate entity without a change in the form or content of the communication (Intrado Memorandum Contra at 12).

In response to AT&T Ohio's claim that E9-1-1 services are information services, rather than telecommunications services, Intrado states that the FCC has distinguished between a separately-stated, separately-priced storage and retrieval function being offered as an information service on a stand-alone basis to an end user and an automatic location identification database function being offered for the management, control, or operation of telecommunication systems or telecommunications services by a carrier to provide an integrated comprehensive 9-1-1 service (*Id.* at 13 citing *Bell Operating Companies: Petitions for Forbearing from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶¶17, 18 [1998]). In light of the fact that its services are marketed to end users (municipalities and PSAPs) as a single integrated offering, Intrado asserts that the Commission has properly classified its services as a telecommunications service (*Id.* at 13).

Additionally, Intrado asserts that the PSAPs and the municipalities that it serves are the end users of such services just as PSAPs or municipalities that purchase services from the ILECs at retail rates via a retail tariff are considered as holding

end user status. Intrado highlights that the FCC has determined that "wholesale" means a service or product that is an input to a further sale to an end user, while a retail transaction is for the customer's own personal use or consumption (*Id.* citing *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 5318, ¶298 [1997]).

(21) In regard to AT&T Ohio's argument that the Commission incorrectly determined that Intrado is a telecommunications carrier pursuant to federal law, AT&T Ohio's application for rehearing should be denied. As we stated above, we found that Intrado is a telephone company pursuant to Section 4905.03, Revised Code, and Rule 4901:1-7-01(S), O.A.C. Under Chapter 4901:1-7, O.A.C., "telephone company" includes the definition of "telecommunications carrier" incorporated in 47 U.S.C. 153(44), and the obligations found in Chapter 4901:1-7, O.A.C., including interconnection, are generally applicable to telephone companies as defined by Section 4905.03, Revised Code.

(22) Finally, Cincinnati Bell questions the intent of the Commission's requirement that a provider of competitive emergency telecommunications services must carry all calls throughout the county for the designated types of telecommunications services (Cincinnati Bell Application for Rehearing at 7 citing Finding and Order at ¶11). Specifically, Cincinnati Bell states that if it were the intent to create exclusivity for types of telecommunications traffic, such a conclusion is unreasonable and unlawful. Cincinnati Bell submits that it is beyond the jurisdiction of the Commission to dictate how counties will provision 9-1-1 services. Additionally, Cincinnati Bell believes that just because a county may authorize a particular competitive emergency services telecommunications carrier, there is no reason why a county cannot authorize multiple 9-1-1 providers, even for the same class of service (*Id.* at 8).

Similarly, Cincinnati Bell contends that a given wireless carrier should not be forced to redirect all of its traffic to the competitive emergency services telecommunications carrier if it is content to continue using the existing connections (*Id.*). Cincinnati Bell also points out that ILEC telephone boundaries extend beyond county boundaries. Therefore, Cincinnati Bell believes it would be inequitable to force a wireless provider to interconnect with a competitive emergency services telecommunications carrier for a

county's 9-1-1 service, while continuing to have to interconnect with the ILEC for the provision of 9-1-1 service in other counties. In support of its position, Cincinnati Bell asserts that the Commission's determination will actually result in less, rather than more competition for the provisioning of emergency services (*Id.* at 9, 10).

(23) In response to Cincinnati Bell's contention that the Commission erred in its determination that the county-designated competitive emergency services telecommunications carrier will be the exclusive provider of 9-1-1 service in the county, Intrado points out that competitive emergency services telecommunications carriers will still compete with the ILEC to provide 9-1-1 services (Intrado Memorandum Contra at 19). Intrado also asserts that Cincinnati Bell lacks standing to raise its arguments in light of the fact that, to the extent that there is an aggrieved entity, it would be a county or another competitive emergency services telecommunications carrier,, and not Cincinnati Bell (*Id.* at 20).

(24) With respect to the Commission's requirement that Intrado must carry all calls throughout the county for the designated types of telecommunications services, the Commission finds that the application for rehearing should be denied. First, the Commission agrees with Intrado and finds that Cincinnati Bell lacks standing with respect to this assignment of error inasmuch as Cincinnati Bell does not argue that the Commission's order invades its rights or aggrieves its interests. Second, we note that the ILEC's right to provide 9-1-1 services remains intact, although there will now be a competitor for these services. Additionally, the Commission emphasizes that the requirement that there be no more than one additional competitive emergency services telecommunications carrier designated by the county for specific types of traffic is necessary and limited in scope at this point in time in order to ensure that the public interest is protected and the chance of a 9-1-1 system error is reduced. The Commission will continue to monitor the development of the competitive emergency services telecommunications market and will take whatever future action that it deems necessary.

It is, therefore,

ORDERED, That the applications for rehearing are granted in part and denied in part consistent with the above findings. It is, further,

ORDERED, That the Commission's February 5, 2008, Finding and Order is clarified in accordance with the above findings. It is, further,

ORDERED, That to the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

JSA/JRJ/vrm/geb

Entered in the Journal

Reneé 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 Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio.	)))))))	Case No. 07-1280-TP-ARB

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, post hearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES:

Cahill, Gordon & Reindel, L.L.P. by Ms. Chérie R. Kiser, Suite 750, 1990 K Street, NW, Washington, DC 20006 and Ms. Rebecca Ballesteros, Intrado Communications, Inc., 1601 Dry Creek Drive, Longmont, Colorado 80503, on behalf of Intrado Communications, Inc.

Mayer Brown LLP by Mr. J. Tyson Covey, 71 South Wacker Drive, Chicago, Illinois 60606 and Ms. Mary K. Ryan Fenlon, AT&T Ohio, 150 East Gay Street, Room 4-A, Columbus, Ohio 43215, on behalf of Ohio Bell Telephone Company dba AT&T Ohio.

I. BACKGROUND

Under Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),[1] 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.[2] Under the rules, an internal arbitration panel is assigned

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1 The Act is codified at 47 U.S.C. 151 et seq.

2 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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to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

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.[3]

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 135th to the 160th day (inclusive) after the date on which a local exchange carrier (LEC) receives a request for negotiation, petition the commission to arbitrate any open issues." By mutual agreement, the parties established December 29, 2007, as the 160th day (Arbitration Petition p. 7, footnote 12).

On December 21, 2007, Intrado filed a petition for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with AT&T Ohio (AT&T) pursuant to Section 252(b) of the Act. In its petition, Intrado presented its issues in the form of categories.

On December 21, 2007, with its petition for arbitration, Intrado filed a motion pro hac vice to allow Chérie Kiser, Angela R. Collins, and Rebecca Ballesteros to practice before the Commission. The attorney examiner granted the motion by entry issued January 17, 2008.

On January 14, 2008, AT&T filed a motion to dismiss or, in the alternative, a motion to hold Intrado's petition in abeyance. In its motion, AT&T requested that the Commission dismiss the petition or, in the alternative, hold the petition in abeyance to allow for negotiation. AT&T also recommended that the Commission hold the petition in abeyance until it ruled on Intrado's application to provide services as a competitive local exchange carrier (CLEC). AT&T pointed out that the parties had not discussed the terms of an interconnection agreement. In its motion, AT&T states that it provided Intrado with the AT&T 13-state template interconnection agreement on August 2, 2007. More than four months later, on December 18, 2007, Intrado submitted to AT&T its proposed changes to the 13-state agreement. Intrado filed its petition for arbitration on December 21, 2007. Because of Intrado's delayed response, AT&T claims that it was virtually denied meaningful time to negotiate.

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3 *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 or Certification Order).

In its January 14, 2008, motion, AT&T recommended that the Commission hold the petition in abeyance to await the Commission's decision in Case No. 07-1199-TP-ACE. AT&T explains that if the Commission were to deny Intrado's application, Intrado would not be entitled to an interconnection agreement. The arbitration petition, therefore, would be rendered moot. To avoid wasted effort, AT&T recommended that the petition be held in abeyance.

On January 22, 2008, AT&T moved to withdraw its motion to dismiss and request to hold the petition in abeyance. AT&T explained that pursuant to a conference mediated by the Commission's staff, the parties agreed to negotiate for a period of 30 days. In partial satisfaction of its request, AT&T agreed to withdraw its motion. By letter filed January 22, 2008, the parties acknowledged a mutual agreement to extend the negotiating period to February 17, 2008.

AT&T filed a response to Intrado's petition on January 15, 2008. Attached to its response, AT&T included an issues matrix that identifies 38 unresolved issues. AT&T added two additional issues to those presented by Intrado.

On March 5, 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 Deadline	March 11, 2008
Arbitration Package	March 25, 2008
Hearing	April 8-11, 2008
Initial Briefs	April 23, 2008
Reply Briefs	May 2, 2008
Arbitration Award	May 28, 2008

By letter filed March 19, 2008, AT&T advised the Commission that the parties had agreed to stay the arbitration schedule for 30 days. Moreover, the parties agreed to cancel the hearing scheduled for April 8, 2008, and cancel the procedural schedule issued March 5, 2008.

In an entry issued August 1, 2008, the attorney examiner issued a revised procedural schedule as follows:

Discovery Completion	September 16, 2008
Issues Matrix	September 23, 2008
Arbitration Package	October 7, 2008
Hearing	October 14-16, 2008
Initial Briefs	October 30, 2008
Reply Briefs	November 13, 2008
Arbitration Award	December 17, 2008

On September 23, 2008, the parties filed an issues matrix identifying 36 unresolved issues, not counting sub-issues, for arbitration. AT&T amended the matrix on September 29, 2008. On January 30, 2009, and February 2, 2009, AT&T filed revised issues matrices advising the Commission of the issues that the parties had resolved.

In accordance with the procedural schedule, the parties filed arbitration packages on October 7, 2008, containing exhibits and the written testimony of their witnesses. Intrado provided the testimony of Carey F. Spence-Lenss and Thomas W. Hicks. AT&T offered the testimony of Patricia Pellerin and Mark Neinast. An arbitration panel conducted a hearing on October 14 and 15, 2008.

The parties filed initial briefs on October 30, 2008. Reply briefs were filed on November 13, 2008. On November 21, 2008, December 5, 2008, and December 16, 2008, AT&T filed memoranda of supplemental authority containing the decisions of other states relating to Intrado entering into interconnection agreements with ILECs.

III. ISSUES FOR ARBITRATION

Issue 1(a) **What service(s) does Intrado currently provide or intend to provide in Ohio?**

Issue 1(b) **Of the services identified in 1(a), for which, if any, is AT&T required to offer interconnection under Section 251(c) of the Telecommunications Act of 1996.**

Issue 1(c) **Of the services identified in 1(a), for which, if any should rates appear in the ICA?**

At the hearing, Carey F. Spence-Lenss appeared and testified on behalf of Intrado. Ms. Spence-Lenss is vice president of regulatory and government affairs for Intrado. She sponsored Intrado Exhibit 2. Intrado Exhibit 2 is her testimony, which addresses several issues, including issue 1(a) (Intrado Ex. 2 at 1, 3).

Providing Intrado's background information, Ms. Spence-Lenss states that Intrado was established in 1999 as a wholly-owned subsidiary of Intrado Inc. Intrado Inc., in turn, was founded in 1979. Intrado provides regulated telecommunications services, such as 911 selective routing, switching, and transport. In addition, Intrado provides automatic location identification (ALI) services that are integral to Intrado's Intelligent Emergency Network (IEN). By making new applications and services available to Public Safety Answering Points (PSAPs) and other public safety entities, Intrado intends to increase efficiency and effectiveness in responding to emergency calls. In so doing, Intrado claims that it can enable the public safety community to transcend the current constraints of the existing 911 infrastructure (Intrado Ex. 2 at 5).

Intrado will provide its service to public safety entities and give them access to various forms of communication, such as voice, data, and streaming media. Intrado's IEN also intends to expand the 911 infrastructure to embrace different technologies, including wireline, wireless, Internet telephony, and other technologies (Intrado Ex. 2 at 6).

Relying on the Commission's decision in Case No. 07-1199-TP-ACE, Ms. Spence-Lenss explained that the Commission granted Intrado authority to be a competitive emergency services telecommunications carrier (CESTC) in Ohio. She contends that, as a CESTC, the Commission found that under federal law Intrado is a "telecommunications carrier" that offers "telecommunications service." Likewise, under federal law, she claims that the Commission found Intrado to be engaged in the provision of "telephone exchange service." As a CESTC, it is Intrado's position, based on the Commission's decision, that it is entitled to all the rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act. Such rights include the authority to negotiate and interconnect with incumbent local exchange carriers (ILECs) like AT&T (Intrado Ex. 2 at 3-4).

Intrado proclaims that it has authority to provide competitive local telecommunications services in 40 states, including Ohio. Intrado points out that in the states of Illinois and California it has entered into two other Section 251 interconnection agreements with AT&T affiliates. Intrado has also entered into agreements with Qwest (Intrado Ex. 2 at 4).

As to what services it provides, Intrado responds that it is authorized to provide competitive 911/E911 telephone exchange services to counties and PSAPs in Ohio. Intrado notes, however, that the Commission, when it granted Intrado CESTC status, recognized that Intrado may seek to expand its authority to include other telephone exchange services (Intrado Ex. 2 at 9).

Intrado points out that its competitive 911/E911 service offering is similar to "telephone exchange communication service" or "Business Exchange" service, as currently offered by AT&T to PSAPs (Intrado Ex. 2 at 9).

Addressing Issue 1(a) in its brief, Intrado relies upon the definition of "telephone exchange service" in the Act to support its contention that it provides telephone exchange service. Specifically, Intrado relies upon 47 U.S.C. §153(47), which defines telephone exchange service 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.

To respond to Intrado's contentions, AT&T offered the testimony of Patricia H. Pellerin. Ms. Pellerin is an employee of The Southern New England Telephone Company (AT&T Connecticut). She serves as an associate director-wholesale regulatory support. Ms. Pellerin sponsored AT&T Exhibit 1.

AT&T identifies issue 1(a) as the threshold issue. The answer is critical because a requesting carrier can arbitrate and interconnect with an ILEC under Section 251(c)(2)(A) only if it provides "telephone exchange service" or "exchange access" to others. AT&T claims that Intrado's witness admitted that IEN does not qualify as "exchange access." Hence, to AT&T, the remaining issue is whether IEN can qualify as telephone exchange service (AT&T Br. 5, AT&T Reply Br. 4).

Relying on the definition of exchange access service as "the offering of access to telephone exchange service or facilities for the purpose of the origination or termination of telephone toll services," AT&T rejects the notion that 911 services are "telephone toll services" (AT&T Ex. 1 at 17-18). In its review of the record, AT&T concludes that Intrado has not established that it provides telephone exchange service (AT&T Reply Br. 4).

AT&T rejects Intrado's claim that the Commission found it to be a provider of "telephone exchange service." In Case No. 07-1199-TP-ACE, AT&T states that the Commission found that Intrado's telephone exchange activities are restricted in scope and do not extend to the level of a CLEC. In the entry on rehearing, AT&T states that the Commission clarified that Intrado provides a component of basic local exchange service and is not a traditional provider of basic local exchange service. Instead, Intrado's

activities are limited to competitive emergency telecommunications services (AT&T Br. 11-12).

In its reading of Case No. 07-1199-TP-ACE, AT&T concludes that the Commission has not decided whether Intrado's 911 service is "telephone exchange service." The Commission has not conducted an analysis of the elements of telephone exchange service, i.e., whether Intrado's service provides "intercommunication," whether it operates "within a telephone exchange," whether the service is "of the character ordinarily furnished by a single exchange," or whether the service allows subscribers to "originate and terminate a telecommunications service." AT&T, therefore, concludes that the issue is open as to whether 911 service is a telephone exchange service (AT&T Reply Br. 8-9). In its own analysis, AT&T concludes that Intrado does not provide telephone exchange service, is not entitled to interconnect with AT&T under Section 251(c)(2), and that AT&T is not required to arbitrate terms for interconnection (AT&T Br. 12-13).

Intrado declares that its 911/E911 service meets the criteria for telephone exchange service. Intrado contends that its service allows its subscribers to intercommunicate, fulfilling part (A) and allows subscribers to originate and terminate calls as required by part (B). In both instances, Intrado claims to fulfill the requirements of part A and B because its service allows subscribers to intercommunicate with and originate and terminate calls to local emergency personnel (Intrado Br. 12).

Intrado claims to satisfy the intercommunication requirement because its 911 service allows PSAP customers to communicate with Intrado's other PSAP customers and AT&T's PSAP customers. Moreover, Intrado points out that its service allows consumers to make calls to PSAPs and communicate with local emergency personnel. Intrado describes an interconnected community consisting of 911 callers, PSAPs, and first responders in the relevant geographic area (Intrado Reply Br. 8).

Looking at 47 U.S.C. §153(47), AT&T rejects the notion that Intrado's 911/E911 service falls within the definition of telephone exchange service. Part A requires "intercommunicating." Because Intrado's IEN does not allow a PSAP customer to originate calls or receive non-911 calls, AT&T concludes that there is no intercommunication (AT&T Br. 6-8). Citing the Federal Communications Commission (FCC), AT&T states that intercommunication means the ability of all end users in an exchange to communicate with each other.[4] PSAP customers can only receive calls from 911 callers and cannot originate calls to anyone. AT&T rejects the idea that intercommunication exists because consumers can call PSAPs (AT&T Reply Br. 6-7). Even looking at intercommunication from the perspective of the 911 caller, AT&T still fails to find "intercommunication." A 911 caller can only connect to a specific, predetermined

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4 *In the Matter of Deployment of Wireline Services Offering*, 15 FCC Rcd. 385 ¶23 (December 23, 1999).

point (i.e., the PSAP). AT&T likens such an arrangement to private line service, where communications are restricted to two or more designated points for exclusive use by a particular customer or authorized users. AT&T declares that the FCC has stated that private line services do not constitute telephone exchange service (AT&T Reply Br. 7-8).

Pointing to non-traditional communication services that the FCC has deemed to be telephone exchange services, Intrado argues that it similarly offers telephone exchange service. As examples of other telephone exchange services, Intrado cites data transmissions, certain advanced DSL-based services, and electronic directory information services that provide call-completion services. In further reliance on the FCC, Intrado emphasizes that telephone exchange service is not limited to voice telephony (Intrado Br. 13-14).

AT&T dismisses Intrado's comparisons as flawed. Aside from failing to meet the definition of telephone exchange service, AT&T finds nothing in common with Intrado's 911/E911 service and xDSL service and directory assistance call completion. AT&T agrees that the FCC found that certain xDSL and directory assistance call completion services meet the definition of telephone exchange service because they allow subscribers to connect with all other end-users in the exchange and because the service met the other requirements in the definition of telephone exchange service (AT&T Reply Br. 10). To AT&T, there is a distinction that other services allow intercommunicating, the ability to connect with all other end users in an exchange. Because Intrado's IEN does not allow a PSAP customer to originate calls or receive non-911 calls, AT&T concludes that there is no intercommunication (AT&T Br. 6-8). Because PSAPs cannot connect with anyone in the exchange, AT&T sees an absence of intercommunicating and, therefore, distinguishes Intrado's service from the xDSL and directory assistance with call completion (AT&T Reply Br. 9-10). Moreover, AT&T regards Intrado's service as more akin to services that the FCC has found not to be telephone exchange service, like private line service or directory assistance without call completion, services where there is a predetermined point of connection (AT&T Reply Br. 10).

In the case of a call transfer, Intrado asserts that AT&T misconstrues the FCC's findings. Intrado explains that a directory assistance provider does not provide telephone exchange service if it hands off a call to another carrier and that carrier charges the calling party for completion of the call. Intrado points out that a calling party using 911/E911 services is never charged for a 911 call. If Intrado's PSAP customer transfers a call, Intrado charges the customer for the service. This clarifying distinction, Intrado believes, undercuts AT&T's argument (Intrado Reply Br. 9).

AT&T asserts other reasons why Intrado's service fails to meet the definition of "telephone exchange service." Analyzing the "telephone exchange" element of 47 U.S.C. §153(47), AT&T concludes that Intrado's IEN, the only service it intends to provide, does

not qualify as telephone exchange service because Intrado's service does not operate within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area. Instead, its service is based upon municipal boundaries. Telephone exchange service, asserts AT&T, is based upon exchange boundaries (AT&T Ex. 1 at 20). Noting that Intrado has conceded that its service does not operate within the same exchange or within exchange area boundaries, AT&T rejects the claim that Intrado provides a telephone exchange service (AT&T Br. 9).

Intrado disputes AT&T's argument that it does not provide telephone exchange service because it does not operate within telephone exchange boundaries. According to Intrado, the concept of an exchange is based upon geography and regulation, not exchange boundaries. Citing the FCC, Intrado states that the telephone exchange service definition does not require a specific geographic boundary. Drawing upon wireless carriers as an example, Intrado points out that they provide telephone exchange service even though their geographic service areas are not coterminous with their wireline counterparts (Intrado Reply Br. 9).

Intrado goes further to define telephone exchange service as including any means of communicating information within a local area that involves a central switching complex which interconnects all subscribers within a geographic area. Relying on this definition, Intrado describes its system as using selective routers to interconnect PSAPs and 911 callers located in the same geographic area. Intrado does not equate geographic areas with ILEC exchange boundaries. Extended area service (EAS), which Intrado compares to a community of 911 callers and PSAPs, is based on a community of interest where subscribers can reach each other without incurring a toll charge (Intrado Reply Br. 10).

Intrado adds that ILEC exchange boundaries are inapplicable to 911/E911 services. Intrado notes that the federal district court that oversaw the Modified Final Judgment recognized that 911/E911 transmissions cross local access and transport area (LATA) boundaries. To allow for emergency service across LATA boundaries, Intrado alleges that the court waived the within-LATA restrictions. From this, Intrado concludes that there is no requirement that Intrado's service offering be limited to AT&T's exchange boundaries to qualify as a telephone exchange service under the Act (Intrado Reply Br. 10-11).

Referring to another provision in the definition of "telephone exchange service," AT&T declares that Intrado's service is not "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." The FCC, according to AT&T, included this element as a means to determine whether the service is local in nature and not a toll service. Applying this condition to Intrado's service, AT&T finds that a customer can make a 911 call without incurring a toll charge, but the call is not

local in nature when it is delivered to a PSAP located in a different exchange and where such calls are not covered by the exchange service charge (AT&T Br. 9-10).

Intrado takes issue with AT&T's claim that 911 calls do not involve an "exchange service charge." Intrado explains that the provision of telephone exchange services to 911 callers is not at issue in this proceeding. Instead, Ohio public safety agencies and PSAPs will be billed as recipients of telephone exchange service from Intrado. Intrado's understanding from the FCC is that any charge assessed for service would be considered an "exchange service charge." Consequently, Intrado contends that it meets the "exchange service charge" element of the definition because Intrado's PSAP customers will have the ability to communicate within the equivalent of an exchange area pursuant to a service and payment agreement with Intrado (Intrado Reply Br. 12).

Intrado adds further that the "exchange service charge" portion of the definition only aids to define whether a service is local. To Intrado, there is no jurisdictional issue concerning 911/E911 service. Tariffs routinely include 911/E911 services to PSAPs. According to Intrado, the parties have agreed that no form of intercarrier compensation shall apply to the exchange of 911/E911 calls. For these reasons, Intrado urges the Commission to reject AT&T's reliance on the "exchange service charge" element of the definition of telephone exchange service (Intrado Reply Br. 12).

To meet Part B of the definition of "telephone exchange service," a subscriber must be able to originate and terminate a telecommunications service. According to AT&T, Intrado has admitted that IEN does not allow a subscriber to originate and terminate a telecommunications service (AT&T Ex. 1 at 20). Although a PSAP could transfer a call to another PSAP or conference in another PSAP, AT&T claims that Intrado admits that such transferring and conferencing are not the same as actually originating a call (AT&T Br. 10). A PSAP is not allowed to originate a call. To originate calls, the PSAP would use its local service provider (AT&T Ex. 1 at 20-21). Even though IEN allows a PSAP to transfer a call to another emergency responder, AT&T does not accept the argument that IEN provides PSAPs with the capability to originate calls. To highlight the point, AT&T noted that a PSAP would not be able to call back a disconnected caller using IEN (*Id.* at 25, 26).

AT&T adds that in some instances Intrado does not terminate a call. Intrado's tariff, according to AT&T, provides that its selective router may be used to hand-off the call to a separate 911 service provider for call completion. Citing the FCC, AT&T proclaims that handing off traffic to another carrier for completion does not meet the definition of telephone exchange service (AT&T Br. 10-11).

Intrado maintains that it allows its PSAP customers to originate and terminate communications. Because its service allows Intrado PSAP customers to reach AT&T PSAP customers or to conduct two-way communication between a 911 caller and a PSAP,

Intrado claims that its service has the capacity to originate and terminate calls (Intrado Reply Br. 8). Intrado denies any admission that call transfers and conferencing are not the same as originating a call (*Id.*)

In further support of its contention that its 911/E911 service is a telephone exchange service, Intrado points out that in its tariff AT&T describes its own 911 service as a "telephone exchange communication service." From this, Intrado argues that AT&T cannot deny that Intrado's 911/E911 service is a telephone exchange service.

AT&T rejects Intrado's argument as incorrect. AT&T clarifies that its tariff does not identify its 911 service as "telephone exchange service." Instead, the tariff refers to the service as "telephone exchange communication service," emphasizing that it is a communication service offered in an exchange. AT&T denies that there is anything in its tariff that asserts that its 911 service meets the definition of telephone exchange service. AT&T further contends that the label placed on a service is of no consequence. Ultimately, the characteristics of a service determine whether it is telephone exchange service (AT&T Reply Br. 11-12).

Intrado rejects AT&T's argument that Intrado's tariff is evidence that Intrado does *not provide local exchange service. For its argument, AT&T points to language in* Intrado's tariff that states that "The Company [Intrado] is not responsible for the provision of local exchange service to its Customers" (AT&T Ex. 1 at 19). AT&T also points to a tariff provision that states that "Intelligent Emergency Network Service is not intended to replace the local telephone service of the various public safety agencies which may participate in the use of this service" (*Id.*). A PSAP customer must purchase local exchange service from another carrier. From this, AT&T concludes that Intrado does not offer telephone exchange service (AT&T Br. 5-6, AT&T Reply Br. 5-6). Intrado responds that its 911/E911 services are not intended to replace all local exchange services to which public safety agencies may subscribe. For non-emergency purposes, PSAPs may subscribe *to additional local exchange services. According to Intrado, its tariff simply acknowledges* that PSAPs may subscribe to other local exchange services for administrative purposes, to make outgoing calls, or to receive other emergency or non-emergency calls. Intrado acknowledges in its tariff that PSAPs have the choice of other providers for these services (Intrado Br. 14-15).

In further support for its argument that it provides telephone exchange service, Intrado states that its interconnection arrangement with AT&T is for the mutual exchange of traffic. According to Intrado, two-way communications, not two-way traffic is key in determining whether there is a mutual exchange of traffic. Even though 911 trunks are *generally* one-way, *Intrado argues that 911 trunks, nonetheless, provide two-way* communications and traffic. As an example, Intrado points out that a call may be delivered by a one-way trunk to a PSAP. The PSAP, in turn, can "hookflash" for dial tone

to originate a bridged call to a third-party. From this, Intrado concludes that one-way trunks can support two-way voice communications (Intrado Br. 15-16).

AT&T disagrees with Intrado's claim that a hookflash is tantamount to originating a call. AT&T points to where Intrado has admitted that hookflash is merely a conferencing capability. AT&T also points to where Intrado has testified that its IEN service does not allow call origination. Consulting Intrado's tariff, AT&T finds where the tariff states that PSAP customers only receive calls, further undermining Intrado's claim of call origination capability. On this point, AT&T cites the Florida commission, which dismissed Intrado's petition upon finding that Intrado does not provide telephone exchange service (AT&T Reply Br. 5-6).

Intrado accuses AT&T of describing Intrado's 911/E911 service as an information service, rather than a telecommunications service. Citing the FCC, Intrado claims that the presence of Internet protocol within its network has no bearing on whether its service is an information service (Intrado Br. 17).

To further distinguish its service from an information service, Intrado highlights the component nature of its service. Intrado points to three components of its 911/E911 service: the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP. Intrado acknowledges that the ALI might be regarded as an information service, but Intrado combines each component to create an integrated product (Intrado Br. 18-19).

In further rejecting AT&T's claim that Intrado's 911/E911 service is an information service, it is Intrado's contention that the nature of a service determines its classification. It is customer perception that defines a product. In this instance, Intrado states that public safety agencies understand that they are purchasing a complete, integrated 911/E911 service offering, not component parts (Intrado Br. 19).

Noting in the arbitration petition that Intrado compared its 911 services to fax services, AT&T disagrees. AT&T explains that fax services use basic two-way telephone exchange lines that have assigned telephone numbers. Moreover, the lines can originate and receive telephone calls over the public switched telephone network (PSTN). In comparison, AT&T enumerates that Intrado's 911 service does not have assigned telephone numbers, does not have dial tone, and cannot originate calls to subscribers served on the PSTN (AT&T Ex. 1 at 25-26).

AT&T notes that Intrado states in its petition that it intends to offer local exchange service. AT&T highlights, however, that Intrado is not certified to offer local exchange service. Based on its tariff, Intrado only intends to offer emergency services (AT&T Ex. 1 at 17-18).

Taking into account the State of Ohio's definition of basic local exchange service, AT&T concludes that Intrado's IEN does not qualify as basic local exchange service. As in the federal statute, Rule 4927.01(A)(1), O.A.C., defines basic local exchange service in terms of whether a customer can originate voice communications within a local service area. AT&T states that Intrado has admitted that its service does not allow subscribers to originate calls (AT&T Ex. 1 at 22-23). Referring to Rule 4927.01(A)(1)(a), O.A.C., AT&T points out that Intrado's IEN does not provide dial tone service. IEN also does not provide operator services and directory assistance. Intrado emphasizes that Rule 4927.01(A)(1)(d), O.A.C., specifies that operator services and directory assistance are only provided to exchange lines that provide dial tone. Furthermore, pursuant to Rule 4927.01(A)(1)(h), O.A.C., AT&T states that Intrado's IEN does not provide access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies. Intrado explains that interexchange carrier (IXC) presubscription services are only available to exchange lines that provide dial tone (AT&T Ex. 1 at 23-24).

Intrado rejects AT&T's contention that its tariff provides evidence that its 911/E911 service is not telephone exchange service. To the contrary, Intrado claims that there is no provision in the tariff that indicates that Intrado's 911/E911 service is anything other than telephone exchange service. Upon comparing, Intrado finds that its tariff provisions are nearly identical to those contained in AT&T's tariff. Moreover, those provisions highlighted by AT&T to support its contention are basic local exchange services, not telephone exchange services (Intrado Reply Br. 12-13).

AT&T makes the argument that the Commission has no authority to arbitrate issues that are not raised by the parties. Specifically, AT&T refers to the Commission's arbitration of issues under Section 251(a). Citing Section 252(b), AT&T states that the Commission must limit itself to deciding those issues raised by the parties. Because Intrado's application is filed under Section 251(c), AT&T contends that the Commission has no authority to arbitrate issues under Section 251(a). Even further, AT&T remarks that even if Intrado had sought to arbitrate under Section 251(a) the Commission would be barred from doing so under Section 252(b) (AT&T Br. 13-17).

In its reply brief, Intrado finds additional support for its position from commission decisions in Texas, Illinois, and California. The commissions found that Intrado offered telephone exchange service and, therefore, was entitled to interconnection under Section 251(c) (Intrado Reply Br. 4-5). In support of its argument that it provides telephone exchange service, Intrado highlights the reason why interconnection may only be provided to carriers that offer telephone exchange service or exchange access service. According to Intrado, the purpose of the limitation was to prevent long distance carriers from avoiding access charges by taking advantage of interconnection via Section 251(c). Intrado adds that it was Congress' intent, with the inclusion of part B of the telephone

exchange definition, to broaden the inclusion of services that would fall within the telephone exchange limitation in Section 251(c). Telephone exchange service is not limited to voice service (Intrado Reply Br. 5-6).

Intrado voices support over the Commission's authority to arbitrate and oversee the interconnection arrangements between the parties. Because Intrado is a competitor and AT&T is an ILEC, Intrado argues that Section 251(c) is applicable and grants the Commission oversight authority. Moreover, Intrado claims that its status as a competitor grants it access to the PSTN. Intrado rejects AT&T's recommendation that the parties enter into a commercial, non-Section 251 agreement. There would be no statutory requirement for Commission review and oversight. The agreement would not be publicly available for other carriers to review. Ultimately, Intrado argues, such an arrangement would undermine the Commission's jurisdiction over Intrado and 911/E911 services generally. Intrado points out that in Case No. 07-1216-TP-ARB, the Commission found that uninterrupted 911 service is affected with a public interest that calls for the Commission's oversight and resolution of disputes through arbitration (Intrado Reply Br. 13-14).

Pointing out differences between a commercial agreement and a Section 251(c) interconnection, Intrado highlights that a commercial agreement has nothing to do with interconnection to the PSTN. Commercial agreements are for retail services. Intrado wishes to be a competitor, not a retail customer. Intrado believes that the Section 251/252 framework is the appropriate mechanism (Intrado Reply Br. 15).

Intrado does not accept AT&T's assertion that many of the issues raised by Intrado fall outside the scope of sections 251(b) and 251(c) and thus are not subject to arbitration. By its intent to establish a mutual exchange of traffic and interoperability between the parties' networks, Intrado finds the key components of Section 251(c) interconnection. Intrado, relying on judicial precedent, also recognizes that in some circumstances, attendant issues that are themselves outside the scope of Sections 251(b) and (c) may be subject to arbitration (Intrado Reply Br. 16).

Intrado adds that some state commissions have recognized that the Section 252 arbitration process applies to all Section 251 agreements with ILECs. Intrado distinguishes the case law cited by AT&T, noting that those cases dealt with the duty to negotiate rather than arbitrate issues that fall outside of Section 251(b) and (c). Intrado believes that the true issue involves the authority of a state commission to review by means of an arbitration proceeding issues that are beyond Section 251(b) and (c) (Intrado Reply Br. 16-17).

ISSUE 1(a) ARBITRATION AWARD

In addressing what services Intrado provides or intends to provide, AT&T seeks to undermine Intrado's authority by taking the position that Intrado does not provide "telephone exchange service" or "exchange access." Claiming that Intrado has admitted that it does not provide "exchange access," AT&T focuses on whether Intrado provides telephone exchange service. To AT&T, the answer is crucial to whether Intrado can interconnect with AT&T under Section 251(c)(2)(A) of the Act.

In Case No. 07-1216-TP-ARB we stated that we had already generically addressed the issue of whether Intrado is engaged in the provision of telephone exchange services or exchange access service in Case No. 07-1199-TP-ACE. We determined that Embarq had merely repeated the position it asserted in Case No. 07-1199-TP-ACE. We, therefore, rejected Embarq's attempt to resurrect its arguments.

AT&T seeks to carve out an exception to reopen the issue by changing its approach. AT&T claims that in Case No. 07-1199-TP-ACE the Commission did not examine the elements of 47 U.S.C. §153(47) to determine whether Intrado provides telephone exchange service. Taking that approach, AT&T walks through the elements of 47 U.S.C. §153(47) and other criteria to show where Intrado's service lacks essential components of telephone exchange service.

Notwithstanding that we decided in prior cases that Intrado provides telephone exchange service, we will conduct an analysis of 47 U.S.C. §153(47). In our review of the record, we find sufficient evidence that Intrado's 911 service is telephone exchange service. First, we find that 911 service involves intercommunication. Intrado has identified the ability of its PSAP customers to communicate with other Intrado PSAP customers and AT&T's PSAP customers. The service also allows the public to communicate with PSAPs and local emergency personnel. Though somewhat limited in its ability, we find that there are more attributes than not that Intrado's service provides intercommunication. AT&T would deny the existence of intercommunication based on the limited calling choices inherent in the service. The statute, however, does not quantify intercommunication. It only requires the existence of intercommunication. Though minimal, we do find that intercommunication exists.

We also find that Intrado's 911 service operates within a connected system of telephone exchanges. We are persuaded by Intrado's argument that exchange boundaries should be read more broadly to include areas that are not coterminous with the ILEC exchange boundaries. PSAPs must have a service that takes into account the location of fire, police, and other emergency service providers within the county that it serves. Although the reach of a particular 911 service may not coincide with the boundaries of ILEC exchanges, the service does have geographical limitations that are generally

consistent with a community of interest. In this respect, we find that the service area is akin to a single exchange with EAS to neighboring exchanges. Furthermore, the Commission also agrees with Intrado that wireless carriers provide telephone exchange service and enter into Section 251 interconnection agreements even though they provide service in areas that are not coterminous with ILEC exchange boundaries.

To meet the requirement of an exchange service charge, Intrado states that it will charge PSAP customers and public safety agencies for telecommunication service. Based on its understanding of the FCC's position, Intrado believes that any service charge would be regarded as an exchange service charge. Although AT&T highlights that 911 callers are not charged and, therefore, do not incur an exchange service charge, we find sufficient evidence of an exchange service charge in the fee paid by PSAPs and public safety agencies to Intrado for the provision of telecommunications service.

Whether Intrado's PSAP customers can originate and terminate calls falls on whether calls initiated to other PSAPs and establishing two-way communications with 911 callers qualifies as originating and terminating calls. Intrado would also regard in some circumstances that call transfers and conferencing involve call originating. Again, as with "intercommunicating," the statute does not quantify "originate." We thus find that the capability of a PSAP to call to another PSAP and engage in two-way communications with 911 callers satisfies the call origination and termination requirement.

In its brief, Intrado emphasized that 47 U.S.C. §153(47) consists of two independent parts, A and B. If Intrado's 911 service satisfies the criteria of either A or B it will establish that it provides a telephone exchange service (Intrado Br. 12). Whether evaluated under part A or part B, we find that Intrado provides telephone exchange service.

AT&T argues that the Commission has no authority to arbitrate issues that fall within the ambit of Section 251(a). In *In the Matter of the 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*, Case No. 08-537-TP-ARB (Case No. 08-537-TP-ARB), we pointed out that while neither party raised the application of Section 251(a) as an issue for arbitration, it does not bar us from applying applicable law. Furthermore, we found that Section 252 endows us with arbitration and enforcement authority over all Section 251 agreements. Even though neither party has raised an issue relating to interconnection under 251(a), we are not prohibited from applying Section 251(a).

ISSUE 1(b) ARBITRATION AWARD

Intrado sought to identify the services that AT&T is required to offer interconnection under Section 251(c). Intrado takes the position that the Commission has

determined that Intrado is entitled to all rights under Section 251(c) because of its provision of competitive emergency telephone exchange services. AT&T, on the other hand, claims that it is not obligated to offer Section 251(c) interconnection to Intrado because Intrado does not provide telephone exchange service or exchange access.

In Case No. 07-1199-TP-ACE, and as recently as the Commission's January 14, 2009, entry on rehearing in Case No. 08-537-TP-ARB, the Commission determined that CESTCs are entitled to all the rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act. AT&T has not presented in this proceeding any facts or arguments that would cause the Commission to re-examine its previous determination. Moreover, our above analysis of 47 U.S.C. §153(47) leads us, alternatively, to the conclusion that Intrado provides telephone exchange service. Because Intrado is a provider of telephone exchange service, AT&T must provide interconnection to Intrado for all services offered by Intrado under its certification and subject to the further requirements of this arbitration award.

ISSUE 1(c) ARBITRATION AWARD

As a telecommunications carrier that offers telephone exchange services, Intrado is entitled to interconnection facilities and UNEs, where appropriate, at cost-based rates. Rates should be established pursuant to Sections 251 and 252 of the Act. Intrado's interconnection agreement with AT&T should include the pricing appendix typically approved by the Commission for AT&T interconnection agreements that set forth the prices to be charged by AT&T for services, functions, and facilities to be purchased in connection with the interconnection arrangements in Ohio.

For occasions when Intrado is the designated 911/E911 provider, the interconnection agreement should contain rates, such as port charges, for AT&T's interconnection to Intrado's network.

The availability and pricing of services provided by both parties is more fully discussed, below, in the Commission's award for Issue 1(d).

Issue 1(d) For those services identified in Issue 1(c), what are the appropriate rates?

The parties have presented a number of questions under the umbrella of this issue. AT&T once again argues that Intrado is not offering telephone exchange service and is, therefore, not entitled to Section 251(c) interconnection (Joint Issues Matrix filed September 23, 2008, AT&T Br. 17). Intrado argues for two points: the interconnection agreement should include rates for services provided by Intrado to AT&T, and rates for every service Intrado may purchase should be included in the interconnection agreement.

With regard to the inclusion in the interconnection agreement of rates to be charged by Intrado to AT&T, Intrado indicates that it charges port termination charges to all carriers who interconnect to their IEN and has, therefore, included these charges in the interconnection agreement. Intrado further points out its understanding that AT&T also charges port termination on carriers seeking to terminate 911 traffic on AT&T's network (Intrado Ex. 2 at 17). Intrado does not advance a specific position with regard to this issue on brief.

AT&T indicates on brief that the real issue is that Intrado wishes to include in a Section 251(c) agreement the rates that it would charge AT&T for the services Intrado seeks to provide (AT&T Br. 17). AT&T first maintains that it is improper for the interconnection agreement to include such charges, as the purpose of a Section 251(c) agreement is to allow a CLEC to obtain services from an ILEC (*Id.* at 17-18). Its second argument is that the rates are for services that AT&T is not required to purchase at all (*Id.* at 18). AT&T, in its third argument, maintains that the rates have not been reviewed by the Commission and should be reciprocal (*Id.*).

In addition, AT&T states that Intrado has provided no basis for its port termination charges, aside from indicating that they are similar to AT&T's charges imposed on competitors. AT&T further points out that the proposed rate table is titled "INTELLIGENT EMERGENCY NETWORK SERVICE E9-1-1 STANDALONE AGREEMENT," and notes that AT&T will not be purchasing Intrado's tariffed IEN service. AT&T also states that Intrado cannot compel AT&T to interconnect with it under Section 251(c), or insist on including terms for such connection in a Section 251/252 interconnection agreement. AT&T finally states its willingness to negotiate a commercial agreement for the parties' 911 interconnection (AT&T Ex. 1 at 29).+

AT&T observes that while Intrado states that its rates are similar to AT&T's, Intrado has stated that its rates are market-based and thus do not mirror AT&T's rates, as would be appropriate under Section 251(c). AT&T also observes that Intrado has a single rate across the country, while AT&T's rates vary by state (*Id.* at 30). AT&T concludes that the parties should be charging each other the same rates (*Id.* at 31). AT&T also explains that facilities and trunks are separate and distinct elements. AT&T goes on to state that when AT&T establishes trunks to Intrado, a trunk port charge may be appropriate, but notes that AT&T is not required to establish a separate point of interconnection (POI), has no duty to lease facilities from Intrado, and concludes that Intrado would have nothing to charge (*Id.* at 30).

With regard to the AT&T rates that appear in the interconnection agreement, AT&T initially argues that since Intrado is not entitled to interconnect under Section 251(c), there are no issues to arbitrate (*Id.* at 17-18, citing 47 U.S.C. §251(c)(2)(A), 47 C.F.R. §51.305(b),

and *First Report and Order* ¶191). In its reply brief, AT&T further states that paragraph 191 of the FCC's First Report and Order indicates that "Section 251(c) interconnection is only available to CLECs if they provide "telephone exchange service" or "exchange access" (*Id.* at 17).

AT&T subsequently argues that if Intrado is entitled to Section 251(c) interconnection, then the specific AT&T rates to be included in the agreement should be only those rates covered under 251(c). AT&T further states that if Intrado seeks to purchase non-Section 251(c) services those rates should not be included in the agreement. AT&T indicates that it has included language that refers to the appropriate tariffs for those non-Section 251(c) services (*Id.*).

With regard to the rates to be charged by AT&T, Intrado specifically argues that it is entitled to interconnection facilities and UNEs at cost-based rates and that all rates to be charged by AT&T should be specifically set forth in the interconnection agreement (Intrado Ex. 2 at 15). Intrado further argues that tariffs are not an appropriate mechanism for determining charges from AT&T to Intrado. Intrado further states that if AT&T can identify with specificity co-carrier interconnection pricing that has been established under Section 252(d)(1) and set forth in tariffs, Intrado could accept a reference to relevant tariffs, but AT&T has not yet done so (*Id.* at 15-16).

Intrado further expresses concern that, absent rates for services explicitly spelled out in the interconnection agreement, Intrado will be at a competitive disadvantage because Intrado will not know its operating costs. Intrado also indicates that AT&T could use the tariffed rates in an anti-competitive manner by placing resources in a given area and changing its tariffed prices for service (*Id.* at 16).

AT&T points out that there are services that Intrado may desire to purchase under certain scenarios where the terms, conditions, and prices appear in AT&T's Access Tariff, and gives the example of facilities on Intrado's side of a POI (*Id.* at 33). AT&T notes that Intrado may choose to obtain these services from another provider or by self-provision (*Id.*).[5] AT&T concludes that the interconnection agreement is not the appropriate place to price these services.

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5 Citing *In the Matter of the Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission's Triennial Review Order and its Order on Remand*, Case No. 05-887-TP-UNC arbitration award issued November 9, 2005, (Issue 5), and Entry on Rehearing issued January 4, 2006 (¶¶ 18-20).

ISSUE 1(d) ARBITRATION AWARD

Whether Intrado is offering "telephone exchange service," and whether it is entitled to interconnection under Section 251(c) of the Act, is discussed in Issue 1(a). However, AT&T has put forward arguments in the context of Issue 1(d) that should be addressed.

First, in citing ¶191 of the *First Report and Order*, AT&T creates a conclusion that does not appear in the text. In fact, the referenced paragraph does not address the current question at all. The decision in ¶191 was whether an interexchange carrier had access to Section 251(c) interconnection. The FCC concluded that it did not because the IXC was not seeking interconnection for the purpose of providing telephone exchange service. The FCC went on to state that traditional IXCs that offer access services in competition with an incumbent LEC (i.e., IXCs that offer access services to other carriers as well as to themselves) are eligible to obtain interconnection pursuant to Section 251(c)(2).

However in this case, Intrado is engaged in the provision of telephone exchange service, even if it does not itself provide a complete telephone exchange service under its current certification. As a result, Intrado does seek interconnection for the purpose of the provision of telephone exchange service as affirmed by the Commission in Case No. 07-1199-TP-ACE.

Even if that were not sufficient reason to grant Intrado Section 251(c)(2) interconnection to AT&T's network, similar to an IXC that provides access service to other carriers in competition with the ILEC (which can obtain interconnection under 251(c)(2)), Intrado seeks to provide 911 termination services to other carriers. Intrado should, therefore, be similarly granted access to Section 251(c)(2) interconnection.

Second, AT&T cites ¶39 in the Commission's arbitration award in Case No. 07-1216-TP-ARB to support its contention that the purpose of a Section 251(c) agreement is exclusively for a CLEC to purchase services from an ILEC. Here again, AT&T's conclusion is not supported by the text. The discussion in that text is with regard to whether a process by which an ILEC can order services from a CLEC is included in an interconnection agreement, whether that inclusion is under Section 251(a) or 251(c). It does not support at all the concept that a Section 251 interconnection agreement is exclusively to allow a CLEC to purchase services from an ILEC.

As the subject of that paragraph is the determination of whether an aspect of an interconnection agreement is under Section 251(a) or 251(c), and AT&T maintains that this is a determination this Commission is prohibited from making, it seems that AT&T wishes to have it both ways. It cannot claim that the Commission was in error in the Embarq award with regard to assigning parts of the interconnection agreement to Section 251(a) and other parts to Section 251(c) and, on the other hand, cite to the very discussion it

claims was erroneous as support for its current position to deny Intrado access to a Section 251 interconnection agreement.

With regard to the inclusion of Intrado's port charges in the interconnection agreement, the Commission notes that, while there is no requirement under Section 251(c) that AT&T interconnect with Intrado on Intrado's network, pursuant to Issue 4 and 4(a), the Commission requires one POI on Intrado's network under certain circumstances. The Commission notes that under those circumstances, Intrado is required to provide for the possibility of that interconnection under Section 251(a) of the Act. As a result, Intrado is required to have rates and charges for the applicable interconnection services stated somewhere. Absent a carrier-to-carrier tariff, the most reasonable place for these rates to be listed is in an attachment to the interconnection agreement. As to the rates themselves, as proposed by Intrado, the trunk port would be the point of interconnection on Intrado's network. As such, Intrado's trunk port is defined as an interconnection facility. Consequently, the requirement that Intrado's rates mirror AT&T's port rates is not applicable here since that requirement applies only to reciprocal compensation for the transport and termination of traffic under 251(b)(5).

With regard to the explicit inclusion of all rates Intrado may pay AT&T as a result of this interconnection agreement, the Commission concludes that Intrado is mistaken on a few critical aspects of this question. Even though Intrado's purchasing of services from AT&T is subject to Section 251(c), that does not mean that all services that Intrado may wish to purchase are UNEs, or that all services it may wish to purchase are available at total element long-run incremental cost (TELRIC) or other cost-based pricing. For example, the FCC has set out explicit lists of the network elements that incumbent carriers are required to provide on an unbundled basis, and priced at TELRIC. Services or features not on those lists are available to Intrado from AT&T's Access Tariff or via a separate contract, just as it would be for any CLEC.

The Commission notes that numerous approved interconnection agreements refer to the incumbent carrier's Access Tariff for pricing, terms, and conditions of services not identified as UNEs. With regard to Intrado's concerns about the "volatility" of tariffed rates, the Commission notes that changes to AT&T's Access Tariff would be under Rule 4901:1-7-14, O.A.C., which requires a 30-day application and approval process. Given AT&T's "accessible letter" process regarding access tariff changes, Intrado would have ample notice of a pending change in rates, terms, or conditions, and would have an opportunity to be heard with regard to any change.

With regard to Intrado's suggestion that any tariff references be made specific, by identifying the tariff and/or tariffed service, this seems to create for AT&T an impossible task of predicting what Intrado would desire to purchase. Even if it were to make such a

prediction, such specificity may work against Intrado, as it could be understood to limit what Intrado might purchase from AT&T under this agreement.

Based on these considerations, the Commission concludes that AT&T's proposed language for sections CES 3.3.2 and CES 10.1, and Intrado's proposed language for section Pricing 1.1, are appropriate.

Issue 2(a) Does Intrado's certification as a CESTC entitle it to all rights and services under Section 251, including wholesale resale services and unbundled network elements?

For its position, Intrado relies on the Commission's decision in Case No. 07-1199-TP-ACE wherein the Commission determined that Intrado is entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act. Furthermore, Intrado states that in its arbitration with Embarq[6] the Commission confirmed that Intrado is entitled to UNEs pursuant to Section 251(c). From this, Intrado concludes that it has rights under Section 251 to wholesale resale services and UNEs. Going a step further, Intrado contends that provisions concerning such services should be included in the parties' interconnection agreement (Intrado Ex. 2 at 17-18, Intrado Br. 53). More specifically, Intrado believes that it is entitled to reciprocal compensation, access to rights-of-way, and collocation (Intrado Br. 53). Intrado states that it does not dispute that there may be eligibility requirements to obtain certain UNEs. For those UNEs, Intrado states that it is committed to complying with any applicable rules (Intrado Br. 54).

AT&T argues that the Commission by its creation of a new carrier classification intended a difference between a CESTC and CLEC. If Intrado, as a CESTC, can obtain the all the rights and services available to a CLEC, there would be no practical difference between a CESTC and a CLEC. To preserve the distinction, AT&T believes that only those provisions that relate solely to CESTCs should be included in the interconnection agreement. The dispute arises because Intrado wishes to include language that would apply only to a CLEC. A concern of AT&T is that CLECs could opt into the interconnection agreement. AT&T, therefore, recommends that Intrado amend the agreement if it decides to become a CLEC (AT&T Ex. 1 at 35-36). AT&T adds that Intrado's certification as a CESTC does not entitle it to anything under Section 251 or 252. Nor, continues AT&T, is Intrado entitled to unbundled loops, a UNE, because its customers are not end users. By definition, AT&T contends that a UNE loop must serve an end user (AT&T Br. 18).

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6 *In the Matter 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 (Case No. 07-1216-TP-ARB).

Intrado reiterates that the Commission in its Certification Order decided that Intrado is entitled to all rights under Section 251, including UNEs. As for including provisions for services that it has no authority to provide, Intrado points to Case No. 07-1216-TP-ARB where the Commission recognized that interconnection agreements are often negotiated prior to a party being granted certification to offer the services that may be covered by the interconnection agreement. Intrado contends further that the Commission determined that it would be appropriate to include services and facilities even if Intrado's current certification would bar the use of such services and facilities. Finding no reason for the Commission to alter its decision, Intrado believes that all appendices sought by Intrado, along with accompanying definitions, should be included in the interconnection agreement (Intrado Reply Br. 25-26).

ISSUE 2(a) ARBITRATION AWARD

At issue is whether Intrado has rights to wholesale resale services and UNEs. In Case No. 07-1199-TP-ACE and Case No. 07-1216-TP-ARB, we determined that Intrado, as a CESTC, is entitled to all rights and obligations under Section 251 of the Act. Section 251 of the Act, in part, sets forth the general duties of telecommunications carriers. Section 251(c) imposes a duty upon ILECs to make available unbundled access to network elements. Section 251(c) also includes a duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications subscribers.

AT&T takes the position that Intrado's status as a CESTC does not entitle it to anything under Sections 251 or 252. AT&T's position is directly contrary to our prior decisions. As we have previously, we find here that Intrado as a provider of telephone exchange services is entitled to all rights and obligations under Section 251 of the Act. Accordingly, Intrado is entitled to wholesale resale services.

As for UNEs, AT&T declares that unbundled loops are the only UNEs sought by Intrado for the provision of its CESTC service. AT&T rejects Intrado's entitlement to UNEs because it claims that Intrado's customers are not end users. According to AT&T, a UNE loop must serve an end user. In Issue 31, we determine that Intrado's PSAP customers are end users. Following AT&T's logic from the premise that Intrado's customers are "end users," we conclude that Intrado is entitled to unbundled loops. In sum, AT&T has asserted no facts or argument that would give us a basis for varying from the awards issued in Case Nos. 07-1199-TP-ACE and 07-1216-TP-ARB. Consequently, Intrado shall be entitled to UNEs. The Commission reminds Intrado that it may only avail itself of UNEs to the extent that it has Commission authorization to provide that service and the UNE is utilized for the intended purpose pursuant to FCC and Commission rules.

Issue 2(b) Which appendices should be included in the interconnection agreement?

It is Intrado's position that the interconnection agreement should include all appendices normally offered to competitors. Intrado explains that the Commission determined in Case No. 07-1199-TP-ACE that Intrado is entitled to all rights of a telecommunications carrier pursuant to Section 251. Included among those rights, according to Intrado, are reciprocal compensation, wholesale resale services, access to rights-of-way, UNEs, and collocation. Intrado states that AT&T specifically disputes Intrado's entitlement to UNEs and wholesale resale services (Intrado Br. 53).

Relying on Case No. 07-1216-TP-ARB, Intrado claims that the Commission has already determined that Intrado is entitled to UNEs under Section 251(c). As a "telecommunications carrier" providing a "telecommunications service," Intrado contends that it is entitled to a UNE under Section 251(c)(3) upon requesting it for the provision of a telecommunications service. Intrado acknowledges that there may be eligibility requirements for some UNEs. In those cases, Intrado states that it is willing to comport with those requirements. Being eligible for UNEs, Intrado believes that the interconnection agreement should reflect its eligibility (Intrado Br. 53-54).

Because it may seek to expand its certification and local service offerings, Intrado requests that the interconnection agreement not be limited to Intrado's provision of 911/E911 service (Intrado Ex. 2 at 18-19). To offer those additional services, Intrado will need to strike an agreement with AT&T. In doing so, Intrado argues that it would not be unlike other carriers that do not use all available services, facilities, and functions under an existing agreement. To deny the inclusion of additional services, argues Intrado, would single it out for an overly restricted interconnection agreement (Intrado Br. 55).

Intrado recalls that in Case No. 07-1216-TP-ARB, the Commission recognized that negotiations for services to be included in an interconnection agreement may precede certification. Moreover, Intrado recalls that the Commission determined that it was appropriate for Intrado to include services in the interconnection agreement that go beyond its current certification. Intrado urges the Commission to remain consistent and allow it to include all appendices normally included in an interconnection agreement. Intrado states that the parties have already expended a significant amount of time and resources negotiating both 911/E911 services and non-911/E911 services. To exclude non-911/E911 provisions would cause Intrado to negotiate and arbitrate those provisions again. Intrado, therefore, requests that all appendices and accompanying definitions be included in the interconnection agreement at this time (Intrado Br. 54-56).

Starting from the position that Intrado is not authorized to provide local exchange service, AT&T proposes to exclude from the interconnection agreement those appendices

that relate to local exchange service. AT&T's witness lists the specific appendices that should be included (AT&T Ex. 1 at 36). In addition, AT&T wants to exclude resale services and UNEs from the list of products that AT&T would provide to Intrado under the interconnection agreement. AT&T explains that resale services and UNEs are associated with the provision of basic local exchange service. Because Intrado is not certified to provide local exchange service, local service provisions should be omitted from the interconnection agreement. AT&T identifies those specific appendices that it wishes to exclude (AT&T Ex. 1 at 37-39).

For similar reasons, AT&T seeks to exclude from the interconnection agreement the UNE appendix. Without local exchange service authority, AT&T states that Intrado would have no use for UNEs. AT&T indicates that its argument hinges on the definition of end users and the availability of UNEs for end users, as discussed in Issue 31. According to AT&T, Intrado argues that its PSAP customers are end users, supposedly to qualify for unbundled loops (AT&T Ex. 1 at 39).

AT&T rejects Intrado's claim to all rights and services under Section 251. AT&T does acknowledge that the Commission stated that Intrado is entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252. AT&T points out that the Commission added that its certification decision does not address the appropriateness and scope of any specific request for interconnection. Cases would be decided on case-specific facts of Intrado's proposal (AT&T Ex. 1 at 39-40). AT&T's witness further points out that if the Commission decides in favor of AT&T on Issue 2(b) other issues will be moot, specifically issues 6, 13(a), 13(b), 15, 29(a), and portions of issues 3, 4(c), and 7(a) (AT&T Ex. 1 at 40).

In its brief, AT&T denies that Intrado, as a CESTC, is entitled to anything under Section 251 or 252. Because Intrado does not intend to resell any of AT&T's local services, AT&T believes that the interconnection agreement should not contain any provisions for resale. In particular, AT&T claims that Intrado is not entitled to wholesale resale services or UNEs such as unbundled loops. AT&T reasons that unbundled loops would only be available to Intrado if its customers were end users. AT&T does not regard PSAPs as end users (AT&T Br. 18).

Intrado asserts that AT&T is wrong in saying that Intrado, as a CESTC, is not entitled to anything under Section 251 or 252. Intrado repeats that the Commission decided in its Certification Order that Intrado is entitled to all rights under Section 251. To Intrado, that should be sufficient to settle the issue. Insofar as including in the interconnection agreement services which Intrado is not eligible to provide, Intrado points out in Case No. 07-1216-TP-ARB that the Commission recognized that interconnection agreements are often negotiated prior to the grant of certification to offer services that may be covered by the interconnection agreement. Intrado adds that the Commission also

determined that it was appropriate to include services and facilities in the interconnection agreement even if Intrado's current certification would bar access to those services and facilities. Based on this notion, Intrado advocates for the inclusion of all appendices in the interconnection agreement (Intrado Reply Br. 25-26).

Contrary to Intrado's reading of Case No. 07-1216-TP-ARB, AT&T states that the Commission rejected Intrado's argument in support of including services and facilities for which Intrado has no to authority provide. AT&T quotes and highlights language from the Commission's award to emphasize the scope and limitations of Intrado's certification.

Although Intrado wishes to include all appendices in the interconnection agreement, AT&T believes that only those appendices related to the actual service provided should be included. Conversely, AT&T would exclude those appendices relating to local exchange service because Intrado is not authorized to provide local exchange service (AT&T Br. 18-19).

AT&T is concerned that the inclusion of such appendices would burden AT&T's field personnel concerning which services Intrado is authorized to order. AT&T would also have to monitor the appendices to ensure that they are amended to updated with changes in law. Including the appendices, argues AT&T, would imprudently add voluminous surplusage to the interconnection agreement. AT&T would prefer to amend the agreement in accordance with the services that Intrado obtains authority to provide (AT&T Br. 18-19, AT&T Reply Br. 17).

ISSUE 2(b) ARBITRATION AWARD

AT&T argues that Intrado is not authorized to provide local exchange service. For that reason, AT&T seeks to exclude from the interconnection agreement sections such as resale services, UNE product lists the UNE appendix, and appendices that relate to local exchange service. These sections, AT&T explains, relate to local exchange service and, therefore, should be excluded. Moreover, AT&T points out that Intrado does not intend to resell AT&T's local services. AT&T, therefore, urges exclusion of resale provisions.

The positions asserted by AT&T have been considered and decided in Case Nos. 07-1199-TP-ACE and 07-1216-TP-ARB. In Case No. 07-1216-TP-ARB, specifically, we decided to allow the parties to include in the interconnection agreement provisions that Intrado lacked present authority to provide. We did, however, agree with Embarq that clarifying language should be included that "Intrado should not be allowed to avail itself of services or facilities that exceed the scope of Intrado's certification." We determined that such a provision was in line with Rule 4901:1-6-10(E)(3), O.A.C., which provides for the negotiation of an interconnection agreement prior to granting certification. As in Case No.

07-1216-TP-ARB we shall permit the interconnection agreement to contain appendices relating to local exchange service.

This finding is even more appropriate in light of the fact that Intrado has a pending CLEC certification before the Commission in Case No. 08-1289-TP-ACE, *In the Matter of Intrado Communications Inc. to Provide Facilities-Based and Resold Local Exchange Company Services in the State of Ohio* (08-1289). Pursuant to the Commission's entry on February 25, 2009, this application should follow the automatic approval process. Thus, Intrado's CLEC certification case will be effective on March 9, 2009. Again, however, the Commission reminds Intrado that services, or elements it receives from AT&T for the provision of its services pursuant to its CLEC authority should only be used to provide its CLEC services and those services, or elements it obtains from AT&T for its CESTC offering should be utilized as such.

Issue 2(c) Should the interconnection agreement include definitions for terms not utilized in the interconnection agreement?

In Issue 2(c), AT&T seeks to exclude the definition of terms that are not used in the interconnection agreement. If the Commission excludes from the agreement the local service appendices noted by AT&T, AT&T would urge the Commission to exclude as well those definitions associated with the excluded appendices (AT&T Ex. 1 at 40-41, AT&T 19-20, AT&T Reply Br. 17).

As with all appendices, Intrado advocates for the inclusion of all definitions in the interconnection agreement. Noting the time and resources spent toward reaching a comprehensive agreement, Intrado wants to include all appendices and definitions to avoid renegotiating and likely arbitrating provisions that are currently on the table (Intrado Ex. 2 at 19, Intrado Br. 55-56, Intrado Reply Br. 26).

ISSUE 2(c) ARBITRATION AWARD

With our decision to include all appendices, this issue is moot. AT&T's desire to exclude definitions of terms that are not used in the interconnection agreement is contingent upon the removal of appendices containing certain terms. Because we have decided that it is appropriate to include all appendices, the corresponding terms are relevant and should be defined.

Issue 3: What trunking traffic routing arrangement should be used for the exchange of traffic generally?

There are two contract provisions that are in dispute regarding Issue 3. First, whether the terms of the Competitive Emergency Services (CES) Appendix arise from

Section 251 of the Act or from the Commission's requirements. And second, whether Intrado shall be required to establish trunks to each AT&T local tandem in a LATA where Intrado offers non-911 service or whether it is at Intrado's option.

First, AT&T contends that Intrado is only certified, currently, as a CESTC, and the limits related to that certification come from the PUCO rather than 251. AT&T avers that its language reflects the fact that Intrado is not entitled to Section 251(c)(2) interconnection, is not a CLEC, and is not seeking typical CLEC arrangements in a Section 251(c) interconnection agreement (AT&T Br. 20).

Intrado argues that the Commission has already determined that Intrado is entitled to interconnection pursuant Section 251 (Intrado Ex. 1 at 9). Intrado points out that in every other state except Ohio, the parties have agreed to use the language "Section 251 of the Act" in this provision. Intrado avers that there is no reason for Ohio to be treated differently than the other states in which the parties will interconnect their networks. (*Id.*) At a minimum, Intrado suggests that the Commission should adopt language indicating that Section 251 of the Act and the Commission govern the source of 911 interconnection arrangements between the parties (*Id.*).

Next, AT&T contends that once Intrado obtains CLEC certification, it should be required to establish a trunk group to each AT&T local tandem in a LATA where Intrado offers non-911 service because without such trunk groups there is a possibility that there could be misrouted traffic or blocked calls (AT&T Ex. 2 at 16). AT&T contends that its proposal follows standard industry practice and routing principles embraced by the industry using the Local Exchange Routing Guide (LERG) (AT&T Ex. 2 at 16-17). AT&T contends that it is unclear why Intrado objects to establishing these trunk groups, since AT&T will provide them to Intrado at no charge, eliminating any economic burden on Intrado to establish trunks in order to prevent misrouted calls (Joint Issues Matrix).

Intrado claims that AT&T's proposed language requiring Intrado to establish trunking to every tandem in a LATA or to every originating office connected to a tandem goes beyond Intrado's obligations when providing non-911 traffic. Intrado argues that it is entitled to establish, pursuant to Section 251, a single POI per LATA and is under no obligation to establish additional facilities beyond that POI. AT&T's language, Intrado avers, would require just that (Intrado Ex. 1 at 9- 10).

ISSUE 3 ARBITRATION AWARD

Regarding the first of the two contract provisions in dispute for Issue 3, the Commission in Case No. 07-1199-TP-ACE determined that the services Intrado sought to provide qualified it as a telecommunications carrier, inasmuch as it would be engaged in the transmission of a telephonic message. Accordingly, the Commission found that

Intrado was entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act. The Commission in its certification order also determined that the competitive services that Intrado intended to provide were so unique that it should not be classified as a CLEC but under the new designation CESTC and placed restrictions on what a CESTC could provide. As a telecommunications carrier, a CESTC has certain rights and obligations under sections 251 and 252 of the Act. Sections 251 and 252 of the Act give the states the responsibility and authority to implement and enforce some of those rights and obligations. In Ohio, the responsibility and authority are vested in this Commission. The two components (rights/responsibility vs. authority to implement and enforce) are not reasonably severable in that either, absent the other, is of no effect. As the Commission has placed unique parameters on CESTCs and has also determined that CESTCs have rights and obligations under sections 251 and 251 of the Act, the Commission directs the parties to adopt language, in CES 9.1, indicating that 911 interconnection arrangements between the parties are governed by Section 251 of the Act and this Commission.

With respect to the language in dispute in the ITR Appendix, the second disputed contract issue, the Commission finds that, given the benefits, and the fact that Intrado will incur no costs, Intrado should be required to establish a trunk group to each AT&T local tandem in a LATA where Intrado offers non-911 service. While the Commission agrees with Intrado that it is not legally obligated to establish more than a single point of interconnection with AT&T, the Commission is basing its decision on the record in this proceeding where AT&T demonstrated that the lack of such trunk groups could result in misrouted traffic or blocked calls. Furthermore, the benefit to Intrado from the deployment of such trunk groups and the fact that AT&T will provide the trunk groups to Intrado at no charge does not harm Intrado and may even serve to benefit Intrado by reducing or eliminating blocked or misrouted traffic. Therefore, AT&T's language for ITR 4.2 should be adopted.

Issue 3(a) What trunking and traffic routing arrangements should be used for the exchange of traffic when Intrado Comm is the designated 911/E911 service provider?

The disputes contained in Issue 3(a) revolve primarily around the routing of 911 traffic in split wire centers (i.e., wire centers whose customers are served by more than one PSAP). In this regard, the issue between the parties arises where the PSAPs in question are themselves served by different carriers, one of them being a CESTC. The main dispute is whether, in such a split wire center, a local exchange carrier should be required to establish direct trunking to the selective router of the E911 provider to that PSAP, and specifically if AT&T should be required to do so. As a secondary question, if direct trunking is not required, which carrier's selective router should be designated the primary selective router for that wire center. As ancillary issues, the parties dispute whether it is

appropriate to limit the language in Section CES to the provision of Wireline 911 services, and the use of the term "database" as opposed to "DBMS" (an acronym for Database Management System).

Intrado is seeking to require AT&T to use dedicated trunking from its end offices to deliver its end users' 911 calls to Intrado's selective router, when Intrado is designated as a 911 service provider, in split wire centers. Intrado claims that establishing dedicated trunking from AT&T's end offices to Intrado's selective router is technically feasible and provides the most reliable 911 network (Intrado Ex. 1 at 16, 19). Intrado points out that existing interconnection arrangements established by AT&T require CLECs to establish dedicated and redundant trunking from the CLEC's POI on AT&T's network to each selective router serving the geographic area in which the CLEC is offering service (Intrado Ex. 1 at 12-13). Intrado contends that it is not requiring AT&T to implement line attribute routing and has simply offered line attribute routing as a possible method for AT&T to determine over which dedicated trunk to route its 911 calls to reach the appropriate Intrado PSAP customer (Intrado Br. 29).

As a threshold matter, AT&T argues that Intrado's direct trunking proposal seeks to dictate how AT&T routes 911 traffic on AT&T's side of the parties' POI. AT&T argues that this Commission has held in previous cases that carriers are responsible for routing and carrying traffic on their own side of a POI and that other carriers cannot dictate those arrangements. Therefore, as long as AT&T gets 911 traffic to the POI, Intrado should not be able to dictate how it does so (AT&T Ex. 2 at 23-24). AT&T contends that Intrado's proposal would require AT&T to implement and pay for an entirely new system called Class Marking or Line Attribute Routing (AT&T Ex. 2 at 21). AT&T contends that implementing class marking would create serious reliability concerns and would be extremely complex, expensive, and time consuming. AT&T also states that Intrado is not willing to pay any of the related costs, preferring instead to shift the entire burden to AT&T. AT&T claims that it would have no way to recover those expenses (AT&T Ex. 2 at 25). AT&T points out that the difference between Class Marking and Line attribute Routing is that Line Attribute Routing is an automated process (AT&T Ex. 2 at 21, footnote 6). Class Marking, AT&T explains, is used to perform individual line screening on each subscriber line. Thus, AT&T avers, instead of being sent to a selective router, every 911 call would be routed directly to a PSAP from each end office, or in the case of Intrado, to Intrado's selective router (*Id.*) AT&T claims that it is unaware of any ILEC or CLEC in the country that uses class marking for 911 calls today, and Intrado has not identified any (AT&T Ex. 2 at 22). AT&T also indicates that Intrado's proposal creates reliability concerns. "Once one begins moving the call-sorting responsibility out to the end offices, and away from a centralized process, it expands the area where we have to maintain the routing of 911 traffic to numerous end offices" (AT&T Ex. 2 at 32).

AT&T claims the only alleged justification for Intrado to require direct trunking, no matter what the costs or risks, would be to avoid having to pay AT&T for selective routing when AT&T is the primary selective router and sends 911 calls to Intrado as the secondary selective router (AT&T Ex. 2 at 30–31). AT&T contends that this makes no sense in Ohio as AT&T does not charge other carriers for selective routing in split wire centers when it is the primary selective router. Thus claims AT&T, Intrado's alleged fear of having to pay AT&T as the primary selective router is unfounded (AT&T Ex. 2 at 31).

AT&T contends that Intrado's alternative proposal that Intrado always be designated as the primary selective router regardless of how many end users are served is fundamentally unfair (AT&T Ex. 2 at 35). AT&T avers that since its inception, 911 calls in a split wire center have been routed to the designated primary selective router which then either routes the call directly to a PSAP served by that router or, if necessary, sends the call to the secondary selective router which then sends the call to the correct PSAP served by that router (AT&T Ex. 2 at 19). AT&T claims that the determination of which carrier's selective router is primary and which is secondary, is typically based on which router serves PSAPs that serve the clear majority of access lines in the wire center. AT&T avers that this is the fairest, most logical, and most efficient method and is how AT&T deals with wire centers that are split between its PSAP customers and PSAP customers of an adjacent ILEC (*Id.*). AT&T explains that the basic assumption behind making the carrier whose PSAP serves the most access lines be the primary selective router is that more 911 calls will be headed to that carrier's PSAP customer, so it makes sense to route all 911 calls to that selective router first. AT&T contends that under Intrado's proposal, if Intrado's PSAP serves ten percent of the lines and AT&T's PSAP serves 90 percent of the lines in a wire center then 90 percent of 911 calls would leave AT&T's network and go to Intrado's selective router only to return to AT&T's network (AT&T Ex. 2 at 35-36).

With regard to the limitation of Section CES to "wireline" 911 services, Intrado states that it is opposed to the limitation because Intrado may be the designated 911/E911 service provider for more than wireline traffic. Intrado notes that the Commission has recognized that there are different "types" of telecommunications services (i.e., wireline, wireless, voice over Internet protocol (VoIP)) and that one provider may carry multiple types of 911/E911 calls (Joint Issues Matrix at 16). Intrado states that, as one 911 services provider may carry multiple types of calls, AT&T's use of the limiting term "wireline" is not consistent with the Commission's order on Intrado's certification (Intrado Ex. 1 at 11).

AT&T states that it proposes that CES sections 5 and 6 reflect the parties' respective responsibilities when Intrado is the designated wireline 911 service provider. AT&T posits that these provisions are limited to wireline services because AT&T only serves wireline end users, and it is those wireline end users that will access Intrado's 911 customers. The fact that Intrado may be the 911 provider for other services (e.g., wireless, nomadic VoIP)

is irrelevant to the parties' interconnection agreement because AT&T will not route wireless or nomadic VoIP traffic to Intrado (*Id.*).

With regard to the use of the terms 'database" and "DBMS," Intrado maintains that the interconnection agreement should use the defined term "DBMS" rather than the undefined term "database" (Joint Issues Matrix at 16). Intrado states that it prefers to use defined rather than undefined terms in the interconnection agreement (Intrado Ex. 1 at 11-12).

ISSUE 3(a) ARBITRATION AWARD

With regard to the trunking arrangements used for the exchange of 911 traffic when Intrado is the designated 911 service provider, the Commission finds that, consistent with our previous arbitration awards in Case Nos. 08-537-TP-ARB and 07-1216-TP-ARB, AT&T is generally entitled to route its end users' 911 calls to the POI and engineer its network on its side of the POI. The Commission also determined in those cases that consistent with the FCC's findings in *In the Matter of the Revision of the Commissions Rules to Ensure Compatibility with Enhanced 911 Emergency Systems, Request of King County*, 17 FCC Rcd. 14789, ¶1 (2002), and with certain geographic limitations, the POI for 911 traffic should be at the selective router of the E911 service provider that serves the caller's designated PSAP. Each party should bear the cost of getting to the POI.-

Therefore, unless the parties come to a mutual agreement regarding the designation of primary and secondary selective routers in split wire centers, AT&T should deliver its end users' 911 calls destined for PSAP customers of Intrado to Intrado's selective router serving that PSAP. In addition, Intrado should deliver its end users' 911 calls destined for PSAP customers of AT&T to AT&T's selective router serving that PSAP. Consistent with our previous findings, AT&T is not required to establish direct trunking to Intrado's selective router(s) where Intrado is the 911 provider to a PSAP. AT&T will, therefore, be able to engineer its network on its side of the POI, including the use of its selective router(s), for delivery of its end users' 911 traffic to Intrado's selective router.

As to the inclusion of the identifier "Wireline" in CES sections 5 and 6, if, as AT&T indicates, these sections are of no effect unless Intrado is designated as the wireline provider, then the addition of the term wireline to the sections is, by definition, unnecessary.

As a final matter, regarding the use of the defined term "DBMS" as opposed to "database," the Commission notes that the definition of DBMS itself in CES Section 2.8 identifies it as a "Database Management System." In the common usage of the terminology, and as the full wording of the acronym indicates, a DBMS is a system to manage a database. In reviewing the language in question, the Commission finds that

AT&T's proposed usage of each term is clear in meaning and consistent with the general usage of the terminology, and thus should be adopted.

Issue 4 What terms and conditions should govern points of interconnection generally?

Issue 4(a) What terms and conditions should govern points of interconnection when Intrado is the designated 911/E911 service provider?

AT&T is seeking to require Intrado to interconnect its non-911 PSTN traffic at an AT&T tandem or end office. AT&T argues that if Intrado desires to connect at some other point on AT&T's network, it would need to be mutually agreed to by the parties (AT&T Ex. 2 at 46). AT&T contends that it may have existing spare facilities and may agree to other POIs. AT&T contends that its proposed language follows existing law and will minimize potential disputes when establishing interconnection arrangements between the parties (AT&T Ex. 2 at 46-47).

Intrado avers that for non-911 traffic it is entitled to designate any technically feasible location within AT&T's network for the POI and is not limited to AT&T's end office or tandem as AT&T's language requires (Intrado Ex. 1 at 23).

Where Intrado is the designated 911 service provider, Intrado is proposing language requiring AT&T to transport its end users' emergency calls destined to Intrado's PSAP customers to two geographically diverse POIs on Intrado's network, which would be Intrado's selective router/access ports (Intrado Ex. 1 at 23-24). Intrado claims that ILECs like AT&T also impose this type of arrangement on CLECs seeking to terminate 911 service traffic on the ILEC's network. Intrado claims that it simply seeks to mirror the type of interconnection arrangements that AT&T and other ILECs have determined to be the most efficient and effective for the termination of emergency calls (Intrado Ex. 1 at 25). Intrado points out that where AT&T serves as the 911 service provider it routinely designates the location of its selective routing access ports as the POI for telecommunications entities to gain access to the 911 services AT&T provides to PSAPs. This POI, Intrado emphasizes, is in addition to the POI designated by the CLEC on AT&T's network for the exchange of other Section 251(c) traffic. Intrado further asserts that AT&T's POI arrangements with other ILECs are further evidence that industry practice calls for 911 calls to be delivered to the selective router serving the PSAP (*Id.* at 25).

Intrado explains that its proposal to require two geographically diverse POIs on Intrado's network when Intrado is the 911 service provider makes sense as the critical nature of 911 communications demands diversity and redundancy (Intrado Ex. 1 at 27).

Intrado further asserts that geographically diverse routes for 911 traffic are consistent with industry guidelines and recommendations (*Id.* at 28).

AT&T agrees with Intrado that redundant diverse facilities should be established for the exchange of 911 traffic; however, AT&T recommends that Intrado establish multiple POIs on AT&T's network (AT&T Ex. 2 at 43). AT&T is proposing that the parties interconnect their networks at AT&T's selective router and exchange 911 traffic with each other there. AT&T avers this position makes the most sense from an engineering and service viewpoint, as the parties will each have facilities at that location. AT&T contends that it also makes sense from a regulatory perspective, which requires a carrier connecting to an ILEC under Section 251(c) to establish the facilities to connect to the ILEC network. AT&T further argues that the purpose of a POI is to allow the mutual exchange of traffic between the interconnected carriers, and it makes no sense to require separate POIs for the interconnection of Carrier A to Carrier B and for Carrier B to Carrier A, when instead there can be one POI to serve both (AT&T Ex. 2 at 40).

