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The Docket No. is 070736-TP, In re: Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 2152(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

This is being filed on behalf of Intrado Communications Inc.

Total Number of Pages is 66

Intrado Communications Inc.'s Post Hearing Brief

A version in MS Word 2003 is also attached.

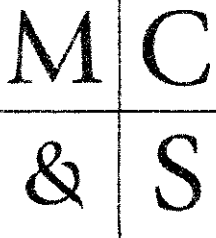
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August 14, 2008

VIA ELECTRONIC FILING

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Re: Docket No. 070736-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. is an electronic version of Intrado Communications Inc.'s Post-Hearing Brief in the above referenced docket. Also enclosed is a MS Word 2003 version of the document.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb

Enclosure

cc: Rebecca Ballesteros, Esq.
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Petition)
of Intrado Communications Inc. for Arbitration) Docket No. 070736-TP
Pursuant to Section 252(b) of the Communications Act)
of 1934, as amended, and Sections 120.80(13), 120.57(1),) Filed: August 14, 2008
364.15, 356.16, 364.161, and 364.162, F.S., and)
Rule 28-106.201, F.A.C to Establish an)
Interconnection Agreement with BellSouth)
Telecommunications, Inc. d/b/a AT&T Florida)

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Comm has built on its parent's emergency service expertise to become an integral part of the public safety industry.⁶ Intrado Comm is poised to offer Florida counties, public safety agencies, and Public Safety Answering Points ("PSAPs") a competitive alternative for their 911/E911 services, which have traditionally been provided by ILECs like AT&T.⁷ Intrado Comm can only deliver this alternative if it has equal access to all end users – PSAPs and 911 callers.⁸ Intrado Comm's competitive 911/E911 service offering directly responds to the goals of Congress and the Federal Communications Commission ("FCC") by providing "meaningful automatic location identification information that permits first responders to render aid, regardless of the technology or platform employed" by the caller.⁹ As the FCC has determined, it is imperative that public safety officials receive "accurate and timely information concerning the current location of an individual who places an emergency call, notwithstanding the platform or technology used by the provider or the means by which the individual places the call."¹⁰

Intrado Comm, however, cannot offer its innovative 911/E911 service offering to Florida PSAPs without first establishing mutually beneficial interconnection and interoperability arrangements with the ILECs who control access to the public switched telephone network ("PSTN").¹¹ Intrado Comm seeks interconnection with AT&T, which will allow AT&T's end users to reach Intrado Comm's initial end users (*i.e.*, Florida PSAPs) and vice versa.¹² This requires dedicated trunks from

⁶ Transcript at 126, line 3 (Spence-Lens Direct).

⁷ Transcript at 128, lines 21-23 (Spence-Lens Direct).

⁸ Transcript at 165, lines 9-13 (Hicks).

⁹ *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 10609, ¶ 6 (2007).

¹⁰ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) ("*TRS 911 Order*").

¹¹ Transcript at 76, lines 1-4 (Hicks Direct).

¹² Transcript at 76, lines 1-4 (Hicks Direct).

the end office of the 911 caller to two geographically diverse Intrado Comm selective routers (switches). These arrangements also will meet the goal of ensuring that “Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service.”¹³

Section 251(c) of the Act provides the most suitable vehicle for ensuring that Intrado Comm obtains the interconnection and interoperability arrangements it needs to provide its 911/E911 services to Florida counties and PSAPs while, at the same time, promoting the reliability and redundancy critical to public safety.¹⁴ Section 251(c) was intended to facilitate “[v]igorous competition,” which Congress understood “would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [ILECs].”¹⁵ Therefore, the process established by Section 251(c) and the FCC’s implementing rules eliminates these barriers to entry to give competitors like Intrado Comm “a fair opportunity to compete” in the marketplace.¹⁶

Like other consumers of telecommunications services who have benefited from Section 251(c) competition, Florida public safety entities deserve competitive choices and state-of-the art technologies.¹⁷ Intrado Comm’s network incorporates IP-based technologies and, as such, is able to fully accommodate legacy analog services and the myriad of IP-based services being offered today as well as readily adapt for the technologies of tomorrow, which are generally not supported by existing

¹³ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶ 96 (2007) (“*Katrina Order*”).

¹⁴ Transcript at 76, line 17 to 77, line 4 (Hicks Direct).

¹⁵ *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, ¶ 16 (1996) (“*Local Competition Order*”) (intervening history omitted), *aff’d* by *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁶ *Local Competition Order* ¶ 18.

¹⁷ Transcript at 216, lines 15-23 (Melcher Rebuttal).

911 networks.¹⁸ Adoption of Intrado Comm's proposed positions and contract language will "enable the public safety community to focus on future needs rather than requiring more from legacy systems, offer more redundancy and flexibility, and contribute greatly to improving compatibility between public safety systems that operate using different proprietary standards."¹⁹

ARGUMENT

ISSUE 1(a): WHAT SERVICE(S) DOES INTRADO COMM CURRENTLY PROVIDE OR INTEND TO PROVIDE IN FLORIDA?

*****Intrado Comm Position:** Intrado Comm's competitive 911/E911 services are telephone exchange services and are appropriately classified as telecommunications services.

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?

*****Intrado Comm Position:** Intrado Comm is entitled to interconnect its network with AT&T to access the PSTN, which Intrado Comm needs to provide 911/E911 services to Florida counties and PSAPs. Sections 251/252 were designed to promote the type of interconnection and interoperability Intrado Comm seeks.

A. Section 251(c) Provides the Necessary Interconnection to the Public Switched Telephone Network that Intrado Comm Needs to Provide Services in Florida

In order for Intrado Comm to provide its 911/E911 services to Florida public safety agencies, Intrado Comm must interconnect with ILECs like AT&T that control a significant majority of the local exchange market, and consequently, the consumers that make 911 calls destined for Intrado Comm served PSAPs.²⁰ The appropriate method of achieving such interconnection is through the framework established by Sections 251 and 252 of the Act, which was designed to promote competition by facilitating the interconnection of new entrants to the PSTN and to ensure the interoperability of co-

¹⁸ Transcript at 69, lines 6-8 (Hicks Direct); *see also* Hearing Exhibit No. 29.

¹⁹ *Katrina Order* ¶¶ 74-75, 80-82.

²⁰ Hearing Exhibit No. 11, Deposition of Thomas W. Hicks at 10, lines 5-10.

carrier networks.²¹ Indeed, when Congress amended the Act in 1996 to open local exchange markets to competition,²² it recognized that ILECs, such as AT&T, would have the incentive to thwart competition and therefore it established the Section 251/252 negotiation and arbitration process, which conferred upon competitive carriers not only a right to interconnect with the incumbent, but the right to do so on fair and pro-competitive terms.

Intrado Comm cannot offer its 911/E911 services in Florida without interconnecting to the PSTN, and AT&T is one of the dominant gatekeepers to that network.²³ Sections 251/252 were designed to protect competitors from experiencing unreasonable delays in entering the marketplace formerly controlled exclusively by the incumbent.²⁴ Unlike commercial negotiations where both parties may have an incentive to reach agreement, ILECs have generally demonstrated a reluctance to abide by the law, and thus, arbitration is necessary to ensure that competitors without equal bargaining power have their rights protected.²⁵ Section 252 of the Act is specifically designed to address the very unequal bargaining power manifest in negotiations between ILECs and competitors in order to advance Congress's goal of increased competition.²⁶

²¹ *Local Competition Order* ¶ 10.

²² Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, *et seq.* (1996)).

²³ Hearing Exhibit No. 11, Deposition of Thomas W. Hicks at 11, line 15 to 12, line 12.

²⁴ *See, e.g., Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, 2000 U.S. Dist. LEXIS 19649, 99-CV-4915 (ARR) (E.D. Va 2000) (noting that “[t]he tight schedule set out in the Act manifests an intention of Congress to resolve disputes expeditiously,” that the strict timelines contained in the Telecommunications Act indicate Congress’ desire to open up local exchange markets to competition without undue delay”) (quoting *AT&T Communications Sys. v. Pacific Bell*, 203 F.3d 1183, 1186 (9th Cir. 2000) and that “the legislative history explains that the purpose of the Act is ‘to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition’” (quoting H.R. Conf. Rep. No. 104-458, at 113 (1996) reprinted in 1996 U.S.C.C.A.N. 10, 124)).

²⁵ *Local Competition Order* ¶ 41 (noting “significant imbalances in bargaining power”).

²⁶ *Local Competition Order* ¶ 15 (the “statute addresses this problem [of the incumbent’s “superior bargaining power”] by creating an arbitration proceeding in which the new entrant may assert certain rights”); *see also id.* ¶ 134 (noting that because it is the new entrant’s objective to obtain services and access to facilities from the incumbent and thus

AT&T's witness admits that in order for a competitor to provide 911/E911 services, the competitor must be interconnected with the PSTN.²⁷ Competitors are entitled to interconnect with ILECs pursuant to 251(c).²⁸ Intrado Comm is a competitive local exchange carrier ("CLEC") and AT&T is an ILEC, yet AT&T claims Intrado Comm is the one CLEC that should be denied its 251(c) rights. Intrado Comm's legal right to 251(c) interconnection is well-established. As the FCC has recognized:

absent interconnection between the [ILEC] and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the [ILEC]'s network. Because an [ILEC] currently serves virtually all subscribers in its local serving area, an [ILEC] has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An [ILEC] also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the [ILEC]'s subscribers.²⁹

Congress addressed these problems in the 1996 Act by requiring ILECs to enter into an agreement with the 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.³⁰ Intrado Comm's request for Section 251(c) interconnection is premised on these same principles. Intrado Comm cannot provide 911/E911

"has little to offer the incumbent in a negotiation," the Act creates an arbitration process to equalize this bargaining power).

²⁷ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 47, lines 15-18 and 50, lines 8-10.

²⁸ *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, n.200 (2002) ("Virginia Arbitration Order") (stating that ILECs are required by Section 251(c)(2) to allow competitors to interconnect while interconnection arrangements between "non-incumbent carriers" are governed by Section 251(a)).

²⁹ *Local Competition Order* ¶ 10.

³⁰ *Local Competition Order* ¶¶ 10-11, 13.

services in Florida today (other than in a test environment) without interconnection to the PSTN pursuant to 251(c).³¹

B. Intrado Comm Provides Telephone Exchange Service

When Intrado Comm provides its complete 911/E911 service offering to Florida public safety agencies and PSAPs, Intrado Comm provides telephone exchange service. AT&T's arguments to the contrary should be rejected for the following reasons:

First, Intrado Comm's services have the same qualities as other telephone exchange services.³² The FCC has found that "telephone exchange service [is] not limited to traditional voice telephony, but include[s] non-traditional 'means of communicating information within a local area.'"³³ The FCC has also stated "a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area."³⁴ Intrado Comm's service fulfills this "key component" because it allows Florida consumers to be connected with PSAPs and communicate with local emergency personnel.³⁵

The FCC has found other non-traditional telephone services are telephone exchange services. For example, in its *Advanced Services Order*, the FCC found that even if "the transmission is a data transmission rather than a voice transmission ... such transmissions nevertheless constitute telephone exchange service."³⁶ It added "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the

³¹ Transcript at 171-72 (Hicks) (discussing the fact that Intrado Comm is not offering services today).

³² Transcript at 135, lines 6-7 (Spence-Lenss Direct).

³³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 17 (1999) ("*Advanced Services Order*").

³⁴ *Advanced Services Order* ¶ 30.

³⁵ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 50, lines 17-20.

³⁶ *Advanced Services Order* ¶ 21.

1996 Act.”³⁷ The FCC therefore found 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.”³⁸ The FCC has also found that certain electronic directory information services are telephone exchange services: “the call-completion service offered by many competing [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.”³⁹

The provision of telephone exchange services is not limited to services that must be provided over the competitive carrier’s exchange. The FCC has explicitly stated that it “has never suggested that the telephone exchange service definition is limited to voice communications provided over the public circuit-switched network.”⁴⁰ Rather, the Commission found 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.⁴¹

Thus, the fact that the wireline 911 network is interconnected to, but separate from, the PSTN⁴² does not change the classification of the 911/E911 services to be provided by Intrado Comm.

³⁷ *Advanced Services Order* ¶ 21.

³⁸ *Advanced Services Order* ¶ 20.

³⁹ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736, ¶ 17 (2001).

⁴⁰ *Advanced Services Order* ¶ 20.

⁴¹ *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 54 (1998) (emphasis added).

⁴² 47 C.F.R. § 9.3 (defining wireline E911 network).

Second, Intrado Comm will offer 911/E911 services to Florida public safety agencies similar to the product currently offered by AT&T in Florida. Interestingly, AT&T's Florida tariff specifically states that AT&T's 911 service

is a *telephone exchange communication service* whereby a Public Safety Answering Point (PSAP) designated by the customer may receive telephone calls to the telephone number 911 . . . [and] includes lines and equipment necessary for the answering, transferring and dispatching of public emergency telephone calls originated by persons within the serving area who dial 911.⁴³

AT&T cannot credibly argue that Intrado Comm's 911/E911 service offering is not telephone exchange service when it classifies its own service as such.⁴⁴

Third, there is no merit to AT&T's claims that Intrado Comm's Florida tariff acknowledges that Intrado Comm does not provide local exchange services.⁴⁵ The 911/E911 services provided by Intrado Comm are not intended to replace all of the local exchange services to which the public safety agencies may subscribe. Florida counties or PSAPs subscribe to additional local exchange service for administrative purposes, such as to place outgoing calls and to receive other emergency or non-emergency calls, including any which might be relayed by operators or terminated on PSTN-accessible local exchange telephone lines.⁴⁶ The statements in Intrado Comm's Florida tariff acknowledge this and are virtually identical to the requirements contained in AT&T's Florida tariff for 911/E911 services.⁴⁷ In its tariff, AT&T indicates that the 911 service "is not intended to replace the telephone service of the various public safety agencies" and that the PSAP customer must "subscribe for

⁴³ AT&T Florida, Inc. General Exchange Tariff, Section A24, First Revised Page 6 (effective April 3, 2001) (emphasis added); see also Hearing Exhibit No. 22 (providing relevant provisions of AT&T Florida tariff).

⁴⁴ Transcript at 151, lines 17-20 (Spence-Lenss Rebuttal).

⁴⁵ Hearing Exhibit No. 4, AT&T Response to Staff Interrogatory 55.

⁴⁶ Transcript at 151, line 24 to 152, line 12 (Spence-Lenss Rebuttal).

⁴⁷ Transcript at 151, line 24 to 152, line 12 (Spence-Lenss Rebuttal); see also Hearing Exhibit No. 17 (providing Intrado Comm's revised tariff).

additional local exchange service at the PSAPs for administrative purposes for placing of outgoing calls and for receiving other emergency calls.”⁴⁸ Intrado Comm understands PSAPs have a competitive choice when purchasing local exchange services for administrative purposes and acknowledges this in its tariff.

Fourth, the interconnection arrangements Intrado Comm seeks from AT&T are for the mutual exchange of traffic.⁴⁹ While 911 trunks are generally one-way trunks, they are capable of originating a call in a conferencing capacity, and may be used for two-way traffic purposes. For example, once a 911 call is delivered over the one-way trunks to the PSAP, the PSAP may then “hookflash” to obtain dial tone to originate a bridged call to a third-party.⁵⁰ The “mutual exchange” of traffic need not actually occur over the same trunks, and may be properly reflected by traffic flows of originating and terminating traffic between the various trunking configurations established between the interconnected parties.⁵¹ Further, although these trunks are engineered as one-way, they are capable of supporting two-way voice communications. Two-way communications, not two-way traffic, is the key consideration in the determination.⁵²

Section 251(c) interconnection agreements often contain provisions relating to 800 or toll-free services, operator services, directory assistance, telecommunications relay service (711), and other

⁴⁸ AT&T Florida, Inc. General Exchange Tariff, Section A24, Second Revised Page 2 (effective April 3, 2001); *see also* Hearing Exhibit No. 22 (providing relevant provisions of AT&T Florida tariff).

⁴⁹ 47 C.F.R. § 51.5 (defining “interconnection”); *see also* Transcript at 107, lines 3-11 (Hicks Rebuttal) (discussing how Intrado Comm’s proposed arrangements fit into the definition of “interconnection” adopted by the FCC).

⁵⁰ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 95.

⁵¹ *Advanced Services Order* ¶¶ 20-21, 30 (discussing “intercommunication” as the hallmark of telephone exchange service).

⁵² *Advanced Services Order* ¶ 20 (the FCC “has long interpreted the traditional telephone exchange definition to refer to ‘the provision of individual two-way voice communication by means of a central switching complex to interconnect all subscribers within a geographic area’”); *see also* Transcript at 177, lines 12-16 (Hicks) (“the services that Intrado intends to provide provides two-way voice communications. That does not imply two-way traffic.”).

types of services that are typically viewed as “one-way” services. For example, many providers of directory assistance offer a call completion service that allows the caller to connect to the party for which it was seeking information. Although these calls are only one-way (from the caller to the directory assistance provider and then to the ultimate called party), the FCC determined that directory assistance providers offering call completion services were providing telephone exchange services.⁵³ The FCC reasoned that the call completion service allows a “local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call.”⁵⁴ Thus, while the call completion service offered by the directory assistance provider “may not take the form of an ordinary telephone call (*i.e.*, one initiated by LEC provision of dial tone), [it] nonetheless ‘allows a local caller at his or her request to connect to another local telephone subscriber.’”⁵⁵ The same analogy applies for 911/E911 services. Intrado Comm’s provision of services to the PSAP allows the 911 caller to connect to its requested party, *i.e.*, the first responders answering the emergency call.⁵⁶

In sum, Intrado Comm’s 911/E911 services are appropriately classified as telephone exchange services.

C. The 911/E911 Service Offering Provided by Intrado Comm Is Appropriately Classified as a Telecommunications Service, Not an Information Service

AT&T’s appears to claim that Intrado Comm’s 911/E911 service is an information service.⁵⁷

AT&T’s arguments- should be rejected for the following reasons:

⁵³ Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, 16 FCC Rcd 2736, ¶¶ 20-21 (2001) (“*DA Call Completion Order*”).

⁵⁴ *DA Call Completion Order* ¶ 20.

⁵⁵ *DA Call Completion Order* ¶ 21.

⁵⁶ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 44.

⁵⁷ See, e.g., Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 10, line 16 to 11, line 1.

First, Intrado Comm's inclusion of internet protocol within its network has no bearing on the classification of the 911/E911 service Intrado Comm will provide to Florida PSAPs. The FCC has determined that the mere incorporation of Internet protocol within a carrier's network does not transform the services provided by the carrier into unregulated information services absent other considerations.⁵⁸ How Intrado Comm may transport calls within its network has no bearing on the classification of the ultimate 911/E911 service offering it provides to Florida PSAPs.⁵⁹

Second, AT&T's argument ignores the nature of the comprehensive, integrated 911/E911 service offering Intrado Comm will provide in Florida. As Intrado Comm's witness explained, there are three integrated components that are necessary to provide 911/E911 service – the selective router, the database system that retains the Automatic Location Information (“ALI”), and the transport of the 911 call to the PSAP.⁶⁰ While the ALI database function as a stand-alone service may be viewed as an information service (although in a carrier-to-carrier relationship pursuant to Section 251 it is considered a telecommunications service), the comprehensive 911/E911 service offering to be provided by Intrado Comm in Florida combines all three components into one integrated product just as AT&T's 911/E911 service to PSAPs does today.⁶¹ The switching and transmission components would be useless without the ALI functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records.⁶² The FCC also recognizes that all of the various components come together to form an all-inclusive service offering known as the

⁵⁸ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004); *see also Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290 (2006) (classifying as telecommunications services certain prepaid calling cards utilizing Internet Protocol).

⁵⁹ Transcript at 154, lines 17-23 (Spence-Lenss Rebuttal).

⁶⁰ Transcript at 70 (Hicks Direct).

⁶¹ Transcript at 155, line 11 to 156, line 5 (Spence-Lenss Rebuttal).

⁶² Transcript at 71, lines 8-11 (Hicks Direct).

“wireline E911 network.”⁶³ Further, the FCC has found ALI provisioning so essential to the 911 call process that it has imposed outage reporting requirements on ALI service providers when ALI services are disrupted for specified periods.⁶⁴ Segmenting the physical switching and routing of 911 calls from the database that provides the routing information for such calls, as AT&T appears to suggest, would significantly diminish the viability and reliability of 911 services.⁶⁵ The bottom line is that the three integrated components are so intertwined that “one would be useless without the other.”⁶⁶

Third, AT&T’s arguments also disregard the long-standing principle that the classification of a service depends “on the nature of the service being offered to customers.”⁶⁷ What a company offers to a customer is what the customer perceives to be the integrated finished product, even to the exclusion of discrete components that compose the product.⁶⁸ Thus, the classification of Intrado Comm’s 911/E911 services turns on the nature of the functions offered,⁶⁹ how the service is marketed, and whether the information service features and the telecommunications service are a single, integrated offering.⁷⁰ When a Florida public safety agency designates Intrado Comm as its 911/E911 service provider, it understands that it is purchasing a complete, integrated 911/E911 service offering, not separate piece parts.⁷¹

⁶³ *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 15 (2005) (“*VoIP E911 Order*”) (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

⁶⁴ 47 C.F.R. § 4.5(e)(4).

⁶⁵ Transcript at 71, lines 9-11 (Hicks Direct).

⁶⁶ Transcript at 71, line 9 (Hicks Direct).

⁶⁷ *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 59 (1998).

⁶⁸ *National Cable & Telecommunications Association v. Brand X Internet Services*, 125 S. Ct. 2688, 2704 (2005) (“*Brand X*”).

⁶⁹ *Brand X*, 125 S. Ct. at 2704.

⁷⁰ *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290, ¶ 13 (2006).

⁷¹ Transcript at 155, line 20 to 156, line 5 (Spence-Lenss Rebuttal).

D. Interconnection of 911 Networks Is Governed by Section 251(c)

Interconnection between a CLEC and an ILEC for the purpose of providing competitive 911/E911 services to PSAP customers is governed by 251(c) of the Act.⁷² The FCC has specifically confirmed that it

requires [local exchange carriers] 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. We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions. . . .⁷³

There is nothing to suggest that a competitor's right to 251(c) can be denied if it seeks to provide a competitive 911/E911 service to public safety agencies or PSAPs. As reviewed above, 911/E911 services to PSAPs are telephone exchange services, Intrado Comm is a competitive local exchange carrier, and AT&T is required by Section 251(c) to provide interconnection to Intrado Comm. The Act does not limit a competitor's right to seek 251(c) interconnection for certain kinds of telephone exchange services. Section 251(c) is the appropriate mechanism for Intrado Comm to secure "nondiscriminatory access to, and interconnection with, [AT&T's] networks for the provision of 911 and E911 services."⁷⁴

⁷² *Local Competition Order* ¶ 997.

⁷³ *VoIP E911 Order* ¶ 38 (emphasis added); see also n.128; 47 U.S.C. § 271(c)(2)(B)(vii)(1) (requiring Bell Operating Companies ("BOCs") to provide nondiscriminatory access to 911 and E911 services to other telecommunications carriers); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, ¶ 256 (1997) ("[S]ection 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity."); *id.* ("For facilities-based carriers, nondiscriminatory access to 911 and E911 service also includes the provision of unbundled access to [a BOC's] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office . . .").

⁷⁴ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282, ¶ 25 (2002) ("*City of Richardson Order*").

Under Section 251(c)(2)(C), AT&T must provide Intrado Comm with interconnection that is at least equal in quality to the interconnection AT&T provides itself for routing 911/E911 service calls.⁷⁵ Interconnection to the PSTN “is an essential component of [the] end-to-end” 911/E911 service Intrado Comm intends to provide in Florida.⁷⁶ The FCC has recognized the importance of ensuring competitors receive interconnection for 911/E911 services in the same manner that incumbents provide such service to themselves (*i. e.*, parity).⁷⁷ Intrado Comm’s proposed interconnection arrangements will ensure such parity.

E. The Use of Un-Filed, Un-Regulated Commercial Agreements by ILECs Undermines the Goals of and Violates the Act

Throughout this proceeding, AT&T has claimed that the arrangements requested by Intrado Comm should be included in a commercial agreement, similar to the agreements AT&T has in place with several incumbent carriers in Florida today.⁷⁸ Intrado Comm is not required to use a commercial agreement similar to the agreements AT&T has in place with other non-competing ILEC 911/E911 service providers today. In addition, the commercial agreements between AT&T and other non-competing ILECs should have been filed with this Commission.

A cornerstone principle of Sections 251 and 252 is to ensure that interconnection arrangements do not favor one carrier over another.⁷⁹ For this reason, the FCC determined that the Act requires all interconnection agreements, *including* those negotiated before the date of enactment, be submitted to

⁷⁵ *Virginia Arbitration Order* ¶ 652.