ISSUES 4 and 4(a) ARBITRATION AWARD

In our prior decisions, the Commission determined that, consistent with the FCC's findings, the point of interconnection to the wireline E911 network, with certain geographic limitations, is at the selective router of the E911 network provider and that each party bears the cost of getting to the POI. The Commission, therefore, finds, unless otherwise mutually agreed to, that the 911 traffic terms and conditions established by the parties reflect that each party is responsible for getting its end users' 911 calls to the selective router of the 911 service provider to which a 911 call is destined. In other words, AT&T would need to establish a POI on Intrado's selective router for the delivery of its end users' 911 calls to PSAP customers of Intrado, and Intrado must establish a POI on AT&T's selective router for the delivery of its end users' 911 calls to PSAP customers of AT&T.

With respect to the number of POIs that must be established on a selective router for the delivery of 911 traffic, the Commission has previously determined that for 911 traffic there were no existing requirements to establish multiple POIs on a selective router for the delivery of end users' 911 calls destined for a PSAP served by that selective router. The Commission, therefore, rejected requiring the establishment of multiple POIs on the 911 service provider's selective router. Finding no new evidence to overturn this decision, the Commission again finds that establishing multiple POIs on the 911 service provider's selective router is not required at this time. As with the previous ruling, this does not preclude the parties from otherwise mutually agreeing to additional points of interconnection at any technically feasible point.

To the extent Intrado does not want to interconnect at an AT&T tandem or end office to exchange non-911 PSTN traffic, Intrado would be within its rights to request interconnection at any technically feasible point on AT&T's network. If the parties cannot mutually agree to terms and conditions for the type of interconnection requested by Intrado, the dispute can be brought before the Commission for resolution at that time.

4(c) What terms and conditions should govern points of interconnection when a fiber mid-span meet is used?

Intrado contends that if the parties were to interconnect using a mid-span meet, the parties would negotiate a point at which one carrier's responsibility for service ends and the other carrier's begins, and each party would pay its portion of the costs to reach the mid-span meet point. Intrado avers that each carrier is required to build to the mid-span meet point even if the ILEC is required to build out facilities to reach that point. Intrado avers that its proposed language reflects theses concepts (Intrado Ex. 1 at 32-33).

AT&T contends that Intrado's proposed mid-span meet point does not comport with federal law and grants Intrado sole discretion as to when, where, and how to establish a POI (AT&T Ex. 2 at 47). AT&T contends that interconnection at a location other than AT&T's end office or tandem building would be an expensive form of interconnection, for which Intrado must bear the cost (Joint Issues Matrix filed February 2, 2009, at 27).

ISSUE 4(c) ARBITRATION AWARD

The Commission does not agree with AT&T's assessment that Intrado's proposed language allows Intrado to determine unilaterally the location of the meet point. The language proposed by Intrado would allow for a meet point at an AT&T tandem or end office as agreed to by AT&T, or at some other mutually agreeable point. Therefore, if AT&T does not agree to a meet point requested by Intrado, it is not mutually agreed to, and AT&T would not be required to establish facilities to that meet point. The Commission, therefore, adopts Intrado's proposed language that would allow the parties to establish POIs at mutually agreeable points other than AT&T's tandems and end offices.

Issue 5(a) **Should specific terms and conditions be included in the ICA for inter-selective router trunking? If so, what are the appropriate terms and conditions?**

Issue 5(b) **Should specific terms and conditions be included in the ICA to support PSAP-to-PSAP call transfer with automatic location information (ALI)? If so, what are the appropriate terms and conditions?**

Intrado is proposing terms and conditions to be included in the interconnection agreement for inter-selective router trunking. Intrado explains that inter-selective router trunking is trunking deployed between selective routers that allows 911 calls to be transferred between selective routers and, thus, between the PSAPs served by the selective routers. Intrado contends that AT&T must ensure its network is interoperable with another carrier's network for the provision of 911 services. Intrado avers that the establishment of inter-selective router trunking as requested by Intrado will ensure that PSAPs are able to communicate with each other and still receive access to essential ANI/ALI information (Intrado Ex. 1 at 33-34). Intrado argues that interoperability using the capabilities inherent in each 911 service provider's selective router and ALI database system enables call transfers to occur with the ANI and ALI associated with the emergency call to remain with the voice communication when a call is transferred from one 911 service provider to another (Intrado Ex. 1 at 34).

Other than the public safety benefits, Intrado avers that this Commission, in its order certifying Intrado as a CESTC, recognized that interconnection between 911 service providers is necessary to ensure transferability across county lines and call/data transferability between PSAPs (Intrado Ex. 1 at 35).

AT&T argues that Intrado's proposed language requiring AT&T to implement the capability for PSAP-to-PSAP call transfers with ALI everywhere does not belong in an interconnection agreement, and should not be done with fixed contract terms between AT&T and Intrado. Rather, AT&T contends, the PSAPs at issue must be involved in the negotiations and all three parties must work together to formulate a written agreement. AT&T avers that not all PSAPs desire this capability for PSAP-to-PSAP call transfers and when they do formally request such call transfer capability, they may not all want to set it up in the same way (AT&T Ex. 2 at 49-50). AT&T also points out that unlike facility and trunking arrangements in a Section 251/252 interconnection agreement, these facilities and trunks would be deployed not to effectuate interconnection between AT&T and Intrado, but rather solely to meet a specific request of the E911 customers, who will not be a party to this agreement (AT&T Ex. 2 at 52).

While Intrado agrees that counties and PSAPs should be involved and advised on the inter-tandem functionality that is desired and, therefore, should be deployed between

the parties, Intrado does not agree that formal written PSAP approval is necessary before the deployment of inter-selective router trunks. Each party, Intrado argues, is responsible for its PSAP or county customers and can provide them with any information it deems appropriate (Intrado Ex. 1 at 35).

AT&T contends that implementing this capability would require AT&T to incur costs for facilities, trunks, database storage, extensive translations, and testing. Moreover, AT&T regards this work as highly specialized and, consequently, there are few technicians that are trained and qualified to work on 911 translations. The work, AT&T explains, is not routine business (AT&T Ex. 2 at 50). AT&T claims that Intrado is not willing to bear any of these costs and instead wants to shift the costs to AT&T. AT&T explains that today, if AT&T were to incur the costs to implement selective router-to-selective router call transfers, the requesting PSAP would compensate AT&T for those costs. Under Intrado's proposal, AT&T avers, AT&T would be required to incur all the costs to implement this capability, regardless of whether any PSAP requested it, yet neither the PSAP nor Intrado would compensate AT&T for any of its costs (AT&T Ex. 2 at 50-51). AT&T argues that such costs should only be incurred at the PSAP's request, since there would otherwise be no need to incur the expense of providing facilities and trunks for a capability that the PSAP did not request or intend to use (AT&T Ex. 2 at 52).

Intrado, on the other hand, states that its position is consistent with prior Commission findings. Intrado avers that the Commission in Case No. 07-1216-TP-ARB determined that interconnection agreements should contain the framework for interconnection and interoperability of the parties' networks through inter-selective routing and rejected requiring that PSAPs provide input into the inter-selective router arrangements to be established between Intrado and Embarq (Intrado Ex. 1 at 35-36).

While AT&T acknowledges the Commission required a similar approach in Case No. 07-1216-TP-ARB, AT&T contends the Commission decision overlooks the key factor of compensation, since there is no mechanism for Embarq to recover any of its costs of implementing Intrado's proposal from either Intrado or any PSAP. AT&T points out that the Commission expressly recognized that PSAPs should have a say in how call transfer capability is implemented and necessarily required the affected PSAPs to be consulted before any such capability is implemented and be allowed to participate in the planning (AT&T Ex. 2 at 53). AT&T contends that this decision makes sense and is consistent with AT&T's proposal with the exception that the Embarq decision includes PSAP-to-PSAP call transfers as part of a Section 251/252 interconnection agreement and will prevent Embarq from recovering its costs from the involved PSAP (AT&T Ex. 2 at 54).

AT&T avers that it would not refuse to implement the facilities and trunks required for PSAP-to-PSAP call transfers if Intrado's language is not accepted. AT&T contends that its proposed language would require both Intrado and AT&T to work together and enter

into a separate agreement--with the assistance of the PSAPs and necessary government agencies—to effectuate such an arrangement. AT&T contends that accepting its proposed language would require AT&T to work with Intrado and allow PSAPs to remain in the picture to ensure that the specific functionalities that they request are provided in a manner acceptable to them (AT&T Ex. 2 at 52-53).

ISSUES 5(a) and 5(b) ARBITRATION AWARD

In the Commission's previous awards, as in this one, the Commission determined that Section 251(a) of the Act is the applicable statute relative to the scenario in which Intrado and an ILEC each serve as primary providers of 911 service to different PSAPs and transfer calls between each carrier's selective routers in order to route properly a 911 call (inter-selective routing). The Commission has also concluded previously, as it does here, that it is appropriate to include terms and conditions for Section 251(a) arrangements in the parties' arbitrated interconnection agreement. In Case No. 07-1199-TP-ACE, the Commission required that each designated CESTC shall interconnect with each adjacent countywide 911 system to ensure transferability across county lines (Case No. 07-1199-TP-ACE, Finding and Order issued February 5, 2008, at 9). Additionally, the Commission required that each CESTC be required to ensure call/data transferability between Internet protocol (IP) enabled PSAPs and non-IP PSAPs within the countywide 911 systems it serves, and to other adjacent countywide 911 systems, including those utilizing non-IP networks which are served by another 911 system service provider (*Id*). As this call transfer capability is effectuated via inter-selective router trunking, the Commission determined in Case No. 07-1216-TP-ARB, that it has effectively required the availability of inter-selective router trunking between adjacent countywide 911 systems and between Intrado and other 911 carriers. Thus, the Commission concurred with Intrado that the interconnection agreement should contain the framework for interconnection and interoperability of the parties' 911 networks through inter-selective routing. The Commission sees no reason to deviate from this determination in this instance. While both parties and the Commission agree that PSAP input is important, the Commission agrees with Intrado that the interconnection agreement should contain the framework for establishing the interconnection and interoperability of the parties' networks to ensure inter-selective router capabilities can be provisioned once requested by an Ohio county or PSAP.

The Commission notes that the decision to include terms and conditions for inter-selective routing in Case No. 07-1216-TP-ARB, did not exclude Embarq from receiving compensation for implementing PSAP-to-PSAP call transfers from either the PSAP or Intrado. Similarly, the Commission finds our decision here to include inter-selective routing terms and conditions does not preclude AT&T from receiving compensation for implementing PSAP-to-PSAP call transfers, where it provides that functionality.

Issue 6 Should reciprocal requirements for trunking forecasting, ordering and service grading be included in the agreement?

With regard to Issue 6(a), trunking forecasting, the Revised Joint Issues Matrix filed on February 2, 2009, indicates that this issue has been resolved.

With regard to Issue 6(b), the ordering process, Intrado, in its initial brief, points out that it has provided a detailed description of its ordering process, that it has stated that its processes are compliant with the ATIS-OBF Access Service Request process, much like AT&T uses today, and that its witness had already acknowledged that Intrado would accept language indicating that its ordering system would be consistent with industry standard terms. Intrado finally states that AT&T can change its ordering systems as easily as Intrado can, and notes that the rates that Intrado can charge are limited to those included in the interconnection agreement (Intrado Br. 59-60). In its reply brief, Intrado references the arbitration award in Case No. 07-1216-TP-ARB to support its contention that Intrado's proposed language be included in the agreement (Intrado Reply Br. 27).

AT&T notes in its initial brief that the process by which AT&T would order services from Intrado is "outside the scope of a Section 251(c) interconnection agreement" (AT&T Br. 38, citing Case No. 07-1216-TP-ARB at 39). AT&T states that the "only appropriate ordering process for use in the interconnection agreement is AT&T's ordering process." AT&T finally concludes that even if Intrado conformed its web-based ordering process to industry standards, AT&T "would be forced to incur additional costs to implement that system solely for Intrado's own benefit." In its reply brief, AT&T points out that while its ordering system was developed as a result of collaborative processes, and can be changed only through a formal process, Intrado's was developed unilaterally and can be changed at any time. AT&T further indicates that Intrado should use the ordering system that "every other carrier uses" (AT&T Reply Br. 42). Finally, AT&T quotes the arbitration award issued in Case No. 07-1216-TP-ARB to support its contention that Intrado's language should be rejected.

ISSUE 6(b) ARBITRATION AWARD

The Commission finds it interesting to note that on Issue 6(b), the ordering process, both parties quote the same paragraph from the arbitration award issued in Case No. 07-1216-TP-ARB, yet reach opposite conclusions. The paragraph in question reads:

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.

Case No. 07-1216-TP-ARB, Arbitration Award issued September 24, 2008, at 39.

Intrado, in focusing on the first sentence, maintains that its language should be adopted (Intrado Reply Br. 27). AT&T, focusing on the remainder of the paragraph, concludes that Intrado's language must be rejected.

While AT&T opines that there would be additional costs involved in developing processes to handle a unique Intrado ordering process, it has not provided specific support for that opinion, or an estimate of the costs involved. Additionally, the Commission notes that the proposed interconnection agreement requires that Intrado incur costs to obtain "operating system software and hardware to access AT&T 22-STATE OSS functions." AT&T goes so far as to specify what the hardware and software should be and indicates that those requirements may change, requiring the expenditure of additional costs simply so Intrado can order services from AT&T. Additionally, AT&T requires carriers to use web-based interfaces for certain ordering and pre-ordering processes. Intrado has not objected to incurring those costs or using a web-based process as a part of doing business, nor have any other carriers to the Commission's knowledge. From this, it would appear that incurring certain costs or using another carrier's web-based interface, in order to purchase facilities or services from another carrier is not unusual.

AT&T is correct in noting that there is a disparity in terms in the ability to change ordering processes. The Commission is very familiar with the long-running collaborative process that resulted in the current system. However, the Commission notes that it is not strictly correct to state that "all other carriers" use the Telcordia EXACT ordering system. It is clearly accurate to say that all other carriers use that system to place orders with AT&T. However, that does not address the question of how AT&T will place orders with Intrado, should the need arise. While AT&T seems to oppose the inclusion of any language that implies that it may at some point have to order services or facilities from Intrado, as a practical matter it well may have to do so. In that event, it would seem prudent for AT&T to seek the protection offered by establishing criteria in this agreement for that capability.

Neither party seems to oppose the development of interconnection agreement language that would render a result similar to that required in Case No. 07-1216-TP-ARB. The parties are, therefore, instructed to develop 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. These requirements are consistent with other arbitrations awards where this issue has arisen. Consequently, Intrado may be well served to discuss its ordering system with all affected carriers so that a single system might be developed.

Issue 7(a): Should the ICA include terms and conditions to address separate implementation activities for interconnection arrangements after the execution of the interconnection agreement? If so, what terms and conditions should be included?

AT&T initially states that the issue is whether, and to what extent the parties should document their physical architecture plans in a signed agreement. AT&T argues that documenting architecture plans in a signed agreement protects both parties, by "ensuring everyone has the same understanding of rights and responsibilities and has committed to a jointly understood plan." AT&T notes that this is a process routinely followed by CLECs. AT&T characterizes Intrado's objection as a misconception that the documentation process would constitute an amendment to the interconnection agreement, and further notes that Intrado's witness Hicks acknowledged that the language proposed by AT&T would not lead to an amendment of the interconnection agreement. Moreover, AT&T contends that he conceded that documenting the parties' plans would prevent future disputes. AT&T states that Intrado objects to using the standard forms used by AT&T to provide needed network information (AT&T Br. 39-40).

Intrado acknowledges that it may be beneficial to document the parties' physical architectures, but states that there is no need to "provide notices, to complete additional forms, or to sign separate agreements beyond the interconnection agreement to establish interconnection with AT&T." In its reply brief, Intrado maintains that AT&T's initial brief provides "nothing new beyond its pre-filed testimony and its issue statements" (Intrado Reply Br. at 29).

ISSUE 7(a) ARBITRATION AWARD

AT&T's assertion that this issue arises from Intrado's perception that the proposed signed documentation regarding the parties' physical architecture plans requires an

amendment to the interconnection agreement is supported on the record. The testimony of Intrado's witness indicates that this is Intrado's understanding (Intrado Ex. 2 at 38).

Given the importance of 911 and E911 systems to public safety, the Commission deems it appropriate to ensure that at least the level of documentation and coordination occurring between AT&T and any CLEC should occur between AT&T and Intrado. To this end, AT&T's proposed language with regard to CESIM 2.1, CESIM 5.1, CESIM 5.3, NIM 2.1, NIM 4.1, NIM 4.2, and NIM 4.3 are to be included in the final agreement.

With regard to CESIM 2.4, while there is no evidence on the record arguing for either party's specific language, Intrado's proposed language (which would require some form of notice 30 days prior to a request to change the physical architecture plan) appears to imply that either party must request permission of the other in order to make changes to its own physical architecture. Intrado's proposed language, therefore, implies additional unspecified time for approval. AT&T's proposed language (which would require 30 days notice of any intent to change the physical architecture plan), appears to be more expeditious, and is consistent with the use of "intent" with regard to notice timeframes in similar language appearing in existing approved interconnection agreements. On those bases, AT&T's proposed language should be allowed to stand.

Issue 10 What are the proper definitions for the following terms: (a) Competitive Emergency Services Telecommunications Carrier; (b) CLEC; and (c) Interconnection?

Intrado disagrees with AT&T's proposed definitions of "CESTC," "CLEC," and "Interconnection." Being a newly created classification, AT&T states that there has been no prior definition of CESTC. The parties now want to include a definition in the interconnection agreement. Toward that end, the parties have fashioned competing language. In its definition, AT&T designates a CESTC as a "telecommunications service" provider (AT&T Ex. 1 at 43). Intrado, on the other hand, opts to define a CESTC as a "telephone exchange service" provider (Intrado Ex. 2 at 27). AT&T, over Intrado's objection, wants to include language to define the scope of Intrado's certification. AT&T proposes to accomplish this by including language from the Commission's Certification Order (AT&T Ex. 1 at 43). In particular, AT&T focuses on a portion of the Certification Order where it states that the Commission restricted the scope of Intrado's service to the transmission of telephonic messages in its capacity of maintaining the selective router and directing 911 traffic to the appropriate PSAP. AT&T contends that its proposed language mirrors the Commission's language. Intrado's proposed language, on the other hand, AT&T regards as too broad and inconsistent with the Commission's Certification Order (AT&T Br. 41-42, AT&T Reply Br. 47).

Intrado objects to AT&T's proposal because it believes that it goes beyond the Commission's statement in Case No. 07-1199-TP-ACE. According to Intrado, AT&T's definition indicates that a CESTC is only permitted to maintain a selective router and direct 911 traffic to the appropriate PSAP. Intrado emphasizes that the Certification Order does not contain such a limitation. Moreover, there are activities that a CESTC may undertake that are not accounted for by AT&T's definition. Examples include maintaining the ALI database, call transfer, or notification services. Because of these additional activities, Intrado believes it is more accurate to state that a CESTC provides telephone exchange services (Intrado Ex. 2 at 27, Intrado Br. 61-62).

The parties agree that there should be a definition of CLEC but disagree on how to define it. Intrado proposes that the definition of CLEC be based upon the definition of CLEC found in Rule 4901:1-7-01(D), O.A.C. (Intrado Ex. 2 at 28, Intrado Br. 62). AT&T prefers to define CLEC in terms of a carrier's certification as a CLEC. In contrast, AT&T criticizes Intrado's language because it provides that any non-incumbent LEC can be a CLEC whether it has a certificate or not. It is AT&T's opinion that a carrier must be granted a certificate as a CLEC in AT&T's territory in order to obtain end user-specific products and services. As an example, AT&T believes that a carrier certified in one ILEC's territory would not without proper certification be a CLEC in another ILEC's territory for purposes of an interconnection agreement (AT&T Ex. 1 at 45). By its language, AT&T wants to preserve the distinction between a CLEC that provides basic local exchange service to end users and a CESTC that serves PSAPs but has no relationship with end users (AT&T Br. 42, AT&T Reply Br. 47-48). AT&T adds that its language proposal is particularly necessary if the Commission finds in issue 2(b) that the interconnection agreement must include CLEC provisions. To take advantage of CLEC provisions in the interconnection agreement, AT&T states that a carrier must have a CLEC certificate (AT&T Ex. 1 at 44-45, AT&T Br. 42-43).

The parties disagree on the definition of "interconnection." Intrado would rely on the definition contained in AT&T's generic template agreement. The template agreement defines interconnection in accordance with the Act. To Intrado, interconnection is the physical linking of the parties' networks for the mutual exchange of traffic (Intrado Ex. 2 at 28, Intrado Br. 63). AT&T disagrees. AT&T contends that its language proposal captures Intrado's unique characteristics. AT&T claims that Intrado is unique because it only provides 911/E911 services. It is a CESTC, not a CLEC. Distinguished from other carriers, Intrado and AT&T will interconnect at selective routers, not at an end office or tandem office (AT&T Br. 43, AT&T Reply Br. 48). AT&T is concerned that Intrado's definition could lead to a required interconnection at an end office or tandem office. AT&T, therefore, prefers to narrow the definition (AT&T Ex. 1 at 46, AT&T Br. 43).

ISSUE 10 ARBITRATION AWARD

The parties do not come to a complete agreement on the definition of a CESTC. Each proposes language ostensibly affecting the scope of Intrado's activities. The parties propose the following competing language for the definition of a CESTC in GTC §1.1.50 of the interconnection agreement:

> "Competitive Emergency Services Telecommunications Carrier" means a telephone company certificated by the Commission **to** offer***ing*** competitive ***local*** emergency **Telecommunications *Telephone Exchange*** Services on a county-wide basis**, and which certification is restricted in scope to the transmission of a telephonic message in its capacity of maintaining the Selective Router and directing 911 traffic to the appropriate PSAP within AT&T-OHIO's franchised area.**[7]

Both parties contend that their proposed language best tracks the Commission's Certification Order.

In its Certification Order, the Commission specifically concluded that Intrado, as a CESTC, is a "telecommunications carrier" pursuant to 47 U.S.C. §153(44) and is a provider of "telecommunications service" pursuant to 47 U.S.C. §153(51). From this and other findings, the Commission concluded that Intrado is "engaged in the provision of telecommunications." Given our findings in this arbitration award, it would be more accurate and consistent with the Certification Order to say that "Competitive Emergency Services Telecommunications Carrier" means a telephone company certificated by the Commission engaged in the provision of competitive local emergency Telephone Exchange Services on a county-wide basis.

In its definition of a CESTC, AT&T proposes language restricting the scope of Intrado's certification. It was not our intent in the Certification Order to limit the scope of Intrado's certification in any manner related to the maintenance of a selective router. Instead, the Commission merely referred to Intrado's activity of maintaining a selective router and directing 911 traffic to the appropriate PSAP as a basis for finding that Intrado is, by law, a telephone company and a public utility. AT&T's suggested language limiting Intrado's certification should, therefore, be omitted.

The parties disagree on what the definition of CLEC should be. AT&T advocates that a carrier must receive certification from the Commission as a requisite for being a

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7 The parties agreed upon language is in normal font. Intrado's proposed language is in bold italics. AT&T's proposed language is bold underline font.

CLEC. Intrado, on the other hand, recommends that Rule 4901:1-7-01(D), O.A.C., should serve as the definition of CLEC. Rule 4901:1-7-01(D), O.A.C., reads as follows:

> "Competitive local exchange carrier" (CLEC) means, with respect to a service area, any facilities-based and nonfacilities-based, local exchange carrier that was not an incumbent local exchange carrier on the date of the enactment of the Telecommunications Act of 1996 (1996 Act), or is not an entity that, on or after such date of enactment, became a successor or assign of an incumbent local exchange carrier.

AT&T rejects Intrado's proposal because it does not take into account whether a carrier has a certificate of public convenience and necessity.

We find that Intrado's proposed language, being entirely consistent with our rules, is the more appropriate definition of CLEC. It is common place and accepted practice for CLECs to negotiate the terms of an agreement with an ILEC prior to the CLEC being authorized to provide service in the ILEC's territory.[8] For this reason, we find that AT&T's prerequisite of certification is contrary to practice. Nevertheless, with respect to services and facilities that a CLEC may seek from an ILEC during negotiations, the CLEC may not employ those services and facilities until the CLEC obtains certification from the Commission.

At issue is whether "interconnection" should be broadly defined or whether, in this interconnection agreement interconnection should be restricted to interconnection between selective routers. AT&T would have the Commission define interconnection to mean interconnectivity between the selective routers of the parties. The Code of Federal Regulations, however, defines interconnection broadly. It is the "linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic."[9] We find no persuasive reason for deviating from interconnection as it is defined by the Act and the rules and regulations of the FCC. It is one thing to restrict interconnection to selective routers, to the exclusion of end offices and tandem offices; it is another to redefine a commonly used term. AT&T's proposed language goes too far.

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8 Case No. 07-1216-TP-ARB, Arbitration Award issued September 24, 2008, at 13; Rule 4901:1-6-10(E)(3), O.A.C..

9 47 C.F.R. 51.5 (Terms and Definitions)

Issue 13(a): What subset of traffic, if any, should be eligible for intercarrier compensation when exchanged between the parties?

AT&T indicates that the issue here concerns the definitions of "Section 251(b)(5) traffic," "ISP-Bound Traffic," and "Switched Access Traffic". (AT&T Br. 43). AT&T states that it proposes to define these terms consistent with the originating and terminating points of the call, and maintains that this is how traffic is normally classified for purposes of reciprocal compensation (*Id.*). AT&T also states that its definitions with regard to these terms are consistent with the Commission's decision in a previous arbitration case, and that the law relevant to these definitions has not changed since that decision (*Id.* at 44, citing *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, Arbitration Award issued January 25, 2006, at 8-10 (*TelCove*). AT&T opines that its language is more specific and is consistent with applicable law and should, therefore, be adopted (AT&T Br. 43).

Specifically, AT&T proposes to define "Section 251(b)(5) Traffic" and "ISP-Bound Traffic" in terms of their originating and terminating points and in the same manner as traffic in which the originating end user and terminating end user are either both located in the same ILEC local exchange area or both located in neighboring ILEC local exchange areas within the same common mandatory local calling area (*Id.* 44-45). Similarly, AT&T proposes to define "Switched Access Traffic" based on the originating and terminating points, indicating that "Switched Access Traffic" must be traffic in which the originating and terminating points are within different local exchanges (*Id.* 44-45).

AT&T notes that "Reciprocal compensation is the most fertile source of inter-carrier disputes, and the law regarding reciprocal compensation is likely the area most subject to ongoing changes" (AT&T Reply Br. 49). AT&T indicates that if the proposed language is affected by an FCC decision prior to contract execution, AT&T would be willing to revisit the affected definitions (*Id.*).

AT&T identifies a further issue with regard to language in sections IC 1.2 and IC 3.5. AT&T takes the position that "Intrado has requested a wireline interconnection agreement, and Intrado should not be delivering wireless traffic to AT&T over local interconnection trunks pursuant to this agreement" (AT&T Br. 46). AT&T further notes that it has a different interconnection agreement "that accommodates the differing and unique requirements of wireless services" (*Id.*).

Intrado notes that the parties' interconnection agreement should be consistent with the rulings of the FCC with respect to intercarrier compensation, and further states that AT&T's language presents numerous problems and is generally inconsistent with the

current rules applicable to intercarrier compensation (Intrado Br. 65). Intrado observes that there have been numerous FCC and court decisions affecting intercarrier compensation since the *TelCove* decision.

Specifically, Intrado notes that in the *ISP Remand Order*[10] the FCC concluded that, except for traffic under Section 251(g) of the Act, "all telecommunications traffic" is subject to reciprocal compensation, and argues that this makes AT&T's reliance on direct or indirect references to "local" traffic inappropriate.

Further, Intrado posits that AT&T's proposed definition of "Switched Access Traffic" appears to include interconnected VoIP services, and states that the FCC has not specifically identified whether VoIP traffic is an information service or a telecommunications service. Intrado argues that this language would "impose obligations on Intrado in the context of an agreement that it has admitted by itsown pleadings to the FCC are not required" (Intrado Br. 68).

Finally, Intrado argues that AT&T's proposed language would limit reciprocal compensation to traffic determined to be "wireline" or "dialtone," neither of which are defined in the interconnection agreement. Intrado states that Intrado may deliver wireless traffic to AT&T to the extent Intrado is providing telecommunications services to a wireless provider and that wireless provider's customers call an AT&T customer. Intrado notes that AT&T's proposed language at Appendix Intercarrier Compensation §3.5 indicates that third party traffic may be exchanged between the parties (*Id.* 69).

ISSUE 13(a) ARBITRATION AWARD

The treatment of ISP-bound traffic has been decided and re-decided a number of times in recent years. In 1999, the FCC found that ISP-bound traffic was jurisdictionally interstate, since users contact websites across state lines.[11] Because the FCC had previously determined that Section 251(b)(5) applied only to local traffic,[12] the FCC concluded that ISP-bound traffic was not subject to reciprocal compensation. In March of 2000, the D.C. Circuit Court remanded the matter without vacating the FCC's decision,

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10 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, ¶54 (2001).

11 *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999) (Declaratory Ruling).

12 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16013, paras. 1033–34 (1996) (subsequent history omitted) (Local Competition First Report and Order).

requiring a better explanation of how the FCC's jurisdictional analysis related to the question of whether ISB-bound traffic was subject to Section 251(b)(5).[13]

In April of 2001, the FCC released an order on remand that abandoned the earlier conclusion that Section 251(b)(5) traffic was local traffic and concluded that ISP-bound traffic was excluded from Section 251(b)(5) by virtue of Section 251(g) of the Act.[14] In order on remand, the FCC maintained that Section 251(g) preserved the existing pre-1996 Act compensation structure for "exchange access, information access, and exchange services for such access." The FCC concluded that ISP-bound traffic was "information access" and, therefore, exclusively subject to the FCC's jurisdiction as interstate traffic under Section 201 of the Act. Noting that ISP-bound traffic tended to be one-way and, therefore, subject to regulatory arbitrage, the FCC imposed a unique compensation regime for ISP-bound traffic[15], pending the final resolution of the Intercarrier Compensation Notice of Proposed Rule Making (NPRM).[16]

In May of 2002, the D.C. Circuit Court again remanded to the FCC without vacating the decision. The Court indicated that the FCC's rationale was inadequate[17] but that there was a "non-trivial likelihood" that the FCC had the authority to establish the compensation system for ISP-bound traffic (*Id.* 434). Most recently, in November of 2008, the FCC concluded that "although ISP-bound traffic falls within the scope of Section 251(b)(5), this interstate, interexchange traffic is to be afforded different treatment from other Section 251(b)(5) traffic pursuant to our authority under sections 201 and 251(i) of the Act."[18]

AT&T's proposed definition of ISP-Bound traffic, as being between parties in the same "Local Exchange Area" or "mandatory local calling area," runs contrary to the trend in the FCC's decision making on the subject. It is certainly contrary to the November 2008 Remand Decision, in which the FCC explicitly identified ISP-bound traffic as "interstate, interexchange traffic." While, as AT&T has noted, reciprocal compensation is an area

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13 *Bell Atlantic*, 206 F.3d at 1 and 5.

14 *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, (2001) (ISP Remand Order),

15 *Id.*, paras. 74-77.

16 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (Intercarrier Compensation NPRM).

17 *WorldCom*, 288 F.3d at 429

18 *In the Matter of; High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up ,Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking 2008 WL 4821547, F.C.C., Nov 05, 2008, (NO. WC05-337, CC96-45, WC03-109, WC06-122, CC99-200, CC96-98, CC01-92, CC99-68, WC04-36) (November, 2008 Remand Decision) at para. 6 [Emphasis added]

fraught with conflict, in this instance, the FCC has established a single form of intercarrier compensation for ISP-bound traffic, independent of whether that traffic is considered "local." AT&T's proposed definition at Section IC 5.1 is, therefore, not to be included in the final arbitration language. Intrado's proposed definition provides sufficient clarity, pending a final determination from the FCC on intercarrier compensation.

While AT&T's definition of "ISP-Bound traffic" appears in the interconnection agreement resulting from the *TelCove* arbitration, the definition was not presented as an issue in that arbitration. In fact, the only discussion in *TelCove* relating to ISP-bound traffic was in the context of an issue regarding the handling of Foreign Exchange (FX)/Virtual NXX traffic, which may include ISP-bound traffic. Therefore, AT&T's reliance on the *Telcove* arbitration for resolution of this issue, especially in light of the recent FCC ruling, is misplaced.

As a result of the foregoing, the Commission will require that the parties utilize Intrado's proposed language at sections IC 5.1 and GTC 1.1.86, with the requirement that the November 2008 Remand Decision also be referenced.

With regard to AT&T's proposed definition of Section 251(b)(5) traffic appearing at Section IC 4.1, Intrado argues that it is similarly impaired by the FCC's decision in the ISP Remand Order to "no longer construe Section 251(b)(5) using the dichotomy set forth in the Declaratory Ruling between "local" traffic and interstate traffic."[19] However, in this instance, for Section 251(b)(5) traffic other than ISP-Bound Traffic, the FCC's and the Commission's rulings have provided additional clarity regarding the term "reciprocal compensation" found in Section 251(b)(5). In particular, as noted by AT&T, the FCC rule, 47 C.F.R. §51.701(b)(1), states that Section 251(b)(5) reciprocal compensation does not apply to traffic that is interstate, or intrastate exchange access, or exchange services for such access. Furthermore, Rule 4901:1-7-12(C)(1), O.A.C., defines traffic subject to reciprocal compensation consistent with the FCC rules. AT&T's proposed definition in this case is the same one adopted by the Commission in the *Telcove* arbitration in regard to an issue arbitrated in that proceeding.[20] Thus, in order to provide the clarity previously provided by the FCC and this Commission, we direct the parties to incorporate AT&T's definition for Section 251 (b) (5) traffic at §IC 4.1 and exclude Intrado's proposed definition at §GTC 1.1.124. However, as the intercarrier compensation, including Section 251(b)(5) traffic, remains an open item,[21] the Commission expects the parties to avail themselves of the interconnection agreement's change in law provisions should the FCC or this Commission provide further guidance.

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19 ISP Remand Order at para 54

20 See, *Telcove* arbitration, Issue 37.

21 November, 2008 Remand Decision at ¶ 38 - 41

With regard to the disputed language in Section IC 1.2 and Section IC 3.5, while the parties are disputing Intrado's ability under this agreement to deliver wireless traffic to AT&T subject to reciprocal compensation, this appears to be a spurious issue.

Section 3.9 of the Intercarrier Compensation attachment (language not in dispute in this arbitration) clearly states that "This Attachment is not meant to address whether the Parties are obligated to exchange any specific type of traffic." Therefore, the question of whether Intrado may or may not deliver wireless traffic to AT&T cannot be addressed by language changes to this attachment.

Section IC 1.2 identifies that the appendix under discussion here applies to "...traffic originated over the originating carrier's facilities or over local circuit switching purchased by CLEC from AT&T...." Given that Intrado is not, and does not appear to intend to become registered as a CMRS carrier, and local circuit switching is inherently wireline, this would already seem to limit the Appendix IC to wireline traffic, with or without AT&T's proposed inclusions.

While Intrado argues that Section IC 3.5 may give it the right to transit wireless traffic to AT&T under this agreement, the language in question discusses the obligation to enter into intercarrier compensation arrangements with third party carriers, regardless of whether that third party carrier has purchased local switching on a wholesale (non-resale) basis. Here again, the inclusion or exclusion of the words "wireline" or "dialtone" do not appear either to impart or remove the ability of Intrado to deliver non-911 wireless traffic to AT&T, as that is not the subject at hand in the section.

Finally, Section 251(a) of the Act requires all carriers to handle transit traffic. However, transit traffic is not subject to reciprocal compensation. While generally the transit traffic carrier is an ILEC, the Act does not so limit the definition. Under Rule 4901:1-7-13 (D) O.A.C., transit traffic is under a different compensation regime than reciprocal compensation. Rule 4901:1-7-13, O.A.C., applies to Intrado's transiting of any traffic, regardless of source, to AT&T. Therefore, it appears that AT&T's proposed language does not and cannot have the limiting effect with which Intrado is concerned, because the limitations lie elsewhere in the interconnection agreement or in law. However, the exclusion of this language from Intrado's interconnection agreement, while it is generally present in CLEC agreements with AT&T, may possibly discriminate against another carrier not a party to the agreement. On this basis, therefore, AT&T's proposed language is to be included for sections C 1.2 and IC 3.5.

With regard to the language proposed by AT&T for sections IC 16.1 and ITR 12.1, there are two issues: the language discussing IP-enabled services and the differentiation between "local exchange service" and "local dialtone." As to the former issue, it is true that, as Intrado notes, the FCC has yet to make a conclusive statement as to whether IP-

enabled services are information or telecommunications services. However, until such a determination is made, the Commission notes that the language in question addressing the use of IP-protocol is, as was noted in the *TelCove* arbitration, technologically neutral, in that it treats calls using IP-based technologies in a consistent manner with those that do not. Thus, AT&T's proposed language for switched access traffic should be adopted, consistently with the Commission's decision in the *Telcove* arbitration. Should the FCC issue a decision at some point indicating that IP-enabled services are universally information services, or makes some other distinction, the parties can avail themselves of the change in law provisions of the agreement.

As a final matter encompassed by this issue, the parties are disputing the difference in language between the words "local dial tone" and "telephone exchange service" in sections IC 16.1, ITR 2.14, and ITR 12.1 which address traffic between AT&T and a potential Intrado CLEC. While neither party addresses this specific difference in language in the record, the Commission notes that this appears similar to the question regarding the language in sections IC 1.2 and IC 3.5. Similarly, the language proposed by AT&T appears commonly in its existing interconnection agreements. The Commission also notes that its resolution of the disputed language in Section IC 3.5 makes the phrase "local telephone exchange service" synonymous with "dialtone." Since the language proposed by AT&T, appearing in other interconnection agreements, is sufficiently clear to render the meaning of the language in the affected sections clear, the Commission will here require the language proposed by AT&T for these sections.

Issue 13(b) Should the parties cooperate to eliminate misrouted access traffic?

AT&T avers that the parties have agreed that, with some exceptions, Switched Access Traffic will be delivered over Feature Group Access trunks. To the extent Switched Access Traffic is improperly routed to local interconnection trunks, the parties have agreed to work cooperatively to identify such traffic with the goal of removing it from the local interconnection trunks. AT&T, however, contends that Intrado's purported agreement to assist AT&T in the endeavor rings hollow in light of Intrado's objection to language requiring it to join AT&T in seeking relief from a court or commission in order to prevent or stop misrouted traffic (AT&T Ex. 1 at 52-53). AT&T contends that adopting Intrado's position will enable traffic washing and related access avoidance schemes by third parties that are delivering such improper traffic to AT&T via Intrado. AT&T avers that its language provides the appropriate course of action for the parties to follow when Switched Access Traffic is improperly routed to local interconnection trunks and should be adopted (AT&T Ex. 1 at 53-54).

Intrado claims that AT&T's proposed language attempts to define broadly Switched Access Traffic and address how such traffic may be exchanged between the parties.

Intrado contends that AT&T's definition and related language regarding Switched Access Traffic would impose more onerous restrictions on that traffic than are currently found in the FCC's rules. Intrado avers that the FCC is currently reviewing Switched Access Traffic issues and, given the uncertainty in this area, Intrado would prefer to rely on applicable law rather than include terms and conditions that may be contrary to current requirements (Intrado Ex. 2 at 29).

Intrado contends that it is willing to work with AT&T to eliminate misrouted access traffic. However, Intrado believes AT&T's proposed language would require Intrado to engage in self-help mechanisms or block traffic, actions that are inconsistent with FCC requirements (Intrado Ex. 2 at 30). Intrado contends that the FCC disfavors self-help policies and has indicated that carriers may not block traffic, because it is not in the public interest (Intrado Br. 69-70). Intrado claims that if AT&T sees the need to take action against another carrier, AT&T is free to do so without the assistance of Intrado (Tr. Vol II at 43). Intrado contends that it should not be forced to join AT&T in court or state commission proceedings at AT&T's whim and Intrado's expense (Tr. Vol. I at 143). Intrado points out that AT&T's own witness admits that Intrado is under no obligation to assist AT&T in taking action against other carriers (Tr. Vol. II at 43-44)

AT&T contends that its language would merely require that, if all other efforts to stop misrouted traffic from being sent over the parties' networks fails, Intrado will join AT&T in going to the proper court or agency to seek authority to stop misrouted calls (Appendix IC §16.2). Intrado claims that AT&T's proposed language would require Intrado to agree to exercise self-help remedies or block misrouted access traffic (Intrado Br. 69). AT&T contends that the disputed language in Appendix IC §16.2 requires nothing of the kind (AT&T Reply Br. 51).

ISSUE 13(b) ARBITRATION AWARD

Each party claims, with regard to the language in dispute in Issue 13(b), dire results clearly not contemplated in the language at hand. AT&T's proposed language does not specify what actions Intrado should take on its own to stop improperly routed traffic. Intrado's language refers to "applicable law," and thus does not contemplate the avoidance of access charges.

The Commission concurs with Intrado. By agreeing to proposed contract language requiring Intrado to work cooperatively with AT&T to identify and remove third-party switched access traffic that is inappropriately routed over local interconnection trunk groups, Intrado will be required, at a minimum, to follow all FCC and Commission directives regarding misrouted access traffic. The Commission further agrees with Intrado that it is not necessary to include language that would require Intrado and AT&T to file a joint complaint or "any other appropriate action with the applicable Commission."

AT&T's language also presumes that the joint request will seek the removal or blocking of such traffic, rather than appropriate routing and compensation.

The Commission reminds AT&T that it is free to take whatever action it deems necessary against Intrado or the third-party for the resolution of such issues. The Commission will determine how such issues will be resolved. It is not necessary for the contract language to predetermine a course of action.

Furthermore, Intrado is correct that the requirements for Switched Access Traffic, as a subset of all intercarrier compensation, are currently under review by the FCC. Therefore, the Commission approves Intrado's proposed language for IC §16.2 and ITR §12.2.

Issue 15: **Should the interconnection agreement permit the retroactive application of charges that are not prohibited by an order or other change in law?**

AT&T proposes in Appendix IC §4.2.1 that retroactive treatment would apply to traffic exchanged as "local calls." AT&T maintains that, because local calls are subject to reciprocal compensation, "local calls" is the appropriate classification of traffic to which a retroactive adjustment should apply (AT&T Br. 47). AT&T further maintains that Intrado's opposition to AT&T's proposal makes no sense because "local calls" are the calls subject to reciprocal compensation, and thus, "local calls" is the appropriate classification of traffic to which the retroactive adjustment would apply (AT&T Ex. 1 at 54-55, AT&T Br. 47, AT&T Reply Br. 53,).

Intrado agrees that the interconnection agreement should include terms and conditions to address changes in law. Intrado, however, disagrees with AT&T's proposed language discussing how such modifications will be implemented. Intrado notes that AT&T's language indicates that retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement, and expresses concern that this language could allow AT&T to make retroactive compensation adjustments for traffic that is not affected by a change of law. Intrado states that it has, therefore, proposed language that would limit the application of retroactive compensation adjustments to those specifically ordered by intervening law (Intrado Ex. 2 at 30, Intrado Br. 70).

ISSUE 15 ARBITRATION AWARD

The parties wish to craft language that will govern the retroactive application of charges in the event that there is a change in law, specifically a modification or nullification of the FCC's ISP Compensation Order. Intrado rejects AT&T's proposed language because it believes the language is too broad and could allow AT&T to make

retroactive compensation adjustments for traffic that is not affected by a change in law. To prevent this possibility, Intrado proposes to limit adjustments to traffic affected by intervening law. AT&T rejects Intrado's proposed language as redundant and unnecessary.

By its proposed language, AT&T seeks to ensure that retroactive treatment is applied only to traffic exchange as "local calls." AT&T's reasoning is that only local calls are subject to reciprocal compensation and, therefore, are the only type calls that would be subject to a retroactive adjustment.

The parties proposed language appears in IC Section 4.2.1 and reads as follows:

> Should a regulatory agency, court or legislature change or nullify the **AT&T-OHIO**'s designated date to begin billing under the FCC's ISP terminating compensation plan, then the Parties also agree that any necessary billing true ups, reimbursements, or other accounting adjustments shall be made symmetrically and to the same date that the FCC terminating compensation plan was deemed applicable to all traffic in that state exchanged under Section 251(b)(5) of the Act. By way of interpretation, and without limiting the application of the foregoing, the Parties intend for retroactive compensation adjustments, to the extent they are ordered by Intervening Law, to apply uniformly to all traffic among **AT&T-OHIO**, CLEC and Commercial Mobile Radio Service (CMRS) carriers in the state where traffic is exchanged ***to which Intervening Law applies*** **as local calls within the meaning of this Appendix**.[22]

Noting the reference to "Intervening Law" appearing earlier in the provision, we find merit in AT&T's criticism of Intrado's proposed language as redundant and unnecessary. Accordingly, Intrado's proposed language should be excluded. The record does not show that Intrado objects to AT&T's assertion that only local calls would be subject to any change in the ISP Compensation Plan. Nor do we find otherwise. Moreover, we find no merit in Intrado's concern that AT&T could use this provision to make retroactive compensation adjustments for traffic that is not affected by a change in law. The language "within the meaning of this Appendix limits the scope appropriately to local calls affected by the FCC's ISP Compensation Plan. AT&T's language should, therefore, be incorporated into the interconnection agreement.

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[22] The parties agreed upon language is in normal font. Intrado's proposed language is in **bold italics**. AT&T's proposed language is bold underline font.

Issue 24: What limitation of liability and/or indemnification language should be included in the ICA

Intrado rejects AT&T's proposed limitation of liability language for being overly broad. According to Intrado, AT&T's language protects it from being liable to Intrado, Intrado's end users, or any other person for losses arising out of the provision of access to 911 services. Intrado claims that AT&T's language also protects it from errors, interruptions, defects, failures, or malfunctions of 911 and seeks protection from fraud, even if committed by AT&T. Intrado, by its language proposal, intends to make AT&T liable for errors, interruptions, defects, failures, or malfunctions that are attributable to AT&T (Intrado Ex. 2 at 30-31, Intrado Br. 71). Intrado believes AT&T's language goes too far. Intrado contends that, typically, carriers cannot limit their liability for errors caused by gross negligence or willful misconduct. Intrado clarifies that its proposed language employs the phrase "attributable to AT&T" to refer to situations that are not otherwise protected by existing law and tariffs (Intrado Br. 71).

AT&T, on the other hand, does not agree that it should be liable for personal injury, death, or destruction of property for any errors, interruptions, defects, failures, or 911 service malfunctions that arise from the normal course of business. AT&T wants to protect itself from matters beyond its control. Reviewing Intrado's tariff, AT&T finds that it includes extensive limitation of liability language that protects Intrado in similar circumstances (AT&T Ex. 1 at 56).

In support of its proposed limitation of liability language, AT&T states that limits on liability for 911 service are appropriate. Moreover, AT&T believes that limits on liability are critical to allow carriers to provide 911 service. Otherwise, the cost and risk of providing 911 service would be too great. AT&T also seeks to protect itself from end user fraud. AT&T sees no reason to be held liable for the fraudulent conduct of Intrado's end users. Instead, AT&T proposes that Intrado accept responsibility for its end users' fraud (AT&T Ex. 1 at 57-58).

Particularly troubling to AT&T is the phrase that assigns liability that is "attributable to AT&T." AT&T condemns that language as vague and ambiguous and appears to impose broader liability on AT&T than would apply under normal fraud law. To AT&T, the language is too indefinite and could be read to assign liability to AT&T for losses that are beyond its control. Moreover, AT&T declares that the language is unnecessary because Intrado cannot identify any scenario where a customer's fraudulent behavior could be attributed to AT&T. A better solution, suggested by AT&T, is for Intrado protect itself from liability by incorporating protective language in its own tariff (AT&T Br. 48-49).

Intrado rejects AT&T's claim that "attributable to AT&T" is vague and ambiguous. Intrado claims that it sufficiently defended its support for its proposed language in its brief. In further support of its proposed language, Intrado points out that the limitation of liability language is from AT&T's own template interconnection agreement. To grant AT&T unlimited protection from liability, alleges Intrado, is inconsistent with Ohio law and AT&T's tariff (Intrado Reply Br. 27-28).

AT&T reiterates that broad limitation of liability is essential in the provision of 911 service. Without limitation of liability, the risks and costs of providing the service would be prohibitive. AT&T reads Intrado's proposal to include the phrase "attributable to AT&T" as broadening, not limiting, AT&T's exposure to liability. Intrado's interpretation is that the language would limit AT&T's liability except where there is gross neglect or wanton and willful misconduct. AT&T disagrees. AT&T finds the language vague to the point of conceivably exposing AT&T to greater liability. AT&T believes that it could conceivably be held liable for the fraud of an Intrado customer. Conversely, AT&T claims that Intrado cannot identify any circumstances where its customer's fraud could be attributed to AT&T. For that reason, AT&T concludes that Intrado's language is unnecessary and should be excluded (AT&T Reply Br. 53-54).

ISSUE 24 ARBITRATION AWARD

By including the term "attributable to AT&T," Intrado seeks to hold AT&T liable for 911 service failures rooted in AT&T's acts or omissions. Intrado rejects AT&T's proposed language because it appears to protect AT&T even from errors caused by gross negligence or willful misconduct. AT&T, on the other hand, believes that Intrado's suggested language is vague and overbroad, to the point of increasing beyond typical standards AT&T's exposure to liability.

We agree with AT&T that, as a matter of public policy, 911 service providers should be afforded broad limitation of liability to allow the provision of 911 service. Without such protection, the potential risk and liability exposure inherent in 911 service would be prohibitive. However, Intrado believes that AT&T's language goes too far, protecting AT&T from even those errors caused by gross negligence or willful misconduct. Intrado's proposed language attempts to reign in what it regards as absolute freedom from liability resulting from AT&T's proposal. Contrarily, AT&T reads Intrado's language to do the opposite of its intent. Instead, of limiting AT&T's liability, AT&T contends that Intrado's language broadens AT&T's exposure to liability, even including acts beyond AT&T's control.

The parties agree that limitation of liability language should be included in the interconnection agreement. They differ on the language to effectuate limitation of liability. AT&T does not advocate for its protection from losses resulting from gross negligence or

willful misconduct. Nor would we endorse such a position. AT&T only argues that Intrado's proposed language fails to achieve the purpose of limiting liability to any errors except those caused by gross negligence or willful misconduct.

Limitation of liability in the provision of 911 service must be broad, yet it should not provide absolute immunity. To achieve the purpose of limiting of liability to within an acceptable degree, we recommend that the parties include the following language in GTC §15.7 of their interconnection agreement: AT&T shall not be liable to CESTC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service, unless such loss is attributable to gross negligence or willful misconduct.

This language determines AT&T's liability by its conduct, not by its status as a party. We agree with AT&T that an interpretation of Intrado's proposed language could expose AT&T to liability for any loss traceable to its actions, even where its acts or omissions are merely inadvertent. Our language limits AT&T's liability to within acceptable standards without granting it complete immunity.

Issue 29(b) Is AT&T permitted to impose unspecified non-recurring charges on Intrado Comm?

Intrado argues that any charges applied to Intrado via the interconnection agreement must be developed pursuant to the process established by Sections 251 and 252 and must be set forth in the interconnection agreement. Intrado argues that it cannot agree to pay for services or products when it does not know the rate to be charged. Intrado avers that it does not plan to order products or services that are not contained in the interconnection agreement, which should resolve AT&T's' concerns through the Section 252 process with approval by the Commission.

According to AT&T, this issue involves what pricing should apply when Intrado orders and AT&T inadvertently provisions products and services that are not contained in the interconnection agreement. AT&T explains that the parties have already agreed that AT&T's obligation to provide products and services to Intrado is limited to those for which rates, terms, and conditions are contained in the interconnection agreement. AT&T also avers that the parties have agreed that, to the extent Intrado orders a product or service not contained in the interconnection agreement, AT&T would reject that order (AT&T Ex. 1 at 63). AT&T is proposing language that would require Intrado to pay the standard generic rate that a CLEC would pay for that same product or service when there is no access tariff (AT&T Ex. 1 at 64). AT&T points out that these provisions are only relevant when Intrado orders something it is not entitled to pursuant to the interconnection agreement. Therefore, AT&T contends, it should not have to go through the process of proposing rates pursuant to Sections 251 and 252 of the Act, as proposed by

Intrado (AT&T Ex. 1 at 64). AT&T states that its proposed language is entirely appropriate considering that Intrado has ordered a product or service for which it had no contract terms, but that AT&T provisioned anyway (AT&T Ex. 1 at 64).

AT&T further contends that it should be allowed to reject new orders for the same product or services until rates, terms, and conditions are incorporated into the interconnection agreement. AT&T avers that it should not be required to continue providing service outside the interconnection agreement simply because it did so once (AT&T Ex. 1 at 64). If the order were for a UNE, AT&T claims that Intrado could submit a bona fide request (BFR) in accordance with Appendix UNE's BFR provisions. AT&T further avers that if the order were for a product or service still available in AT&T's access tariff, Intrado could seek to amend the interconnection agreement to incorporate relevant rates terms and conditions (AT&T Ex. 1 at 63).

ISSUE 29(b) ARBITRATION AWARD

The Commission agrees with AT&T that it should not have to go through the process of proposing rates when it provisions a product or service on Intrado's behalf that is not contained in the parties' interconnection agreement. The Commission believes that doing so would equate Intrado's ordering of a service not contained in the interconnection agreement to a BFR or a request to amend the interconnection agreement, which it is clearly not. However, as AT&T has agreed that it would reject orders for services not contained in the interconnection agreement, Intrado is not solely to blame if such a situation arises. Therefore, the Commission finds that the response to the situation must be balanced between the parties.

It is true that the interconnection agreement contains provisions for adding additional, products, services, terms, and conditions. However, in a situation where Intrado orders a product or service for which terms and conditions are not contained in the interconnection agreement, the Commission finds that AT&T does not have to propose rates pursuant to the process established by Sections 251 and 252 of the Act. This is particularly appropriate since the product or service may not be a UNE subject to the pricing requirements of Section 252(d).

The Commission, therefore, will allow AT&T to charge Intrado what it charges CLECs for the same product or service. However, if AT&T has provisioned Intrado's order, even though it agreed to reject such orders, the Commission finds that Intrado should only be required to pay the lowest price in effect at that time for Ohio CLECs and not necessarily the generic rate.

We have found that a request to provision a service not contained in the interconnection agreement does not equate to a BFR or a request to amend the

interconnection agreement. Moreover, taking into consideration the parties' agreement that AT&T can reject orders for products and services not contained in the interconnection agreement, the Commission finds that AT&T should be allowed to reject future orders for the product or service until such time as terms and conditions are incorporated into the interconnection agreement.

Consistent with these findings, the parties are instructed to include AT&T's proposed language for Pricing Sections 1.9.1 and 1.9.2 with the language of 1.9.1. The language should be revised to reflect pricing for orders that are not contained in the interconnection agreement. Pricing should be at the lowest rate in effect at that time for Ohio CLECs.

Issue 31: How should the term "End User" be defined and used in the interconnection agreement?

Intrado defines the issue in terms of whether Intrado's PSAP customers are "end users." It is Intrado's position that PSAPs and other public safety agencies that Intrado will serve are retail end users. Intrado points out that PSAPs or municipalities purchase services from ILECs at retail rates from retail tariffs. Moreover, Intrado asserts that ILECs grant such PSAPs and municipalities end user status. Intrado, therefore, asks for similar treatment. Intrado advocates that PSAPs should be regarded as end users whether served by Intrado or AT&T (Intrado Ex. 2 at 32-33). In support of its position, Intrado refers to the Commission's decision in Case No. 07-1216-TP-ARB, where Intrado states that the Commission found that PSAPs are properly considered end users (Intrado Br. 63-64).

AT&T proposes language that would restrict end users to AT&T's residence and business retail customers because those are the only customers that will be placing calls to 911. Intrado's customers, on the other hand, will include other carriers for which Intrado aggregates 911 traffic and Intrado's PSAP customers. AT&T rejects Intrado's position because none of Intrado's customers will be able to dial 911. AT&T notes from the arbitration award in Case No. 07-1216-TP-ARB that the Commission distinguished between dial tone end users and PSAP end users. It is AT&T's understanding that the Commission in the Intrado Certification Order defined end user to refer to customers of basic local exchange service that can dial 911. To support its position, AT&T notes that the National Emergency Number Association (NENA) defines end user as the 911 caller. AT&T mentions that the parties' interconnection agreement incorporates several NENA definitions. AT&T explains that its definition of end users is not the same as the NENA definition. AT&T explains that its generic definition for "end user" is intended for CLECs that offer basic local exchange service. AT&T believes a different definition is needed for Intrado's interconnection agreement where it is limited to the offering of 911/E911 services. AT&T would agree to withdraw its definition and substitute the NENA definition. In further support of its position, AT&T believes that the general term

"customer" is more appropriate because Intrado will not be providing service to end users. In addition, the word "customer," AT&T argues, provides a level of liability protection against all Intrado customers. Finally, AT&T warns that if non-911 appendices are included in the interconnection agreement under issue 2(b), Intrado may have customers that are not end users (AT&T Ex. 1 at 65-68, AT&T Br. 51-53).

In its reply brief, AT&T argues that consistency demands that end users be distinguished from Intrado's customers. As an example, AT&T points to provisions in the interconnection agreement where "end user" is used in the context of intercarrier compensation. AT&T adds that there are other provisions that are unrelated to the service that a PSAP receives (AT&T Reply Br. 56).

Noting Intrado's reliance of Case No. 07-1216-TP-ARB for the idea that PSAPs are properly considered end users, AT&T contends that Intrado's reliance is misplaced. AT&T cites language from the award in Case No. 07-1216-TP-ARB that states that Intrado's proposed definition of end user is too broad given the limitations of its current certification. Another distinction, AT&T points out, is that in Case No. 07-1216-TP-ARB Embarq, an ILEC, agreed to include PSAP customers in the definition of "end user." The Commission, for its part, adopted the parties' definition of end user that included PSAP customers. AT&T, therefore, does not regard Case No. 07-1216-TP-ARB as binding precedent (AT&T Reply Br. 56-57).

ISSUE 31 ARBITRATION AWARD

In Case No. 07-1216-TP-ARB, the Intrado and Embarq presented for arbitration the issue of "Whether the agreement should contain a definition of "end user" and what definition should be used?"[23] The arbitration award issued in Case No. 07-1216-TP-ARB set out the following definition of "end user" for the interconnection agreement between Embarq and Intrado:

> 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 911 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.

We find no facts or arguments that would cause us to vary from the award in Case No. 07-1216-TP-ARB. Moreover, the reasoning for our decision in Case No. 07-1216-TP-ARB is equally applicable in this proceeding.

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[23] Case No. 07-1216-TP-ARB, Arbitration Award issued September 24, 2008, Issue 4.

In Case No. 07-1216-TP-ARB, we considered the definition of "customer" as it appears in Rule 4901:1-7-01, O.A.C., and noted that the Commission's rules governing carrier-to-carrier (i.e., wholesale) operations compel that the term "customer" include wholesale customers. We also rejected Intrado's request to expand the definition of end user to include wholesale customers. Similarly, AT&T's proposal that "customer" be used to refer to Intrado's PSAP end users would be overly broad because of its inclusion of wholesale customers, as "customer" is defined by our carrier-to-carrier rules. We must, therefore, reject AT&T's use of the word "customer" to distinguish Intrado's PSAP customers from AT&T's end users.

To shed additional light, the Commission considered the definition of end user as it appears in Rule 4901:1-8-01, O.A.C., (911 Service Program Rules). Rule 4901:1-8-01(E), O.A.C., in addition to describing the E911 database, also identifies an "end user" as the customer who makes a 911 call (Case No. 07-1216-TP-ARB, Arbitration Award issued September 24, 2008, p. 19-20). As in Case No. 07-1216-TP-ARB, "end user," for the purpose of this interconnection agreement shall mean the retail, end-use, dial tone customer of either Intrado or AT&T or the PSAP served by either party. Where it is necessary to avoid ambiguity, the parties shall use "End User" to refer to the retail, dial tone customer, whereas "PSAP End User" may refer to the PSAP.

Issue 34(a) How should a non-standard collocation request be defined?

Issue 34(b) Should non-standard collocation request be priced on an individual case basis?

AT&T explains that the parties have agreed that non-standard collocation requests (NSCR) are requests from a Collocator that are beyond the terms, conditions, and rates set forth in the Physical Collocation Appendix. Therefore, AT&T argues, any collocation request that does not have rates, terms, and conditions set forth in the interconnection agreement are non-standard collocation requests (AT&T Ex. 1 at 69). AT&T argues that Intrado's proposed language, which states that NSCR charges would not apply if AT&T has existing similar arrangements with other communications service providers, is fraught with the potential for dispute. AT&T avers that while another carrier might have what Intrado would characterize as an arrangement "similar" to what Intrado requests, such an arrangement may actually be quite different and may impose on AT&T different provisioning costs. AT&T further contends that another carrier's collocation arrangement may have been engineered and provisioned several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado. AT&T avers that if Intrado objects to AT&T's non-standard collocation charges because it believes them to be discriminatory, it may invoke dispute resolution pursuant to the interconnection agreement. AT&T contends that individual-case-basis pricing is

appropriate for any non-standard collocation arrangement; therefore, Intrado's proposed language should be rejected (AT&T Ex. 1 at 69-70).

Intrado contends that AT&T should not be permitted to impose non-standard charges on Intrado for arrangements that AT&T has provided to other service providers. Intrado avers that once AT&T provides one provider with a certain arrangement, it should no longer be considered non-standard and subject to varying costs based on AT&T's independent determination. Intrado avers that the FCC has found that if a particular method of interconnection is currently employed between networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. Intrado further avers that under such circumstances the FCC stated that ILECs bear the burden of demonstrating technical infeasibility (Intrado Br. 74-75, citing *In The Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499, Released August 8, 1996 at 204). Intrado, therefore, contends that AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided a similar arrangement to another provider (Intrado Ex. 1 at 40-41).

ISSUES 34(a) AND (b) ARBITRATION AWARD

As the parties have agreed that a NSCR is a request for collocation that is beyond the terms, conditions, and rates established in the interconnection agreement, the Commission agrees with AT&T that any collocation request that does not have rates, terms, and conditions set forth in the interconnection agreement would logically be considered an NSCR. The Commission also finds the use of the term "similar arrangements" could lead to disparities between what the parties regard as similar arrangements.

The Commission also agrees with AT&T that the cost of provisioning similar arrangements several years ago may vary significantly from the cost of providing the same arrangement today. Intrado argues that the FCC's Local Competition Order established a rebuttable presumption of feasibility. While this point is addressed in the Local Competition Order, feasibility is not the same as the cost of provisioning. Since AT&T is not attempting to deny Intrado arrangements that are not part of the interconnection agreement that have been provided in the past, but only wishes to apply non-standard charges on an individual case basis, Intrado's argument about technical feasibility is moot.

In addition, the Commission finds that, similar to the FCC's argument for abandoning the "pick-and-choose rule,"[24] allowing a CESTC to select "similar

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24 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Second Report and Order, 19 F.C.C.R. 13494, CC Docket No. 01-338, Released July 13, 2004

arrangements" established for another telecommunications carrier, where the only benefit may be price, may well inhibit the development of more creative solutions that will better meet the CESTC's needs.[25]

Therefore, the Commission approves AT&T's proposed language allowing it to impose non-standard charges for collocation arrangements for which terms and conditions are not set forth in the interconnection agreement. The Commission concurs with AT&T that if Intrado objects to AT&T's non-standard collocation charges because it believes them to be discriminatory, it may invoke dispute resolution pursuant to the interconnection agreement. The Commission believes the dispute resolution process will be better able to determine whether similar arrangements exist and whether the prices previously charged for these similar arrangements are still relevant to the NSCR on an individual case basis.

Issue 36 Should the terms defined in the interconnection agreement be used consistently throughout the agreement?

Intrado states that the interconnection agreement defines certain terms. To the extent that the interconnection agreement defines a term, Intrado advocates that the term be capitalized throughout the interconnection agreement to denote a specifically defined term (Intrado Ex. 2 at 33, Intrado Br. 64-65). Intrado believes that consistent capitalization will reduce disputes concerning the meaning of certain terms. Of particular concern to Intrado is the capitalization of the term "end user." Intrado reveals that the parties have not come to an agreement on whether the term "end user" should be capitalized (Intrado Br. 65).

For its position, AT&T believes that words should be capitalized only when their use is consistent with the defined term. As an example, AT&T believes that the term "end user" should be defined relative to its customers, not end users of other carriers generally (AT&T Ex. 1 at 70). AT&T does not believe that capitalization is an appropriate issue for arbitration. Instead, AT&T believes the matter should be addressed when the parties create a conforming agreement for Commission approval (AT&T Br. 54, AT&T Reply Br. 58)).

ISSUE 36 ARBITRATION AWARD

Both parties agree that defined terms should be capitalized throughout the interconnection agreement. To that extent, we agree with the parties. Defined terms should be capitalized throughout the interconnection agreement. The point of contention between the parties is the capitalization of the term "end user." In Issue 31 we defined "end user" to mean the retail, end-use, dial tone customer of either party or the PSAP

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25 Id at ¶¶ 1 and 12.

served by either party receiving 911 calls for the purpose of initiating the emergency or public safety response. When used in this manner, "end user" should be capitalized. Where it is necessary to avoid ambiguity, the PSAP served by either party shall be capitalized and referred to as the "PSAP End User."

It is, therefore,

ORDERED, That Intrado and AT&T incorporate the directive 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 AT&T 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 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, AT&T, their counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

LDJ/CK/LS/MT/vrm

Entered in the Journal

MAR 0 4 2009

Reneé 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 Communications Act of 1934 as amended, to Establish an Interconnection Agreement with The Ohio Bell Telephone Company dba AT&T Ohio.	)))))))	Case No. 07-1280-TP-ARB

ENTRY ON REHEARING

The Commission, considering the arbitration award issued March 4, 2009, the application for rehearing filed by The Ohio Bell Telephone Company dba AT&T Ohio (AT&T) on April 3, 2009, and the memorandum contra filed by Intrado Communications, Inc. (Intrado) on April 13, 2009, issues its entry on rehearing.

(1) On March 4, 2009, the Commission issued an award that decided issues presented for arbitration by Intrado and AT&T.

(2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(3) On April 3, 2009, AT&T filed an application for rehearing. In its application for rehearing, AT&T challenges the Commission's awards for issues 1(a), 1(b), 1(c), 4, 4(a), 5(a), 5(b), 6, 13(a), 24, 29(b), and 31. On April 29, 2009, the Commission granted rehearing to allow for further consideration of the issues raised by AT&T and the parties' language proposals for the interconnection agreement.

(4) For issues 1(a) and 1(b), AT&T contends that the arbitration award incorrectly interprets the federal definition of "telephone exchange service." AT&T relies upon the definition of telephone exchange service found in 47 U.S.C. §153(47), which reads 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.

To interpret this provision, AT&T relies upon decisions issued by the Federal Communications Commission (FCC) in its *Advanced Services Order*[1] and its *Directory Listing Order*.[2] Upon analyzing the elements of telephone exchange service pursuant to the standards set in the *Advanced Services Order* and the *Directory Listing Order*, AT&T concludes that Intrado's Intelligent Emergency Network (IEN) service does not meet the criteria of telephone exchange service pursuant to 47 U.S.C. §153(47). According to AT&T, the FCC defined the components of 47 U.S.C. §153(47). That is, the FCC defined "intercommunication," what it means to "originate" a telecommunications service, what it means to provide a service "within a telephone exchange or within a connected system of telephone exchanges within the same exchange area," what it means to be of a character ordinarily furnished by a single exchange and which is covered by the exchange service charge, and what it means for telephone exchange services to be "comparable."

(5) To begin, AT&T continues to claim that IEN does not provide call origination. AT&T contends that call origination applies to part A and part B of 47 U.S.C. §153(47). AT&T rejects the finding that a Public Safety Answering Point's (PSAP's) ability to transfer (hookflash) a call can be considered call origination. AT&T takes the position that the transfer of an already originated call is not origination, stating that calls cannot be originated twice. To highlight further that PSAPs cannot initiate calls, AT&T emphasizes that a PSAP must wait for an inbound 911 call. Without a 911 call, the PSAP can do nothing.

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1 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999).

2 *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001).

Noting a requirement that subscribers must have the capacity to interconnect with a multiplicity of customers, AT&T declares that IEN does not meet that requirement. Instead, PSAPs can only contact predetermined points. For these reasons, AT&T concludes that the Commission erred in finding that call transfers and conferencing involve call originating.

AT&T proclaims that there are other sources that substantiate that PSAPs do not originate calls. Looking at Intrado's tariff, AT&T finds further support for its argument that a call transfer is not origination. AT&T points to language in the tariff that refers to transfers of existing calls, calls originated by the 911 caller, and emergency calls originated by personal communications devices. In addition to the tariff, AT&T points to the testimony of Intrado's witness, Ms. Spence-Lenss, who, it claims, testified that call transfer is not call origination. For additional support of its position, AT&T refers to the Florida and Illinois commissions that determined that Intrado's service does not provide call origination.

(6) Intrado argues that the Commission properly concluded that IEN fits within the definition of telephone exchange service. In disagreement with AT&T, Intrado asserts that IEN provides call origination. Differing from AT&T's reading of 47 U.S.C. 153(47), Intrado finds that origination is only relevant to part B of the statute. Nonetheless, Intrado believes that IEN fulfills the requirement of origination by enabling two-way communication between a PSAP and a 911 caller or between a PSAP and another PSAP. By functioning in such a way, Intrado believes that IEN necessarily provides a PSAP with the ability to originate and terminate a call.

Intrado rejects AT&T's claim that IEN's call transfer capability (hookflash) does not involve call origination. Intrado explains that when a PSAP receives a 911 call it can hookflash to receive dial tone. It then originates a call to a third party through the central office serving as the 911 selective router. The third party may be bridged to the 911 caller. The PSAP may either disconnect or remain on the line. Highlighting AT&T's misunderstanding, Intrado emphasizes that the PSAP originates a call and adds the 911 caller to an existing call. Contrary to AT&T's understanding, Intrado emphasizes that the PSAP does not add another party to the 911 caller's call.

Intrado states that AT&T misconstrued its witness' testimony on whether the transfer of a call is origination. In AT&T's reading of the testimony, AT&T claims that Intrado's witness admitted that the transfer of a 911 call is not origination. Intrado points out that its witness stated that transferring may involve originating.

(7) In the arbitration award, we determined that the capability of a PSAP to call another PSAP and engage in two-way communications with 911 callers satisfies the call origination and termination requirements. AT&T has presented no argument that would cause us to alter our decision. AT&T stakes its position upon whether a PSAP, by hookflashing, joins another party to a call originated by the 911 caller. AT&T does not contest whether PSAPs can originate calls to other PSAPs. Intrado, in response, alleges that AT&T's characterization is incorrect. According to Intrado, the PSAP, after receiving a 911 call, can hookflash to receive dial tone to originate a call to an emergency service provider. Taking into account that the evidence shows that, in addition to receiving 911 calls, Intrado's PSAP can originate calls to other PSAPs and emergency service providers, we must conclude, as we did in the arbitration award, that Intrado's service meets the "originating and terminating" requirement.

(8) Included in the definition of telephone exchange service is intercommunication. According to AT&T's reading of the *Advanced Services Order*, intercommunication is a component of parts A and B of 47 U.S.C. §153(47). AT&T rejects the Commission's determination that intercommunication is not quantified by 47 U.S.C. §153(47). AT&T also rejects the finding that intercommunication exists where PSAPs can contact other PSAPs and the public can communicate with PSAPs and local emergency personnel. According to AT&T's reading of the *Advanced Services Order* and the *Directory Listing Order*, the FCC defines intercommunicating as a service that permits all subscribers within a geographic area to make calls to one another.

AT&T claims that Intrado's service fails to meet the definition of intercommunicating because PSAPs cannot make calls to an entire community of interconnected customers within a geographic area. AT&T emphasizes that PSAPs cannot make

calls to anyone. PSAPs can only receive 911 calls. Even if call transfers were deemed to be call origination, AT&T still finds that Intrado's service lacks the intercommunicating requirement because PSAPs cannot engage an entire community of interconnected customers. AT&T likens Intrado's service to private line service. The FCC has rejected private line service as an intercommunicating service because customers who subscribe to a private line service can only communicate with predetermined points.

Citing the FCC's *Directory Listing Order*, AT&T reaches the conclusion that intercommunicating requires more than a connection between designated points. As an example, AT&T points to the distinction made by the FCC concerning Directory Assistance (DA) with and without call completion. The FCC decided that DA with call completion is an intercommunicating service because it allows a caller to complete a call to any listed telephone number. DA without call completion, on the other hand, only allows connection with the DA service itself. To AT&T, Intrado's service is the equivalent of DA without call completion because a 911 caller similarly has no access to a community of interconnected customers. AT&T describes Intrado's service and DA without call completion as "inbound-only hub-and-spoke arrangements."

(9) Intrado rejects AT&T's claim that IEN does not provide intercommunication, as required in the definition of telephone exchange service. Procedurally, Intrado urges the Commission to reject AT&T's argument because it is merely a restatement of the argument that it has already asserted. Substantively, Intrado points out that the PSAP purchases 911 service from Intrado so that it can receive calls from all 911 callers programmed to reach the PSAP. Disputing AT&T's characterization, Intrado denies that there is a predesignated transmission path. Moreover, Intrado rejects any comparison of IEN to a dedicated, point-to-point service like private line service. Unlike private line service, Intrado distinguishes its service by its ability to receive calls from multiple locations and 911 callers.

Intrado argues that its 911 service complies with the *Directory Listing Order* by interconnecting all 911 callers in a specific geographic area to the PSAP authorized to receive 911 calls. To

Intrado, the issue is whether Intrado's PSAP customer can intercommunicate with 911 callers seeking emergency assistance. It is immaterial whether the "end user" can communicate with any other entity through 911 dialing. Citing the *Advanced Services Order*, Intrado contends that the intercommunication requirement is satisfied by customers having the capacity to intercommunicate with other subscribers. Because PSAPs can intercommunicate with Ohio consumers in a relevant geographical area, Intrado concludes that Intrado's service provides a key component of telephone exchange service.

Intrado challenges AT&T's presumption that Intrado's intercommunicative abilities are limited to call forwarding. It is Intrado's position that call forwarding encompasses call origination. Intrado adds that intercommunication occurs in PSAP-to-PSAP communications. Intrado notes that intercommunication may also occur during efforts to route properly a misdirected mobile emergency call. Three-way conference calls between police dispatchers, PSAP operators, and individuals in distress may also involve intercommunication.

Intrado believes that there is a relationship between the concepts of "geographical area" and "community of interconnected customers." Both, according to Intrado, tie into origination and conferencing abilities. Intrado emphasizes that the purpose of the 911 system is to aid in the rapid response of emergency providers closest to the 911 caller. From this perspective, Intrado likens the area served by the PSAP to extended area service where goods and services in a community are sought to be made available on a local calling basis. Intrado states that it employs selective routers to ensure that customers can call PSAPs regardless of exchange boundaries. In sum, Intrado concludes that its service is consistent with the *Directory Listing Order* because it allows a community of interconnected customers to make calls to one another. The community of interest consists of 911 callers, PSAPs, and first responders located in a relevant geographical area.

(10) The Commission finds it necessary to again note, as we did in the arbitration award, that the Telecommunications Act of 1996

(the Act)[3] does not define "intercommunication." Nor has the FCC precisely defined the scope of intercommunication that a provider must offer to meet the definition of telephone exchange service. In the *Advanced Services Order*, the FCC stated that intercommunication refers to a service that permits a community of interconnected customers to make calls to one another over a switched network. The FCC further concluded that a service satisfies the interconnection requirement as long as it provides customers with the ability to intercommunicate with other subscribers. In our arbitration award we noted that 47 U.S.C. §153(47) does not quantify intercommunication. It does not set limits on the size of the community or the number of interconnected customers. It is, therefore, open whether a community and customers may be more precisely defined.

Taking into account the network architecture of Intrado, we find, as before, that PSAPs are part and parcel of a community of PSAPs, local emergency service providers, and the public. We must note that there is a distinction between origination and intercommunication. We do not agree that intercommunication necessarily means that PSAPs must have the capacity to call potential 911 callers. We find that intercommunication exists where PSAPs and 911 callers can transmit and receive messages using the same facilities. Thus, even though a PSAP may not be positioned to initiate a call to an end user, a PSAP can intercommunicate with a caller after an end user initiates a call to the PSAP. We also find, based on the evidence, that PSAPs can intercommunicate, in the more traditional sense, with certain other PSAPs and emergency service providers. We thus find that Intrado's service provides intercommunication pursuant to the definition of telephone exchange service.

We further note that while it was not discussed in the record of this case, the Commission takes administrative notice of the fact that Intrado was directed to amend its tariff to provide "reverse 911" to PSAPs upon request from any county Intrado serves (Case No. 07-1199-TP-ACE, Finding and Order at Finding 16, February 5, 2008). Reverse 911 provides PSAPs with the ability to provide outbound emergency notification messaging to all telephone subscribers within the area served

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3 The Act is codified at 47 U.S.C. 151 et seq.

by the PSAP. Having required Intrado to provide the capability upon request, this Commission cannot now ignore that capability in the current arbitration. Thus, even though reverse 911 is not necessary for our determination here, PSAPs will possess the ability through reverse 911 to initiate calls to 911 end users, providing further evidence of Intrado's ability to provide intercommunication and call origination.

(11) A third component of telephone exchange service is that service must be within a telephone exchange or within a connected system of telephone exchanges within the same exchange area. AT&T contends that Intrado's service does not meet this definition. AT&T concedes that the exchange area need not coincide with an incumbent local exchange carrier's (ILEC's) exchange boundary. Nevertheless, AT&T rejects the notion that a geographic boundary can be defined by the 911 caller, the PSAP, and a first responder. In its interpretation of the *Advanced Services Order* and the *Directory Listing Order*, AT&T regards the connection between a PSAP, a 911 caller, and first responders as merely a communication between designated points, not the equivalent of a local exchange area.

(12) In opposing AT&T, Intrado contends that its service meets the requirement that it serve an exchange area. Intrado rejects as a mischaracterization AT&T's assertion that Intrado's service is merely communication between designated points. In doing so, Intrado accuses AT&T of misconstruing the FCC's position and the design of Intrado's system.

To begin, Intrado criticizes AT&T for failing to understand how the "points" interact. A connection between the 911 caller, the PSAP, and the first responder is an inaccurate representation. Intrado points out that fixed and nomadic 911 callers within the community of interest can be connected to the designated PSAP. In the event of misdirected mobile emergency calls, PSAP-to-PSAP communications take on a critical role. Intrado states that it can route 911 calls from multiple callers to a PSAP and from one PSAP to another, including nonsubscriber PSAPs, to ensure that a caller is connected to the closest emergency service provider.

According to Intrado, federal authorities have determined that ILEC exchange boundaries are irrelevant to 911 services. In

support, Intrado cites a decision where a federal district court waived a local access and transport area (LATA) restriction to allow an ILEC to provide 911 service beyond a LATA boundary. The court also recognized that selective routers often serve 911 callers and PSAPs in more that one LATA.