⁷⁶ *City of Richardson Order* ¶ 25.

⁷⁷ *Local Competition Order* ¶ 16.

⁷⁸ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 49, lines -16.

⁷⁹ *See, e.g.*, 47 U.S.C. §§ 251(c)(2)(D) (interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory), 252(d)(1) (state commission determinations must be nondiscriminatory); *Local Competition Order* ¶ 1296 (discussing intent of 251/252 to prevent discrimination).

state commissions for approval pursuant to Section 252(e).⁸⁰ The FCC specifically reviewed whether to exempt from Section 252(e) the contracts between neighboring non-competing ILECs like those agreements AT&T has in place with other 911/E911 service providers, and rejected that approach. The FCC found that, if it were to except such agreements from public disclosure, the parties to those agreements might have an incentive to insulate themselves from competition in order to preserve the terms of their preexisting agreements.⁸¹ The FCC reasoned that a new entrant cannot effectively compete if the new entrant is unable to obtain from an ILEC interconnection terms that are as favorable as those the ILEC offers a neighboring carrier.⁸²

Therefore, the FCC determined that state commissions “should have the opportunity to review all agreements, including those that were negotiated before the new law was enacted” to “best promote[] Congress’s stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms” and “to ensure that such agreements do not discriminate against third parties.”⁸³ Having the opportunity to review existing agreements gives a state commission and potential competitors “a starting point for determining what is ‘technically feasible’ for interconnection,” such as the types of standards and operational procedures in place between carriers.⁸⁴ More recently, the FCC re-emphasized its earlier findings and explicitly stated that any “agreement that creates an ongoing obligation pertaining to resale, number portability,

⁸⁰ *Local Competition Order* ¶ 165; see also 47 U.S.C. § 252(a)(1) (agreements arrived at through voluntary negotiations, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the state commission for approval).

⁸¹ *Local Competition Order* ¶ 168.

⁸² *Local Competition Order* ¶ 168.

⁸³ *Local Competition Order* ¶ 167 (emphasis in original).

⁸⁴ *Local Competition Order* ¶ 167.

dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement” subject to Section 252.⁸⁵

Using a non-251 commercial agreement as AT&T suggests would violate the Act’s requirements that interconnection agreements be filed with state commissions pursuant to Section 252 as well as deny Intrado Comm its rights to a Section 251(c) agreement.^{86/} The use of a commercial arrangement between AT&T and Intrado Comm would also hinder other providers of competitive 911/E911 services’ ability to compete with AT&T in the provision of 911/E911 services to PSAPs.⁸⁷ AT&T cannot use the commercial agreement process to discriminate or to evade its responsibilities under the Act.

In sum, Section 251(c) is the appropriate vehicle for Intrado Comm to obtain the interconnection and interoperability it needs to provide competitive 911/E911 services to Florida public safety agencies.

⁸⁵ *Qwest Communications International 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 FCC Rcd 19337, ¶ 8 (2002) (emphasis in original) (“*Qwest Order*”).

^{86/} 47 U.S.C. §§ 252(e)(1), (h).

⁸⁷ *Cf. Local Competition Order* ¶ 168.

ISSUE 1(c): OF THE SERVICES IDENTIFIED IN 1(a), FOR WHICH IF ANY SHOULD RATES APPEAR IN THE ICA?

ISSUE 1(d): FOR THOSE SERVICES IDENTIFIED IN 1(c), WHAT ARE THE APPROPRIATE RATES?

*****Intrado Comm Position:** The rates proposed by Intrado Comm to facilitate AT&T's connection to Intrado Comm's network are reasonable and AT&T imposes similar charges. Inclusion of these rates in the Parties' Section 251(c) interconnection agreement is appropriate because they support the mutual exchange of traffic between the Parties.

The Parties' Section 251(c) interconnection agreement addresses the mutual exchange of traffic between their networks as required by the Act.⁸⁸ To offer 911 calling services to its end users, AT&T is required to secure access to Intrado Comm's network when Intrado Comm serves as the designated 911/E911 service provider.⁸⁹ Intrado Comm has proposed rates for access ports or "terminations" on its network that would be applied when AT&T terminates traffic on Intrado Comm's network that is destined for an Intrado Comm served PSAP.⁹⁰ Intrado Comm's proposed charges are similar to the charges imposed by AT&T on competitors for interconnection to AT&T's network.⁹¹ These charges apply to any carrier seeking to connect to Intrado Comm's network. Terms and conditions regarding Intrado Comm's rates are necessary to effectuate this mutual exchange of traffic.⁹²

Contrary to AT&T's claims, Intrado Comm is not preventing AT&T from using its own facilities or the facilities of a third party to reach Intrado Comm's network.⁹³ Even if AT&T uses its own facilities, AT&T will be required to pay Intrado Comm for the physical connection to Intrado

⁸⁸ Transcript at 107, lines 3-11 (Hicks Rebuttal).

⁸⁹ Transcript at 48, lines 7-17 (Clugy Rebuttal); Transcript at 49, lines 12-24 (Clugy).

⁹⁰ Hearing Exhibit No. 36.

⁹¹ Transcript at 138, lines 6-10 (Spence-Lenss Direct); Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 75.

⁹² Transcript at 165, lines 17-25 (Hicks).

⁹³ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 14, lines 7-9.

Comm's switch (*i.e.*, the selective router port). Nor is Intrado Comm under an obligation to limit its rates to the rates charged by AT&T or otherwise comply with the pricing standards imposed on ILECs under the Act.⁹⁴ In fact, the Wireline Competition Bureau of the FCC has specifically rejected ILECs' attempts to cap competitors' rates at the prevailing ILEC rate for facilities and services other than reciprocal compensation.⁹⁵ Intrado Comm's proposed rates should be adopted for inclusion in the interconnection agreement⁹⁶ as well as Intrado Comm's proposed language referencing its pricing attachment.⁹⁷

In addition, AT&T should not be permitted to impose unspecified tariffed rates on Intrado Comm. AT&T's proposed language would allow AT&T to charge for 911 interconnection facilities based on the pricing appendix or at "standard" AT&T 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.⁹⁸ Any references to tariffed rates should be eliminated from the 911 Appendix.⁹⁹

⁹⁴ 47 U.S.C. § 252(d); *see also* Transcript at 362, lines 11-12 (Pellerin) (admitting CLECs are not subject to 252 pricing requirements).

⁹⁵ *Virginia Arbitration Order* ¶¶ 581-89.

⁹⁶ Intrado Comm's proposed rates are set forth in Hearing Exhibit No. 36.

⁹⁷ Appendix Pricing § 1.1.

⁹⁸ 47 U.S.C. §§ 251(c)(2)(4); 252(d)(1).

⁹⁹ Appendix 911 §§ 3.3.2, 10.1.

ISSUE 2: IS THE 9-STATE TEMPLATE INTERCONNECTION AGREEMENT THE APPROPRIATE STARTING POINT FOR NEGOTIATIONS? IF NOT, WHAT IS?

*****Intrado Comm Position:** The Parties should use the agreement they have already negotiated and revised. AT&T has offered no valid reason for not using that agreement in Florida. AT&T's refusal is even more egregious given its development of the 22-state template, which contains many of the 13-state provisions at issue between the Parties.

Intrado Comm seeks to utilize the interconnection agreement template that the Parties have spent significant time reviewing, negotiating, and revising in connection with their Ohio negotiations.¹⁰⁰ The Parties have already negotiated and reached agreement on many of the outstanding issues before this Commission, and AT&T has provided no valid reason for not continuing to use that set of documents in Florida. Intrado Comm is not trying "to take 13-state language and re-label it as 9-state."¹⁰¹ Rather, Intrado Comm has proposed contract language to be adopted by this Commission in accordance with the requirements of the Act.¹⁰² This contract language is based on AT&T's 13-state template interconnection agreement, and reflects the interconnection arrangements Intrado Comm must have to serve PSAPs and public safety agencies in Florida. Intrado Comm has no obligation to negotiate an interconnection agreement based on the templates produced by AT&T.¹⁰³ Nonetheless, Intrado Comm has agreed to negotiate an agreement starting with an AT&T template in hopes of reaching a mutually beneficial agreement more rapidly.

¹⁰⁰ Transcript at 167, lines 18-19 (Hicks).

¹⁰¹ Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 29.

¹⁰² 47 U.S.C. § 252. As the petitioner, Intrado Comm is entitled to frame the issues for arbitration. 47 U.S.C. § 252(b). Issue 2 as raised by Intrado Comm was whether Intrado Comm was entitled to a comprehensive interconnection agreement covering AT&T's entire footprint. AT&T, however, has manipulated the issue into a 9-state versus 13-state dispute.

¹⁰³ Transcript at 160, lines 11-18 (Spence-Lenss Rebuttal); *see also MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999) (finding "absurd" Ameritech's argument that "every interconnection agreement within a region must be identical" because such a "result would be at odds with § 252, which contemplates individualized negotiations between the incumbent and each incoming carrier").

An interconnection agreement based on one uniform template minimizes potential disputes and disagreements between the Parties because there is only one set of terms and conditions governing the Parties' relationship throughout the nation.¹⁰⁴ Presumably, this is why AT&T and other ILECs like to use their "template" interconnection agreements as the starting point for negotiations. In addition, AT&T has recognized the benefit of system-wide uniformity in other proceedings before this Commission. In order to achieve uniformity across its 22-state operating territory, AT&T asked the Commission for authority to use a new nomenclature on its end user bills "in order to be consistent across its 22-state footprint."¹⁰⁵ The Commission approved AT&T's request and recognized the "impetus" for AT&T's request to achieve "consistent labeling in bills across all states in the corporate footprint."¹⁰⁶ Apparently, uniformity across the 22-state region is desirable, but only when it benefits AT&T.¹⁰⁷

Intrado Comm understands that billing systems, unbundled network elements, pricing, and performance standards may differ by state. Despite repeated requests, AT&T has provided no reason, technical infeasibility or otherwise, for not using in Florida the documents the Parties have negotiated and agreed to use in Ohio. The only reason proffered by AT&T for refusing to use the interconnection agreement language already reviewed and revised by the Parties is that "AT&T would need to undertake a thorough analysis of the 13-state template to determine what language would need to be added, deleted and/or changed to accommodate the particular requirements for a CLEC ICA in

¹⁰⁴ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 77.

¹⁰⁵ Docket No. 080108-TP, *Petition to Permit Use of "Federal Subscriber Line Charge" to Identify the Interstate End User Charge on Customers' Bills by AT&T Florida*, Petition (filed Feb. 21, 2008).

¹⁰⁶ Docket No. 080108-TP, *Petition to Permit Use of "Federal Subscriber Line Charge" to Indentify the Interstate End User Charge on Customers' Bills by AT&T Florida*, ORDER NO. PSC-08-0305-PAA-TL, Notice of Proposed Agency Action Order Granting Permission to Use "Federal Subscriber Line Charge" on AT&T Customer Billing (May 9, 2008).

¹⁰⁷ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 23, lines 13-16 (acknowledging AT&T is taking steps to promote uniformity across its operating regions).

Florida.”¹⁰⁸ AT&T claims this process “could take several months or longer.”¹⁰⁹ These claims are specious and should be rejected. AT&T has already completed a similar process in two different venues.¹¹⁰

First, under the merger conditions adopted in connection with the AT&T/BellSouth merger, AT&T is required to port interconnection agreements between states in its 22-state operating territory.¹¹¹ Intrado Comm knows of at least one instance in which AT&T reviewed and revised a Wisconsin interconnection agreement (based on the 13-state template) for a competitor’s use in Florida.¹¹² There is no reason AT&T could not build off the work it has already done for another competitor.

Second, on July 1, 2008, AT&T made available a 22-state template interconnection agreement that governs AT&T’s entire 22-state territory.¹¹³ Based on a very cursory review, it appears that some of the provisions at issue between the Parties from the 13-state agreement are contained in the 22-state agreement.¹¹⁴ In fact, the 22-state agreement appears to be based on the 13-state agreement with the

¹⁰⁸ Transcript at 272, lines 12-15 (Pellerin Direct).

¹⁰⁹ Transcript at 272, line 16 (Pellerin Direct).

¹¹⁰ Cf. Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 62 (“AT&T has not undertaken the significant effort to identify the changes that would be necessary if the Commission ordered the use of the 13-state template for Intrado’s ICA.”); see also Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 25, lines 7-9 (same).

¹¹¹ *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, Appendix F (2007) (“*AT&T/BellSouth Merger Order*”); see also *AT&T/BellSouth Merger Order*, Concurring Statement of Commissioner Michael J. Copps (stating that the “portability of interconnection agreements” condition is an “important step[] for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition”).

¹¹² Transcript at 159, lines 12-15; see also Docket No. 07-0629, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P., et al. v. Illinois Bell Telephone Company*, Verified Answer to Verified Complaint and Request for Declaratory Ruling (filed Jan. 8, 2008), attaching copy of Wisconsin to Florida markup (Exhibit 1), available at: <http://www.icc.illinois.gov/e-docket/>.

¹¹³ The 22-state template interconnection agreement is available at <https://clec.att.com/clec/shell.cfm?section=115#Multi-State>. As discussed in Intrado Comm’s Petition for Arbitration, Intrado Comm requested a 22-state agreement from AT&T on at least three different occasions prior to filing its arbitration petition.

¹¹⁴ For example, the language in dispute under Issues 14(b), 21, 22, 31, 32, and 33 is contained verbatim in the 22-

necessary modifications, revisions, and additions made to accommodate the former BellSouth region. Given the similarities between the 13-state agreement and the 22-state agreement, AT&T should not have any issue using the interconnection agreement already reviewed and revised by the Parties in Ohio.

ISSUE 3(a): WHAT TRUNKING AND TRAFFIC ROUTING ARRANGEMENTS SHOULD BE USED FOR THE EXCHANGE OF TRAFFIC WHEN INTRADO IS THE DESIGNATED 911/E911 SERVICE PROVIDER?

*****Intrado Comm Position:** Line Attribute Routing is technically feasible and provides the most reliable and redundant 911/E911 network. Industry recommendations support the use of the trunking arrangements sought by Intrado Comm and AT&T imposes similar traffic routing requirements on competitors when they seek to terminate 911/E911 traffic on AT&T's network.

Intrado Comm's witnesses demonstrated that line attribute routing is technically feasible, and that similar processes are in use today for the routing of long distance calls.¹¹⁵ Under the FCC's rules, interconnection and access requests shall be deemed technically feasible absent technical or operational concerns that prevent fulfillment of the requests, and the determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns.¹¹⁶ AT&T has not demonstrated, by clear and convincing evidence, that line attribute routing is not technically feasible or that "specific and significant adverse impacts" would result from Intrado Comm's requested interconnection arrangement.¹¹⁷ The FCC has determined that the ILEC, not the competitor, has the burden to prove technical infeasibility to the relevant state commission.¹¹⁸

AT&T has not demonstrated that it is technically infeasible to utilize line attribute routing. Line attribute routing would not require AT&T to create any new information because the process is

state agreement.

¹¹⁵ Transcript at 114, lines 5-7 (Hicks Rebuttal); Transcript at 222, lines 1-6 (Melcher Rebuttal).

¹¹⁶ 47 C.F.R. § 51.5 (defining technical feasibility).

¹¹⁷ *Local Competition Order* ¶¶ 198, 203.

based on the Master Street Address Guide (“MSAG”), which AT&T would be required to use to get the information necessary to “attribute” the appropriate PSAP to the customer’s subscriber line that would allow for the trunking of the 911 call to the relevant 911/E911 network serving the PSAP.¹¹⁹ The process is similar to that used to establish presubscribed interexchange carriers.¹²⁰

Even if AT&T produced sufficient evidence to support its claims that line attribute routing would require it to modify its network, such evidence does not affect the analysis of technical feasibility. Under the FCC’s requirements, AT&T is obligated to make the requisite changes in its network and operational practices that will accommodate the interconnection of competing local exchange networks and the mutual exchange of traffic between those networks.¹²¹ The FCC has stated that incumbent carriers like AT&T are required to adapt their facilities to interconnection or use by other carriers, and an ILEC must accept the novel use of, and modification to, its network facilities to accommodate the interconnector.¹²² The FCC recognized that ILEC networks were not designed to accommodate third party interconnection, and the purposes of the Act would be frustrated if ILECs were not required, at least to some extent, to adapt their facilities.¹²³

Intrado Comm’s witness also confirmed that line attribute routing provides the most reliable and redundant 911/E911 network.¹²⁴ Switching via AT&T’s selective router is no longer necessary when Intrado Comm is the designated provider,¹²⁵ and inserting another stage of switching in the call

¹¹⁸ *Local Competition Order* ¶ 198; 47 C.F.R. § 51.5.

¹¹⁹ Transcript at 114, lines 5-7 (Hicks Rebuttal).

¹²⁰ Transcript at 222, lines 3-6 (Melcher Rebuttal).

¹²¹ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 65.

¹²² *Local Competition Order* ¶ 202.

¹²³ *Local Competition Order* ¶ 202.

¹²⁴ Transcript at 81-82 (Hicks Direct).

¹²⁵ Transcript at 119, lines 5-8 (Hicks Rebuttal).

processing path introduces the possibility of additional points of failure.¹²⁶ Moreover, AT&T's proposal to use a common trunk group for all 911/E911 service traffic destined for Intrado Comm's network is inconsistent with NENA recommendations.¹²⁷ The use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado Comm to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities. Industry recommendations, therefore, call for identifiable end office trunk groups for default routing.¹²⁸ This configuration readily assists both the 911 network provider and the PSAP in quickly troubleshooting 911 service problems, or redirecting 911 traffic from an end office on demand.¹²⁹

It is likely for these same reasons that AT&T itself imposes certain requirements on competitors seeking to terminate traffic on AT&T's 911 network.¹³⁰ Indeed, while AT&T claims that Intrado Comm's proposal would dictate how AT&T engineers its network,¹³¹ AT&T imposes similar requirements on competitors when it is the designated 911/E911 service provider. For example, AT&T's 22-state template interconnection agreement requires CLECs to transport "911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location."¹³² Thus,

¹²⁶ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 47.

¹²⁷ Transcript at 81, lines 15-17 (Hicks Direct).

¹²⁸ See, e.g., NENA Technical Information Document on Network Quality Assurance, NENA TID 03-501 at 11-12 (revised July 11, 2003) ("Serving End Office to E9-1-1 Control Office Switched Message Trunks must be route diverse. There should be at least two trunks from each central office to the E9-1-1 Control Office. A pair of diverse circuits may be assigned on a fiber ring system or a fiber system with diversely routed protection."), available at http://www.nena.org/media/File/03-501_20030711.pdf; NENA Standard for Enhanced 9-1-1 (E9-1-1) Default Routing Assignments and Functions, NENA 03-008 at 9 (Jan. 19, 2008) ("It must be recognized that 'default call routing' by definition may result in having some emergency calls reach a PSAP not directly responsible for the subscriber's location. Local authorities, E9-1-1 System Service Providers and carriers should ensure that default call routing impacts are minimized through the appropriate association of trunk groups with defined geographic areas."), available at http://www.nena.org/media/File/03-008_20080119.pdf

¹²⁹ Transcript at 81, lines 17-22 (Hicks Direct).

¹³⁰ Transcript at 457, line 20 to 458, line 9 (Neinast).

¹³¹ Transcript at 444, lines 14-16 (Neinast Supplemental Rebuttal).

¹³² See, e.g., AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that

given that AT&T's requirements for competitors connecting to its network are essentially no different than what Intrado Comm seeks here, Intrado Comm's proposed language should be adopted.¹³³

Further, AT&T should not be permitted to charge Florida public safety agencies for services AT&T no longer provides.¹³⁴ Switching via AT&T's selective router is no longer necessary when Intrado Comm is the designated provider,¹³⁵ and thus AT&T will no longer provide selective routing services, ALI services, or database management services when Intrado Comm is the designated 911/E911 service provider.¹³⁶ Selective routing involves termination of a call to a PSAP.¹³⁷ When Intrado Comm is the designated provider, AT&T will no longer be terminating calls to the PSAP.¹³⁸ A Florida public safety agency should not be disadvantaged or required to incur unnecessary costs simply because it chooses a competitive provider.¹³⁹

"CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR").

¹³³ Appendix 911 §§ 6.1.1, 6.1.1.1., 6.1.1.2, 6.1.1.3.

¹³⁴ Transcript at 111, lines 8-14 (Hicks Rebuttal); Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 84 (admitting AT&T will charge); *see also* Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service*, by *Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (Fla. P.S.C. June 4, 2008) ("The law is clear that telecommunications companies may not charge for services they do not provide. Section 364.604(2) provides that '[a] customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.'").

¹³⁵ Transcript at 81, lines 5-7 (Hicks Direct).

¹³⁶ Transcript at 119, lines 5-8 (Hicks Rebuttal).

¹³⁷ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 51.

¹³⁸ Transcript at 119, lines 4-8 (Hicks Rebuttal).

¹³⁹ Transcript at 118, lines 16-19 (Hicks Rebuttal).

ISSUE 3(b): WHAT TRUNKING AND TRAFFIC ROUTING ARRANGEMENTS SHOULD BE USED FOR THE EXCHANGE OF TRAFFIC WHEN AT&T IS THE DESIGNATED 911/E911 SERVICE PROVIDER?

*****Intrado Comm Position:** AT&T's proposed language would prevent Intrado Comm from using third-parties to obtain the necessary trunking facilities to the selective router and imposes unlawful trunking requirements on Intrado Comm.

Intrado Comm 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 Comm, however, disagrees with AT&T's language that would require Intrado Comm to "provide interconnection trunking at" each AT&T selective router.¹⁴⁰ Just as AT&T has argued in other contexts,¹⁴¹ Intrado Comm has the right to either self-provision trunking or obtain trunking from a third-party. AT&T's use of the term "provide" would unlawfully limit Intrado Comm's ability to use third-party providers. Intrado Comm's proposed language, which states that Intrado Comm will "arrange to deliver 911 traffic to" AT&T's selective routers should be adopted.¹⁴²

AT&T's language also imposes unlawful trunking requirements on Intrado Comm for non-911 traffic. Specifically, AT&T's language would require Intrado Comm to establish trunking to each local tandem in a LATA, and in some cases trunking to each end office in a local exchange area.¹⁴³ For non-911 traffic, Intrado Comm is entitled to establish a single point of interconnection ("POI") per LATA and is under no obligation to establish additional facilities beyond that POI.¹⁴⁴ AT&T's language should be rejected.

¹⁴⁰ Appendix 911 § 4.2.1.

¹⁴¹ Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 14, lines 7-9.

¹⁴² Appendix 911 § 4.2.1.

¹⁴³ Appendix ITR § 4.2.

¹⁴⁴ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a) ("[a]n incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . at any technically feasible point within the incumbent LEC's network"); *Virginia Arbitration Order* ¶ 52 ("competitive LECs may request interconnection at any technically feasible point"); *Developing a Unified Inter-carrier Compensation Regime*, 16 FCC Rcd

ISSUE 4(a): WHAT TERMS AND CONDITIONS SHOULD GOVERN POINTS OF INTERCONNECTION (POIs) WHEN INTRADO COMM IS THE DESIGNATED 911/E911 SERVICE PROVIDER?

*****Intrado Comm Position**: Intrado Comm's proposed physical architecture arrangement benefits public safety. Interconnection on Intrado Comm's network is appropriate when Intrado Comm is the designated 911/E911 service provider and is consistent with the purpose of Section 251(c), the manner in which adjacent ILECs provide 911/E911 services today, and industry recommendations and guidelines.

While ILECs have experienced virtually no competition in their provision of 911/E911 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/E911 services to PSAPs is what policies will best promote reliable and resilient services, and ensures 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/E911 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 call others is different from interconnection that ensures 911 callers reach the right PSAP when they have an emergency and need help.

911/E911 services are unique and different.¹⁴⁵ This is demonstrated by the interconnection and routing arrangements ILECs have established between themselves (non-competing ILECs prior to and since the passage of the Act) and the arrangements ILECs impose on CLECs today for these services. The physical architecture arrangements Intrado Comm seeks in this proceeding are critical to issues of

9610, ¶ 112 (2001) ("*Intercarrier Compensation NPRM*") ("an [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point").