As a final argument against AT&T's interpretation of exchange area, Intrado accuses AT&T of taking an impermissibly narrow view of the "equivalent of a local exchange area." The FCC, according to Intrado, has defined the term more broadly. Intrado points out that the FCC has decided that the definition of telephone exchange service does not require a specific geographic boundary. A comparison to illustrate the point would be wireless geographic service areas, which are considered to be within a telephone exchange even though they are not consistent with wireline exchange area boundaries.

(13) Although conceding that an exchange area does not need to coincide with ILEC exchange boundaries, AT&T disputes the Commission's finding that an exchange area can be defined by the 911 caller, the PSAP, and a first responder. In our arbitration award we recognized that "PSAPs must have a service that takes into account the location of fire, police, and other emergency service providers within the county that it serves. Although the reach of a particular 911 service may not coincide with the boundaries of ILEC exchanges, the service does have geographical limitations that are generally consistent with a community of interest." AT&T's argument does not persuade us to change our determination on this matter.

AT&T's attempt to characterize Intrado's service as a linear connection from a 911 caller to a PSAP to an emergency service responder is not an accurate portrayal of Intrado's service. AT&T's characterization fails to take into account mobile service callers, nonsubscribing PSAPs, and out-of-territory emergency service providers. The service is not simply a predesignated point-to-point, spokes and hub arrangement. It is instead a service that facilitates communications between the public and emergency service providers within a particular geographic area. As we stated in the arbitration award, Intrado's service, because it must account for the location of fire, police, and other emergency service providers, does have geographical limitations that are generally consistent with a

community of interest. In accordance with 47 U.S.C. §153(47), we find that Intrado's service is of a character that is ordinarily furnished by a single exchange.

(14) According to Intrado, in order to qualify for interconnection under Section 251(c), a carrier must provide telephone exchange service or exchange access service. Intrado claims that these limitations are intended to prevent long distance carriers from using interconnection to avoid the payment of access charges. In its memorandum contra, Intrado argues that its 911 service is analogous to exchange access service and that it is entitled to interconnection as either a telephone exchange service provider or an exchange access service provider. In the Act, Intrado states that "exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Intrado concedes that 911 services do not fall squarely within the definition of exchange access because it is not a toll service. Intrado, nevertheless, argues that its 911 service performs the same function as an exchange access service because it provides local exchange carriers access to PSAPs for the transmission and completion of 911 calls.

(15) The Commission finds that Intrado's qualifications as an exchange access provider are not at issue in this proceeding. The parties, in Issue 1(a), arbitrated the issue of what services Intrado provides or intends to provide in Ohio. AT&T and Intrado disputed whether Intrado is entitled to interconnect with AT&T under Section 251(c)(2)(A) as a provider of "telephone exchange service" or "exchange access." AT&T took the position that Intrado admitted that it does not qualify as an exchange access provider. AT&T, therefore, only discussed at hearing and in its application for rehearing whether Intrado meets the criteria of a provider of telephone exchange service. It is, therefore, beyond the scope of this proceeding whether Intrado is a provider of exchange access.

(16) AT&T disagrees with the Commission's finding that Intrado imposes an "exchange service charge," as embodied in the definition of telephone exchange service. AT&T asserts that a payment of a fee to Intrado by PSAPs is not enough. According to AT&T's understanding of the *Advanced Services Order*, the payment of a fee implies that an end-user obtains the

ability to communicate within the equivalent of an exchange area. The PSAP, AT&T claims, cannot make calls to anyone. It can only receive and forward 911 calls. AT&T, therefore, concludes that any charge that a PSAP pays to Intrado cannot be an exchange service charge. AT&T criticizes the Commission's award for finding that Intrado's service is of a "character ordinarily furnished by a single exchange." To AT&T, Intrado's service fails to meet this standard, being only a service that provides connectivity between designated points.

(17) Intrado commends the Commission for finding that Intrado's PSAP service fee meets the requirement of having an exchange service charge. Over AT&T's objection that the subscription fee paid by PSAPs is not enough, Intrado responds that the *Advanced Services Order* states that any charges assessed for services would be considered an "exchange service charge." In exchange for the payment of a service fee, Intrado provides the facilities to allow a PSAP to communicate within the equivalent of an exchange area.

(18) We find that in the *Advanced Services Order*, the FCC acknowledges that neither the Act nor the FCC's rules define exchange service charge. Analyzing the context in which the term is used, the FCC concluded that "exchange service charge" "implies that 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." According to the FCC, the purpose of the exchange service charge is to distinguish local from toll service. As applied to xDSL-based advanced services within the equivalent of an exchange area, the FCC concluded that any charge that an LEC assesses for originating or terminating traffic would be deemed an exchange service charge. The FCC explained that, if otherwise, LECs could remove services at will from the definition of telephone exchange service simply by calling the charges for the service something other than exchange service charges.

We have concluded above that Intrado's service will be provided in the equivalent of an exchange. In the arbitration award we found sufficient evidence of an exchange service charge in the form of a fee paid by PSAPs and public safety agencies to Intrado for the provision of telecommunications

service. We see no reason to deviate from our arbitration award.

(19) Upon considering other services deemed by the FCC to be telephone exchange services, AT&T finds no comparisons to Intrado's service. AT&T condemns the Commission's award for failing to compare Intrado's service to xDSL and DA call completion services. AT&T states that in the *Advanced Services Order*, the FCC determined that xDSL fell within the definition of telephone exchange service. Similarly, the FCC declared in its *Directory Listing Order* that DA call completion services are telephone exchange services. AT&T points out that the Illinois commission determined that Intrado's service lacks the attributes of either xDSL or DA with call completion. Pointing out the differences, AT&T argues that xDSL allows a subscriber to communicate with any other subscriber without an additional line. IEN, on the other hand, does not allow PSAPs to make calls and only permits the transfer of calls to a designated point. DA with call completion, AT&T argues, similarly allows communication with a large number of people whereas IEN only allows a transfer to a designated point.

(20) Relying on the FCC's *Advanced Service Order*, Intrado asserts that telephone exchange service is not limited to traditional voice telephony. It also includes non-traditional means of communicating information within a local area. Disagreeing with AT&T, Intrado contends that DA and xDSL services are directly comparable to Intrado's 911 service. Intrado rejects AT&T's claim that DA is distinguishable from Intrado's 911 service because DA allows callers to intercommunicate with a large community and because DA allows the origination of a new call to a large group of subscribers without further DA assistance. Intrado argues that the purposes of DA and 911 services account for the difference in their respective communities of interest. Calls to subscribing PSAPs or by subscribing PSAPs will only be limited by the 911 caller's geographic location and the caller's proximity to first responders.

Intrado rejects AT&T's assertion that Intrado's service only allows a call transfer to a single destination with continued involvement by the PSAP. To Intrado, such a description contradicts AT&T's characterization of the hookflash. Intrado

argues that AT&T cannot claim that the PSAP is merely a passive forwarding service that cannot originate calls and, at the same time, claim that the PSAP's continued involvement on bridged calls distinguishes the PSAP from DA services. Essential, in Intrado's view, is that DA and Intrado's services are similar in their ability to originate bridged communications between a caller and a third party. Intrado believes that involvement subsequent to the origination of a call is immaterial.

(21) Intrado urges the Commission to reject AT&T's argument that Intrado's service must be compared to xDSL service. Intrado contends that AT&T ignores the reality of xDSL technology and has proffered misleading analysis. To Intrado, it appears that AT&T's reliance on whether an additional line is required overlooks the FCC's determination that intercommunication is a key criterion of telephone exchange service. It is Intrado's opinion that a comparison of 911 service to xDSL service is irrelevant.

(22) We note that in the *Advanced Services Order*, the FCC pointed out that the Act does not define "comparable." Relying on a dictionary definition, the FCC stated that comparable is generally understood to mean "having enough like characteristics and qualities to make comparison appropriate." In analyzing xDSL-based advanced services, the FCC concluded that the xDSL services in question meet the definition of telephone exchange service because the service originates and terminates within an exchange area.

Based on our reading of the *Advanced Services Order*, we agree with Intrado that it is not necessary to compare Intrado's service to the xDSL service at issue in the *Advanced Services Order* or to DA at issue the *Directory Assistance Order*. The more precise comparison, as stated in the *Advanced Services Order*, is to services that fall within the scope of part A of 47 U.S.C. §153(47). As stated alternatively in the *Advanced Services Order*, services in part B must share some of the same characteristics and qualities of the telephone exchange service definition in part A. The FCC further noted that neither the statutory text nor the legislative history provides guidance on which characteristics and qualities must be present in order for a service to fall within the scope of part B. For additional

clarification, the FCC pointed out that part B is not restricted to market substitutes for two-way, switched voice service. Absent clear congressional intent, the FCC presumed that it had discretion to determine which particular telecommunications services are sufficiently "comparable." If, as the FCC stated, a "comparable" service is a service that shares some of the same characteristics, it stands to reason that the "comparable" service need not share all of the same characteristics.

As did the FCC, we find, as we did in the arbitration award, that Intrado's service, by virtue of its ability to originate and terminate traffic within a geographically relevant area, not only meets the definition of telephone exchange service, but also is "comparable" to any service that may meet the criteria of part A of 47 U.S.C. §153(47). Absent clear legislative intent and a paucity of precedent we find sufficient latitude within the statute to find that Intrado's service meets the criteria of both part A and part B of 47 U.S.C. §153(47).

(23) AT&T noted in its application for rehearing that if the Commission reverses its decision on Issues 4 and 4(a) it would need to reverse its decision on issues 1(c) and 6(b). We agree. Because we are not reversing our decision on Issues 4 and 4(a), there is no reason to reverse, or address in detail, issues 1(c) or 6(b) on rehearing.

(24) In its application for rehearing of issues 4 and 4(a), AT&T asserts that the Commission erred by requiring AT&T to establish a POI on Intrado's selective router for delivery of AT&T's end users' 911 calls to PSAP customers of Intrado. AT&T again asserts that the location of the POI under Section 251(c)(2) does not vary depending on what type of service a carrier provides nor does there need to be multiple POIs serving the same purpose. AT&T avers that it is undisputed that AT&T has not requested interconnection to Intrado and that Intrado has requested interconnection to AT&T exclusively under Section 251(c)(2). AT&T avers that Congress, the FCC, and this Commission have repeatedly recognized, under Section 251(c)(2), a CLEC's point of interconnection with the ILEC must be on the ILEC's network and the ILEC has no obligation to build out to the CLEC or establish a POI on the CLEC's network.

AT&T contends that, at a minimum, the Commission should clarify whether its decision regarding the location of the POI, for 911 traffic when Intrado is the 911 service provider, is premised on Section 251(c)(2) or Section 251(a). If it is 251(a), AT&T contends the arbitration provisions do not apply, as it avers that the structure of Section 251 and 252 makes plain that state commissions have no authority to arbitrate issues under Section 251(a)(1). AT&T claims that the only time ILECs have a duty to negotiate with a requesting carrier under Section 252(b) is when the carrier requests an agreement to implement Sections 251(b) and (c), not Section 251(a)(1). AT&T argues that the only way a state commission would have authority to implement Section 251(a) would be if Congress expressly gave it that authority, for such power cannot be inferred. AT&T contends that the question is whether the Commission is affirmatively authorized to implement Section 251(a), not whether the Act precludes it from doing so. In addition, AT&T argues that the duty imposed by Section 251(a) is most reasonably interpreted as the duty to allow any other telecommunications carrier to connect to it and any other interpretation would have the effect of creating an unlawful taking by making the first carrier build or pay for facilities it would not otherwise need.

AT&T further avers that the arbitration award errs by going beyond the open issues the parties identified for arbitration. According to AT&T, neither Intrado nor AT&T asked to interconnect under Section 251(a)(1). Therefore, AT&T argues that, to the extent the Arbitration Award relies on Section 251(a)(1) for its decision on Issues 4 and 4(a), the ruling is beyond the Commission's jurisdiction and beyond the scope of the case and should be reversed. AT&T contends that Section 251 addresses interconnection in two discrete situations. If a competing carrier seeks to interconnect with an ILEC, it does so under Section 251(c)(2). On the other hand, AT&T contends that Section 251(a)(1) acts as a catchall for situations not covered by Section 251(c)(2), which comes with specific rights and obligations. According to AT&T, once interconnection has been established under Section 251(c), the ILEC has fulfilled its legal obligation and there is absolutely no duty to interconnect to the requesting carrier again under Section 251(a)(1). AT&T states that when the ILEC interconnects to a carrier under

Section 251(c)(2) it has fulfilled any conceivable duty it could ever have under Section 251(a)(1) as well.

Next, AT&T claims that the Commission's decision "makes bad policy" because it encourages arbitration and will open the door to imposing massive new costs and obligations on the ILECs. According to AT&T, the decision encourages arbitration as Intrado will have no actual end users making 911 calls and will need few trunk ports for interconnection. Where Intrado is the service provider to the PSAP, AT&T will be sending many calls to Intrado and will therefore need many more trunk ports for interconnection on Intrado's network at Intrado's market-based rates. AT&T contends that an even more serious offense will be that the Commission's award will open the door for every CLEC to demand that AT&T establish and pay for a POI on that CLEC's network since nothing in Sections 251(c)(2) or (a)(1) requires any special treatment for 911 carriers.

Finally, to the extent that the Commission does not reverse its decision, AT&T asks the Commission to, at a minimum, clarify that any POI AT&T would have to establish at an Intrado selective router would have to be within AT&T's service area. To the extent that the Commission does require AT&T to establish a POI on Intrado's network under Section 251(a), AT&T urges the Commission to clarify that this interconnection can be achieved indirectly as well as directly as permitted by statute.

(25) According to Intrado, AT&T's rehearing rehashes its arguments from its initial briefs to argue that a single mutual POI on AT&T's network should be implemented between the parties. Intrado states that it seeks a POI arrangement equal to AT&T's, which is vital to Intrado's ability to carry out its public safety duties under the Act. Intrado further points out that AT&T's arguments are predicated on the belief that state commissions are somehow powerless when interpreting and arbitrating particular portions of the Act. Intrado avers that this Commission has repeatedly rendered decisions under Sections 251(a) and (c) and it is entitled to apply any applicable law when rendering its decisions. Intrado points out that Section 252 does not foreclose state authority to arbitrate, nor does it somehow restrict such arbitrations to Sections 251(b) and (c). Specifically, Intrado states that Section 252(a) affords

any party to a Section 252 negotiation the right to petition a state commission for arbitration. Intrado notes that the Ohio Commission and several other state commissions have appropriately determined that the Section 252 arbitration process applies to all Section 251 agreements with ILECs.

Furthermore, Intrado rejects AT&T's argument that the issue of selective router POIs was not open for the purpose of arbitration. Intrado notes that the issue of one-way POIs was clearly an issue for arbitration under issue 4 and 4(a) and that it is improper for AT&T to claim that an issue argued under one legal theory and decided under another is somehow no longer open for Commission resolution. According to Intrado, the Commission has well-established authority to apply any applicable law, and it properly considered the issue of one-way POIs under the law.

Next, Intrado argues that the Commission's decision to compel AT&T to establish a POI at the selective router of Intrado when it is serving a PSAP was consistent with its decisions in the Embarq/Intrado[4] and CBT/Intrado[5] arbitration awards. Intrado claims that apart from AT&T's discredited theories regarding why the Commission may not arbitrate Section 251(a) issues, AT&T's only other argument against the Commission's decision is that Section 251(a) is simply the duty of a carrier to allow any other telecommunication carrier to connect to it. Intrado disagrees with AT&T's claim that Section 251(a) is redundant in comparison to Section 251(c)(2) and argues that, given the nature of Intrado's 911 services, both provisions are complimentary. Specifically, Intrado avers that "Section 251(c)(2) compels AT&T to allow Intrado to enter the competitive 911/E911 marketplace by opening its network under 251(c)(2), whereas Section 251(a) governs the substantive arrangements between selective routers that enable 911/E911 service to function as it has under the incumbent."

Finally, Intrado refutes what it claims is AT&T's throw-away argument regarding the effect of the Commission's ruling to be,

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4 *In the Matter of the Application of Intrado Communications, Inc. for Arbitration of an Interconnection Agreement with Embarq*, Case No. 07-1216-TP-ARB (Case No. 07-1216-TP-ARB).

5 *In the Matter of the Application of Intrado Communications, Inc. for Arbitration of an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08-537-TP-ARB (Case No. 08-537-TP-ARB).

in effect, an unlawful taking. First, Intrado notes that, in the two cases relied upon by AT&T, the Supreme Court found that no unlawful taking had occurred. Next, Intrado claims that AT&T misses the point that such takings are only unlawful if they are not compensated, which, according to Intrado, is not the case here. Third, Intrado points out that Intrado is not the sole beneficiary of AT&T's need to deploy facilities to connect to the selective router of Intrado. Intrado avers that AT&T's customers and AT&T itself are the principle beneficiaries when AT&T customers are able to continue to complete emergency calls to an Intrado-served PSAP.

(26) With regard to issue 4 and 4(a), the Commission finds that AT&T's application for rehearing should be granted in part and denied in part. We find that AT&T's application for rehearing with regard to the requirement that AT&T establish a POI on Intrado's network fails to raise any new arguments for the Commission's consideration. Therefore, AT&T's application for rehearing with regard to this issue is denied. We find, however, that AT&T's arguments with regard to the location of the POI on Intrado's network should be granted, as discussed in more detail below.

We will first address some of the specific arguments raised by AT&T concerning the requirement of a POI on Intrado's network when it is the 911 service provider. In the arbitration award, as in our previous arbitration awards for Intrado and other ILECs, the Commission clarifies that the determination that the POI be on Intrado's selective router when Intrado is the 911 service provider to the PSAP is based on Section 251(a). Section 251(a) establishes the duty of a telecommunications carrier to interconnect directly or indirectly with the facilities of other telecommunications carriers. This determination is appropriate in light of the scenario where Intrado is the 911 service provider to a PSAP serving an ILEC's end user customer. It is the ILEC that will need to interconnect to complete its end users' emergency calls to the PSAP. While the award language did not specifically reference 251(a), the aforementioned Commission decisions, which again are noted in the award, are clear as to the applicability of 251(a). The record also reflects that both parties understood the Commission's previous decisions with regard to 251(a). Furthermore, AT&T, in its brief, presented many of the same

arguments regarding the applicability of 251(a) as it provided in its rehearing application.

With respect to AT&T's claim that the Arbitration Award for issues 4 and 4(a) goes beyond the open issues because both parties argued that it fell under 251(c) is without merit. The Commission agrees with Intrado that the record clearly reflects that the proper location of the POI when Intrado is the 911 service provider to the PSAP is a primary issue. Furthermore, AT&T discussed Section 251(a) at length on the record in arguing against Intrado's desire to have AT&T establish a POI on Intrado's network. Further, it would be inappropriate to apply the requirements of Section 251(c) in this scenario when the Commission has already determined that the applicable section of the Act is Section 251(a), regardless of whether or not both parties contend such arrangements fall under Section 251(c). In sum, AT&T has asserted no facts or arguments that would give us a basis for varying from the award issued in this matter or in Case Nos. 07-1216-TP-ARB and 08-537-TP-ARB. Therefore, AT&T's request for rehearing on this point is denied.

The Commission further agrees with Intrado that it has also previously determined 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. Nor is the Commission limited to disputes pursuant to Section 251(c) of the Act. In its Application for Rehearing, AT&T raises no new arguments that the Commission has not previously considered regarding the applicability of Section 252(b) to disputes regarding Section 251(a) arrangements. Therefore, AT&T's request for rehearing based on its position that matters under Section 251(a)(1) cannot be arbitrated under Section 252 is denied.

With regard to AT&T's argument that the Commission's decision sets bad policy, the Commission must address AT&T's misunderstanding. According to AT&T, pursuant to this decision, each CLEC will now demand that AT&T establish and pay for a POI on the CLEC's network. As AT&T is well aware, the FCC and this Commission have interpreted the Section 252(i) of the Act to say that a CLEC may only opt in to an agreement as a whole and may not "pick and choose"

portions of that agreement (Rule 4901:1-7-07(A)(3), Ohio Administrative Code (O.A.C.)). In other words, a CLEC that is not a CESTC like Intrado cannot avail itself of an interconnection agreement unless it takes the entire agreement. The POI established under Section 251(a) for the point of interconnection at the selective router of a 911 service provider to a PSAP would not be applicable to a CLEC offering retail services to non-PSAP end users. In fact, in the arbitration award, the Commission reminded Intrado that it is to avail itself of the service or elements it receives from AT&T for the provision of its CESTC services only (Arbitration Award at 23, 26-27). Therefore, unless the CLEC is also a CESTC, and to date, only Intrado is certified as such in Ohio, then it may not utilize this agreement or the Commission's findings to require AT&T to have a POI on its network. Furthermore, we agree with Intrado that our decision does not represent an unlawful taking as the interconnection agreement includes compensation to AT&T, where appropriate, and the facilities in question do not accrue to the sole benefit of Intrado.

Finally, the Commission grants AT&T's application for rehearing in order to clarify that, as in the previous Intrado arbitration awards, any POI AT&T would have to establish at an Intrado selective router would have to be within AT&T's service area. The Commission further clarifies that as interconnection in this scenario is based on Section 251(a), interconnection can be achieved directly or indirectly with Intrado when Intrado is the 911 service provider to the PSAP.

(27) Responding to the Commission's arbitration award for issues 5(a) and (b), AT&T again claims that it does not object to establishing PSAP-to-PSAP call transfer capability, also known as inter-selective routing, when appropriate terms can be worked out with the PSAPs. AT&T, however, does not believe that the topic should be addressed in a two-party interconnection agreement because such capability does not involve interconnection between AT&T and Intrado. AT&T argues that the Commission held in the Intrado-Embarq arbitration that inter-selective routing involves a peering arrangement between two carriers and does not involve interconnection of a competing carrier's network with an ILEC's network (Arbitration Award, Case No. 07-1216-TP-ARB at 8). AT&T then argues that if Section 251(c) does not apply to

inter-selective routing because it does not involve interconnection, the Commission cannot impose terms regarding inter-selective routing under Section 251(a) because the definition of interconnection is the same under Section 251(c) as it is under Section 251(a).

(28) Intrado avers that AT&T misconstrues the Embarq Arbitration Award to mean that inter-selective routing constitutes a peering arrangement, not interconnection between the parties and, therefore, Sections 251(a) and 251(c) cannot be invoked. Intrado contends that the Commission's point was that Section 251(c) was inapplicable because selective routing transfers between PSAPs cannot be analogized to the interconnection between competitive networks such as ILEC and CLEC networks, not that inter-selective routing is not interconnection. Furthermore, Intrado points out that inter-selective routing is vital to an efficient and reliable 911 system, and AT&T's plan to engage in PSAP-by-PSAP negotiations amounts to a piecemeal approach to public safety.

(29) We affirm our conclusion in the Embarq Arbitration Award that inter-selective routing arrangements do not involve the interconnection of a competing carrier's and an ILEC's networks. This does not mean interconnection is not necessary to achieve inter-selective routing, only that it was the Commission's determination that it was not interconnection subject to Section 251(c). Instead, inter-selective routing involves the interconnection of two 911 network service providers' networks in separate, adjacent geographic areas. Clearly, inter-selective routing involves the linking of two networks for the mutual exchange of traffic as interconnection is defined in 47 C.F.R. §51.5. The Commission further points out that in the Embarq Arbitration Award cited by AT&T, the Commission states that it "has mandated that each competitive emergency services telecommunication carrier shall *interconnect* with each adjacent countywide 911 system" (Embarq Arbitration Award at 36, emphasis added). As it is the determination of the Commission that inter-selective routing involves interconnection under 251(a), AT&T's application for rehearing on this point is denied. With regard to AT&T's rehearing request to exclude inter-selective routing from the interconnection agreement to allow for PSAP input, the Commission finds that AT&T raises no new arguments and

that nothing will preclude PSAPs from providing input on inter-selective routing arrangements. Therefore, AT&T's request for rehearing on this point is denied.

(30) For Issue 13(a), AT&T indicates in its memorandum of support of its rehearing application that "the current law on ISP (Internet Service Provider)-bound traffic fully supports AT&T's proposed language." AT&T first states that the controversy addressed in the FCC's *ISP Remand Order*[6] addressed only local calls to an ISP, since there was no dispute that a call to an ISP in another exchange was an "access call,"[7] AT&T further notes that the FCC defined the issue it addressed in the *ISP Remand Order* as "whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP *in the same local calling area*."[8]

AT&T goes on to note that, in its review of the *ISP Remand Order*, the DC Circuit Court stated that the FCC had held that "calls made to [ISPs] located within the caller's local calling area" are not subject to Section 251(b)(5). Instead, compensation for such calls is subject to the "interim provisions devised by the Commission." [9] AT&T additionally argues that the U.S. Second Circuit Court of Appeals had rejected the position that the FCC's *ISP Remand Order* preempted state commissions with regard to virtual NXX (VNXX) traffic delivered to ISPs.[10] AT&T also points out that the U.S. First Circuit Court of Appeals rejected the claim that the *ISP Remand Order* applies to all ISP-bound calls and stated that the FCC "expressly states at a number of points that ISP-bound traffic is not subject to reciprocal compensation under §251(b)(5)." AT&T highlights that "[t]here is no express statement that ISP-bound traffic is not subject to access charges."[11] In further discussion of VNXX traffic, AT&T points out that the FCC itself

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6 *Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68,* Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*).

7 AT&T's Application for Rehearing at 30.

8 *Id.* at 30-31, citing *ISP Remand Order.*

9 *Id.* at 31, citing *WorldCom, Inc. v. FCC,* 288 F.3d 429, 430 (D.C. Cir. 2002).

10 *Id.* at 31-32, citing *Global NAPs, Inc. v. Verizon New England, Inc.,* 454 F.3d 91 (2d Cir. 2006).

11 *Id.* at 32, citing *Global NAPs, Inc. v. Verizon New England, Inc.,* 444 F.3d 59 (1st Cir. 2006).

noted that "the *ISP Remand Order* did not purport to address VNXX calls."[12]

Finally, AT&T takes issue with the Commission's reliance on the *November 2008 Remand Decision*[13] stating that the decision did not change in any way the manner of compensation for ISP-bound traffic, despite the fact that the FCC had removed the word "local" from the discussion.

(31) Intrado, in its Memorandum Contra concerning this issue, points initially to the specific question that the arbitration of this issue put before the Commission the definitions of "Section 251(b)(5) Traffic," "ISP-Bound Traffic," and "Switched Access Traffic." Intrado notes that the Commission approved the definitions of these terms with reference to applicable law. Intrado believes that the definitions approved by the Commission adequately resolve the question placed before the Commission.[14]

Intrado notes that these definitions bind both parties to the applicable law and that AT&T's dispute with these definitions is based in part on the possibility of disputes as to proper application of the law. Intrado states that the flaw in AT&T's argument is that, should such a dispute exist, AT&T should not be permitted to circumvent the resolution of that dispute through language in the interconnection agreement that binds Intrado to AT&T's preferred resolution.[15]

Intrado goes on to state that AT&T's proposed definition uses the term "local" to classify traffic that is subject to reciprocal compensation, a distinction that the FCC has already determined to be inappropriate in this context. In support of this statement, Intrado points to the FCC's holding that ISP-

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12 *Id.* at 33-34.

13 *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking 2008 WL 4821547, F.C.C., Nov. 05, 2008, (NO WC05-337, CC96-45, WC03-109, WC06-122, CC99-200,CC96-98, CC01-92, CC99-68, WC04-36) (*November 2008 Remand Decision*)

14 Intrado Memorandum Contra at 36.

15 *Id.* at 36-37.

bound traffic is interstate traffic that falls within the scope of 251(b)(5),[16] and notes that the FCC has removed the term "local" from its rules on the subject. Intrado maintains that using the interconnection agreement to bind it to a specific resolution of whatever ambiguity may exist is not a proper resolution of that ambiguity.[17]

Intrado states that AT&T is "simply wrong" when it asserts that the FCC's rulings regarding ISP-bound traffic addresses only a certain subset of ISP-bound traffic, and notes that the FCC has addressed ISP-bound traffic as a single concept. In support, Intrado points to both the FCC's *ISP Remand Order* and the *November 2008 Remand Decision*, particularly with regard to designating types of traffic. Intrado emphasizes that the FCC did not give any indication that its decisions do not apply to all ISP-bound traffic.[18]

(32) The Commission notes that AT&T makes a long and detailed defense of how its definition meets the FCC's definition under current law. However, at no point does AT&T indicate that the language the Commission approved is inconsistent with current law. It would be difficult for the approved language to be inconsistent with current law, since the approved language defines the term with regard to "current law." AT&T has advanced no new argument for its preferred language and has advanced no new argument refuting the approved language. Rehearing could be denied on that basis alone.

However, in the interest of clarity, and addressing AT&T's argument, the Commission notes that the FCC's decision in the *Declaratory Ruling*[19] that ISP-bound traffic was interstate by nature applied to both local and interexchange ISP-bound traffic. That the *Declaratory Ruling* made no functional difference for the small minority of calls where the caller and the ISP are in different exchanges does not affect the universality of that *Declaratory Ruling*. As AT&T itself notes, the FCC decision that Section 251(b)(5) is not limited to "local"

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16 *Id.* at 37, citing the FCC's *November 2008 Remand Decision.*

17 *Id.* at 37.

18 *Id.* at 38-39.

19 *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999).

traffic and is not inconsistent with that prior declaration. Further, we observe that when the FCC stated in the *November 2008 Remand Decision* that "[as] a result, we find that ISP-bound traffic falls within the scope of section 251(b)(5)," it made no distinction between "local" or any other type of ISP-bound traffic.

AT&T attempts to make a case that the Commission did not indicate that ISP-bound traffic was subject to reciprocal compensation, citing to the Award. However the language cited by AT&T reads:

> In 1999, the FCC found that ISP-bound traffic was jurisdictionally interstate, since users contact websites across state lines. Because the FCC had previously determined that Section 251(b)(5) applied only to local traffic, the FCC concluded that ISP-bound traffic was not subject to reciprocal compensation (Arbitration Award at 47, emphasis added).

If that statement is not sufficient to make the point that ISP-bound traffic is not "local," the arbitration award goes on to note that "[i]n April of 2001, the FCC released an order on remand that abandoned the earlier conclusion that Section 251(b)(5) traffic was local traffic and concluded that ISP-bound traffic was excluded from Section 251(b)(5) by virtue of Section 251(g) of the Act (Arbitration Award at 48). The Commission further noted that most recently, in November of 2008, the FCC concluded that "although ISP-bound traffic falls within the scope of Section 251(b)(5), this interstate, interexchange traffic is to be afforded different treatment from other Section 251(b)(5) traffic pursuant to our authority under sections 201 and 251(i) of the Act" (*Id.* Emphasis added).

As AT&T notes, in the *November 2008 Remand Decision*, the FCC did reaffirm its existing rules, which at the time of that reaffirmation identified ISP-bound traffic as interstate, interexchange traffic. Therefore, the question of whether ISP-bound traffic is "local" has been addressed, in the negative, by the FCC. ISP-bound traffic is Section 251(b)(5) traffic; however, it is "interstate, interexchange" Section 251(b)(5) traffic.

The FCC has established, under its authority, a distinct compensation structure for ISP-bound traffic. At this time, all compensation structures are under review in the context of the ongoing review of FCC CC Dockets 99-68 and 01-92. The Commission sees no reason to bind either AT&T or Intrado to a definition that the FCC has already changed, and may well change again in the near future.

AT&T further makes a great deal of the fact that carriers have attempted to use the *ISP Remand Order* to try and carry VNXX traffic without proper compensation. The Global NAPs decision concludes, as AT&T itself noted, that the *ISP Remand Order* "does not govern charges imposed by the originating carrier for the delivery of VNXX traffic." AT&T further notes that the FCC "itself has confirmed that the *ISP Remand Order* does not apply to VNXX traffic." The Commission agrees that it is settled law that the *ISP Remand Order*, and the subsequent remands, do not apply to VNXX traffic. If it is indeed settled law, then AT&T loses nothing by a definition of ISP-bound traffic that is based on "current law." If AT&T believes that some carrier has acted in violation of law regarding VNXX traffic, it has the opportunity to respond to that violation. However, the question before the Commission in this arbitration is not an issue of VNXX traffic, it is whether the language proposed by AT&T or the language proposed by Intrado is appropriate for inclusion in the interconnection agreement between these two parties.

With regard to that question, the Commission concludes, again, that language in an interconnection agreement should not be used to bind carriers to terminology that the FCC has abandoned as confusing and that is not consistent with current law. Rehearing on this issue should, therefore, be denied.

(33) For Issue 24, AT&T claims that the Commission addressed a settled issue and left a disputed issue unresolved. AT&T states that Issue 24 involved General Terms and Conditions (GTC) Section 8.1 and Section 15.7. Section 8.1 relates to limitation of liability for Intrado's end users' fraud. Section 15.7 addresses 911 limitation of liability language. AT&T states that the parties settled the dispute relating to Section 15.7 prior to the arbitration award. AT&T claims that the Commission ruled upon Section 15.7 but not Section 8.1.

The issue in Section 8.1, according to AT&T, is whether Intrado's proposed language should be included in the interconnection agreement. The language provides that AT&T would be liable to Intrado for any fraud associated with Intrado's end user's account that is "attributable to AT&T." AT&T notes that the Commission rejected Intrado's proposed "attributable to" language in Section 15.7. AT&T urges the Commission to reject the language in Section 8.1 as well. AT&T advocates the elimination of the language because it is vague and expands, rather than decreases, AT&T's exposure to liability beyond that which is normally applied under fraud law. AT&T also condemns the language for being unnecessary, since Intrado could identify any circumstances where a customer's fraudulent behavior could be attributed to AT&T. Finally, AT&T regards Intrado's proposed language as unfair because there is no reciprocal language that would hold Intrado liable. AT&T, therefore, urges the Commission to adopt its language for Section 8.1.

(34) Intrado contends that AT&T is mistaken in its position that the Commission did not resolve limitation of liability language for Section 8.1 of the interconnection agreement. It is Intrado's interpretation of the arbitration award that the Commission properly addressed both Section 8.1 and 15.7. Intrado points out that the Commission was clear in its rejection that AT&T can protect itself from losses resulting from gross negligence or willful misconduct.

(35) The Commission notes that in their initial briefs and reply briefs, the parties refer to Section 8.1 and Section 15.7. AT&T points out that Intrado proposes similar language for both provisions. It is not until the parties filed a revised joint issues matrix that there is an indication that Section 15.7 has been resolved. Understanding that the parties have resolved Section 15.7, we, nevertheless, apply the same principles set forth in the arbitration award to Section 8.1. In the arbitration award, we sought to craft limitation of liability language that was sufficiently broad but not so broad as to provide absolute immunity. We recognized that without broad protection the potential risk and liability exposure inherent in providing 911 service would be prohibitive. However, we acknowledged that protection from liability should not go so far as to protect AT&T from gross negligence or willful misconduct. Adhering

to these principles and limitations, AT&T's recommended language for Section 8.1 should be revised to hold it liable for any losses that arise from gross negligence or willful misconduct. To accomplish this goal we suggest the following revision to Section 8.1: AT&T Ohio shall not be liable to CLEC for any fraud associated with CLEC's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Traffic (ABT) unless any resulting loss is attributable to AT&T's gross negligence or willful misconduct.

(36) In its application for rehearing, AT&T challenges the Commission's award for Issue 29(b). AT&T argues that the Commission's arbitration award errs in granting Intrado the lowest rate used by any other carrier when Intrado requests and AT&T inadvertently provisions services that are not included in the interconnection agreement. AT&T avers that allowing Intrado to pay AT&T the lowest rate in effect at that time for Ohio CLECs is contrary to federal law and the FCC's all-or-nothing rule. AT&T contends that if a CLEC wants a product or service that is not covered by its interconnection agreement, it cannot simply adopt the lowest price AT&T charges any other CLEC. AT&T argues that any such attempt to "pick and choose" a favorable rate from another interconnection agreement would violate the FCC's all-or-nothing rule that requires a CLEC to adopt another interconnection agreement in its entirety.

(37) Intrado avers that the Commission's decision is perfectly consistent with the FCC's all-or-nothing rule, which concerns products or services provided under an agreement. The Commission's decision, Intrado contends, focuses on instances where products or services are explicitly provided outside of the terms and conditions of the interconnection agreement. Intrado contends that if AT&T has agreed not to provision particular products or services, they will not be priced within the interconnection agreement. Intrado contends that the Commission was correct to point out that if Intrado requests, and AT&T begins to provide such a product or service, that "Intrado is not solely to blame." Intrado avers that if AT&T got its way, AT&T would be free to charge Intrado whatever price it saw fit, with resulting negotiations reflecting an imbalance in bargaining power against Intrado. Intrado points out that the Ohio CLEC rate would only be instituted for a

short time as AT&T would be allowed, pursuant to the contract language, to reject future orders for the product or service until such time as terms and conditions are incorporated into the interconnection agreement. Intrado contends that AT&T's argument totally ignores the conditions under which the Ohio CLEC rate will be imposed despite its clear inclusion within the conforming language. Intrado contends that the kind of protection AT&T seeks from artificially low rates will only arise in the context of a deliberate choice by AT&T to provide an unlisted product or service without negotiation, and may be terminated at any time by AT&T after the initial billing occurs.

(38) In our arbitration award, we made it clear that the lowest price available to other CLECs would only be available to Intrado under very limited circumstances, one of which is that AT&T inadvertently provisioned a product or service to Intrado that is not in the interconnection agreement. Therefore, AT&T has the ability to prevent Intrado from receiving the current lowest CLEC rate for that product or service simply by not provisioning it. Once AT&T has "inadvertently" provided a service to Intrado, the Commission has agreed with AT&T that it can refuse to provide any more of that product or service until terms and conditions can be incorporated into the interconnection agreement, therefore, any potential harm to AT&T is mitigated.

(39) Further, given that AT&T can refuse to provision future Intrado orders for the "inadvertently" provided product or service (something AT&T is unable to do if the service is part of an interconnection agreement or tariff), that service would be provided under terms less advantageous to Intrado than those that the CLEC with the lowest rate enjoys. As the terms and conditions that the CLEC with the lowest rate and the terms and conditions that Intrado would receive are different, and in fact more onerous for Intrado, the Commission's award is not inconsistent with the FCC's all-or-nothing rule. Therefore, AT&T's request for rehearing on this issue is denied.

(40) In the arbitration award for Issue 31, the Commission determined that an "end user" means "the retail, end-use, dial tone customer of either Intrado or AT&T or the PSAP served by either party. Where it is necessary to avoid ambiguity, the parties shall use 'End User' to refer to the retail, dial tone

customer, whereas 'PSAP End User' may refer to the PSAP." AT&T disagrees and urges the Commission to adopt AT&T's language.

AT&T notes the Commission's reliance upon Case No. 07-1216-TP-ARB in reaching its decision. AT&T distinguishes this case from Case No. 07-1216-TP-ARB on the basis that the parties agreed to a broader definition of end user. In Case No. 07-1216-TP-ARB, Embarq and Intrado agreed that "end user" would include Intrado's PSAP customers and retail end user customers who make emergency 911 calls. By contrast, AT&T states that it never agreed to expand the definition of end user beyond its customary meaning. Citing the Commission's 911 Service Program Rules, AT&T regards an end user as one who makes a 911 call. AT&T also relies on Intrado's certification order which defined end users as customers of basic local exchange services that can dial 911 to access emergency services, not Intrado's PSAP customers. For further support, AT&T relies upon the National Emergency Number Association's (NENA) definition of "end user" as the 911 caller.

(41) In arguing for its proposed definition of "end user," Intrado disagrees with AT&T's attempt to distinguish the present case from Case No. 07-1216-TP-ARB on the basis that Embarq and Intrado agreed on the definition of "end user." Claiming that AT&T's analysis is flawed, Intrado contends that the definition of end user involves more than just the parties' agreement. To Intrado, the agreement between Embarq and Intrado is immaterial to whether PSAPs are end users. According to Intrado, the Commission's certification order determined that Intrado is "engaged in the provision of telecommunications due to its transmission of 911 end user information from the end user's location to the PSAP." In Intrado's review of the Commission's decision, it concludes that the decision is consistent with Ohio telecommunication rules and AT&T's boilerplate definition of end user. Intrado claims that the Commission did not dispute this interpretation in its entry on rehearing.

(42) AT&T has presented no new facts or arguments that would cause us to reverse or modify the arbitration award concerning the definition of end user. In the arbitration award, we considered not only the implications of our carrier-to-carrier

rules on the definition of customer but we also considered Rule 4901:1-8-01, O.A.C., (911 Service Program Rules).

In its application for rehearing, AT&T urges the Commission to also consider NENA standards. The NENA standards point out that its recommendations are solely for the voluntary use of entities involved with E911 products and services. NENA recognizes that advances in technology or operations may precede its published standards. Because Intrado presents the advent of competitive 911 services, we must depart from the usual norms in defining "customer" and "end user." We believe that our award for Issue 31 recognizes a significant change in the technology and operations regarding 911 services. Moreover, the arbitration award accommodates the competing interests of AT&T and Intrado. Accordingly, we maintain that "end user," for the purpose of the interconnection agreement shall mean the retail, end-user, dial tone customer of either Intrado or AT&T or the PSAP served by either party. Where it is necessary to avoid ambiguity, the parties shall use "End User" to refer to the retail, dial tone customer, whereas "PSAP End User" may refer to the PSAP.

(43) On April 3, 2009, both parties filed a conforming interconnection agreement pursuant to the arbitration award. The parties differ in their interpretations of the arbitration award in two sections of the agreement. These are sections 8.1 and 44.4.1. Section 8.1 was discussed and resolved in Finding 35, herein, as a result of the AT&T's rehearing of Issue 24. The disputed language in Section 44.4.1 is related to Issues 1(a) and 2(b) but was not specifically mentioned by AT&T in its application for rehearing. Rather, each party explained its rationale for its version of the language for Section 44.4.1. in filings related to the conforming interconnection agreement. Upon review of each party's proposed language for Section 44.4.1, the Commission finds that AT&T's language more closely tracks the original language proposed by the parties with necessary modifications and specificity to conform it to the arbitration award for Issues 1(a) and 2(b). Therefore, the Commission directs the parties to include AT&T's proposed language for Section 44.4.1 in the final interconnection agreement.

It is, therefore,

ORDERED, That the application for rehearing filed by AT&T is granted in part and denied in part in accordance with the findings of this entry on rehearing. It is, further,

ORDERED, That the parties file within 15 days a complete executed interconnection agreement that is consistent with the findings and conclusions in Paragraphs (35) and (43) of this entry on rehearing. It is, further,

ORDERED, That copies of this entry on rehearing be served upon all parties, counsel, and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

LJD/CK/LS/MT/vrm

Entered in the Journal
JUN 17 2009

Reneé J. Jenkins
Secretary

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-1187, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina	)))))	RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 13, 2008

BEFORE: Commissioner Lorinzo L. Joyner, Presiding, Chairman Edward S. Finley, Jr., and Commissioner William T. Culpepper, III

APPEARANCES:

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BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission (the Commission) pursuant to Section 251 and Section 252 of the Telecommunications Act of 1996 (the Act) and North Carolina General Statute 62-110(f1).

On December 21, 2007, Intrado Communications Inc. (Intrado) filed a Petition for Arbitration of an Interconnection Agreement (or ICA) with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina (AT&T). Intrado also moved that the deadline for the filing of prefiled testimony be extended by 40 days. On December 27, 2007, Intrado filed a Motion for Admission *Pro Hac Vice* for Chérie R. Kiser, Angela F. Collins, and Rebecca Ballesteros.

By Order dated December 28, 2007, the Commission extended the deadline for the filing of prefiled direct testimony by Intrado to January 30, 2008, prefiled rebuttal testimony by AT&T to March 11, 2008, and prefiled rebuttal testimony of Intrado to March 21, 2008.

On January 3, 2008, the Commission granted the Motion for Admission *Pro Hac Vice* for Chérie R. Kiser, Angela F. Collins, and Rebecca Ballesteros.

On January 15, 2008, AT&T filed a Response to the Petition for Arbitration and a Motion for Abeyance. On January 23, 2008, Intrado filed an Opposition to AT&T's Motion for Abeyance. On January 28, 2008, AT&T filed a Response to Intrado's

Opposition to Motion for Abeyance. On January 29, 2008, the Commission issued an *Order of Abeyance* to allow the parties to negotiate in good faith in order to resolve or clarify issues before the Commission. The Commission also modified the dates for the filing of testimony previously established in the December 28, 2007 Order.

On February 7, 2008, Intrado filed a copy of a *Finding and Order* issued by the Public Utilities Commission of Ohio for judicial notice by the Commission.

On March 20, 2008, Intrado filed a Motion to extend the deadline for the filing of direct and rebuttal testimony, which was granted by Order of the Commission on March 25, 2008. On April 24, 2008, Intrado prefiled the testimony of Thomas W. Hicks, Cynthia Clugy, and Carey F. Spence-Lenss.

On April 24, 2008, Intrado filed a Motion to extend the deadline for the filing of the joint issues matrix and joint proposed procedural schedule; the Commission granted the Motion by order issued on April 25, 2008. On May 1, 2008, Intrado moved for an extension of time to file the joint issues matrix; the Commission granted the Motion by order dated May 2, 2008.

Also on May 2, 2008, Intrado and AT&T, having been unable to reach an agreement on the proposed procedural schedule, separately filed proposed procedural schedules. On May 8, 2008, the Commission issued an *Order Setting Procedural Schedule*. On May 9, 2008, Intrado and AT&T filed their Joint Issues Matrix.

On May 23, 2008, AT&T filed the prefiled rebuttal testimony and exhibits of Patricia Pellerin and Jason Constable.

On June 3, 2008, Intrado filed the rebuttal testimony and exhibits of Thomas W. Hicks, Cynthia Clugy, John R. Melcher, and Carey F. Spence-Lenss.

On June 24, 2008, the Public Staff filed a Notice of Participation and Request for Service of Filings.

On July 1, 2008, Intrado and AT&T filed a Revised Joint Issues Matrix.

On July 15, 2008, AT&T filed a Motion to Admit J. Phillip Carver to Practice before the Commission; the Commission granted the Motion by order dated July 18, 2008.

On July 25, 2008, the Public Staff moved that the Commission issue an order requiring Intrado and AT&T to file a second revised joint issues matrix in order to reflect the parties' positions if the Commission adopted either the 9-state template interconnection agreement (9-state template) or the 13-state template interconnection agreement (13-state template) as the starting point in this proceeding. The Commission granted the Public Staff's Motion by Order dated July 28, 2008. On August 6, 2008, Intrado and AT&T filed a Second Revised Joint Issues Matrix.

Also on August 6, 2008, Intrado and AT&T filed orders of witnesses and estimates of cross-examination time. The Public Staff filed an estimate of cross-examination time on August 6, 2008.

The evidentiary hearing was held as scheduled on August 13, 2008.

On September 26, 2008, Mr. Craig Whittington, 911 and Special Projects Coordinator for the Guilford Metro 911, filed a letter with the Commission in this docket. Mr. Whittington stated that "the citizens of not just Greensboro and Guilford County, but all across North Carolina need a more robust emergency 911 system that serves all callers and competition among and of network service providers will ensure that the people of North Carolina are receiving the very best 911 and most cost efficient 911 network service support possible." Mr. Whittington stated that he personally supports open 911 competition in North Carolina.

After receiving an extension of time, on October 10, 2008, Intrado, AT&T, and the Public Staff filed their Post-Hearing Briefs and/or Proposed Orders in this matter.

On December 8, 2008, Intrado filed as Supplemental Authority a copy of a decision by the Indiana Regulatory Utilities Commission.

On December 10, 2008, AT&T filed as Supplemental Authority a copy of a decision by the Florida Public Service Commission.

On January 9, 2009, Intrado filed as Supplemental Authority a copy of its Motion for Reconsideration filed with the Florida Public Service Commission and a copy of AT&T's response to the Motion for Reconsideration filed in Florida.

On March 5, 2009, Intrado filed as Supplemental Authority a decision issued by the Ohio Public Utilities Commission on March 4, 2009 in its Intrado/AT&T Ohio arbitration proceeding.

On March 6, 2009, AT&T filed as Supplemental Authority: (1) the Florida Public Service Commission Staff's February 19, 2009 recommendation on Intrado's Motion for Reconsideration; (2) the Florida Public Service Commission's March 3, 2009 vote sheet approving Staff's recommendation that Intrado's Motion for Reconsideration be denied; and (3) the Proposed Arbitration Decision in the Illinois Commerce Commission's docket established to consider the identical relief sought by Intrado in the instant docket.

On March 9, 2009, Intrado filed additional Supplemental Authority. Specifically, Intrado noted that the Proposed Arbitration Decision from the Illinois Commerce Commission filed by AT&T in this docket on March 6, 2009 is a recommended administrative law judge decision that remains subject to review and revision by the full Illinois Commerce Commission. Intrado filed a copy of its written exceptions and reply exceptions filed with the Illinois Commerce Commission. Intrado noted that a final

decision from the full Illinois Commerce Commission is expected either March 17 or March 25, 2009.

On March 17, 2009, AT&T filed a Notice of Supplemental Authority which included two recent orders by state commissions, including: (1) an order by the Florida Public Service Commission denying Intrado's Motion for Reconsideration; and (2) the Illinois Commerce Commission's Arbitration Decision finding that Intrado is not entitled to interconnect with AT&T Illinois under Section 251.

A glossary of the acronyms referenced in this *Order* is attached as Appendix A.

Based on the foregoing and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Intrado seeks to provide competitive 911/E911 service to public safety answering points (PSAPs) and other public safety agencies in North Carolina.

2. The services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.

3. The ICA should contain rates in instances when AT&T is the 911 service provider to the Public Safety Answering Point (PSAP) and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

4. AT&T's 9-state template is not the appropriate starting point for negotiations. The 13-state template is the appropriate starting point for negotiations for the parties in this proceeding. Based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

5. The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to competing local provider (CLP) trunking obligations in the 9-state region.

6. AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center. The primary selective router should be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

7. The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

8. AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T.

9. The parties may negotiate and establish multiple POIs, or different POIs for different types of services.

10. AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the Federal Communication Commission (FCC) rules.

11. The Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations, if agreed upon.

12. The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other incumbent local exchange companies (ILECs) in North Carolina. In addition, automatic number identification (ANI) and automatic location identification (ALI) information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

13. Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

14. The ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

15. It is not appropriate to include Intrado's proposed language in Section 3.4.3 of Appendix 911 concerning the interoperability of ALI. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

16. The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

17. The parties should modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, Switched Access Traffic in the General Terms and Conditions (GTC) section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, the Appendix Intercarrier Compensation (IC) and Appendix ITR should retain the references to "wireline" and "dialtone" service.

18. Language specifying the actions to be taken to remove misrouted Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix C of the parties' ICA. Also, the blocking of switched access traffic should not be included in the ICA as an option.

19. The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

20. Matrix Issue No. 18 concerning the term of the ICA and notification for a successor ICA has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

21. Matrix Issue No. 20 concerning the appropriate terms and conditions regarding billing and invoicing audits has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 20.

22. Matrix Issue No. 22 concerning Intrado's ability to assign the ICA to an affiliated entity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 22.

23. Matrix Issue No. 23 concerning individual case basis pricing for specific administrative activities has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 23.

24. AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

25. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

26. Matrix Issue No. 25 concerning late payments has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 25.

27. Reciprocal compensation should be rounded up to the next whole minute, and airline mileage should be rounded up to the next whole mile.

28. AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 concerning non-recurring charges is appropriate and should be adopted for inclusion in the interconnection agreement.

29. Matrix Issue No. 33 concerning providing unbundled network elements (UNEs) at parity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 33.

30. It is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix concerning non-standard collocation requests from the 13-state template without the additional language proposed by Intrado.

31. Matrix Issue No. 35 concerning references to applicable law has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

32. If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

ISSUE NO. 1 - MATRIX ISSUE NO. 1(a): What service(s) does Intrado currently provide or intend to provide in North Carolina?

ISSUE NO. 2 – MATRIX ISSUE NO. 1(b): Of the services identified in Issue No. 1(a), which, if any, is AT&T required to offer interconnection under Section 251(c) of the Act?

POSITIONS OF PARTIES

INTRADO: Intrado's 911/E911 service to North Carolina PSAPs falls within the definition of "telephone exchange service" pursuant to the Act. Intrado is therefore entitled to interconnect with AT&T pursuant to Section 251(c) for the purpose of providing 911/E911 services to North Carolina PSAPs.

AT&T: The emergency service that Intrado intends to provide does not comply with the definition of "telephone exchange service" contained in the Act. Intrado therefore is not entitled to an interconnection agreement pursuant to Section 251. Hence, Intrado's petition should be denied in its entirety.

PUBLIC STAFF: Intrado intends to provide telephone exchange service to PSAPs and other public safety agencies in North Carolina. AT&T is required to offer interconnection under Section 251(c) of the Act to Intrado for telephone exchange service to the PSAPs and other public safety agencies in North Carolina and any other telephone exchange service or exchange access Intrado may offer.

DISCUSSION

Since Matrix Issue Nos. 1(a) and 1(b) are closely intertwined, the Commission will consider them together. Taken as one, they represent the threshold question in this docket of whether Intrado is entitled to interconnection from AT&T under the Act. If the answer to Matrix Issue No. 1(b) is negative, then the arbitration cannot proceed; but if the answer is positive, then the arbitration should proceed.

Strictly speaking, Matrix Issue No. 1(a) simply poses the question of what services Intrado provides or intends to provide. There was no substantial difference among the parties as to what those services were. Where the parties differ is the legal significance of these services for the purposes of allowing the interconnection of those services.

According to Intrado, it intends to provide a competitive 911/E911 service similar to the "telephone exchange communications service" or "Business Exchange Service" currently offered by AT&T to PSAPs in North Carolina in its retail tariff. Intrado noted that AT&T's own 911 tariff described its E911 service offering as a telephone exchange communications service. Intrado also said it intends to provide in the future a so-called Intelligent Emergency Network to allow it to provide automatic retrieval and delivery of information directly to PSAPs and other government agencies. Intrado represented that its network was designed to interoperate with existing legacy PSAP equipment but allows for much more capability once the PSAP migrates to newer technologies. Intrado emphatically asserted that the competitive 911/E911 services it intended to offer are telephone exchange services.

On cross-examination, Intrado witness Spence-Lenss agreed that the service Intrado intends to provide is limited to aggregating emergency 911 calls at Intrado's selective router and then routing those calls to PSAPs, and it is not Intrado's intention to serve the end-users who place the 911 calls. AT&T argued that Intrado's arrangement contemplates that the calls will always flow in only one direction, a view reinforced by Intrado witness Spence-Lenss' statement that Intrado's 911 trunks were to be one-way trunks. AT&T noted that Intrado witness Spence-Lenss had testified that Intrado does not contend that the service it will provide constitutes an exchange access service. Thus, AT&T identified the only question as being whether the service constitutes a telephone exchange service.

47 U.S.C. 153(47) defines telephone exchange service as follows:

> TELEPHONE EXCHANGE SERVICE—The term "telephone exchange service" means (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 telecommunications service.

AT&T contended that Intrado did not address part (A) in the presentation of its evidence; and that, in any event, Intrado could not meet the "within a telephone exchange" language of part (A) because wire centers and PSAP municipal boundaries do not mesh up. Furthermore, Intrado's proposed service does not allow for two-way traffic as required by part (B). This latter part is the nub of AT&T's argument.

This is a case of first impression in North Carolina. There is no clear precedent from the FCC or the courts on the precise question of whether interconnection for the purpose of exchanging 911/E911 traffic constitutes telephone exchange service or exchange access service pursuant to Section 251(c)(2)(A) of the Act.[1] Two relatively recent decisions by state utility commissions reached differing conclusions on the matter.[2] Earlier decisions found generally in Intrado's favor.[3] As is common with the

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[1] Section 251(c)(2)(A) of the Act provides that the ILEC must interconnect "for the transmission and routing of telephone exchange service and exchange access."

[2] For example, the Florida Public Service Commission (FPSC), *In Re: Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Docket No. 070736-TP, Order No. PSC-08-0798-FOF-TP, Final Order (Issued December 3, 2008) ruled that Intrado's proposed service did not meet the definition of "telephone exchange service" under 47 U.S.C. 153(47) (at page 5). Intrado filed a Motion for Reconsideration on December 18, 2008. The FPSC affirmed that decision on February 19, 2009. The Indiana Regulatory Commission, *In the Matter of the Complaint of Communications Venture Corporation d/b/a Indigital Telecom Against Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems Concerning the Refusal of Verizon to Allow Connection of Indigital's Wireless Enhanced 911 Telephone System Serving Public Safety Answering Points and Indigital's Request for the Indiana Utilities Regulatory Commission to Order the Connection Under Reasonable Terms, Conditions and Compensation,* Final Order, Cause No. 43277 (Approved November 20, 2008) found that a private, commercial agreement between Verizon and Indigital Telecom was an interconnection agreement subject to Section 252 requirements and that the agreement "contains precisely the types of information typically contained in 47 U.S.C. 252 agreements: selective routing of traffic, purchase of trunks, port charges and terms of compensation among others." (at p. 9). Also, see *Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Case No. 08-545, issued February 13, 2009, Proposed Arbitration Order (Intrado's proposed services fall under neither 47 U.S.C. 153(47)(A) or (B)).

introduction of new types of services — in this instance, *competitive* emergency services — decision-making bodies have struggled in their efforts to properly classify them. While the Act was passed only a little over a decade ago, this is a lifetime in the further development and evolution of telecommunications services. The Commission must therefore reach a conclusion based on its own best judgment of the law.

In the arbitration AT&T argued that, since Intrado was proposing to use one-way trunking, Intrado could not provide the two-way traffic required by 47 U.S.C. 153(47)(B). However, the first thing that should be noted about 47 U.S.C. 153(47) is that it is written in the disjunctive—that is, if either part (A) or part (B) of the definition is satisfied, then such service is a "telephone exchange service." While the provisions of 47 U.S.C. 153(47) are less than perfectly lucid, at least on first reading, the parts can be understood by breaking them down in the following manner. Under Part (A) a "telephone exchange service" must (1) furnish subscribers intercommunicating service, (2) be within a telephone exchange or within a connected system of telephone exchanges within the same exchange areas, and (3) be covered by an exchange service charge. Alternatively, a "telephone exchange service" under Part (B) must be (1) a comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof), (2) originate and terminate a telecommunications service, and (3) provide subscribers the ability to intercommunicate. The common feature of these two Parts is "intercommunication," either explicitly as in (A) or implicitly by reference to "comparable service" and "originate and terminate" as in (B). "Intercommunication" is not separately defined in the Act, nor is it exactly a term of art. The FCC in the *Advanced Services Order* stated, somewhat unhelpfully for our immediate purposes, that the requirement is satisfied "as long as it provides customers with the capability of intercommunicating with other subscribers."[4] More to the point, however, the *Webster's New World Dictionary,* Second College Edition (1972), defines "intercommunicate" simply as "to communicate with *or to* each other or one another." (Emphasis added). This definition implies that an

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[3] See, for example, California Decision No. 01-09-048, *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,* Opinion Affirming Final Arbitrator's Report and Approving Interconnection Agreement (C.P.U.C., September 20, 2001) (agreeing with Arbitrator that SCC Communications Corporation, now Intrado, was providing "telecommunications services" and its services meet the definition of "telephone exchange service" by enabling subscribers to intercommunicate with a telephone exchange.). See, also, Ohio Case No. 07-119-TP-ACE, *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio,* Finding and Order (Ohio P.U.C., February 5, 2008), Para. 7. (The Ohio P.U.C. created a separate category of "competitive emergency services telecommunications carriers," to which it said Intrado belonged. Although not discussing 47 U.S.C. 153(47) directly, the Ohio PUC found that "Intrado is a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the 1996 Act," although "its telephone exchange activities are restricted in scope and, thus, do not extend to the level of a CLEC." Ohio reinforced its conclusion that Intrado's proposed service qualified as telephone exchange service under both 47 U.S.C. 153(47)(A) and (B) in its Arbitration Award in Case No. 07-1280-TP-ARB (issued March 4, 2009) (*Ohio Arbitration Award*).

[4] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 385,* Para. 17 (1999) (*Advanced Telecommunications Capability Order*).

intercommunication can include a situation in which one person delivers a message to another even if the other person does not or cannot reply.

In construing 47 U.S.C. 153(47), it is important to note that the FCC has been expansive in its definition of telephone exchange services. In the *Advanced Telecommunications Capability Order,* it has found that telephone exchange service is not only traditional voice telephony, but also includes "non-traditional means of communicating information within a local area." Also, in the *Advanced Telecommunications Capability Order,* Para. 21, the FCC found that even if "the transmission is a data transmission rather than a voice transmission . . . such transmissions nevertheless constitute telephone exchange service." Notably, the FCC has also found in the *DA Call Completion Order* that telephone exchange service included call-completion services offered by competing directory assistance providers.[5] In that case, the FCC engaged in an analysis of 47 U.S.C. 153(47)(A) and (B). With respect to 47 U.S.C. 153(47)(A), the FCC stated that "the call-completion service offered by many competing DA [directory assistance] providers constitutes intercommunication because it permits a community of interconnected customers to make calls to one another in the manner prescribed by the statute." (*Id.*, Para. 17) Thus, while noting that a DA provider's offer of call completion was not "traditional provision of telephone exchange service through the provision of dial tone," the FCC reasoned that it permitted "intercommunication" within the meaning of 47 U.S.C. 153(47)(A). (*Id.*, Para. 18) The FCC also agreed that call completion met the requirements of 47 U.S.C. 153(47)(B) because it allowed the "calling party the ability 'through the system of switches, transmission equipment, or other facilities (or combination thereof)' to originate and terminate a telecommunications service." (*Id.*, Para. 20) The FCC observed that 47 U.S.C. 153(47)(B) was added to "ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but including non-traditional means of communications within a local calling area."

Moreover, the FCC has even gone so far as to require local exchange companies "to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act." The FCC continued: "We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions...."[6] These pronouncements suggest strongly that the language 47 U.S.C 153(47) should be given a liberal interpretation that furthers the purpose of telecommunications competition.

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[5] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended,* 16 FCC Rcd 2736 (2001).

[6] *E911 Requirements for Internet Protocol (IP)-Enabled Service Providers,* 20 FCC Rcd 10245, Para. 38 (2005). See also *id.*, n. 128; and 47 U.S.C. 271(c)(2)(B)(vii)(I) (requiring Bell Operating Companies to provide nondiscriminatory access to 911 and E911 service to other telecommunications carriers)

The Commission also notes with approval the reasoning set forth in the *Ohio Arbitration Award.* In that Order, the Ohio PUC found that Intrado's 911 service involved intercommunication, albeit limited, but noted that 47 U.S.C. 153(47)(A) "does not quantify intercommunication. It only requires the existence of intercommunication." (at 15) Furthermore, it rejected AT&T's argument that exchange boundaries must be coterminous with ILEC exchange boundaries. "PSAPs must have a service that takes into account the location of fire, police, and other emergency service providers within the county that it serves. Although the reach of a particular 911 service may not coincide with the boundaries of ILEC exchanges, the service does have geographical limitations that are generally consistent with a community of interest."[7] Turning to the question of whether Intrado's service also falls under 47 U.S.C. 153(47) (B), which requires that a carrier both originate and terminate calls, the Ohio PUC noted that "as with 'intercommunicating', the statute does not quantify 'originate'." (at 16) The Ohio PUC thus concluded that the capability of a PSAP to call another PSAP and engage in two-way communications with 911 callers satisfies the call origination and termination requirement. We find the Ohio PUC's reasoning and analysis to be persuasive. Thus, for the reasons stated by the Ohio PUC, we, too, reject the arguments made by AT&T that Intrado's proposed service does not constitute telephone exchange service.

Lastly, it should be noted that AT&T witness Pellerin admitted on cross-examination that AT&T's own E911 tariff described its offering as a "telephone communications service", a classification that Intrado argued is comparable if not identical to telephone exchange service. As for one-way traffic, witness Pellerin also admitted that AT&T had entered into an interconnection agreement with a *one-way* paging company that regarded one-way paging as local traffic. AT&T has attempted to argue that these "examples" have simply been misclassifications or mistakes on AT&T's part and should not affect the construction of the definition of "telephone exchange service" in 47 U.S.C. 153(47) in this proceeding. We disagree. In our opinion, it is highly relevant and instructive that, at a point when AT&T was not anticipating this docket, AT&T itself has treated 911/E911 service or other services with similar characteristics as telephone exchange services. AT&T's previous behavior, combined with the expansive way the FCC has interpreted related matters, suggests that the better interpretation of 47 U.S.C. 153(47)(A) and (B) is that competitive 911/E911 services, such as those to be offered by Intrado, are included in those definitions[8]. In any event, the provision is written in the disjunctive, so satisfaction of (A) **or** (B) is sufficient to satisfy the statute.

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[7] The Ohio PUC also noted that Commercial Mobile Radio Service (CMRS) providers enter into Section 251 agreements even though they provide service in areas not coterminous with ILEC exchange boundaries. (at 16)

[8] AT&T's objection that Intrado could not comply with the "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange" language because wire centers do not necessarily mesh up with municipal boundaries is not particularly persuasive. It fails to take into account the existence of extended area service (EAS), not to mention extended local calling areas (ELCA) or the fact that competing local providers are not formally bound to adopt the ILECs' local exchange boundaries for themselves.

Accordingly, the Commission concludes that Intrado intends to provide telephone exchange service as defined in both 47 U.S.C. 153(47)(A) and (B) to PSAPs and other public safety agencies in North Carolina. As such, it is not required to offer additional services for it to be deemed to offer telephone exchange service. Intrado is therefore a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the Act.

CONCLUSIONS

With respect to Matrix Issue No. 1(a), the Commission concludes that Intrado seeks to provide competitive 911/E911 services to PSAPs and other public safety agencies in North Carolina.

With respect to Matrix Issue No. 1(b), the Commission concludes that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

ISSUE NO. 3 – MATRIX ISSUE NO. 1(c): Of the services identified in Matrix Issue No. 1(a), for which, if any should rates appear in the ICA?

ISSUE NO. 4 - MATRIX ISSUE NO. 1(d): For those services identified in Matrix Issue No. 1(c), what are the appropriate rates?

POSITIONS OF PARTIES

INTRADO: The rates proposed by Intrado to facilitate AT&T's connection to Intrado's network are reasonable and should be included in the parties' ICA. Intrado should not be subject to rates developed outside of the Section 251/252 process.

AT&T: If Intrado is entitled to a Section 251 agreement, the appropriate rates are those proposed by AT&T, which should be applied on a reciprocal basis.

PUBLIC STAFF: The ICA should contain rates in instances in which AT&T is the 911 service provider to the PSAP and those in which Intrado is the 911 service provider to the PSAP. When Intrado and AT&T each serve a different PSAP and transfer calls between themselves, the ICA need not contain rates for this direct trunking interconnection.

DISCUSSION

These issues were addressed by Intrado witnesses Spence-Lenss and Hicks and by AT&T witness Pellerin.

Intrado contended that the ICA with AT&T should include a pricing appendix that sets forth the prices to be charged by AT&T for services, functions, and facilities to be purchased in connection with the parties' interconnection arrangements in North Carolina. It also proposed rates for AT&T to pay to interconnect with Intrado.

In AT&T witness Pellerin's discussion of the sub-parts of Matrix Issue No. 1, she set forth three different rate scenarios that would arise together with AT&T's position as to how the services would be priced under each scenario. The three scenarios are:

1. When AT&T is the 911 service provider to the PSAP.

2. When Intrado is the 911 service provider to the PSAP.

3. When Intrado and AT&T each serve a different PSAP and transfer calls between each other.

With respect to the first scenario, AT&T has agreed to include terms and conditions for such interconnection and any related Section 251 rates in the ICA unless Intrado chooses to obtain facilities through AT&T's access tariff.

With respect to the second and third scenarios, AT&T contended that it is not required by Section 251(c) of the Act to offer those arrangements, although it is willing to negotiate a commercial agreement with Intrado to do so. If the Commission nevertheless requires AT&T to offer terms and conditions for these two scenarios, AT&T has proposed sections in Appendix 911. AT&T does not believe that rates to be paid to Intrado by AT&T should be included in the ICA.

The Commission believes that there is no dispute as to Scenario 1 in which AT&T has agreed to include terms and conditions for such interconnection and any related Section 251 rates in the ICA unless Intrado chooses to obtain facilities through AT&T's access tariff.

As for Scenario 2, Intrado is the 911 service provider to the PSAP, and thus AT&T would be required to seek interconnection with Intrado for the completion of AT&T's customers' emergency service calls to the PSAP. This is simply the reverse of Scenario 1. Here AT&T's interconnection with Intrado would be pursuant to Section 251(a).

Scenario 3, where an AT&T PSAP and an Intrado PSAP wish to be able to transfer calls between one another, involves trunks between a PSAP served by an AT&T selective router and a PSAP served by an Intrado selective router, in which case the public switched network would not be involved in the transfer of these calls. This creates a mixed situation, in which AT&T's interconnection would arise from Section 251(a) in the case of AT&T-to-Intrado and from Section 251(c) in the case of Intrado-to-AT&T.

There is a division of authority as to the outer limits of matters on which incumbents are obliged to negotiate and state commissions are to rule. The Commission notes that the more restrictive view is that incumbent carriers must negotiate only as to issues arising under Sections 251(b) and (c) *See*, e.g., *MCI Telecommunications Corporation v. BellSouth Telecommunications*, 298 F.3d 1269 (Eleventh Circuit, July 26, 2002) (unlimited issues contrary to scheme and text of statute, which lists only a limited number of issues incumbents must negotiate).[9] The broader view is that, where parties have voluntarily included in negotiations issues other than those pertaining to duties required of an incumbent, such issues can be decided through compulsory arbitration under Section 252(b)(1). *See*, e.g., *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (Fifth Circuit, November 21, 2003) (jurisdiction of PUC not limited by terms of Sections 251(b) and (c) but by the actions of the parties in voluntary negotiations). In the instant case, the parties have voluntarily negotiated as to all three scenarios, and the Commission will arbitrate them accordingly.

While the Commission has concluded that it has the authority to arbitrate as to all three scenarios, and it is clear that rates arising under Section 251(c) must be included in the ICA, it is less clear whether the rates arising under Section 251(a) must also be included in the ICA. However, since the parties have presented these issues for our decision and we have the authority to arbitrate the issues, it would be administratively efficient for the parties to include Section 251(a) rates in the ICA.

As to the question of the appropriate rates, the Commission notes that, while the overall record in this docket regarding this issue is relatively sparse, Intrado did concisely set forth its general position on the matter in the August 6, 2008 Revised Joint Issues Matrix. Intrado's Matrix Issue No. 1(d) position statement referred back to language in its position statement concerning Matrix Issue No. 1(c) in pertinent part as follows:

> Intrado Comm's interconnection agreement with AT&T should include the pricing appendix typically approved by the Commission for AT&T North Carolina interconnection agreements that sets forth the prices to be charged by AT&T for services, functions and facilities to be purchased in connection with the Parties' interconnection arrangements in North Carolina.

Intrado qualified this statement with reference to proposed rates for AT&T's interconnection to Intrado's network, such as port termination charges, when Intrado has been designated as the 911/E911 service provider. Intrado stated that its charges would apply to any carrier seeking to connect to Intrado's network (therefore not being "commercial agreements") and represented that the "charges proposed by Intrado

[9] Interestingly, the Eleventh Circuit also held in this case that the specific provision requested by MCI also fell within Section 252(b)(4)(C), which provides that the state commission must resolve an issue if resolution is necessary to implement the terms of the agreement under Section 252(c).

Comm are similar to the [rates] imposed by AT&T for interconnection to AT&T's network."

AT&T responded that Intrado's rates were actually those of a "commercial agreement" and that AT&T should not have to pay Intrado commercial rates for interconnection while Intrado enjoys TELRIC rates from AT&T. AT&T urged, as a general matter, that Intrado's ICA rates to AT&T should not exceed AT&T's ICA rates to Intrado for reciprocal services. Furthermore, parties should only charge for services provided.

The Public Staff did not discuss the question of rates to be charged but confined its discussion to what services ought to be includable in the ICA under the various scenarios.

Given these representations by Intrado and AT&T in the Revised Joint Issues Matrix and the paucity of other evidence in the record, the Commission can only conclude that there is no disagreement as to the application of AT&T's rates involving Intrado's interconnection with AT&T but that there is a disagreement where AT&T interconnects with Intrado. The pertinent question at this point is what standard should apply to such rates.

It is perhaps inevitable that, as the Act enters its thirteenth year and competitive entry reaches further than the "garden variety" CLP-to-ILEC arrangement, the Commission would be faced with a novel situation. After all, the common situation is that the requesting carrier seeks to interconnect with the ILEC but not *vice versa*. Section 252 of the Act does not directly address ILEC-to-CLP interconnection arising out of Section 251(a). In the absence of such guidance, the Commission believes that the more general guide in such situations is one of "reasonableness" within the context of due recognition of the rights and obligations of each party.

In practical terms, Intrado's main concern appears to be centered on rates for access ports. Intrado noted in its Proposed Order that the Ohio PUC had recently determined that Intrado's rates for access ports (or "termination") on its network were "reasonable" and "not beyond the range of other companies." Intrado also observed that it was under no obligation to limit its rates to those charged by AT&T or comply with the other standards of the Act relating to rates. AT&T, as noted before, objected to being subject to what is viewed as commercial rates, noted that its rates were subject to TELRIC constraints, and urged that its rates be accepted as reciprocally applicable to both parties.

It is axiomatic that AT&T is subject to TELRIC rates. These rates have been validated and are acceptable to Intrado for Intrado-to-AT&T interconnection. By contrast, Intrado is not subject to TELRIC rates under the Act. Thus, the Commission has no basis in the record, other than Intrado's assertions and its citation to the Ohio PUC, to find that its proposed rates are in fact more reasonable than those of AT&T.

It may well be that the parties are not far apart in arriving at rates for AT&T-to-Intrado interconnection. The Commission therefore concludes that good cause exists to ask AT&T and Intrado to resume negotiations on this matter and to include any agreement in the Composite Agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

As for the rates pertaining to Scenario 1 and that part of Scenario 3 pertaining to Intrado-to-AT&T interconnection, these arise under Section 251(c) and shall be the proposed AT&T rates.

CONCLUSIONS

The Commission concludes that the ICA should contain rates in instances when AT&T is the 911 service provider to the PSAP and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of Scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

ISSUE NO. 5 – MATRIX ISSUE NO. 2: Is AT&T's 9-state template interconnection agreement the appropriate starting point for negotiations? If not, what is?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should use the 13-state template they have already negotiated and revised. Intrado asserted that AT&T has offered no valid reason for not using that agreement in North Carolina. Intrado maintained that AT&T's refusal is even more egregious given its development of the 22-state template[10], which contains many of the 13-state provisions at issue between the parties. Intrado opined that there is no need for the parties to renegotiate language they have already resolved in their Ohio negotiations.

AT&T: AT&T asserted that its 9-state template was specifically designed for use in the 9-state (former BellSouth) territory, including North Carolina. AT&T maintained that, in contrast, the 13-state template, which was designed for use in AT&T's 13-state (former SBC) territory, does not address the network configuration or systems in use in North Carolina. AT&T argued that the Commission should determine that the 9-state template is better suited for an interconnection agreement in North Carolina. AT&T finally noted that, in the alternative, the parties may mutually agree to utilize AT&T's 22-state

[10] The 22-state template was released by AT&T on July 1, 2008.

template, which was released in July 2008 and was also designed for use in North Carolina.

PUBLIC STAFF: The Public Staff stated that, as many of the outstanding issues appear in the 13-state template and not in the 9-state template, the 13-state template should be used as a basis for an interconnection agreement between the parties. The Public Staff recommended that, if the parties agree, the Commission should conclude that the parties may instead choose to use the 22-state template since it appears now to be the standard template for the combined BellSouth/SBC legacy regions.

DISCUSSION

Intrado witness Spence-Lenss stated in her rebuttal testimony that Intrado will accept state-specific requirements, which are typically delineated in state-specific appendices. Witness Spence-Lenss noted that, however, the general terms and conditions and the majority of technical issues should be the same regardless of jurisdiction.

Witness Spence-Lenss further noted that Intrado has asked AT&T on numerous occasions to identify those portions of the 13-state template that would need to be modified for use in North Carolina. Witness Spence-Lenss stated that, other than general assertions about operational support systems (OSS), pricing, performance standards, and UNEs, AT&T has not provided specific information to Intrado. Witness Spence-Lenss testified that any necessary modifications could easily be addressed through the inclusion of additional appendices to the already agreed-upon terms.

Witness Spence-Lenss stated that Intrado has reviewed the 9-state template, but that the review was not thorough and its initial revisions did not reflect the arrangements that Intrado needs to provide competitive 911 service offerings in North Carolina. She maintained that, ultimately, if the Commission orders the use of the 9-state template, Intrado would be left with an interconnection agreement that it did not have the opportunity to review, comment on, or negotiate, and that does not reflect the arrangements Intrado needs to offer competitive service to PSAPs in North Carolina. She argued that this is very much a substantive issue.

Intrado maintained in its Proposed Order that the Commission should find that the parties must utilize the interconnection agreement template that the parties have spent a significant time reviewing, negotiating, and revising in connection with their Ohio negotiations. Intrado noted that the parties have already negotiated and reached agreement on many of the outstanding issues before the Commission and asserted that AT&T has provided no valid reason for not continuing to use that set of documents in North Carolina. Intrado argued that it has no obligation to negotiate an interconnection agreement based on the templates produced by AT&T.

Intrado asserted that AT&T has recognized the benefit of system-wide uniformity in other proceedings. Intrado maintained that, despite Intrado's repeated requests,

AT&T has provided no reason, technical infeasibility or otherwise, for not using the documents the parties have negotiated and agreed to use in Ohio. Intrado stated that it sees no reason for the parties to negotiate new generic provisions for use in North Carolina when the parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. Intrado opined that this approach is practical and will ensure that consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible.

Intrado maintained that similar (and in some cases exact) language to that agreed-upon by the parties is contained in AT&T's new 22-state template. Intrado asserted that, given the similarities between the 13-state template and the 22-state template, AT&T should not have any issue using the interconnection agreement language already reviewed and revised by the parties in North Carolina, especially when neither the 9-state template nor the 13-state template is available on AT&T's website since its release of the 22-state template.

Intrado recommended that the Commission find that the parties should utilize the set of interconnection documents previously negotiated in connection with the parties' Ohio arbitration proceeding and that Intrado is not required to utilize AT&T's 9-state template as the starting point for negotiations.

Intrado stated in its Post-Hearing Brief that it requested a 22-state template from AT&T on at least three different occasions prior to filing its arbitration petition. Intrado further noted that, based on its very cursory review, it appears that some of the provisions at issue between the parties from the 13-state template are contained in the 22-state template. Intrado noted that, for example, it appears that the language in dispute under Matrix Issue Nos. 14(b), 21, 22, 31, 32, and 33 is contained nearly verbatim in the 22-state agreement. Intrado asserted that the 22-state template appears to be based on the 13-state template with the necessary modifications, revisions, and additions made to accommodate the former BellSouth region. Intrado noted that, although the 22-state template appears to have incorporated much of the 13-state template, Intrado's proposed language for inclusion in its North Carolina interconnection agreement with AT&T is the result of negotiated revisions to the 13-state template. Intrado stated that the parties have engaged in negotiations based on the 13-state template and exchanged proposed revisions to that template, which are the subject of this arbitration.