¹⁴⁵ See, e.g., *TRS 911 Order* ¶ 29 (recognizing "the importance of emergency call handling for all Americans"); *VoIP E911 Order* ¶ 6 ("the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services").

reliability, redundancy, and minimizing points of failure for 911/E911 services.¹⁴⁶ These are the key considerations when establishing interconnection arrangements for public safety providers.¹⁴⁷ A state commission's authority pursuant to Section 253(b) of the Act to "protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers,"¹⁴⁸ and the mandate of Section 251(c) that ILECs must provide interconnection that is at least equal in quality to that provided by the ILEC to itself and others,¹⁴⁹ support and necessitate the adoption of Intrado Comm's proposals in their entirety.¹⁵⁰

A. Interconnection on the ILEC Network Was Required for the Benefit of Competitors like Intrado Comm, Not Incumbents like AT&T

In enacting and implementing the Act, the goal of both Congress and the Commission was to ensure that new entrants could effectively compete with the entrenched incumbent provider. Section 251(c)(2) has four components to ensure effective interconnection arrangements between ILECs and CLECs are achieved. Interconnection is to be for the transmission and routing of telephone exchange service and exchange access;¹⁵¹ at any technically feasible point within the carrier's network;¹⁵² that is

¹⁴⁶ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954, ¶ 2 (1999) (adopting rules to "improve 911 reliability, [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); *Wireless Communications and Public Safety Act of 1999*, Pub. L. No. 106-81, 113 Stat. 1286 (expressing intent of statute to establish a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); see also *Katrina Order* ¶ 96 (recognizing goal to ensure "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service"); *New and Emerging Technologies 911 Improvement Act of 2008*, Pub. L. No. 110-283 (recognizing importance of reliable 911 systems).

¹⁴⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) (recognizing the goal to have the most efficient and most reliable 911/E911 network possible regardless of the platform or technology used by end user's service provider or the means by which the individual places the call).

¹⁴⁸ 47 U.S.C. § 253(b).

¹⁴⁹ 47 U.S.C. § 251(c)(2)(C).

¹⁵⁰ Appendix 911 §§ 6.3, 6.3.2; Appendix 911 NIM §§ 4.1, 4.1.1, 4.2, 4.2.1.

¹⁵¹ 47 U.S.C. § 251(c)(2)(A).

¹⁵² 47 U.S.C. § 251(c)(2)(B).

at least equal in quality to that provided by the ILEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;¹⁵³ and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with Section 252 of the Act.¹⁵⁴ The FCC, in its rules to implement the Act, gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC.¹⁵⁵ 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.¹⁵⁶ Giving competitors this “right” was intended to lower barriers to entry.¹⁵⁷ Thus, 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.

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.¹⁵⁸ 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.¹⁵⁹ 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

¹⁵³ 47 U.S.C. § 251(c)(2)(C).

¹⁵⁴ 47 U.S.C. § 251(c)(2)(D).

¹⁵⁵ *Local Competition Order* ¶ 172.

¹⁵⁶ *Local Competition Order* ¶ 209.

¹⁵⁷ *Local Competition Order* ¶ 209.

¹⁵⁸ *Intercarrier Compensation NPRM* ¶ 112 (“[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.”).

¹⁵⁹ *Virginia Arbitration Order* ¶ 71.

incumbent than the single point designated by the competitor.¹⁶⁰ Indeed, the FCC recognized that, while the Act *permits* a competitor to choose where it will deliver its traffic, “carriers do not always deliver originating traffic and receive terminating traffic at the same place.”¹⁶¹ The FCC’s implementing regulations were developed based on its recognition that the framework established by Section 251(c) was established for the benefit of the competitor and could be altered if the competitor chose to forego its rights.

The FCC further 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.¹⁶² The FCC clarified that the term “nondiscriminatory” in the 1996 Act was not synonymous with “unjust and unreasonable discrimination” used in the 1934 Act; it is a more stringent standard.¹⁶³ 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 the duty to be “just” and “reasonable” under Section 251(c)(2)(D). The FCC went on to add that ILECs may not discriminate against parties based upon the identity of the carrier.¹⁶⁴

B. ILECs Have Historically Delivered 911/E911 Traffic to the Network of the Entity Serving the PSAP or Required Competitors to Bring 911/E911 Traffic to the ILEC

Interconnection that is at least equal in type, quality, and price to the interconnection arrangements the ILEC provides to itself and others was required of ILECs to ensure effective local

¹⁶⁰ *Virginia Arbitration Order* ¶ 71.

¹⁶¹ *Virginia Arbitration Order* ¶ 71.

¹⁶² *Local Competition Order* ¶ 216.

¹⁶³ *Local Competition Order* ¶ 217.

¹⁶⁴ *Local Competition Order* ¶ 218.

competition emerged.¹⁶⁵ The FCC determined that 251(c)(2)(C) interconnection that is *at least* equal in quality to that enjoyed by the ILEC itself was the minimum requirement.¹⁶⁶ AT&T recognizes that the ILEC-established industry practice is that the POI for connecting to the 911/E911 network is at the selective router.¹⁶⁷ 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.¹⁶⁸

In today's environment, 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.¹⁶⁹ While Intrado Comm is not privy to the un-filed agreements between AT&T and adjacent ILECs, Intrado Comm seeks interconnection between its network and AT&T's network that is similar to what AT&T has implemented for itself and with other 911/E911 service providers in Florida.

The Act entitles Intrado Comm to interconnection "that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."¹⁷⁰ 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. AT&T is required under 251(c)(2)(C) to make the same

¹⁶⁵ S. Rep. No. 104-23, at 20 (1995).

¹⁶⁶ *Local Competition Order* ¶ 225.

¹⁶⁷ Hearing Exhibit No. 5, AT&T Response to Staff Interrogatories 35, 37, 99.

¹⁶⁸ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*").

¹⁶⁹ Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 22(c).

¹⁷⁰ 47 U.S.C. § 251(c)(2)(C).

arrangement available to Intrado Comm.¹⁷¹ AT&T cannot use 251(c)(2)(B) to undermine its obligations under 251(c)(2)(C).¹⁷²

Consistent with interconnection for 911/E911 traffic established between the ILECs when AT&T is the designated 911/E911 service provider, AT&T 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 POTS traffic.¹⁷³ Thus, while Section 251(c)(2)(B) and the FCC's rules entitle CLECs to designate a single POI on the ILEC network, AT&T's template interconnection agreement compels CLECs to interconnect at every ILEC selective router to deliver 911 calls to AT&T's PSAP customers.¹⁷⁴ Intrado Comm 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.¹⁷⁵ AT&T has not demonstrated why the interconnection arrangements it imposes on CLECs or ILECs when AT&T

¹⁷¹ *Local Competition Order* ¶ 225.

¹⁷² *See, e.g., Quarantello v. Leroy*, 977 So.2d 648, 651-652 (2008) ("In arriving at its conclusion, the trial court apparently considered the first phrase meaningless or in isolation from the second. We are, however, loathe to render statutory language irrelevant in any context, and we discern no valid reason to do so here. Statutory interpretation is a 'holistic endeavor'.") (citing *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)); *Goode v. State*, 39 So. 461, 463 (1905) ("It is the general rule, in construing statutes, that construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used should be rejected, if an interpretation can be found which will give it effect.").

¹⁷³ Transcript at 360, lines 19-21 (Pellerin) ("the CLEC pays for those trunks independent of where the POI is"); *see also* AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR").

¹⁷⁴ *See supra* n.173.

¹⁷⁵ Transcript at 85, lines 19-21 (Hicks Direct).

is the designated 911/E911 service provider are not equally applicable when Intrado Comm is the designated 911/E911 service provider.¹⁷⁶

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.¹⁷⁷ Further, 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.*¹⁷⁸ In comparing networks, the FCC determined that the substantial similarity of network facilities may be evidenced by their adherence to the same interface or protocol standards.¹⁷⁹ AT&T bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point.¹⁸⁰ AT&T has not made such a showing.

C. Intrado Comm's Proposal for Multiple POIs Is Consistent with Industry Recommendations and Guidelines

Intrado Comm has requested that AT&T establish interconnection to a minimum of two, geographically diverse POIs on Intrado Comm's network for reliability and redundancy purposes, and to benefit public safety.¹⁸¹ AT&T agrees that multiple POIs are beneficial.¹⁸² Implementation of

¹⁷⁶ Cf. Transcript at 463, lines 5-6 (Neinast) ("The AT&T position is that the selective router location is the proper demark for 911 traffic").

¹⁷⁷ *Local Competition Order* ¶ 554.

¹⁷⁸ *Local Competition Order* ¶ 204.

¹⁷⁹ *Local Competition Order* ¶ 204.

¹⁸⁰ *Local Competition Order* ¶ 554.

¹⁸¹ Transcript at 14, lines 9-14 (Hicks); Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 45; *see also generally Katrina Order.*

¹⁸² Hearing Exhibit No. 5, AT&T Response to Staff Interrogatories 87 and 97.

Intrado Comm's proposal would ensure that 911 calls are diversely routed, which is consistent with the FCC's recommendations.¹⁸³ In addition, the FCC is currently reviewing 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.¹⁸⁴

Intrado Comm's proposal is also consistent with industry recommendations as AT&T itself acknowledges.¹⁸⁵ The public benefit of the type of diversity and redundancy requested by Intrado Comm has been supported by the FCC's Network Reliability and Interoperability Council ("NRIIC"), which found "[w]hen all 9-1-1 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 (e.g., cable cut). The ECOMM Team recommends diversification of 9-1-1 circuits over multiple, diverse interoffice facilities."¹⁸⁶ Likewise, a National Emergency Number Association ("NENA") 911 Tutorial states:

9-1-1 systems are expected to function without interruption. However, expecting every network and PSAP component to work perfectly forever is unrealistic. Stuff happens – things break. Reliability, then, is achieved through diversity and redundancy. One method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to its 9-1-1 tandem. Each trunk group should be large enough to carry the entire traffic load for that end office.¹⁸⁷

¹⁸³ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 3, n.6 (1994) ("the American public depends on 911 services in its emergencies" and that reliability in the 911 network results from the deployment of diverse routing of interoffice facilities, multiple 911 tandem switch architectures, and diverse links for ALI database access).

¹⁸⁴ *VoIP E911 Order* ¶ 59.

¹⁸⁵ Transcript at 460, lines 9-11 (Neinast) ("We can only suggest that they would for the public safety aspect and the guidelines that the ESIF and FCC have recommended they have multiple POIs.").

¹⁸⁶ Network Reliability Council Focus Group IV, Essential Communications During Emergencies Team Report (Jan. 12, 1996), available at <http://www.nric.org/pubs/nric2/fg4/nrcfinal.pdf>; see also Hearing Exhibit No. 4, Intrado Comm Response to Staff Request for Production of Documents 5.

¹⁸⁷ NENA 9-1-1 Tutorial at 13 (Jan. 19, 2000), available at <http://www.nena.org/florida/Directory/911Tutorial%20Study%20Guide.pdf>; see also Hearing Exhibit No. 4, Intrado Comm Response to Staff Request for Production of Documents 5.

Thus, Intrado Comm's proposed language implements industry best practices for diversity and redundancy.

D. LATA Boundaries Do Not Apply to 911/E911 Service Traffic

LATA boundaries are inapplicable to 911/E911 services. The FCC and the federal district court overseeing the Modified Final Judgment recognized that many 911/E911 "transmissions cross LATA boundaries."¹⁸⁸ The district court specifically waived the LATA restrictions to ensure the Bell Operating Companies ("BOCs") could "provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary,"¹⁸⁹ thus allowing "the BOCs to provide multiLATA 911 services, including E911 services."¹⁹⁰ There are no restrictions on AT&T's ability to carry 911/E911 service traffic destined for Intrado Comm's network outside of the LATA.

E. Section 253(b) of the Act Gives the Commission the Authority to Adopt Intrado Comm's Proposed Arrangements

Section 253(b) of the Act gives 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."¹⁹¹ This statutory provision "set[s] aside a large regulatory territory for State authority" and gives the Commission ample support for adoption of Intrado Comm's proposals, which serve to protect the public safety and welfare

¹⁸⁸ *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, ¶ 20 (1998).

¹⁸⁹ *United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984).

¹⁹⁰ Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991).

¹⁹¹ 47 U.S.C. § 253(b).

and the rights of consumers.¹⁹² Section 253(b) gives the Commission “broad regulatory authority to achieve [these] public interest objectives,”¹⁹³ and Intrado Comm’s proposed physical architecture arrangements meet the objectives set forth in the Act.¹⁹⁴

ISSUE 4(b): WHAT TERMS AND CONDITIONS SHOULD GOVERN POINTS OF INTERCONNECTION (POIs) WHEN AT&T IS THE DESIGNATED 911/E911 SERVICE PROVIDER?

*****Intrado Comm Position:** Intrado Comm cannot agree to language that would undermine its rights as the competitor to designate the location of the POI.