AT&T witness Pellerin stated in her rebuttal testimony that a Commission decision to utilize the 13-state template would require significant and time-consuming analysis of that template to identify language that must be changed for North Carolina – which would result in additional, but not yet identified, issues requiring arbitration. Witness Pellerin asserted that, additionally, the 13-state template is not the agreement that the parties started negotiating from in North Carolina, so it is not appropriate as a basis for this arbitration.

During cross-examination, witness Pellerin stated that AT&T invited Intrado to discuss or negotiate using the 9-state template. She also noted that Intrado later stated it was not going to look at the 9-state template. Witness Pellerin testified that she never participated in negotiations on the 9-state template, however, that such negotiations took place and that Intrado provided redlines to the 9-state template in October 2007. Witness Pellerin noted that Intrado then filed its arbitration petition using the 13-state template.

Witness Pellerin stated that AT&T invited Intrado to examine and engage in discussions with AT&T on the recent 22-state template, which Intrado did not do.

AT&T asserted in its Proposed Order that it advocates for use as a template agreement the 9-state template that it routinely makes available in North Carolina and that is adapted specifically for use in the 9-state region, including North Carolina. AT&T maintained that the 9-state template reflects the appropriate terms and conditions and network architecture for services AT&T offers in the 9-state region and accommodates the unique, state-specific legal and regulatory requirements, network, technical systems, operational systems, OSS, and policies for the former BellSouth region, including North Carolina.

AT&T argued that Intrado proposes to use the 13-state template, which was designed for use in the 13 AT&T states outside of the former BellSouth region, in this proceeding. AT&T maintained that the 13-state template has always been used in those 13 states and that no Commission has ever ordered the use of the 13-state template in any of the nine Southeast states. AT&T stated that the 13-state template has not been the basis for a voluntarily negotiated agreement between AT&T and any CLP in the 9-state Southeast region. AT&T noted that AT&T witness Pellerin testified that the 13-state template was designed for CLP interconnection agreements in AT&T's 13-state territory and does not accommodate the particular characteristics present in North Carolina.

AT&T maintained that it seems logical that a template specifically designed for use in North Carolina would be the better template. AT&T recommended that the Commission not order the use of a template agreement designed for use elsewhere in the absence of some compelling reason to do so, especially since Intrado has not offered any such reason. AT&T noted that Intrado witness Spence-Lenss, in her prefiled direct testimony, stated that Intrado desires a single agreement for the entire area served by AT&T; however, AT&T argued, Intrado offered no indication as to why it believes its desire for a single agreement should necessarily mandate the use of the 13-state template, rather than the 9-state template.

AT&T further noted that it has provided standard offerings and capabilities for the portions of the agreement that are most likely to apply to Intrado. AT&T stated that, specifically, it has negotiated with Intrado appendices identified as Appendix 911 and Appendix 911 NIM, which contain virtually all of the terms and conditions that relate specifically to the functionality Intrado seeks for the services it will provide to PSAPs.

AT&T asserted that, thus, it is offering a single set of uniform contractual provisions that relate to what Intrado will actually utilize from the interconnection agreement. AT&T noted that this means that the entire subject dispute is over what to use as the boiler plate in the agreement, i.e., the general terms and conditions and appendices unrelated to 911 services, most of which are unlikely to ever be used by Intrado. AT&T argued that, given this, it is difficult to understand why Intrado objects so strongly to using the 9-state template.

AT&T maintained that, even though the 9-state template was provided to Intrado almost a year ago, and the parties commenced and engaged in negotiations from this template, witness Spence-Lenss testified that Intrado has never conducted a thorough review of the agreement. AT&T asserted that, although Intrado obviously deems the 9-state template less suitable than the 13-state template, Intrado cites to no particular provision of the 9-state template it finds unsuitable.

AT&T argued that, in contrast, AT&T witness Pellerin testified specifically as to a number of ways in which the 13-state template would fail to properly function in the 9-state region. AT&T stated that some examples include:

- in the 13 state region, the parties have actual usage recordings from which to bill for non-911 traffic that the parties exchange. But in North Carolina, due to switch recording and billing limitations, non-911 traffic is billed based on percentage factors – an example would be 72% local and 28% toll. Parties apply these factors to a big bucket or buckets of minutes to create their intercarrier compensation bills;

- the way the trunk groups are defined and how traffic is routed is different between the states; and

- collocation is handled differently between the states.

AT&T noted that the fact that the 13-state template does not work in the 9-state region from an operational standpoint is not the only problem. AT&T asserted that also problematic is the fact that the use of the 13-state template would needlessly complicate both the agreement itself and the process of setting the terms of the agreement. AT&T stated that, in this regard, AT&T witness Pellerin testified that a decision that the parties must utilize the 13-state template in North Carolina would require several months or more to assess and would give rise to numerous additional issues that are, as yet, unidentified.

AT&T maintained that, to date, Intrado's request for the 13-state template has resulted in a number of disputed issues that are largely unrelated to the central legal and technical disputes between the parties. AT&T stated that many of the issues in this proceeding that remain unresolved relate specifically to disputes over language in the 13-state template that do not exist if the 9-state template is used. AT&T noted that, specifically, Matrix Issue Nos. 13(b), 15, 34(a), and 34(b) would become moot if the

Commission ordered the use of the 9-state template. AT&T maintained that use of the 9-state template would also avoid disputes over at least some of the language included in, and partially resolve, Matrix Issue Nos. 3, 4(c), 7(a), 10, 13(a), and 29(a).

AT&T noted that, finally, there are 11 issues in the proceeding that not only arise solely in the context of the 13-state template, but that have also been resolved in the context of that agreement during negotiations in Ohio; these issues are Matrix Issue Nos. 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33, and 35. AT&T stated that Intrado has requested that the Commission interject the negotiated language for these 11 issues into the 9-state template, even if the Commission selects the 9-state template rather than the 13-state template. AT&T recommended that the Commission decline to do so. AT&T argued that the 13-state template includes thousands of provisions, most of which are not in dispute. AT&T stated that these 11 issues pertain to language that was once in dispute, but has now been resolved; thus, these 11 issues currently have the exact same status as all of the other provisions in the 13-state template that were never in dispute. AT&T asserted that there is no reason for the Commission to treat these particular issues any differently from all of the other currently undisputed portions of the 13-state template. AT&T advocated that, instead, the Commission must make a decision to utilize either the 13-state template or the 9-state template. AT&T maintained that there is no basis to provide for special handling of the issues in the 13-state template that were once disputed, but are no longer in dispute.

AT&T further noted that it made its 22-state template available to CLPs on July 1, 2008 and that AT&T has agreed to utilize the 22-state template for Intrado's North Carolina interconnection agreement properly modified to reflect the outcome of issues presented for arbitration, as well as items previously resolved by the parties to the extent they are consistent with any technical, regulatory, and/or operational issues specific to the former BellSouth region. AT&T stated that it finds the 22-state template to be an acceptable alternative to the 9-state template provided both parties agree to its use.

AT&T recommended that the Commission order the use of the 9-state template and that, in the alternative, the parties may mutually agree to utilize AT&T's 22-state template. AT&T noted that acceptance of this recommendation would render moot Matrix Issue Nos. 13(b), 15, 34(a), and 34(b); portions of Matrix Issue Nos. 3, 4(c), 7(a), 10, 13(a), and 29(a) are effectively resolved as well. AT&T also recommended that the Commission decline to interject into the 9-state template the 11 issues resolved in Ohio for inclusion in the 13-state template. AT&T noted that this effectively resolves in favor of AT&T Matrix Issue Nos. 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33, and 35.

The Public Staff maintained in its Proposed Order that Intrado wants to use the 13-state template in North Carolina, on which it reached agreement with AT&T in Ohio, while AT&T wants to use its 9-state template, which it has used in negotiations in the former BellSouth region. The Public Staff noted that both parties contend that, if the Commission rules against them on this issue, it will take a substantial amount of time to

negotiate the subsequent interconnection agreement in order to adapt the template. The Public Staff stated that, on July 1, 2008, AT&T stopped offering the 9-state and 13-state templates and began offering a 22-state template. The Public Staff further stated that a template is merely a starting point for negotiations, the use of which can facilitate negotiations by establishing a framework for an interconnection agreement. The Public Staff asserted that the law does not require the use of a template at all or give either party the right to choose the template. The Public Staff stated that provisions can be added to, deleted from, or modified within the template and that Intrado and AT&T have negotiated many of these issues already in Ohio.

The Public Staff noted that AT&T has contended that a number of the issues raised by Intrado would need no resolution if the 9-state template is used because the issues do not arise in the context of the 9-state template. The Public Staff stated that, in the August 6, 2008 Joint Issues Matrix, Intrado contended that substitution of the 9-state template will not resolve the issues as contended by AT&T. The Public Staff asserted that, under Section 252(c) of the Act, the Commission is required to resolve each open issue set forth in the arbitration petition. The Public Staff stated that the issues raised by Intrado that AT&T contends would be settled by use of the 9-state template are valid and reasonable issues, and the Commission has the duty to resolve them. The Public Staff opined that many of the outstanding issues appear in the 13-state template and not in the 9-state template, and the Public Staff noted that many of these issues have been resolved in connection with the Ohio arbitration.

The Public Staff argued that, with the amount of time that has already been spent resolving issues pursuant to the 13-state template, the Commission should find that the 13-state template should be used as a basis for an interconnection agreement. The Public Staff further proposed that, if the parties agree, they should also be allowed to choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

After reviewing the record on this issue, the Commission finds that the main area of contention is whether the 9-state template is a better starting place for negotiations since it addresses the network configuration or systems in use in North Carolina or the 13-state template which the parties have already negotiated and revised. The Commission notes that it appears that the new 22-state template would satisfy the concerns of both AT&T and Intrado. AT&T has stated that the 22-state template was designed for use in North Carolina which resolves its concerns that the 13-state template was not designed for use in North Carolina. And, apparently, the 22-state template maintains the revisions from the 13-state template that Intrado is interested in preserving.

However, the Commission notes that the 22-state template was released in July 2008 and that the record in this proceeding is based on the use of the 9-state template or the 13-state template. In addition, the Commission agrees with the Public Staff that, under Section 252(c) of the Act, the Commission is required to resolve each

open issue set forth in the arbitration petition. The issues set forth in Intrado's arbitration petition are structured based on the 13-state template only, and not on the 22-state template.

The Commission agrees with Intrado and the Public Staff that Intrado does not have any obligation to negotiate an interconnection agreement based on the templates produced by AT&T. Further, the Commission agrees with the Public Staff that a template is merely a starting point for negotiations, the use of which can facilitate negotiations by establishing a framework for an interconnection agreement, and that the law does not require the use of a template or give either party the right to choose the template.

Based on the record in this proceeding, the Commission concludes that AT&T's 9-state template is not the appropriate starting point for negotiations. The Commission finds that use of the 13-state template is the appropriate starting point for negotiations for the parties in this proceeding due to the amount of time that has already been spent resolving issues pursuant to the 13-state template. Further, based on the recent release of the 22-state template, the Commission concludes that, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

CONCLUSIONS

The Commission, in its discretion, concludes: (1) that AT&T's 9-state template is not the appropriate starting point for negotiations; (2) that use of the 13-state template is the appropriate starting point for negotiations for the parties in this proceeding; and (3) that, based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

ISSUE NO. 6 – MATRIX ISSUE NO. 3: What trunking and traffic routing arrangements should be used for the exchange of traffic generally?

POSITIONS OF PARTIES

INTRADO: Intrado has proposed minor, clarifying revisions to AT&T's proposed language for Appendix 911 Section 9.1. AT&T objects to Intrado's revisions, but has not explained why. Intrado is not required to establish trunking to every tandem in a Local Access and Transport Area (LATA) or every originating office connected to a tandem as AT&T's proposed language requires. AT&T's Out-of-Exchange Appendix should not apply to 911/E911 traffic or inter-selective router traffic. Intrado has proposed language to clarify that the terms and conditions of that appendix do not apply to those types of traffic.

AT&T: In Appendix 911 Section 1.3, the Parties agree that approval is required from the E911 Customer for a Party to carry the customer's 911 traffic. AT&T's additional language properly captures the E911 Customer's ability to revoke its authorization. In Appendix 911 Section 9.1, AT&T proposes language which provides that the 911 Appendix applies to the provision of 911 service pursuant to Section 251. Intrado objects to this general language, but its reasons are unclear. Regarding non-911 traffic, in the 13-state ITR Section 4.2, Intrado has substituted the word "may" for "shall" where AT&T would ask a carrier to establish trunking to the correct tandem. (Similar language appears in 9-state Attachment 3 Interconnection.) Without a trunk group at these tandems, there is a possibility that there could be misrouted traffic or blocked calls. Intrado may never send public switched telephone network (PSTN) traffic anywhere, as it only wants to route 911 traffic, but the language AT&T proposes is important if it ever does (or if another CLP adopts Intrado's ICA). Intrado proposes language to exclude the exchange of 911 calls and inter-selective router (SR) calls from the Appendix Out-of-Exchange Traffic (OET). This language is unnecessary because the definition of out-of-exchange traffic in OET Section 1.4 already excludes 911 traffic.

PUBLIC STAFF: The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to CLP trunking obligations in the 9-state region.

DISCUSSION

Intrado stated that there is no justification for the inclusion of the addition made by AT&T in Appendix 911 Section 1.3 that a PSAP could revoke, condition, or modify its approval. Intrado asserted that carriers do not negotiate their ICAs based on customer approvals, but rather the services they want to market to the target customer base. Intrado stated that it needs to know that, if it markets call transfer capability to potential PSAP customers, its interconnection agreements will support selective router-to-selective router interconnection necessary to enable call transfers. Intrado contended that the language agreed to by both parties already ensures that PSAPs and E911 customers are part of the process, and there is no need for the additional language proposed by AT&T.

Intrado also argued that AT&T's language in Appendix ITR Section 4.2 requiring Intrado to establish trunking to each local tandem in a LATA, and in some cases trunking to each end office in a local exchange area, is unlawful. Intrado maintained that it is entitled to establish a single POI per LATA and is under no obligation to establish additional facilities beyond the POI.

AT&T disagreed with four contract provisions regarding general trunking that are unrelated to which carrier is providing service to the PSAP. In Appendix 911 1.3 AT&T proposed language that would permit an E911 customer to revoke the authorization of

either Party providing 911 service to the PSAP, if desired. AT&T stated that Intrado did not offer any support for its objection to AT&T's additional language.

AT&T stated that Intrado's proposed language revisions in Appendix 911 Section 9.1 reflect reciprocity in the provision of 911 services pursuant to Section 251 of the Act. AT&T stated that it acknowledges that it has certain obligations regarding access to 911 databases pursuant to Section 251, but it does not agree that Intrado's provision of 911 services is subject to Section 251. AT&T stated that its proposed language is general and not specifically tied to the provision of 911 services as an obligation under Section 251 of the Act. AT&T suggested that Intrado's position reflects reciprocity in the provision of 911 services pursuant Section 251 of the Act.

AT&T disagreed with Intrado's statement regarding non-911 traffic that it "is not required to establish trunking to every tandem in the LATA." AT&T contended that ITR Section 4.2 requires Intrado to establish a trunk group to each tandem where Intrado offers basic local exchange service. AT&T stated that, without a trunk group at tandems where Intrado offers local exchange service, there is a possibility for misrouted traffic or blocked calls.

Finally, AT&T noted that Intrado wanted to add language in OET Section 1.1 that was redundant to the definition of Out-of-Exchange Traffic in Appendix OET Section 1.4 which already excludes 911 traffic. AT&T commented that Intrado's proposed language to Appendix OET Section 1.1 to exclude the Parties exchange of 911/E911 service calls or the inter-selective router transfer of 911/E911 service calls was unnecessary.

The Public Staff's view was that the proposed language by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1, addressing the point at which the Parties agree that approval is required from the E911 customer for a party to carry the customer's 911 traffic is not needed in the agreement.

The Public Staff noted that Intrado had proposed to substitute the word "may" for "shall" where AT&T would be asking a carrier to establish end office and tandem trunking. The Public Staff stated that Intrado should not be required to establish trunking to every AT&T end office and tandem in a LATA. The Public Staff suggested that the parties should adapt the language in the agreement to clarify that Intrado is only required to establish trunking to the tandems and end offices that would be appropriate for a CLP operating in North Carolina.

The Public Staff also noted that Intrado wanted to add language to the definition of Out-of-Exchange Traffic in Appendix OET Section 1.1 to clarify that the OET Appendix does not apply to 911 traffic. The Public Staff observed that AT&T had argued that the language in the definition of Out-of-Exchange Traffic in Appendix OET Section 1.4 of the appendix already excludes 911 traffic. The Public Staff's view was that the additional language proposed by Intrado is necessary since the definition of OET does not clearly exclude 911 traffic.

After careful consideration, the Commission believes that the additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. From the Briefs, arguments and testimony of the witnesses, both Parties agree that approval is required from the E911 Customer for a Party to carry the customer's E911 traffic. Therefore, the additional language is not necessary in the agreement.

The Commission also believes that the clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted to clarify that Out-of-Exchange Traffic does not include 911/E911 traffic. The Commission is persuaded by Intrado's argument that the definition for Out-of-Exchange Traffic should explicitly state that 911 traffic is to be excluded.

The Commission further concludes that the language in Appendix ITR Section 4.2 should be adapted to conform to CLP trunking obligations in the 9-state region. Finally, the Commission concurs with the Public Staff that Intrado should not be required to establish trunking to every AT&T end office and tandem in a LATA. The Commission believes that the parties should adapt the language in the agreement to clarify that Intrado is only required to establish trunking to the tandems and end offices that would be appropriate for a CLP operating in North Carolina.

CONCLUSIONS

Accordingly, the Commission concludes that the additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 shall not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 shall be adopted. The language in Appendix ITR Section 4.2 shall be adapted to conform to CLP trunking obligations in the 9-state region.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

ISSUE NO. 7 – MATRIX ISSUE NO. 3(a): What trunking and traffic routing arrangements should be used for the exchange of traffic when Intrado is the designated E911/911 service provider?

POSITIONS OF PARTIES

INTRADO: When an area is served by more than one public safety agency (only one of which would be Intrado's customer), Intrado's language would require AT&T to implement "line attribute routing" to ensure that only traffic destined for Intrado's PSAP customer is delivered to Intrado. Where it is technically infeasible for AT&T to sort its end users 911 call traffic at the associated originating office and where an originating office serves customers both inside and outside of Intrado's network serving area, it is best for AT&T and Intrado to work cooperatively with the affected governmental 911 authority to determine which 911 provider is best suited to sort the 911 traffic and hand-off calls to the other 911 provider as appropriate.

AT&T: When Intrado is the designated 911/E911 service provider, there are two general scenarios that will be addressed: (1) AT&T will establish direct end office 911 trunk groups to the Intrado SR for wire centers that are not split between PSAP jurisdictions; and, (2) AT&T will establish SR to SR trunk groups for wire centers that are split between PSAP jurisdictions. Intrado's insistence that AT&T should re-engineer its network in a way that would severely compromise network reliability in order to reduce Intrado's cost of doing business should be rejected.

PUBLIC STAFF: AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center[11]. The primary selective router should be determined by the selective router assigned to the PSAP that serves the majority of access lines in the wire center.

DISCUSSION

Intrado stated that when a CLP's customers receive emergency services from PSAPs that are served by the ILEC 911/E911 network, it is necessary for the CLP's switch to be configured to select the appropriate direct and redundant trunk group to the 911 selective router connected to the PSAP that is to respond to the CLP's 911 caller, as determined by the location of the caller. Further, in conjunction with direct trunking, such routing may be accomplished by setting the appropriate line attributes in the central office line database for each line during the service provisioning and automated recent line change processes. Intrado contended that this is similar to the way in which line attributes are established when an end user pre-subscribes to a long distance provider. Intrado stated that it refers to this technique as "line attribute routing."

Intrado argued that AT&T's proposal to use a common trunk group for all 911/E911 service traffic destined for Intrado's network is inconsistent with National Emergency Number Association (NENA)[12] recommendations. Intrado stated that the use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities. Intrado also argued that industry recommendations call for identifiable end office trunk groups for default routing.

Intrado stated that direct trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E911 network, as evidenced by AT&T's use of direct trunking arrangements within its own network when it is the 911/E911 service provider. Intrado also stated that switching via AT&T's selective router is no longer necessary when Intrado is the designated provider, and inserting another stage

[11] A split wire center is a wire center where there are PSAPs served by both AT&T and Intrado. A wire center boundary follows the local loop cable footprint serving a specific geographic area and may or may not overlap municipal jurisdictions.

[12] NENA is a US non-profit organization promoting 911 as a standard emergency number, including technical support, public awareness, certifications programs, and legislative representation. Newton's Telecom Dictionary, 17th Edition, February 2001.

of switching in the call processing path introduces the possibility of additional points of failure.

According to Intrado, North Carolina public safety entities must have assurances that 911/E911 service traffic destined to their first responders will be treated equally. Intrado pointed out that Congress and the FCC recognized that there are numerous operational barriers faced by competitors which require that all aspects of local services be available to all competitors on an equal basis. Thus, Intrado stated that Congress and the FCC determined that equal access was absolutely necessary for competition in the local market to survive. Intrado suggested that the routing technique that if proposed, direct routing to the selective router in conjunction with the use of line attribute routing, is similar to the equal access concept.

Intrado contended that 911 calls of all citizens should be routed using the most reliable process available – direct trunking to the selective router serving the PSAP. Intrado argued that AT&T's refusal to utilize direct trunking when Intrado is the designated 911/E911 service provider means that some AT&T customers' 911 calls (i.e., those calling a PSAP served by Intrado) will be treated differently than other AT&T customers' 911 calls (i.e., those calling a PSAP served by AT&T). Intrado believed that AT&T customers 911 calls should be treated in the same manner – directly trunked from the end office to the selective router serving the PSAP – regardless of who is the service provider for the PSAP or county.

Intrado stated that it has demonstrated that the use of direct trunking in conjunction with line attribute routing is technically feasible and that similar processes are in use today for the routing of long distance calls. Intrado argued that since it has demonstrated that its proposal is technically feasible, the burden shifts to AT&T to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that specific and significant adverse impacts would result from Intrado's requested interconnection arrangement. Intrado maintained that AT&T has provided no demonstration that it is technically infeasible to utilize direct trunking and line attribute routing. Intrado stated that AT&T claimed that implementation of Intrado's proposal would impose some costs on AT&T, but when questioned, AT&T could not demonstrate the source of such information.

Intrado contended that AT&T's comparison of line attribute routing to "class marking" is inappropriate. Intrado stated that class marking involved data which is not validated by the Master Street Address Guide (MSAG)[13], while line attribute routing is based upon integration of MSAG data into AT&T's service provisioning. Intrado acknowledged that class marking earned a bad reputation for requiring manual procedures, which could lead to misapplication of tax codes and misrouted calls. Intrado stated that it is not requesting AT&T to use this type of class marking in providing 911/E911 call processing.

[13] MSAG is a database containing the mapping of street addresses to Emergency Service Numbers within a given community. Newton's Telecom Dictionary, 17th Edition, February 2001.

Intrado acknowledged that its direct trunking and line attribute routing proposal would require AT&T to validate its end users' address information against the MSAG or AT&T's regional street address guide to ensure that an end user's 911/E911 calls are directed to the appropriate PSAP. Intrado stated that this would involve putting an attribute on the end user's line so that when the end user calls 911, the switch knows where to send the call. Intrado opined that this is no different than presubscription when the end user designates the long distance carrier to which its 1+ calls are to be directed.

Intrado also added that in actuality, the use of direct trunking in conjunction with line attribute routing would not require AT&T to create any new information because the process is based on obtaining the caller's street address information from the MSAG. Further, AT&T would use the MSAG information to establish the "attribute" to direct the 911 call to the appropriate PSAP which covers the caller's address.

AT&T noted Intrado's recommendation that the system that is currently used for routing should be replaced by the use of call sorting at the originating caller's switch. According to AT&T, this sorting is sometimes referred to as class marking and, at other times, as line attribute routing. AT&T contended that, by any name, Intrado has proposed a costly and completely unproven process.

AT&T stated that it has agreed to establish a direct trunk group to the Intrado selective router without providing any additional switching in a wire center in which all customers are served by a PSAP to which Intrado provides emergency services. In this instance, AT&T stated there is no need to use class marking or the current system of selective routing.

According to AT&T, the dispute in this issue is actually quite limited and relates to how AT&T end user 911 traffic will be routed when an AT&T end office serves PSAPs that are provided service by both AT&T and Intrado. AT&T's witness Constable explained that since PSAPs typically follow municipal or other governmental jurisdictions, a wire center may encompass the territory of two or more PSAPs that are served by different carriers (e.g., one by AT&T and one by Intrado), and thus are "split." AT&T maintained that it proposes to utilize selective routing to handle these situations for Intrado precisely as it currently does for other carriers.

Specifically, AT&T explained that a determination is made as to which carrier provides service to the PSAP that serves the majority of the customers in the wire center. The selective router of this carrier is designated as the Primary Selective Router. The selective router of the other carrier is designated as the Secondary Selective Router. Then, as witness Constable testified, "all calls from split wire centers would route to the Primary Selective Router, where a determination would be made via the Selective Router Database to route the call directly to a PSAP or deliver the call to the Secondary Selective Router for delivery to a PSAP." AT&T reiterated that the designation of a router as primary or secondary would be based entirely on which carrier serves the PSAP that provides 911 service to the majority of the end users in the wire center.

AT&T pointed out that Intrado witness Hicks testified that AT&T does not currently use line attribute routing in providing 911 service and that line attribute routing is superior to the method AT&T currently uses to route 911 calls. AT&T stated that, although witness Hicks cited nothing to support his view, the fact that Intrado advocates that the current system be discarded in favor of a new superior system creates an insurmountable legal impediment to Intrado's position. Specifically, AT&T noted that Section 251(c)(2)(C) requires the ILEC to offer interconnection that is at least equal in quality to that provided . . . to itself, or to any subsidiary, affiliate or any other party to which the carrier provides interconnection. AT&T stated that this is precisely what it has done when it offered to Intrado the same routing that it offers to other carriers.

Beyond the legal impediment to Intrado's argument, AT&T further contended that there is no record support for Intrado's assertion that line attribute routing is superior to the current system, or for that matter, even reliable. AT&T stated that there is no evidence to support any conclusion as to how line attribute routing would function in the real world setting.

AT&T also stated that the evidence established that the cost and time to put this untested system into place is prohibitive. AT&T pointed out that Intrado's witness Hicks agreed that the Commission should consider, at a minimum, "technical feasibility, cost and time to implement," in determining the reasonableness of a proposal. Further, AT&T noted that witness Hicks testified that he had no idea of the time and cost to AT&T to implement line attribute routing, but stated that the cost to implement line attribute routing is to be borne by AT&T.

AT&T witness Constable testified that AT&T has never used line attribute routing for 911 service. However, based on comparable projects, he believed that line attribute routing would cost between two to three million dollars and require 12 to 18 months to implement. Witness Constable also stated that class marking is time consuming, manual, and inefficient in addition to requiring costly changes at the wire center level and on each individual line.

AT&T witness Constable explained that class marking would require special, complicated switch software translations to be built into every split wire center switch for individual end users and PSAPs served within a split wire center office. Witness Constable also stated that each line would require a service order to be issued to change the properties associated with the individual customer's service to class mark that line to the correct PSAP. AT&T believed that the Intrado proposal should be rejected because there was no evidence to support a conclusion that it should be required to bear the substantial implementation costs of putting a new system in place.

AT&T also stated that Issue No. 7 - Matrix Issue No. 3(a) involves two side issues. First, Intrado takes the position that if the Commission does not adopt class marking, then it should simply make Intrado's selective router the Primary Router in all cases. In response, AT&T argued that Intrado criticizes selective routing on the one hand because it introduces additional switching and the theoretical possibility of

technical problems. Yet, Intrado's alternative request is that it should always be the primary SR, even if it serves a PSAP that will handle only a small percent of the calls in any given area. AT&T noted that witness Constable testified on this point that Intrado's proposed language would give Intrado an unnecessary competitive advantage by creating additional charges that must be borne by PSAPs. AT&T also stated that there was no logical reason why Intrado should always be the primary SR. Second, AT&T believed that Intrado seeks to interject into Issue No. 7 - Matrix Issue No. 3(a) a pricing sub-issue that really has nothing to do with the routing question that is the proper subject of Issue No. 7 - Matrix Issue No. 3(a), and which is inappropriate for inclusion in the arbitration of a Section 251 Agreement. AT&T explained that under the current system the carrier designated as the primary SR bills the PSAP that ultimately receives the call for selective router functionality. AT&T stated that Intrado claims that this routing function does not constitute a service to the PSAP, and therefore, AT&T should not be allowed to charge the PSAP. AT&T argued that Intrado's position must be rejected because the purpose of this arbitration is to arrive at a set of rates, terms, and conditions for interconnection between the parties, not to determine what a third party should or should not be charged for services that are provided by either party. According to AT&T a Section 251/252 arbitration between an ILEC and a CLP is not the proper proceeding to determine what either carrier may charge third party customers that are not a party to the proceeding.

The Public Staff stated that this issue involves 911 calls delivered from an AT&T end office to a PSAP served by Intrado in a wire center split among multiple PSAP providers. The Public Staff stated that it agreed with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in split wire centers. Additionally, the Public Staff agreed with AT&T's method of determining the primary selective router, i.e., the router assigned to the PSAP that serves the majority of access lines in the wire center. The Public Staff stated that it does not support Intrado's recommendation to require AT&T to convert its systems to provide line attribute routing. The Public Staff commented that, based on the cost and reliability issues associated with line attribute routing, it does not believe that Intrado's request is reasonable or necessary. The Public Staff maintained that primary/secondary routing can provide Intrado with the access to 911 traffic needed to provide service to prospective PSAP customers. Further the Public Staff believed that AT&T's proposal also allows it to meet its federal obligations under Section 251(c)(2)(d) of the Act to provide interconnection at least equal in quality to that provided to itself or another ILEC.

The Public Staff also recommended that the Commission should decline to find that AT&T should not charge a PSAP served by Intrado in the event that AT&T serves the primary routing function. Likewise, if Intrado provides the primary routing function in a split wire center, and transfers calls to an AT&T secondary router, the Public Staff recommended that the Commission should decline to find that Intrado should not charge the PSAP for its primary routing service. The Public Staff believed that costs incurred by a third-party PSAP should not be addressed in the ICA.

The Commission agrees with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in split wire centers. In reaching this conclusion, the Commission notes that Intrado has requested that the Commission order AT&T to provide it with a routing arrangement with direct trunking and line attribute routing. Intrado argued that the arrangement that it desires is technically feasible and superior to the methods now employed by AT&T. Intrado thus advocated that the current system be discarded in favor of this new superior system and that, to the extent that any costs are involved in implementing this proposal, those costs are to be borne by AT&T. Intrado relied upon Section 251(c)(2)(C) which requires that AT&T provide Intrado with an interconnection agreement which is equal in quality to the arrangement that it provides to itself to support its request. AT&T countered that AT&T does not currently use line attribute routing in providing 911 service and that line attribute routing is, at least in the opinion of Intrado, superior to the method AT&T currently uses to route 911 calls. AT&T argued further that Intrado's advocacy that the current system be discarded in favor of a new "superior" system creates an insurmountable legal impediment to Intrado's position because Section 251(c)(2) only requires AT&T "to offer interconnection that is at least equal in quality to that provided . . . to itself, or to any subsidiary, affiliate or any other party to which the carrier provides interconnection."

The FCC has stated unequivocally that Section 251(c)(2) requires an ILEC to offer a competitor interconnection that is "at least" equal in quality to that enjoyed by the ILEC itself. The FCC states further that: "This is a minimum requirement. Moreover, to the extent a carrier requests interconnection of superior or lesser quality than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible. Requiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality. We conclude that, *as long as the new entrants compensate incumbent LECs for the economic costs of higher quality interconnection,* competition will be promoted." *First Report and Order*, Para. 225. Emphasis added.

Assuming arguendo that Intrado has made the case that the superior interconnection agreement that it has proposed is technically feasible for AT&T to implement, Intrado is entitled to and AT&T must provide the arrangement to Intrado, provided Intrado is willing to compensate AT&T for the economic costs of the higher quality interconnection. The evidence presented in this proceeding, to the extent that there was any evidence provided, indicates that the costs to AT&T to implement Intrado's novel intelligent Emergency Network ® arrangement would be substantial and that Intrado is not willing to bear any of the financial burden. Under these circumstances, we cannot and shall not require AT&T to accommodate Intrado's interconnection request to reprogram its central offices to permit line attribute routing.

In addition, the Commission agrees with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in

split wire centers. The Commission declines to require AT&T to convert its systems to provide line attribute routing. The Commission believes that line attribute routing is a more error prone way of sorting 911 traffic, while requiring an unknown, but certainly sizable, cost and time commitment for AT&T to implement. These costs could also recur if a PSAP decides to switch to another provider from Intrado.

Based on the cost and reliability issues associated with line attribute routing, the Commission does not believe that Intrado's request is reasonable or necessary. Primary/secondary routing can provide Intrado with the access to 911 traffic it needs to provide service to prospective PSAP customers. AT&T's proposal also allows it to meet its federal obligations under Section 251(c) of the Act to provide interconnection at least equal in quality to that provided to itself or another ILEC.

Finally, the Commission agrees with the Public Staff and AT&T that the proper method of determining the primary selective router, i.e., the router assigned to the PSAP that serves the majority of access lines in the wire center, is appropriate. Further, the Commission is of the opinion that either AT&T or Intrado can charge the PSAP(s) for primary or secondary selective routing functions. The Commission believes that a Section 251/252 arbitration between an ILEC and a CLP is not the proper proceeding to determine what either carrier may charge third party customers that are not a party to the proceeding and that costs incurred by a third-party PSAP should not be addressed in the ICA.

CONCLUSIONS

The Commission concludes that AT&T's proposed primary/secondary routing system shall be used to handle 911 traffic in a split wire center. The primary selective router shall be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

ISSUE NO. 8 – MATRIX ISSUE NO. 3(b): What trunking and traffic routing arrangements should be used for the exchange of traffic when AT&T is the designated E911/911 service provider?

POSITIONS OF PARTIES

INTRADO: AT&T's proposed language would require Intrado to provide interconnection trunking at each AT&T selective router in areas in which Intrado provides local exchange service to end users. Intrado has revised this language to clarify that Intrado's only obligation when providing local exchange service to end users is to have its end users' 911 traffic delivered to each AT&T selective router. AT&T's language would require Intrado to provide its own trunking to those routers rather than use transport facilities provided by a third party. There is no requirement that Intrado self-provision trunking to each AT&T 911 selective router.

AT&T: When AT&T is the designated 911/E911 service provider, AT&T expects to offer reciprocal trunk arrangements necessary to provide reliable 911/E911 service to Intrado's end user local exchange customers.

PUBLIC STAFF: The language in the agreement should require Intrado to establish trunking to the appropriate POI on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

DISCUSSION

Intrado stated that it does not dispute that it is required to deliver 911/E911 service calls to AT&T's selective routers when AT&T is the designated 911/E911 service provider. Intrado disagreed with AT&T's language that would require Intrado to provide interconnection trunking at each AT&T selective router. Intrado maintained that it has the right to either self-provision trunking or obtain trunking from a third party.

AT&T characterized Intrado's proposed language on this issue as Intrado merely needing to arrange to deliver 911 traffic. AT&T stated that this general language ignores the fact that facilities and trunks are different. AT&T's proposal does not require Intrado to provide the "facilities" to each AT&T selective router, only that it provides interconnection trunks to the appropriate selective routers. AT&T maintained that the trunk arrangements should be reciprocal to what AT&T will provide its end user in accessing Intrado's PSAP customers.

The parties did not provide testimony addressing this issue. However, the Public Staff agrees with Intrado's position that it should be allowed to set up its network and to reach the POI on AT&T's network through a third party, if it desires to do so. The agreement language should clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party.

For the reasons stated by the Public Staff, the Commission believes that the agreement language should clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party. The Commission acknowledges AT&T's comment that facilities and trunk arrangements are different. However, the Commission directs Intrado and AT&T to provide reciprocal trunk group arrangements, to include facilities, to insure the reliable exchange of traffic between their networks. The Commission also agrees with the Public Staff that Intrado has the right to either self-provision trunking or obtain trunking from a third party. The Commission believes that Intrado has the right to construct or lease facilities to reach the agreed upon POI on AT&T's network, and that Intrado is also responsible for any required trunking equipment necessary to connect to the AT&T selective router.

CONCLUSIONS

The Commission concludes that the ICA shall clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8, 9, 10, AND 11

ISSUE NOS. 9-12 – MATRIX ISSUE NOS. 4, 4(a), 4(b), AND 4(c): What terms and conditions should govern points of interconnection (POIs) generally, and when: (a) Intrado Communications is the designated 911/E911 service provider; (b) when AT&T is the designated 911/E911 service provider; and (c) when a fiber mid-span meet is used?

POSITIONS OF PARTIES

INTRADO: For non-911 traffic, Intrado has the right to designate a single POI at any technically feasible location on AT&T's network. For 911/E911 traffic, when Intrado has been selected as the designated provider of 911/E911 services, AT&T must interconnect to a minimum of two geographically diverse POIs on Intrado's network, which would be Intrado's selective router/access ports. When AT&T has been designated as the 911/E911 service provider, Intrado will establish a POI on AT&T's network for the exchange of local exchange traffic and emergency calls. This point may be at AT&T's selective router/911 tandem or any mid-span meet point established by the parties. If the parties were to interconnect for the exchange of non-911 traffic using a mid-span meet point, Intrado's proposed language would require the parties to negotiate a point at which one carrier's responsibility for service ends and the other carrier's begins and each party would pay its portion of the costs to reach the mid-span meet point.

AT&T: Federal law requires the POI to be established on the incumbent LEC's network. The POI shall be established within AT&T's network at the most economical and efficient location to provide service to a PSAP, which is at AT&T's Selective Router.

PUBLIC STAFF: AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network. The parties may negotiate and establish multiple POIs, or different POIs for different types of traffic, but indicating to the parties a specific POI for a particular type of service, i.e., 911 service, is outside the authority of the Commission. AT&T is not required to agree to an interconnection point on the network of Intrado, but may agree to interconnect at a point on Intrado's network as part of a negotiated settlement.

DISCUSSION

In this arbitration, the parties have propounded the following issues for response by the Commission. First, what terms and conditions should govern points of interconnection (POIs) generally? And, second, what terms and conditions should govern points of interconnection when: (a) Intrado is the designated 911/E911 service provider; (b) AT&T is the designated 911/E911 service provider; (c) when a fiber mid-span meet is used? To answer those questions, the Commission must determine our authority to determine the location of the POI.

In our decisions in *In re the Petition of Ellerbe Telephone Co. et al for Arbitration with Alltel Communications et al*, Docket Nos. P-21, Sub 71 et al, *Recommended Arbitration Order (RAO)*, issued on December 20, 2007, and *Order Ruling on Objections and Requiring the Filing of Composite Agreements (Objections to RAO),* issued on December 31, 2008, respectively, this Commission, on two occasions, struggled to discern the statutory authorization for locating the POI when the parties sought to interconnect with each other indirectly. Although the Parties to this proceeding had the benefit of the *RAO* prior to the filing of Post-Hearing Briefs and Proposed Orders and the Parties included and discussed the *RAO* in their analysis as they saw fit, none of the Parties had the benefit of the Commission's *Objections to RAO* prior to these filings. As a result, none of the Parties considered the issuance of the *Objections to RAO* in their Post-Hearing Briefs and Proposed Orders. Because we believe that both of these decisions are germane to the questions raised in this proceeding about the number and location of the POI, we will discuss each decision in detail.

In the *RAO*, a Commission Panel, with one Commissioner dissenting, decided that the POI must be located on the ILEC's network when the ILEC sought to interconnect with the CMRS Providers to deliver traffic to the CMRS Providers' customers. In the opinion of the Majority, the POI was required to be located on the ILEC's network even though the parties had agreed to interconnect indirectly through a third party tandem. The Panel Majority reasoned that, this Commission's prior decision in *In re Alltel, Docket No. P-118, Sub 130 (Alltel Order)*, held that when two carriers interconnect, either directly or indirectly, they must have a POI (i.e., a single point of interconnection at which traffic is exchanged between the two carriers' networks), and that that point of interconnection must be at a technically feasible point on the ILEC's network unless the two parties mutually agreed to do otherwise. In the Majority's opinion, this decision was mandated by Section 251(c)(2) and the FCC's regulations governing interconnection. The Dissenting Commissioner disagreed. He argued that clear federal authority held that, when an ILEC chooses to interconnect indirectly with a CLP through the use of a third party tandem, the interconnection was initiated pursuant to Section 251(a) rather than Section 251(c)(2). Because the parties had chosen to interconnect indirectly and the ILEC had chosen to exchange traffic in that manner, the Dissenting Commissioner asserted that there were two POIs for the exchange of traffic and that the POI was located on the CMRS Provider's network rather than the ILEC's network when the ILEC delivered the ILEC customer traffic to the CMRS Providers' networks for completion. The Dissent also reasoned that when the scenario was

reversed, i.e., when the CMRS Provider indirectly delivered its customers' traffic to the ILEC's network for termination through the same third party tandem, the POI was to be located on the ILEC's network.

On reconsideration, the Full Commission, by a four to two vote, affirmed the original panel decision that there was but one POI and that the POI was to be located on the ILEC's network even though the ILEC had chosen to deliver its customers' traffic to the CMRS Provider through the use of a third party tandem. See the *Objections to RAO.* Although the Majority affirmed the decision of the earlier panel, it declined to adopt the panel's reasoning that the decision regarding the location of the POI was mandated by 47 U.S.C. 251(c)(2). Instead, the Majority held that, since the request to interconnect was not initiated by the CMRS Providers, but, rather by the ILEC, 47 U.S.C. 251(c)(2) did not govern the location of the POI. In the Majority's opinion, the location and, indeed, the number of POI(s) was grounded in the Section 251(a) requirement which provides that each telecommunications carrier has a duty to interconnect either directly or indirectly with the facilities and equipment of other carriers when the interconnection was made at the behest of the ILEC. The Majority stated:

> The Commission continues to believe that, in these dockets, there should be only one POI and it should be located on the RLECs' network. Obviously, in the absence of reliance on Section 251(c)(2), the grounding for that conclusion must be found elsewhere. The Commission believes that such grounding can be found in Section 251(a)(1), which provides that "[e]ach telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." This, of course, was the provision that the *Atlas* court relied upon. Unlike the language of Section 251(c)(2), Section 251(a)(1) does not specify the number of POIs or where the POI or POIs should be located. *As a result, the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, would seem to provide the Commission with the discretion to determine how many POIs there should be and where they should be located.* As a result, the Commission will proceed to determine, on the basis of its sound discretion, the number and location of the POIs for purposes of the parties' interconnection agreements. *(emphasis added).*

Objections to RAO, pp.11-12.

The Majority thereafter concluded that, in the exercise of its sound discretion, and based upon the equities in the case, the POI should be located at a single location of the CMRS Providers choice on the ILEC's network. The Majority grounded its decision in the Commission's discretionary authority under Section 251(a) to determine both the location and number of POIs, rather than mandatory provisions contained in Section 251(c)(2) which, when interpreted by the FCC, directed that a single POI must be established on the ILEC network. Two Commissioners dissented from the decision.

It is noteworthy that neither the Dissenters in the *Objections to RAO,* nor the Dissenter in the *RAO,* based their objections to the decision on the invalidity of the single POI rule *per se*. Rather, their objections were primarily based upon the inapplicability of the single POI rule when the carriers agreed to indirectly interconnect. Indeed, there appears to be universal agreement that when a requesting CLP seeks to directly interconnect with an ILEC, the CLP has the option to choose a single, technically feasible, location within the ILEC's network upon which to interconnect and that the parties are bound by that choice, unless the parties agree to do otherwise.[14]

The Commission thus concludes that the following general principles can be gleaned from our prior decisions in the *RAO,* the *Objections to RAO,* the federal statutes and the pronouncements of the FCC. First, when a requesting CLP seeks to interconnect directly with an ILEC, the requesting CLP has the option to select a single POI within the ILEC network. Second, when a requesting CLP seeks to interconnect directly with an ILEC, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(b) or (c). The location of the POI is thus chosen pursuant to the mandates in Section 251(c)(2) in the first instance or, under the auspices of Section 252(a)[15] in the second. Third, when an ILEC requests interconnection with a CLP or any other carrier, either directly or indirectly, the interconnection is pursuant to Section 251(a). Again, under those circumstances, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(b) or (c). If, however, the parties cannot agree voluntarily upon either the location or number of POI, the Commission *may*, in its discretion, determine both the number and location(s) of the POI. With these general principles in mind, we now determine the issues presented by the parties regarding the number and locations of the POIs based upon the facts and, where necessary, the equities of this case.

Matrix Issue No. 4 - What terms and conditions should govern POIs generally?

Intrado asserted that, when AT&T is the designated 911/E911 service provider or for non-911 traffic, Intrado is entitled to interconnect at any location on AT&T's network. Intrado stated that it cannot agree to language that would undermine its right as the competitor to designate the location of the POI.

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[14] See Section 251(c)(2) of the Act. Further, in its Further Notice of Proposed Rulemaking about "Developing a Unified Intercarrier Compensation Regime," CC Docket 01-92 (Released March 3, 2005) (*Intercarrier Compensation NPRM*), the FCC wrote at Paragraph 87 that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carriers to connect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA."

[15] Section 252(a)(1) provides that "[u]pon receiving a request for interconnection, services, or network elements pursuant to Section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."

Intrado added that, for the exchange of basic telecommunications traffic, it is entitled to designate any technically feasible location within AT&T's network for the POI. As such, Intrado argued that it is not limited to AT&T's end office or tandem as AT&T's language requires.

Witness Constable testified that the POI issue arises when two telecommunications carriers interconnect their networks. He explained that in this situation, the facilities are physically connected, linking the two networks to one another. Therefore, the point at which this connecting or linking takes place is identified as the POI.

AT&T observed that the clear language of the Act establishes that the POI must be on AT&T's network. AT&T pointed out that Section 251(c)(2)(B) specifically provides that interconnection takes place "at any technically feasible place within the carrier's network." AT&T argued that Intrado does not address this clear language of the Act in any portion of its testimony, nor has it provided the Commission with a basis to find that this language does not apply.

The Public Staff stated that the authority governing this issue can be found in the FCC rules for interconnection in Part 51.305. That section provides, in part:

Part 51.305 Interconnection

(a) 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 Section 51.319.

The Public Staff noted that Intrado has argued that there should be multiple POIs, depending on which party is providing service to the PSAP. When the PSAP is a customer of Intrado, AT&T should establish two geographically diverse POIs on

Intrado's network; and, when AT&T provides service to the PSAP, Intrado will establish the POI on AT&T's network. The Public Staff further noted that, Intrado also offered as an alternative the possibility that the parties will agree on a meet point between the networks, with both parties responsible for getting their respective traffic to the meet point. According to Intrado, the proposed meet point method is similar to the way AT&T interconnects with other ILECs for the exchange of 911 traffic. Intrado would like to "mirror the type of interconnection arrangements that AT&T has used historically with other ILECs."

The Public Staff observed that AT&T proposes that the POI be established at AT&Ts selective router location(s), which follows the precedent established when the FCC determined that interconnection at the selective router was the proper interconnection point for wireless carriers. Also the Public Staff observed that AT&T believes that Intrado's proposal to interconnect in the manner AT&T does with other ILECs is not appropriate because Intrado is not an ILEC, and those type arrangements are not governed by the requirements for interconnection requested under Section 251.

The Public Staff concluded that neither Intrado nor AT&T can compel the other to use its favored interconnection arrangements. The Public Staff concluded that Intrado has the right to interconnect at a point on AT&T's network as described in FCC rules, specifically Part 51.305. While both parties may freely agree to choose any of these approaches, the Commission's authority is limited by the language in the FCC rules. The Public Staff stated that both parties should ensure the safety of the public in operating an efficient 911 system.

The Commission believes that, generally speaking, AT&T is obligated "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – at any technically feasible point within the carrier's network when Intrado requests to interconnect with AT&T."[16] The Commission further believes that AT&T is not obligated to choose a point of interconnection on Intrado's network. However, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Intrado stated that it was not aware of the contractual arrangements which AT&T may have had in the past with other carriers, although special negotiated facility arrangements were not at all uncommon between carriers for the exchange of traffic. However, as pointed out by the Public Staff, Intrado is entitled to interconnect with AT&T's network as described in FCC rules, specifically Part 51.305.

Additionally, the Commission believes that the parties should mutually agree on a POI which is technically feasible for the exchange of local exchange traffic and access traffic, as necessary.

[16] See Section 251(c)(2) of the Act.

CONCLUSIONS FOR MATRIX ISSUE NO. 4

In accord with the discussion set forth in the preamble to this issue, the Commission concludes that: (1) AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T; and, (2) the parties may agree to establish a single POI or multiple POIs at any location or number of locations without regard to the requirements of Section 251 (b) or (c).

Matrix Issue No. 4(a) - What terms and conditions should govern points of interconnection when Intrado is the designated 911/E911 service provider?

According to Intrado, in its rules to implement the Act, the FCC gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC. Intrado commented that the FCC found that Section 251(c)(2) gave competitors the right to interconnect on the ILEC's network rather than obligating competitors to transport traffic to less convenient or efficient points. Intrado reasoned that Section 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.

Intrado stated that, to provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, which protected competitors from ILEC demands to interconnect at multiple points on the ILEC network. The FCC found that the single point of interconnection rule benefits the competitor by permitting it to interconnect for delivery of its traffic at a single point on the ILEC's network. Further, while the single point of interconnection rule was available to competitors, the FCC expressly recognized competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor.

According to Intrado, the FCC concluded that these were intended to be minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection to offset the imbalance in bargaining power. Intrado added that the FCC determined that, for Section 251 purposes, if an ILEC provides interconnection to a competitor in a manner that is less efficient than the ILEC provides itself, the ILEC violates its duty to be just and reasonable under Section 251(c)(2)(D).

Intrado stated that AT&T apparently recognizes that the industry practice is that the POI for connecting to the 911/E911 network is at the selective router. Intrado stated that this is consistent with the FCC's finding that the cost allocation point for the exchange of 911/E911 traffic should be at the selective router. Intrado added that, the Ohio Public Utilities Commission also confirmed that the point of interconnection should be at the selective router of the 911/E911 network provider and that an ILEC sending

911/E911 traffic to Intrado is responsible for delivering its 911/E911 traffic to an Intrado selective router location.

AT&T routinely requires all competitive carriers serving end users in the AT&T geographic service area to bring their end users' 911 calls to the appropriate AT&T selective router serving the PSAP to which the 911 call is destined, even when those carriers have established a POI at a different location for all other local exchange telephone traffic. Intrado stated that it seeks interconnection arrangements with AT&T for the provision of 911/E911 services to PSAPs that are at parity with what AT&T provides itself and others when it is the designated 911/E911 service provider. Intrado suggested that AT&T has not demonstrated why the interconnection arrangements it proposes on CLPs when AT&T is the designated 911/E911service provider are not equally applicable when Intrado is the designated 911/E911 service provider.

Intrado further stated that when AT&T is not the 911/E911 service provider for a PSAP, AT&T takes its originating end users' 911 calls to a meet point established with an adjacent carrier or all the way to the adjacent carrier's selective router. Intrado added that while not privy to the un-filed agreements between AT&T and adjacent ILECs, Intrado seeks interconnection between its network and AT&T's network similar to what AT&T has implemented for itself and with other 911/E911 service providers in the State. Intrado stated that the existence of these arrangements demonstrates that such arrangements are the preferred method of interconnection for completing calls to the 911/E911 service provider and are technically feasible. Intrado argued that AT&T is required under Section 251(c)(2)(C) to make the same arrangement available to Intrado that it makes available to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

Intrado also noted that the FCC has determined that, if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. Intrado pointed out that AT&T has not made a showing that there are any reasons, based on interface or protocol standards, why the two networks would not successfully interconnect at a technically feasible point employing substantially similar facilities.

Intrado stated that it has requested AT&T to establish interconnection to a minimum of two geographically diverse POIs on Intrado's network for reliability and redundancy purposes, and to benefit public safety. Intrado stated that implementation of its proposal would ensure that 911 calls are diversely routed consistent with FCC recommendations. The public benefit of diversity and redundancy requested has been supported by the FCC's Network Reliability and Interoperability Council (NRIC), which found when all 911 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure, such as a cable cut. Intrado believes that its proposed language implements industry best practices for diversity and redundancy.

Intrado also pointed out that AT&T is not encumbered in providing multi-LATA 911 services. Thus, Intrado reasoned that there should likewise be no restrictions on AT&T's ability to carry 911 service destined for Intrado's network outside of a LATA. Intrado stated that, the FCC and federal district court overseeing the Modified Final Judgment recognized that many 911/E911 transmissions cross LATA boundaries.

Intrado explained that it plans to deploy at least two geographically diverse routers in the state at which AT&T, CLPs, and other carriers can interconnect with it to deliver 911 calls destined for Intrado's PSAP customers. Intrado suggested that AT&T's concern about the "impact" of Intrado's POI proposal on other carriers was misplaced. Intrado stated that, by connecting to any Intrado selective router, a carrier can reach any PSAP connected to Intrado's network.

Intrado commented that Section 253(b) of the Act gave the Commission authority to adopt 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. Intrado added that Section 253(b) gives the Commission broad regulatory authority to achieve these public interest objectives and Intrado's proposed physical architecture meet the objectives set forth in the Act.

AT&T stated that witness Constable testified that if Intrado does not interconnect at AT&T's selective router, then, under the language Intrado proposes, all carriers would be required to reroute their facilities from the selective router at which it currently interconnects to the location that Intrado chooses. This would, in turn, impose additional costs on these carriers and risk service interruptions for 911 traffic. AT&T stated that interconnections for the provision of 911 services are currently at AT&T's selective routers.

According to Intrado, when Intrado is the designated 911 provider, AT&T should interconnect on Intrado's network at Intrado's selective routers. However, witness Hicks also testified that it currently does not have any selective routers in North Carolina other than one that is being used for test purposes. As pointed out by AT&T, witness Hicks also testified that he does not know the location of the test selective router or whether it is in the location at which Intrado plans to permanently place a selective router. AT&T commented that, nevertheless, Intrado would expect AT&T to interconnect at both selective router locations, wherever these locations may ultimately be.

To illustrate its point, AT&T commented that, if an AT&T customer is in Asheville, and Intrado's customer (i.e., the PSAP) is in Asheville, Intrado should have no objection to having a local presence in the area in which it is providing service, such as AT&T does. AT&T suggested that the practical effect of Intrado having remotely located selective routers is that AT&T must bear the transport costs for Intrado to reach its various PSAP customers around the State. AT&T also pointed out that, under Intrado's proposal, all of the CLPs and ILECs would have to pay the costs to transport their customers' 911 calls to Intrado's selective routers. AT&T suggested that Intrado has

the option of reducing its costs by placing its equipment in the areas that it plans to serve in a location that is relatively close to AT&T's selective routers.

In the scenario presented in Issue 4(a), AT&T seeks to interconnect with Intrado to allow AT&T's customers to complete calls to the Intrado PSAP. This scenario is quite different from the traditional arrangement that exists in this state because Intrado will be performing the service that has traditionally been performed by ILECs such as AT&T. Additionally, this arrangement differs from the traditional approach because, in this instance, the request for interconnection originates with AT&T, the ILEC, instead of Intrado, the CLP. When the ILEC initiates a request to interconnect with the CLP's network, the Commission's authority to consider and implement the proposals made by the parties is governed by the authority that we derive from Section 251(a) rather than Section 251(c)(2). See *Objections to RAO*.[17]

In the case at bar, Intrado advanced various arguments in support of its contention that AT&T should be required to interconnect with Intrado on Intrado's network when Intrado served as the designated 911/E911 service provider. For instance, Intrado asserted that, in the AT&T-to-Intrado scenario here presented, AT&T should establish interconnection at a minimum of two geographically diverse POIs on Intrado's network for reliability and redundancy purposes, and to benefit public safety. Further, Intrado stated that implementation of its proposal would ensure that 911 calls are diversely routed consistent with FCC recommendations. Intrado argued that the public benefit of diversity and redundancy that it requested has been supported by the FCC's NRIC, when it found that, when all 911 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure, such as a cable cut. Intrado asserted that its proposed language implements industry best practices for diversity and redundancy and that Section 253(b) gives the Commission broad regulatory authority to

[17] See also, *Intrado Petition for Arbitration Order before the Ohio Public Utilities Commission*, Case No. 72-1216-TP-ARB, September 24, 2008 (*Ohio PUC Order*) where the Ohio Public Utilities Commission found that Section 251(c) was not applicable in a scenario where Intrado served as the designated 911/E911 service provider. The Ohio Public Utilities Commission stated: "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 Embraq's customer's 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." *Ohio PUC Order*. p. 8. As we noted in the *Objections to RAO*, "the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, ... provide[s] the Commission with the discretion to determine how many POIs there should be and where they should be located."

achieve the public interest objectives and the physical architecture needs that it has identified.

After carefully considering the arguments, evidence, and briefs presented by Intrado and AT&T, the Commission is not persuaded that AT&T should be required to establish interconnection at Intrado's selective routers at two geographically diverse locations on Intrado's network when Intrado serves as the designated 911/E911 service provider for the reasons generally advanced by AT&T. In particular, the Commission finds that it is unreasonable to expect AT&T to interconnect with Intrado at Intrado's selective router(s), which may be miles apart or, more specifically, removed from a particular AT&T exchange service area by LATA boundaries. Although the competitive marketplace is changing the geographic landscape of the traditional service exchange areas in which the ILECs were obligated to provide telecommunication services, to include 911 services, Intrado must not be allowed to make the ILECs and other telecommunication competitors incur operating expenses which are unreasonable or unwarranted because of Intrado's operating paradigm. Intrado's comments concerning how AT&T would have Intrado and other competitors connect with AT&T at AT&T's tandem switches, or at various other end offices, must be viewed in the context of practicality as to network design practices commonly used by service providers within the telecommunications industry.

Given the particular facts and equities presented in this proceeding, the Commission will not require AT&T to interconnect with Intrado's network at two *yet-to-be determined* locations anywhere within the state of North Carolina at the behest of Intrado. In reaching this conclusion, the Commission notes that the parties are free to choose to interconnect at a single point of interconnection, or at several different points of interconnection, as may be decided by the parties based upon the practice of basic network design characteristics. Further, we note that the parties are, for the most part, the best judges of the nature and needs, be it architecture or financial, of their individual businesses and networks. For these reasons, the Commission declines to order AT&T to interconnect with Intrado in the manner requested by Intrado when Intrado serves as the designated 911/E911 service provider. However, when Intrado is the designated 911/E911 service provider for a particular county and/or PSAP, AT&T should continue to practice accepted industry standards in providing emergency service coverage in the most responsible manner.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(A)

The Commission concludes that, the parties may negotiate and establish multiple POIs, or different POIs for different types of services, but, the Commission will not exercise its discretion, in this case, to dictate to the parties a specific POI for a particular type of service.

Matrix Issue No. 4(b) - What terms and conditions should govern points of interconnection when AT&T is the designated 911/E911 service provider ?

Intrado stated that when AT&T is the designated 911/E911 service provider or for non-911 traffic, Intrado is entitled to interconnect at any location on AT&T's network. Intrado argued that it cannot agree to language that would undermine its rights as the competitor to designate the location of the POI.

For 911 traffic, Intrado agrees that AT&T's selective router is the appropriate POI for Intrado's delivery of 911 traffic to AT&T when AT&T is the designated 911/E911 service provider. However, Intrado declared that AT&T refused to identify the selective router as the POI and requires all 911 calls destined for its PSAP customers to be delivered to the relevant selective router. Intrado stated that it agrees with AT&T that 911 calls should be delivered to the relevant selective router when that selective router is the POI for all 911 traffic. For non-911 traffic, Intrado opined that it can choose any technically feasible location within AT&T's network for the POI.

According to AT&T Intrado's position appears to be that, when AT&T provides 911 services, Intrado is willing to interconnect on AT&T's network. AT&T suggested that to the extent that this is the case, the parties appear to be in agreement. However, AT&T pointed out that Intrado witness Hicks testified that Intrado had the option of either interconnecting at AT&T's selective router/911 tandem or utilizing a mid-span meet point.

The Commission believes that it can only require that AT&T allow Intrado to interconnect at any technically feasible point on AT&T's network. This position is certainly well established and based on FCC directives. Intrado has the right to interconnect on AT&T's network, at a technically feasible point, and may further request additional points on interconnection, if desired. The Commission believes that, in most instances, the AT&T local tandem for local exchange traffic could serves a dual function as the 911 selective router location when AT&T is the designated 911 provider.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(B)

The Commission concludes that AT&T must allow Intrado to interconnect at any technically feasible point on AT&T's network. The parties may, however, mutually agree to establish multiple POIs, or different POIs for different types of services.

Matrix Issue No. 4(c) - What terms and conditions should govern points of interconnection (POIs) when a fiber mid-span meet is used?

Intrado stated that, if the parties decide to interconnect using a meet point, the meet point should be at a point between the parties' networks with both parties sharing the cost of the meet point arrangement. Intrado argued that AT&T's proposed language regarding meet point interconnection is not consistent with the FCC's requirements because it dictates the specific location of the meet point and does not address the

facilities AT&T is required to build to reach the meet point. Intrado claimed that AT&T utilizes meet point arrangements with other providers in North Carolina. Further, Intrado argued that meet point arrangements are technically feasible, and that Intrado has the right to obtain the same types of interconnection arrangements AT&T utilizes within its own network and with other carriers.

AT&T noted that Intrado claimed that it has the option of either interconnecting on AT&T's network at the selective router, an approach that AT&T obviously would agree with, or to require the use of a mid-span meet point. AT&T pointed out that Intrado does not identify a location for the meet point, but only contended that it has the right to negotiate for the use of such an arrangement. AT&T argued that the interconnection requirement provided for under Section 251(c)(2)(B) occurs on the ILEC's network. AT&T asserted that the meet point argument presented by Intrado should be disregarded under the law.

The Public Staff stated that Intrado offered as an alternative interconnection arrangement the use of a meet point between the networks, in which both parties are responsible for getting their respective traffic to the meet point. The Public Staff commented that Intrado stated that the proposed meet point method is similar to the way AT&T interconnects with other ILECs for the exchange of 911 traffic, and that Intrado would like to "mirror the type of interconnection arrangements that AT&T has used historically with other ILECs."

The Commission finds that, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Intrado stated that it was not aware of the contractual arrangements which AT&T may have had in the past with other carriers, although special negotiated facility arrangements were not at all uncommon between carriers for the exchange of traffic. However, as pointed out by the Public Staff, Intrado is entitled to interconnect with AT&T's network as described in the FCC rules, specifically Part 51.305.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(C)

The Commission finds that, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Further, the Commission finds that AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. However, the Commission also finds that Part 51.305 of the FCC rules does not provide guidance to the Commission as to the location of the POI when the parties decide to interconnect using the meet point. When the parties decide to interconnect through the use of a meet point and cannot agree upon the location, the Commission may, in its discretion, weigh the facts and the equities of a particular case to determine the terms and conditions governing the location of the POI when a fiber meet point interconnection is desired. In this particular case, however, the Commission,

in its discretion, will not mandate any language in the ICA regarding meet point, and will remind the parties that they are free to negotiate mutually agreeable meet point locations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

ISSUE NO. 13 – MATRIX ISSUE NO. 5: (a) Should specific terms and conditions be included in the ICA for inter-selective router trunking? If so, what are the appropriate terms and conditions? (b) Should specific terms and conditions be included in the ICA to support PSAP-to-PSAP call transfer with automatic location information (ALI)? If so, what are the appropriate terms and conditions?

POSITIONS OF PARTIES

INTRADO: The ICA serves as the framework for the interconnection and interoperability of competing local exchange networks. 911 is a local exchange network and end users (i.e. PSAPs) of the 911 network should be able to transfer 911 calls amongst themselves with full functionality regardless of who is the designated 911 service provider. In a competitive environment, a subscriber should be able to place calls to other subscribers without regard to who is the service provider. The best way to effectuate such seamless interoperability is to include provisions requiring inter-selective router trunk groups and PSAP-to-PSAP call transfer in the ICA.

AT&T: The best industry practice is for the parties to negotiate private agreements for such arrangements with the participation of PSAPs and other relevant government disaster agencies. Such agreements are necessary because it is the PSAP customer that determines whether a selective router is installed.

PUBLIC STAFF: The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. ANI and ALI information that was initially transmitted to the serving AT&T end office during the 911 call should be retained whenever the call is transferred between the parties' selective routers.

DISCUSSION

Intrado stated that the parties disagree as to whether a separate agreement with the PSAP is necessary prior to implementing inter-selective routing capabilities. Intrado commented that it strongly supported the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back-up routing, night transfer routing, call transfer routing, etc., with its designated 911 service provider. However, Intrado stated there is no need to include a provision in the interconnection agreement that requires the parties to obtain a separate, formal agreement with a county or PSAP as a prerequisite to deploying inter-selective router trunking. Intrado contended that the interconnection agreement should contain the framework for establishing the

interconnection and interoperability of the parties' networks to ensure inter-selective router capabilities can be provisioned once requested by a county or PSAP.

Intrado stated that inter-selective router trunking allows emergency calls to be transferred between selective routers and the PSAPs connected to those selective routers while retaining critical access to the caller's number and location information associated with the emergency call. Intrado suggested that establishment of inter-selective router trunking ensures that PSAPs are able to communicate with each other and more importantly, that misdirected calls can be quickly and efficiently routed to the appropriate PSAP.

Intrado commented that a second related issue on inter-selective trunking dealt with whether the parties were required to notify each other of changes in dial plans that support inter-selective router trunking. Intrado stated that dial plans are used to determine to which PSAP emergency calls should be routed based on the route number passed during the call transfer. Intrado stated that it proposed language that would require the parties to notify each other of any changes, additions, or modifications to 911-related call transfer dial plans. Intrado pointed out that Section 251(c)(5) of the Act requires ILECs to provide public notice of changes in their network that would affect the interoperability of facilities and networks.

AT&T commented that this issue involves the use of inter-selective routing to provide the ability for a PSAP to transfer a call directly to another PSAP. AT&T stated that, while not all PSAP customers order this service, PSAPs who do want these arrangements typically order them on a customized basis that varies from one PSAP to the next, and they order the arrangements directly from the service provider. Furthermore, PSAPs order precisely what they want and pay AT&T for what they order. AT&T witness Constable stated that Intrado's proposal would require AT&T to incur all of the costs to implement this capability, regardless of whether any PSAP requested it; yet neither the PSAP nor Intrado would compensate AT&T for any of its costs incurred to provide this feature.

AT&T argued that providing inter-selective routing does not involve interconnection at all and is, therefore, not proper for inclusion in an interconnection agreement. AT&T reiterated that the call transfer functionality is a feature that a PSAP orders to allow it to transfer a call to another PSAP. Intrado witness Constable testified that the engineering and implementation of call transfer must be designed and implemented in conjunction with a PSAP as well as any other relevant government agency. Unlike facility and trunking arrangements in a Section 251 interconnection agreement, these facilities and trunks would be deployed not to effectuate interconnection between AT&T and Intrado. Instead witness Constable stated that, "these facilities would be deployed to meet a specific request of the 911 customers, who are not parties to this agreement." AT&T commented that the purpose of a Section 251 interconnection agreement is to set the terms for interconnection between a CLP and an ILEC.

AT&T stated that, to provision inter-selective routing, it requests for call transfer capability to be initiated by the PSAP, and a separate agreement would be entered into to ensure that the PSAP gets precisely what it orders. In contrast, AT&T argued that Intrado wants AT&T to be directed to provide Intrado, without costs, call transfer functionality that it would provide PSAPs as a sort of "one-size-fits-all call transfer product."

AT&T commented that implementing the inter-selective routing that Intrado proposes would require AT&T to incur costs for facilities, trunks, database storage, extensive translations, and testing. However, AT&T commented that Intrado has not proposed a mechanism whereby AT&T could recover its costs, and Intrado has not offered to pay any of these costs in order to provide the PSAPs this feature. AT&T added that PSAP-to-PSAP inter-selective routing can be very useful, and this feature should be available to any PSAP requiring this feature. AT&T stated that this functionality should be made available to the PSAP requesting this feature on a customized basis. AT&T suggested that the PSAPs should pay "AT&T, or any other provider that undertakes the labor, and sustains the costs, necessary to create this capability."

AT&T witness Constable testified that AT&T does not know what Intrado means by "ALI interoperability" as the term is not defined in the ICA or in NENA standards. Witness Constable also testified that in the context of call transfer functions between AT&T and Intrado, the parties have detailed language regarding how ALI will be provided.

AT&T also addressed the dispute with Intrado related to the notification of dialing plan changes. AT&T stated that it objects to a requirement that it notify Intrado of each and every dialing plan change, as Intrado's contract language proposes AT&T to do. AT&T argued that such notification is unfairly burdensome and unnecessary, as AT&T experiences numerous dialing plan changes on a regular basis that have no impact whatsoever on inter-selective trunk routing for 911.

The Public Staff noted that Intrado witness Hicks contended that Intrado's "interoperability" plan utilizing inter-selective router trunking would ensure that call transfers from one selective router to another could be performed in a manner that allowed misdirected emergency calls to be terminated to the correct PSAP, irrespective of the 911 service provider. Calls transferred under its selective routing plan would retain critical caller ANI and ALI information associated with the call. Witness Hicks also contended while "interoperability," is technically feasible, it is currently only available on a limited basis in North Carolina. According to his testimony, interoperability is necessary to ensure that PSAPs can fully utilize the benefits of the enhanced, next-generation 911 services Intrado provides over Internet Protocol (IP)-based technology, while maintaining the minimum service that is available today. Further whenever technically feasible, he believed that the trunks interconnecting selective routers should be geographically diverse and redundant.

The Public Staff stated that Intrado's proposed ICA language would require interselective router trunking to allow calls to be transferred between PSAPs subtending AT&T's selective routers and PSAPs subtending Intrado's selective routers. The resulting networks would have to satisfy industry service quality standards and support diversity, redundancy, and reliability consistent with state or local 911 rules.

The Public Staff observed that AT&T witness Constable contended that expensive trunking facilities should not be constructed unless a PSAP formally requests inter-selective router call transfer capabilities. As stated by AT&T, if a PSAP does request these capabilities, the requesting PSAP should work with AT&T and Intrado to ensure that the proposed facilities satisfy its needs. Further, witness Constable argued that placing inter-selective router call transfer functionality in an interconnection agreement between AT&T and Intrado with no oversight from the PSAPs would inappropriately remove the PSAPs from the decision-making process. Witness Constable stated that Intrado's proposed provisions for inter-selective router trunking would cause AT&T to incur costs for facilities, trunks, database storage, translations, and testing without receiving any compensation. Witness Constable testified AT&T should have to bear such costs only if a PSAP intends to use the call transfer functionalities, and in such a case, the requesting PSAP should be involved in planning and implementing the call transfer architecture. Under present established practices, PSAPs that request inter-selective call transfer compensate AT&T for the costs of providing this service. Witness Constable argued that Intrado's proposal would remove the PSAPs from the picture and place the burden of those costs on AT&T.

The Public Staff also observed that in Section 4 of the 911 Appendix, AT&T proposed language that would require AT&T and Intrado to provide inter-selective routing upon request from a PSAP. The requesting PSAP would be expected to participate in the planning process to ensure that the inter-selective router functionality meets its expectations.

The Public Staff suggested that, based upon the evidence presented by witness Constable, which Intrado did not refute, the Commission should conclude that the primary/secondary routing architecture currently employed by ILECs is the appropriate architecture for AT&T and Intrado to use when they jointly provide 911 service under a split wire center arrangement. The Public Staff stated that this routing process appears to work well whenever ILECs share 911 responsibilities within a given geographical area. In addition the testimony indicates that this arrangement should be more cost effective and less error-prone to implement than the inter-selective router architecture proposed by Intrado.

The Public Staff also believed that the use of AT&T's current primary/secondary routing architecture will not impair Intrado's ability to deploy any of its new or enhanced 911 features. The Public Staff commented that if Intrado begins providing service and encounters problems with such deployments, the Commission should expect AT&T to work cooperatively and expeditiously with Intrado to solve them.

The Public Staff also recommended that AT&T and Intrado should provision their interconnected network so that each 911 call transferred from a primary to a secondary router retains the same ANI and ALI information that was initially delivered to the primary router. Additionally, the Public Staff stated that each party should be responsible for advising the other party of any changes to its systems which may adversely impact the operation of the interconnected network, or the other party's provision of 911 service to the public.

The Public Staff stated that AT&T's charges for the facilities, equipment, and services needed to interconnect with Intrado to offer 911 services to PSAP and the public must comply with the requirements of Section 251(c). The Public Staff also stated that AT&T's charges and the charges Intrado intends to impose on AT&T for interconnection must be specified in the parties' ICA other than those involving trunking between a PSAP served by an AT&T selective router and a PSAP served by an Intrado selective router. The Public Staff stated that language contained in the ICA should be mutually agreed to between AT&T and Intrado, and should not require any consent endorsements from PSAPs.

The Public Staff also observed that Intrado's proposed ICA language would require AT&T to notify Intrado if it upgrades its selective routers or makes changes that might affect inter-selective routing capabilities, even if these changes do not directly affect Intrado. Intrado proposed that AT&T should also be required to advise Intrado of network changes that affect call transfer capabilities. The Public Staff stated that Intrado believes that AT&T currently exchanges dial plan information with other 911 providers and contends that it deserves the same treatment.

The Commission believes that the interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs. In reaching this conclusion, the Commission finds AT&T's testimony that this arrangement shall be more cost effective and less error-prone to implement than the inter-selective router architecture proposed by Intrado persuasive. The Commission also notes that the Public Staff stated that this routing process appears to work well whenever ILECs share 911 responsibilities within a given geographical area. Further, Intrado did not dispute the fact that the primary/secondary approach as practiced in the industry today would achieve the continuing support of the delivery of 911 service between itself and AT&T, as well as other telecommunications providers.

The Commission agrees with the Public Staff that each party is responsible for advising the other party of any changes to its systems which may adversely impact the operation of the interconnected network, or the other party's provision of 911 service to the public. The Commission observes that Section 251(c)(5) of the Act requires ILECs to provide public notice of changes in their network that would affect the interoperability of facilities and networks. Therefore, the Commission believes that AT&T and Intrado will continue to comply with the rules and regulations, as generally practiced within the industry, governing the exchange of public notices of changes in dial plans between

service providers, as appropriate. The Commission further believes that in light of "technology neutrality," AT&T and Intrado are obligated to provide for the seamless and transparent exchange of information "between and across telecommunications networks."[18]

CONCLUSIONS

The Commission concludes that the interconnection of selective routers operated by AT&T and Intrado shall follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. In addition, ANI and ALI information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

ISSUE NO. 14 - MATRIX ISSUE NO. 6: (a) Should requirements be included in the ICA on a reciprocal basis for: (1) trunk forecasting; (2) ordering; and, (3) service grading? (b) If not, what are the appropriate requirements?

POSITIONS OF PARTIES

INTRADO: Intrado has modified AT&T's proposed ICA language to make forecasting provisions reciprocal. As co-carriers, both parties will be purchasing services from each other and thus each party should be aware of the process to order services and facilities from each other. Intrado has therefore included language addressing its ordering process that is consistent with industry terms and parameters in the ICA.

AT&T: In the 13-state Appendix ITR Section 6.1, AT&T requires Intrado to provide an initial trunk forecast to ensure adequate trunking to accommodate Intrado's demand when it enters the local exchange service market. While AT&T's general trunk forecast is made available to CLPs on an ongoing basis, AT&T's forecast will have no meaning for Intrado from an initial implementation perspective. Both parties should follow industry standard ordering guidelines and systems, using Access Service Requests (ASRs) and the EXACT system. AT&T should not be obligated to use an undefined and non-standard ordering system.

PUBLIC STAFF: The first two sentences of Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. Further, the ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is

[18] See Section 256(a)(2) Coordination For Interconnectivity, of the Act.

reasonable and reciprocal, and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

DISCUSSION

Intrado stated that it modified AT&T's proposed language to make the forecasting provisions for non-911 trunks applicable to both parties rather than solely imposed on Intrado. Intrado argued that it must have some indication from AT&T how many trunks will be required to support calls between the parties' networks to adequately groom its network. Intrado further stated that AT&T claims it will provide trunk forecast information to Intrado, but disputes the requirement to provide an "initial" trunk forecast. Intrado also stated that forecasts are integral to ensuring the parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delays. Similarly, Intrado believed that language addressing how AT&T will order services from Intrado should be included in the interconnection agreement. Intrado has provided detailed information regarding its ordering process and explained that its procedures incorporate the standard Alliance for Telecommunications Industry Solutions (ATIS)-OBF Access Service Request process much like AT&T uses today and provides to other carriers when they order services from AT&T.

Intrado suggested that as co-carriers exchanging 911 traffic with each other, both parties will be purchasing services from the other. Intrado stated that each party should be aware of the process to order services and facilities from each other.

AT&T stated that the parties generally agree that trunk forecasting requirements should be fair and reciprocal and that each party should provide the other with necessary information. AT&T contended that the dispute relates specifically to initial trunk forecasts. In Section 6.1, Appendix ITR, AT&T has requested that Intrado provide it with an initial forecast that is necessary to ensure that AT&T has available enough trunks to meet the demands of Intrado's network. AT&T argued that there is, in this limited situation, no need for a reciprocal requirement because an initial forecast from AT&T would be of no use to Intrado. AT&T stated that it requires Intrado's initial forecast to determine how much additional traffic Intrado will be adding to AT&T's network, and to plan accordingly. AT&T added, on the other hand, that Intrado is developing a new network that will be initially sized. AT&T suggested that Intrado does not need an initial AT&T trunk forecast to determine whether its pre-existing network is adequate.

As to the dispute regarding trunk orders placed by AT&T, Intrado has proposed a process that has been proposed whereby AT&T would order trunks from Intrado according to procedures posted on Intrado's website. AT&T contended that, under such a proposal, it would be bound to accept whatever future rates and procedures Intrado chooses to post. AT&T stated that a more equitable approach is to make the ordering processes reciprocal.

The Public Staff noted that, Intrado witness Hicks contended that both parties needed information on trunk quantities to ensure that they were adequate to handle both immediate and anticipated emergency call traffic and Intrado had modified the ICA to require the exchange of forecast information. Intrado posited that both parties needed to maintain a proper quantity of trunks and a grade of service consistent with industry standards.

The Public Staff believes that, as suggested by Intrado, the requirement for the parties to exchange initial information on their respective trunk forecasts is worthwhile and should be retained. After reviewing both parties proposed language on this issue, the Public Staff suggested that the exchange of trunk information should be reciprocal and suggested the adoption of the following language for this issue in Section 6.1 Appendix ITR:

> Each party agrees to provide an initial forecast for all trunks groups described in this Appendix ITR. Each Party shall review the initial trunk forecast provided by the other Party and provide any additional information to the other Party that it believes may impact the other Party's trunk forecast.

With respect to the issue of trunk ordering, the Public Staff noted that both parties proposed language with procedures that contemplate the use of an ASR. The Public Staff suggested that, because of the limited testimony on this issue, the ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and that AT&T should be required to use Intrado's designated ordering system to obtain services from Intrado.