The Act and the FCC’s rules do not permit AT&T to dictate the location of the POIs that Intrado Comm may use to exchange traffic with AT&T network.¹⁹⁵ When AT&T is the designated 911/E911 service provider and for the exchange of non-911 traffic, Intrado Comm as the competitor has the right to choose the location of the points of interconnection on the incumbents’ network.¹⁹⁶ AT&T’s proposed language, however, requires Intrado Comm to establish POIs at certain locations or otherwise requires the location of the POIs to be “negotiated” or “mutually agreed” by the Parties.¹⁹⁷ For 911 traffic, Intrado Comm agrees that AT&T’s selective router is the appropriate POI for Intrado Comm’s delivery of 911/E911 service traffic to AT&T when AT&T is the designated 911/E911

¹⁹² *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999); Transcript at 166, lines 20-24 (Hicks).

¹⁹³ *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916, ¶ 29 (2002).

¹⁹⁴ Transcript at 167, lines 8-17 (Hicks).

¹⁹⁵ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a) (“[a]n incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC’s network . . . at any technically feasible point within the incumbent LEC’s network”); *Virginia Arbitration Order* ¶ 52 (“competitive LECs may request interconnection at any technically feasible point”); *Intercarrier Compensation NPRM* ¶ 112 (“an [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point”).

¹⁹⁶ *See, e.g., Virginia Arbitration Order* ¶ 52 (“competitive LECs may request interconnection at any technically feasible point”); *Intercarrier Compensation NPRM* ¶ 112 (“an [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point.”).

¹⁹⁷ GTC §§ Whereas Clause 2, 1.1.116; Appendix 911 NIM § 2.2, 2.3, 3.1.1, 3.2.1; Appendix 911 §§ 3.3.2, 4.2.2, 4.2.4; Appendix NIM §§ 2.2, 2.3.

service provider. AT&T, however, refuses to identify the selective router as the POI. AT&T requires all 911 calls destined for its PSAP customers to be delivered to the relevant selective router.¹⁹⁸ Intrado Comm agrees 911 calls should be delivered to the relevant selective router when that selective router is the POI for all 911 traffic¹⁹⁹ and should be identified as such. For non-911 traffic, Intrado Comm is entitled to designate any technically feasible location within AT&T's network for the POI. Intrado Comm is not limited to AT&T's end office or tandem as AT&T's language requires.²⁰⁰ Intrado Comm's proposed language is consistent with law and should be adopted.

ISSUE 4(c): WHAT TERMS AND CONDITIONS SHOULD GOVERN POINTS OF INTERCONNECTION (POIs) WHEN A FIBER MEET IS USED?

*****Intrado Comm Position:** If the Parties decide to interconnect using a meet point, the meet point should be at a point between the Parties' networks (rather than an AT&T selective router/tandem/end office) with both Parties sharing the cost of the meet point arrangement.

In a meet point arrangement, the Parties negotiate an interconnection point between their networks at which one carrier's responsibility for service ends and the other carrier's begins and each Party pays for its portion of the costs to reach the meet-point.²⁰¹ 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 out to reach the meet point.²⁰² The FCC has determined that both the ILEC and the new entrant "gains

¹⁹⁸ See, e.g., AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR").

¹⁹⁹ King County Order ¶ 1 (selective router is "cost-allocation" point).

²⁰⁰ 47 C.F.R. §51.305(a)(2) (listing five "minimum" places that are considered technically feasible points).

²⁰¹ Compare Local Competition Order ¶ 553 (finding each carrier must build out to the meet point even if the ILEC is required to build out facilities to reach that point) with Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 41 (indicating AT&T has no obligation to build out facilities in a meet point arrangement).

²⁰² Appendix 911 NIM §§ 3.3.1, 3.3.7; Appendix NIM §§ 3.3.1, 3.3.1.1.

value” from the use of a meet point to exchange traffic and thus each Party to the arrangement should bear its portion of the economic costs of the arrangement.²⁰³ AT&T utilizes meet point arrangements with other providers in Florida (for both 911/E911 service traffic and non-911 traffic),²⁰⁴ meet point arrangements are technically feasible,²⁰⁵ and Intrado Comm has the right to obtain the same types of interconnection arrangements AT&T utilizes within its own network and with other carriers.²⁰⁶

Accordingly, Intrado Comm’s proposed language should be adopted.

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 Comm Position:** The inter-selective router arrangements requested by Intrado Comm are consistent with the interconnection and interoperability requirements of Section 251(c), and would put Intrado Comm on equal footing with other 911/E911 service providers in Florida. Separate, formal agreements with counties or PSAPs are not necessary.

Inter-selective router trunking allows emergency calls to be transferred between selective routers and the PSAPs connected to those selective routers while retaining the critical access to the caller’s number and location information associated with the emergency call.²⁰⁷ This type of interoperability between 911/E911 networks allows 911/E911 calls to be transferred among carriers to ensure misdirected emergency calls are transferred to the appropriate PSAP while still retaining access

²⁰³ *Local Competition Order* ¶ 553.

²⁰⁴ Transcript at 263, lines 22-27 (Pellerin Direct).

²⁰⁵ *Local Competition Order* ¶ 553.

²⁰⁶ 47 U.S.C. § 251(c)(2)(C).

²⁰⁷ Transcript at 90, lines 1-15 (Hicks Direct).

to the critical caller location information (*i.e.*, ALI) associated with the call.²⁰⁸ If the call is required to be transferred over the PSTN, the caller's ANI and ALI is lost. 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. For this reason, Intrado Comm requests that the Parties adopt arrangements to enable access to ALI when performing call transfers via inter-selective router trunking.²⁰⁹ The transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak.²¹⁰ 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).²¹¹

There is very little in dispute between the Parties with respect to Intrado Comm's proposed language. First is whether a separate agreement with the PSAP is necessary.²¹² Intrado Comm strongly supports the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back up routing, default routing, night transfer routing, call transfer routes, etc., with its designated 911/E911 service provider.²¹³ There is no need, however, to include a provision in the interconnection agreement that requires the Parties to obtain a separate, formal agreement with a Florida county or PSAP as a prerequisite to deploying inter-selective router

²⁰⁸ Transcript at 90, lines 1-12 (Hicks Direct).

²⁰⁹ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 106 (discussing how AT&T has implemented ALI interoperability arrangements between itself and other ALI providers in Texas).

²¹⁰ Transcript at 12, lines 7-19 (Hicks).

²¹¹ 47 U.S.C. § 251(c)(5). Intrado Comm has added language to AT&T's proposed Out-of-Exchange Traffic Appendix ("OET") to clarify that Appendix OET does not apply to inter-selective router calls.

²¹² Appendix 911 § 1.4.

²¹³ Transcript at 92, lines 3-11 (Hicks Direct).

trunking.²¹⁴ 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 Florida county or PSAP.

The second issue is whether the Parties are required to notify each other of changes in dial plans that support inter-selective router trunking.²¹⁵ Dial plans are used to determine to which PSAP emergency calls should be routed based on the route number passed during the call transfer.²¹⁶ Intrado Comm has proposed language that would require the Parties to notify each other of any changes, additions, or modifications to 911-related call transfer dial plans. Use of dial plans ensures interoperability between the Parties' networks. Interoperability, such as that contemplated by Intrado Comm's proposed language, falls squarely within the realm of Section 251(c). Section 251(c)(5) of the Act requires ILECs like AT&T to provide public notice of changes in their network "that would affect the interoperability of those facilities and networks."²¹⁷ The importance of interoperability between competing networks is highlighted by the FCC's rules that ILECs must provide public notice of any changes that "[w]ill affect the [I]LEC's interoperability with other service providers."²¹⁸ For the purposes of Section 251(c)(5) and its implementing rules, the FCC defined "interoperability" 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."²¹⁹ The FCC determined "that the concepts of seamlessness

²¹⁴ Thus, PSAPs are not cut-out of the process as AT&T claims. See Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 45.

²¹⁵ Appendix 911 § 7.4.15.

²¹⁶ Transcript at 95, lines 6-7 (Hicks Direct).

²¹⁷ 47 U.S.C. § 251(c)(5).

²¹⁸ 47 C.F.R. § 51.325(a)(2).

²¹⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("FCC Interoperability Order").

and transparency are already adequately incorporated into” its adopted definition and thus a specific reference to these concepts in the definition was not necessary.²²⁰ Accordingly, Intrado Comm’s proposed language should be adopted.²²¹

ISSUE 6(a): SHOULD REQUIREMENTS BE INCLUDED IN THE ICA ON A RECIPROCAL BASIS FOR: (1) TRUNKING FORECASTING; (2) ORDERING; AND (3) SERVICE GRADING?

ISSUE 6(b): IF NOT, WHAT ARE THE APPROPRIATE REQUIREMENTS?

*****Intrado Comm Position:** Provisions regarding Intrado Comm’s ordering process are appropriate for inclusion in the Parties’ Section 251(c) interconnection agreement because these terms are necessary for the mutual exchange of traffic between the Parties’ networks. The trunk forecasting provisions for non-911/E911 traffic should be reciprocal.

Intrado Comm has 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 Comm.²²² Intrado Comm must have some indication from AT&T as to how many trunks will be required to support calls between the Parties’ networks to adequately groom its network.²²³ AT&T claims that it will make trunk forecast information available to Intrado Comm, but disputes the requirement to provide an “initial” trunk forecast.²²⁴ Intrado Comm agrees with AT&T’s witness that it is very important to “size trunk groups properly,”²²⁵ which is the reason Intrado Comm seeks such a forecast from AT&T prior to entering the market. Forecasts are integral to ensuring the Parties’ networks meet industry

²²⁰ *FCC Interoperability Order* ¶ 178.

²²¹ Appendix 911 § 1.4, 7.4.1.5; Appendix OET § 1.1.

²²² Appendix ITR § 6.1.

²²³ Transcript at 97, lines 3-4 (Hicks Direct).

²²⁴ Transcript at 412, lines 12-15 (Neinast Direct).

²²⁵ Transcript at 412, line 15 (Neinast Direct).

standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delays.²²⁶ Forecasting obligations should apply equally to both Parties.

Similarly, language addressing how AT&T will order services from Intrado Comm should be included in the interconnection agreement.²²⁷ AT&T is wrong when it claims that Intrado Comm's language "would require AT&T Florida to follow whatever ordering procedures that Intrado posts on its website (as well as pay whatever rates Intrado wishes to charge)."²²⁸ First, Intrado Comm has provided detailed information regarding its ordering process,²²⁹ as well as explained that its procedures incorporate the standard ATIS-OBF Access Service Request process "much like AT&T uses today" and provides to other carriers when they order services from AT&T.²³⁰ There is no requirement for Intrado Comm to use a "specific access service request system"²³¹ and in fact, there is no uniform access service request process that all carriers use.²³² Second, there are no rates associated with Intrado Comm's ordering process.²³³ The only rates to be charged by Intrado Comm at this time are port termination charges as explained above, which will be set forth on Intrado Comm's pricing

²²⁶ Transcript at 97, lines 5-10 (Hicks Direct).

²²⁷ Appendix ITR §§ 8.6, 8.6.1.

²²⁸ Transcript at 413, lines 3-5 (Neinast Direct); *see also* Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 74.

²²⁹ *See, e.g.*, Hearing Exhibit No. 28; *see also* Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 31(b).

²³⁰ Transcript at 56, lines 17-19 (Clugy); *see also* Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 18(b) (explaining AT&T uses the ASR process).

²³¹ Transcript at 57, line 19 (Clugy).

²³² Transcript at 58, lines 1-2 (Clugy).

²³³ Transcript at 58, line 22 (Clugy).

appendix as attached to the Parties' interconnection agreement.²³⁴ Therefore, no changes could be made to those rates without an amendment to the interconnection agreement.²³⁵

AT&T is also wrong when it suggests that there are no FCC orders supporting inclusion of Intrado Comm's ordering process in the Parties' interconnection agreement.²³⁶ The Parties' Section 251(c) interconnection agreement addresses the mutual exchange of traffic between their networks as required by the Act, and terms and conditions regarding how services will be ordered between the Parties is necessary to effectuate this mutual exchange of traffic.²³⁷ As co-carriers exchanging 911/E911 service traffic with each other, both Parties will be purchasing services from the other.²³⁸ Thus each Party should be aware of the process to order services and facilities from each other. Inclusion of Intrado Comm's proposed language will ensure the necessary interoperability between the Parties' networks, which is essential to any interconnection arrangement.²³⁹

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?

*****Intrado Comm Position:** Once the interconnection agreement is executed, no further notice or action should be needed from Intrado Comm to implement the arrangements contained in the agreement other than routine discussions between the Parties' operational personnel.

AT&T's proposed language contemplates that the Parties will amend the interconnection agreement to set forth the specific interconnection arrangements to be utilized by the Parties.²⁴⁰

²³⁴ Intrado Comm's proposed rates are contained in Hearing Exhibit No. 36.