The Commission is of the opinion that each party should exchange initial and on-going trunk information, as required, to ensure that the emergency call traffic is handled in the most efficient manner following industry standards. In the case of non-911 initial trunk information, it would appear reasonable that the initial trunk requirements for such traffic would be driven by Intrado's network and business plans to which AT&T would be expected to provide adequate facilities to meet. However, the Commission believes that the reciprocal exchange of trunk information would be beneficial to both parties and should occur.

The Commission notes that AT&T stated in its Proposed Order that the issue on service grading was resolved and therefore is not to be addressed by the Commission.

In addition, the Commission instructs AT&T to use Intrado's ordering system to coordinate and order trunk facilities in order to meet network demand. The Commission's basis for this position is based on the information, as presented, that both AT&T's and Intrado's ordering procedures follow standard industry practices for this function. As such, both parties are to reciprocate in its practice of ordering trunk facilities from each other as reasonable.

CONCLUSIONS

The Commission concludes that Section 6.1 of Appendix ITR of the original 13-state template shall be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado, and that each party should review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T shall be required to utilize Intrado's designated ordering process to obtain services from Intrado.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

ISSUE NO. 15 – MATRIX ISSUE NO. 7(a): Should the ICA include terms and conditions to address separate implementation activities for interconnection arrangements after the execution of the interconnection agreement? If so, what terms and conditions should be included?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should not be required to undertake additional activities (other than routine operational discussions) or enter into other agreements to effectuate their interconnection arrangements after the ICA has been executed. Further, Intrado stated that additional, unnecessary steps should not be required to implement interconnection arrangements or make network changes.

AT&T: AT&T asserted that Intrado shall notify AT&T when Intrado intends to interconnect to an AT&T Selective Router. Also, AT&T stated that either party should be required to give 120 days notice to add or remove a network switch.

PUBLIC STAFF: The Public Staff asserted that the ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

DISCUSSION

This issue was addressed by Intrado witness Hicks and AT&T witness Constable.

In its Proposed Order, Intrado argued that AT&T's proposed language contemplates that the parties will amend the ICA to set forth the specific interconnection arrangements to be utilized by the parties. Further, Intrado noted that AT&T's proposed language requires Intrado to provide notice beyond the ICA or amend the agreement to seek interconnection. Intrado does not agree with AT&T's requirement that it needs to provide notice beyond the ICA or amend the agreement to seek interconnection. According to Intrado, no further notice or action should be needed from Intrado to implement the interconnection arrangements set forth in the agreement other than

routine discussions between the parties' operational personnel. Intrado asserted that AT&T's language would impose additional, unnecessary steps on Intrado to effectuate its interconnection arrangements with AT&T. Moreover, Intrado contended that, in a world where timely response to customer requests is important, having any period longer than 30 days to make a network change is poor business. Thus, Intrado strongly opposes AT&T's language that would require Intrado to wait 120 days after an agreement is signed before the parties can interconnect their networks. Also, Intrado argued that it has proposed language that clarifies that Intrado will provide the additional notifications required by AT&T only to the extent it seeks additional points of interconnection with AT&T. Intrado asserted that its proposed language is reasonable, reflects the need to respond quickly to public safety requests, and should be adopted.

AT&T witness Constable explained that the dispute involves several sections of language in the 911 NIM Appendix. Under AT&T's proposed language, Section 2.1 would require that the parties consent to the network architecture that will be developed; Section 5.1 would require that Intrado provide notice of any new interconnection arrangements it wishes to establish; and, Section 5.4 would require each party to give 120 days' notice when adding or removing a switch from its network. According to witness Constable, the proposed language would reduce misunderstandings, facilitate Intrado's establishment of facility and trunking arrangements at a new AT&T Selective Router, and give the parties 120 days' notice when either party wishes to add or remove switches from its networks. Witness Constable explained that replacing a switching system requires more than the 30-day period suggested by Intrado in order to effect a smooth transition. In fact, witness Constable explained further that adding or removing a switch may take as much as a year due to long range planning, capital expenditures and the coordination required with other carriers.

The Public Staff stated in its Proposed Order that AT&T's proposed language contemplates that the parties will amend the ICA to set forth the specific interconnection arrangements to be utilized by the parties and that Intrado does not agree with AT&T's requirement that it needs to provide notice beyond the ICA or amend the agreement to seek interconnection. According to the Public Staff, Intrado believes that no further notice or action should be needed to implement the interconnection arrangements set forth in the agreement other than routine discussions between the parties' operational personnel. Intrado's proposed language also has clarified that, only to the extent it seeks additional points of interconnection with AT&T, Intrado will provide the additional notifications requested by AT&T. AT&T's language would impose additional, unnecessary steps on Intrado to effectuate its interconnection arrangements with AT&T.

The Public Staff noted that AT&T asserted that Appendix 911 NIM Section 2.1 provides that the parties will agree to the physical architecture plan in a particular interconnection area. AT&T simply proposes that the Parties document that plan prior to implementation. Such documentation will ensure that both Parties' understanding of the plan is the same - before either Party invests in its implementation - and will thus avoid potential disputes. In Appendix 911 NIM Section 2.4, AT&T requires Intrado to provide notification of its actual "intent" to change the parties' architecture plan, not to

simply notify AT&T of its request for such a change. A request does not necessarily indicate intention to proceed with a change. Intrado needs to notify AT&T using the proper form when it intends to interconnect to an AT&T Selective Router. Further, 120-days notice (rather than only 30) is appropriate when Intrado will add a switch to its network because adding a switch is a significant network change that affects every carrier providing service in that geographic area. Finally, the Public Staff recommended that the ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

After reviewing the parties' positions and the record proper, the Commission agrees with the Public Staff and AT&T that: (1) Intrado should notify AT&T when Intrado intends to interconnect to an AT&T Selective Router; and, (2) that either party should be required to give 120 days notice to add or remove a network switch. The ICA shall be revised accordingly.

In requiring this revision, we acknowledge that Intrado's opposition to AT&T's proposal is rooted partially in its reluctance to share its business plans with AT&T. In today's competitive environment, this reluctance is completely understandable. Ordinarily, when a competitor seeks to compete with an ILEC to provide telecommunications service, the Commission would take affirmative steps to minimize or avoid altogether any actions by the Commission which would result in Intrado's business plans being shared with or changed to accommodate AT&T. This, however, is not the ordinary situation. 911 and E911 providers routinely provide critical information on a real time basis to law enforcement officers, fire fighters, health care providers and other first responders which may, on occasion, mean the difference between life and death to a member of the public. As such, these 911/E911 services are extraordinarily important to the overall safety and welfare of the community.

As a result, the Commission believes that 911 and E911 networks must, to the extent possible, be designed and operated to ensure that the public can seamlessly and reliably access the network and that the operators of such network can accurately identify and transmit the location and other necessary information to the appropriate emergency services provider. To achieve this goal, it is necessary, in the Commission's opinion, for AT&T and Intrado to cooperate and coordinate their activities to preclude outages and minimize misdirected calls or other errors which could result in unnecessary loss of property and/or increased suffering or death. Undoubtedly, the degree of cooperation and coordination that we envision will impact Intrado's ability to respond as quickly as it would like to public safety requests. However, given the choices that we have been provided and our desire that the network be designed and operated to ensure seamless access and reliable information, the Commission finds the language proposed by AT&T with regard to notice required to add or replace a switching system to be more reasonable and more likely to produce the coordination necessary for a satisfactory interconnection between the parties.

CONCLUSIONS

Because 911 and E911 emergency services networks are responsible for ensuring that critical information is received from the public and transmitted to the correct emergency service providers in situations in which the well-being and safety of the individual providing the information and the public at large might be at risk, Intrado shall notify AT&T when Intrado intends to interconnect to an AT&T Selective Router in order to preclude outages and minimize misdirected calls or other errors which could result in unnecessary loss of property and/or increased suffering or death. In addition, either party to this ICA shall be required to give 120 days notice to add or remove a network switch.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

ISSUE NO. 16 – MATRIX ISSUE NO. 8(a): What terms and conditions should be included in the ICA to address access to 911/E911 database information when AT&T is the designated E911 service provider?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the ICA should include a requirement that the parties maintain interoperability between their networks to support the exchange of ALI information between the parties.

AT&T: AT&T asserted that it is not appropriate to impose upon AT&T a duty to maintain "ALI interoperability". AT&T further maintained that Intrado has proposed no definition for the term "interoperability", and the proposed language is impermissibly vague for this reason.

PUBLIC STAFF: The Public Staff stated that the parties should be required to revise the ICA 13-state Appendix 911 template that AT&T witness Constable provided in Revised Exhibit JEC-1 to: (1) remove the phrase "to support ALI interoperability" from Section 3.4.3; (2) remove Section 3.4.5 concerning the mutual sharing of steering tables; and (3) reflect consistent treatment of the parties' mutual responsibilities in the parallel Sections 3.4.3 and 5.4.3 and the parallel Sections 3.4.4 and 5.4.4. The Public Staff maintained that all of these changes should be incorporated into the final version of the ICA filed with the Commission in this proceeding.

DISCUSSION

This matrix issue concerns the following disputed language for Section 3.4.3 of Appendix 911 (See Revised Exhibit JEC-1):

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files **to support ALI interoperability** that are based upon NENA recommended

standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.

Intrado proposed the inclusion of the bold and underlined language shown above, and AT&T and the Public Staff opposed the inclusion of this language.

Intrado asserted in its Proposed Order that it has proposed language to ensure that the parties can maintain interoperability between their databases when exchanging 911 traffic or transferring 911 calls between each party's selective router. Intrado stated that, for this reason, it requests that the parties adopt arrangements to enable access to ALI when performing call transfers via inter-selective router trunking.

Intrado recommended that the Commission conclude that the transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or Voice over Internet Protocol (VoIP) calls, or even wireline calls where the caller cannot speak. Intrado noted that language regarding inter-selective router trunking and call transfer with ALI is also necessary to ensure interoperability between the parties' networks as contemplated by Section 251(c) of the Act.

Intrado also recommended that the Commission reject AT&T's contention that the term "interoperability" is vague or unknown. Intrado maintained that the term is well understood by those in the 911 industry to mean the ability of networks to seamlessly and transparently exchange information and function together. Intrado stated that, in addition, the FCC has defined "interoperability" in 47 C.F.R. § 51.325(b) as, "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged." Intrado argued that the proposed language should, therefore, be adopted for use in the parties' interconnection agreement. Further, Intrado recommended that the Commission conclude that interoperability of the parties' networks is critical to ensuring reliable 911/E911 services for North Carolina consumers and public safety agencies, including the exchange of ALI information between the parties. Intrado urged the Commission, therefore, to adopt Intrado's proposed language for 911 in Section 3.4.3.

AT&T witness Constable stated in his rebuttal testimony that the Commission should reject Intrado's proposed language in Section 3.4.3 because it serves no real purpose and will only create confusion. He noted that the term "ALI interoperability" is not defined in the interconnection agreement or in NENA standards and that the language is unnecessary because the parties already have detailed language regarding how ALI will be provided.

AT&T stated in its Proposed Order that the single dispute remaining about this issue involves Intrado's request that the Commission impose an "ALI interoperability" requirement upon AT&T. AT&T noted that, in Appendix 911, Section 3.4.3, Intrado proposes to obligate AT&T to provide "ALI interoperability". AT&T asserted that this term is not defined anywhere in the ICA or in NENA standards. AT&T maintained that witness Constable testified that the parties have already agreed as to how ALI will be

provided, so this language is unnecessary. AT&T recommended that the Commission find that no purpose would be served to require "ALI interoperability" when that term is undefined. AT&T recommended that the Commission adopt the language proposed by AT&T and reject the changes suggested by Intrado.

The Public Staff noted in its Proposed Order that provisions addressing database access appear in Appendix 911 of the 13-state template. The Public Staff maintained that Revised Exhibit JEC-1 is a draft of Appendix 911 showing the changes proposed by AT&T and Intrado. The Public Staff stated that Section 3.4 of the draft addresses database access in the event that AT&T is the designated provider of 911/E911 services. The Public Staff commented that Section 5.4 addresses database access if Intrado is the designated provider of 911/E911 services.

The Public Staff asserted that each of these sections contains four separate paragraphs. The Public Staff noted that paragraph 3.4.3 contains the language referring to ALI interoperability that AT&T witness Constable objected to in his testimony. The Public Staff provided the entire text of this paragraph, as follows:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files *to support ALI interoperability* that are based upon NENA recommended standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly. (Italics added by the Public Staff and represents disputed language.)

The Public Staff stated that witness Constable specifically noted that the term "ALI interoperability" is not defined in the "Definitions" section of Appendix 911. The Public Staff further maintained that the phrase "to support ALI interoperability" used in paragraph 3.4.3 appears to add nothing of substance to the paragraph. Thus, the Public Staff recommended that the Commission direct the parties to delete this phrase from Appendix 911.

The Public Staff asserted that paragraph 3.4.5 of Appendix 911, which addressed the issue of steering tables, is absent from Revised Exhibit JEC-1. The Public Staff noted that witness Constable testified that this issue had been resolved, and his position concerning the steering tables issue and the resolution of that issue were not contested by Intrado. The Public Staff recommended that the Commission conclude that there is no issue left to resolve concerning paragraph 3.4.5 and that the paragraph should not be included in the interconnection agreement.

Finally, the Public Staff noted that there are certain subtle differences between Sections 3.4 and 5.4 of Appendix 911 that the parties did not directly address. The Public Staff stated that paragraph 3.4.3 provides that files electronically transmitted to AT&T's E911 database must be "based upon NENA recommended standards." The Public Staff maintained that paragraph 5.4.3, which sets a parallel requirement for files that will be transmitted electronically to Intrado's E911 database, requires that these

files be "based upon NENA standards." The Public Staff asserted that it is not certain that this slight difference in wording is significant relative to the parties' mutual responsibilities, but recommended that the Commission conclude that the requirements specified in these paragraphs should be identical. The Public Staff recommended that the Commission direct the parties to either remove the word "recommended" from paragraph 3.4.3 of Appendix 911 or add it to paragraph 5.4.3, whichever they prefer. The Public Staff noted that there are also significant differences between what should be parallel and identical language in paragraphs 3.4.4 and 5.4.4 concerning the parties' responsibilities. The Public Staff recommended that the Commission direct the parties to revise these paragraphs so that the mutual responsibilities and wording are consistent, and to include these revised paragraphs in the interconnection agreement.

The Commission notes that both Intrado and AT&T state in their Proposed Orders and Briefs that the only issue in contention in Matrix Issue No. 8(a) concerns the following highlighted language in Section 3.4.3 of Appendix 911 as outlined in Revised Exhibit JEC-1:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files **to support ALI interoperability** that are based upon NENA recommended standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.

Intrado proposes the inclusion of the language highlighted above while AT&T and the Public Staff propose that the identified language be excluded from Section 3.4.3. Since this is the only issue that Intrado and AT&T identify as in dispute, it is the only issue the Commission will address. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

After reviewing the record on the proposed inclusion of the phrase "to support ALI interoperability" in Section 3.4.3 of Appendix 911, the Commission is not persuaded that the inclusion of this language is necessary. Both AT&T and the Public Staff question the necessity for including this language, and Intrado has not provided any convincing arguments that this phrase is of any importance or significance. Therefore, the Commission agrees with AT&T and the Public Staff that it is not appropriate to include Intrado's proposed language as identified above in Section 3.4.3.

CONCLUSIONS

The Commission concludes that Section 3.4.3 of Appendix 911 as outlined in Revised Exhibit JEC-1 should read as follows:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files that are based upon NENA recommended standards. Manual (i.e. facsimile) entry

shall be utilized only in the event that the DBMS is not functioning properly.

Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

ISSUE NO. 17 – MATRIX ISSUE NO. 10: What 911/E911-related terms should be included in the ICA and how should those terms be defined?

POSITIONS OF PARTIES

INTRADO: The only 911/E911-related definition at issue between the parties is the definition of "911 Trunk." Intrado proposed to define "911 Trunk" as a trunk from either AT&T's End Office or Intrado's switch to the E911 System. AT&T, however, objects to the use of "End Office" and would prefer the language to state that it is a trunk from either party's switch to the E911 System. The inclusion of "End Office" when referring to AT&T's switch is appropriate because any trunks to the E911 System should come directly from the AT&T End Office where the end user making the 911 call is located. Industry standards recommend identifiable trunk groups from each end office when calls from multiple end offices are directed to the same PSAP. Inclusion of the term "End Office" ensures that AT&T will abide by default routing treatment when transmitting calls to the E911 System.

AT&T: The parties disagree regarding the definition of the term "911 Trunk" or "E911 Trunk." Intrado's additional language could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router – even if that required AT&T to implement extensive network modifications to support Class Marking.

PUBLIC STAFF: The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

DISCUSSION

The testimony regarding this issue is limited. This issue was addressed by Intrado witness Clugy and AT&T witness Constable. Intrado witness Clugy testified that the term "End Office" was inserted because it implied the originating office and was a defined term in the agreement. In its Proposed Order, Intrado argued further that using "End Office" is appropriate because the definition is intended to describe the portion of the network carrying the 911 call from the originating end office to the selective router. According to Intrado, its proposed definition more accurately describes the 911 transport piece from the caller's originating end office to a selective router, and should therefore be adopted.

AT&T witness Constable did not directly address the definition of "911 Trunk" in his testimony, and the only language detailing AT&T's position is found in the Revised Joint Issues Matrix filed with the Commission on August 6, 2008. AT&T stated that the parties disagree regarding the definition of the term "911 Trunk" or "E911 Trunk" and that Intrado's additional language could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router – even if that required AT&T to implement extensive network modifications to support Class Marking.

AT&T referenced Matrix Issue No. 3(a) to further clarify its position in this regard. In his testimony concerning Matrix Issue No. 3(a) discussing how AT&T's end user 911 traffic would be routed to a PSAP served by Intrado, AT&T witness Constable stated that, if an AT&T End Office must connect to the E911 System as proposed by Intrado, then AT&T would conceivably have to establish dedicated trunk groups to each selective router using Intrado's proposed "class marking" translations.

In its Proposed Order, the Public Staff argued that this issue is closely connected to Matrix Issue No. 3(a) concerning trunking arrangements when Intrado provides the selective router to the PSAP. According to the Public Staff, including language stating that a "911 Trunk" is a trunk from AT&T's End Office in the ICA would incorrectly imply that traffic from an AT&T end office is directly routed to the Intrado selective router in those instances in which wire centers are split between PSAP jurisdictions. The Public Staff further noted that the resolution of that issue is currently disputed and is dependent upon whether the Commission adopts AT&T's primary/secondary selective router proposal or Intrado's "class marking" proposal. Although the Public Staff's discussion in this section of the Proposed Order does not explicitly state the Public Staff's preference, the Public Staff does find that AT&T's primary/secondary router proposal is more appropriate in its discussion of Matrix Issue No. 3. In accord with this finding, the Public Staff recommended that the term "End Office" should be excluded from the definition of a 911/E911-Trunk.

We note that this is a limited dispute between the parties involving language in the Appendix 911, Section 2.3, which concerns the definition of the term "911 Trunk" or "E911 Trunk." The current positions of the parties are succinctly reflected in the Revised Joint Issues Matrix, filed August 6, 2008. Specifically, Intrado proposes to define a 911 Trunk as running from either AT&T's End Office or Intrado's switch. AT&T has no objection to the proposed reference to Intrado's switch. However, AT&T contends that Intrado's proposed reference to AT&T's End Office could be read to require AT&T to provide direct trunking from its end offices to Intrado's selective routers, even if this routing required AT&T to implement extensive network modifications to support class marking. We agree with AT&T that the language proposed by Intrado could be read in this fashion.

This interpretation could potentially conflict with our ruling on Matrix Issue No. 3(a), discussed above in which we determined that the ICA shall include provisions whereby AT&T will provide inter-selective routing as it does at present, i.e., by the designation of primary and secondary routers. Applying this process, there will likely be

situations in which AT&T is the primary router. In these cases, trunks will run from the AT&T switch (*i.e.*, the selective router) to Intrado's switch (the selective router). Thus, the definition of "trunk" proposed by Intrado would be inconsistent with the practice we have ordered.

Moreover, running trunks from an AT&T end office to Intrado's switch in every instance could only be accomplished by the adoption of an alternative to the current practice, such as class marking or "line attribute routing", which this Commission rejected as part of our ruling on Matrix Issue No. 3(a). For these reasons, we believe that the language proposed by AT&T is preferable, as well as consistent with our decision on Matrix Issue No. 3(a). Therefore, we hereby adopt AT&T's proposed language. The term "End Office" should be excluded from the definition of a 911/E911-Trunk.

CONCLUSIONS

The Commission concludes that Intrado's proposed language regarding the definition of "911 Trunk" or "E911 Trunk" could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router, even if that required AT&T to implement extensive network modifications to support Class Marking or Line Attribute Routing. For this reason, we reject Intrado's proposed definition and adopt AT&T's proposed definition.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

ISSUE NO. 18 – MATRIX ISSUE NO. 13(a): What subset of traffic, if any, should be eligible for intercarrier compensation when exchanged between the Parties?

POSITIONS OF PARTIES

INTRADO: AT&T's proposed language improperly classifies the types of traffic subject to intercarrier compensation and imposes onerous terms and conditions on the parties' exchange of intercarrier compensation that are not consistent with the law. AT&T's proposed language limits the traffic eligible for compensation between the parties to "wireline" service or "dialtone".

AT&T: The parties disagree as to the proper definitions for "Section 251(b)(5) Traffic", "ISP-Bound Traffic" and "Switched Access Traffic" as those terms appear in the 13-state template. AT&T defines these terms with specificity to clearly articulate the conditions under which traffic is subject to intercarrier compensation.

PUBLIC STAFF: The Commission should require the parties to modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic in the GTC section and the appendices to comport with current FCC decisions and orders consistent with the Commission's understanding of those decisions and orders. The

Appendix Intercarrier Compensation and Appendix ITR should retain the references to "wireline" and "dialtone" service.

DISCUSSION

According to Intrado, this issue deals with the parties' exchange of non-911 traffic. Intrado stated that AT&T's language presents several problems and is not consistent with current FCC regulations.

First, Intrado stated that AT&T's language uses the term "local" to classify traffic subject to reciprocal compensation. Intrado observed that the FCC determined that AT&T's reliance on the characterization of traffic as local or non-local to determine whether reciprocal compensation obligations applied was incorrect. Intrado stated that the FCC determined that all telecommunications is subject to reciprocal compensation under Section 251(b)(5) of the Act except for those specific types of traffic carved out by Section 251(g) – exchange access, information access, and exchange services for such access. As a result of these findings the FCC removed the term local from its rules when describing the subset of telecommunications traffic that is subject to reciprocal compensation. Intrado also stated that the FCC determined that it should refrain from generically describing traffic as local traffic because the term local traffic is particularly susceptible to varying meanings and, significantly, is not a term in Section 251 (b)(5) or Section 251(g) of the Act. Intrado contended that AT&T's proposed definition for "Section 251(b)(5) Traffic" and its proposed definition for "ISP-Bound Traffic" requires the originating party and the terminating party to be located in the same ILEC Local Exchange Area or in an area that is subject to an Extended Area Service (EAS) arrangement. Intrado argued that this would require the call to be local and neither the FCC's *ISP Remand Order* nor Section 51.703 of the FCC's rules contain such qualifications because the FCC specifically found that Section 251(b)(5) applies to all traffic.

Second, Intrado stated that AT&T's proposed definition of "Switched Access Traffic" (i.e., traffic that is not subject to reciprocal compensation but instead is subject to higher access charges) includes "traffic that . . . (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology." Intrado contended that this definition appears to encompass interconnected VoIP services. Intrado asserted that the FCC defines "access service" as services and facilities provided for the origination and termination of any interstate or foreign telecommunication service. Intrado stated that the FCC has not determined whether interconnected VoIP services are telecommunications services or information services, and thus has not determined that interconnected VoIP services are subject to switched access charges. Intrado further stated that this fact is borne out by AT&T's recent request to the FCC for a declaratory ruling that IP-based traffic such as VoIP is subject to access charges. Intrado argued that AT&T should not be permitted to impose obligations on Intrado in the context of an agreement that AT&T has admitted by its own pleadings to the FCC are not required. Intrado suggested that AT&T's proposed

language goes beyond the parameters of the FCC's current rules regarding switched access services.

Third, Intrado stated that AT&T's proposed language would limit reciprocal compensation to traffic determined to be "wireline" or "dialtone," neither of which is defined in the ICA. Intrado further stated that FCC Rule 51.703(a) and the *ISP Remand Order*, by contrast, speak in terms of telecommunications traffic, not wireline or dialtone and therefore, AT&T's arguments that these terms are proper because this is not a wireless agreement are unavailing. Intrado does not offer wireless services and thus believes it does not need an ICA covering "wireless" services. Intrado stated that, as interconnected co-carriers, it may deliver wireless traffic to AT&T to the extent Intrado is providing telecommunications services to a wireless provider, and that wireless provider's customers call an AT&T customer.

AT&T first noted that, specifically, the parties disagree as to the proper definitions for "Section 251(b)(5) Traffic", "ISP-Bound Traffic" and "Switched Access Traffic." Further, the parties disagree regarding the application of these terms to other provisions in the ICA.

AT&T witness Pellerin asserted that AT&T's proposed definition for Section 251(b)(5) traffic reflects the specific criteria that must be applied to determine what traffic is subject to reciprocal compensation. In pertinent part AT&T stated that, "Section 251(b)(5) traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are: (a) both physically located in the same ILEC Local Exchange Area. . . or (b) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. . ."

AT&T commented that Intrado is incorrect in its claim that AT&T's proposed definition is inconsistent with Section 251(b)(5) traffic because the FCC does not use the term "local" in describing this traffic. However, AT&T stated that, "in the ISP Remand Order, the FCC dispensed with using "local" as the term for traffic subject to reciprocal compensation under 251(b)(5), but reaffirmed that Section 251(b)(5) reciprocal compensation only applies to traffic that originates and terminates in the same exchange." In addition, AT&T noted that FCC Rule 701(b) states that Section 251(b)(5) reciprocal compensation is inapplicable to traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.

Regarding ISP-Bound Traffic, AT&T stated that it proposed the following definition, in pertinent part, for ISP-Bound Traffic: ISP-Bound Traffic shall mean telecommunications traffic exchanged between CLP and AT&T as defined in the ISP Compensation Order, in which the originating End User of one Party and the ISP served by the other Party are: (a) both physically located in the same ILEC Local Exchange Area. . . or (b) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. . ." AT&T contended that its proposed definition of ISP-Bound Traffic clearly articulates what is intended.

Regarding Switched Access Traffic, AT&T commented that it has proposed specific language to define Switched Access Traffic, whereas, Intrado has proposed a general reference to applicable law. AT&T proposed adding the following language to the definition of Switched Access Traffic:

> ". . . all traffic that originates from an End User physically located in one local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology."

AT&T contended that its proposed definition was also previously adopted by the PUC of Ohio in the Telcove Arbitration proceeding.

Last, AT&T asserted that language in Section 1.2 clarifies that Appendix IC applies to Intrado's "wireline local telephone exchange (dialtone) service." AT&T stated that, because Intrado has requested a wireline ICA, it should not deliver wireless traffic to AT&T over local interconnection trunks pursuant to this Agreement.

In summary, AT&T noted that, it proposed language for the definitions of "Section 251(b)(5) Traffic", "ISP-Bound Traffic", and "Switched Access Traffic" is reasonable, and complies with federal law.

Regarding Section 251(b)(5) Traffic, the Public Staff noted that AT&T's proposed language, unlike Intrado's, reflected the position that the physical location of the originating and terminating callers is determinative of whether a call is subject to reciprocal compensation requirements. The Public Staff stated that, during cross examination, AT&T witness Pellerin acknowledged that the FCC and the D.C. Court of Appeals were still involved in a dispute over what constitutes Section 251(b)(5) traffic. Witness Pellerin contended that the FCC's prior rulings had not been vacated to date, and that they currently were still in effect.

The Public Staff noted that the Commission has ruled in a previous arbitration case involving Global NAPs and Verizon South that the traffic eligible for reciprocal compensation must include intraLATA traffic between calling and called parties within the same local calling area. However, the determination of whether the call was local (and therefore, subject to Section 251(b)(5) reciprocal compensation) was based on whether the originating and terminating NPA-NXX were assigned to the same

exchange, or to exchanges that shared the same local calling area, as defined by the originating carrier. It was not necessary for the calling and called parties to be physically located within the same local calling area during the call.

Therefore, the Public Staff recommended that the Commission should conclude that the definition of Section 251(b)(5) traffic proposed by AT&T is inconsistent with the prior decision of the Commission and that it is appropriate to replace AT&T's proposed language with the following language:

> Section 251(b)(5) Traffic subject to intercarrier compensation obligations shall include all intraLATA telecommunications traffic in which the calling party's NPA-NXX and the called party's NPA-NXX are assigned to an exchange that share the same local calling area, as defined by the carrier originating the call.
>
> The parties should promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify the parties' intercarrier compensation obligations with respect to Section 251(b)(5) Traffic.

With respect to the definition of ISP-Bound Traffic, the Public Staff commented that neither party provided meaningful support for its proposed definition of ISP-Bound Traffic. In light of the lack of evidence in the record and the apparent fact that the only significant FCC Order that has attempted to define the nature of ISP-Bound Traffic is the FCC's ISP Remand Order, previously cited by AT&T in support of its proposed language concerning Section 251(b)(5) Traffic, the Public Staff suggested the adoption of Intrado's proposed definition, which explicitly references the FCC Order. The Public Staff also suggested that the Commission should append the following sentence to Intrado's definition:

> The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify this definition or the parties' intercarrier compensation obligations with respect to ISP-Bound Traffic.

The Public Staff stated that AT&T's proposed definition for Switched Access Traffic conforms to the FCC's current views on what constitutes that class of traffic and provides solid guidance to the parties concerning the applicability of access charges to that traffic. The one exception to AT&T's definition is to remove the language which states that the end users are to be physically located in a local exchange to the end users having an NPA-NXX associated with a local exchange. AT&T's proposed definition of Switched Access:

> The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions

that modify this definition or the parties' intercarrier compensation obligations with respect to Switched Access Traffic.

Finally, the Public Staff noted that there remained contention over whether the proposed language would limit compensable traffic to wireline or dialtone traffic. The Public Staff stated that the parties should retain the references to wireline and dialtone traffic in Appendix IC and Appendix ITR of the ICA. The Public Staff asserted that these terms reflect the apparent understanding between the parties that the rates, terms, and conditions were meant to apply exclusively to wireline traffic.

As pointed out by the Public Staff, the Commission has ruled in a previous arbitration case involving Global NAPs and Verizon South that the traffic eligible for reciprocal compensation must include intraLATA traffic between calling and called parties within the same local calling area. As such, the determination of whether the call was local (and therefore, subject to Section 251(b)(5) reciprocal compensation) was based on whether the originating and terminating NPA-NXXs were assigned to the same exchange, or to exchanges that shared the same local calling area, as defined by the originating carrier. It was not necessary for the calling and called parties to be physically located within the same local calling area during the call. Therefore, for the reasons presented by the Public Staff, the Commission agrees with the classes of traffic as detailed and the related compensation scheme for each class of traffic.

The Commission concludes that definitions for Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic should be adopted and modified as suggested by the Public Staff as reflected in the above comments. The Commission also agrees that the ICA between the parties is for the exchange of "wireline" and "dialtone" local exchange traffic, as characterized by AT&T. The Commission agrees with the Public Staff that these terms reflect the traditional practice between service providers that the rates, terms, and conditions were meant to apply exclusively to wireline traffic.

CONCLUSIONS

The Commission concludes that the parties shall modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic in the GTC section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, Appendix IC and Appendix ITR shall retain the references to "wireline" and "dialtone" service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

ISSUE NO. 19 - MATRIX ISSUE NO. 13(b): Should the parties cooperate to eliminate misrouted access traffic?

POSITIONS OF PARTIES

INTRADO: Intrado is willing to work with AT&T to eliminate misrouted access traffic. AT&T's language does not accurately state the current requirements for Switched Access Traffic and would require Intrado to engage in unlawful steps such as self-help and blocking of calls.

AT&T: AT&T proposed that Intrado assist AT&T in taking action to remove Switched Access Traffic improperly routed over local interconnection trunks to switched access trunks.

PUBLIC STAFF: Language specifying the actions to be taken to remove Switched Access Traffic is appropriate for inclusion in Section 16.2 of Appendix IC of the parties' agreement. However, blocking of switched access traffic should not be included as an option.

DISCUSSION

Intrado stated that it has revised the language to indicate that the parties will cooperate to address misrouted access traffic consistent with FCC requirements. Intrado argued that AT&T's proposed language would require Intrado to agree to exercise "self-help" remedies or block misrouted access traffic. Intrado contended that the blocking of traffic is not in the public interest and if AT&T wants to take action against another carrier, then it should do so without requiring Intrado's involvement. Intrado stated that AT&T seeks to require it to engage in certain actions against third parties for misrouted access traffic.

AT&T stated that the parties disagree as to how to remedy a situation in which Switched Access Traffic is improperly routed to local interconnection trunks. AT&T contended that Intrado objects to language that would set forth specifically what this cooperation would entail, including jointly filing a complaint with this Commission. AT&T suggested adding language to the appropriate sections of the interconnection agreement to allow for the blocking of misrouted access traffic onto local interconnection trunks. AT&T commented that Intrado's proposal to address this problem without a defined process to do so would not provide AT&T with a means to prevent fraudulent behavior such as traffic washing and related access avoidance schemes by third parties for traffic Intrado delivers to AT&T.

The Public Staff stated that the parties should be encouraged to work together to ensure that toll traffic is identified and routed properly and in a manner that allows assessment of legitimate access charges. The Public Staff stated that blocking should not be considered an appropriate remedy for eliminating such traffic from local interconnections trunks. The Public Staff suggested that the parties adopt the following language in Section 16.2 of Appendix IC:

> If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the

delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify traffic with the goal of removing such traffic from the local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other Party, the terminating Party may file a complaint or take other appropriate action with the applicable Commission in order to seek removal of the traffic from local trunk groups or appropriate compensation from the third party competitive local exchange carrier delivering such traffic.

After reviewing the record proper, the Commission is of the opinion that the Public Staff's proposed language on the management of misrouted access traffic is appropriate and should be added to the Parties' interconnection agreement. Further, we agree with the Public Staff that blocking is not an appropriate remedy for eliminating misrouted traffic. The Commission believes that the parties should work cooperatively to identify and eliminate misrouted access traffic to local interconnection trunk groups and to insure proper compensation to the terminating party.

CONCLUSIONS

For the reasons articulated previously, the Commission concludes that the Public Staff's proposed language specifying the actions to be taken to remove Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix IC of the parties' ICA. Also, the blocking of switched access traffic shall not be included in the ICA as an option.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

ISSUE NO. 20 – MATRIX ISSUE NO. 15: Should the ICA permit the retroactive application of charges that are not prohibited by an order or other change in law?

POSITIONS OF PARTIES

INTRADO: Intrado agreed that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. Intrado however, disagreed with AT&T's proposed language discussing how such modifications will be implemented. AT&T proposed language wherein retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement. According to Intrado, this broad language could allow AT&T to make retroactive compensation adjustments for traffic that is not affected by a change of law. Therefore, Intrado has proposed language that would apply retroactive compensation adjustments consistent with intervening law.

AT&T: The parties disagree on terms and conditions for retroactive treatment following modification or nullification of the compensation plan (ISP Compensation Plan) set forth in the FCC's *ISP Compensation Order.* AT&T proposed in Appendix IC Section 4.2.1 that retroactive treatment would apply to traffic exchanged as "local calls." AT&T stated that this is the appropriate classification of traffic to which a retroactive adjustment would apply. Intrado objected to this language, preferring a vague reference to intervening law, which is redundant and therefore unnecessary.

PUBLIC STAFF: The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

DISCUSSION

This issue was addressed by Intrado witness Clugy and AT&T witness Pellerin. Both parties appear to agree that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. The parties are seeking to include language in anticipation of a change of law regarding reciprocal compensation of "local" traffic pursuant to the *ISP Compensation Order.*[19] Intrado contended that AT&T's proposed language indicating that retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement is so broad it could apply to traffic not affected by a change in law, and AT&T contended that Intrado's language is vague, redundant, and unnecessary. Further, Intrado stated that the ICA should limit the application of retroactive compensation adjustments to those specifically ordered by intervening law and that Intrado's language should be adopted.

By contrast, AT&T proposed that retroactive treatment would apply to traffic exchanged as "local calls." Witness Pellerin testified this is the appropriate classification of traffic to which a retroactive adjustment would apply. Intrado objected to retroactive treatment for local calls and advocated as an alternative the additional language "to which Intervening Law applies". AT&T argued that the contractual provision at issue already states that ". . . the Parties intend for retroactive compensation adjustments, *to the extent they are ordered, by Intervening Law*, to apply to all traffic." According to AT&T, including an additional reference to "Intervening Law" to the end of this sentence, as Intrado proposed, is redundant and, therefore unnecessary.

In its Proposed Order, the Public Staff stated that the ICA should provide for a possible change of law regarding reciprocal compensation. According to the Public Staff, the ICA language should be clear that any such change of law would only be effective as to the particular type of traffic affected by the change of law. Finally, the Public Staff stated that it does not believe that AT&T's language would be

[19] Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27. 2001) (*ISP Compensation Order*).

misinterpreted in the manner proposed by Intrado and that Intrado's proposed language is, therefore, unnecessary.

The Commission agrees with all parties that the ICA should provide for a possible change of law regarding reciprocal compensation. Certainly both parties should be clear that any such change of law would only be effective as to the particular type of traffic affected by the change of law. After carefully reviewing the contentions of the parties and the language proposed by AT&T, the Commission agrees with the reasoning advanced by the Public Staff that AT&T's language would not be interpreted so broadly that it could apply to traffic not affected by a change in law. Thus, Intrado's proposed language is unnecessary.

CONCLUSIONS

The Commission finds that Intrado's proposed language is redundant and unnecessary. We find that the AT&T-proposed language is the better alternative.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

ISSUE NO. 21 - MATRIX ISSUE NO. 18: (a) What term should apply to the interconnection agreement? (b) When should Intrado notify AT&T that it seeks to pursue a successor ICA?

POSITIONS OF PARTIES

INTRADO: Intrado stated that, in connection with the parties' negotiations for an Ohio ICA, they had agreed to contract language to govern the term and termination of the ICA. Intrado sees no reason to negotiate new generic provisions governing the term and termination for use in North Carolina when the parties have already reached an agreement on such provisions that are unaffected by generic provisions.

AT&T: AT&T noted in the Cover Letter to its Proposed Order that the parties had reached agreement on language to be placed in the 13-state template in Ohio and that there was therefore no need for any substantive consideration of Matrix Issue No. 18, subparts (a) and (b). The parties have agreed to a three-year term for the ICA and, after notice of expiration, a right to request a successor agreement from AT&T within 10 days. AT&T has agreed to modify its 9-state template language.

PUBLIC STAFF: There should be a three-year term for the ICA. When one party seeks to terminate the ICA, Intrado has the right to request a successor agreement from AT&T within 10 days.

DISCUSSION

Based on the record in this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 18 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 18.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

ISSUE NO. 22 – MATRIX ISSUE NO. 20: What are the appropriate terms and conditions regarding billing and invoicing audits?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 20. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that the interconnection agreement should reflect the language agreed to by the parties in the Ohio interconnection agreement with respect to the terms and conditions regarding billing and invoicing audits.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 20 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 20.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

ISSUE NO. 23 – MATRIX ISSUE NO. 22: Should Intrado be permitted to assign the ICA to an affiliated entity? If so, what restrictions, if any should apply if that affiliate has an effective ICA with AT&T?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 22. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff asserted that as long as an affiliate is properly certified in North Carolina and the Commission has received proper documentation, it is acceptable for the ICA to provide that it can be assigned to an affiliate if that affiliate's ICA has been terminated prior to such assignment.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 22 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 22.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

ISSUE NO. 24 – MATRIX ISSUE NO. 23: Should AT&T be permitted to recover its costs, on an individual case basis, for performing specific administrative activities? If so, what are the specific administrative activities?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 23. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that there appears to be no significant dispute between the parties with respect to the 13-state template language Intrado proposes to include in the North Carolina ICA. The Public Staff noted that this language is presented in Section 6.3 of the General Terms and Conditions of the December 18, 2007 draft agreement Intrado filed with its arbitration petition. The Public Staff recommended that the Commission require the parties to incorporate this language, suitably modified to reflect any North Carolina-specific requirements and terminology, into the ICA they file pursuant to the Commission's Order in this docket.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 23 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 23.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24 AND 25

ISSUE NO. 25 – MATRIX ISSUE NO. 24: What limitation of liability and/or indemnification language should be included in the ICA?

POSITIONS OF PARTIES

INTRADO: Intrado takes issue with AT&T's language that indicates that AT&T will not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. In Intrado's view, this is very broad language and gives AT&T unlimited protection from liability. AT&T should not have unlimited protection from liability, especially for actions that are attributable to AT&T.

AT&T: AT&T should not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. AT&T disagrees with Intrado's proposed language as vague and ambiguous.

PUBLIC STAFF: The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person". AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

DISCUSSION

This issue was addressed by Intrado witness Clugy and AT&T witness Pellerin.

The parties have reached resolution on the majority of the limitation of liability and indemnification provisions of the ICA in connection with their Ohio negotiations (either via a negotiated resolution or Intrado's acceptance of AT&T's originally proposed language). Two issues, however, remain for resolution.

The first issue is whether AT&T may limit its liability for losses arising from the provision of 911 services. AT&T's language indicates that it will not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. According to Intrado, this is very broad language and gives AT&T unlimited protection from liability. Intrado contended that carriers typically cannot limit their liability for errors that are caused by gross negligence or willful misconduct, but AT&T's language does just that. Intrado has, therefore, proposed language that would make AT&T liable for losses if the provision of access to 911 service or errors, interruptions, defects, failures, or malfunctions of 911 were attributable to AT&T. AT&T asserted that the language proposed by Intrado would allow Intrado and/or its customers to hold AT&T liable for personal injury, death, destruction of property for system and/or equipment errors,

interruptions, defects, or malfunctions of 911 service that result from the normal course of doing business.

In its Proposed Order, the Public Staff asserted that the parties' positions lie on either end of the spectrum. Nevertheless, the Public Staff believes that it is appropriate to protect AT&T from liability for unintentional or negligent acts or omissions, but to potentially allow liability for willful, wanton, or intentional acts or omissions. The Public Staff reasoned that there are more likely to be "life or death" situations involved with the provision of 911 service, so it is important that the parties exercise the utmost degree of care to ensure that the service is of the highest quality.

As the Public Staff correctly observed, the parties' positions on this issue lie on either end of the spectrum. At one end of the spectrum, AT&T believes that it should bear no liability for any error, no matter how egregious the error. At the other end, Intrado believes that AT&T should bear unlimited liability for an error, no matter how simple or innocent. In this proceeding, Intrado and AT&T individually asked the Commission to choose either one or the other of the proposals. Both parties have advanced various arguments in support of their individual preference. After carefully reviewing the arguments of the parties and the evidence presented in this proceeding, we decline to adopt either of the options proposed by the parties and, instead, for the reasons more fully articulated below, adopt the more moderate alternative proposed by the Public Staff.

Our Supreme Court has held that carriers typically cannot limit their liability for errors that are caused by gross negligence or willful misconduct. *See, e.g., Jordan v. Eastern Transit & Storage Co.*, 266 N.C. 156, 162 (1966) ("[I]t has long been held that, in absence of statutory authorization, a common carrier or other public utility may not contract for its freedom from liability for injury caused by its negligence in the regular course of its business."); *Hall v. Sinclair Refining Co.*, 242 N.C. 707, 709 (1955) (finding that a contract provision that exempts a party from liability for harm resulting from its own negligence is not favored by North Carolina law). Similarly, this Commission has previously rejected interconnection agreement language that would completely absolve an ILEC from some continuing responsibility for its misconduct. (*See* Docket No. P-1262, Sub 2, *In re Petition for Arbitration of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with LEXCOM Telephone Company, Recommended Arbitration Order* (Nov. 26, 2007). In the *LEXCOM* decision, we stated:

> In the absence of such negotiated agreement, the Commission firmly believes that it is unwise to allow LEXCOM to disclaim any and all liability for errors or omissions in its handling of directory listings, including errors and omissions that are a result of its negligence. Were it to do so, the Commission would be allowing LEXCOM to shift complete responsibility for ensuring the accuracy of the directory from LEXCOM, the entity that has statutory responsibility for providing the directory, to TWCIS, a party that is, by statute, entitled to nondiscriminatory access to directory listings

and, more importantly, a competitor with the ILEC in the telecommunications services market.

In accordance with this clearly articulated precedent, the Commission continues to believe that it is unwise to allow an ILEC such as AT&T to shift complete responsibility for any errors that AT&T commits to its competitor in the telecommunications market. We, therefore, reject AT&T's proposal which broadly insulates AT&T from liability for any acts or omissions, including willful, wanton, and intentional acts.

Although it is clear that our precedent favors exposing AT&T to some measure of liability for errors attributable to AT&T, we find Intrado's proposed language, which subjects AT&T to unlimited liability for any error, no matter how innocuous, equally objectionable to AT&T's efforts to absolve itself from any responsibility for its errors. In our opinion, subjecting AT&T to such open-ended liability for seemingly minor errors is not in the public interest. We believe, as AT&T contended, that this language, if adopted, would or could potentially make providing 911/E911 service cost-prohibitive, and that no carrier would reasonably be able (or willing) to provide 911 service without an exponential rate increase. Because of the unique importance of 911/E911 to the public, we dare not risk that either of those eventualities could occur. Thus, we also reject Intrado's proposed language that would expose AT&T to unlimited liability.

By rejecting both parties' solution, we are left with a dilemma as to how to resolve this open issue. The question is: How can we, consistent with our responsibilities under the Act, determine what liability each party should bear for errors and omissions committed by the other party in the implementation of an ICA? When faced with this situation in other arbitration dockets, the Commission has been reluctant to impose disputed limitation of liability and/or indemnification language on the parties when they have been unable to reach agreement through arms length negotiations. See *In re MCI Telecommunications*, Docket No. P-141, Sub 29, Order Ruling on Objections, Comments, Unresolved Issues and Composite Agreement, pp. 22-23, April 11, 1997, (1997 WL 233032), *In re MCImetro Access Transmission Services*, Docket No. P-474, Sub 10, Recommended Arbitration Order, pp. 107-109, April 3, 2001, (2001 WL 468490). Oftentimes, we have directed the parties to begin negotiations anew with the assistance of the Public Staff, a neutral and detached party. See *Sprint v. Randolph Arbitration*, Docket P-294, Sub 30, Recommended Arbitration Order, pp. 35-36, August 23, 2008. In the latter case, we required renewed, Public Staff-assisted negotiations when the fully developed record was not adequate to fashion a solution to the issue in question and the parties showed some willingness to resolve the dispute.

Without a doubt, the Commission would prefer the latter solution. This case, however, does not lend itself to that option. The record and the parties' positions on this issue are fully developed; the parties have not resolved their dispute even though they have engaged in extensive pre-trial (and, presumably, post-trial) arms-length negotiations; and, perhaps, most importantly, the Public Staff has taken a position in the current docket which is adverse to both AT&T and Intrado.

Thus, we are left with the choice of sending the parties back for further negotiations unassisted, imposing a Commission created solution on the parties, or adopting the "compromise" recommendation made by the Public Staff. After carefully examining the recommendation of the Public Staff and weighing the amount of time and effort that the parties and the Commission have expended in reaching this point in the proceeding, we choose the latter option. In doing so, we find that the Public Staff's recommendation protecting AT&T from liability for unintentional or negligent acts or omissions---but allowing potential liability for willful, wanton, or intentional acts or omissions---is nuanced, balanced and in the public interest. The recommendation relieves AT&T from the prospect of unlimited liability for errors and mistakes that are bound to occur during the course of a normal business operation providing 911/E911 emergency service and meets AT&T's concern that the cost of providing such service would be prohibitive as a result. At the same time, the Public Staff's proposal assures the public and Intrado that 911/E911 service is being responsibly provided by a service provider that is attentive to its business and mindful of the consequences of failing to provide the highest quality service.

Accordingly, we conclude that AT&T and Intrado shall include language in the ICA that limits AT&T's liability for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of unintentional or negligent acts by AT&T and/or its agent. The ICA shall also state that AT&T may be liable for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of gross negligence and /or willful misconduct.

The second, less difficult, issue deals with AT&T's proposal to change the term "End User" to the word "customer". The provision discussed by witness Pellerin not only limits the liability to "End Users", but also to "any other Person". The definition of "Person" appears to cover every type of entity, including "customers". With the limitation of liability applying to "any other Person", AT&T's liability should be appropriately limited. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

CONCLUSIONS

The Commission concludes that AT&T and Intrado shall include language in the ICA that limits AT&T's liability for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of unintentional or negligent acts by AT&T and/or its agent. The ICA shall also state that AT&T may be liable for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of gross negligence and/or willful misconduct. Finally, the Commission concludes that the word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

ISSUE NO. 26 – MATRIX ISSUE NO. 25:

(a) Should disputed charges be subject to late payment penalties?

(b) Should the failure to pay charges, either disputed or undisputed, be grounds for the disconnection of services?

(c) Following notification of unpaid amounts, how long should Intrado Comm have to remit payment?

(d) Should the parties be required to make payments using an automated clearinghouse network?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 25. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that language in the agreement should specify that, for disputed charges put into the escrow account in a timely manner, the only fees owed would be the interest earned through the escrow account that is associated with the disputed charge.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 25 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 25.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

ISSUE NO. 27 – MATRIX ISSUE NO. 29(a): What rounding practices should apply for reciprocal compensation usage and airline mileage?

POSITIONS OF PARTIES

INTRADO: Intrado argued that AT&T's proposed language to round reciprocal compensation up to the next whole minute and to round airline mileage up to the next mile does not represent current industry practice. Intrado proposed that reciprocal compensation usage be billed in six-second increments and that airline mileage be billed in one-fifth mile increments.

AT&T: AT&T asserted that its proposal to round airline mileage to the next mile is consistent with the industry standard practice, and should, therefore, be adopted by the Commission. AT&T further argued that its proposal to round reciprocal compensation up to the next whole minute is consistent with industry practice and should also, therefore, be adopted by the Commission.

PUBLIC STAFF: The Public Staff stated that airline mileage should be rounded to the next whole mile and that rounding for reciprocal compensation usage should be to the next whole minute in cases where actual usage is not available and the billing party relies on jurisdictional reporting factors.

DISCUSSION

Intrado witness Hicks provided the following testimony on this issue; this is the only evidence placed in the record by Intrado on this issue:

> Q. Does AT&T's proposed language reflect industry standard rounding practices?
>
> A. No. Per-minute charges are normally billed in six-second increments. AT&T, however, seeks to round-up charges to the next minute. Similarly, per-mile charges are normally billed in one-fifth mile increments. AT&T seeks to round-up to the next whole mile.

Intrado stated in its Proposed Order that its witnesses stated that industry practice calls for reciprocal compensation usage to be billed in six-second increments and airline mileage to be billed in one-fifth mile increments. Intrado asserted that AT&T's proposed language does not represent current industry practice.

Intrado maintained that AT&T has argued that its language does represent industry practices and that any financial impact to Intrado of such rounding is minimal.

Intrado recommended that the Commission agree with Intrado that many carrier-to-carrier agreements and carrier tariffs utilize six-second increments for per minute charges and one-fifth increments for per mile charges. Intrado noted that AT&T has pointed to no document or standard that supports its proposed rounding methods. Intrado stated that, while AT&T argues that the financial impact to Intrado of such rounding is minimal, Intrado should not be required to pay AT&T more than it otherwise would owe to AT&T.

Intrado recommended that the Commission adopt its proposed language since it represents current industry standards and practices.

AT&T witness Pellerin stated in her rebuttal testimony that she cannot identify the basis for Intrado witness Hicks' conclusions about what is "normal" rounding practices for either reciprocal compensation or airline mileage. Witness Pellerin testified that Intrado's proposed rounding increments are not consistent with AT&T's experience in the industry.

Witness Pellerin noted that the language in dispute regarding mileage rounding is reflected in Pricing Section 2.3 as follows:

> When the calculation results in a fraction of a mile, AT&T will round up to the next **[Intrado:one-fifth (1/5)] [AT&T: whole]** mile before determining mileage and applying rates.

Witness Pellerin stated that the proper increment for rounding distance sensitive rates is one mile, which is standard in the industry for carrier interconnection. Witness Pellerin noted that this is reflected in the Multiple Exchange Carrier Access Billing (MECAB) Guidelines, ATIS-0401004-0009. She noted that Section 3.4 of those Guidelines states:

> 3.4 Transport or Mileage Charge Calculations
>
> The appropriate method for calculation of MPB for the distance sensitive portion of Local Transport (direct-trunk and tandem-switched), Channel Mileage (e.g. Special Transport), is as follows:
>
> 1. The Vertical and Horizontal (V&H) coordinates (filed in NECA Tariff FCC No. 4) are used to calculate the airline distance between two wire centers. Fractional mileage is rounded to the next whole number.

Witness Pellerin noted that, in addition, AT&T's North Carolina switched access tariff provides:

> To determine the rate to be billed, first compute the mileage using the V&H coordinates method for the points involved, then apply the per mile rate shown. If the calculation results in a fraction of a mile, always round up to the next whole mile before determining the mileage and applying the rates. (BellSouth Telecommunications, Inc. Access Services Tariff, Section E6.7.13)

Witness Pellerin noted that AT&T's North Carolina tariff also provides similar language in its section entitled "LATAs and Mileage Measurement Methodology", as follows:

> The resultant number is the airline miles between the wire centers. (Rounded to the next full mile.) (BellSouth Telecommunications, Inc. North Carolina Access Services Tariff, Section 10.4.2)

Witness Pellerin asserted that Intrado's proposed language to round mileage to the next one-fifth mile is inconsistent with industry standard and should be rejected. She maintained that AT&T's mileage rounding increment of one mile should be adopted.

Witness Pellerin testified that the appropriate rounding increment for calculation of conversation time is one minute, not six (6) seconds as Intrado proposes. Witness Pellerin noted that similar language appears in both Pricing Section 2.2 and Intercarrier Compensation Section 14.4[20]:

> For purposes of reciprocal compensation only, measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded **[Intrado: based on six (6) second intervals] [AT&T: to the next whole minute].**

Witness Pellerin stated that the parties agree that reciprocal compensation is calculated based on actual conversation seconds, as opposed to including non-conversation time (which is how access usage is calculated). Thus, witness Pellerin maintained, there is no reciprocal compensation charge for calls not completed. She noted that the parties also agree that usage is calculated on a trunk group basis.

Witness Pellerin maintained that the financial impact to Intrado by rounding reciprocal compensation to the next minute is truly *de minimus.* She noted that IC Section 14.4 provides that usage is accumulated on each trunk group for a month, and then rounded up before being billed at the agreed-upon reciprocal compensation rate of $0.0007 per minute. Witness Pellerin stated that, hypothetically, if Intrado had

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[20] Witness Pellerin noted that the language dispute reflected in Pricing Section 2.2 and Intercarrier Compensation Section 14.4 is not present with the 9-state template and need not be addressed by the Commission unless it requires use of the 13-state template.

100 trunk groups delivering Section 251(b)(5) usage to AT&T, and all were rounded up by a full minute (which would never happen), that would equate to 7 cents per month for all trunk groups together – or 84 cents per year. She noted that, even if Intrado had 1,000 trunk groups to AT&T, it is still only $8.40 per year. Witness Pellerin asserted that it is not even worth the arithmetic to be more accurate by backing out the fraction of a minute Intrado would pay based on six second rounding.

During cross-examination, witness Pellerin stated that this issue represents one of the fundamental differences between the 9-state template and the 13-state template; in the 9-state region, their switches do not have the capability (or current technology) to do the measurements and billing based on actual usage. She asserted that it would be a huge project to update the switches, update operational systems, and update billing systems to do the measurements and billing based on actual usage.

AT&T stated in its Proposed Order that this issue involves the appropriate rounding practices to apply in two different contexts: (1) airline mileage; and (2) reciprocal compensation.

AT&T noted that the dispute regarding rounding for reciprocal compensation is moot if the 9-state template is used. For airline mileage, AT&T stated that it proposes that mileage should be rounded up to the next whole mile, and Intrado proposes that mileage be rounded up to the next one-fifth of a mile. AT&T maintained that witness Pellerin testified that rounding up to one whole mile is the standard in the industry for carrier interconnection. AT&T asserted that this industry standard for mileage rounding is stated in the MECAB Guidelines, ATIS – 0401004-0009, Section 3.4. AT&T stated that, as an example of this standard practice, witness Pellerin quoted specific portions of AT&T's Switched Access Tariff and Dedicated Access Services Tariff, which incorporate the practice of rounding to the next whole mile.

AT&T stated that, as to rounding for reciprocal compensation, AT&T proposes a rounding increment of one minute, while Intrado proposes rounding in six second intervals. AT&T argued that, once again, AT&T made a proposal that tracks the standard industry practice for carrier billing, while Intrado has proposed an approach that deviates from this standard practice. AT&T noted that witness Pellerin also testified that AT&T's proposed rounding of reciprocal compensation usage to the next whole minute is utilized between other carriers.

AT&T asserted that, rather than accepting the standard industry practice, Intrado has proposed a much shorter rounding increment. AT&T argued that the difference, however, between the standard increment proposed by AT&T and the interval proposed by Intrado represents a financial impact that is minimal. AT&T noted that, to illustrate this point, witness Pellerin testified as to the hypothetical example in which Intrado would have 100 trunk groups dedicated to Section 251(b)(5) usage, and all were rounded up by a full minute, rather than the six seconds proposed by Intrado. AT&T maintained that, not counting any offset for traffic AT&T would terminate to Intrado, the resulting difference would be $.07 per month or 84 cents per year. AT&T stated that, for

1,000 trunk groups, the difference would be $8.40 a year. AT&T noted that, furthermore, AT&T does not currently have the technology that would permit it to measure and bill reciprocal compensation based on actual usage. AT&T asserted that, clearly, Intrado has offered no reasons, financial or otherwise, to deviate from the standard practice. AT&T recommended that the Commission adopt the language proposed by AT&T.

The Public Staff maintained in its Proposed Order that, while both parties contend their position is consistent with the industry standard, the Public Staff believes that AT&T has provided sufficient proof that its rounding factors represent the standard for purposes of carrier interconnection. The Public Staff noted that an additional complication with Intrado's position is that AT&T's switches and billing system are not designed to capture the actual usage. The Public Staff asserted that, thus, AT&T would have to incur the expense of implementing this capability for what appears to be, at most, a *de minimus* difference from AT&T's proposal. Therefore, the Public Staff argued, the Commission should conclude that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

After reviewing the evidence of record on this issue, the Commission agrees with AT&T and the Public Staff and finds that it is appropriate to round airline mileage up to the next whole mile and round reciprocal compensation up to the next whole minute. As the record reflects, both Intrado and AT&T maintain that their rounding proposals are standard industry practice. However, AT&T has provided convincing evidence that its method constitutes standard industry practice, and the record shows that any financial harm suffered by Intrado as a result of AT&T's rounding proposal would truly be *de minimus*. In addition, AT&T has asserted that its current systems do not capture actual usage and that updates would need to be completed in order for AT&T to round as proposed by Intrado in this proceeding. Therefore, the Commission concludes that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

CONCLUSIONS

The Commission concludes that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

ISSUE NO. 28 – MATRIX ISSUE NO. 29(b): Is AT&T permitted to impose unspecified non-recurring charges on Intrado Comm?

POSITIONS OF PARTIES

INTRADO: Intrado argued that AT&T should be required to notify Intrado of any charges prior to provisioning a service. Intrado maintained that any charges to be imposed on Intrado should be developed pursuant to the Section 251 and Section 252 process.

AT&T: AT&T asserted that services ordered and provided by AT&T that are not included in the interconnection agreement and for which there is no tariffed rate should be priced based on AT&T's standard generic contract rate.

PUBLIC STAFF: The Public Staff stated that the language proposed by AT&T is adequate to ensure that AT&T is paid for the services and products it provides to Intrado and that Intrado is not charged an unreasonable or discriminatory rate for receiving those services.

DISCUSSION

Intrado witness Hicks stated in his direct testimony that AT&T should be required to identify which and when services, functions, or facilities are subject to extraordinary charges, and notify Intrado if such charges will be applied. Witness Hicks noted that Intrado understands that some items must be individually billed as non-recurring charges depending on the specific request made by Intrado. Witness Hicks maintained that both parties, however, must identify any services to which such charges may apply and how those charges will be calculated.

Intrado stated in its Proposed Order that it opposes AT&T's ability to arbitrarily develop rates, post those rates on AT&T's website, and then impose those rates on Intrado without notice. Intrado argued that any rates developed by AT&T should be pursuant to the process established by Section 251 and Section 252 and subject to approval by the Commission.

Intrado noted that AT&T has claimed that it must be able to develop rates to ensure Intrado pays for services that might have been rendered for which no current rate exists. Intrado maintained that, in AT&T's view, AT&T's standard generic contract rate should be applied in these instances. Intrado asserted that the process that AT&T proposed to use to develop and impose those rates is arbitrary.

Intrado recommended that the Commission conclude that any rates to be imposed on it under the interconnection agreement should be developed through the Section 251 and Section 252 process with approval by the Commission. Intrado

asserted that imposing some parameters on AT&T's ability to impose rates on Intrado is reasonable.

AT&T witness Pellerin stated in her rebuttal testimony that, in Pricing Section 1.9, the parties have agreed that AT&T's obligation to provide products and services to Intrado is limited to those for which rates, terms, and conditions are contained in the interconnection agreement. She noted that the parties also agreed in Section 1.9 that, to the extent Intrado ordered a product or service not contained in the interconnection agreement, AT&T would reject that order. Witness Pellerin stated that if the order was for a UNE, Intrado could submit a Bona Fide Request in accordance with Appendix UNE's Bona Fide Request provisions. She stated that if the order was for a product or service still available in AT&T's tariff, Intrado could seek to amend the interconnection agreement to incorporate relevant rates, terms, and conditions.

Witness Pellerin noted that Pricing Sections 1.9.1 and 1.9.2 address what happens if Intrado orders a product or service not contained in the interconnection agreement and AT&T inadvertently provisions it nonetheless. Witness Pellerin stated that the language in Sections 1.9.1 and 1.9.2 is as follows[21]:

> 1.9.1 CLEC [competitive local exchange company] shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then ~~AT&T shall propose rates pursuant to the process required in Sections 251 and 252 of the Act.~~ **CLEC shall pay for the Product or Service at AT&T's current generic contract rate for the Product or Service set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website; or**
>
> **1.9.2 CLEC will be billed and shall pay for the product or service as provided in Section 1.9.1, above, and AT&T may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.9.**

Witness Pellerin noted that AT&T's proposed language in Section 1.9 provides that Intrado will pay the standard generic rate that another CLP would pay for that same product or service (provided there is no tariff rate). She stated that Intrado's language requiring AT&T to propose rates pursuant to the Act should be rejected. Witness Pellerin argued that it is important to keep in mind that, in this example, Intrado has ordered, and AT&T has inadvertently provisioned, a product or service that is available to other CLPs in their interconnection agreements, but is not in Intrado's interconnection

[21] The language stricken through represents language proposed by Intrado and the language in bold and underlined represents language proposed by AT&T.

agreement. Witness Pellerin asserted that AT&T should not have to go through the process of proposing rates when it already has rates established. She stated that, moreover, Intrado has objected to AT&T's language in Section 1.9.2 that would require Intrado to actually pay for these services.

Witness Pellerin stated that AT&T's proposed language in Section 1.9.2 also provides that AT&T may reject other orders for the same product or service until rates, terms, and conditions are incorporated into the interconnection agreement. She argued that AT&T should not be expected or required to continue providing service outside the interconnection agreement simply because it inadvertently did so once.

Witness Pellerin maintained that AT&T's language is entirely appropriate when you consider that Intrado has ordered (and received the benefit of) a product or service for which it has no contract terms, but that AT&T inadvertently provisioned anyway.

Witness Pellerin further noted that AT&T objects to Intrado's proposed language in Pricing Section 1.10.1. She noted that Section 1.10.1 addresses any rates in the Pricing Schedule that are "TBD" (to be determined). She stated that the parties have agreed to most of the language regarding TBD rates, including retroactive application of generic prices "without the need for any additional modification(s) to this Agreement or further Commission action." She noted that Intrado then adds this conflicting language: "if the parties have reached mutual agreement of the specified rate and the Commission has approved pursuant to the following process." Witness Pellerin maintained that this language would require that (1) Intrado agrees to the prices, and (2) the Commission approves them. She argued that this language would improperly permit Intrado to object to prices even if the Commission had approved them. Witness Pellerin proposed that the Commission reject Intrado's proposed language in this regard.

During cross-examination, witness Pellerin explained that the parties have agreed that if there is a tariffed rate for a particular service, then that rate will be used. She stated that if, however, there is not a tariffed rate but there is a rate in AT&T's generic interconnection agreement that AT&T offers to other CLPs in North Carolina, then AT&T proposes that that rate would be applied to Intrado. Witness Pellerin noted that Intrado is proposing that AT&T come up with some other rate that AT&T proposes and the parties mutually agree on. She stated that AT&T believes that to be an unnecessary step given that AT&T has already developed a rate that it uses for other CLPs. Witness Pellerin explained that Intrado's proposed language ("AT&T shall propose rates pursuant to the process required by Sections 251 and 252") assumes that all of the prices in the pricing appendix are limited to unbundled network elements and interconnection. She stated that the pricing section applies to the entire agreement so there may very well be services included in the generic agreement that are not necessarily TELRIC prices.

AT&T stated in its Proposed Order that this issue involves two provisions of the ICA, Pricing Section 1.9.1 and Section 1.9.2, which relate to the same dispute. AT&T noted that, specifically, the parties have agreed in Section 1.9 (Pricing) that AT&T is

obligated only to provide products and services to Intrado for which there are rates, terms, and conditions in the ICA. AT&T maintained that Section 1.9.1 and Section 1.9.2 address the procedure to follow if Intrado orders a product that is not included in the ICA, and AT&T inadvertently provides the product or service (even though it is under no obligation to do so). AT&T noted that the parties have already agreed in Pricing Section 1.9.1 that, in these circumstances, Intrado will pay the tariffed rate if a tariff exists. AT&T stated that it further proposes that, if no tariff exists, the standard generic rate that any other CLP would pay for the same product or service would apply to Intrado.

AT&T maintained that Intrado, on the other hand, proposes that, under these circumstances, AT&T should be required to develop charges through the Section 252 process with approval by the Commission. AT&T stated that, thus, in the unlikely event that AT&T inadvertently provides services that are outside of the scope of the Agreement, it would have to propose and negotiate (and perhaps arbitrate) a rate for services that have already been rendered and for which generic CLP prices already exist. AT&T argued that this circumstance should occur rarely, if ever. AT&T maintained that, if it does occur, this occurrence would almost certainly be under circumstances that constitute a mutual mistake, i.e., a mistake by Intrado in ordering outside of the interconnection agreement, and a mistake by AT&T in providing the service in spite of its being improperly ordered. AT&T stated that, in these limited circumstances, AT&T should be allowed to charge Intrado the going rate for the service it has ordered (outside of the interconnection agreement), without the prospect of protracted price negotiations or arbitration. AT&T proposed that the Commission approve the language proposed by AT&T.

AT&T noted that it proposed Section 1.9.2 as a companion to Section 1.9.1. AT&T stated that this section would provide that, under the circumstances identified in Section 1.9.1, Intrado would be billed for, and would be required to pay for, the product or service. AT&T maintained that its proposed language would also state that AT&T's one-time provision of a service that is not within the scope of the interconnection agreement would not bind AT&T to provide the service in the future and that these provisions would only arise when Intrado ordered something that is outside of the interconnection agreement (and AT&T inadvertently provides the product, even though it is under no obligation to do so). AT&T asserted that, under these circumstances, it only makes sense that Intrado should be required to pay for what it has ordered, and AT&T should have no obligation to provide the product again unless the interconnection agreement is amended to include associated rates, terms, and conditions. AT&T argued that Section 1.9.2 simply creates a mechanism to achieve this reasonable objective and proposed that the Commission adopt AT&T's language in this regard.

The Public Staff stated in its Proposed Order that the language proposed by AT&T for this issue would require Intrado to pay the standard generic rate that another CLP would pay for the same product or service, assuming there is no rate in AT&T's tariff. The Public Staff noted that Intrado's proposed language would require AT&T to propose a rate for Intrado's acceptance, even though this rate may be already

contained in an effective ICA for another CLP. The Public Staff maintained that, additionally, Intrado has objected to language that would require Intrado to pay for these improperly ordered services at all.

The Public Staff recommended that the Commission find that the language proposed by AT&T is adequate to ensure that AT&T is paid for the services and products it provides to Intrado and that Intrado is not charged an unreasonable or discriminatory rate for receiving those services. The Public Staff stated that, as noted by AT&T, this provision will come into play only if Intrado orders a product or service not offered in the ICA and it is inadvertently provided by AT&T.

This issue centers around language disputes for the Appendix Pricing, Sections 1.9.1 and 1.9.2, as follows:

Intrado's proposed language

Section 1.9.1: CLEC shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then AT&T shall propose rates pursuant to the process required in Sections 251 and 252 of the Act.

Section 1.9.2: AT&T's provisioning of orders for such Products or Services is expressly subject to this Section 1.9 and in no way constitutes a waiver of AT&T's right to charge and collect payment for such Products and/or Services.

AT&T's proposed language

Section 1.9.1: CLEC shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then CLEC shall pay for the Product or Service at AT&T's current generic contract rate for the Product or Service set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website; or

Section 1.9.2: CLEC will be billed and shall pay for the product or service as provided in Section 1.9.1, above, and AT&T may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.9.

After reviewing the record of evidence on this issue, the Commission agrees with AT&T and the Public Staff that AT&T's proposed language is appropriate. As noted by both AT&T and the Public Staff, the issue in dispute here does not come into play unless Intrado, presumably inadvertently, or in error, orders a product or service which it is not entitled to receive under the express terms of the ICA and AT&T, inadvertently, or in error, provides the product or service. Based on AT&T's proposed language, under such a circumstance, Intrado would be billed at: (1) the rates set forth in AT&T's applicable intrastate tariff(s) **or**; (2) to the extent there are no tariffed rates, then Intrado will pay AT&T's current generic contract rate as set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website. Under AT&T's proposed Section 1.9.2, AT&T may then reject future orders until such time as appropriate rates for such services are incorporated into the Intrado/AT&T interconnection agreement. The Commission agrees with AT&T that it is inappropriate and unnecessary to require AT&T to propose some other rate that the parties mutually agree on when AT&T has already got a rate that it uses for other CLPs. The Commission concludes that AT&T's proposed language is appropriate and reasonable and, therefore, should be adopted for inclusion in the parties' interconnection agreement.

CONCLUSIONS

The Commission concludes that AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 is appropriate and should be adopted for inclusion in the parties' interconnection agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

ISSUE NO. 29 – MATRIX ISSUE NO. 33: Should AT&T be required to provide UNEs to Intrado Comm at parity with what it provides to itself?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 33. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio.

AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that it is unnecessary to require that the ICA explicitly state that, to the extent technically feasible, the quality of the UNEs and access to such UNEs shall be at least equal to what AT&T provides to itself and to other telecommunications carriers requesting access to the UNEs, because AT&T is already subject to this legal obligation.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 33 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 33.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

ISSUE NO. 30 – MATRIX ISSUE NO. 34:

(a) How should a "non-standard" collocation request be defined?

(b) Should non-standard collocation requests be priced based on an individual case basis?

POSITIONS OF PARTIES

INTRADO: Intrado argued that, once AT&T provides one carrier with a certain collocation arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination.

AT&T: AT&T asserted that a non-standard collocation request is any collocation request that is beyond the terms and conditions set forth in the interconnection agreement. AT&T recommended that the Commission conclude that Intrado is required to pay for the collocation arrangements based on the specific criteria of the request. AT&T recommended that the Commission reject Intrado's proposal to pay the same as other carriers have paid for "similar" work because: (1) the term "similar" is too vague in this context; and (2) older "similar" arrangements may reflect obsolete costs.

PUBLIC STAFF: The Public Staff stated that Intrado's proposed additional language goes beyond the implied intent of Section 2.22 in the Physical Collocation Appendix and should not be adopted.

DISCUSSION

Intrado witness Hicks stated in his direct testimony that AT&T has proposed language that would permit it to charge Intrado for "non-standard" collocation requests made by Intrado. He asserted that AT&T should not be permitted to impose "non-standard" charges on Intrado for arrangements that AT&T has provided to other service providers. Witness Hicks maintained that, once AT&T provides one provider with a certain arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination. Witness Hicks stated that it is his understanding that the FCC has found that if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical infeasibility. Witness Hicks argued that AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided a similar arrangement to another provider.

Intrado asserted in its Proposed Order that witness Hicks explained that Intrado should be entitled to the same collocation arrangements that AT&T provides to other carriers at the same rates, terms, and conditions. Intrado maintained that once AT&T provides one carrier with a certain arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination.

Intrado maintained that AT&T has contended that Intrado should be required to pay for non-standard collocation arrangements based on the specific criteria of the request. Intrado asserted that, in AT&T's view, while another carrier might have what Intrado would characterize as "similar" to what Intrado requests, it may actually be different.

Intrado recommended that the Commission conclude that AT&T should not be permitted to impose "non-standard" charges on Intrado for arrangements that AT&T has provided to other carriers. Intrado maintained that the FCC has found in Paragraph 204 of its *Local Competition Order* that, if a particular method of interconnection or collocation is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical infeasibility. Intrado proposed that the Commission find that AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided a similar arrangement to another provider.

AT&T witness Pellerin stated in her rebuttal testimony that there is no language in dispute regarding the definition of a "non-standard" collocation request. She stated that, however, the determination of what constitutes a non-standard collocation request is important to the context of the parties' pricing dispute in Matrix Issue No. 34(b).

Witness Pellerin maintained that the parties have agreed in the Physical Collocation Appendix - Section 2.22 that a non-standard collocation request is any collocation request that is beyond the terms, conditions, and rates set forth in Appendix Physical Collocation. She stated that the parties have also agreed to the definition of "Custom Work Charge", as follows:

> Denotes the charge(s) developed solely to meet the construction requirements of the Collocator, (e.g., brighter lighting above the Collocator's cage, circular cage, different style tile within the cage). [Appendix Physical Collocation, Section 2.8]

Witness Pellerin stated that, because custom work such as that described above is provided for by Appendix Physical Collocation, it would be considered a "standard" (rather than "non-standard") collocation request.

Witness Pellerin maintained that Intrado proposed additional language, to which AT&T objects, as set forth in bold italics below:

> Appendix Physical Collocation – Section 2.22 - Non-Standard Collocation Request (NSCR) – AT&T-[STATE] may seek to impose non-standard charges for requirements based on requests from a Collocator that are beyond the terms, conditions, and rates established in this Appendix; ***provided, however, that NSCR charges shall not apply to CLEC requests for collocation or interconnection for which AT&T-(STATE) has existing similar arrangements with other communications service providers. The charges for such similar existing arrangements requested by CLEC shall be in parity with AT&T-(STATE) charges for existing similar arrangements***.

Witness Pellerin argued that Intrado should be required to pay for non-standard collocation arrangements (i.e., beyond the terms and conditions set forth in the interconnection agreement) based on Intrado's specific collocation arrangement. She stated that the term "similar" is sufficiently vague in the context of physical collocation requests as to be fraught with potential for dispute. Witness Pellerin maintained that, while another carrier might have what Intrado would characterize as an arrangement "similar" to what Intrado requests, such arrangement may actually be quite different and may impose on AT&T different provisioning costs. Witness Pellerin asserted that another carrier's collocation arrangement may have been engineered and provisioned for several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado. She stated that, if Intrado objects to AT&T's NSCR charges because it believes them to be discriminatory, it may invoke dispute resolution pursuant to the interconnection agreement. Witness Pellerin argued that individual case basis pricing is appropriate for any non-standard collocation arrangement; therefore, Intrado's proposed language should be rejected.

AT&T asserted in its Proposed Order that the parties are fundamentally in agreement as to the definition of a "non-standard" collocation request. AT&T noted that, specifically, they have agreed to language in Section 2.22 of the Physical Collocation Appendix that a "non-standard collocation is any collocation request that is beyond the terms, conditions, and rates set forth in Appendix Physical Collocation." AT&T stated that the parties also seem to be in general agreement that pricing for non-standard collocation should be determined on a case-by-case basis. AT&T maintained that, thus, the only real dispute is language that Intrado seeks to include in the Appendix to limit the parameters of this individual-case-basis pricing.

AT&T asserted that Intrado's proposed language would restrict AT&T to charging Intrado for requested physical collocation arrangements at the same rate as it charged other carriers that have obtained "similar" arrangements at any point in the past.

AT&T argued that the difficulty with Intrado's proposal is that a particular request by Intrado would or would not cost the same as an arrangement previously provided to another carrier based on an assessment of whether the two requests are "similar". AT&T noted that, thus, as its witness Pellerin testified, "while another carrier might have what Intrado characterizes as an arrangement 'similar' to what Intrado requests, such arrangement may actually be quite different and may impose on AT&T different provisioning costs." AT&T stated that, further, as witness Pellerin noted, "another carrier's collocation arrangement may have been engineered and provisioned several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado."

AT&T maintained that, accordingly, the adoption of Intrado's limitation that the pricing must be the same as "similar" past requests will do little or nothing to provide a useful pricing guide and will instead create the likelihood of future disputes as to what does or does not constitute a "similar" request. AT&T argued that the better approach would be for AT&T to price non-standard collocation requests by Intrado based on the specific request, and the specific circumstances that pertain at the time of the request. AT&T asserted that, if Intrado objects to the charges AT&T proposes, then it always has the option of invoking dispute resolution pursuant to the interconnection agreement. AT&T recommended that the Commission adopt AT&T's proposed language.

The Public Staff stated in its Proposed Order that Intrado witness Hicks, when asked on cross-examination by the Public Staff what would justify a non-standard collocation request, opined that AT&T wanted to be protected from anything out of the ordinary requested by a CLP. The Public Staff noted that, while he understood AT&T's position, he argued that Intrado also wants to be treated fairly, and if AT&T has previously provided a similar collocation arrangement, then the pricing should be equivalent.

The Public Staff maintained that, if AT&T deployed equipment, witness Hicks stated that AT&T and Intrado should jointly make a determination of the appropriate charges, taking into account whether a similar deployment had been performed

previously. The Public Staff asserted that, otherwise, Intrado would have to merely presume that AT&T was charging Intrado fairly. The Public Staff stated that, if Intrado subsequently learned that another collocator had installed similar equipment at a much lower rate than that offered to Intrado, Intrado would consider taking corrective action under the provisions of the ICA.

The Public Staff noted that witness Hicks contended that AT&T should not be permitted to impose arbitrary, "non-standard" charges on Intrado for arrangements AT&T has provided previously to other service providers. The Public Staff maintained that, for example, if AT&T has developed pricing for work for another collocator, then Intrado should be subject to that same pricing rather than special, higher pricing. The Public Staff stated that witness Hicks contended that arrangements should no longer be considered non-standard and subject to varying costs based on AT&T's independent determination. The Public Staff noted that witness Hicks also stated that the FCC has found that if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures.

The Public Staff stated that it agrees with AT&T that a non-standard collocation request is any collocation request beyond the terms and conditions set forth in the ICA. The Public Staff further stated that it agrees that Intrado should be required to pay for non-standard collocation arrangements based on the specific criteria of the request (i.e., on an individual case basis). The Public Staff asserted that, while Intrado might characterize another collocator's arrangement as "similar" to what Intrado requests, it may actually be very different. The Public Staff maintained that, for example, these "similar" collocation arrangements may have been engineered and provisioned several years ago, making any associated costs obsolete. The Public Staff asserted that individual case basis pricing is appropriate for any non-standard collocation arrangement. The Public Staff maintained that, if Intrado objects to AT&T's NSCR charges as discriminatory, it may seek dispute resolution pursuant to the ICA.

The Public Staff recommended that the Commission find that using the 13-state template without the proposed additional language provided by Intrado in Section 2.22 of the Physical Collocation Appendix is appropriate.

In this issue, Intrado proposes to include the following language shown in bold and underlined in Section 2.22 of the Physical Collocation Appendix:

> 2.22 Non-Standard Collocation Request (NSCR) – AT&T-[STATE] may seek to impose non-standard charges for requirements based on requests from a Collocator that are beyond the terms, conditions, and rates established in this Appendix**; provided, however, that NSCR charges shall not apply to CLEC requests for collocation or interconnection for which AT&T-[STATE] has existing similar arrangements with other communications service providers. The charges for such**

similar existing arrangements requested by CLEC shall be in parity with AT&T-[STATE] charges for existing similar arrangements.

The Commission agrees with AT&T and the Public Staff that Intrado's proposed language is not appropriate. The phrase "existing similar arrangements" is much too subjective, and, as noted by AT&T, would, instead, create the likelihood of future disputes as to what does or does not constitute a "similar" request. Non-standard collocation requests should be priced based on an individual case basis and the language from the 13-state template without the additional language proposed by Intrado would achieve this result. In addition, as noted by both AT&T and the Public Staff, if Intrado is aggrieved by a particular individually-priced non-standard collocation request, it can invoke the dispute resolution provision in the interconnection agreement. Therefore, the Commission finds it appropriate to exclude the language proposed by Intrado and, instead, adopt the exact language from the 13-state template for Section 2.22 in the Physical Collocation Appendix.

CONCLUSIONS

The Commission concludes that it is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix from the 13-state template without the additional language proposed by Intrado.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

ISSUE NO. 31 - MATRIX ISSUE NO. 35: Should the Parties' interconnection agreement reference applicable law rather than incorporate certain appendices which include specific terms and conditions for all services?

POSITIONS OF PARTIES

INTRADO: Intrado explained that, in connection with their Ohio negotiations, the Parties had agreed that certain appendices should be included in the ICA rather than indicating that the services governed by those appendices would be provided pursuant to applicable law. Thus, the Parties agreed to incorporate certain appendices into the Ohio ICA governing such services as local number portability, rights-of-way, numbers, directory assistance, and the like. Intrado wants the same provision as in Ohio to be included in the North Carolina ICA.

AT&T: In its Cover Letter to its Proposed Order, AT&T maintained that Matrix Issue No. 35 was an issue that arises solely in the context of the 13-state template. For this issue, AT&T represented that the Parties had reached agreement on the language to be placed into the 13-state agreement in Ohio and, accordingly, AT&T does not believe there is a need for any substantive consideration of this issue by the Commission.

PUBLIC STAFF: Any attachments should be incorporated into the ICA rather than incorporated by reference.

DISCUSSION

Based on the record in this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 35 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 35.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

ISSUE NO. 32 – MATRIX ISSUE NO. 36: Should the terms defined in the ICA be used consistently throughout the agreement?

POSITIONS OF PARTIES

INTRADO: The ICA defines certain terms, but AT&T's language does not consistently capitalize those terms throughout the agreement. To the extent a term has been defined, it should be capitalized throughout the agreement in recognition that it is a specifically defined term.

AT&T: AT&T asserted that defined terms should be appropriately capitalized throughout the ICA based on the use of the terms.

PUBLIC STAFF: If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

DISCUSSION

This issue was addressed by Intrado witness Clugy in her direct testimony and AT&T witness Pellerin in her rebuttal testimony.

Witness Clugy testified that the ICA defines certain terms, but AT&T has not consistently capitalized those defined terms throughout the ICA. She recommended that, if a term has been defined, it should be capitalized throughout the ICA. AT&T witness Pellerin agreed that defined terms should be capitalized throughout the ICA, but only when the defined terms are used in a manner consistent with their definition. She proposed that, if the parties have a disagreement as to whether a particular word should be capitalized, they should seek the Commission's assistance.

In its Proposed Order, the Public Staff stated that, if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

It appears that the parties may not actually disagree as to whether a previously defined term should be capitalized when used in a manner consistent with its definition, but disagree as to whether terms such as "end user" are being used consistently with their definition and therefore should be capitalized. However, no specific instances of disagreement have been brought before the Commission. The Commission finds that, if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition. Any further disputes over capitalization, definitions, or the proper language for inclusion in the ICA may be brought to the Commission.

CONCLUSIONS

The Commission concludes that if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition. Any further disputes over capitalization, definitions, or the proper language for inclusion in the ICA may be brought to the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Intrado and AT&T shall prepare and file a Composite Agreement in conformity with the conclusions of this *Order* no later than Monday, June 8, 2009. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996 *Order* in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (*Arbitration Procedure Order*), as amended by the Commission's *Order Modifying Composite Agreement Filing Requirements* dated November 3, 2000.

2. That, not later than Tuesday, May 26, 2009, a party to the arbitration may file objections to this *Order* consistent with paragraph 3 of the *Arbitration Procedure Order*.

3. That, not later than Tuesday, May 26, 2009, any interested person not a party to this proceeding may file comments concerning this *Order* consistent with paragraphs 5 and 6, as applicable, of the *Arbitration Procedure Order*.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of any party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections, or comments shall also file those Composite Agreements, objections, or comments, including the executive summary required in decretal paragraph 4 above, on

an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in Microsoft Word.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of April, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Commissioner Culpepper separately concurs with the Majority's decisions in Findings of Fact Nos. 8, 9, 10, and 11.

bp042309.01

Appendix A

Sprint/Randolph Arbitration Proceeding
Docket No. P-1187, Sub 2

Act	Telecommunications Act of 1996
ALI	Automatic Location Identification
ANI	Automatic Number Identification
ASR	Access Service Request
AT&T	BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina
ATIS	Alliance for Telecommunications Industry Solutions
CLEC	Competitive Local Exchange Company
CLP	Competing Local Provider
CMRS	Commercial Mobile Radio Service (wireless)
Commission	North Carolina Utilities Commission
EAS	Extended Area Service
FCC	Federal Communications Commission
GTC	General Terms and Conditions
ICA	Interconnection Agreement
ILEC	Incumbent Local Exchange Company
Intrado	Intrado Communications Inc.
IP	Internet Protocol
LATA	Local Access and Transport Area
MSAG	Master Street Address Guide
MECAB	Multiple Exchange Carrier Access Billing
NENA	National Emergency Number Association
OSS	Operational Support Systems
POI	Point of Interconnection
PSAP	Public Safety Answering Point
PSTN	Public Switched Telephone Network
Public Staff	Public Staff – North Carolina Utilities Commission
RAO	Recommended Arbitration Order
SR	Selective Router
TELRIC	Total Element Long Run Incremental Cost
UNE	Unbundled Network Element
VoIP	Voice over Internet Protocol

DOCKET NO. P-1187, SUB 2

Commissioner William T. Culpepper, III, concurring:

While I fully concur with the Commission's Findings of Fact Nos. 8, 9, 10 and 11 and the large majority of the discussion explaining the rationale therefor, I write separately to reiterate and further expound on that which I stated in my concurring opinion in *In re the Petition of Ellerbe Telephone Co. et al for Arbitration with Alltel Communications et al,* Docket Nos. P-21, Sub 71 et al, *Order Ruling on Objections and Requiring the Filing of Composite Agreements* (*Objections to RAO*).

The Commission correctly notes herein that:

(1) When a non-ILEC telecommunications carrier, such as a CLP or a CMRS Provider, requests interconnection with an ILEC, the ILEC's obligation is prescribed by Section 251(c)(2) of the Act which gives the CLP/CMRS Provider the option to choose a single technically feasible location within the ILEC's network upon which to interconnect, with the parties being bound by that choice unless they voluntarily agree to do otherwise[1];

(2) Under the auspices of Section 252(a) of the Act, when a requesting CLP seeks interconnection with an ILEC, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(c); and

(3) When an ILEC requests interconnection with a CLP or any other carrier, the interconnection is pursuant to Section 251(a) of the Act and, again, the parties **may agree** to establish a single POI or multiple POIs at any location or number of locations (emphasis supplied).

However with respect to the third principal above cited (Section 251(a)), this RAO goes on to say:

> If, however, the parties cannot agree voluntarily upon either the location or number of POI, the Commission *may*, in its discretion, determine both the number and location(s) of the POI.[2]

This conclusion is based on the following dictum contained in the *Objections to RAO* majority opinion:

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[1] As noted in footnote 14 on page 41 of this RAO, the FCC has interpreted Section 251(c)(2) to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.

[2] Page 41

> Unlike the language of Section 251(c)(2), Section 251(a)(1) does not specify the number of POIs or where the POI or POIs should be located. As a result, the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, would seem to provide the Commission with the discretion to determine how many POIs there should be and where they should be located.[3]

I do not subscribe to or agree with the foregoing dictum insofar as it suggests that the Commission has the discretion, under Section 251(a), to **require** more than a single point of interconnection. This is in keeping with my concurring opinion in the *Objections to RAO*, in which I stated:

> In other words, it is my belief that in all instances there is required to be but a single POI between two interconnecting telecommunications carriers and, in the event they are unable to agree as to its location, then that issue is one to be properly decided by the Commission based upon facts and equities presented to it, and the law applicable thereto, in the course of a Section 252 arbitration proceeding.[4]

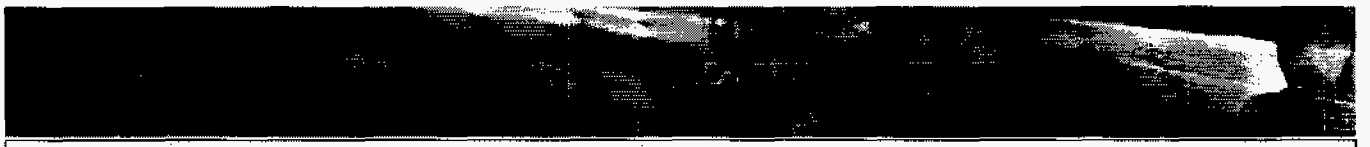
Put another way I do not believe that the obligations of a CLP or other carrier to a requesting ILEC under Section 251(a)(1) are greater than the obligations of an ILEC to a requesting non-ILEC under Section 251(c)(2) with respect to the number of **required** POI (i.e. a single POI).

Commissioner William T. Culpepper, III

[3] *Objections to RAO*, p.11

[4] *Objections to RAO*, Culpepper concurring opinion, p.1.

intrado



Issued by: Black Hawk County Iowa 9-1-1 Service Board

Iowa 9-1-1 Call Center First in Nation to Successfully Trial 9-1-1 Text Messaging

Black Hawk County First 9-1-1 Call Center to Participate in Landmark Effort Enabling Speech and Hearing Impaired Citizens to Communicate Directly With 9-1-1 for Help; Service to go live this July

Waterloo, IOWA --- The Black Hawk County Iowa 9-1-1 Service Board today announced that the Black Hawk Consolidated Public Safety Communications Center has become the first 9-1-1 Call Center in the country to successfully receive text messages sent directly to 9-1-1. This groundbreaking effort allows those with speech and hearing impairments to use text messaging to communicate directly with a 9-1-1 operator in an emergency. A broad team of communications companies including i wireless, Intrado Inc., Positron Public Safety and RACOM Corporation were involved in this effort.

The organizations worked collaboratively to support the public safety needs of the nation's 31 million citizens with speech and hearing impairments who rely upon text messaging as a primary means of communications. Currently they must communicate with 9-1-1 operators using a relay center or a specialized communications device.

"The successful testing of text messaging to 9-1-1 from a wireless telephone is a tremendous emergency services advancement for individuals who have sensory disabilities," said Richard Ray, chair of the National Emergency Number Association's (NENA) Accessibility Committee. "I urge public safety agencies to accelerate the deployment of this technology and to encourage, support and celebrate efforts such as this."

"Increasingly text is becoming the way people communicate and public safety must be able to support 9-1-1 text messaging," said Chief Thomas Jennings, chairman, Black Hawk 9-1-1 Board. "We are excited to have the opportunity to participate on a solution to enable 9-1-1 texting for the Speech and Hearing impaired community as well as set the stage for adoption by the larger texting population."

"The state of Iowa has a long history of pioneering advancements in 9-1-1 technology as a way to enhance the safety of all of our citizens," said David Miller, administrator, Iowa Homeland Security and Emergency Management Division. "We are proud to be part of this initiative to assist the speech and hearing impaired."

The new enhancement to 9-1-1 utilizes Short Message Service (SMS) to establish a text conversation directly between the 'caller' and the 9-1-1 operator. While SMS was not initially developed for use in public safety it has gained widespread acceptance by the Speech and Hearing Impaired Community and is becoming an increasingly popular form of communication. CTIA - the Wireless Association, a wireless industry organization, estimates that the number of SMS text messages exceeded one trillion in 2008. As part of this program techniques have been

identified that will improve the overall speed and reliability of 9-1-1 SMS to make it even better for public safety communications.

"This effort was driven by our desire to support the public safety needs of the speech and hearing impaired," said George Heinrichs, Intrado president. "This breakthrough will not only enhance their safety but the safety of others who find themselves in special circumstances where texting is the best available means to contact 9-1-1."

"We are excited to be a part of this landmark project to enable our deaf and hard of hearing subscribers to text message to 9-1-1," said Michael Haskins, i wireless chief executive officer and chief operating officer. "i wireless has a strong commitment to public safety and to bringing innovative services to our customers, and this pioneering project creates a new method for requesting emergency services. We are proud to be the first wireless carrier to provide this capability."

"The ability to reach the 9-1-1 center by text message will undoubtedly benefit millions of Americans, especially those who are members of the Speech and Hearing Impaired Community who rely on text messaging as their sole form of mobile communication," said Brian Fontes, chief executive officer, NENA. "Today's announcement demonstrates what can be achieved through commitment and dedication to improving public safety and helping those who rely on 9-1-1 for help."

The trial solution in Black Hawk County is in restricted test mode with plans to go live in early July of 2009. Black Hawk County citizens will be notified when the service is available. To find out when this service will be available in your area please contact your wireless carrier. It's important to note that a voice call remains the best way to contact 9-1-1. Texting to 9-1-1 should be limited to use in situations where a voice call is not possible.

About Black Hawk Consolidated Communications

Black Hawk Consolidated Communications was created as a combined center to provide the most effective emergency communications for the Public Safety Agencies and for the citizens of Black Hawk County that we serve. We are dedicated in providing reliable, effective and courteous service to all Agencies and to the public who call on us for information and assistance by answering calls promptly and by dispatching the appropriate response units in a timely manner. As radio dispatchers, we will always be mindful of the safety and welfare of the units in the field, providing them with our support and assistance with as much accurate, appropriate and timely information as they may need to perform their duties in a safe and effective manner. As 9-1-1 operators, we are the first response in an emergency. We will provide assistance and instructions to the best of our ability in accordance to EMD protocol and SOP's always keeping in mind the need to bring a situation under control and to provide for the safety of the responding units. We at all times will be responsive to the needs of our citizens and our Public Safety Personnel. We remain committed to improving the service that we provide and to keep our center at the peak of efficiency in an ever changing Public Communications Field.

About the Iowa Homeland Security and Emergency Management Division

The Iowa Homeland Security and Emergency Management Division not only provides information in times of emergency, but also works to empower Iowa's citizens to prepare themselves in advance of disaster and emergency situations through its BeReadyIowa.org Web site and preparedness campaigns. Additional information on Division activities are published in a bi-weekly electronic newsletter, other informative publications such as the Division's annual report, and through its speaker's bureau.

About Intrado

For over 30 years, Intrado has played a key role in helping to define, build and maintain the complex emergency communications system in North America. Intrado provides the core of the 9-1-1 infrastructure and has supported over 1 billion 9-1-1 calls. Intrado is partnering with public safety agencies and telecommunications carriers to deliver the next generation of 9-1-1 technology and services. Additional information on Intrado can be found at the Company's Web site: http://www.intrado.com.

About i Wireless

Founded in 1997 and headquartered in Urbandale, Iowa, i wireless is a partnership between T-Mobile USA and Iowa Network Services. i wireless has over 250 full-service company stores and authorized dealers across Iowa and western Illinois offering customers the largest regional and nationwide coverage on the most advanced all digital GSM voice and data network.

About RACOM Corporation

RACOM delivers best-of-class wireless, voice and data networks and network applications to public safety, utility and other mission-critical communications users. The company is headquartered in Marshalltown, IA and serves the upper Midwest with future-proof, cost effective and configurable network solutions. Additional information about RACOM is available at http://www.racom.net.

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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 Communications Act of 1934 as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company.	))))))	Case No. 08-537-TP-ARB

ENTRY ON REHEARING

The Commission, considering the arbitration award issued October 8, 2008, the applications for rehearing filed by Intrado Communications, Inc. and Cincinnati Bell Telephone Company on November 7, 2008, and the memoranda contra filed by Intrado Communications, Inc. and Cincinnati Bell Telephone Company on November 17, 2008, issues its entry on rehearing.

(1) On October 8, 2008, the Commission issued an award that decided six issues presented for arbitration by Intrado Communications, Inc. (Intrado) and Cincinnati Bell Telephone Company (CBT).

(2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(3) Intrado and CBT filed applications for rehearing on November 7, 2008, to contest the Commission's decision. In its application for rehearing, Intrado requests that the Commission reconsider its award for the following reasons:

(a) It fails to find that interconnection between a competitor like Intrado and an incumbent local exchange carrier (ILEC) is subject to Section 251(c) of the Telecommunications Act of 1996 (the Act);[1] and

(b) It fails to adopt Intrado's proposed interconnection arrangements to ensure it receives interconnection from CBT that is at least

1 Codified at 47 U.S.C. §251 et seq.

equal in quality to that which CBT provides to itself and other parties interconnecting to its own network. Furthermore, Intrado seeks clarification of the award to confirm that Intrado is entitled to obtain unbundled network elements (UNEs) pursuant to Section 251(c) to provide service to its public safety answering point (PSAP) customers.

In its application, CBT requests rehearing of the Commission's award in this proceeding with respect to issue 6. Specifically, CBT claims that the Commission erred where:

(a) It erroneously stated that when CBT interconnects with Intrado to deliver 9-1-1 traffic to Intrado's selective router, such interconnection would be pursuant to Section 251(a) and not Section 251(c); and

(b) In the alternative, if such interconnection is pursuant to Section 251(a) of the Act, the Commission has no authority to establish rates for trunk ports in this arbitration.

(4) In its application for rehearing regarding its first assignment of error, Intrado states that the Commission's conclusion in its certification order[2] is correct in deciding that Intrado is entitled to Section 251(c) rights as a provider of 911/E911 service because Intrado is a telecommunications carrier providing telephone exchange service. Intrado claims that the Commission erred as a matter of law, in this arbitration, when it determined that Section 251(c) does not apply in interconnection arrangements with CBT when Intrado is the designated 911/E911 service provider. By ruling in this manner, Intrado argues that the Commission strips Intrado of the rights it is entitled to under Section 251(c). Moreover, Intrado accuses the Commission of creating a double standard whereby Section 251(c) applies to Intrado in some circumstances but not in others. Intrado argues further that the Commission's decision is contrary to the law and its underlying policy to promote competition.

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2 *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 (Finding and Order issued February 5, 2008) (07-1199).

(5) It is Intrado's interpretation that Section 251(c) applies whenever a competitor seeks to interconnect with an ILEC, assuming the competitor is a telecommunications carrier providing telephone exchange service. Intrado maintains that it neither matters that Intrado is the 911/E911 service provider, nor does it matter on which network the interconnection takes place. Intrado contends that the Commission's decision runs afoul of the Act and its underlying purpose. Moreover, Intrado asserts that the Commission provides no legal or public policy reasons to justify what Intrado considers a novel interpretation.

According to Intrado, Section 251(c) applies whenever a competitor, like Intrado, seeks interconnection from an ILEC, like CBT, even when the competitor is the designated 911/E911 service provider. Intrado is concerned that the Commission's interpretation may result in an ILEC refusing to comply with its obligations under Section 251(c). To be clear, Intrado believes that Section 251(c), not Section 251(a), governs all ILEC-competitor interconnections. Intrado emphasizes that Section 251(a) governs non-incumbent carrier interconnections and ILEC-to-ILEC interconnections.

Explaining the underlying policy, Intrado states that the Federal Communications Commission (FCC) understood that ILECs enjoyed dominion over the telecommunications industry and the marketplace. ILECs have no incentive to negotiate with competitors on even terms. It is Intrado's understanding that Congress and the FCC designed Section 251 to equalize the unequal bargaining power between ILECs and competitive local exchange carriers (CLECs). Section 251(c) achieves the goal of equalizing bargaining power by providing all competitors access to the public switched telephone network on equal terms. Section 251(c) requires that an ILEC enter into an agreement with a new entrant on just, reasonable, and nondiscriminatory terms to enable the competitor's customers to place calls to and receive calls from the ILEC's subscribers.

By contrast, Intrado states that Section 251(a) applies where the parties to an agreement have equal bargaining power. Equal bargaining power occurs when both parties are CLECs or when both parties are ILECs. With equal bargaining power, neither party needs the protections provided by Section 251(c). Intrado

emphasizes that it does not have equal bargaining power with CBT and, therefore, Section 251(c) should apply.

Intrado argues that the Commission has limited Intrado to Section 251(a) when Intrado is the provider of 911/E911 service. By doing so, Intrado claims that the Commission has restricted impermissibly and unreasonably the rights and protections that Intrado would be entitled to as a competitive telecommunications carrier. As an example, Intrado declares that under Section 251(a), Intrado could be denied interconnection on just, reasonable, and nondiscriminatory terms. Moreover, Intrado believes that it could be denied access to unbundled network elements (UNEs) and collocation arrangements. Such a result, according to Intrado, is unreasonable and contrary to law. Intrado claims the rights provided by Section 251(c) by virtue of its status as a competitive telecommunications carrier providing telephone exchange service.

(6) CBT, in its memorandum contra, points out that Intrado fails to identify which, if any, of the six contested issues considered by the Commission in this arbitration it claims was decided incorrectly or what contract language Intrado seeks in lieu of that ordered by the Commission. CBT explains that Intrado has not shown how the Commission's decision has led to any improper terms appearing in the parties' interconnection agreement. It is CBT's opinion that Intrado must show that the Commission's application of a Section 251(a) analysis, rather than the application of Section 251(c), led to the inclusion of improper terms in the agreement.

Moreover, CBT claims that the Commission granted Intrado all the rights it would receive had the Commission applied Section 251(c), including the ability to arbitrate all contested issues. CBT also claims that Intrado has failed to identify any contract term that results in a competitive disadvantage. For these reasons, CBT concludes that Intrado has failed to identify any issue upon which it should be granted rehearing.

(7) Upon review of Intrado's rehearing arguments relative to its first assignment of error, the Commission finds that Intrado fails to raise any new arguments for the Commission's consideration. As discussed in the Commission's award in this

matter and its entry on rehearing issued in Case No. 07-1216-TP-ARB (07-1216)[3], Section 251(c) provides protections to ensure a CLEC customer can place calls to and receive calls from customers of an ILEC. Based on Intrado's current certification it will not be engaged in the transmitting of calls to the ILECs' subscribers (See 07-1199, Finding and Order issued February 5, 2008 at 1, 5, and as discussed in further detail below). It is appropriate, therefore, to apply Section 251(a) to Intrado when it is the designated provider of 911/E911 services.

In response to Intrado's arguments regarding the existence of unequal bargaining power between Intrado and the ILECs when Intrado is the provider of 911/E911 service, it will be CBT seeking to "interconnect" with Intrado to terminate its end user's 9-1-1 calls to the appropriate Intrado-served PSAP. Under those conditions, the ILEC becomes dependent on Intrado for access to facilities that it must have in order to provide a component of basic local exchange service under Ohio law. In fact, neither party can impede the other's ability to operate in the market by refusing interconnection, since providing access to 9-1-1 or E9-1-1 service is a requirement under Ohio law. Once Intrado serves a PSAP, CBT will have no choice but to interconnect with Intrado in order to ensure that its end users have the capability of completing 9-1-1 emergency calls to the PSAP. The bargaining power, when Intrado is the designated wireline 911/E-911 service provider, appears to be equal.

Additionally, we previously determined that competitive emergency services telecommunications carriers (CESTCs) are generally entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the Act. We did not, however, specifically state that only Section 251(c) is applicable, as Intrado repeatedly suggests (07-1199 at 5, 07-1199 Entry on Rehearing issued April 2, 2008 at 14).

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3 *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.

Finally, we agree with CBT that Intrado has not provided evidence of any harm from the application of Section 251(a) or the resulting contract language approved by the Commission. Therefore, rehearing is denied.

(8) Regarding its second assignment of error, Intrado, in its rehearing application, states that the Commission's award in this proceeding is inconsistent with the award issued in 07-1216. Intrado states that in 07-1216 the Commission did not reach the issue of whether Intrado's proposed interconnection arrangement was supported by the equal in quality requirement of Section 251(c)(2)(C). The Commission explained that Section 251(a) governed the interconnection between Intrado and Embarq when Intrado was the designated 911/E911 service provider. Intrado states that the award in this proceeding, on the contrary, analyzes Intrado's proposal based upon Section 251(c)(2)(C) notwithstanding that the Commission determined that the interconnection is governed by Section 251(a). In either case, Intrado finds an error of law.

According to Intrado, it is entitled, pursuant to Section 251(c)(2)(C), FCC rules, and the Commission's carrier-to-carrier rules to interconnectivity "that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate or other party to which the carrier provides interconnection." Intrado believes that the interconnection CBT provides itself and imposes on competitors connecting to its network to terminate 911 calls to CBT's PSAP customer is no different from what Intrado seeks when it is the 911/E911 service provider.

(9) CBT, in its memorandum contra, points out that while the Commission may have applied Section 251(a) to Intrado's interconnection proposals, the Commission also performed the analysis requested by Intrado itself when Intrado wanted its proposals judged under Section 251(c)(2)(C) in both 07-1216 and this case. CBT notes that Intrado claims that the Commission's analysis under Section 251(c)(2)(C) is incorrect but fails to point out which issues or contract language it claims should be different. CBT avers that Intrado has failed to find error and is simply rehashing its unsuccessful arguments to overturn the Commission's finding that Intrado's demand for dedicated trunking to geographically diverse points on Intrado's network is "superior" to the interconnection CBT

provides to itself and other carriers. In fact, CBT states that Intrado will receive exactly the same interconnection as CBT provides itself and others. CBT notes that Intrado is complaining about CBT's internal network design, not the quality of interconnection with Intrado. According to CBT, nothing in the Act, the FCC's or Commission's rules mandates how CBT must design its network for traffic originating from CBT's customers.

(10) With respect to Intrado's interconnection proposals, the Commission strongly disagrees with Intrado that the CBT award is inconsistent with our analysis in 07-1216. As noted earlier, the Commission is consistent in its finding in both cases that Intrado's interconnection proposals are best addressed pursuant to Section 251(a). While it is true that in the Embarq Award the Commission did not reach as far as to analyze the proposals pursuant to Section 251(c), the additional analysis provided in the CBT award was simply in response to Intrado's arguments and was used to further support why Section 251(c), and in particular Section 251(c)(2)(C), would not be applicable. However, the fact remains that the result of the Commission's determination is the same. The fact that this determination can be supported via two different articles of law is not an error of law. Rehearing on Intrado's second assignment of error is therefore denied.

(11) In its first assignment of error regarding issue 6, CBT states that the Commission relied on an erroneous decision in 07-1216 to decide that when Intrado is the 911/E911 service provider, the ILEC must request interconnection with Intrado to terminate its traffic to an Intrado PSAP customer under Section 251(a). From there, CBT avers, the Commission concluded, in its award for issue 6, that Intrado could charge CBT for interconnection trunk ports under Section 251(a) when CBT interconnects to Intrado's network.

Pointing to what it perceives to be a contradiction in the Commission's decision, CBT notes that the Commission has confirmed that under Section 251(c) a requesting carrier's point of interconnection must be on the ILEC's existing network. Furthermore, according to CBT, the Commission appropriately confirmed that an ILEC is under no obligation to construct facilities to interconnect with another carrier's network.

Nevertheless, in issue 6, CBT points out that the Commission stated that Intrado's trunk port would be CBT's point of interconnection (POI) on Intrado's network. However, under Section 251(c), Intrado can only interconnect on CBT's existing network, which does not include Intrado's selective router. To CBT, it is an error for the Commission to assume that CBT would have to request interconnection on Intrado's network under Section 251(a). Because CBT is an ILEC and Intrado is a CESTC, with no greater rights than a CLEC, CBT argues that the interconnection should be governed by Section 251(c), not by Section 251(a). CBT emphasizes that Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC. CBT emphasizes that it has not requested interconnection to Intrado, pursuant to either Section 251(a) or (c). CBT notes that Intrado initiated a formal request for arbitration under Section 251(c). Moreover, according to CBT, Intrado did not present any issues arising under Section 251(a).

CBT notes that a POI is for the mutual exchange of traffic, not a one-way arrangement. According to CBT, it is contrary to law and Section 3.2.2 of the interconnection agreement that the parties maintain separate POIs. CBT claims that it is entitled to use the same POI that Intrado establishes within CBT's network as the location where CBT can deliver its traffic to Intrado. Moreover, this obviates the need for CBT to seek interconnection under Section 251(a) and the need for CBT to establish a POI on Intrado's network. To compel CBT to establish a POI on Intrado's network would conflict with the Act. CBT proclaims that the FCC and Congress refused to require ILECs to build out or establish POIs on competitors' networks. CBT notes, however, that it is not filing rehearing of the decisions of the Commission with regard to issues 2, 3, and 4 which require the establishment of a POI on Intrado's network because the Commission appropriately adopted CBT's language for these issues.

(12) In its memorandum contra, Intrado acknowledges that it agrees with CBT in certain respects but claims that CBT's application for rehearing contains several legal and factual inaccuracies. Intrado agrees with CBT that Section 251(c) of the Act governs the parties' interconnection agreement. To Intrado, it is clear from the Act and FCC rulings that Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC. In

further agreement with CBT, Intrado summarizes that Section 251(a) governs interconnection between ILECs or between two CLECs. Section 251(c), on the other hand, always governs ILEC-to-competitor relationships. The applicability of Section 251(a) is not contingent upon which party requests interconnection.

Intrado strongly disagrees with other points asserted by CBT. Intrado does not recognize an agreement to interconnect on CBT's network when Intrado is the 911/E911 service provider. Intrado, in its memorandum contra, interprets Section 3.2.2 differently from CBT's interpretation. According to Intrado, Section 3.2.2 merely states that CBT may use the same POI that Intrado establishes on CBT's network to send traffic to Intrado's network. Intrado contends that this provision applies to interconnection generally. Pointing to Section 3.8.7, Intrado highlights a provision that specifically addresses the interconnection and exchange of traffic when Intrado is the designated 911/E911 service provider. Relying on this provision, Intrado states that CBT has agreed to transport its end users' 911 calls to the mutually agreed POI on Intrado's network. The POI will be used exclusively to terminate 911/E911 traffic. Intrado states that the Commission upheld this provision in its arbitration award, with the limitation that CBT was not required to transport traffic outside its serving territory.

(13) The Commission finds that, while CBT admits that it is not filing rehearing on the issues that give rise to issue 6 (issues 2, 3, and 4), its rehearing application reads as such. In particular, the Commission award for issue 2 requires the establishment of a single POI for the termination of 911 calls on Intrado's network under certain circumstances and, therefore, issue 6 simply allows Intrado to charge for trunk ports associated with that POI. Specifically, issue 6 as originally presented to the Commission for resolution is as follows: "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" (emphasis added). Intrado is correct that Section 3.8.7 of the contract submitted by both parties requires CBT to transport its end users 911 calls to a POI on Intrado's network for the termination of its customers' emergency calls to PSAP served by Intrado. Intrado is also correct that the

Commission upheld this provision of the contract with the limitation that CBT is not required to transport 911 traffic outside of its local access transport area (LATA). This finding was a direct result of the Commission's arbitration award for issue 2, again an issue for which CBT did not seek rehearing.

While we also agree with Intrado that the language in Section 3.3.2 applies to a POI on CBT's network for the exchange of traffic generally and Section 3.8.7 applies to 911 traffic terminated to Intrado specifically, CBT assumes that Intrado will automatically request a POI on CBT's network pursuant to Section 3.3.2. It is entirely possible that, under its current certification, Intrado will not request a POI on CBT's network, since its current certification does not involve carrying calls to CBT's network for termination, and there is no clear indication from the record that Intrado would have any other reason for requesting a POI on CBT's network. Unlike the typical interconnection arrangement between an ILEC and a CLEC, Intrado may find itself in control of some portion of the facilities CBT needs to terminate its customers' 911 calls. As a practical matter, then, if Intrado is the designated Wireline 911/E911 carrier for a PSAP serving CBT's customers, CBT may well need to request a POI from Intrado, in the absence of a POI requested by Intrado. Since this is the exact scenario contemplated by Section 3.8.7 of the contract, Intrado is permitted to charge CBT for the port terminations on its selective router consistent with the Commission's award for issue 6. CBT's rehearing on this assignment of error is, therefore, denied.

(14) In its second assignment of error regarding issue 6, CBT states that even if the Commission believes that Section 251(a) controls the terms of CBT's delivery of traffic to Intrado, establishing a rate that CBT must pay for interconnection trunk ports on Intrado's selective router is an error of law. Given that Section 252(b)(4) limits the Commission to arbitrate only those issues presented, CBT concludes that the Commission overstepped its authority by discussing pricing under Section 251(a).

CBT points out that requests for interconnection under Section 251(a) would not be subject to the compulsory arbitration provisions of Section 252(b). By definition, Section 252(b)

arbitrations can only involve the specific requirements of ILECs found in Section 251(b) and (c). CBT states flatly that a state commission cannot compel arbitration of an interconnection agreement under Section 251(a) of the Act. Therefore, CBT concludes that the Commission exceeded its authority in setting port rates for Intrado under Section 251(a).

(15) Even though Intrado agrees with CBT that it did not raise the application of Section 251(a) as an open issue for arbitration, Intrado disagrees with CBT that a state commission cannot use its Section 252 arbitration and enforcement authority over Section 251(a) agreements. Intrado's reading of the Act leads it to the conclusion that the Section 252 arbitration process applies to all Section 251 agreements with ILECs.

(16) Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements. Section 252 of the Act creates the availability of arbitration to the parties. The petition for arbitration was submitted under the auspices of Section 252 of the Act, which refers to the process of "Negotiation, Arbitration and Approval of Agreements" reached as a result of "... a request for interconnection, services, or network elements pursuant to section 251, ..." Section 252(c)(1) requires the Commission in resolving arbitration cases pursuant to 252(b) to "ensure that such resolution and conditions meet the requirements of Section 251, including regulations prescribed by the Commission pursuant to 251." Section 252(c)(2) requires this Commission to "establish any rates for interconnection, services, or network elements according to subsection (d)." Subsection (d) only gives instructions for pricing facilities and services covered by 251(c). Thus, while the language of the Act in Section 252 gives more detailed instruction with regard to 251(c), it requires the Commission to approve all interconnection agreements under any subsection of 251. Additionally, Section 252(e) of the Act states that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Moreover, Section 252(e) gives the state commission explicit authority to reject an agreement (whether

arbitrated or not) in the event the agreement (or a portion of the agreement) either "discriminates against a telecommunications carrier not a party to the agreement" or the implementation of the agreement "is not consistent with the public interest, convenience or necessity." Clearly then, the Commission has the authority and the requirement to consider Section 251(a) where it is applicable. Therefore, CBT's request for rehearing of issue 6 is denied.

(17) As a final matter, Intrado seeks clarification from the Commission that it is entitled to UNEs pursuant to Section 251(c). Intrado points out that the Commission, in 07-1216, allowed Intrado to purchase UNE loops under Section 251(c). In addition, CBT's witness acknowledged that CBT would allow Intrado to purchase local loops at UNE rates.

Intrado is uncertain in this proceeding because it appears that the Commission will only allow Intrado to purchase UNEs pursuant to Section 251(c) when Intrado seeks to expand its certification status to offer dialtone services to end user customers other than PSAPs. Intrado, therefore, requests assurance that it may obtain UNEs from CBT under Section 251(c) in its current status as a CESTC.

(18) CBT objects to Intrado's request for clarification. CBT points out that UNEs were never an issue for arbitration. Moreover, no arbitration issues had any bearing on UNEs. CBT states that Intrado's rights with respect to UNEs are spelled out in Article 9 of the interconnection agreement. However, the parties did not dispute any contract provisions in Article 9. In light of these factors, CBT concludes that there is nothing for the Commission to clarify.

(19) CBT's objection to Intrado's request for clarification is well-founded. Pursuant to Section 4903.10, Revised Code, the Commission may only consider for rehearing those issues decided by the Commission in the arbitration award. Intrado never raised the availability of UNEs to Intrado as a CESTC as an issue in this proceeding. Moreover, no prior mention has been made concerning the impact of Article 9 of the interconnection agreement and Schedule 9.5, which, together, provide the terms for the provisioning of UNEs. Rehearing on this issue for the purpose of clarification must, therefore, be

denied. However, the Commission notes that since Article 9 is included in the interconnection agreement, as long as Intrado abides by the contract requirements in that Article, Intrado may avail itself of UNEs to the extent that it has Commission authorization to provide that service. Should there be a future dispute in this regard, either party may bring that dispute forward pursuant to the contract's dispute resolution procedures at that time.

It is, therefore,

ORDERED, That the applications for rehearing filed by Intrado and Cincinnati Bell Telephone Company are denied in their entirety. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

LDJ/vrm

Entered in the Journal

JAN 14 2009

Reneé J. Jenkins
Secretary

A24. EMERGENCY REPORTING SERVICES

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A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (C)

.1 General (C)

a. 9-1-1 is the three-digit telephone number designated throughout the United States as the emergency telephone number to facilitate the reporting of an emergency requiring response by a public safety agency. (C) (C)

b. Enhanced Emergency Number Service, also referred to as Enhanced 9-1-1 Service or E9-1-1 is a telephone exchange communication service whereby a Public Safety Answering Point (PSAP) designated by the customer may receive telephone calls dialed to the telephone number 9-1-1. E9-1-1 Service includes lines and equipment necessary for the answering, transferring, and dispatching of public emergency telephone calls by persons within the serving area who dial 9-1-1. (M1) (M1) (M2) (M2)

c. The E9-1-1 customer may be a municipality, county, or other state or local governmental unit or an authorized agent of one or more municipalities, counties, or other state or local governmental units to whom authority has been lawfully delegated. The customer must be legally authorized to subscribe to the service and have public safety responsibility by law to respond to telephone calls from the public for emergency, police, fire, and other emergency services within the telephone central office areas arranged for E9-1-1 calling. (D) (D) (M2) (M2)

d. Provision of Enhanced Emergency Number Service, E9-1-1 as specified in this Tariff, includes the network and other facilities where the E9-1-1 Service Area coincides with the Company serving boundaries. However, where Company boundaries and the E9-1-1 Service Area do not coincide, then the customer will be required to bear additional charges based on costs for all supplemental network and/or other facilities required in the provision of this service. These charges will be determined on a per occasion basis. (C) (C)

e. Rates and charges for the E9-1-1 Service elements are shown in Section A24.1.10 of this Tariff. When an E9-1-1 installation is desired by a customer whose serving area does not meet the preceding criteria, E9-1-1 Service is available with any of the Service Elements as itemized in Section A24.1.9 of this Tariff; however, the customer is required to bear additional charges which may result from provision of such a system. (C) (C)

f. Terminal equipment may be provided by the Company or the customer for E9-1-1 Service. Where not specifically itemized in this Tariff, said equipment, including rearrangements, moves, or changes will be provided at rates and charges based upon costs. Customer may obtain terminal equipment as a regulated service via an Individual Case Basis. (T) (N)

(M1) Material previsouly appearing in this location has been moved to 2nd Revised Page 1 of Section A124.1. (N)
(M2) Material previously appeared on 2nd Revised Page 5. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE -- E9-1-1 (Continued)

.2 **Acronyms**

ALI - Automatic Location Identification
ANI - Automatic Number Identification
CAD - Computer Aided Dispatch
CALI – Centralized Automatic Location Identification
CAS - Call Associated Signaling
CLEC – Competitive Local Exchange Telecommunications Company
CPE - Customer Premises Equipment
CBN – Call Back Number
DBMS – Data Base Management System
DID – Direct Inward Dial
EMF - Enhanced Multi-Frequency
ERA - Emergency Response Agency
ESN/ESZ - Emergency Service Number / Emergency Service Zone
ESRD - Emergency Service Routing Digits
ESRK - Emergency Service Routing Key
FGD – Feature Group D
ICB – Individual Case Basis
MDN - Mobile Directory Number
MF - Multi-Frequency
MIN - Mobile Identification Number
MPC - Mobile Position Center
MSAG - Master Street Address Guide
MSC - Mobile Switching Center
NCAS - Non-Call Associated Signaling
NENA - National Emergency Number Association
NID - Network Interface Device
pANI - Pseudo ANI
PBX – Private Branch Exchange
PDE - Position Determining Entity
PSAP - Public Safety Answering Point
PSP – Private Switch Provider
PSTN - Public Switched Telephone Network
SRDB – Selective Routing DataBase
SRIS - Subscriber Record Information Service (N)
SS7 – Signaling System 7
TOPS – Traffic Operator Position System
WSP – Wireless Service Provider

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.3 **Definition of Terms** (M)

9-1-1 Interoffice Facility (N)
An intraexchange or interexchange trunk capable of forwarding ANI between central offices.

Access Lines
The connecting facility between a customer's premises network interface device (NID) and the local exchange carrier's facility that provides access to the switching network for local exchange and interexchange telecommunications service. (N)

Alternate Routing (AR) (M)
The capability of routing E9-1-1 calls to a designated alternate location(s) if all E9-1-1 trunks to a primary PSAP are busy or out of service. May be activated upon request or automatically, if detectable, when E9-1-1 equipment fails or the PSAP itself is disabled. (C) (C)

Automatic Location Identification (ALI)
The automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and supplementary emergency services information. (C) (M) (C)

Automatic Location Identification (ALI) Database (N)
The set of ALI records residing on a computer system. (N)

Automatic Number Identification (ANI) (M)
Telephone number associated with the access line from which a call originates. (M)

Call Associated Signaling (CAS) (N)
A method of delivering the CBN (may not be a call back number) and ESRD of the cell sector from which the call originated. These 20-digits are delivered from the wireless carrier's Mobile Switching Center to the E9-1-1 Selective Routers using either SS7 or Feature Group D signaling protocol. From the E9-1-1 Selective Routers, the 20-digits are transmitted to the PSAP using Enhanced Multi-Frequency (EMF) or ISDN connections. The PSAP would query the ALI database using the ESRD to retrieve cell sector information stored in the ALI database.

Call Back Number (CBN)
A number used by the PSAP to re-contact the location from which the E9-1-1 call was placed. The number may or may not be the number of the station used to originate the E9-1-1call. This is also the generic term for the telephone number delivered to the E9-1-1 Network by the wireless carrier in the calling party number field. It may be, but is not limited to, the MDN, the MIN, or a surrogate CBN associated with the mobile handset.

Caller
An individual placing a 9-1-1 call in order to obtain emergency assistance. May also be referred to as an end user. (N)

(M) Material previously appeared on 2nd Revised Page 5. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE–E9-1-1 (Continued) (C)

.3 Definition of Terms (Continued) (M)

Centralized Automatic Location Identification (CALI) (N)
A remote centralized database system consisting of two host machines, one being the primary system responding to the Public Safety Answering Point (PSAP), and the other being the secondary system. This remote system provides ALI to the PSAP during a 9-1-1 call.

CALI Port for PSAPs
This port provides an interface for the PSAPs to acquire local ALI queries within the CALI. The Port rate includes the two ports that are required for redundancy, one port into the primary CALI and one port into the secondary CALI system. The customer must also subscribe to the data circuits from the PSAP to the primary and secondary system.

CALI Storage/Processing
The data storage for the ALI records in both the primary and secondary systems. The ALI records are updated on the CALI system from the Database Management System multiple times a day with Change/Add/Delete activity (E9-1-1 ALI database management charges are not included in this rate). CALI will provide ALI in two ways:

- The ANI of the 9-1-1 caller is received by the Company's Selective Routers, which then routes the call to the appropriate PSAP. Upon receipt of the ANI at the PSAP an ALI query is made, using the ANI as the key, to look up the location information on the CALI platform. The CALI database will respond with the matching ALI, if it resides on the CALI platform, and will then format and transmit it back to the requesting PSAP.

- The CALI can also be directed by the ANI to steer to another database to receive the appropriate ALI record. The record, when received by the CALI platform from the other ALI database, is then formatted and transmitted back to the requesting PSAP.

Computer Aided Dispatch (CAD)
A computer based system, which aids PSAP attendants by automating selected dispatching and record keeping activities.

Customer
Governmental unit or other entity authorized to provide E9-1-1 Service.

Customer Premises Equipment (CPE)
Communications or terminal equipment located in the customer's facilities. (N)

Database Management System (DBMS) (M)(T)
A system of manual procedures and computer programs and systems used to create, store, and update the data required to provide the Selective Routing (SR) data and ALI records. (C)

Default Routing (DR)
The capability to route a 9-1-1 call to a designated (default) PSAP when the incoming 9-1-1 call cannot be selectively routed due to an ANI failure or other causes. This is a standard feature of E9-1-1 Service. No ANI/ALI data is provided when a call is sent to Default Routing. (C)(M)

(M) Material previously appeared on 2nd Revised Page 5. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued)

.3 **Definition of Terms (Continued)**

Dual Selective Routing
Dual Selective routing is provided using two Selective Routers (S/R) that mirror the E9-1-1 Call Delivery effort in order to provide diversity and a higher level of network reliability in the event of a major failure at one of the Selective Routers.

Emergency Response Agency (ERA)
An agency authorized to respond to emergencies initiated by 9-1-1 calls.

Emergency Service Number (ESN)/Emergency Service Zone (ESZ)
An ESN is a three to five digit number representing a unique combination of emergency service agencies (Law Enforcement, Fire and Emergency Medical Service) designated to serve a specific range of addresses within a particular geographical area, or Emergency Service Zone (ESZ). The ESN facilitates selective routing and selective transfer, if required, to the appropriate PSAP and the dispatching of the proper service agency(ies).

Emergency Service Routing Digits (ESRD)
A pseudo ANI typically used with Call Associated Signaling (CAS) architecture that identifies the cell site or cell sector from which a wireless E9-1-1 call originates. The ESRD may also be used to retrieve the ALI associated with the wireless call.

Emergency Service Routing Key (ESRK)
A pseudo ANI typically used with Non-Call Associated Signaling (NCAS) which identifies a group of cell sites or cell sectors in a defined geographic area associated with an ESZ or group of ESZs. The ERSK may also be used to retrieve the ALI associated with the wireless call.

End Office
The Central Office(s) in the E9-1-1 System from which E9-1-1 calls are originated.

End User
An individual placing a 9-1-1 call in order to obtain emergency assistance. May also be referred to as a caller.

Enhanced 9-1-1 (E9-1-1)
An emergency telephone system which may include network switching, database and CPE elements capable of providing Selective Routing, Selective Transfer, Fixed Transfer, ANI, ALI, SRIS. (C) (N)

Enhanced 9-1-1 Service Area
The geographic area in which the Customer will respond to all E9-1-1 calls and dispatch appropriate emergency assistance.

Enhanced Multi-Frequency (EMF)
The ability to pass 20-digits from the E9-1-1 Selective Router to the PSAP.

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.3 Definition of Terms (Continued) (M)

Feature Group D (FGD) (N)
An MF signaling protocol, originally developed to support equal access to long distance services, capable of carrying one or two ten-digit telephone numbers. (N)

Forced Disconnect (M)
A function of the E9-1-1 Central Office trunk circuit which enables the PSAP attendant to release a connection even though the calling party has not hung up. This feature prevents the jamming of the E9-1-1 exchange lines and is a standard feature of E9-1-1 Service. (M)

J-Std-034 (N)
A standard jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies the interconnection between the Mobile Switching Center (MSC) and the E9-1-1 Selective Router/Switch.

J-Std-036
A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunication Industry Solutions (ATIS), that defines standards for E9-1-1 service relating to wireless E9-1-1 implementation. This also defines technical requirements for Phase II.

Local Service Provider (LSP)
Dial tone providers, i.e., Local Exchange Carriers, Competitive Local Exchange Carriers (CLECs), Shared Tenant Service Providers, Private Switch Providers (PSPs), etc.

Master Street Address Guide (MSAG)
A database of street names and house number ranges within their associated communities defining Emergency Service Zones (ESZs) and their associated Emergency Service Numbers (ESNs) to enable proper routing of E9-1-1 calls.

Mobile Directory Number (MDN)
The telephone number dialed to reach a wireless telephone.

Mobile Identification Number (MIN)
A 34-bit binary number that a wireless handset transmits to identify itself to the wireless network.

Mobile Position Center (MPC)
The interface between the wireless network and the wireless location network. The MPC retrieves, forwards, stores, and controls position data within the location network. The MPC is not provided by and is not the responsibility of the Company.

Mobile Switching Center (MSC)
The wireless equivalent of a central office, which provides switching functions for wireless calls. As an element of the wireless network, the MSC is not provided by the Company and is not the responsibility of the Company.

Multi-Frequency (MF)
A type of signaling used on inter-office and 9-1-1 trunks. (N)

(M) Material previously appeared on 1st Revised Page 6. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.3 Definition of Terms (Continued) (M)

National Emergency Number Association (NENA) (N)
The National Emergency Number Association is a not-for-profit corporation established in 1982. NENA is a networking source and promotes research, planning and training. NENA strives to educate, set standards, and provide certification programs, legislative representation and technical assistance for implementing and managing 9-1-1 systems.

National Emergency Number Association 02-010
A recommended set of formats and protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems or their database provider, developed by NENA Data Standards Subcommittee.

National Emergency Number Association 03-002
A technical reference, developed by the NENA Network Technical Committee, which provides recommendations for the implementation of Enhanced Multi-Frequency (EMF) Signaling, from the E9-1-1 Selective Router to PSAP. The J-Std-034 FG-D protocol is the corollary protocol of NENA 03-002.

Phase I E9-1-1
The service by which the WSP delivers to the designated PSAP the wireless end user's call back number and cell site/sector information when a wireless end user makes a 9-1-1 call, as contracted by the customer. Phase I wireless standards are outlined in J-Std-034 per the FCC Docket No. 94-102.

Phase I Call Associated Signaling (CAS)
A method of delivering the CBN (may not be a true call back number) and ESRD of the cell site/sector from which the wireless call originated. These 20 digits are delivered from the wireless carrier's Mobile Switching Center to the E9-1-1 Selective Router using Feature Group D or SS7 signaling protocol. From the E9-1-1 Selective Router, the 20 digits are transmitted to the PSAP using Enhanced MF signaling. The PSAP would then query the ALI database using the ESRD to retrieve cell/site sector information stored in the ALI database.

Phase I Non-Call Associated Signaling (NCAS)
A method of delivering the voice portion of the wireless E9-1-1 call using CAMA or SS7 trunking from the wireless carrier's MSC to the E9-1-1 Selective Router. An ESRK (also known as pANI) is assigned when the E9-1-1 call is made and is used for the routing of the ANI to the PSAP. The PSAP will query the ALI database using the ESRK which, in turn, will "steer" to the wireless carrier's database to "pull" the wireless caller's CBN (may not be a true call back number) and cell site/sector information for delivery back to the PSAP.

Phase II E9-1-1
The service by which the WSP delivers to the designated PSAP the wireless end user's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Docket No. 94-102. Phase II standards are outlined in J-Std-036.

Phase II Wireline Compatibility Mode (originally known as Phase I "NCAS")
A method of delivering the voice portion of the wireless E9-1-1 call using CAMA or SS7 trunking from the wireless carrier's MSC to the E9-1-1 Selective Router. An ESRK (also known as pANI) is assigned when the 9-1-1 call is made and is used for the routing of the ANI to the PSAP. The PSAP will query the ALI database using the ESRK which, in turn, will "steer" to the wireless carrier's database to "pull" the wireless caller's location information (including callback number) for delivery back to the PSAP. (N)

(M) Material previously appeared on 1st Revised Page 6. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE–E9-1-1 (Continued) (C)

.3 **Definition of Terms (Continued)** (M1)

Position Determining Entity (PDE) (N)
The PDE determines the geographic location of a wireless handset, as described in FCC Phase II standards, when the wireless caller places a 9-1-1 call or while the call is in process. The PDE equipment is not provided by and is not the responsibility of the Company.

Pseudo ANI (pANI)
A telephone number used to support routing of wireless E9-1-1 calls. It may identify a wireless cell, cell sector or PSAP to which the call should be routed. Also known as a routing number, ESRK (Emergency Services Routing Key) or ESRD (Emergency Services Routing Digit). (N)

Public Safety Answering Point (PSAP) (M1)
A facility equipped and staffed to receive 9-1-1 calls. A Primary PSAP receives the calls directly. If the call is relayed or transferred, the next receiving PSAP is designated a Secondary PSAP. (C)
(M1)(C)

Public Switched Telephone Network (PSTN) (N)
Any common carrier network that provides circuit switching between public users.

Record
The subscriber information associated with a telephone number.

- For Wireline billing, the number of records will be equal to the total of the Company's subscriber access lines, and the other Local Service Providers' actual number of record counts in the E9-1-1 database. Wireline billing will be updated annually.

- For Wireless billing, the Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count. (N)

Selective Routing (SR) (M1)
The routing of a E9-1-1 call to the proper PSAP based on the ANI of the wireline caller or the Pseudo ANI of the wireless caller. Selective Routing is controlled by the ESN which is derived from the customer's MSAG. The Selective Router is also referred to as the E9-1-1 Tandem. (C)
(M1)(C)

Service Control Point (SCP) (N)
A centralized database system used for, among other things, Wireless E9-1-1 Service applications. It specifies the routing of E9-1-1 calls from the cell site to the PSAP. This hardware device contains special software and data that includes information on all relevant cell site locations and cell sector identifiers. This SCP equipment is not provided by, and is not the responsibility of, the Company. (N)

Serving Central Office (M2)
The central office from which a PSAP, either primary or secondary, is served. (M2)

(M1) Material previously appeared on 1st Revised Page 6. (N)
(M2) Material previously appeared on 1st Revised Page 7. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE–E9-1-1 (Continued)

.3 **Definition of Terms (Continued)**

Signaling System 7 (SS7)/Common Channel Signaling 7 (CCS7)
An out-of-band signaling system used to provide basic routing information, call set-up and other call termination functions. Signaling is removed from the voice channel itself and put on a separate data network. Also known as Common Channel Signaling No. 7 (CCS7)

Subscriber
A person or business that orders access line service from a telephone company.

Subscriber Record Information Service (SRIS) (N)
An optional feature associated with Enhanced 911 Service which provides Verizon subscriber records. (N)

Wireless E9-1-1 Area
The geographic area within which the Customer is requesting Wireless E9-1-1 Service.

Wireless Service Provider (WSP)
Cellular, satellite or other radio-based telephony or data transport commercial entity.

X, Y Coordinates
Shorthand expression for coordinates that identify a specific location in two dimensions representing latitude and longitude.

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.4 Description of Service (N)

a. The E9-1-1 Service offering is available to government agencies that are responsible for the provision of emergency services within the E9-1-1 Service Area covered by the Company. This service enables a wireline caller dialing 9-1-1 from a line with access to the local exchange telephone network, or a wireless caller with access to the wireless network, arranged to provide E9-1-1 Service, to be automatically connected to the designated Public Safety Answering Point (PSAP).

b. E9-1-1 is the provisioning of basic 9-1-1 service (enables a caller dialing 9-1-1 to reach an answering point) with the additional features of Automatic Number Identification (ANI), Automatic Location Identification (ALI), and Selective Routing (SR). E9-1-1 is the only form of emergency telephone service provided by the Company. Thus, all references to 9-1-1 refer to E9-1-1 Service.

c. An E9-1-1 system includes network switching and database capability for providing Selective Routing, ANI and ALI. The ALI database is developed from the MSAG and the records of participating telecommunications companies, and remains the property of the Company.

d. The PSAP's Customer Premises Equipment (CPE) must conform to existing industry signaling standards for the termination of E9-1-1 calls. This signaling must enable the call processing of all wireline and/or wireless information required by the PSAP call taker to successfully handle the E9-1-1 call, e.g., Enhanced Multi-Frequency (EMF) signaling as defined in NENA Technical Reference 03-002, June 21, 1998.

e. E9-1-1 Service is comprised of the following components:

(1) Automatic Number Identification (ANI)

Provides the telephone number associated with the access line from which a call originates, if available. This is an inherent feature of E9-1-1 Service, and is included in the E9-1-1 trunking rate elements.

(2) ALI Database Administration

ALI Database Administration is the processing of subscriber records against the Master Street Address Guide (MSAG) for the creation of ALI records and/or the creation of Selective Routing records. Specifically this service:

- Provides for daily database processing for all add, delete and change activity associated with subscriber records.
- Provides processing of customer records for compliance with the MSAG.
- Does not include ALI storage or processing for use during an E9-1-1 call. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE–E9-1-1 (Continued) (C)

.4 Description of Service (Continued) (N)

e. (Continued)

(3) Dual Selective Routing

Dual Selective Routing is performed by linking two Selective Routers - also called E9-1-1 Tandems. This architecture, using two Selective Routers with mirror imaged databases, provides a high level of network reliability that will allow the completion of E9-1-1 calls to the target PSAP in the event of a major outage at one of the E9-1-1 Tandems. End offices have circuits connecting them to each of the Selective Routers. In addition, there are circuits provisioned between the E9-1-1 tandems to allow calls to switch to the other E9-1-1 Tandem if there are no circuits available to the target PSAP. This provides an additional network path to complete the call to the target PSAP. Since each end office has a trunk group to each Selective Router, the architecture also allows calls to be completed in the event of a major facilities failure between the end office and one of the Selective Routers. Trunk signaling between the end offices and E9-1-1 tandems can be MF, FGD, or SS7. Inter-tandem (between E9-1-1 tandems) signaling is SS7. Information passed over the network during call set-up includes the ANI for wireline calls, and the ESRK or ESRD for wireless calls. Once the call is received at the E9-1-1 tandem, the ANI, ESRK or ESRD is looked up in the Selective Routing database (SRDB) to determine which PSAP to deliver the voice call. ANI for wireline or ESRK or ESRD for wireless with or without the CBN are also delivered via the voice path to the PSAP. Selective Routing can also be performed by NPA NXX or Incoming Trunk Group to the designated PSAP for all calls with the same NPA NXX or all calls delivered on the same incoming trunk group.

Selective Routing includes the Alternate Routing of E9-1-1 calls to a designated alternate PSAP when all trunks to the Primary PSAP are busy. ANI, ESRK, or ESRD is provided, if available, when a call is sent via Alternate Routing.

Selective Routing also includes default routing in the event of ANI, ESRK, or ESRD failure, garbled digits, or other causes. Each Incoming E9-1-1 facility group to the Selective Router is assigned to a designated default PSAP. No ANI, ESRK, or ESRD is provided when a call is sent via Default Routing.

(4) CALI Storage/Processing

Centralized Automatic Location Identification (CALI) system consists of two host machines, one being the primary system and the other being the secondary system. The Public Safety Answering Point (PSAP) sends a query to both machines to retrieve ALI. The primary system returns the ALI and sends a confirmation to the secondary system that it has delivered the ALI. If the secondary system does not receive this confirmation, it will also send the ALI. ALI rates are inclusive of the network connections between the primary and secondary CALI systems to allow the two machines to communicate to each other. The PSAP must also subscribe to from the Company two 9.6 Kbps or higher circuits from the PSAP location, one to the primary CALI system and the second one to the secondary CALI system. These circuits may be provisioned from the Company's tariff depending on the type of circuit. The customer must also subscribe to ALI Database Administration in order to subscribe to CALI services. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.4 **Description of Service (Continued)** (N)

e. (Continued)

(4) CALI Storage/Processing (Continued)

The CALI system stores the ALI database for subscribers in the E9-1-1 service areas covered by the Company CALI will process ALI in two ways:

- Upon receipt of an ALI query from the PSAP, the CALI databases will use the ANI or pANI to look up and respond with the matching ALI if it resides on the CALI platform. The ALI will then be formatted and transmitted back to the requesting PSAP.

- The CALI can also steer the pANI to another ALI database to retrieve the appropriate ALI record. The record, when received by the CALI platform from the other ALI database, is formatted and transmitted back to the requesting PSAP.

For Wireless CALI Storage/Processing, the Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count. The Company will use this record count only for purposes of billing for CALI Storage/Processing.

(5) CALI System Ports for PSAPs

The CALI System Ports for PSAPs includes the two ports that are required for redundancy; one port into the primary CALI system and one port into the secondary CALI system. The port rate includes the capability to establish a secure connection with the CALI system, including security firewall clearance. The customer must provide one 9.6 Kbps or higher circuit from the PSAP to the primary system and a second 9.6 Kbps or higher circuit from the PSAP to the secondary system. Circuits from each of the CALI systems to other databases are not included in this CALI service. These circuits may be provisioned from the applicable Company tariff, depending on the type of circuit provisioned.

(6) Trunking

End Office to E9-1-1 Selective Router: Provides a two-wire voice grade circuit from a Company Central Office to a Company Selective Router. Provides ANI and a voice path for the E9-1-1 caller from a Company Central Office to the Company Selective Routers. Includes Company wide average of facilities termination and local loop mileage from the Company Central Offices to the Company Selective Routers. Requires dedicated trunks to meet P.01 grade of service or a minimum of 2 trunks, whichever provides the higher grade of service from each end office regardless of host or remote arrangement.

Company Selective Router to PSAP: Provides a two-wire voice grade circuit from a Company Selective Router to a Public Safety Answer Point (PSAP). Provides ANI and a voice path for the E9-1-1 caller from the Company Selective Router to PSAP. The Company can choose to provide via digital or analog connection at its discretion and in agreement with the customer. Requires dedicated E9-1-1 trunks to meet P.01 grade of service from the Company Selective Router to the PSAP. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE--E9-1-1 (Continued) (C)

.4 Description of Service (Continued) (N)

e. (Continued)

(6) Trunking (Continued)

End Office to TOPS Switch: This is an optional service that provides an additional dedicated network completion alternative for E9-1-1 calls from the local end office to the Traffic Operator Position System (TOPS) switch, where the call is then switched without Operator intervention to the appropriate Company Selective Router. The signaling on this route is Multi-frequency. Calls will route to TOPS if there is a spike in traffic and all first choice E9-1-1 trunks are busy, or if the trunks are not operational, e.g., SS7 outage. When the E9-1-1 calls route via the TOPS they will include the ANI, and call processing at the E9-1-1 tandem will route the call to the correct PSAP with the ANI. Alternate Routing of E911 calls via non-dedicated TOPS facilities is included in the Company's E911 Selective Routing service

PSAP to CALI: Provides connectivity, based on a Company wide average of facilities termination and local loop mileage, from PSAP to the CALI systems.

(7) PSAP Terminal Equipment

PSAP terminal equipment deemed essential to the operation of E9-1-1 Service may be provided by the Company as outlined in Docket No. 830490-TL and FPSC Rule 25-4.0345. If provided by the Company, it shall be offered under the terms specified in Section A24.1.1f. and A24.1.10c.(7) of this Tariff when regulated.

f. Wireless Service

(1) CAS

The Company offers CAS in a Phase I wireless configuration, which allows for the delivery of 20 digits (CBN and ESRD) to the appropriate Selective Router for forwarding from the Selective Routers to the PSAP. Upon receipt of the ESRD and CBN at the PSAP, a request for ALI data, using the ESRD, is sent to the CALI Database. The ALI is provided via the data path established for Wireline subscribers. The ESRD ALI data is stored in the CALI database. The wireless carrier is responsible for each ESRD MSAG valid ALI record which is needed for retrieval of CALI and/or wireless Selective Routing, and the transmission of the record(s) to the Company. Circuits from the wireless carriers MSC(s) to the tandem routers are not included in this service.

(2) Phase I NCAS and Phase II Wireline Compatibility Mode

The Company offers this configuration which allows for the delivery of 10-digit ESRK to the appropriate Selective Router for forwarding to the designated PSAP. Upon receipt of the ESRK at the PSAP, an ALI query is made using the ESRK, via the data path to the appropriate ALI platform. The ALI platform directs the ESRK to steer to the appropriate wireless database to retrieve the appropriate ALI record. The Record, when received by the ALI platform from the wireless database, is reformatted into the PSAP's Phase I or Phase II display and processed back to the requesting PSAP. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.5 Rules and Regulations (T)

a. E9-1-1 Service is provided by the Company where facility and operating conditions permit. (T)

b. The service is furnished to municipalities, counties, and other governmental agencies, only for the purpose of voice reporting emergencies by the public. (T)

c. This offering is limited to the use of central office number 9-1-1 as the universal emergency number and only one 9-1-1 Service will be provided within any government agency's locality. (T)

d. E9-1-1 Service is classified as Business Exchange Service and is arranged for one-way incoming service to the appropriate PSAP. Outgoing calls can only be made on a transfer basis. (M[1]) (M[1])

e. Residential subscribers whose telephone services have been temporarily disconnected for non-payment, will continue to have access to E9-1-1 service (outgoing service only). (N) (N)

f. The 9-1-1 emergency number is not intended to replace the telephone service of the various public safety agencies which may participate in the use of this number. The subscriber must subscribe for additional local exchange service at the PSAPs for administrative purposes for placing of outgoing calls and for receiving other emergency calls, including any which might be relayed by Company or other operators. In order for phone calls of a non-emergency nature to reach the PSAP, the main directory listing for the PSAP must be a ten-digit local exchange administrative telephone number. (T) (N) (N)

g. E9-1-1 calls originated from local exchange telephone network access facilities shall be completed to the appropriate PSAP without a charge being assessed to the end user by the Company. Calls from a pay telephone shall not require a coin to be deposited or payment of any charge. Calls using toll facilities are subject to normal charges. (M[2]) (N) (N)

h. The Company does not undertake to answer and forward 9-1-1 calls, but furnishes the use of its facilities to enable the customer's personnel to respond to such calls on the customer's premises. (M[1]) (M[2]) (T)

i. Vacation Service is not provided for any part of the E9-1-1 Service. (D) (D)

j. The rates charged for E9-1-1 Service do not include the constant monitoring or inspection of facilities to discover errors, defects and malfunctions in the Service. The customer shall make such operational tests as, in the judgment of the customer, are required to determine whether the system is functioning properly for its use. The customer shall promptly notify the Company in the event the system is not functioning properly. (C) (M[3]) (C) (M[1])

k. When an order for E9-1-1 Service and facilities or requests for additions, rearrangements, relocations or modifications or service and equipment are canceled in whole or in part prior to completion of the work involved, the subscriber is required to reimburse the Company for all expenses incurred in handling the request before notice of cancellation is received. Such charges, however, are not to exceed all charges which would apply if the work involved in complying with the request had been completed. (T) (M[3]) (T)

l. Application for E9-1-1 Service must be executed in writing by the subscriber (a municipality, a county, a local government authority or their duly appointed agent). If execution is by an agent, satisfactory evidence of the appointment must be provided in writing to the Company. At least one local law enforcement agency must be included among the participating agencies in any E9-1-1 offering. (T) (T)

(M[1]) Material previously appeared on 5th Revised Page 3. (N)
(M[2]) Material previously appearing in this location has been moved to 1st Revised Page 6.
(M[3]) Material previously appearing in this location has been moved to 1st Revised Page 7. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.5 Rules and Regulations (Continued) (T)

m. When an E9-1-1 Service is ordered out of this tariff by the customer, the Company will bill the customer upon the in-service date of the System. Where an additional component or service is ordered to commence operation at a date other than the system cut date, the component or service will be billed upon its in-service date. (M[1]) (N) (N)

n. The Company will bill "911" local option fees in accordance with Chapter 365, Florida Statutes, as amended. Each customer imposing a "911" local option fee agrees to release, indemnify, defend and hold harmless the Company from any and all loss, claims, demands, suits or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the customer or by any other party or person, arising out of the Company's good faith compliance with the instructions of the customer concerning the imposition, billing, collection or remittance of the "911" fee, whether or not the act of complying with the customer's instructions is deemed to be negligent. (M[3]) (T) (T) (M[3])

o. General Regulations located in Section A2. of this tariff will also apply to this Service offering. (M[1]) (T)

p. Company serving boundaries and political subdivision boundaries may not coincide. If a central office serves telephones located both within and outside the public safety jurisdiction, it is the obligation of the customer to make arrangements to handle all E9-1-1 calls that originate from telephones served by these central offices. (D) (T) (D)

q. Each customer must subscribe to sufficient E9-1-1 End Office to Selective Router and Selective Router to PSAP trunks to adequately handle incoming calls in each customer's average busy hour so that no more than one call out of 100 (P.01 transmission grade of service) encounters call blockage. Thus, the E9-1-1 network from each central office to the selective routers and the selective routers to the PSAP must provide a minimum of a P.01 transmission grade of service or two trunks, whichever is the higher standard. The trunks needed to provide a P.01 transmission grade of service will be split between two selective routers. For example, if four trunks are required then two trunks will be provisioned to each selective router from the end office. If the customer requests a fully redundant system, additional trunks must be ordered to provide a P.01 grade of service to and from each selective router. (M[2]) (N) (N)

r. Where a 9-1-1 call is placed by the calling party via interconnection with an interexchange carrier, the Company cannot guarantee the completion of said 9-1-1 call, the quality of the call or any service elements that may otherwise by provided with E9-1-1 Service. (M[3]) (T) (M[2]) (M[3]) (T)

s. Information provided by the Company as part of the provision of E9-1-1 is to be used only for the purpose of answering and dispatching emergency calls. (D) (N) (D)

t. Calls placed through network access lines, including those with nonpublished numbers, to a PSAP may display subscriber information associated with such numbers to emergency 9-1-1 responding personnel. The subscriber forfeits the privacy afforded by nonpublished service upon placing a 9-1-1 call. (N)

(M[1]) Material previously appearing in this location has been moved to 3rd Revised Page 4. (N)
(M[2]) Material previously appearing in this location has been moved to 4th Revised Page 2.
(M[3]) Material previously appeared on 2nd Revised Page 4. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued)

.5 Rules and Regulations (Continued)

u. E9-1-1 information consisting of the names, address, and telephone numbers of customers whose listings are not published in directories or listed in Directory Assistance Offices is confidential. C-ALI Service Information is provided on a call-by-call basis only for the purpose of responding to emergency calls. Private and semiprivate telephone number service subscribers forfeit the privacy afforded by these services to the extent that the telephone number, address, and name of the subscriber is furnished to the Provider of Emergency Services.. (C) | (C)

v. The Company is obligated, by the requirements of the Electronic Communications Privacy Act of 1986 (18 USC 2703), to take prudent action to protect its subscribers' rights to privacy and to protect its proprietary ALI databases. When the Company or other local exchange carrier provides the ALI controller service to the Customer's PSAP, these requirements are met by the direct control that the Company or other local exchange carrier retains over the ALI software.

w. Any terminal equipment associated with the 911 call taker that is used in connection with E9-1-1 Service, whether such equipment is provided by the Company or the Customer, shall be configured so that it is unable to extract any information from the ALI platform, whether obtained from the Company or not, other than information relating to a number of an in progress E9-1-1 call. (N)

x. Customer initiated changes and rearrangements to the MSAG that affect service address and ALI database records (e.g., street name and number changes, emergency services territorial or name change, jurisdictional boundary changes and rearrangements, etc.) other than those processed in normal daily updates require a comparative listing of changes providing direct and individual reference to existing designations.

y. The Company will provide to the Customer, on request, once per year, one copy of the MSAG at no charge, to be used solely for the verification of emergency services routing designations for E9-1-1 Services. The MSAG will be provided via electronic means only. Customers of ALI services may access their MSAG through electronic means, on a dialup basis at no additional charge. Additional copies will be provided on a non-regulated basis.

z. Information concerning MSAG, error reports, and audit reports will be provided to the Customer upon request in the same media (either fax or via electronic means) as requested by the Customer. For information not provided as part of normal moves and changes or error correction, the Customer must provide that request in writing to the Company. One complete copy of the MSAG is available to the Customer on an annual basis as described above in A24.1.5y. The Company is restricted from providing information that is prohibited by Federal, State and Local laws.

aa. Standard provision of E9-1-1 Service for Private Branch Exchange (PBX) subscribers includes only the ANI and ALI associated with the main listed number of the PBX and does not include the provision of PBX Station ANI and ALI information. Under special arrangement and configurations with the Customer and Company, Private Switch E9-1-1 Service can be provided whereby a Private Switch e.g., PBX Station E9-1-1 call with appropriate Private Switch ANI and ALI information is delivered to the PSAP. The Private Switch Provider (PSP) must utilize Direct Inward Dial (DID) station numbers and provide for the transmission of voice and Station ANI via a minimum of two dedicated facilities to the E9-1-1 network. In addition, the PSP must provide and periodically maintain the Private Switch Station ALI data in the appropriate format to the Company's E9-1-1 Database Management System. The Private Switch Provider will be responsible for those charges associated with any required PBX enhancements; DID station numbers; trunking to access the E9-1-1 network; and the provision of the initial and ongoing Private Switch ALI information to the Company. The Customer will be responsible for those charges associated with Selective Routing and ALI Service for the Private Switch stations. Other provisions of this tariff section, A24 Emergency Reporting Services, will apply as appropriate.

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.6 Wireless Regulations (C)

a. The Company will deliver to each customer the data required and specified by the FCC in CC Docket 94-102, including the cell site or sector location, the callback number, and in Phase II the longitude/latitude of the wireless caller. The Company disclaims any and all responsibility for (1) the delivery of any additional data elements that the WSP may choose to provide beyond those required and specified in CC Docket No. 94-102 and (2) the content of the data delivered to the customer. In addition, the Company shall not be responsible for the location determination technology, the accuracy of the location determination technology, or the investigation or maintenance of these technologies. (M[1])(N)

b. The customer must have all required elements of Wireless E9-1-1 Phase I, utilizing ESRK or ESRD routing and cell site/sector location based information, in place before Phase II can be implemented. In addition, the customer's ALI format must be modified to accommodate the Phase II data (latitude, longitude, confidence and uncertainty). (M[1])

c. Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count. (M[2]) (D)

.7 Customer Obligation (M[2])

a. Existing customer's with tariff or Individual Case Basis (ICB) Agreements who choose to subscribe to E9-1-1 services in this tariff, agree to a term of three years. This tariff supersedes all existing Individual Case Basis (ICB) contracts and requires the customer to agree to a three year term commitment on services subscribed to in this tariff, Section A24 Emergency Reporting Services. These tariff rates may be superceded by any tariff rate revisions that go into effect during the three-year term commitment period; the termination charge relief provisions of Section A2.3.17b. for rate revisions shall not apply. Beginning on the effective date of the tariff, any customer receiving E9-1-1 services can continue to receive those services pursuant to the new tariff. (N)

b. The customer must furnish the Company its agreement, in writing, to the following terms and conditions: (M[3])

(1) That at least one PSAP will be provided and staffed on a 24-hour, seven days per week basis. (M[2])

(2) That the customer accepts responsibility for dispatching, or having others dispatch police, fire, ambulance or other emergency services as required, to the extent as such services are reasonably available.

(3) That the customer will develop an appropriate method for responding to calls for nonparticipating agencies which may be directed to the E9-1-1 PSAP by calling parties.