²³⁵ Transcript at 61, lines 12-16 (Clugy).

²³⁶ Transcript at 59, lines 8-18 (Clugy).

²³⁷ Transcript at 48, lines 14-17 (Clugy Rebuttal).

²³⁸ Transcript at 47, lines 12-14 (Clugy Rebuttal).

²³⁹ *FCC Interoperability Order* ¶ 178.

²⁴⁰ Appendix 911 NIM §§ 2.1, 2.4, 5.1, 5.3; Appendix NIM §§ 2.1, 4.1, 4.2, 4.3.

Intrado Comm does not agree with AT&T's requirement that Intrado Comm needs to provide AT&T any notice beyond the interconnection agreement or amend the agreement to effectuate the Parties' interconnection arrangements. Other than routine discussions between the Parties' operational personnel, no further notice or action should be needed from Intrado Comm to implement the interconnection arrangements set forth in the agreement.²⁴¹

Further, AT&T's language would require Intrado Comm to wait 120 days after the agreement is signed before the Parties can interconnect their networks.²⁴² It is unclear whether AT&T's originally proposed language applies to the Parties' initial interconnection arrangements, and thus Intrado Comm added the term "additional" to clarify that the waiting period did not apply to the initial interconnection of the Parties' networks.²⁴³ In a world where timely response to customer requests is important, having any period longer than 30 days to make a change is poor business. AT&T's concerns about service outages are misplaced.²⁴⁴ Should AT&T not be able to implement changes within 30 days, the new interconnection arrangement sought by Intrado Comm (and likely required by public safety) would be delayed in its implementation. A service outage would only occur if AT&T decided to terminate service without ensuring the appropriate interconnection arrangements were in place.²⁴⁵ Intrado Comm's proposed language is reasonable, reflects the need to respond quickly to public safety requests, and should be adopted.

²⁴¹ Compare Transcript at 98, lines 17-19 (Hicks Direct) with Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 43 (claiming Intrado Comm opposes operational meetings between the Parties).

²⁴² Appendix 911 NIM §§ 2.1, 2.4, 5.1, 5.3; Appendix NIM §§ 2.1, 4.1, 4.2, 4.3.

²⁴³ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 105.

²⁴⁴ Transcript at 437, lines 15-16 (Neinast Rebuttal).

²⁴⁵ Hearing Exhibit No. 3, Intrado Comm Response to Staff Interrogatory 105.

ISSUE 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?

*****Intrado Comm Position:** AT&T should be required to support interoperability between the Parties' databases, including the exchange of ALI information.

Please see Intrado Comm's arguments under Issue 5 above discussing the importance of ALI interoperability between the Parties' networks.

ISSUE 9: TO THE EXTENT NOT ADDRESSED IN ANOTHER ISSUE, WHICH TERMS AND CONDITIONS SHOULD BE RECIPROCAL?

*****Intrado Comm Position:** There is no obligation for the arrangements in the interconnection agreement to be subject to PSAP approval. Intrado Comm's proposed language clarifies the Parties' responsibilities to each other under the 911 Appendix.

AT&T has proposed language that would subject the interconnection arrangements contained in the Parties' agreement to PSAP or E911 customer approval.²⁴⁶ While this language is not necessary, Intrado Comm does not oppose its inclusion. Intrado Comm does, however, oppose the addition made by AT&T that such approval could be revoked, conditioned, or modified by the PSAP. There is no need for this language. Carriers do not design their network interconnection arrangements based on customer approvals, but rather the services they want to market to the target customer base. Carriers need to ensure they have the necessary network arrangements to make services available. AT&T is not obligated to police Intrado Comm's relationships with Florida PSAPs and public safety agencies. Intrado Comm 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. There is no need for public safety to approve anything. The language agreed to by the Parties already ensures that Florida PSAPs and E911

²⁴⁶ Appendix 911 § 1.3.

customers are part of the process, and there is no need for the surplus language proposed by AT&T. Intrado Comm's proposed language should be adopted.

Similarly, AT&T has proposed language setting forth the purpose of the arrangements contained in Appendix 911.²⁴⁷ While Intrado Comm generally disagrees that this language is necessary, it has accepted AT&T language subject to some minor edits, which clarify which entities are being discussed in the provision. Specifically, Intrado Comm's proposed language is as follows (with Intrado Comm's additions in bold italics):

- 9.1 The terms and conditions of this Appendix represent a negotiated plan *between the Parties* for providing *each other* access to 911 and E911 Databases, and provide trunking and call routing for purposes of 911 call completion to *each Party's respective* Public Safety Answering Point (PSAP) *customers* as required by Section 251 of the Act.

AT&T has offered no reason for its rejection of Intrado Comm's clarifying edits. These edits do not change the meaning of the provision; rather, they clarify who the specific entities are to which the provision is addressed. Intrado Comm's proposed language should be adopted.

ISSUE 10: WHAT 911/E911 RELATED TERMS SHOULD BE INCLUDED IN THE ICA AND HOW SHOULD THOSE TERMS BE DEFINED?

*****Intrado Comm Position:** "911 Trunk" should be defined as a trunk from AT&T's end office or Intrado Comm's switch to the E911 system. 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.

The only 911/E911-related definition at issue between the Parties is the definition of "911 Trunk."²⁴⁸ The Parties have agreed to the definition of a "911 Selective Router Trunk," which describes the 911 call delivery portion from the selective router to the PSAP or between selective routers. Therefore, the Intrado Comm's proposed definition more accurately describes the 911

²⁴⁷ Appendix 911 § 9.1.

²⁴⁸ Appendix 911 § 2.3.

transport piece from the caller's originating end office to a selective router. Intrado Comm's proposed language should be adopted.

ISSUE 13(a): WHAT SUBSET OF TRAFFIC, IF ANY SHOULD BE ELIGIBLE FOR INTERCARRIER COMPENATION WHEN EXCHANGED BETWEEN THE PARTIES?

*****Intrado Comm Position:** The Parties' interconnection agreement should be consistent with the rulings of the FCC with respect to intercarrier compensation. AT&T's proposed language improperly classifies the types of traffic subject to intercarrier compensation and uses definitions to go beyond the law.

AT&T's proposed language presents numerous problems and is generally inconsistent with the current rules applicable to intercarrier compensation. *First*, AT&T's language uses the term "local" to classify traffic subject to reciprocal compensation.²⁴⁹ In 2001, the FCC determined that its prior reliance on the characterization of traffic as local or non-local to determine whether reciprocal compensation obligations applied was incorrect.²⁵⁰ Specifically, the FCC determined that "all telecommunications traffic" 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.²⁵¹ 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.²⁵² The FCC determined that it should refrain from generically describing traffic as "local" traffic because the term "local" is particularly susceptible to varying meanings and,

²⁴⁹ Appendix Intercarrier Compensation §§ 4.1, 5.1; GTC § 1.1.84, 1.1.124.

²⁵⁰ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, ¶ 54 (2001) ("ISP Remand Order"), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), petition for reh'g and reh'g en banc denied (Sept. 24, 2002), cert. denied sub nom, 123 S. Ct. 1927 (2003); see also *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 6 (D.C. Cir. 2000) (finding "[Section] 251(b)(5) purports to extend reciprocal compensation to all 'telecommunications'").

²⁵¹ *ISP Remand Order* ¶ 32.

²⁵² *ISP Remand Order* at Appendix B.

significantly, is not a term used in Section 251(b)(5) or Section 251(g) of the Act.²⁵³ AT&T's proposed definition for "Section 251(b)(5) Traffic" (*i.e.*, reciprocal compensation 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 different areas that are subject to an Extended Area Service ("EAS") arrangement.²⁵⁴ 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 251(b)(5) applies to all traffic.²⁵⁵ AT&T's proposed language attempts to bind Intrado Comm through contract to compensation treatment of a broad range of traffic types that is inconsistent with the law for such traffic.²⁵⁶ AT&T is an active participant in trying to further define how 251(b)(5) should be applied²⁵⁷ and is well aware that the specific application of 251(b)(5) has been and will continue to be unresolved for a period of time. AT&T's proposed language is legally wrong and Intrado Comm's language should be adopted.

Second, 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

²⁵³ *ISP Remand Order* ¶ 34. On review, the D.C. Circuit remanded the FCC's determination that Section 251(g) exempted ISP-bound traffic from reciprocal compensation, but made no further determinations with respect to the remainder of the FCC's findings. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *petition for reh'g and reh'g en banc denied* (Sept. 24, 2002), *cert. denied sub nom*, 123 S. Ct. 1927 (2003).

²⁵⁴ Appendix Intercarrier Compensation §§ 4.1, 5.1

²⁵⁵ The FCC has been ordered by the D.C. Circuit Court to issue an order on remand by November 2008 given that the remand from the *WorldCom* decision has been unresolved since 2002. *See Core Communications, Inc.*, No. 07-1446, 2008 U.S. App. LEXIS 14501 (D.C. Cir. July 8, 2008).

²⁵⁶ *See, e.g.*, Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 3(c) (referencing the FCC's definition of "ISP-Bound Traffic," which is different from AT&T's definition).

²⁵⁷ In just the past year, AT&T has made at least ten (10) filings with the FCC attempting to influence the outcome of the FCC's ruling on remand regarding 251(b)(5) traffic.

provider of voice communication applications or services when such switch utilizes IP technology.”²⁵⁸ This definition appears to encompass interconnected VoIP services. The FCC defines “access service” as “services and facilities provided for the origination and termination of any interstate or foreign telecommunication.”²⁵⁹ The FCC has not determined whether interconnected VoIP services are telecommunications service or information services, and has not determined that interconnected VoIP services are subject to switched access charges.²⁶⁰ 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.²⁶¹ AT&T should not be permitted to impose obligations on Intrado Comm in the context of an agreement that it has admitted by its own pleadings to the FCC are not required. AT&T’s proposed language goes beyond the parameters of the FCC’s current rules regarding switched access services and should be rejected.

Third, 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.²⁶² FCC Rule 51.703(a) and the *ISP Remand Order*, by contrast, speak in terms of “telecommunications traffic,” not “wireline” or “dialtone.”²⁶³ AT&T’s arguments that these terms are proper because this is

²⁵⁸ Appendix Intercarrier Compensation § 16.1; Appendix ITR § 12.1.

²⁵⁹ 47 C.F.R. § 69.2(b).

²⁶⁰ Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 3(e) (admitting that the FCC has only addressed the application of access charges to IP-in-the-middle services).

²⁶¹ *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption,”* Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152 (filed July 17, 2008), available at www.neca.org/wawatch/wwpdf/071808_3.pdf. The FCC is currently seeking comment on AT&T’s request. Given this recent request, AT&T’s claim that its language “maintains the status quo” is wrong. See Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 70.

²⁶² Appendix Intercarrier Compensation § 1.2, 3.5; Appendix ITR § 2.14.

²⁶³ 47 C.F.R. § 51.703(a); *ISP Remand Order* ¶¶ 32, 34.

not a “wireless” agreement are unavailing.²⁶⁴ Intrado Comm does not offer wireless services and thus does not need an interconnection agreement covering “wireless” services. As interconnected co-carriers, however, Intrado Comm may deliver wireless traffic to AT&T to the extent Intrado Comm is providing telecommunications services to a wireless provider, and that wireless provider’s customers call an AT&T customer.²⁶⁵ AT&T’s language should be rejected.

ISSUE 13(b): SHOULD THE PARTIES COOPERATE TO ELIMINATE MISROUTED ACCESS TRAFFIC?

*****Intrado Comm Position:** The Parties should cooperate to eliminate misrouted access traffic consistent with FCC regulations, but AT&T should not be permitted to require Intrado Comm to block traffic or engage in other “self-help” mechanisms.

AT&T has proposed language governing how the Parties will deal with misrouted access traffic.²⁶⁶ Intrado Comm has revised this language to indicate that the Parties will cooperate to address misrouted access traffic consistent with FCC requirements. AT&T’s proposed language would require Intrado Comm to agree to exercise “self-help” remedies or block so-called misrouted access traffic. The FCC disfavors “self-help” policies and has indicated carriers may not block traffic because it is not in the public interest.²⁶⁷ AT&T’s language should be rejected as unlawful and Intrado Comm’s proposed language should be adopted.

²⁶⁴ Transcript at 288, line 20 to 289, line 6 (Pellerin Direct).

²⁶⁵ AT&T’s proposed language contemplates that third party traffic may be exchanged between the Parties. *See, e.g.,* Appendix Intercarrier Compensation § 3.5.