(4) That the customer will subscribe to, or provide 911 trunks, and telephone equipment with a capacity adequate to handle the number of E9-1-1 trunks and lines recommended by the Company to provide P.01 grade of service. (M[3])

(M[1]) Material previously appearing in this location has been moved to 1st Revised Page 3. (N)
(M[2]) Material previously appearing in this location has been moved to 2nd Revised Page 1 of Section A124.1.
(M[3]) Material previously appeared on 5th Revised Page 3. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.7 **Customer Obligation (Continued)** (C)

c. When the Selective Routing feature is provided, the customer is responsible for identifying primary and secondary PSAP locations as well as the unique combinations of police, fire, and ambulance or any other appropriate agencies responsible for providing emergency service in the E9-1-1 serving area. An Emergency Service number (ESN) will be provided for each unique combination by the Company. The customer will associate these ESNs with street address ranges or other mutually agreed upon routing criteria in the E9-1-1 serving area. These ESNs will be carried in the Database Management System (DMS) to permit routing of E9-1-1 calls to the primary and secondary PSAPs responsible for handling of calls from each telephone in the E9-1-1 serving area. The following terms define the customer's responsibility in providing this information: (M[1]) (M[4])

(1) Initial and subsequent ESN assignments by street name, address range, and area or other mutually agreed upon routing criteria shall be furnished by the customer to the Company. (M[1])

(M[2])

(2) After establishment of service, it is the customer's responsibility to continue to verify the accuracy of the routing information contained in the master street address guide, and to advise the Company of any changes in street names, establishment of new streets, changes in address numbers used on existing streets, closing and abandonment of streets, changes in police, fire, ambulance or other appropriate agencies' jurisdiction over any address, annexations and other changes in municipal and county boundaries, incorporation of new cities, or any other matter that will affect the routing of E9-1-1 calls to the proper PSAP. (D) (M[2]) (M[2])

(3) Changes, deletions, and additions which the customer desires to have made in the master street address guide should be submitted on an "as-occurred" basis. (D)

(D)

(4) The Company will furnish a written copy to the customer for verification showing each change, deletion and addition to the master street address guide. (M[2])

d. The customer is responsible for procuring PSAP equipment. This equipment must meet network compatibility requirements, receive voice and ANI from 9-1-1 callers, provide the ability to retrieve information on a per call basis from the Company's database management system. The customer's equipment must provide ANI and ALI display and control. If Company changes are necessary to achieve compatibility with customer-owned equipment, an ICB will be required before such services become available. Any additional cost associated with bringing incompatible equipment not in compliance with the E9-1-1 system will be the responsibility of the customer. The customer may obtain PSAP equipment from the company as a regulated service as outlined in Docket No. 830490-TL and FPSC Rule 25-4.0345. (M[2])

e. The customer will conduct training to impress upon personnel the sensitive nature of the ALI database information and their legal obligation to protect it from unauthorized access. (M[3]) (M[4])

(M[3])

(D)
(D)

(M[1]) Material previously appearing in this location has been moved to 5th Revised Page 1. (N)
(M[2]) Material previously appearing in this location has been moved to Original Page 1.2.
(M[3]) Material previously appearing in this location has been moved to Original Page 1.3.
(M[4]) Material previously appeared on 1st Revised Page 3.1. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued)

.8 Liability

a. The Company's entire liability to the Customer or any person for interruption or failure of E9-1-1 Service shall be limited by the terms set forth in this section, and in other tariffs of the Company. This E9-1-1 Service is offered solely to assist the Customer in providing E9-1-1 emergency service in conjunction with applicable fire, police, and other public safety agencies. By providing this service to the Customer, the Company does not create any relationship or obligation, direct or indirect, to any third party other than the Customer.

b. The Company shall not be liable for civil damages, whether in contract, tort or otherwise, to any person, corporation, or other entity for any loss or damage caused by any Company act or omission in the design, development, installation, maintenance, or provision of E9-1-1 Service. However, in no event shall the Company's liability to any person, corporation, or other entity for any loss or damage exceed an amount equal to the prorated allowance of the tariff rate for the service or facilities provided to the Customer for the time such interruption to service or facilities continues, after notice by the customer to the Company. No allowance shall be made if the interruption is due to the negligence or willful act of the Customer.

c. The Customer shall indemnify and hold harmless the Company from any damages, or other injuries which may be asserted by any person, business, governmental agency, or other entity against the Company as a result of any act or omission of the Company or Customer or any of their employees, directors, officers, or agents in connection with developing, adopting, implementing, maintaining, or operating the E9-1-1 system or for releasing subscriber information, including nonpublished or unlisted information in connection with the provision of the E9-1-1 Service.

d. The Company accepts no responsibility for obtaining subscriber record information from private telecommunications systems.

e. The Company shall not be liable or responsible for any indirect, incidental, or consequential damages associated with the provision of E9-1-1 Service, including, by way of example and without limitation, when a call originates from a system or line which makes the provision of specific location information impossible to provide for technical reasons, and when a failure or interruption in E9-1-1 Service is due to the attachment of any equipment by a Customer to Company facilities.

f. The Company shall not be liable for any civil damages caused by an act or omission of the Company in the good faith release of information not in the public record, including nonpublished subscriber information to emergency service providers responding to calls placed to an E9-1-1 Service or other providers using such information to provide E9-1-1 Service. (C)

g. The Company shall have no liability whatsoever to any person arising from its provision of, or failure to provide, E9-1-1 Service to any subscriber. It is the obligation of the Customer to answer, respond to, transfer, terminate, dispatch, or arrange to dispatch emergency services, or otherwise handle all 9-1-1 telephone calls that originate from telephones within the Customer's service area. Neither the Customer nor the Company shall have any responsibility for 9-1-1 calls that carry foreign dial tone, whether they originate within or outside of the Customer's service area, or for calls originating from mobile/cellular telephones.

h. The Company shall not be liable for any mistakes, omissions, interruptions, delays, errors or defects in transmission or service caused or contributed to by the negligence or willful act of any person other than the Company, or arising from the use of Customer provided facilities or equipment.

i. When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the Customer or the failure of the facilities provided by the Customer, a pro rata adjustment of the fixed monthly charges involved will be allowed as covered by Section A2 of this tariff. Where allowances on monthly charges for service elements of E9-1-1 Service are involved, only those service elements which are affected by the interrupted service shall be considered; and, further, only those access lines that have interrupted service shall be considered in determining the number of access lines affected.

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.8 Liability (Continued) (C)

j. The liability of the Company to the customer shall be limited as provided in Section A2.5 of the General Services Tariff. In no event shall the Company be liable in tort, contract, or otherwise for errors, omissions, interruptions, or delays to any person for personal injury, property damage, death, or economic losses arising out of or related to a person's use of the E9-1-1 system. By subscribing to this E9-1-1 Service, the customer agrees to indemnify and hold the Company harmless from any claim, action, or proceeding (without limiting the generality of the foregoing), arising out of or related to a person's use of the E9-1-1 system, and this indemnity shall include and not be limited to cases of errors, omissions, defects, or interruptions due to acts or omissions on the part of the Company or the Company's facilities. (M1) (M2)(T) (D) (T) (T) (T) (M2)

k. The Company reserves the right to select and determine the type of equipment it utilizes to provide E9-1-1 services. (N)

l. Termination Liability: Subject to the provision of A24.1.7a. please see Section A2.3.17 for termination liability application.

.9 Service Rate Elements

E9-1-1 Service is available in the following six service element offerings:

a. Automatic Location Identification (ALI) Database Administration

(1) Provides for daily database processing and updates for ALI storage and the SRDB platforms for all add, delete and change activity associated with subscriber or other service provider records.

(2) Provides processing of customer records against the MSAG.

(3) Provides for the creation of a file containing the updated records.

(4) Does not include Centralized ALI storage or processing for use during a 9-1-1 call.

(5) Is used for updates to the Selective Routing Data Base (SRDB).

(6) Rates based on a per 1,000 records (the combination of Company access line counts and non-Company record counts). Wireless records for pANI/ESRK/ESRD are counted as non-Company Records. Wireless subscription counts are not applied to this rate element.

b. Dual Selective Routing (SR), per 1,000 records rate for wireline and wireless, rate for all routing whether based on ESN, trunk, default, etc.

(1) Provides for diverse selective routing of E9-1-1 call to PSAP.

(2) Receives ANI for Wireline and the ESRK or ESRD for Wireless and routes E9-1-1 call based on ESN in the ALI database. (D)

(3) Includes ports for Company End Offices to Selective Router trunks and Selective Router to PSAP trunks for P.01 grade of service between the dual routers. Above a P.01 grade of service requires the customer to purchase additional ports.

(4) Provides for trunk default routing to an established PSAP in the event of ANI or ESRK or ESRD failure. (N)

(D)

(D)

(M1) Material previously appearing in this location has been moved to Original Page 1.7. (N)
(M2) Material previously appeared on 3rd Revised Page 2. (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.9 Service Rate Elements (Continued)) (C)

b. (Continued) (D) (N)

(5) Rates based on a per 1,000 records (the combination of Company access line counts and non-Company record counts) for wireline and per 1,000 subscribers for wireless.

(6) Supports Phase I CAS and NCAS as well as Phase II NCAS wireline compatibility methods.

(7) Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count.

c. Selective Router Port

(1) Provides a digital port at the Company selective routers for two-wire voice grade termination.

(2) Includes facilities termination within a Company selective router wire center.

(3) Trunk port to be applied only if greater than P.01 grade of service is required for connection of the following:

(a) Incoming E9-1-1 trunks from host, remote central office or tandem switch.

(b) Outgoing E9-1-1 trunks to PSAP.

(4) This rate element is always applied when Business Local Exchange Service is utilized in the provision of E9-1-1 service.

d. CALI Storage/Processing, per 1, 000 records rate for wireline and per 1,000 subscribers for wireless

(1) Provides storage and retrieval of ALI records for E9-1-1 calls processed through the CALI system.

(2) Requires customer to also subscribe to ALI Database Administration as defined above in A24.1.9a.(1).

(3) Includes one port on both the primary and secondary CALI. Above one port to both the primary and secondary CALI platforms requires the customer to purchase additional ports (with corresponding circuits).

(4) Provides storage of ESRK or ESRD records for CAS and steering data to a wireless carrier or their vendor/agent for NCAS Phase I or Phase II Wireline Compatibility. Provides for retrieval of an ALI record, for CAS from within the CALI platform and from the carrier database for wireless Phase I NCAS and Phase II Wireline Compatibility.

(5) Rates based on a per 1,000 records (the combination of Company access line counts and non-Company record counts).

(6) Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count. (N)

(D)

(D)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.9 Service Rate Elements (Continued) (C)

e. CALI Port for PSAPs (D) (N)

(1) Provides for host end connectivity ports into the CALI storage platform. One port to the primary and one port to the secondary CALI platforms are included in the CALI Storage/Processing rate.

(2) This rate is only applicable for greater than one port on both the primary and secondary CALI platforms, i.e., if customer wants additional ports. They can be ordered in equal amounts (one on each the primary and secondary CALI platforms.

(3) Customer is required to maintain a secure environment with protected password at remote end access terminal.

f. Trunking

(1) End Office to E9-1-1 Selective Routers, per trunk

(a) Provides ANI on a two-wire voice grade circuit from a Company central office switch to the Company Selective Routers.

(b) Includes Company wide average of facilities termination and local loop mileage from Company host central offices to Company Selective Routers.

(c) Requires dedicated trunks to meet the higher of P.01 grade of service, or minimum of two trunks, from each end office regardless of host or remote arrangement.

(d) This rate also applies when Business Local Exchange Service is utilized in the provision of E9-1-1 service. The customer must also subscribe to the appropriate Business Local Exchange Service. See Company General Services Tariff Section A3.

(2) Selective Routers to PSAP, per trunk (D)

(a) Provides ANI on a two-wire voice grade circuit from the Company Selective Routers to the designated PSAP. (M)

(b) Company can choose to provide via digital or analog connection at its discretion and in agreement with the customer.

(c) Includes Company wide average of facilities termination and local loop mileage from Company host central offices to Company Selective Routers.

(d) Requires dedicated E9-1-1 trunks to meet P.01 grade of service from the Company Selective Routers to the PSAP. (N)

(M)

(M) Material previously appearing in this location has been moved to Original Page 8.2. (C)

A24. EMERGENCY REPORTING SERVICES

A24.1 ENHANCED EMERGENCY NUMBER SERVICE – E9-1-1 (Continued) (C)

.9 Service Rate Elements (Continued) (C)

f. Trunking (Continued) (N)

(3) End Office to TOPS Switch, per trunk

(a) Provides for a dedicated trunk from a Company end office to the Company TOPS switch.

(4) PSAP to CALI, per trunk

(a) Provides connectivity between the CALI and the PSAP.

(b) Includes Company wide average rates for facilities termination and trunk local loop.

(c) Requires a minimum of two dedicated E9-1-1 trunks (one to the primary and one to the secondary).

(d) This rate is to be applied only if greater than the minimum of two circuits is required for connection between the PSAP and the CALI systems. A minimum of two circuits (one to the primary and one to the secondary, with corresponding CALI ports) will need to be purchased to maintain equal access to the CALI platform. All subsequent additions will also be in pairs to maintain equal access to the CALI platform.

(5) E9-1-1 Miscellaneous Point to Point Trunk - Intraoffice Exchange

(a) Provides for two dedicated two-wire transport trunks from one remote location to another remote location when both remote locations are served by the same end office.

(6) E911 Miscellaneous Point to Point Trunk - Interoffice Exchange

(a) Provides for two dedicated two-wire transport trunks from one remote location to another remote location when both remote locations are served by different end offices. (N)

.10 Rates and Charges

(M)

a. Messages

(1) The calling party is not charged for calls placed to the 9-1-1 number.

(2) Charges for applicable local and/or toll messages transferred over exchange facilities from a PSAP are billed as covered in other sections of this Tariff based on rates applicable from the central office serving the customer's major PSAP to the point of termination of the transfer. (M)

b. Rates are in addition to the applicable Network Access Charge found in Section A4. of the Tariff. (N)

(M) Material previously appeared on Original Page 8.1 (N)

A24. EMERGENCY REPORTING SERVICES

A24.1 Enhanced Universal Emergency Number Service-E911 (Continued) (C)

.10 Rates and Charges (Continued) (T)

c. The following rates are based on a three year term commitment.[1] (C)

		Installation Charge		Monthly Rate	
(1)	Automatic Location Identification (ALI) Database Administration per 1000 records [2]			$42.67	(C)
(2)	Dual Selective Routing, per 1000 records for wireline and per 1,000 subscribers for wireless [2,3]			$26.09	
(3)	Selective Router Ports, per port			$2.39	
(4)	CALI Storage/Processing, per 1,000 wireline records and per 1,000 wireless subscribers [2,3,4]			28.99	
(5)	CALI Ports, per port [5]			$ 20.99	
(6)	Trunking				
	End Office to E9-1-1 Selective Routers, per trunk		[6]	12.86	
	Selective Routers to PSAP, per trunk		[6]	40.88	
	End Office to TOPS Switch, per trunk		[6]	18.40	
	PSAP to CALI, per trunk		[6]	26.24	
	E9-1-1 Miscellaneous Point to Point Trunk, per trunk – intra-office exchange		[6]	53.10	
	E9-1-1 Miscellaneous Point to Point Trunk, per trunk – inter-office exchange		[6]	67.28	

(7) Miscellaneous Service and Equipment

a. Charges for subscriber requests that necessitate additions, moves or changes of access facilities and/or equipment on Company premises will be based upon costs per request.

b. Installation of additional network or other facilities will be provided by the Company at the rates contained herein only where the 9-1-1 Service Area coincides with the Company serving boundaries.

c. Miscellaneous service and equipment provided by the Company for use by the customer is available via an Individual Case Basis. See Section A24.1.1.f. of this Tariff.

NOTE 1: Subject to the provision of A24.1.7a. please see Section A2.3.17 for termination liability application.

NOTE 2: The per 1000 rate is based on the maximum number of records in service within the geographical boundaries of the customer's public safety jurisdiction for the most current twelve-month period prior to service establishment. These counts will be adjusted annually for purposes of updating customer billing. A minimum of 1000 will be billed and standard rounding (below 500 downward, 500 and above upward) will be used. See definition section for the definition of Record.

NOTE 3: Wireless subscription rate is based on 100% of the wireless subscription in a county using the wireless subscriber counts derived from the State of Florida Wireless Board's 911 Disbursements to Counties, and will be updated annually. If the State of Florida Wireless Board counts have not been updated within the preceding 12 months, an increase of 10% will be assessed to derive the new annual wireless subscriber count.

NOTE 4: Customer must subscribe to CALI services for both wireline and wireless.

NOTE 5: CALI Wireline Storage and Wireless Phase I or II includes one port on the primary CALI system and one port on the secondary system only. Circuits are not included in this rate.

NOTE 6: Refer to Section 7.7.2 of the Company's Facilities for Intrastate Access Tariff for applicable non-recurring charges for local channel 2-wire circuits and interoffice channel circuits. (C)

(D)

A24. EMERGENCY REPORTING SERVICES

A24.2 Subscriber Record Information Service (N)

.1 Description of Service

a. Subscriber Record Information Service (SRIS) is an optional feature of Enhanced 9-1-1 Service. SRIS provides subscriber's telephone numbers, with the associated name and service address, within designated NPA-NXXs. SRIS provides the Customer with:

(1) An initial electronic file containing records available in the existing 9-1-1 ALI Database Administration System.

(2) Records of ongoing additions, deletions, or changes to Company Subscriber names addresses or telephone numbers, from other Company Information System(s).

2. Rules and Regulations [1]

a. Data format including method of encryption, transmission protocols and transport medium are as specified by the Company and require compatible Customer Premises Equipment. Upon request, the Company will provide all applicable specifications.

b. When this service is used in lieu of the Automatic Location Identification (ALI) Database Administration Service (as described in Section 24.1.4.e2 of this tariff) the following Services are not available: Dual Selective Routing, Selective Transfer, C-ALI Storage & Processing, Private Switched Automatic Location Identification and Emergency Service Listings. If this Service alters an existing 9-1-1 Service arrangement(s) of other governmental agency(s), it is the obligation of the Customer to provide the Company with agreement(s) from affected governmental agency(s) prior to the establishment of the Service.

c. The Service is provided by NPA-NXXs assigned to Company Central Offices. A Company Central Office serving boundary may not coincide with the Customer's geographic jurisdiction.

d. In addition to Company subscriber records, the initial electronic file may contain customer records of participating Service Provider subscribers stored in the 9-1-1 ALI Database Administration System. The Company will provide such information upon receipt of written authorization from the participating Service Provider(s). It is the Customer's responsibility to provide the Company with written authorization from Service Provider(s).

e. Recurring updates are provided for Company Subscribers only. It is the Customer's responsibility to make arrangements with other Service Provider(s) and Private Telecommunications System Owner(s) to obtain update information for other subscribers. This Service does not include any Company provided coordination and/or consultation activities associated with Customer acquisition of such information.

f. All records provided by the Company will not be retained within Company Information Systems after they are provided to the Customer.

[1] These Rules and Regulations listed are in addition to those provided in Section A24.1 preceding. (N)

A24. EMERGENCY REPORTING SERVICES

A24.2 Subscriber Record Information Service [1] (Continued) (N)

2. Rules and Regulations (Continued)

g. This Service includes the provisioning of records containing the name, telephone number and location of non listed and non published Subscribers.

h. All information, data and other materials are provided by the Company "as is." The Service does not include modification by the Company of information with respect to any Street Address Guide or any other instrumentality associated with Emergency Services or Emergency Support Services. The Company makes absolutely no express or implied warranties whatsoever regarding the completeness or accuracy of the information provided or the technical quality of any media supplied hereunder, including but not limited to implied warranties or merchantability or fitness for a particular purpose.

i. The Company hereby grants to the Customer a non-exclusive limited license to use the information provided by this Service solely for the purposes of the Customer providing Emergency Services or Emergency Support Services, or as otherwise required under applicable law, regulation, or judicial or regulatory order. The Customer shall not sell, lease, grant, copy, publish, reproduce, disclose, allow access to or sub-license the information provided by the Service to any other Party, except the Customer's duly authorized agents, without the written consent of the Company or as otherwise provided herein. Under no circumstances shall the information provided by the Services be used or disclosed by the Customer or by the Customer's duly authorized agents in any manner for purposes other than providing Emergency Services or Emergency Support Services.

j. The Customer acknowledges and agrees that information provided by the Services is Confidential Information of the Company and shall not be used or disclosed by the Customer except as provided herein or as otherwise required under applicable law, regulation, or judicial or regulatory orders. In addition, the Customer agrees to conduct training to impress upon personnel the sensitive nature of the information provided with the Service and their legal obligation to protect it from unauthorized access.

k. The Customer warrants and represents that the Customer presently either is not subject to any Federal, State or Local Public Information Law or Regulation (e.g., by way of example and not as a limitation, Public Access to Records Law, "Freedom of Information" Law, or "Government in the Sunshine" Law) which would require or permit the Customer to provide access to information provided by the Service other than as set forth herein or, if the Customer is subject to such public information law or regulation, that such information is exempt from disclosure pursuant to such law or regulation.

l. It is agreed that a violation by the Customer of any of the provisions of this tariff may cause irreparable harm and injury to the Company, and that the Company shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to seek an injunction enjoining and restraining the Customer or the Customer's agent from doing or continuing to do any such act and any other violations or threatened violations of rules and regulations in this tariff.

m. The Customer's obligations as described herein in regulations 2.i through 2.l shall survive expiration or termination of this Service.

(N)

[1] These Rules and Regulations listed are in addition to those provided in Section A24.1 preceding.

A24. EMERGENCY REPORTING SERVICES

A24.2 Subscriber Record Information Service (Continued) (N)

3. **Rates and Charges**

		Non Recurring Rate	Monthly Rate	
a.	Initial Electronic File of Subscriber Record Information	$4,013.07		
b.	Recurring Updates of Subscriber Record information			
	per 1,000 Company Subscriber Access Lines [1]		$ 2.40	
	Access Arrangement to Company Records	172.50	46.00	(N)

[1] The per 1,000 rate is based on the maximum number of Company subscriber access lines in service within the geographical boundaries of the Customer's public safety jurisdiction at the time of service establishment. These counts will be adjusted annually for purposes of updating customer billing. A minimum of 1,000 will be billed and standard rounding (below 500 downward, 500 and above upward) will be used. (N) (N)

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A24. EMERGENCY REPORTING SERVICES

A24.2 (Reserved for Future Use) (C)

(D)

(D)

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A24.2 (Reserved for Future Use)

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A24. EMERGENCY REPORTING SERVICES

A24.2 (Reserved for Future Use) (C)

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A24.2 (Reserved for Future Use)

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A24. EMERGENCY REPORTING SERVICES

A24.2 (Reserved for Future Use) (C)

(D)

(D)

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM ("INDIGITAL") AGAINST VERIZON NORTH, INC. AND CONTEL OF THE SOUTH, INC. D/B/A VERIZON NORTH SYSTEMS (COLLECTIVELY "VERIZON") CONCERNING THE REFUSAL OF VERIZON TO ALLOW CONNECTION OF INDIGITAL'S WIRELESS ENHANCED 911 TELEPHONE SYSTEM SERVING PUBLIC SAFETY ANSWERING POINTS, AND INDIGITAL'S REQUEST FOR THE INDIANA UTILITY REGULATORY COMMISSION TO ORDER THE CONNECTION UNDER REASONABLE TERMS, CONDITIONS, AND COMPENSATION	**CAUSE NO. 43277** **FINAL ORDER** **APPROVED: NOV 2 0 2008**

BY THE COMMISSION:
Larry S. Landis, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

1. **Procedural History.** On April 25, 2007, Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") filed its complaint against Verizon North, Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (collectively "Verizon") as captioned herein. On May 15, 2007, Verizon filed its *Memorandum in Support of Motion to Dismiss.*[1] Verizon argued that the Commission lacked subject matter jurisdiction over INdigital's complaint as a result of the passage of the new Indiana telecommunications law, P.L. 27-2006.

On May 22, 2007, the Indiana Wireless Enhanced 911 Advisory Board ("Wireless Board") filed its *Petition to Intervene*, alleging that it had a substantial and on-going interest in the issues in this proceeding. On May 25, 2007, INdigital filed its *Motion to Strike Verizon's Memorandum in Support of Motion to Dismiss,* in part due to Verizon's failure to file the aforementioned *Motion.* Notwithstanding the absence of the actual *Motion*, INdigital argued against dismissal, asserting that the Commission retained subject matter jurisdiction, P.L. 27-2006 notwithstanding. On May 28, 2007, Verizon filed its *Motion to Dismiss*, stating that the previous failure to file the motion had been by inadvertent error.

[1] Within the *Memorandum in Support*, Verizon made reference to their motion to dismiss, "concurrently filed herewith." However, Verizon's *Motion to Dismiss* was not actually filed until May 28, 2007, accompanied by a cover letter from Verizon's counsel indicating that "through inadvertent error, the document was not attached to the filing."

On May 29, 2007, the Office of Utility Consumer Counselor ("OUCC" or "Public") filed its *Motion to Strike and/or Response to Verizon's Memorandum in Support of Motion to Dismiss.* Like INdigital, the OUCC argued that the Commission retained subject matter jurisdiction over the complaint by INdigital against Verizon.

On June 1, 2007, Verizon filed its *Response in Opposition to the Motion for Leave to File Responsive Pleading of the Indiana Wireless Enhanced 911 Advisory Board* ("Response") as well as its *Objection and Response in Opposition to Petition to Intervene of the Indiana Wireless Enhanced 911 Advisory Board* ("Objection"). Verizon argued in its *Response* that because the Wireless Board had not yet been granted its requested intervention, it should not be allowed to file a pleading in response to Verizon's *Motion to Dismiss*. In support of its position, Verizon cited Commission procedural rule 170 I.A.C. 1-1.1-11, which states that an intervenor is bound by all rulings and other matters of record prior to the time that the intervenor is made a party. Therefore, Verizon argued, since the date for response to its *Motion to Dismiss* had passed, the Wireless Board should not be allowed to file a responsive pleading. In its *Objection*, Verizon argued that the Wireless Board's "stated interests are to set and collect E911 fees from wireless providers, and to maintain the state's E911 system....[B]oth interests will remain unaffected by the outcome of the instant proceeding."

On June 8, 2007, Verizon filed its *Response in Opposition to Motions to Strike of INdigital and the OUCC.* On June 11, 2007, the Wireless Board filed its *Reply to Verizon's Opposition to Intervention.* INdigital filed its *to Verizon's Response in Opposition to INdigital's Motions to Strike* and Verizon filed additional authority on June 19, 2007.

On August 10, 2007, Intrado Communications, Inc. ("Intrado") filed its *Petition to Intervene*, stating that it had a substantial interest in the proceeding "because it is seeking interconnection with the network and 9-1-1 systems of Verizon North Inc." Intrado further stated that its "entrance at this stage of the proceeding will neither unduly broaden the issues involved in this proceeding nor unreasonably delay it." On August 14, 2008, Verizon filed its *Objection to Intrado's Petition to Intervene*, arguing that Intrado did not have a substantial interest in the proceeding because the case was a complaint case regarding "a specific and unique reconfiguration of Verizon's network[.]" Further, Verizon argued that this was not a generic 911 proceeding or investigation, and that Intrado had not pled with any specificity that it had sought connection or that any future request might fail. In addition, Verizon noted that Intrado had not justified the lengthy time between the filing of the complaint and testimony and Intrado's request for intervention.

On August 17, 2007, Intrado filed its *Verified Direct Testimony of Thomas W. Hicks on Behalf of Intrado Communications Inc.* On August 20, 2007, Intrado replied to Verizon's objection to Intrado's intervention. Intrado argued that it had requested interconnection with Verizon, that its intervention would not broaden the issues, and that all other parties to the Cause (INdigital, the Wireless Board, and OUCC) had no objection to the requested intervention.

Also on August 20, 2007 Verizon filed its *Emergency Motion to Strike Intrado's Testimony and for Expedited Ruling and Modification of Schedule.* Verizon requested that the

Commission strike the testimony "improperly filed by Intrado", deny Intrado's intervention, or, if the Commission granted the intervention, allow for a change to the procedural schedule "to allow Verizon sufficient time to conduct adequate discovery on the array of new issues injected by Intrado and prepare supplemental direct testimony, or...rebuttal testimony[.]"

On August 20, 2007, INdigital filed a Response confirming that it had no objection to the intervention, and had no position on Verizon's *Motion to Strike* Intrado's testimony. However, INdigital objected to a modification of the schedule on the grounds of prejudice to it, and stated that as INdigital did not solicit Intrado's intervention, INdigital should not be prejudiced by it.

On August 23, 2007, the Wireless Board filed its *Response in Opposition to Verizon's Emergency Motion*, in which it argued that the schedule should not be modified, although the Wireless Board did not object to Intrado's intervention. It further argued that Verizon had sufficient time to engage in discovery and filed rebuttal testimony based on the current schedule.

On August 27, 2007, Intrado filed a response to Verizon's emergency motion, arguing that its petition was timely, that Verizon's discovery problems were of its own making, and that Intrado itself objected to any delay in the date of the evidentiary hearing.

On August 27, 2007, the Presiding Officers issued a docket entry finding that Intrado should be granted intervention; the petition itself was timely, and the filing of testimony before being granted intervenor status was insufficient reason for the striking of that testimony. In addition, the Presiding Officers noted that other than Verizon, the other parties did not object to the intervention, and that Intrado had agreed to accept the procedural schedule as established. Therefore, the Presiding Officers denied Verizon's request for modification of the procedural schedule.

On September 6, 2007, the Presiding Officers granted INdigital a two-day extension of time in which to file its rebuttal testimony. The Motion requesting the extension stated that none of the parties had an objection to the requested extension. On September 14, 2007, INdigital and Verizon jointly filed their *Unopposed Motion for Suspension of Procedural Schedule*, stating that such suspension would allow them the "time to conduct a trial of certain technical protocols that they have agreed upon as a means to resolve the matters in dispute, such trial to extend for a period not to exceed ninety (90) days." INdigital and Verizon further stated that they had agreed that within 45 days of the end of the trail period, they would either jointly move for "dismissal of this Cause because of the resolution of all issues, or, if disputes remain, request that this matter be rescheduled for hearing." On September 17, 2007, INdigital and Verizon jointly filed a *Clarification of Motion for Suspension of Procedural Schedule*, stating that the Motion was erroneously titled 'unopposed' when, in fact, Intrado neither supported or opposed the requested extension, and had requested that INdigital and Verizon clarify that matter.

On September 17, 2007, the Presiding Officers issued a docket entry resolving the suspension of the procedural schedule and noting Intrado's requested clarification. The Presiding Officers granted the requested suspension and order the parties to file a report on or before January 30, 2008 regarding "the status of matters between the parties and whether or not any party wishes to proceed to hearing on this matter."

On January 28, 2008, Verizon and INdigital filed a *Joint Motion for Extension of Time to File Status Report*, stating that additional time was necessary in order to complete adequate testing of the technical protocols. The Presiding Officers granted the Motion and ordered Verizon and INdigital to file their status report on March 3, 2008. On February 29, 2008, Verizon and INdigital again requested an extension of time to file their status report up to and including July 9, 2008. On March 5, 2008, the Presiding Officers granted the parties' motion to the extent that they were no longer required to file a report on March 3, 2008. However, the Presiding Officers ordered the parties to file, on or before April 7, 2008, "their respective positions on why this matter should not be dismissed without prejudice pursuant to 170 I.A.C. 1-1.1-24."

On April 7, 2008, INdigital and Verizon responded to the March 5, 2008 docket entry. They reiterated that if the technical trials were successful, they would seek to dismiss the Cause. However, they jointly stated that they did not expect their efforts to be complete before July because "software and other technical protocol issues need to be resolved before live 'turn-ups' and final testing can take place, and they must allow sufficient time for their ongoing actions to reach the point where they can make a final determination concerning whether this cause can be dismissed or should proceed to hearing." INdigital therefore requested the additional four-month extension, up to and including July 9, 2008; Verizon, Intrado and the OUCC had no objection to the requested extension. The Presiding Officers thereafter granted the requested by docket entry on April 14, 2008, and ordered Verizon and INdigital to file their status report on or before July 9, 2008.

On July 8, 2008, Verizon and INdigital filed their *Joint Motion to Withdraw Pending Motion to Dismiss and to Dismiss Complaint with Prejudice*, advising that the technical trials had been successful and that they had resolved the disputes between them. Verizon and INdigital therefore requested that the Commission dismiss this Cause.

On July 18, 2008, Intrado filed its Response to Verizon and INdigital's *Motion to Dismiss*. Intrado argued that dismissal was premature until it had an opportunity to "review the resolution between [Verizon and INdigital] in order to determine whether it supports or objects to the pending motion." Intrado argued that the Commission did not have sufficient evidence that the settlement was in the public interest and objected to the dismissal as it related to non-moving parties that did not participate in the settlement process. Intrado stated that it had requested information about the settlement through a discovery request after being rebuffed by Verizon and INdigital upon an informal request by Intrado. Intrado also argued that Verizon and INdigital had not stated sufficient grounds for dismissal under Commission rules and that any dismissal with prejudice should not bind any non-moving party. Intrado therefore asked the Presiding Officers to delay ruling on the motion to dismiss until Intrado had received responses to discovery; to allow Intrado sufficient time to review the responses to determine whether or not it had an objection to the pending motion; and to order Verizon and INdigital to correct the deficiencies in their *Motion* to provide "sufficient evidentiary basis"; and find that any dismissal in this Cause is without prejudice to the non-moving parties who are not parties to the settlement.

On July 22, 2008, Verizon filed its reply to Intrado's response, with INdigital concurring in Verizon's position by separate filing the same day. Verizon and INdigital argued that Intrado's motions had broadened the issues in this Cause, in contravention to the rules established for the intervention of parties to a case. Verizon and INdigital stated that Intrado had no pending claims; had done nothing in the months intervening between Verizon and INdigital's first request for suspension, in which they stated that they would move to dismiss the case if the technical trial was successful; did not make inquiries about the parties' settlement negotiations, the "development of the agreed protocols, or any impact of the agreed resolution on Intrado"; and had only requested the settlement materials after Verizon and INdigital had filed their Motion to Dismiss the Cause. Verizon stated that it had informed Intrado that it was not filing the Verizon and INdigital settlement with the Commission for approval, and that it would not be providing a copy of the settlement to any entity. Verizon stated that Intrado "did not attempt to reach Verizon's counsel to discuss the matter and waited another five days before sending Verizon purported 'data requests' on July 16, 2008." Verizon argued that the service of data requests violated the suspension of the procedural schedule. Verizon stated that it would

> not be responding to these invalidly-served requests, which are not only barred by the [docket entry suspending the procedural schedule], but seek an array of confidential information regarding the parties' privileged settlement negotiations even though no testimony is due, no hearing is being held, the parties have a pending request to dismiss this proceeding with prejudice, and such information is inadmissible pursuant to Indiana Rule of Evidence 408 (which prohibits admission of evidence of compromise and offers of compromise). Verizon has so notified Intrado.

Verizon *Reply*, at 4.

In addition, Verizon opined that Intrado sought to glean information on the settlement "to gain competitively sensitive information that could be of benefit to it elsewhere," such as the seven pending arbitrations between Verizon and Intrado in other states. *Id.* at 6. Finally, Verizon argued that settlement was a proper basis for dismissal, and, "while vigorously disputing that Intrado has any 'claim related to the subject matter of this dispute' ", stated that any dismissal with prejudice would not bind any non-moving party.

Thereafter, on July 29, 2008, Intrado filed its *Motion to Compel*, stating that Verizon and INdigital had failed to produce the requested discovery, and that Intrado had made an effort, in compliance with Trial Rule 37, to work out the discovery dispute. Intrado argued that the complaint was essentially a request for interconnection, and that all interconnection agreements must be filed with the Commission. Intrado argued that without a copy of the settlement, neither Intrado nor the Commission

> is in a position to know if the services covered by the settlement are local exchange or interexchange...If, in fact, the settlement is limited to interexchange services, as Verizon suggests, [47 U.S.C. §§] 251/252 obligations to file the agreement with the Commission may not be an issue. However, as the Indiana Trial Rules provide, discovery is relevant if it is "reasonably calculated to the discovery of admissible evidence." Intrado's discovery requests are indeed reasonably calculated to determine if the settlement

between Verizon and INdigital pertains to local exchange services, and, if so, it is discoverable as well as admissible as a Section 251/252 interconnection agreement.

Intrado *Motion to Compel*, p.6.

Intrado cited Federal Communications Commission ("FCC") precedent that any "'*on-going* obligation pertaining to resale, number portability...*interconnection*...is an interconnection agreement" subject to Section 252. [Emphasis added.] The FCC also determined that state commissions should decide on a case-by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement' pursuant to Section 252." *Id.* at 7, citing *Qwest Communications Int'l Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 F.C.C.R. 19337, ¶ 8 (2002). Intrado argued that "[a] non-252 commercial agreement (which Verizon and INdigital may contend they have entered into) would violate the Act's requirements that interconnection agreements are to be filed with state commissions pursuant to Section 252." *Id.* Intrado asserted that Verizon could not use a private agreement as a way "to discriminate or to evade its responsibilities under the Act," and that Intrado was entitled to learn the terms of the interconnection even though the agreement was contained in a settlement. *Id.* Intrado thus reiterated its request for the settlement document and asked the Commission to compel Verizon and INdigital to provide it.

On August 8, 2008, Verizon (joined by INdigital in a separate filing) filed its *Response to Intrado's Motion to Compel and Request for Award of Expenses*, in which it argued that Intrado had failed to include INdigital and Verizon's responses to Intrado's demand prior to the *Motion to Compel*. Thus Verizon argued that Intrado had violated the Trial Rules as well as the Commission's procedural rules regarding disputed discovery.

Verizon argued that the suspension of the procedural schedule had also suspended the right to discovery; Intrado's discovery requests sought to impermissibly broaden the issues and delay the proceeding; Intrado had no actual claim at issue in the proceeding; Intrado knew that INdigital and Verizon would move to dismiss if the technical protocol testing was successful, and did not object until the case was already settled; the Commission should take Intrado's various filings as an objection to the dismissal and simply rule based on the filings; Intrado had omitted Verizon and INdigital's responses to the discovery requests in the Motion to Compel, thereby presenting a misleading view of the dispute and violating discovery rules; Intrado did not respond to INdigital's and Verizon's specific objections to the requested discovery; INdigital's complaint did not invoke federal interconnection standards, but rather the state interconnection statute (I.C. § 8-1-2-5), and both INdigital and Verizon advised Intrado of this in letters that Intrado did not include in its *Motion to Compel*; Intrado's requests go beyond the settlement and include the settlement discussions, technical protocols, testing of those protocols and the names of all employees involved, "proprietary and trade secret network configurations and ALI locations", the role of VOIP ALI steering in the settlement, and "identification of all legal authority authorizing INdigital to provide VOIP 911 services"; because the case does not involve federal interconnection rules, the federal law does not trump the "long-standing prohibition against the discovery or admission of settlement communications and documents"; even if the settlement did involve an interconnection, any dispute would be resolved in a case brought

before the Commission to approve the interconnection, not in a complaint case; and the Commission should award Verizon expenses because Intrado misled the Commission by failing to include all documents relevant to its Motion to Compel, and because Verizon had already cautioned Intrado not to file a *Motion to Compel*, given that the discovery dispute was fully briefed and ready for Commission decision. Verizon concluded that despite that admonition, "Intrado proceeded nonetheless, and withheld material communications from the Commission in the process. The Commission should invoke its authority to award Verizon reasonable expenses in responding to the *Motion to Compel*."

On August 15, 2008, Intrado replied that the standard for discovery under the Indiana Trial Rules allows discovery by "any other party" in a proceeding, and that such discovery was necessary for the Commission to make "the determination of whether dismissal of this Cause is appropriate without further examination of whether dismissal is in the public interest." *Reply* at 2.[2] Intrado argued that as an intervenor, it had the right to discovery; that INdigital's initial complaint cited interconnection issues, even though INdigital and Verizon both cite to I.C. 8-1-2-5 and pole attachment standards; that Verizon had no intention of complying with the requested discovery, and that INdigital and Verizon should file their settlement *in camera* "to confirm their presently unsupported and unsubstantiated assertions" that the issue did not involve federal interconnection issues. *Id.* at 6. Further, Intrado argued that a blanket claim of inadmissibility of the settlement should not govern the decision of whether the document should be produced in discovery. Intrado also reiterated that the document in question was an interconnection agreement that must be filed with the Commission, and requested that the Commission deny Verizon's request for fees.

On August 26, 2008, the Presiding Officers issued a docket entry directing Verizon and INdigital to file, under seal, the settlement agreement between them. On September 4, 2008, Verizon and INdigital filed the settlement under seal as directed.

2. **Commission Jurisdiction.** INdigital received a Commission certificate of territorial authority No. 9805-16 on March 29, 1998 to provide interexchange telecommunications service, and is therefore a utility. Verizon is a utility authorized by the Commission to provide local exchange and other telecommunication services in the State of Indiana.

INdigital brought this action under I.C. 8-1-2-5, specifically that section governing disputes over physical connections between utilities. In cases where the parties have failed to agree regarding such connections, the Commission may order connection after examining the matter.

The Commission therefore has jurisdiction over the parties and subject matter of this Cause.

3. **INdigital's Complaint.** As noted above, INdigital filed this action under I.C. 8-1-2-5, requesting that the Commission resolve a dispute over the physical connection between

[2] As Intrado's reply does not have actual page numbers, the page numbers have been imputed for purposes of discussion.

INdigital and Verizon. Neither party invoked the interconnection rules under 47 U.S.C. 251 - 252.

4. **Commission Discussion**. The parties disagree regarding the availability of discovery once the procedural schedule had been vacated by the Presiding officers' docket entry. However, the issue of allowable discovery is moot based on our ultimate resolution of this Cause.

This case began as a dispute between two carriers over physical connection between them. The complaint was filed under the provisions of I.C. 8-1-2-5, which governs interconnection between utilities generally, and more specific to this case "the necessary physical connections to be made...as may be required to furnish reasonably adequate telephone service between such utilities." I.C. 8-1-2-5(a). Under section (c), upon a failure to agree to interconnection terms, an aggrieved party can come to the Commission for a determination of "public convenience and necessity" require the interconnection. If the Commission finds that the interconnection is appropriate,

> it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use, and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintain such connections or connections shall be paid.

While these terms undoubtedly apply to the case at bar, we must note that in this case there is concurrent controlling authority – namely, 47 U.S.C. 251 and 252. While I.C. 8-1-2-5 provides general terms regarding the necessity of interconnection, Sections 251 and 252 provide details regarding interconnection between communications providers. Indeed, the term interconnection is one of art when used in the telecom world, as opposed to a more prosaic indication of the simple act of joining in I.C. 8-1-2-5. And by rules of statutory construction, the general rule gives way to the specific.

Inevitably, then the question arises whether or not this dispute invokes 47 U.S.C. 251 and 252 obligations, and whether or not the carriers in question thus have an obligation to file any resulting agreement with the Commission for approval and potential adoption by other providers. Interconnection has been defined not as the exchange of traffic, but rather "a physical link[] between the equipment of the carrier seeking interconnection and the LEC's network." *AT&T Corp. v. FCC,* 354 U.S. App. D.C. 325, 317 F.3d 227, 235 (D.C. Cir. 2003), *citing Competitive Telecomm. Ass'n v. FCC,* 117 F.3d 1068, 1072 (8th Cir. 1997). In addition, INdigital asked the Commission to, as necessary, determine the appropriate compensation and terms and conditions for the requested interconnection. Thus, while the parties have argued that this case does not invoke an interconnection as defined by 251 and 252, the relief sought appears to indicate otherwise.

The parties requested that the settlement between them be treated as confidential in nature, and argued that because this Cause was brought as a complaint, the resolution of the disputed matters should be handled as if it were a private transaction. However, the *in camera*

scrutiny of the settlement reveals that it contains terms and conditions of the connection between the parties – in other words, it is an agreement on interconnection. While the long period of procedural suspension was to test 'technical protocols,' the result is that those hurdles have been surmounted, the "physical link" has been achieved, and the terms have been reduced to an agreement. *AT&T Corp.*, at 235.

The parties have agreed between themselves that this agreement is a settlement that shall not be disclosed, *except as required by order.* We hereby make that order today. We note that interconnection agreements are documents which can be negotiated settlements, outlining the terms and conditions of the provision and receipt of service related to a physical link between carriers. While Verizon and INdigital requested that the settlement be held as confidential, the agreement contains precisely the types of information typically contained in 47 U.S.C. 252 agreements: selective routing of traffic, purchase of trunks, port charges and terms of compensation, among others. Discussion of these very items would have occurred had the case proceeded to a full evidentiary hearing, and would have been contained in any subsequent Commission order resolving this Cause. More importantly, had this matter never come before the Commission as a dispute and the parties successfully negotiated a settlement prior to the filing of this case, the resulting agreement would have been required to be filed with the Commission, as are all other 47 U.S.C. 252 interconnection agreements. To do otherwise would be to thwart the public availability requirements for such agreements contained in federal law and Commission policy. Indeed, there has been no assertion that the terms of the settlement constitute information so sensitive as to be considered a trade secret. Nor has there been any showing, absent the parties' statements, that the settlement is not an interconnection agreement which must be made available to other carriers. Therefore, the submission of the "settlement" should be considered an interconnection agreement and held by the Commission as a document available for use by other carriers interested in availing themselves of these product offerings contained therein and thereby potentially avoiding disputes on similar issues in the future. Accordingly, the parties shall submit the complete interconnection agreement for Commission processing according to Commission policy to post the same on our website and make it available for public inspection.

As for Intrado's objection to the dismissal of this Cause, we note that we have in the past concluded proceedings when not all parties to the case were in agreement as to the resolution. See, *Nextel West, Corp. v. Ind. Util. Regulatory Comm'n*, 831 N.E.2d 134 (Ind. App. 2005), reh'g denied, 2006 Ind. App. LEXIS 813 (Ind. App. 2006). We find that the settlement reached by Verizon and INdigital is in the public interest, as it involves access to 911 service, one of the cornerstones of public safety, and it is also in the public interest that such a resolution be a public record.

We hereby dismiss this Cause with prejudice. Intrado's *Motion to Compel* is denied. Verizon's *Request for Attorney's Fees* is denied.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. This Cause is dismissed with prejudice.

2. Verizon and INdigital shall file a copy of the agreement reached between them pursuant to the Commission's rules on the filing of interconnection agreements.

3. This Order shall be effective on and after the date of its approval.

GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT;
APPROVED: NOV 2 0 2008

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission

COPY

Matthew Kelley
State Director
Public Affairs, Policy and Communications

Mail Code: INIFAPA

8001 W. Jefferson Blvd
Fort Wayne, IN 46804

Phone 260-461-2325
Fax 260-436-2353

May 28, 2009

FILED

MAY 2 8 2009

INDIANA UTILITY
REGULATORY COMMISSION

Mr. Joe Sutherland
Chief Operating Officer
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500E
Indianapolis, Indiana 46204

Re: Cause No. 43277 - IURC Order dated November 20, 2008 and Docket Entry dated May 20, 2009

Dear Mr. Sutherland:

Attached are two hard copies and one electronic copy of the Settlement Agreement reached between Verizon North Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively "Verizon") and Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") as ordered to be filed in the IURC's May 20, 2009 docket entry and November 20, 2008 Order in the above referenced Cause.

Should you have any questions, please do not hesitate to call me at (260) 461-2325.

Sincerely,

Matthew T. Kelley

Matthew T. Kelley
Verizon Communications

Enc.

SETTLEMENT

AGREEMENT

BETWEEN

COMMUNICATIONS VENTURE CORPORATION d/b/a INDIGITAL TELECOM

AND

VERIZON NORTH INC. & CONTAL OF THE SOUTH, INC. d/b/a VERIZON NORTH SYSTEMS

(WITH AMENDMENTS)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") and Verizon North Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively, "Verizon") for purposes of resolving INdigital's April 25, 2007 Complaint in Indiana Utility Regulatory Commission ("Commission") Cause No. 43277 ("Complaint").

RECITALS

WHEREAS, INdigital filed the Complaint seeking certain relief from the Commission; and

WHEREAS, on or about May 15, 2007, Verizon filed a Motion to Dismiss the Complaint; and

WHEREAS, INdigital and Verizon have engaged in extensive discovery and pre-filed their direct and rebuttal testimony on July 27, 2007 and September 5, 2007 respectively; and

WHEREAS, INdigital and Verizon have met and explored their agreements and differences regarding the Complaint in an effort to resolve their differences; and

WHEREAS, INdigital and Verizon recognize the costs and uncertainty of litigation, the desirability of compromise and voluntary resolution of their differences, and the legitimate interests and good faith of both INdigital and Verizon in achieving the objectives each desires; and

WHEREAS, INdigital and Verizon have succeeded in reaching an agreement to resolve and settle all claims and disputes between them arising out of, or in any way related to, the Complaint;

NOW THEREFORE, INdigital and Verizon, in consideration of the provisions contained herein and other good and valuable consideration exchanged between them, the receipt and sufficiency of which is hereby acknowledged, hereby stipulate and agree as follows:

I. SETTLEMENT

A. INdigital and Verizon hereby agree to and incorporate herein the provisions set forth in Exhibit A, attached hereto, as part of their resolution of all claims and disputes between them arising out of, or in any way related to, the Complaint. Exhibit A sets forth guiding settlement principles agreed to by INdigital and Verizon.

B. INdigital and Verizon hereby agree to cooperate in good faith to implement the provisions of Exhibit A, including but not limited to working jointly to develop a standardized template for the signed PSAP agreement referenced in Exhibit A reflecting that the PSAP consents to Verizon modifying the selective routing services provided to the PSAP from ANI selective routing to trunk-based ESN selective routing under the PSAP's existing contractual rates, terms and conditions; to implement and test the technical modifications and specifications referenced in Exhibit A; to fulfill the processing and programming requests made by wireless service providers and PSAPs as referenced in Exhibit A; to develop and adopt the comprehensive trouble reporting procedures referenced in Exhibit A; to reach agreement on and file the joint motion requesting modification and extension of the existing procedural schedule; to provide adequate notification pursuant to the Notices provisions of this Agreement if, within 45 days following the test period, either INdigital or Verizon still believes that a hearing is required in accord with Exhibit A; and to reach agreement on and file the joint motion withdrawing

Verizon's pending motion to dismiss and requesting dismissal of the Complaint with prejudice if, in accord with Exhibit A, neither INdigital or Verizon requests a hearing.

C. INdigital and Verizon expressly reserve all of their rights to make objections and motions to strike with respect to all testimony and exhibits, their right to cross-examine the witnesses presenting such testimony and exhibits, and to obtain rulings on all pending motions, including Verizon's pending motion to dismiss the Complaint, if they proceed to hearing in accord with Exhibit A.

II. COMPROMISE

INdigital and Verizon agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission by either of them of any liability, obligation, or wrongdoing on its part or on the part of its predecessors, successors, assigns, agents, parents, subsidiaries, affiliates, officers, directors, or employees.

III. RESOLUTION OF COMPLAINT

INdigital and Verizon agree that upon issuance of an IURC order granting the joint motion referenced in Exhibit A, the claims for relief set forth in the Complaint are deemed resolved.

IV. CONFIDENTIALITY

INdigital and Verizon agree that the communications between them and the discussion of materials produced and exchanged during negotiation of this Agreement, as well as the Agreement itself, relate to offers of settlement, and are therefore confidential, privileged, and

inadmissible. INdigital and Verizon agree that they will not disclose same, or any other matters related to their settlement (beyond the mere fact that INdigital and Verizon have settled the Complaint), unless such disclosure is (a) required by any governmental agency, including a PSAP; (b) otherwise required to be disclosed by law; or (c) necessary in any legal proceeding in order to enforce any provisions of this Agreement. INdigital and Verizon agree that they will notify each other in writing pursuant to the Notices terms of this Agreement within five calendar days of the receipt of any data request, subpoena, court order, administrative order or other such mechanism seeking disclosure of information subject to this confidentiality provision. INdigital and Verizon further agree that this Agreement shall not, in whole or in any part, constitute or be cited as precedent or deemed an admission by any party in any jurisdiction, and it is without prejudice to and shall not constitute a waiver of any position that any of the parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

V. MISCELLANEOUS TERMS AND CONDITIONS

A. This document contains the complete Agreement between INdigital and Verizon.

B. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Facsimile or PDF copies of signatures shall be afforded the same authenticity as original signatures.

C. This Agreement may be modified only by a written document signed by INdigital and Verizon. No waiver of this Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the party against whom the waiver is to be enforced.

D. This Agreement shall be binding upon INdigital and Verizon, their predecessors,

successors, subsidiaries, assigns, agents, directors, officers, employees, and attorneys. Each of the signatories of this Agreement represents and warrants that it is authorized to execute this Agreement and to bind the party on whose behalf the signatory is executing the Agreement.

E. If any part or any provision of this Agreement shall be finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

F. INdigital and Verizon hereby warrant and represent that they have not assigned or in any way transferred or conveyed all or any portion of the claims covered by this Agreement. INdigital and Verizon acknowledge and agree that this warranty and representation is an essential and material term of this Agreement, without which they would not have entered into it.

G. INdigital and Verizon cooperated in the drafting of this Agreement. Therefore, in the construction of this Agreement, the provisions hereof shall not be construed against either party.

H. This Agreement shall be governed, in all respects, under the laws of the State of Indiana, irrespective of its choice of law rules.

VI. NOTICES

Any notices required under this Agreement shall be served upon the Parties via both facsimile and overnight priority mail as follows:

Notices to INdigital:

Chief Executive Officer
INdigital Telecom

5312 W. Washington Center Road
Fort Wayne, IN 46818
(260)469-2010 (phone)
(260)469-4329 (fax)

Notices to Verizon:

General Counsel – Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 (phone)
(972) 718-0936 (fax)

Director – Regulatory & Government Affairs
Verizon
One North Capitol Ave.
Indianapolis, IN 46204
(317) 631-7179 (phone)
(317) 634-0398 (fax)

This Agreement shall be binding upon INdigital and Verizon, their counsel, and each of their respective heirs, successors, assigns, subsidiaries and agents, and the undersigned represent that they are fully authorized to execute this Agreement.

ACCEPTED AND AGREED this ____ day of September, 2007.

COMMUNICATIONS VENTURE
CORPORATION D/B/A INDIGITAL TELECOM

Dated: September 14, 2007

By: _____

Its: President and CEO

VERIZON NORTH, INC. and CONTEL OF THE SOUTH, INC. D/B/A VERIZON NORTH SYSTEMS

Dated: 9/14/2007

By: [signature]

Its: Regional President

For Settlement Purposes Only/Not to Be Used in Litigation or Disclosed to Third Parties Except as Required for Enforcement of the Terms Hereof.

Principles of Settlement Agreement Between Verizon and INdigital to Serve as Framework for Formal Settlement Agreement

Trunk Connections and Selective Routing

Verizon will accept wireless trunks from INdigital and will perform selective routing using trunk-based ESN selective routing rather than ANI selective routing. Verizon and INdigital will work together to provision INdigital's trunk requirements in the most efficient manner. INdigital shall provide Verizon with an inventory of how many trunks it will require for each CML router site for trunk-based selective routing.

INdigital will obtain the ESNs from the PSAPs. Verizon will verify ESN information for accuracy as submitted by INdigital.

Trunk ordering and trunk rates and port charges will be at existing wholesale rates.

INdigital must provide a signed agreement from each PSAP customer stating that the PSAP agrees to the changes INdigital is requesting from Verizon regarding Verizon's E9-1-1 network and ALI database.

Database Connections and ALI

INdigital will subscribe to connectivity with the Verizon ALI database platforms through a secure firewall connection just as Intrado and TCS do today.

Verizon will process Indiana wireless ALI requests from the CML remote PSAP customers in the following manner:

> The CML will continue to only be connected to the Verizon ALI database platform (CML co-located HP-3000 now through mid 2008 and ALISA systems in Ft. Wayne and Tampa, FL, beginning second quarter 2008). The Verizon ALI database platform will steer all wireless PANI ranges directly to the INdigital ALI database rather than the current TCS and Intrado connections

Verizon will continue administration / assignment of PANI numbers.

INdigital shall be responsible for connectivity between its database and the Verizon database locations (at Verizon designated demarcation points). INdigital will provide configuration specifications to Verizon for implementation of its interface. Verizon will be available to provide assistance in this regard if INdigital has questions, and Verizon can offer connection suggestions based on its experience.

Verizon will reprogram the ALI steering tables to steer all wireless PANI ESN ranges to the INdigital ALI database. Verizon will work with INdigital to load PANI information into multiple HP3000/ALISA databases as requested by INdigital.

Verizon requires PAM connectivity to its ALI database platforms; thus, INdigital will employ the PAM protocol for its interface with the Verizon ALI database platform. Verizon will provide assistance to INdigital in obtaining PAM protocol interface documentation.

Maintenance and Repair

Verizon and INdigital will develop and adopt comprehensive trouble reporting procedures including outage, mean time to repair, PSAP trouble reporting, third party database trouble reporting, and wireless carrier trouble reporting and coordination. INdigital to take the lead in this effort. INdigital will notify Verizon at least 2 days in advance when planned maintenance of trunks and nodes will take place.

Testing

The parties will cooperate in an implementation period for this Agreement extending to November 30, 2007 to test the arrangement outlined in this agreement.

Complaint Status

INdigital and Verizon will immediately file a joint motion to the IURC to modify and extend the existing procedural schedule to allow the test period hereby agreed to. The parties agree that for WE911 calls that INdigital delivers to Verizon using the ESN direct trunking facility described above, Verizon will provision the ECS-1000 and the HP-3000 to cause an ALI query to be passed to INdigital's ALI network, receive the ALI response from INdigital and cause the ALI data to be presented to the PSAP call taker. Verizon will process the WE ALI query so that it is steered to INdigital and INdigital will return the WE ALI information in a reasonable time period to Verizon and Verizon will send that information to the PSAP.

If by the end of the test period the above-described process cannot be implemented successfully, then within 45 days following the end of the test period, if either INdigital or Verizon believes that a hearing is still required to resolve all issues raised by INdigital's Complaint, the hearing may be rescheduled. If neither Verizon nor INdigital requests a hearing, they will file a joint motion stating that (1) Verizon's Motion to Dismiss is hereby withdrawn, (2) all disputes under the complaint have been resolved, and (3) requesting an order dismissing the complaint accordingly.

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to the Settlement Agreement entered into by Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") with Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively "Verizon") is made and entered into this 28th day of January, 2008 by and between INdigital and Verizon,

WITNESSETH:

WHEREAS, INdigital and Verizon entered into that certain Settlement Agreement dated September 14, 2007 ("Agreement") to resolve and settle disputes between them associated with a complaint filed by INdigital with the Indiana Utility Regulatory Commission ("Commission") and docketed by the Commission as Cause No. 43277 ("Complaint"), and

WHEREAS, INdigital and Verizon desire to amend the Agreement to extend the date by which certain testing provided for by the Agreement shall be completed, and to extend the date by which they shall submit the status of INdigital's Complaint to the Commission,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, it is agreed that the Agreement is hereby modified and amended as follows:

1. In that part of Exhibit A to the Agreement entitled "Testing", the date "November 30, 2007" shall be replaced by the date "March 1, 2008".

2. In the second paragraph of that part of Exhibit A entitled "Complaint Status", the words "then within 45 days following the end of the test period," shall be replaced by the word "and".

3. Verizon and INdigital agree to jointly move the Commission for an extension, from January 30, 2008 to March 3, 2008, of the date by which they are required by the Commission's September 17, 2007 Docket Entry in Cause 43277 to submit the status of the Complaint.

Except as hereby amended, all other terms and condition of the Agreement shall remain unchanged, and shall be in full force and effect as if again recited herein.

WHEREFORE, the parties hereto have executed this Amendment as of the date first above written.

COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM

By: _____
Mark O. Grady

VERIZON NORTH, INC. AND CONTEL OF THE SOUTH, INC. D/B/A VERIZON NORTH SYSTEMS

By: _____

Gale Y. Given, President
Great Lakes Region

249371v2

SECOND AMENDMENT TO SETTLEMENT AGREEMENT

This Second Amendment to the Settlement Agreement entered into by Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") with Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively "Verizon") is made and entered into this 29th day of February, 2008 by and between INdigital and Verizon,

WITNESSETH:

WHEREAS, INdigital and Verizon entered into that certain Settlement Agreement dated September 14, 2007 ("Agreement") to resolve and settle disputes between them associated with a complaint filed by INdigital with the Indiana Utility Regulatory Commission ("Commission") and docketed by the Commission as Cause No. 43277 ("Complaint"), and

WHEREAS, INdigital and Verizon previously amended the Agreement to extend the date by which certain testing provided for by the Agreement shall be completed, and to extend the date by which they shall submit the status of INdigital's Complaint to the Commission, and

WHEREAS, INdigital and Verizon desire to further amend the Agreement and the previous amendment;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below, it is agreed that the Agreement is hereby modified and amended as follows:

1. In that part of Exhibit A to the Agreement entitled "Testing", the date "November 30, 2007" previously replaced by the date "March 1, 2008", shall now be replaced by "July 9, 2008".

2. Verizon and INdigital agree to jointly move the Commission for an extension, from March 3, 2008 to July 9, 2008, of the date by which they are required by the Commission's September 17, 2007 Docket Entry in Cause 43277, and subsequent Docket Entry on January 30, 2008, to submit the status of the Complaint.

Except as hereby amended, all other terms and condition of the Agreement shall remain unchanged, and shall be in full force and effect as if again recited herein.

WHEREFORE, the parties hereto have executed this Amendment as of the date first above written.

COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM

By: _____
Mark O. Grady

VERIZON NORTH, INC. AND CONTEL OF THE SOUTH, INC. D/B/A VERIZON NORTH SYSTEMS

By: _____

Gale Given, President Great Lakes Region
Printed Name and Title

253321

STATE OF INDIANA

FILED
MAY
INDIANA UTILITY REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3407

http://www.in.gov/iurc
Office: (317) 232-2701
Facsimile: (317) 232-6758

IN THE MATTER OF THE COMPLAINT OF COMMUNICATIONS VENTURE CORPORATION D/B/A INDIGITAL TELECOM ("INDIGITAL") AGAINST VERIZON NORTH, INC. AND CONTEL OF THE SOUTH, INC. D/B/A VERIZON NORTH SYSTEMS (COLLECTIVELY "VERIZON") CONCERNING THE REFUSAL OF VERIZON TO ALLOW CONNECTION OF INDIGITAL'S WIRELESS ENHANCED 911 TELEPHONE SYSTEM SERVING PUBLIC SAFETY ANSWERING POINTS, AND INDIGITAL'S REQUEST FOR THE INDIANA UTILITY REGULATORY COMMISSION TO ORDER THE CONNECTION UNDER REASONABLE TERMS, CONDITIONS, AND COMPENSATION	)	**CAUSE NO. 43277**

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On November 20, 2008, the Commission entered a Final Order in this Cause. On December 10, 2008, Verizon filed its *Petition for Reconsideration and Enlargement of Briefing Schedule*, in which INdigital concurred. On December 22, 2008, Intrado filed its *Response to Verizon's Petition for Reconsideration and Enlargement of Briefing Schedule and Response and Motion to Strike INdigital's Concurrence with Verizon's Petition for Reconsideration.* On December 23, 2008, the Presiding Officers granted the request for extension of the briefing schedule. On January 29, 2009, Intrado filed its *Response in Opposition to Verizon's Petition for Reconsideration and INdigital's Concurrence in Same.* On February 19, 2009, Verizon filed its *Reply in Support of Its Petition for Reconsideration.*

Pursuant to 170 I.A.C. § 1-1.1-22(e)(5), a petition for rehearing "shall be deemed denied if not ruled upon or otherwise addressed within sixty (60) days following its filing." At the time that the sixty days after the filing of the petition for reconsideration occurred, the Presiding Officers had extended time for briefing by the parties. The rule for filings on petitions for reconsideration allows ten (10) days for response and seven (7) days for reply to the response. Assuming that the seventeen days allotted for briefing allows forty-three (43) days for Commission review, the sixtieth day following the last brief filed was Monday, April 13, 2009.

Therefore, Verizon's *Petition for Reconsideration* was deemed denied by action of 170 I.A.C. 1-1.1-22(e)(5) on Tuesday, April 14, 2009.

The parties shall file on or before May 29, 2009 a status report regarding their submission of the interconnection agreement ordered to be filed with the Commission pursuant to the November 20, 2008 Order in this Cause.

IT IS SO ORDERED.

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

May 20, 2009
Date

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 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

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, Longemont, 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),[1] 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.*[2] 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.

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1 The Act is codified at 47 U.S.C. Sec. 151 et. seq.

2 The carrier-to-carrier rules became effective November 30, 2007.

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)

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[3] 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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3 This matter is subsequently addressed in the outstanding procedural matter section of this Arbitration Award.

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*

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.).

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.

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,

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

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.

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 Rcd 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).

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*

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

which might be related by Telephone Company operators" (Intrado Initial Br. at 13 citing United Telephone Company of Ohio dba 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

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).

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 [5th 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

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,

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

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

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

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

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:

> . . . 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.*).

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

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

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' 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

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

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 is 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, CLECs 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

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,[4] 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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[4] 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.

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

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

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).

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 it 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

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

(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).

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

> 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(S), 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

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 to 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

> 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

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

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

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 though 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

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

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.

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

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 E9-1-1 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

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

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

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.

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

Reneé J. Jenkins
Secretary

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISISON

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.	:	**00-0769**

ARBITRATION DECISION

By the Commission:

I. Jurisdictional Statement

Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C. § 251, *et seq.* ("1996 Act" or "TA 96") addresses the procedures for arbitration between incumbent local exchange carriers ("ILECs") and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party and sets out time limits. Section 252(b)(4) provides that the state commission shall limit its consideration to the issues set forth in the petition and in the response to the petition and shall resolve each issue by imposing appropriate conditions on the parties as required to implement Section 252(c) - Standards for Arbitration. Section 252(d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic and wholesale prices.

Under Section 252(c), a state commission shall apply the following standards for arbitration:

1) ensure that such resolution and conditions meet the requirements of Section 252, including the regulations prescribed 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.

In this case, additional jurisdictional issues were raised by Illinois Bell Telephone Company d/b/a/ Ameritech ("Ameritech"). Ameritech contends that SCC Communications Corporation ("SCC") is not a telecommunications carrier under definitions found in federal law. Ameritech also contends that under Illinois law, the

Illinois Commerce Commission ("Commission") should find that it has no jurisdiction because, in a pleading made in a Texas Public Utility Commission ("Texas PUC") proceeding, SCC concluded that 47 U.S.C. §§ 251 and 252 did not apply to that case. Ameritech argues that therefore, SCC has made an evidentiary admission that these statutes do not apply to it. Additionally, Ameritech contends that this Commission should apply the doctrine of judicial estoppel to bar SCC'S petition in this matter.

II. Background and Procedural History

On December 5, 2000, SCC filed a verified petition with the Commission for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Ameritech. The Petition identified 50 unresolved issues. On January 2, 2001, Ameritech filed its Response to the Petition which identified six additional arbitration issues.

On December 15, 2000, Ameritech filed a Motion to Dismiss the Petition for Arbitration ("Motion to Dismiss"). SCC and Staff filed responses to the Motion to Dismiss on December 22, 2000. At a status hearing held December 29, 2000, the Hearing Examiners denied the Motion to Dismiss.

On December 21, 2000, Ameritech filed a Motion to Strike Portions of the Petition ("Motion to Strike") and a Petition for Interlocutory Review of Denial of Motion to Hold Proceedings in Abeyance ("Petition for Interlocutory Review"). SCC filed its response to the Petition for Interlocutory Review on December 29, 2000 and its response to the Motion to Strike on January 4, 2001. On January 10, 2001, the Commission denied Ameritech's Petition for Interlocutory Review. On January 11, the Hearing Examiners granted Ameritech's Motion to Strike.

On January 8, 2001, Ameritech filed a Petition for Interlocutory Review of the Denial of Motion to Dismiss the Petition for Arbitration. On January 12, 2001, Ameritech withdrew this Petition for Interlocutory Review.

On January 25, 2001, pursuant to the Hearing Examiners' ruling on Ameritech's Motion to Strike, SCC filed an Amended Petition for Arbitration.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before duly authorized Hearing Examiners of the Commission at its offices in Chicago, Illinois on February 5, 2001. At the hearing, the parties were represented by counsel. Ms. Cynthia Clugy, SCC's Manager of Regulatory Compliance, testified in support of the Petition. Ms. Rita Zaccardelli, Associate Director-Regulatory Support, Mr. Daniel L. Colin, Associate Director of Wholesale Marketing and Mr. Michael D. Silver, Associate Director of Industry Markets, testified on behalf of Ameritech. Mr. Rick Gasparin, Program Director of the Telecommunications Division, testified on behalf of the Staff of the Commission. At the conclusion of the hearing, the record was marked "Heard and Taken."

The HEPAD was duly served on the parties on February 23, 2001. Briefs on Exceptions were filed on March 1, 2001. Reply Briefs on Exceptions were filed on March 5, 2001.

III. Issues in Dispute

A. Jurisdictional Issues

1. Whether the Services SCC Intends to Provide in Illinois Fall within the Purview of the Telecommunications Act of 1996

Ameritech Position

Ameritech contends that SCC is not entitled to arbitration under TA 96 because, according to Ameritech, SCC is not a telecommunications carrier, as defined by federal law. Ameritech argues that only agreements between ILECs and telecommunications carriers are arbitrable by state public utility commissions, such as the Illinois Commerce Commission. Ameritech also argues that SCC does not intend to provide traditional dial-up exchange services and it does not offer its services to the public because many of SCC's customers are ILECs and competitive local exchange carriers ("CLECs"). It contends, essentially, that SCC provides wholesale services, not retail services, which, according to Ameritech, are not services offered to the public. Ameritech argues that because SCC does not provide traditional dial-up services, SCC is not seeking interconnection as is defined by federal law, and therefore, SCC is not entitled to arbitration under the 1996 Act. In support, Ameritech cites *AT&T Submarine Systems, Inc.*, 13 F.C.C. Rcd. 21,258 (rel. October 9, 1998) ("AT&T-SSI"), noting that this decision was affirmed by the District of Columbia Circuit in *Virgin Islands Tel. Corp. v. F.C.C.*, 193 F.3d 921 (D.C. Cir. 1999).

SCC Position

SCC contends that it provides its services to a wide variety of types of customers, including, but not limited to, ILECs and CLECs, but also, business and governmental agencies. SCC concludes that it does provide services to the public and therefore, it falls within the federal definition of a telecommunications carrier. SCC additionally contends it falls within the federal definition of an exchange service provider because it transports emergency call traffic to its subscribers, within a telephone exchange, through the use of transport and switching. SCC also contends that its services are comparable to traditional telephone exchange services, because its services allow subscribers to originate and terminate a 9-1-1 or other emergency call.

Staff Position

Staff concurs with SCC's position that SCC transports emergency call traffic to its subscribers, within a telephone exchange, through the use of transports and switching, and therefore, SCC's services fall within the purview of TA 96. Staff contends that SCC continually and actively provides telecommunications services that facilitate, enhance and advance the provision of emergency services to end users and that SCC uses its carrier-customers as a transport for the 9-1-1 Public Safety Answering Points ("PSAPs") which are a subsection of the public. Staff also argues that SCC does provide its services directly to the end-user. Staff points out that the Federal Communications Commission ("FCC") does not restrict the term telephone exchange service to traditional dial-up telephone service. Staff points to precedent in which the FCC has determined that services such as Advanced Intelligence Networks and Commercial Mobile Radio Services, such as cellular phones, are telephone exchange services.

Commission Analysis and Conclusion

If SCC does not fall within the purview of federal laws defining the telephone services TA 96 governs, this Commission lacks jurisdiction to entertain SCC's arbitration petition. *See, e.g., Low Tech Designs, Inc.,* No. 97 AB-001, March 31, 1997.

Section 251 provides that it is the obligation of the ILEC to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access. 47 U.S.C. § 251 (c)(2)(A). Telephone exchange services is defined as:

> [s]ervice 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 . . . 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. 47 U.S.C. § 153 (47).

Under federal law, a "telecommunications carrier" is "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. . . . a telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services. . ." 47 U.S.C. § 153 (44). "Telecommunications" is defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153 (43). A "telecommunications service" is the offering of telecommunications for a fee directly to the public, or to such

classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153 (46).

In its Brief on Exceptions, Ameritech argues that SCC offered no evidence to support its contention that it is a telecommunications carrier under TA 96. This simply is not true. The evidence SCC provided established that, among other things, the services SCC provides include: database management services, which can include enhanced Automatic Number Identification ("ANI") and Automatic Location Identification ("ALI") to end-users of wireline, wireless and telematics service providers. SCC's telematics service provider customers combine electronic sensors in automobiles with wireless communications devices equipped with location-determining capabilities. These providers are generally private businesses such as On Star, which are a subsection of the public. It additionally provides call routing information to telematics providers. SCC further provides Emergency Warning Evacuation Services and private switched ALI directly to residential and business end-users. SCC also provides an Emergency Communications Network, which allows a LEC to connect emergency call traffic to the appropriate selective routing tandem and deliver a voice call with the appropriate ANI to the 9-1-1 selective routing tandem. SCC also provides a services that allows wireless providers to deliver all emergency calls to the appropriate selective routing tandem. SCC's customers include private businesses, governmental agencies, ILECs and CLECs.

The testimony established that the services SCC intends to provide in Illinois include transportation of a 9-1-1 or emergency call. After an end-user has placed a 9-1-1 call, the call is routed from the caller's location to the local exchange point of presence ("POP") and then to the carrier's point of interconnection ("POI") with SCC, which is usually at the carrier's selective routine tandem. At that point, the voice call and the ANI is trunked to the appropriate PSAP. Data information about the caller is sent from the ALI node to the PSAP for processing. All carriers must connect with an ILEC to deliver emergency calls because the ILEC owns and controls the selective routing tandems. SCC connects to the ILEC at a switch or hub, which connects at the same place, and in the same manner, as any CLEC would connect.

While SCC does not intend to provide traditional dial-up telephone services in Illinois, that fact is not dispositive of the issue. (*See, e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, et al., CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499 ¶¶ 491 and 34 (rel. Aug. 8, 1996) ("Local Competition Order")). The language of TA 96 does not limit the definition of telephone exchange services in the manner in which Ameritech contends. Moreover, the FCC has held that, rather than being limited to traditional telephony, telephone exchange service includes non-traditional means of communication. *See, e.g., Deployment of Wireline Service Offering Advanced Telecommunications Capability,* 14 FCC Rcd. 4761 ¶ 31 (rel. Aug. 7, 1998) ("*Deployment*"). SCC provides a service that transports and enhances a 9-1-1 call. SCC, therefore, provides services that transmits between or among points specified by

the user within the meaning of 47 U.S.C. § 153 (43). SCC also provides service within an exchange, or within a connected system of telephones exchanges, through a system of switches, transmission and equipment, by which, a subscriber can originate and terminate an emergency or 9-1-1 call. SCC therefore falls within the definition of telephone exchange service found in 47 U.S.C. § 153 (47). The Commission finds that SCC falls within the statutory purview of TA 96.

In its Brief on Exceptions, Ameritech cites *Deployment,* at ¶ 23, and contends that SCC is not a telephone exchange service under federal law because there is "no indication in this record" that any service offered by SCC permits intercommunication among subscribers. However, the evidence established that SCC transports a portion of an Emergency or 9-1-1 call. Ameritech offers no legal or factual authority that would indicate that services that transport such a call would not fall within 47 U.S.C. § 153 (47), which defines a telephone exchange service, or under the language in *Deployment.*

2. Whether SCC Falls Under Either of the Two Prongs of the *NARUC I* Test and is, therefore, a Telecommunications Carrier Subject to TA 96

Ameritech Position

Ameritech cites *AT&T-SSI,* for the proposition that providing telecommunications on a wholesale basis (to ILECs and CLECs) is not providing telecommunications to the public, as is, therefore, not providing telecommunications within the meaning of 47 U.S.C. § 153 (46). However, Ameritech fails to mention that in the decision affirming *AT&T-SSI,* the District of Columbia Circuit specifically rejected the wholesale/retail distinction as a basis for making such a determination. It found:

> [t]he term 'telecommunications service' was not intended to create a retail/wholesale distinction . . . neither the Commission nor the courts . . . (have construed) 'the public' as limited to end-users of a service . . . the Commission never relied on a wholesale-retail distinction; the focus of its analysis is on whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier . . . and the fact that AT&T-SSI could be characterized as a wholesaler was never dispositive. *Virgin Islands,* 198 F.3d at 929; *Emphasis added.*

SCC Position

SCC contends that whether it has wholesale customers, such as ILECs and CLECs, is not dispositive. SCC argues that it will hold itself out to its customers indifferently, as it has done in the past, via Commission-approved tariffs. SCC further contends that it is a "telecommunications carrier" under the *NARUC I* test.

Staff Position

Staff contends that SCC is a telecommunications carrier, subject to TA 96, because SCC meets both prongs of the *NARUC I* test (*National Association of Regulatory Utility Commissioners v Fed. Communications Comm.*, 525 F.2d 630 (D.C. Cir. 1976) ("*NARUC I*"), which was applied by the District of Columbia Circuit in *Virgin Islands,* 198 F.3d 921 (D.C. Cir. 1999), and is the test to determine whether a provider of telecommunications is a common carrier under federal law.

Commission Analysis and Conclusion

Staff correctly points out that whether SCC's petition is arbitrable by this Commission is governed by the *NARUC I* test, as the *NARUC I* test determines whether a provider of telecommunications is a common carrier, and is thus subject to federal regulation. *Virgin Islands,* 198 F.3d at 926.

A "common carrier" is one that engages in activities of a quasi-public character. *NARUC I,* 525 F.2d at 641 This does not mean that a given carrier's services must practically be available to the entire public. Rather, an entity can become a common carrier through the nature of the service rendered, even if it is sufficiently specialized as to be of possible use to only a fraction of the total population. *Id.* However, a carrier will not be a common carrier when its practice is to make individualized decisions, in particular cases, as to whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so. *Id.*

Whether a service is available to such classes of eligible users as to be "effectively available to a substantial portion of the public" depends on several relevant factors, such as the type, nature, and scope of users for whom the service is intended. *In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, at 265, n. 133 (1994). Thus, a carrier offering its services only to a legally defined class of users may still be a common carrier if it holds itself out indiscriminately to serve all within that class. *State of Iowa and Iowa Telecommunications and Technology Comm. v. F.C.C.*, 218 F.3d 756, 642 (D.C. Cir. 2000).

The key factor is that the operator offers indiscriminate service to whatever public its service may legally and practically be of use, or, stated another way, whether the carrier holds itself out indiscriminately to serve all to whom it can "legally and practically be of use." *NARUC I*, 525 F.2d at 641. The FCC has subsequently interpreted *NARUC I* to mean that a carrier has to be regulated as a common carrier if it will a.) make capacity available to the public indifferently or, b.) if the public interest requires a common carrier operation of the proposed facility. *Virgin Islands*, 198 F.3d at 923; *Cable & Wireless, PLC*, 12 FCC Rcd 8516, ¶ 16 (rel. June 20, 1997).

The evidence established that SCC's customers are ILECs, CLECs, State agencies that administer 9-1-1 services, wireless operators, emergency warning systems, and emergency roadside assistance programs. While members of the general public do not pay SCC directly for its services, any person who dials 9-1-1 can avail himself or herself of SCC's services. SCC provides its services to a variety of types of customers and there is no showing that its practice is to make individualized decisions in particular cases as to whether to provide service and on what terms. Indeed, SCC is certificated in Illinois, and it must, therefore file, and abide by, its tariffs. Moreover, as Staff has noted, a 9-1-1 call is routed to a PSAP, which is a subsection of the general public, and whose duty it is to serve the general public at large. *See, e.g.*, 83 Ill. Adm. Code §§ 725.105, 725.205, 725.505. The evidence established that SCC will offer those telecommunications to the public or to such classes of users as to be effectively available to the public.

Moreover, the public interest requires that SCC be subject to common carrier regulation. SCC provides 9-1-1 and emergency services. It is of the utmost importance that the continuance and quality of a 9-1-1 call be preserved and enhanced.

Under either prong of the *NARUC I* test, SCC is a telecommunications carrier. Its services and technology are available on an indiscriminate basis to those entities to whom it can be of use. Additionally, SCC enhances existing 9-1-1 services. The public interest is protected when its services are regulated.

Additionally, *AT&T-SSI* is not factually on point. In that case, the FCC found that neither prong of the *NARUC I* test was applicable to AT&T-SSI's proposed system, because AT&T's main service was to provide hardware, lay cable and lease space to cable consortia, common carriers and large businesses with the capacity to interconnect to its proposed cable, on an individualized basis. *Virgin Islands*, 198 F.3d 921-24. Nothing in *Virgin Islands* indicated that the cable laid was regulated in the same manner that SCC is in Illinois where it is certificated, and therefore, must abide by filed tariffs. Moreover, the evidence here established that SCC provides telecommunications services, on an ongoing basis, that facilitate, enhance and advance the provision of emergency services. SCC is continually and indiscriminately transporting 9-1-1 calls for anyone who dials 9-1-1. Additionally, as Staff has noted, it is a matter of public safety that 9-1-1 services should be regulated.

Finally, as Staff has noted, under 47 U.S.C. § 253(b), this Commission has the discretion to protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. 9-1-1 calls are a matter of the utmost public interest, as lives are frequently at stake and time can be critical in the delivery of the call and the dispatch of the needed 9-1-1 service. Under *NARUC I,* SCC is a telecommunications carrier.

In its Brief on Exceptions, Staff argues that the Commission does not need to engage in extensive analysis of the federal statutes and cases because SCC is already certificated in Illinois under Illinois law. In *Low Tech Designs, Inc.*, No. 97 AB-001, March 31, 1997, the Commission found that TA 96 comported with the Illinois statute, and, from this comment, Staff concludes that certification under Illinois law is satisfactory to establish jurisdiction pursuant to federal law. Staff expressed concern that extensive analysis of jurisdiction could "invite" groundless challenges in the future to Section 251 petitions.