²⁶⁶ Appendix Intercarrier Compensation § 16.2; Appendix ITR § 12.2.

²⁶⁷ *See, e.g., Madison River Communications, LLC and Affiliated Companies*, Order, 20 FCC Rcd 4295 (2005) (taking enforcement action for blocking traffic); *OCMC, Inc.; Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14160, ¶ 13 (2005) (“a carrier may not engage in self-help”); *Bell Atlantic-Delaware, et al., Complainants, v. Frontier Communications Services, Inc., et al., Defendants*; and *Ameritech Illinois, Pacific Bell, et al., Complainants, v. Frontier Communications Services, Inc., Defendants*, Order on Review, 15 FCC Rcd 7475, ¶ 11 (2000) (“the Commission looks unfavorably on such self-help”); *see also MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999); *In the Matter of Communique Telecommunications, Inc. d/b/a LOGICALL*, Declaratory Ruling and Order, 10 FCC Rcd 10399 (1995).

ISSUE 15: SHOULD THE ICA PERMIT THE RETROACTIVE APPLICATION OF CHARGES THAT ARE NOT PROHIBITED BY AN ORDER OR OTHER CHANGE IN LAW?

*****Intrado Comm Position:** Intrado Comm disagrees with AT&T's language indicating how changes in law will be implemented. AT&T's language indicates that retroactive compensation arrangements will apply "uniformly" to all traffic exchanged as "local" calls under the agreement even if the change in law does not address all local calls.

Intrado Comm agrees that the interconnection agreement should include terms and conditions to address changes in law. Intrado Comm, however, disagrees with AT&T's proposed language discussing how such modifications will be implemented.²⁶⁸ AT&T's language indicates that retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement. 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 Comm has proposed language that would limit the application of retroactive compensation adjustments to those specifically ordered by intervening law. Intrado Comm's language should be adopted.

ISSUE 18(a): WHAT TERMS SHOULD APPLY TO THE INTERCONNECTION AGREEMENT?

ISSUE 18(b): WHEN SHOULD INTRADO NOTIFY AT&T THAT IT SEEKS TO PURSUE A SUCCESSOR ICA?

*****Intrado Comm Position:** There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

In connection with the Parties' negotiations for an Ohio interconnection agreement, the Parties agreed to contract language with respect to this issue. The Parties reached agreement on changes to the AT&T template language after negotiations that revised some contract provisions and Intrado Comm agreeing to accept the remainder of the provisions as originally proposed by AT&T.

²⁶⁸ Appendix Intercarrier Compensation § 4.2.1.

AT&T, however, has indicated that it is unwilling to use the entire negotiated provision from Ohio for the Parties' Florida interconnection agreement. Intrado Comm sees no reason to negotiate new generic provisions for use in Florida when the Parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado Comm's service territory to the greatest extent possible. AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in Florida. Simply stating that the 9-state template does not address this issue²⁶⁹ does not provide Intrado Comm with the terms it views as necessary for the interconnection agreement, *i.e.*, the complete language as negotiated for the Parties' Ohio interconnection agreement.

In addition, similar (and in some cases exact) language to that agreed-upon by the Parties is contained in AT&T's new 22-state template interconnection agreement. Given the similarities between the 13-state agreement and the 22-state agreement, AT&T should not have any issue using the interconnection agreement language already reviewed and revised by the Parties in Florida, 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.

ISSUE 20: WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS REGARDING BILLING AND INVOICING AUDITS?

*****Intrado Comm Position:** There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

²⁶⁹ Transcript at 269, lines 22-24 (Pellerin Direct).

ISSUE 22: SHOULD INTRADO BE PERMITTED TO ASSIGN THE INTERCONNECTION AGREEMENT TO AN AFFILIATED ENTITY? IF SO, WHAT RESTRICTIONS, IF ANY, SHOULD APPLY IF THAT AFFILIATE HAS AN EFFECTIVE ICA WITH AT&T FLORIDA?

*****Intrado Comm Position**: There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

ISSUE 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 COSTS?

*****Intrado Comm Position**: There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

ISSUE 24: WHAT LIMITATION OF LIABILITY AND/OR INDEMNIFICATION LANGUAGE SHOULD BE INCLUDED IN THE ICA?

*****Intrado Comm Position**: AT&T should be liable for losses if 911 errors, interruptions, defects, failures, or malfunctions are directly attributable to AT&T. AT&T cannot have unlimited protection from liability.

AT&T's language indicates that it will not be liable to Intrado Comm, Intrado Comm'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. This is very broad language and gives AT&T unlimited protection from liability. Intrado Comm has therefore proposed language that would make AT&T liable for losses if the errors, interruptions, defects, failures, or malfunctions of 911 were attributable to AT&T. 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.²⁷⁰ AT&T's language should be rejected.

ISSUE 25(a): SHOULD DISPUTED CHARGES BE SUBJECT TO LATE PAYMENT PENALTIES?

ISSUE 25(b): SHOULD THE FAILURE TO PAY CHARGES, EITHER DISPUTED OR UNDISPUTED, BE GROUNDS FOR THE DISCONNECTION OF SERVICES?

ISSUE 25(c): FOLLOWING NOTIFICATION OF UNPAID AMOUNTS, HOW LONG SHOULD INTRADO COMM HAVE TO REMIT PAYMENT?

ISSUE 25(d): SHOULD THE PARTIES BE REQUIRED TO MAKE PAYMENTS USING AN AUTOMATED CLEARINGHOUSE NETWORK?

*****Intrado Comm Position:** There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

ISSUE 29(a): WHAT ROUNDING PRACTICES SHOULD APPLY FOR RECIPROCAL COMPENSATION USAGE AND AIRLINE MILEAGE?

*****Intrado Comm Position:** Consistent with industry practice, reciprocal compensation usage should be billed in six-second increments and airline mileage should be billed in one-fifth mile increments. AT&T's proposed language of rounding up does not reflect current industry practices.

Consistent with industry practice, reciprocal compensation usage should be billed in six-second increments and airline mileage should be billed in one-fifth mile increments. AT&T's proposed language of rounding up to the next minute or mile does not represent current industry practice.²⁷¹ It is Intrado Comm's experience that many carrier-to-carrier agreements and carrier tariffs utilize six-

²⁷⁰ See, e.g., Docket No. 040130-TP, *Joint Petition by NewSouth Communications Corp. et al. for Arbitration of Certain Issues Arising in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-05-0975-FOF-TP (Oct. 11, 2005) (in another context, finding "that a party's liability should be limited to the issuance of bill credits in all circumstances other than gross negligence or willful misconduct"); *Rich Electronics, Inc. v. Southern Bell Tel. & Tel. Co.*, 523 So. 2d 670, 672 (1988) (stating "well-established" position "that a limitation on the liability of a public utility may not shelter the utility from liability for gross negligence or willful misconduct").

²⁷¹ Appendix Pricing §§ 2.2, 2.3; Appendix Intercarrier Compensation § 14.4.

second increments for per minute charges and one-fifth increments for per mile charges.²⁷² Indeed, when questioned by Staff with respect to industry practices, AT&T could point to no document or standard that supports its proposed rounding methods.²⁷³ While AT&T argues that the financial impact to Intrado Comm of such rounding is minimal,²⁷⁴ Intrado Comm should not be required pay AT&T more than it otherwise would owe to AT&T. AT&T's language should be rejected.

ISSUE 29(b): IS AT&T PERMITTED TO IMPOSE UNSPECIFIED NON-RECURRING CHARGES ON INTRADO COMM?

*****Intrado Comm Position:** Any charges to be applied to Intrado Comm via the interconnection agreement must be developed through the Section 252 process with approval by the Commission. AT&T should not be permitted to arbitrarily develop rates, post those rates on its website, and then impose them on Intrado Comm.

Any charges to be applied to Intrado Comm via the interconnection agreement must be developed through the Section 252 process with approval by the Commission. AT&T's proposed language would allow AT&T to arbitrarily develop rates and post those rates on its website. AT&T's language would also impose unspecified tariff charges on Intrado Comm. Any rates to be imposed on Intrado Comm must be developed pursuant to the process established by Sections 251 and 252, and must be set forth in the interconnection agreement. Intrado Comm cannot agree to pay for services or products when it does not know the rate to be charged. Intrado Comm does not plan to order products or services that are not contained in the interconnection agreement, which should resolve AT&T's concerns about its obligation to provide items that are not contained in the interconnection

²⁷² Hearing Exhibit No. 4, Intrado Comm Response to Staff Request for Production of Documents 22.

²⁷³ Hearing Exhibit No. 5, AT&T Response to Staff Interrogatories 10, 66(a); Hearing Exhibit No. 10, Deposition of Patricia Pellerin at 41, lines 4-10.

²⁷⁴ Transcript at 296, lines 1-18 (Pellerin Direct).

agreement.²⁷⁵ Imposing some parameters on AT&T's ability to impose rates on Intrado Comm is reasonable, and thus, Intrado Comm's proposed language should be adopted.²⁷⁶

ISSUE 33: SHOULD AT&T BE REQUIRED TO PROVIDE UNES TO INTRADO COMM AT PARITY WITH WHAT IT PROVIDES TO ITSELF?

*****Intrado Comm Position:** There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

ISSUE 34(a): HOW SHOULD A "NON-STANDARD" COLLOCATION REQUEST BE DEFINED?

ISSUE 34(b): SHOULD NON-STANDARD COLLOCATION REQUESTS BE PRICED BASED ON AN INDIVIDUAL CASE BASIS?

*****Intrado Comm Position:** 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. Similarly situated carriers should be treated the same and subject to the same costs.

AT&T has proposed language that would permit it to charge Intrado Comm for "non-standard" collocation requests made by Intrado Comm.²⁷⁷ 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. AT&T should not be permitted to impose "non-standard" charges on Intrado Comm for arrangements that AT&T has provided to other service providers. The FCC has found 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

²⁷⁵ Transcript at 298, lines 25-29 (Pellerin Direct); *see also* Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 11.

²⁷⁶ Appendix Pricing §§ 1.9.1, 1.9.2.

²⁷⁷ Appendix Physical Collocation § 2.22.

that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical infeasibility.²⁷⁸ In comparing networks, the FCC determined that the substantial similarity of network facilities may be evidenced by their adherence to the same interface or protocol standards.²⁷⁹ AT&T bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point.²⁸⁰ AT&T should not be permitted to impose arbitrary costs on Intrado Comm when AT&T has already provided a similar arrangement to another provider.

ISSUE 35: SHOULD THE PARTIES' INTERCONNECTION AGREEMENT REFERENCE APPLICABLE LAW RATHER THAN INCORPORATE CERTAIN APPENDICES WHICH INCLUDE SPECIFIC TERMS AND CONDITIONS FOR ALL SERVICES?

*****Intrado Comm Position:** There is no contract language in dispute - the Parties agreed to this language in their Ohio negotiations. AT&T has refused to incorporate the entire negotiated provision into the Parties' Florida agreement. There is no reason for the Parties to re-negotiate generic provisions that are not affected by jurisdictional boundaries.

Please see the argument under Issue 18.

ISSUE 36: SHOULD THE TERMS DEFINED IN THE INTERCONNECTION AGREEMENT BE USED CONSISTENTLY THROUGHOUT THE AGREEMENT?

*****Intrado Comm Position:** To the extent a term has been defined, it should be capitalized throughout the agreement in recognition that it is a specifically defined term. This will reduce disputes between the Parties as to the meaning of certain terms.

The interconnection agreement 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

²⁷⁸ *Local Competition Order* ¶ 204.

²⁷⁹ *Local Competition Order* ¶ 204.

²⁸⁰ *Local Competition Order* ¶ 554.

should be capitalized throughout the agreement in recognition that it is a specifically defined term.²⁸¹

This will reduce disputes between the Parties as to the meaning of certain terms.

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission adopt Intrado Comm's positions and proposed language as set forth herein.

Respectfully submitted,

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²⁸¹

Transcript at 45, lines 15-18 (Clugy Direct); Hearing Exhibit No. 5, AT&T Response to Staff Interrogatory 27(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 14th day of August, 2008.

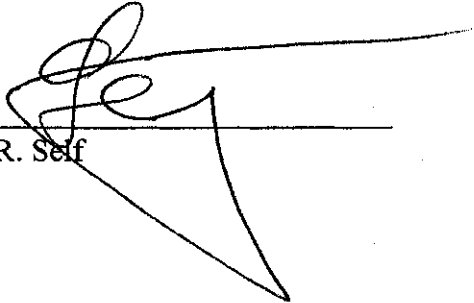
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