The Commission declines to adopt Staff's expansive view of federal law. To be sure, there is great overlap between the two bodies of law; but the statutes have different words and different words could mean different things. Moreover, omitting analysis of the laws giving this Commission jurisdiction in this case only leaves the door open for unnecessary arguments on this issue in other dockets.

3. Whether Legal Conclusions SCC Made Two Years Ago in an Unrelated Texas PUC Proceeding are Evidentiary Admissions

Ameritech Position

Ameritech contended, in its Motion to Dismiss, that statements made approximately two years ago by SCC in an unrelated Texas PUC proceeding constitute an admission that SCC is not a telecommunications carrier under the federal definition.

SCC Position

SCC took no position on this issue. However, Ameritech cited no authority in support of this argument.

Staff Position

Staff took no position on this issue.

Commission Analysis and Conclusion

An evidentiary admission is an oral, or written, out-of-court statement by a party, or its agent, which tends to establish or disprove a material fact in a case, and as such, it is competent evidence against that party in the action. *Ficken v. Alton & Southern Railway Co.*, 291 Ill. App. 3d 635, 637, 685 N.E.2d 1 (5th Dist. 1996). Admissions by parties are considered to be substantive evidence, admissible as an exception to the rule excluding hearsay. *Elliott v. Industrial Comm of Ill.*, 153 Ill. App. 3d 238, 240, 505 N.E.2d 1062 (1st Dist. 1999). A statement that is a legal conclusion does not constitute an admission. *Harris v. Minardi,* 74 Ill. App. 2d 262, 265, 220 N.E.2d 39 (1st Dist.1966); *Schall v. Forrest,* 51 Ill. App. 3d 613, 614 366 N.E.2d 1111 (4th Dist. 1977).

The statements to which Ameritech refers are contained in a document entitled "SCC Communications Corporation's Brief on Threshold Legal/Policy Issues" in a case entitled "Emergency Petition of the Advisory Commission on State Emergency Communications and the Greater Harris County 9-1-1 Emergency Network for Declaratory Rulings Ordering Southwestern Bell Telephone Company to Unbundle its 9-1-1 Network and 9-1-1 Database Management System," Docket No. 20334, filed on February 12, 1999. The statements are as follows:

> As discussed in response to question 5 below, § 251(c)(2) of the FTA (the Federal Telecommunications Act) does not require SWBT (Southwestern Bell Telephone Company) to provide SCC unbundled access to its 9-1-1 services because SCC is not a telecommunications carrier. . . . (Ameritech's Motion to Dismiss, Ex. 4, p. 3).
>
> SCC also concluded in that same pleading:
>
> The provisions governing interconnection under the FTA are inapplicable to SCC; therefore, SCC does not seek to "interconnect" under § 251(c) . . . Section 251(c) requires LECs to interconnect with any requesting telecommunications carrier. Section 3 (44) of the FTA defines a "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators . . . (as defined in section 226)." Telecommunications service" is defined in § 3 (46) to mean "the offering of telecommunications for a fee directly to the public, regardless of the facilities used. " The term "telecommunications" is defined in § 3 (43) as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." SCC's database management activities do not fit within this definition.
>
> Thus, looking to the FTA in order to determine the extent of SWBT's obligations to the Petitioners in simply wrong. The Commission's authority to decide the issues raised by Petitioners lies outside the FTA . . . (Ameritech's Motion to Dismiss, Ex. 4, p. 13).

Clearly, these statements were legal conclusions made by SCC. Legal conclusions made by a litigant are not admissions. *Schall,* 51 Ill App. 3d at 614. Moreover, other portions of this pleading make it clear that in the Texas PUC case, SCC was acting only as a state-selected 9-1-1 database management service provider. (Ameritech's Motion to Dismiss, Ex. 4, pp. 8-9). As was discussed in the previous two arguments, the evidence in the case at bar establishes that SCC's role in Illinois will involve more than providing a database management service.

Additionally, Ameritech has taken the statements made by SCC out of context. In the Texas PUC case, SCC was the successful bidder on a contract to provide a 9-1-1 database management system. When the ILEC, SWBT, refused to unbundle its 9-1-1 network, the Texas Advisory Committee on State Emergency Communications petitioned the Texas PUC for an order requiring Southwestern Bell to unbundle its 9-1-1 network and its 9-1-1 database management system. (*Id.* at 2-3).

The pleading Ameritech cites responded to the Texas PUC's order requiring the parties to discuss whether federal law allowed SCC direct access to SWBT's 9-1-1 tandem and proprietary customer information as a third-party database provider. (*See, Tx. PUC Order Requesting Briefing on Threshold Legal/Policy Issues,* PUC Docket No. 20334, February 5, 1999). In discussing those issues it was ordered to discuss, SCC stated that Sections 252 and 251 of the Act did not govern the issues before the Texas PUC.

The case before the Texas PUC involved a different set of facts and circumstances, and a rather unique set of facts, at that. The Commission therefore concludes that the arguments made by SCC in that case do not indicate that SCC has admitted that it does not provide telecommunications services, or, that it is attempting to mislead this Commission by representing that it is a telecommunications carrier under federal law. The above-captioned statements are not admissions and they are not admissible under the admissions exception to the hearsay rule.

4. Whether Legal Conclusions Made Two Years Ago in an Unrelated Texas PUC Proceeding Judicially Estop SCC From Claiming that it is a "Telecommunications Carrier" Within the Meaning of TA 96

Ameritech Position

Ameritech also contends that that doctrine of judicial estoppel bars SCC from asserting that it is a "telecommunications carrier." Ameritech claims that this doctrine should be applied to the statements cited in the previous pages.

SCC Position

SCC contends that the services that were the subject of the pleading cited by Ameritech did not encompass the services it currently offers to customers. SCC points out that change in the service offerings of a telecommunications carrier is a constant. SCC contends that the doctrine of judicial estoppel is inapplicable because the factors necessary to apply the doctrine of judicial estoppel are not present here.

Staff Position

Staff took no position on this issue.

Commission Analysis and Conclusion

The doctrine of judicial estoppel prevents chameleon-like litigants from shifting positions to suit the exigencies of the moment. *Daily v. Smith,* 292 Ill. App. 3d 22, 25, 684 N.E.2d 991 (1st Dist. 1997). It is designed to protect the integrity of the courts. *Id.* Judicial estoppel should not be applied where doing so would result in an injustice. *Ceres Terminals v. Chicago City Bank and Trust,* 259 Ill. App. 3d 836, 852, 635 N.E.2d 485 (1st Dist. 1994). It is an extraordinary doctrine, which should be applied with caution, because it precludes a party from taking a contradictory position without having the benefit of the trier of fact examining the truth of either statement. *Ceres,* 259 Ill. App. 3d at 857. Because judicial estoppel preserves the integrity of judicial and quasi-judicial proceedings, it should not be applied unless the integrity of that system is being manipulated or abused by a litigant through the use of totally inconsistent factual representations. *Ceres,* 259 Ill. App. 3d at 852; *See also, Judicial Estoppel,* 55 Geo. Wash L. Rev. 409 (1987).

In general, the following elements are necessary to justify application of judicial estoppel: a.) two positions must be taken by the same party in separate judicial or quasi-judicial proceedings; b.) the positions must be given under oath; c.) the party must intend the trier of fact to accept the truth of the facts alleged in support of the positions; d.) the party must have successfully maintained the first position and received some benefit in the first proceeding; and e) the two positions must be totally inconsistent. *Kozak v. Moiduddin,* 294 Ill. App. 3d 365, 367, 689 N.E.2d 217 (First Dist. 1997); *Bidani v. Lewis,* 285 Ill. App. 3d 545, 550, 675 N.E.2d 647 (First Dist. 1996). However, judicial estoppel does not apply when the prior statement is merely an expression of opinion or is a legal conclusion. *Ceres,* 259 Ill. App. 3d at 852.

The statements cited by Ameritech concern whether TA 96 applied in the Texas PUC case. Whether to apply a statute is a legal conclusion, not a fact. *Ceres,* 259 Ill. App. 3d at 852. Therefore, judicial estoppel does not apply here.

Moreover, there is absolutely no evidence indicating that SCC received some benefit from representing that TA 96 did not apply in the Texas PUC proceeding. Additionally, since SCC expressed a legal opinion, one cannot say that it intended the trier of fact to accept the truth of the facts alleged. This is true because the assertions cited by Ameritech are not facts, they are legal conclusions, and Ameritech does not point to any factual assertions made in the pleading as being factually in error. Nor is it evident, from a reading of that pleading, that SCC made any factual misrepresentation in the pleading. Also, as the court noted in *Ceres,* the doctrine of judicial estoppel should be applied with great caution, as, without careful analysis, application of this doctrine could have the effect of taking the fact-finding away from the trier of fact. *Ceres,* 259 Ill. App. 3d at 857.

Of greatest significance is the fact that there is no indication that the two positions are totally inconsistent. SCC performed a different function in the Texas PUC

matter than it does here. It is not uncommon for a telecommunications carrier to provide different services in different territories. And telecommunications companies frequently change the services they provide over time. Companies therefore often have different roles at different points in time and in different places.

Citing no legal authority, Ameritech contends in its Brief on Exceptions that SCC's statements were not legal conclusions. The Commission notes that all of the statements concerned whether SCC's database management services fell within statutory language. Whether a person, place or thing falls within the elements of a statutory definition is a legal conclusion, not a fact. *South Chicago Savings Bank v. South Chicago Savings Bank,* 178 Ill. App. 3d 545, 554, 533 N.E.2d 480 (1st Dist. 1988).

There is nothing disingenuous about SCC's representation to this Commission that it will provide telecommunications services within the meaning of TA 96, in light of the representations made to the Texas PUC that TA 96 did not apply to its database management services. The Commission concludes that Judicial estoppel, which should be applied with caution, does not apply to the facts presented by Ameritech.

B. Substantive Issues

In the Petition, SCC identified 50 issues for resolution and in its Response Ameritech identified an additional six issues. At the time of the evidentiary hearing, all but five of the issues had been resolved by the parties. The scope of these issues was outlined by the document entitled "Issues Matrix SCC/Ameritech Docket No. 00-0769", filed on February 9, 2001. These remaining issues are addressed below.

ISSUE 1.B.1 Advanced Services: Acceptability for Deployment

Whether the definition of advanced services in the interconnection agreement should be amended to clarify the meaning of "acceptable for deployment."

Ameritech Position

Ameritech argues that the rules and procedures for deployment of advanced services laid out by the FCC should be incorporated in a separate appendix to the interconnection agreement. Ameritech wants the agreement to specify in this appendix that advanced services are those "acceptable for deployment" as that term was defined by the FCC in the *Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.,* CC Docket Nos. 98-147 and 96-98, third Report and Order, 14 FCC Rcd. 20912, ¶ 1, n.2 (rel. Dec. 9, 1999) ("Line Sharing Order"). Ameritech opposes SCC's proposal to include a definition of advanced services in the General Terms and Conditions ("GTCs") section of the Parties' interconnection agreement, even though the 13-state generic interconnection agreement made available by Ameritech's parent, SBC Communications, Inc. ("SBC") contains a

definition of Advanced Services in the GTC section of that document. Ameritech argues that the level of detail necessary requires a separate appendix.

SCC Position

SCC seeks to define advanced services as "high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data graphics or video communications using any technology" as stated in the Code of Federal Regulations. *See,* 47 C.F.R. § 51.5 (2000). SCC argues that the definition of advanced services should include the rules that define when such services are "acceptable for deployment." SCC asserts that the definition must reference the FCC's criteria for determining acceptability, as established in its Line Sharing Order. SCC argues that this definition should be included in the GTC section of the interconnection agreement because it is referenced in that section of the agreement as well as in the appendices to the agreement.

Staff Position

Staff took no position on this Issue.

Commission Analysis and Conclusion

The FCC has recognized the need to protect the quality and reliability of the traditional, circuit-switched telephone network, and to prevent the deployment of certain advanced digital technologies that might interfere with the signals of other carriers and end users. The FCC has already established the procedural and substantive rules for determining whether a given advanced technology is acceptable for deployment.

Under the FCC's rules, prior to deploying advanced technology, a party must give the incumbent carrier notice of the type of technology it proposes to use, along with certification that such technology is acceptable for deployment. (*Line Sharing Order*, ¶ 204). The FCC's rules provide that an advanced services loop technology, like xDSL service, is "presumed acceptable for deployment" if it either (1) complies with existing industry standards; or (2) is approved by an industry standards body, the FCC, or any state commission as acceptable for deployment; or (3) has been successfully deployed by any carrier without significantly degrading the performance of other services. 47 C.F.R. § 51.230(a). The requesting carrier has the burden of demonstrating to the state commission that its proposed technology satisfies one of these standards and that it will not degrade the performance of other advanced services or traditional voice services. 47 C.F.R. § 51.230(c).

Ameritech proposes that the agreement follow the FCC's rules, and SCC agrees that the agreement must reference the FCC's criteria for determining acceptability. The issue, then, is how best to reflect the parties' agreement. The Commission rejects Ameritech's argument that the interconnection agreement should contain appendices with unique rules for deployment or DSL services. The Commission finds that the interconnection agreement definition of advanced services should, as SCC suggests, track the definition contained in 47 C.F.R.§ 51.5 and reference the FCC criteria defining "acceptable for deployment" and be set forth in the GTC section of the contract, just as it is in the generic Ameritech interconnection agreement.

ISSUE 2(b) Tariffs

Whether SCC should be required to commit to pay rates contained in unspecified tariffs.

Ameritech Position

Ameritech is required by statute to provide pricing for interconnection on a comparable basis to those it charges its affiliates or other telecommunications carriers.

However, at the hearing of this matter, Ameritech failed and refused to state the basis for the prices it proposed to charge SCC. In its post-hearing brief, Ameritech asserts that pricing for the 9-1-1 related services offered by SCC should be determined by Ameritech special access tariffs, or, if the specific product or service does not appear in the tariff, by the Bona Fide Request ("BFR") process. Ameritech objects to pricing based on rates for unbundled access, because those rates apply only to elements used for telecommunications services, and because it argues that SCC is not a telecommunications carrier and its 9-1-1 offering is not a telecommunications service.

SCC Position

SCC argues that it is entitled to pricing treatment on a non-discriminatory basis. SCC contends, that as a telecommunications carrier providing telecommunications services, it is entitled to the unbundled network element ("UNE") rates for services that Ameritech charges CLECs.

Staff Position

Staff took no position on this Issue.

Commission Analysis and Conclusion

The bottom-line question here is what prices should SCC pay for the products and services it receives under the Agreement. SCC contends that pricing should be based on the rates for unbundled access. The 1996 Act provides that those rates apply only to unbundled network elements requested by a "telecommunications carrier for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3).

As stated above, we find that SCC is a "telecommunications carrier" because it offers "telecommunications for a fee directly available to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." 47 U.S.C. § 153 (46). Ameritech's contention that SCC is not a telecommunications carrier because it provides service only to other carriers is incorrect. The evidence in the record establishes that SCC provides telecommunications services to state agencies, including PSAPs. SCC also provides telecommunications services to residential and business Private Branch Exchange ("PBX") owners and telematics services providers, which are business end-users.

Thus, SCC clearly provides telecommunications services directly to the public. Recognizing the validity of SCC's claim to telecommunications carrier status, ten state commissions and the Public Service Commission of the District of Columbia have certified SCC to provide in-state telecommunications services.[1] We take administrative

[1] In addition to Illinois, SCC asserts that it has been certified by the Public Service Commission of the District of Columbia and commissions in the following states: Alabama,

notice of the final orders issued by other state regulatory bodies, orders which confirm SCC's status as a provider of telecommunications services.

The Commission concludes that SCC is entitled to the UNE rates for services that Ameritech charges CLECs. Because the tariffs may change, the interconnection agreement should reference these tariffs, rather than incorporating a specific price list.

Issue 6 (b) Unbundled Network Elements

Whether SCC's right to access UNEs under 47 U.S.C. § 251(c)(3) of TA 96 is limited only to the UNEs expressly identified by Ameritech in its interconnection agreement with SCC.

SCC Position

According to SCC, Section 1.5 of the UNE Appendix to the Agreement should be amended to clarify that SCC has a right to unbundled access to any network element established by the FCC, this Commission, or any other state commission governing SBC's 13 state operations, regardless of whether those elements are expressly set forth in the Agreement itself.

SCC believes that Section 1.5 should be amended to read as follows:

> [Ameritech] has no obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth in this Agreement, or as required by applicable law.

SCC contends that Ameritech's proposed limitation to only those UNEs expressly set forth in the Agreement should be rejected because: 1) it undermines the authority of this Commission and the FCC to ensure the availability of UNEs; 2) it violates the FCC's SBC/Ameritech Merger Order; 3) it creates an obvious disparity between Ameritech's treatment of itself and its treatment of SCC; and 4) it is inconsistent with the interconnection negotiation guidelines established by the FCC.

Ameritech Position

According to Ameritech, SCC is not entitled to access to UNEs because SCC is not a telecommunications carrier under the 1996 Act. If, however, the Commission finds that SCC is a telecommunications carrier, Ameritech takes the position that

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Colorado, Kentucky, Massachusetts, Montana, New York, Oregon, Texas, and Washington. SCC also asserts that it has effective tariffs on file in Colorado, Massachusetts, and New York, and that it has an effective price list on file in Washington.

access should be limited to the UNEs specifically set forth in the Agreement. Ameritech contends that the Agreement already provides access to all UNEs currently required by law. It also argues that the "Intervening Law" Section (Section 21 of the General Terms and Conditions) provides an orderly procedure for addressing any changes in applicable law. Finally, Ameritech objects to SCC's proposed language ("as required by applicable law") as vague.

In its Brief on Exceptions, Ameritech contends that the additional language "virtually invites future disputes" as to what will be required, when it will be required and how the changes will be implemented.

Staff Position

Staff took no position on this Issue.

Commission Analysis and Conclusion

As explained above, the Commission recognizes that SCC is a telecommunications carrier and as such, is entitled to access to UNEs. That being said, the parties agree that there is no dispute that the Agreement provides for access to all UNEs currently required by law.

The issue that remains is whether the contract language adequately protects SCC in the event that the type or number of UNEs Ameritech is required to offer changes. We agree that Section 21 of the GTCs provides an orderly process for amending the contract to conform to changes in the law, as suggested by Ameritech. In response to Ameritech's Brief on Exceptions, we clarify that the process outlined in Section 21 of the GTCs will apply in the event that the contract must be amended to add UNEs.

However, we also agree with SCC that Section 1.5 of the UNE Appendix could be construed as not allowing additional UNEs to be added to the Agreement in the future. The FCC adopted a national list of UNEs and recognized that the list would periodically need to be updated. (*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, ¶124, ¶149, 15 FCC Rcd 3696 (rel. Nov. 5, 1999) ("UNE Remand Order")). Additionally, state commissions may require additional UNEs if the UNEs meet certain requirements of the 1996 Act. (UNE Remand Order, ¶153; 47 U.S.C. 251(d)(3)). Therefore, we conclude that the contract language should be amended to read as follows:

> [Ameritech] has no obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth in this Agreement, or as required by the Federal

Communications Commission or the Illinois Commerce Commission.

Issue 6 (c) Provisioning and Maintenance of UNEs

Whether SCC must submit a BFR in order to access UNEs when those facilities are not available, or are not addressed in the Agreement or a generic appendix.

SCC Position

According to SCC, the BFR process should only apply in situations where SCC requests a new UNE, or combination of UNEs that Ameritech does not have an obligation to provide, under the rules of the FCC or this Commission.

Specifically, SCC maintains that the BFR process should not apply to situations where: 1) a network element has been designated a UNE under § 251(c) of the 1996 Act; 2) a network element is provided outside the BFR process by an affiliate of Ameritech in any other state; or 3) a network element is designated as a UNE by the FCC or this Commission, but capacity for that element does not currently exist.

Furthermore, SCC argues that the FCC has found that the BFR process is not a prerequisite to accessing UNEs under § 251(c) of the 1996 Act. (*Local Competition Order*, ¶156). SCC also states that the FCC has recognized that the BFR process can impede market entry by competitors. *Id.*

Ameritech Position

Ameritech maintains that, under the 1996 Act, it need only provide access to elements of its existing network, and further argues that it cannot be required to create and provide facilities that do not exist. Thus, to the extent SCC requests unbundled access where facilities are not available, it must use the BFR process.

Staff Position

Staff took no position on this Issue.

Commission Analysis and Conclusion

Ameritech's proposed language requires SCC to use the BFR process when SCC is requesting: 1) an item that the FCC has not identified as a UNE; 2) an item that the FCC has identified as a UNE but that Ameritech does not currently offer, i.e. the element does not exist in Ameritech's network; and 3) an item that the FCC has identified as a UNE and that Ameritech currently offers, but does not exist at the location in Ameritech's network where SCC wants it. The Commission finds this proposal to be reasonable.

In situations requiring simple or complex facilities modifications, as opposed to new facilities, Ameritech's Facilities Modification Process ("F-Mod") would apply. (Unbundled Network Element Facility Modification & Construction Policy, Ameritech Exhibit 4). The F-Mod includes a section called "New Build." This section applies when facilities exist, but there is not enough capacity to fill the CLEC request. The F-Mod, however, explicitly states that the process would not be used in situations called "Greenfields". Examples of "Greenfield" situations include new buildings or new business or residential development. The F-Mod specifies that in "Greenfield" situations, the BFR process, not the F-Mod, would apply.

The Commission finds that the distinction made by Ameritech between Greenfields and situations with merely a lack of capacity is appropriate. The FCC has found that the 1996 Act does not include a duty on the part of ILECs to build new facilities or upgrade existing ones. (*UNE Remand Order*, ¶324). Given the FCC determination that ILECs, such as Ameritech, are not required to build new facilities where none previously existed, we do not impose a requirement on Ameritech to offer new facilities in the same timeframes and manner as it modifies current facilities.

The Commission is unpersuaded by SCC's argument that the FCC, in the *Local Competition Order*, determined that a BFR is not required when requesting UNEs. The section of the *Local Competition Order* relied on by SCC deals with practices that may constitute a failure to negotiate interconnection in good faith. (*Local Competition Order,* ¶ 156). The BFR process that is discussed in the Local Competition Order included, among other things, a requirement on the CLEC to certify that it will make use of the services or facilities it requests within a specified period from the date of the request and to agree to purchase the requested services or facilities for a minimum time. (*Local Competition Order,* ¶ 146). This is a different BFR process than the BFR included in Ameritech's proposal. Additionally, the BFR contemplated in the Local Competition Order was a requirement that ILECs were imposing on CLECs before they would even enter into negotiations for interconnection, not a process by which a CLEC could request that new facilities be built.

Furthermore, we do not find Ameritech's procedures to be anti-competitive, as suggested by SCC. Mr. Silver testified at the hearing that Ameritech would have to go through a similar process in situations where an Ameritech customer requests a service and the facilities do not exist in order to determine cost and feasibility. Therefore, we adopt the language proposed by Ameritech.

Issue AIT-2(b) Effect on Contractual Relationship

Whether, SCC, when a CLEC chooses SCC as a 9-1-1 provider, should be required to notify Ameritech and cooperate with Ameritech's reasonable request that the affected CLEC amend its contract with Ameritech to release Ameritech from any contractual obligations that Ameritech has as the CLEC's 9-1-1 provider

SCC Position

SCC has agreed to provide pre-connection notice to Ameritech, and SCC is willing to provide post-connection notice. SCC contends that it is unreasonable to require it to cooperate with Ameritech, as in so doing, it will serve as Ameritech's agent when Ameritech seeks to amend its contracts with a CLEC to release Ameritech from any contractual obligations that it has as the CLEC's 9-1-1 provider. SCC points out that it is not a party to any of the contracts between Ameritech and its customers, and whether and how those agreements are modified to reflect a customer's use of SCC's services is an issue for Ameritech and that customer to resolve. SCC also argues that it is unreasonable to require SCC to "cooperate" with Ameritech in the absence of any evidence or contractual language defining the scope of such an obligation.

Ameritech's Position

Ameritech contends that whenever a CLEC opts to use SCC as its 9-1-1 provider, instead of Ameritech, SCC should be required to provide advance notice of the change to Ameritech, and post-termination notice. Ameritech also contends that SCC should additionally be required to cooperate with Ameritech in amending its contract with that CLEC, so as to ensure an orderly transition of service and release Ameritech from any contractual obligations that SCC has undertaken. Ameritech provides no definition of what SCC's "cooperation" would entail.

Staff Position

Staff contends that SCC should provide both pre-connection and post-connection notice to Ameritech when a CLEC migrates from Ameritech's services to SCC's services. Staff has indicated that 10 days notice is reasonable. Staff agrees with SCC, however, that it is inappropriate to involve SCC with Ameritech's contractual relationships with CLECs. Staff notes that Ameritech has neither defined nor proposed contractual language regarding continuing cooperation. However, Staff has noted that there could be instances in which the parties to a CLEC-Ameritech agreement will need information that SCC is the best equipped to answer to conclude the transition between Ameritech and SCC as the provider of 9-1-1 services.

Commission Analysis and Conclusion

Currently, CLECs obtain 9-1-1 services from Ameritech pursuant to their interconnection agreements with Ameritech. SCC's aim is to replace Ameritech as the 9-1-1 provider for those CLECs. Should SCC replace Ameritech as a 9-1-1 service provider, the impact of that change should not affect members of the general public who are serviced by a switching CLEC.

All parties agree that the safety of the public would be served if SCC provided Ameritech with some sort of notice of a CLEC's migration from Ameritech to SCC as a 9-1-1 service provider. Staff's position, that SCC should provide both pre-termination notice and post-termination notice is the most reasonable and the most clearly defined position. Staff has indicated that 10 days notice is reasonable. Therefore, the contract should be amended to provide that SCC must provide Ameritech with 10 days notice of a CLEC's intended switch from Ameritech to SCC as a 9-1-1 service provider. It should further be amended to provide that SCC must provide Ameritech with notice, within 10 days after the actual switch or sooner, of the fact that a switching CLEC is currently using SCC as its 9-1-1 service provider.

As for Ameritech's contention that SCC must be contractually obligated to "cooperate" with Ameritech, it is noteworthy that Ameritech admits that SCC is not a party to any of the contracts between Ameritech and CLECs and that it knows of no authority that SCC possess to release Ameritech from liability under its contracts with CLECs. Therefore, any contractual provision requiring "cooperation" would be only to ensure that a member of the public that is serviced by a switching CLEC would have continuous 9-1-1 service.

However, as Staff and SCC have noted, the term "cooperate" is vague. It is so vague that it is not effective as a contractual provision, as it does not define what SCC must do to "cooperate."

Nevertheless, Staff has noted that there could be instances in which the parties to a CLEC-Ameritech agreement will need information that is in the hands of SCC to conclude the transition between Ameritech and SCC as the provider of 9-1-1 services. Therefore, to ensure the public safety, it is necessary that SCC respond to all reasonable requests by Ameritech for such information within a reasonable period of time, and the interconnection agreement between Ameritech and SCC should be amended to include the following language:

> **Upon a reasonable request for information regarding any transition by a CLEC from Ameritech Illinois to SCC, SCC must provide said information, if it possesses such information, within a reasonable amount of time, but no later than 14 days from the date of receipt of the request.**

IV. Compliance with Arbitration Standards

Pursuant to section 252(c) of the Telecommunications Act of 1996, state commissions are required to apply three standards when resolving open issues and imposing conditions upon parties to an interconnection agreement in arbitration. The first standard requires the agency to ensure compliance with Section 251 and any rules promulgated thereunder. Under the second standard, the state agency is required to establish rates according to Section 252(d). The third standard requires the state

agency to provide a schedule for implementation of the terms and conditions by the parties. The Commission has reviewed each of the conclusions reached herein and finds that they are in compliance with the relevant statutes and rules.

As a final implementation matter, the parties shall file, no later than fifteen (15) calendar days from the date of service of this arbitration decision, the complete interconnection agreement for Commission approval pursuant to Section 252(e) of the Act.

By Order of the Commission this 21st day of March, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

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INTRADO COMMUNICATIONS, INC. * Case No.

and VERIZON WEST VIRGINIA, INC.* 08-0298-T-PC

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HEARING TRANSCRIPT

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BEFORE: MELISSA K. MARLAND,

Administrative Law Judge

HEARING: Thursday, October 2, 2008

9:00 a.m.

LOCATION: Howard M. Cunningham

Hearing Room

201 Brooks Street

Charleston WV

Reporter: Emily Thayer

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by the certifying agency.

MS. BUCKLEY:

Could you repeat the question?

ATTORNEY KISER:

That the network design that Verizon has in place today, competitors interconnecting to the selective routers, via dedicated trunks is reliable and efficient?

MS. BUCKLEY:

I don't know if that was my exact testimony, but I would agree with that, yes.

ATTORNEY KISER:

And that interconnection arrangement with the competitors is different than the pre-1996 arrangements that you established with noncompeting adjacent ILECs, which are meet point arrangements; correct?

MS. BUCKLEY:

We do have meet point arrangements with other ILECs. That was also an option for interconnection that was offered to Intrado.

ATTORNEY KISER:

So presumably Verizon made a conscious decision to design its network differently when dealing with competitors versus ILECS.

MS. BUCKLEY:

law requires. But the law only requires a single point of interconnection within a LATA, but your template agreement drafted by Verizon that's handed to the competitive local exchange carrier on the date of negotiation says you will interconnect at a point of interconnection, plus you will have these additional points of interconnection for purposes of 9-1-1 service.

MR. D'AMICO:

The contract allows for the flexibility for carriers to choose multiple points of interconnection. They can choose to have a single point of interconnection for the exchange of non-9-1-1 traffic. Specifically for 9-1-1 traffic, the carriers have agreed that --- and I think I heard it this morning that that's the best approach to have points of interconnection on Verizon's network at this Verizon selective route.

ATTORNEY KISER:

So Verizon's determined and the competitors seem to have accepted that dedicated trunking to selective routers for the delivery of 9-1-1 calls achieves a certain technical criteria and service quality standard that provides the most reliable 9-1-1 delivery network. Would you agree with that?

MR. D'AMICO:

Sounds like a fair statement. Again,

Docket No. 08-0550
ICC Staff Exhibit 1.0

DIRECT TESTIMONY
OF
JEFFREY H. HOAGG

PRINCIPAL POLICY ADVISOR
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 08-0550

DECEMBER 19, 2008

Issues 1, 2, 3(a), 3(b)

Introduction

Q. Please state your name and business address.

A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. By whom are you employed and in what capacity?

A. I am employed as the Principal Policy Advisor in the Telecommunications Division of the Illinois Commerce Commission

Q. Please briefly describe your educational background and work experience.

A. I have been employed by the Illinois Commerce Commission in the Telecommunications Division from 2000 to the present. During this time, I have conducted analyses and provided policy recommendations on a wide range of telecommunications issues, and have provided testimony on behalf of Staff of the Illinois Commerce Commission in various docketed proceedings. Prior to this, I held the positions of Telecommunications Tariffs and Rates Analyst, Telecommunications Policy Analyst, and Special Assistant to the Deputy Chair of the Commission at the New York Public Service Commission. I performed economic and policy analyses of industry and regulatory issues, and formulated recommendations for Commission members and other decision-makers. In 1993-94 I served

as Special Advisor to Commissioner Barrett of the Federal Communications Commission. I provided analyses and policy recommendations on a wide range of telecommunications issues. Among other activities, I prepared testimony, speeches and presentations for delivery to Congress and various regulatory and industry groups, and drafted informal and formal documents for issuance.

I hold a Master of Arts in Economics from Cornell University, and completed all requirements but dissertation for the Ph.D. in Economics from Cornell. My major field of graduate study was Industrial Organization and Regulation.

Q. What is the purpose of your testimony?

A. I first summarize my overall position regarding an appropriate approach the Commission should take regarding this arbitration between Verizon North, Inc. and Verizon South, Inc. ("Verizon") and Intrado, Inc. ("Intrado"). I then provide testimony and recommendations (from a policy perspective) regarding arbitration Issues 1, 2, 3(a) and 3(b). I note that I have prepared this testimony based upon the two parties' Issues Matrix dated November 12, 2008, which the ALJs have directed the parties to revise. Accordingly, the issues as set forth in this testimony may not track with precision those set forth in the final Issues Matrix.

General Comments

Q. Intrado contends it is entitled to interconnect with Verizon pursuant to Section 251(c) of the 1996 Telecommunications Act. Verizon disagrees. What is your position regarding this dispute?

A. Neither I nor other Staff witnesses address this question, which appears to be a legal issue properly addressed by the parties in briefs. Staff's testimony is submitted for the Commission's consideration in the event the Commission determines Intrado is entitled to Section 251 interconnection with Verizon.

Q. Ms. Spence-Lenns contends that "interconnection for the purposes of providing competitive 911/E-911 services must look beyond the traditional interconnection arrangements used for plain old telephone service ("POTS") and seek to establish physical architecture arrangements that specifically address the special needs of 911 callers and first responders." Do you agree?

A. In this proceeding, I believe the Commission can and should (and arguably must from a legal standpoint) adhere to and apply existing Section 251 rules and regulations to this arbitration. I hold this position for two primary reasons – and despite the fact I agree that federal rules do not directly contemplate interconnection for purposes of regulated 911 service competition.

First, by adhering to Section 251 and underlying rules, the Commission will be able to take advantage of and apply a well established and consistent set of existing rules, regulations, principles and precedents. Doing otherwise would require resolving many of the issues presented in this arbitration on an *ad hoc* and less well-defined basis. Among such well established Section 251 principles are: the requesting carrier is entitled to designate its point of interconnection (hereafter "POI") (and if it so chooses, it may designate a single POI per LATA); any POI designated must be within the ILEC's network (unless the ILEC agrees otherwise); each party is responsible for costs of bringing its traffic to the POI; and neither party can dictate the manner in which the other party carries such traffic to the POI.

Second, interconnection with Verizon is only the first step Intrado must take before it provides any regulated competitive 911 services in Illinois. Significantly, pursuant to Sections 10 and 11 of the Emergency Telephone System Act (50 ILCS 750) and Ill. Adm. Code Part 725, the Commission must examine in detail and will need to approve (based upon 911 system considerations and requirements) provision of competitive 911 services by Intrado to any specific ETSB. Staff witness Marci Schroll provides an overview and briefly describes the nature of such a required proceeding.

Q. In your opinion, is it incumbent upon Intrado and Verizon to

recognize (in this proceeding) their respective obligations under the ETSA and Commission Code Part 725 in the event Intrado provides regulated 911 services?

A. Yes. I believe both parties to this arbitration can and should recognize and anticipate their respective duties and obligations under the ETSA and Code Part 725 in the event the Commission ultimately does approve provision of regulated 911 services by Intrado. In particular, Intrado needs to recognize that taking full advantage of its Section 251 rights as a CLEC in this proceeding may result in interconnection that is unsuitable for purposes of providing 911 services pursuant to Code Part 725. For example, Intrado is not required in this proceeding to designate more than one POI per LATA for Section 251 purposes. However, one POI per LATA may or may not be sufficient for purposes of competitive 911 service provision pursuant to the ETSA and Code Part 725.

I believe both parties similarly should recognize that any interconnection arrangements resulting from this proceeding will be closely scrutinized by the Commission for consistency with ETSA and Code Part 725 requirements if Intrado ultimately seeks to provide regulated 911 services in Illinois. Moreover, while other Staff witnesses and I do not support Intrado's proposals concerning line attribute routing in this proceeding, we recognize line attribute routing or similar proposals may come before the Commission in future proceedings concerning 911 system providers. Staff's positions in this arbitration should not be construed to either bind

Staff in future proceedings, nor should they be presumed to indicate Staff's potential positions in such proceedings. Verizon should not consider it a foregone conclusion that if the Commission rejects Intrado's line attribute routing proposals here, it necessarily would do so in a future proceeding directly concerned with 911 systems (presumably involving all parties interested in and affected by 911 systems and providers).

Q. Please briefly summarize an interconnection arrangement you believe would be appropriate as a result of this proceeding.

A. I believe an appropriate interconnection arrangement between Intrado and Verizon would involve Intrado interconnecting at (at least one) Verizon selective router in each LATA where Intrado intends to handle 911 traffic. If Intrado became a designated 911 provider, 911 traffic could be routed directly via this interconnection to Intrado's selective router (via dedicated trunks), bypassing the switching (and any related functions) of Verizon's selective router. For split wire centers, as discussed in Ms. Stewart's testimony, it appears a primary/secondary provider methodology currently is the best approach. If Intrado became the primary 911 provider in such circumstances, 911 traffic again could be routed directly from Verizon's selective router to Intrado's selective router (via dedicated trunks), bypassing the switching functions of Verizon's selective router. Intrado could then route back to Verizon any 911 traffic bound for Verizon as the secondary 911 provider. Similarly, where Verizon is the primary 911 provider, it could route all 911 traffic bound for Intrado, as the

secondary 911 provider, over dedicated trunks to Intrado's selective router.

I believe this general interconnection configuration could be accomplished in a manner consistent with Section 251 interconnection rules and regulations. It also appears this could be desirable from the standpoints of network efficiency, reliability and overall costs. Finally, I believe such interconnection arrangements could be consistent with the Commission's requirements of the ETSA and Code Part 725.

Arbitration Issues 1, 2, 3(a) and 3(b)

INTRADO ISSUE 1: WHEN INTRADO IS THE DESIGNATED 911/E-911 SERVICE PROVIDER, IS VERIZON REQUIRED TO ESTABLISH A POI(S) ON INTRADO'S NETWORK?

VERIZON ISSUE 1: CAN VERIZON BE REQUIRED PURSUANT TO SECTION 251(C) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO ESTABLISH A POI(S) ON INTRADO'S NETWORK FOR THE TRANSMISSION AND ROUTING OF 911/E-911 CALLS FROM VERIZON TO PSAPS FOR WHICH INTRADO IS THE 911/E-911 SERVICE PROVIDER?

Q. In your view, what is the crux of Issue 1?

A. I believe the issue reduces itself to which party will pay for transporting traffic from Verizon's network to Intrado's network when and where Intrado is designated as a 911 provider. In this circumstance, if the POI(s) is located within Verizon's network, Intrado will incur the costs to transport traffic from each POI to its own network. If a POI is located on Intrado's

network, Verizon will incur the costs of transporting traffic from its own network to the POI on Intrado's network.

Q. What is your recommendation concerning Issue 1?

A. I recommend that the Commission reject Intrado's proposed language, which would have Intrado designate one or more POIs on its own network, to which Verizon would be obligated to extend facilities and transport 911 traffic. I believe Intrado's proposal is directly inconsistent with applicable Section 251 statutes, rules and regulations governing this interconnection proceeding. Section 251(c) and applicable rules require that any POI be on the ILEC's network, and there is no exemption for this rule for 911 traffic. I recommend that the Commission direct the parties to insert language consistent with - and fully reflecting - the principle that Intrado may designate one or more POI at any technically feasible location(s) within Verizon's network. It is my understanding this principle is well established, and it is clearly set forth in both the 1996 Telecommunications Act, and applicable rules and regulations promulgated pursuant to that Act.

ISSUE 2(a): SHOULD THE COMMISSION REQUIRE VERIZON TO ESTABLISH DIRECT TRUNKS (I.E., TRUNKS THAT DO NOT ROUTE 911/E-911 TRAFFIC THROUGH A VERIZON 911 TANDEM/SELECTIVE ROUTER) TO TAKE 911/E-911 TRAFFIC FROM VERIZON'S END OFFICES TO THE POI(S)?

Q. Please provide your recommendation concerning this issue.

A. I believe that, where Intrado is the sole designated 911 system provider (i.e., no "split wire center" is involved), Verizon should be required to directly trunk 911 traffic from its end offices to each POI, provided Intrado agrees to specify any POI(s) will be located at Verizon selective routers. As discussed above, it is my opinion that any POI should be within Verizon's network. Assuming the Commission so rules, I am aware of no reason for Intrado to locate POIs anywhere other than at Verizon selective routers.[1] Verizon originated 911 traffic could be routed directly through this interconnection to Intrado's selective router (via dedicated trunks), bypassing the switching (and any related functions) of Verizon's selective router.

It appears that, for whatever reason(s), Verizon seeks to switch all 911 traffic at its own selective router, even in instances where Intrado is the sole designated 911 system provider (i.e., no "split wire center" is involved). I understand that in such circumstances, Intrado's selective router(s) could perform all such required functions. Intermediate switching at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy.

ISSUE 2(b): IF VERIZON IS REQUIRED TO ESTABLISH DIRECT TRUNKS FROM ITS END OFFICES TO THE POI(S), SHOULD THE COMMISSION ADOPT INTRADO'S LANGUAGE SPECIFYING

[1] Section 251 (c) and 47 C.F.R. §51.305(a) (2) do authorize Intrado to designate one or more POIs at any technically feasible point within an ILEC's network.

HOW VERIZON WILL ESTABLISH, ENGINEER AND MAINTAIN THOSE TRUNKS ON VERIZON'S SIDE OF THE POI(S)?

Q. Please provide your recommendation concerning this issue.

A. I see no reason detailed engineering and related requirements concerning 911 trunks on Verizon's "side" of a POI should be in this interconnection agreement. If such trunks do not meet Commission requirements, I believe that is a matter for resolution between the Commission and Verizon.

ISSUE 2(c): IF VERIZON IS REQUIRED TO ESTABLISH DIRECT TRUNKS FROM ITS END OFFICES TO THE POI(S), SHOULD THE COMMISSION ADOPT INTRADO'S PROPOSED LANGUAGE WITH RESPECT TO VERIZON END USER 911/E-911 CALLS ORIGINATING OUTSIDE OF INTRADO'S 911/E-911 SERVING AREA?

Q. Please provide your understanding of this issue.

A. I understand this issue to involve the circumstances of split wire centers. Under such circumstances, the model or practice of dedicated direct trunking to a selective router, which would "sort" 911 traffic to deliver it to the appropriate PSAP, breaks down. Practically speaking, either the end offices or the selective router(s) of the 911 system providers involved must perform the call sorting function. If this function is performed at end offices, it would be feasible to deliver 911 calls from split wire centers to the appropriate PSAP over dedicated direct trunks. If this function is performed at the selective router level, split wire center 911 traffic will undergo some amount of "intermediate" switching.

Call sorting at end offices has sometimes been referred to (or discussed as) line attribute routing. I (and other Staff witnesses) do not believe the record in this proceeding sufficiently supports or warrants adoption of approach in this arbitration. This is addressed in some detail in Ms. Stewart's testimony.

Q. Please summarize your understanding of the parties' proposals concerning this issue.

A. Verizon apparently proposes that all 911 traffic originating in split wire centers be switched initially at Verizon selective routers. Verizon would then hand off to Intrado those 911 calls bound for PSAPs served by Intrado. Intrado ostensibly proposes that the parties work cooperatively to establish 911 call routing in the case of split wire centers:

> Verizon shall work cooperatively with Intrado and the affected Controlling 911 Authority(ies) to establish call routing and/or call handoff between the Parties.

In reality, however, it appears that if the Commission were to require direct trunking, with no "exception" for split wire centers (as apparently advocated by Intrado), Verizon would be forced to perform call sorting at its end offices.

Q. Please provide your recommendation concerning this issue.

A. I believe this is the single exception that should be made to the direct trunking requirement recommended above. If - as I and other Staff

witnesses believe - this record clearly is not adequate to support requiring call "sorting" at Verizon's central offices, then at least some 911 calls originating in split wire centers will need to be switched twice, at the selective router(s) of the 911 system providers. Verizon apparently proposes that all 911 calls originating in split wire centers be switched first at its selective router, and then handed off to Intrado. It appears that in the absence of call sorting at Verizon central offices, Intrado (at least implicitly) advocates the reverse: 911 traffic originated in split wire centers should be switched first at its selective router(s) and then handed off to Verizon.[2]

As I understand it, neither of these proposals would minimize the amount of intermediate switching required for any given split wire center. Unless either party now proposes a demonstrably superior and immediately feasible alternative, I recommend that the Commission require implementation of the so-called "primary/secondary" methodology. Calls originating in split wire centers would be routed first to the "primary" 911 system provider (i.e. the provider with the highest line count for that wire center). All else equal, this approach would minimize the amount of intermediate switching required in split wire centers.

[2] I am not aware that Intrado discusses or proposes any potential exception to its direct trunking proposal in the case of split wire centers.

ISSUE 2(d): SHOULD VERIZON BE REQUIRED TO IMPLEMENT "LINE ATTRIBUTE ROUTING" OR ANOTHER NEW MECHANISM TO SORT CALLS TO THE APPROPRIATE PSAP?

Q. Please provide your recommendation concerning this issue.

A. I believe it is neither required nor would it be appropriate under applicable rules and regulations governing this arbitration for the Commission to adopt or accept any proposals regarding line attribute routing. I am aware of no reason to support, in the context of this Section 252 arbitration, requiring that Verizon carry traffic on its own side of each POI in a specific manner desired by Intrado. The Commission has long held that interconnected carriers are responsible for carrying traffic on their own side of the POI, and carriers generally may elect to do so in the manner they choose. Moreover, it appears that the primary/secondary routing methodology in split wire centers is the best currently available option from 911 network efficiency and reliability perspectives. Accordingly, I recommend that the Commission decline to adopt or accept any new call sorting mechanism in this arbitration proceeding.

ISSUE 3: FOR 911 CALLS TRANSFERRED BETWEEN PSAPS USING INTER SELECTIVE ROUTER TRUNKING, SHOULD THE INTERCONNECTION AGREEMENT:
(A) REQUIRE VERIZON TO ESTABLISH A POI(S) ON INTRADO'S NETWORK FOR 911 CALLS BEING TRANSFERRED FROM PSAPS FOR WHICH VERIZON IS THE 911/E-911 SERVICE PROVIDER TO PSAPS FOR WHICH INTRADO IS THE 911/E-911 SERVICE PROVIDER?
(B) INCLUDE INTRADO'S PROPOSED INTERCONNECTION,

TRUNKING AND ROUTING ARRANGEMENTS IF VERIZON IS REQUIRED TO ESTABLISH A POI(S) ON INTRADO'S NETWORK?

Q. Please provide your recommendation concerning these issues.

A. I believe Issues 3(a) and 3(b) concern only the placement of such POIs. It appears the two parties agree on the desirability of inter-selective router trunking, but disagree on the appropriate location of POIs for traffic exchange. If the Commission determines such POIs should be within Verizon's network (as I believe it should), then Verizon's proposed language regarding Issues 3(a) and 3(b) is acceptable, and Intrado's proposed language should be rejected.

Q. Does this conclude your testimony?

A. Yes.

Docket No. 08-0550
Staff Ex. 2.0

DIRECT TESTIMONY

OF

KATHY STEWART

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 08-0550

December 19, 2008

Issues 2(a), 2(b), 2(c), 2(d), 3(c), 4, and 5

Q. Please state your name and business address.

A. My name is Kathy Stewart and my business address is 527 East Capitol Avenue, Springfield, Illinois, 62701.

Q. By whom are you employed and in what capacity?

A. I am employed by the Illinois Commerce Commission as an Engineering Analyst in the Telecommunications Division.

Q. Please describe your professional background.

A. I began my employment with the Illinois Commerce Commission in July, 1975, in a clerical position. I was promoted to the position of Engineering Technician in 1980 in the Engineering Division. In 1990, with the formation of the Telecommunications Division, I was reassigned to that division. I was promoted to my current title of Engineering Analyst in June, 1994.

My job duties include the inspection of local exchange telecommunication service provider's central office facilities for compliance with 83 Ill. Adm. Code Parts 730 (Standards of Service for Telephone Utilities) and 785 (Joint Rules of the Illinois Commerce Commission, the Office of the State Fire Marshal, and the Illinois Emergency Management Agency: Fire Protection and Emergency Services for Telecommunications Services). I am also responsible for reviewing tariffs filed by various telecommunication service providers in the State of Illinois. In this capacity, I review the companies' proposed tariff language and/or rates,

verify compliance with the Public Utilities Act, applicable code parts, and previous Commission orders. If appropriate, I make a staff recommendation to the Commission for action on pending tariff filings. I also serve as a technical advisor to other staff members with regard to telecommunications network equipment and architecture.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to address the engineering aspects of Issues 2(a), 2(b), 2(c), 2 (d), 3(c), 4, and 5. I note that I have prepared this testimony based upon the two parties' Issues Matrix dated November 12, 2008, which the ALJs have directed the parties to revise. Accordingly, the issues as set forth in this testimony may not track with precision those set forth in the final Issues Matrix.

Arbitration Issues

Issue 2(a): Should the Commission require Verizon to establish direct trunks (i.e., trunks that do not route 911/E-911 traffic through a Verizon 911 Tandem/Selective Router) to take 911/E-911 traffic from Verizon's end offices to the POI(s)?

Issue 2(b): If Verizon is required to establish direct trunks from its end offices to the POI(s), should the Commission adopt Intrado's language specifying how Verizon will establish, engineer and maintain those trunks on Verizon's side of the POI(s)?

Issue 2(c): If Verizon is required to establish direct trunks from its end offices to the POI(s), should the Commission adopt Intrado's proposed language with respect to Verizon End User 911/E-911 Calls originating outside of Intrado's 911/E-911 serving area?

Issue 2(d): Should Verizon be required to implement "line attribute routing" or another new mechanism to sort calls to the appropriate PSAP?

Q. Have you read the testimony presented by both parties to this case regarding these issues?

A. Yes, I have.

Q. Do you agree completely with the position taken by either party?

A. No, I do not agree completely with either party's position.

Q. What is your understanding of the issue at dispute?

A. My understanding is that Intrado believes that all carriers should be required to establish direct, dedicated trunking to Intrado's selective routers, whether or not they are located within the State of Illinois, and that the point of interconnection (POI) for exchange of 911/E911 traffic should be located on Intrado's network. Verizon's position is that it should be allowed to aggregate all 911 traffic from its end users, all CLECs and all wireless carriers, route this traffic over its network and through its selective routers before interconnecting with Intrado at a POI established at a technically feasible point of interconnection on Verizon's network.

Q. What is your position regarding resolution of this issue?

A. As discussed in Mr. Hoagg's testimony, the POI should be established within the LATA on the ILEC's network. As to the appropriate location of the POI, that specific determination should be based upon whether or not the service area is a split wire center. Wire centers, or exchanges, are geographic areas served by a telecommunications carrier utilizing a network consisting of a central office switch and various components making up the local loop. The boundaries of these exchanges are set forth in carriers' Certificates of Service Authority. These exchange boundaries do not necessarily follow the jurisdictional boundaries of municipalities or counties, which are the typical boundaries for 911 systems in Illinois. In those instances, within a single exchange, there may be customers served by one PSAP (for example, a municipal PSAP), as well as customers that are served by another PSAP (for example, a county PSAP).

Q. In an area not served by a split wire center, where is the logical location of the POI?

A. The logical placement of the POI is at the "network" side of the Verizon selective router, where all existing trunks from Verizon's end offices, the CLEC switches and the wireless carriers apparently terminate. Placing the POI at this location does not require extensive rerouting of trunk groups. The traffic is easily transmitted to the Intrado network prior to being switched by the Verizon selective router. In a non-split wire center, there is no need for Verizon to route the 911 calls through its selective router. It is Intrado's responsibility as the 9-1-1 system provider to route all traffic to the appropriate PSAPs.

Q. In the case of split wire centers, where is the logical location of the POI?

A. In split wire center scenarios, 911 calls may need to be routed through multiple selective routers to assure that the call is terminated at the appropriate PSAP. A primary/secondary relationship appears to be the most efficient means of routing calls at this time. One of the selective routers is established as the primary router with all calls terminating there first. If that router determines that the call is destined for a PSAP served by the secondary router, the call would be transported to the secondary selective router and termination at the appropriate PSAP.

Q. How should it be determined which selective router serves as the primary selective router?

A. In the instance where there are multiple PSAPs serving a particular geographic area, the selective router that serves the largest PSAP (measured by population) should be designated as the primary selective router.

Q. Has there been a proposal offered that would route calls to the selective routers using a different methodology rather than primary/secondary selective routers?

A. Yes. Intrado has proposed a methodology entitled "line attribute routing."

Q. Has that methodology been further explained in Intrado's testimony?

A. No, Intrado has not explained line attribute routing or described it in any detail.

Q. Are you familiar with line attribute routing?

A. No. Staff has been unable, despite requests, to obtain any useful information regarding line attribute routing or any other means of call sorting that is currently being utilized for the routing of calls to selective routers.

Q. Do you believe that it is appropriate for the Commission to order a form of line attribute routing or call sorting in this proceeding?

A. No, I do not. As stated in Ms. Schroll's testimony, it is anticipated that a proceeding will be commenced that will address competitive 911 service standards. That proceeding would provide an opportunity to explore different methodologies for routing calls to competing selective routers.

Issue 3 (c): Include Intrado's proposed language requiring the parties to maintain dial plans and notify each other of any change to such dial plans.

Q. What is the dispute with this section?

A. In his Direct Testimony (pg.36-37), Mr. Hicks suggests that Verizon is not willing to exchange dial plan information with Intrado as it does with other providers of 911/E911 services. However, Verizon, in its Panel Rebuttal Testimony (pg.60-61), indicated that this is not true. Verizon agrees that current dial plans are necessary to ensure proper transfers of calls between companies' selective routers, and Verizon is willing to provide this information to Intrado just as it does

to other providers. However, Verizon believes that Intrado seeks an excessive level of dial-plan detail in the interconnection agreement that is not appropriate or customary.

Q. What is a dial plan?

A. The term dial plan is generally understood to be information used by the switches in establishing, routing, completing and terminating calls. The dial plan provides the intelligence needed for the switch to recognize NPA/NXXs and to know if those NPA/NXXs are local calls or long distance and to determine the appropriate trunk group for the completion of the call. Whenever a new NPA/NXX is established, it is necessary for the dial plan of every switch to be revised or calls to that NPA/NXX would not be recognized as a valid telephone number.

Q. It appears that both Verizon and Intrado believe the exchange of dial plans is necessary to perform the transfer of calls between selective routers. Do you agree?

A. Yes, I do.

Q. Did Verizon suggest any alternative language to this issue?

A. No, Verizon merely indicates that the Commission should reject Intrado's language with respect to dial plans in section 1.4.4.

Q. Did Verizon indicate what it considered an excessive level of dial-plan detail?

A. No, it did not.

Q. Does Staff believe that Intrado wants excessive dial plan details?

A. Staff cannot be certain. However, in his direct testimony (pg. 36, line 12), Mr. Hicks states that: "Intrado's language only requests dial plan updates to inter-selective router trunking dial plans". In my opinion, this seems reasonable and not "excessive." Unfortunately, Verizon chose not to elaborate on this issue so Staff is unclear why Verizon considers Intrado's proposal to be "excessive".

Q. What would Staff's recommendation be for issue 3(c)?

A. Given that both Intrado and Verizon believe that the exchange of dial plans is necessary, Staff is of the opinion that some language should be adopted in Section 1.4.4 of the ICA. In lieu of the fact that Verizon failed to propose any rationale for its objections to Intrado's proposal, and that the parties are in agreement regarding the need for exchange of dial plans, Staff recommends that Intrado's language be adopted.

Issue 4: When Intrado becomes the 911/E-911 service provider for a PSAP, is Verizon required to agree to POI(s) on Intrado's network and to provide Intrado forecasts of trunking requirements and other information?

Q. What is your position regarding this issue?

A. As stated earlier in my testimony and in Mr. Hoagg's testimony, the POI(s) should be established within the LATA on the ILEC's network. It appears that the companies agree on the need to share information necessary for establishing the actual interconnection.

Issue 5: Should Verizon be required to provide ongoing trunk forecasts to Intrado?

Q. Have you read the testimony presented by both parties regarding this issue?

A. Yes, I have.

Q. In your opinion, should the trunk forecasting requirement be reciprocal?

A. Yes, it should. As stated in the rebuttal testimony of the Verizon panel at lines 1464 – 1468, the 911 Attachment Section 1.5.5 sets forth a mechanism whereby both parties shall meet to review traffic and usage data on trunk groups and determine the need to modify trunking. It does not appear from the testimony presented, however, that the provision establishes a time frame for this review. It appears that both parties have valuable information regarding trunking levels and therefore the forecasting requirement should be imposed upon both parties.

Q. Does this conclude your testimony?

A. Yes, it does.

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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).[1]

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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[1]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)[2] 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)[3] 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[4] in the end user's LATA (local access and

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[2]For the purposes of this decision, any general reference to either 911 or E911 service encompasses both types of service.

[3]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)).

[4]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).[5] (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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[5]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.

* * *

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[6], 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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[6] (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)[7] 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.

[7]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-serviced 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. Verison 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 tandam/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 do. 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 tarriffed 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

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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[1] ("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[2] ("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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[1]Public Utilites 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).

[2]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[3] 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

[3]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[4] ("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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[4]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, Teste: Sandra Squire
Sandra Squire
Executive Secretary

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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

ARBITRATION ORDER

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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[2] 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.[3] *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").[4]

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[2] The Parties are currently involved in arbitrations in Delaware, Florida, Illinois, Maryland, North Carolina, Ohio and Texas.

[3] The issues presented in the other jurisdictions parallel those currently in dispute in the instant proceeding.

[4] 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

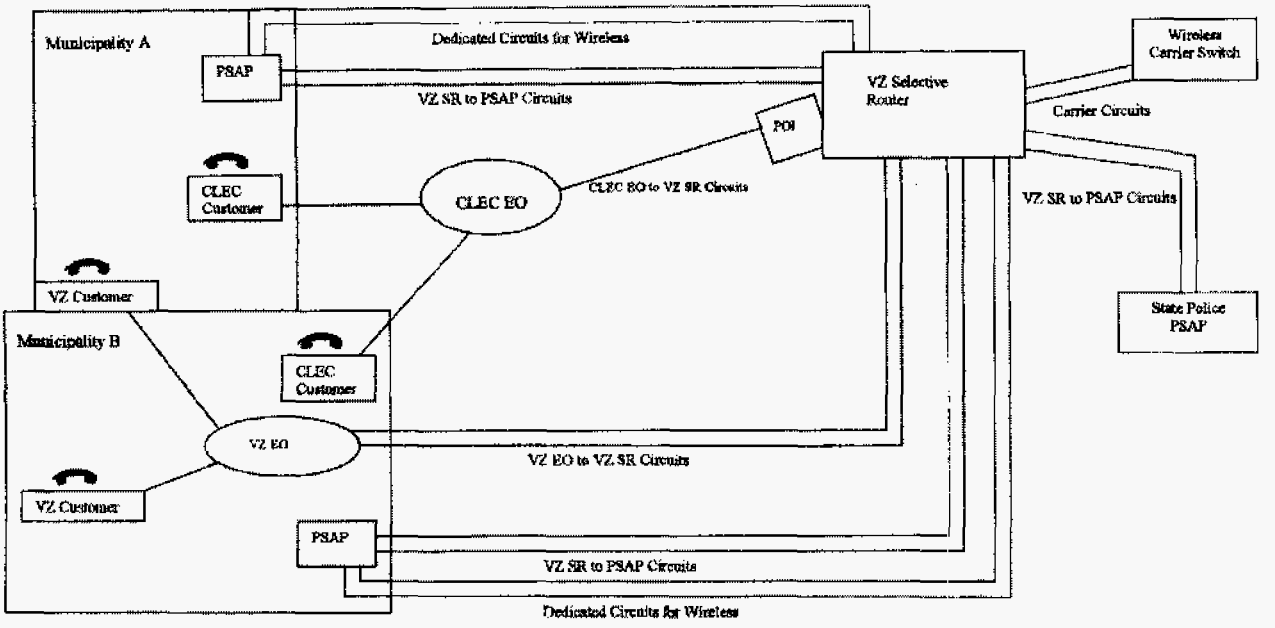


Diagram No. 1

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.

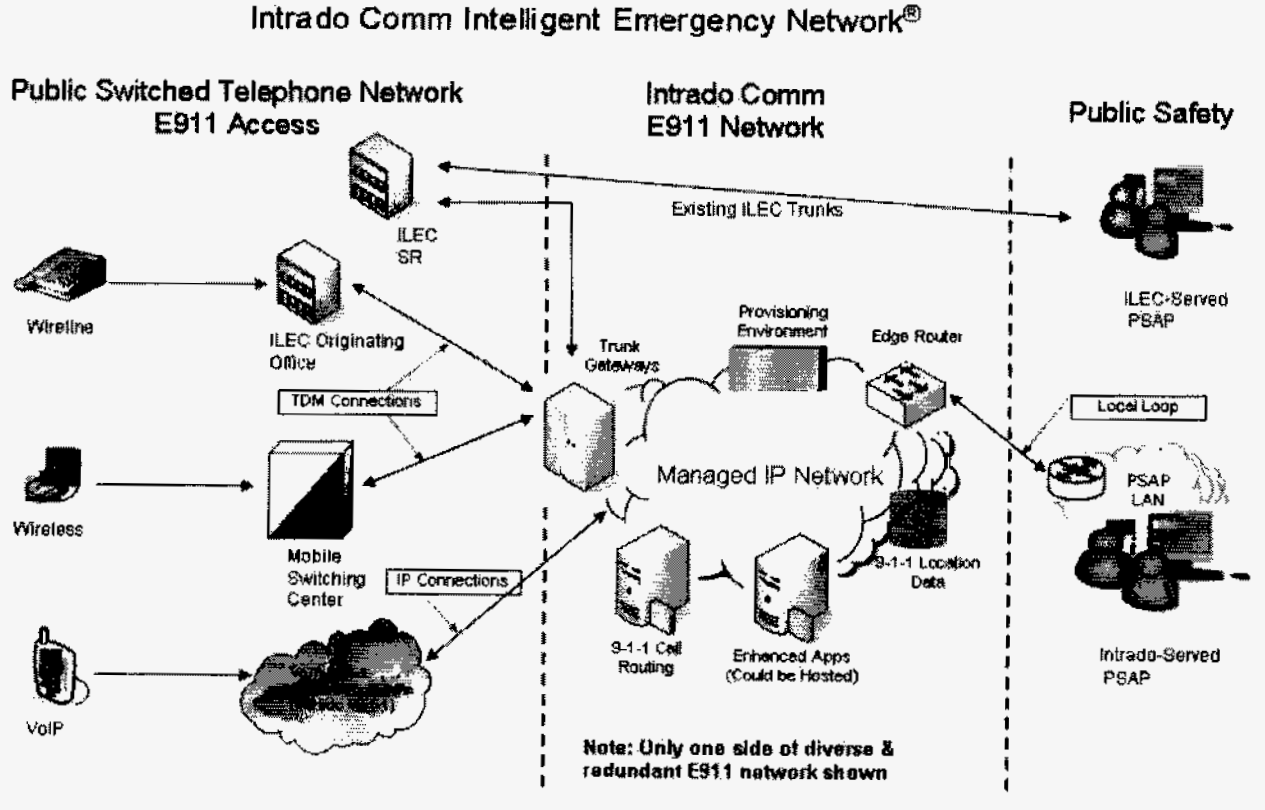


Diagram No. 2

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.[5] *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.[6] *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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[5] 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).

[6] 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.[7] *See* First Jt. Iss. Mat.; Second Jt. Iss. Mat. On January 26, 2009, the Parties filed responses to the Department's information requests.[8] *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.[9] *See* Tr. On February 6, 2009, Verizon filed record request responses. *See* RR Resp. D.T.C.-VZ.[10] 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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[7] The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

[8] The Parties waived discovery between themselves.

[9] At the hearing, Kathleen Cerrati appeared as a replacement witness for Maureen Napolitano on Verizon's witness panel. *See* Tr. at 51-52.

[10] 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.[11]

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

[11] 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'ns 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.[12] Instead, Intrado disputes Verizon's explanation for its March 20 Notice and argues that it is an untimely

[12] 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.[13] *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

[13] 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.[14] *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.[15] 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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[14] 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.*

[15] 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)[16]

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

[16] 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*[17] and *Local Competition Order*[18] and the Ohio Public Utilities Commission's decisions in the Intrado/Embarq and Intrado/CBT arbitrations[19] 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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17 *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*").

18 *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*").

19 *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.[20] In addition, according to Intrado, a transit service

[20] Citing Verizon Reply Comments, *Developing a Unified Intercarrier 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.[21]

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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21 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"[22] 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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22 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*,[23] 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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[23] *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*[24] 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

[24] 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.[25] 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.[26]

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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[25] 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.

[26] 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.[27] 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

[27] 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.*[28] 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.[29]

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

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[28] 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).

[29] 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.[30]

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 Intercarrier Compensation Regime, Notice of Proposed Rulemaking,*

[30] 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.[31] *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.[32] 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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[31] 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).

[32] 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.[33] Verizon's witness D'Amico indicated that this language was a response to Intrado's POI proposals,[34] 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.

> 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.

[33] 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.

[34] 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.[35] *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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35 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,"[36] 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.

[36] 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,[37] 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.'"[38] 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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37 Citing *FCC 1998 BOC Order* at ¶ 17 (rel. Feb. 6, 1998).

38 Citing *In re IP-Enabled Servs. and E911Requirements 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.[39]

[39] 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.[40] 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*.[41] 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.[42] Therefore, *Glossary* §§ 2.94 and 2.95 shall be deleted from the final interconnection agreement.

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[40] 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[.]"

[41] 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."

[42] 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;[43] *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.[44] 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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[43] *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*").

[44] *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.[45] 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

[45] 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.[46] 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."[47] *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.[48] The Department does not need to address the reasonableness of Intrado's proposed charges. Accordingly, the Parties shall

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[46] 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.

[47] 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.

[48] 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 langage 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

Intrado Communications Inc.

IEN INTERCONNECTION PRICING SCHEDULE

	One Time Fee	Monthly Recurring Charge
Per DS1	$250.00	$127.00
Per DS0	$250.00	$ 40.00

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 Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company.	))))))	Case No. 08-537-TP-ARB

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 Ballestero, 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),[1] 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.[2] 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.

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1 The Act is codified at 47 U.S.C. 151 et seq.

2 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).

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.[3]

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 135th to the 160th 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 160th 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 Ballestero 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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3 *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).

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.**

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

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

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.[4]

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

4 Case No. 07-1199-TP-ACE, Finding and Order issued February 5, 2008, Finding 15.

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

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 CLEC 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[5], 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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5 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).

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

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. Secondarily, 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).

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

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

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. 1 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. 1 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,

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

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).

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

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

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

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

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

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

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).[6] 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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6 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).

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

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

LDJ/CK/LS/MT/vrm

Entered in the Journal

OCT 08 2008

Reneé 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 Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North, Inc.	Case No. 08-198-TP-ARB

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ARBITRATION PROCEEDINGS

before Mr. Jay Agranoff, Hearing Examiner, Mr. Mick Twiss, Mr. Chris Kotting, and Ms. Lori Sternisha, Staff Members, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, on Tuesday, January 13, 2009, at 10:00 a.m.

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dedicated. In other words, the trunk itself is going to the Verizon's selective router and it's only used for 9-1-1 traffic, but those facilities could be used for other trunks as well.

Q. Thank you. And I think that -- or would you agree that in most instances CLECs establish a point of interconnection for POTS traffic and multiple interconnection points specifically to reach Verizon's selective router and Verizon's PSAP customers?

A. I'm not sure of the specifics in Ohio but that is their option, to have multiple points of interconnection on Verizon's network.

Q. Would you agree that Verizon has designed its interconnection facilities to establish and maintain a certain technical and service quality level to ensure the most efficient, effective, and reliable 9-1-1 service for its PSAP customers and 9-1-1 callers?

A. I think that's the goal of everyone is to have service quality for 9-1-1. It's a very important issue.

Q. And at page 14 where you're

describing the interconnection arrangements of CLECs, these interconnection trunks that the CLECs are also part of your template language I guess, the dedicated circuits, those are either provided by the CLEC directly or they can purchase them from Verizon or they can purchase them from a third party, correct?

A. Correct. They could physically collocate in the Verizon wire center, they could use their own facilities, or purchase a third party's facilities.

Q. And at page 23, the interconnection arrangements Verizon has with ILECs, lines 497 to 500 just so you know where I'm at, for receiving 9-1-1 calls destined for Verizon PSAP customers, those interconnection arrangements are via meet point which is different than going all the way to the selective router that the CLEC has with Verizon; is that correct?

A. Yes. Verizon establishes, typically establishes meet-point arrangements with ILECs. Those arrangements, agreements predate the act. Normally they're not filed with the state commission and they're not exclusively used just

A. I could speculate on that, but I really wouldn't want to provide a legal analysis, if you will. So I don't know.

Q. And at page 39 of your testimony, starting at around line 881, Verizon appears to suggest that because all the carriers are already connected to Verizon, Verizon should continue to send all 9-1-1 calls from those carriers to Intrado Comm if it serves PSAPs; is that correct?

A. That would be an option. I think the point that I was trying to make here is that under Intrado's proposal, there is no option. Everyone must do direct trunking; and to the extent that a CLEC or wireless carrier who already has an existing arrangement or connections to a Verizon selective router, based on Intrado's proposal they would not have an option of routing that to Intrado through Verizon.

Q. Does Verizon transit 9-1-1 calls from CLECs to third-party carriers today?

A. I don't believe so but the word transit, I think we need to define the actual

call flow to make sure that I accurately answer the question.

Q. Okay. Verizon has a local tandem and we'll say cablevision is -- I don't know what the local cable company is here -- is collocated at the local tandem and Intrado is providing services to PSAPs in competition with Verizon and it is interconnected with Verizon, but cablevision and Intrado are not interconnected. Can cablevision send its 9-1-1 call to Verizon and have Verizon send the 9-1-1 call on to Intrado?

A. Is it -- I'm confused on Intrado's role. Are they a 9-1-1 service provider?

Q. Let's not talk about 9-1-1. Maybe it will be easier for you. It's the same scenario in either way. What you have are two carriers who are interconnected with Verizon but those two carriers have no existing relationship but they both have a relationship with Verizon. Verizon is the middleman. Carrier one sends a call to Verizon and says please send this call on to carrier third party that I don't have a relationship with.

A. Okay. That is what I would call a traditional transit arrangement for the exchange of local exchange traffic and, yes, that happens quite frequently.

Q. And how does that differ from what you have described on page 39?

A. Well, I think the difference is, first of all, on page 39 we're talking about 9-1-1 traffic as opposed to local exchange traffic, and secondly, Intrado, under their proposal, wants direct trunking or insists on direct trunking which would eliminate Verizon as being a middle tandem, if you will. And so the difference to me is with transit there's a relationship between Verizon and CLEC A and Verizon and CLEC B, and the two can pass traffic through Verizon tandem. I'm not sure that under Intrado's proposal for 9-1-1 arrangements that that would be able to occur.

Q. I understand what Intrado's proposal is but I want to talk about your proposal which appears to be set forth on line 883. It says "Verizon would no longer be able to transport 9-1-1 traffic from other carriers to

Intrado-served PSAPs, so those carriers would have no choice but to lease or build their own facilities." When you say Verizon would no longer be able to transport 9-1-1 traffic from other carriers to Intrado, I read that -- maybe I'm misreading it, that's why I'm asking you the question; that Verizon is sitting in the middle between other carriers and Intrado and you say Verizon would no longer be able to transport 9-1-1 traffic from other carriers to Intrado.

A. Yes.

Q. You would be the middleman?

A. Well, what I'm saying is that because Intrado requires direct trunking from Verizon end offices, CLECs and wireless carriers would not be able to route their traffic to Intrado over those dedicated trunk groups from Verizon end offices to Intrado.

Q. How about this, that the Ohio Public Utilities Commission declares that Intrado Communications needs to interconnect on Verizon network.

A. Okay. That would be a good decision.

Q. And I think that would be a bad decision, of course, but under that hypothetical.

A. Okay.

Q. Is it Verizon's intention then that it will then be the middleman between all of the carriers in the market that it has interconnection agreements with today because it is the only provider of service to public safety answering points and Intrado, and it will have those carriers or offer to those carriers the ability to direct all of their 9-1-1 calls to Verizon for transiting to Intrado who is interconnected with Verizon?

A. There's two separate issues. The POI on Verizon's network would just define where the POI is; but there's the other issue that Intrado is insisting on direct trunking from Verizon end offices. So I believe that even though the POI on Verizon's network is a very important issue, likewise, the issue that I think impacts this so-called transiting arrangement, or is associated with that, would be the direct trunking issue.

Q. Okay. Let's say Verizon gets everything that it wants.

A. Okay.

Q. When Verizon says -- and I understand this to be a complaint by Verizon in your testimony. You're telling the Commission Verizon will no longer be able to transport 9-1-1 traffic from other carriers to Intrado-served PSAPs. Of course, the scenario does not exist today, but if you got exactly what you wanted, am I reading this correctly that it's your intention, Verizon's intention that it needs to be able and should be able to transit 9-1-1 calls from all the carriers that are interconnected with it to the competitive PSAP-provider Intrado?

A. Verizon would have that ability and option to do that and offer that option to the CLECs and the wireless carriers, yes.

Q. And you charge for transit services today, don't you?

A. For local exchange traffic through Verizon tandem to another CLECs there are compensation arrangements for transit traffic,

yes.

Q. Okay, thank you. On page 33 to the top of page 34 beginning at lines 761, Verizon indicates "as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 9-1-1 selective routers are located." So it's Verizon's position that it gets to designate where the points of interconnection shall be, and those points of interconnection shall be at all five selective routers, correct?

A. I think it's Verizon's position here that the POI for 9-1-1 traffic has to be on Verizon's network, and it is up to the carrier to determine that POI on Verizon's network at any technically feasible location.

Q. A couple follow-up questions on the transit issue. Is there anything in the act that requires Verizon to accept CLEC traffic that's destined for another carrier?

A. I believe that would be, again, kind of a legal type of an analysis, but Verizon does offer transit services to CLECs and wireless carriers in its interconnection agreements.

Q. And Verizon supports the provision of transit services by incumbent local exchange carriers to CLECs; is that correct?

A. Again, we voluntarily offer it, but we also have the caveat, if you will, that to the extent that Verizon has tandem exhaust issues, that we should also have the ability to manage and care for our tandems and our network exhaust issues as well as the pricing associated with transit rates.

Q. Thank you. Page 39 -- oh, wait. We can skip that.

MS. KISER: I have no further questions for this witness.

HEARING EXAMINER AGRANOFF: Anything else on redirect?

MR. TOWNSLEY: Yes, just a question or two, Your Honor.

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REDIRECT EXAMINATION

By Mr. Townsley;

Q. Mr. D'Amico, Ms. Kiser asked you some questions about transiting. Do you recall those questions?

A. I'm sorry. Where exactly is that?

Q. It's line 2039.

A. 2039?

Q. Yeah. Page 85.

A. We believe "a caller" just adds more clarity as an exchange and, again, this is within the scope of an exchange, a local exchange subscriber which we serve as a local exchange carrier, that "a caller" adds further clarity to it. I think in Mr. Hicks' discussions this morning he talked about the defibrillators calling 9-1-1. We don't see that in terms of providing local exchange networks. You know, we're talking a fixed line subscriber dial tone. We think the term "a caller" just adds greater clarity to the description.

Q. But to the extent that a device was making the call, you don't believe that that would fit under the definition?

A. I think that when we look towards next generation 9-1-1, there will be a lot of device-device calling. I think that that all needs to be sorted out by the public safety agencies, whether they want a device to contact

a 9-1-1 agent, whether they want that to go to another location other than a PSAP location or a 9-1-1 call taker. I think that it is a futuristic application that the public safety agencies will need to give the 9-1-1 service providers direction in how they want to operate in that area. So, yes, it's a realistic futuristic application. There are many of them that's being discussed in the industry, but we don't think in terms of the context of this interconnection agreement, that application such as that is applicable.

HEARING EXAMINER AGRANOFF: Thank you. Anything further on redirect based on questions that the Panel asked?

MR. TOWNSLEY: No, nothing further.

HEARING EXAMINER AGRANOFF: From Intrado?

MS. KISER: I have nothing further. Thank you.

HEARING EXAMINER AGRANOFF: Thank you, sir.

THE WITNESS: Thank you.

HEARING EXAMINER AGRANOFF: Back to

Sorensen Direct Testimony Table of Citations

1. West Virginia Case No. 04-0102-T-GI, *Frontier Communications of West Virginia Inc., Armstrong Telephone Company, Hardy Telecommunications Inc., Spruce Knob Seneca Rock Telephone Inc., War Telecommunications Company and West Side Telecommunications: General Investigation into the provision of Data Base Management*, Order (Nov. 20, 2007) (Exhibit ES-1).

2. Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) ("*Ohio Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Ohio Certification Rehearing Order*") (collectively, Exhibit ES-2).

3. Ohio Case No. 07-1280-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 the Ohio Bell Telephone Company dba AT&T Ohio*, Arbitration Award (Mar. 4, 2009) ("*Ohio AT&T Arbitration Award*") (Exhibit ES-3).

4. Ohio Case No. 07-1280-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 The Ohio Bell Telephone Company dba AT&T Ohio*, Entry on Rehearing, (June 17, 2009) ("*Ohio AT&T Rehearing Order*") (Exhibit ES-4).

5. North Carolina Docket P-1187, Sub 2, *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 BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Recommended Arbitration Order (April 4, 2009) ("*North Carolina RAO*") (Exhibit ES-5).

6. *See, e.g.*, *Ohio AT&T Arbitration Award* at 16 ("Section 252 endows us with arbitration and enforcement authority over all Section 251 agreements") (Exhibit ES-3); Ohio 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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*CBT Rehearing Award*") (Exhibit ES-7) ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. . . . the Commission has the authority and the requirement to consider Section 251(a) where it is applicable. . . The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements").

7. *See, e.g.*, California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCImetro*

Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996, Opinion Approving Arbitrated Interconnection Agreement as Amended (Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated."); Illinois Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff'd Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (Aug. 24, 2005), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); *North Carolina RAO* at 16 (finding that the North Carolina commission has the authority to arbitrate issues falling under Sections 251(c) and 251(a)) (Exhibit ES-5); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

8. Indiana Cause No. 43277, *Complaint of Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") against Verizon North, Inc. and Contel of the South, Inc.*

d/b/a Verizon North Systems (collectively "Verizon") Concerning the Refusal of Verizon to Allow Connection of INdigital's Wireless Enhanced 911 Telephone System Serving Public Safety Answering Points, and INdigital's Request for the Indiana Utility Regulatory Commission to Order the Connection under Reasonable Terms, Conditions, and Compensation, Final Order (Nov. 20, 2008) ("*Indiana INdigital Order*") (Exhibit ES-9). Verizon's Petition for Reconsideration of the *Indiana INdigital Order* was denied (Exhibit ES-11).

9. Ohio Case No. 07-1216-TP-ARB, *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*, Arbitration Award (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*") (Exhibit ES-12).

10. Illinois Docket No. 00-0769, P*etition 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.*, Arbitration Decision (Mar. 21, 2001) (Exhibit ES-13).

11. *911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 31-33 (2005) ("*VoIP E911 Order*").

12. West Virginia Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award (Nov. 14, 2008) ("*West Virginia Arbitration Award*") (Exhibit ES-18), *approved by* Commission Order (Dec. 16, 2008) (Exhibit ES-19).

13. Massachusetts D.T.C. 08-9, *Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts*, Arbitration Order (May 8, 2009) ("*Massachusetts Arbitration Award*") (Exhibit ES-19).

14. Ohio 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*, Arbitration Award (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*") (Exhibit ES-21).

Sorensen Direct Testimony Diagrams

Intrado Emergency Service Evolution

Designed to Meet Public Safety's Growing Critical Response Needs

