

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 30, 2008
TO: Office of Commission Clerk (Cole)
FROM: Office of the General Counsel (Tan)
Division of Regulatory Compliance (Barrett, King)
Division of Economic Regulation (Dowds)
RE: Docket No. 070736-TP - Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.
AGENDA: 11/13/08 - Regular Agenda - Post-Hearing Decision - Participation is Limited to Commissioners and Staff
COMMISSIONERS ASSIGNED: All Commissioners
PREHEARING OFFICER: Edgar
CRITICAL DATES: None
SPECIAL INSTRUCTIONS: Place immediately after Docket No. 070699-TP.
FILE NAME AND LOCATION: S:\PSC\RCP\WP\070736.RCM.DOC

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Case Background

On December 21, 2007, Intrado Communications, Inc. (Intrado Comm) filed a Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T), pursuant

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to Section 252(b) of the Communications Act of 1934, as amended¹ (Act), and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, Florida Statutes (F.S.), and Rule 28-106.201, Florida Administrative Code (F.A.C.). An evidentiary hearing was held on July 10, 2008.

Arbitration

Part II of the Act, sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act addresses interconnection between carriers, and §252 sets forth the procedures for negotiation, arbitration, and approval of agreements. Arbitration occurs when parties are unable to reach a comprehensive negotiated agreement as contemplated by §252 of the Act.

Once a CLEC submits a request for negotiation of an interconnection agreement, §252(b) permits either party to the negotiation to petition a state commission to “arbitrate any open issues” unresolved by voluntary negotiation.² Section 252(b)(4)(c) sets forth that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required.

An ILEC is obligated to arbitrate pursuant to §252(b)(1).³ An ILEC is not obligated to arbitrate matters not required pursuant to §251(c), but can agree to do so. Intrado Comm believes the type of interconnection it desires is required pursuant to §251(c). AT&T believes that §251(a) is the appropriate section under which Intrado Comm may interconnect with AT&T’s network. If all parties agree to look at an issue outside of §251(c), the Florida Public Service Commission (Commission) may assist in its resolution.

911/E911 service

Intrado Comm and AT&T are before the Commission regarding Intrado Comm’s request for interconnection so that it may provide competitive 911/E911 service. The terms “911” and “E911” are used throughout the recommendation. For ease of understanding, “911” is described in §365.171(2), F.S., as the designated emergency communications number to “provide citizens with rapid direct access to public safety agencies . . .” As a general rule, when a telephone subscriber dials “911” seeking emergency assistance, specific trunking and call routing is employed so that the call is delivered to the appropriate public safety entities (i.e., police, fire, medical assistance, etc.) as quickly and efficiently as possible. The earliest applications of 911 call routing did not provide public safety entities with “location-specific” data; however, more modern iterations and systems use databases that are more advanced than earlier versions, and

¹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et seq. (1996)).

²Section 252(b)(1):Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

³ Section 364.012, F.S., does not limit or alter the duties of a “local exchange carrier to provide unbundled access to network elements or the commission’s authority to arbitrate and enforce interconnection agreements to the extent that those elements are required under 47 U.S.C. §251 and §252 . . .”

this capability is appropriately described as being "enhanced," which is how the term "E911" was born. The task of seamlessly providing "location-specific" data has been largely answered for land-based phone lines, although solutions for mobile-based applications are still being developed and implemented.

Several aspects of this matter and the similar proceeding in Docket No. 070699-TP⁴ are "cases of first impression" for the Commission. Although the parties were successful in resolving certain issues prior to the July 10, 2008 hearing, there are unresolved issues. The most notable unresolved issues are Issues 1(a) and 1(b).⁵ The crux of Issue 1(b) is whether the parties should forge a commercial agreement, or one subject to certain sections of the Act. Staff believes Issues 1(a) and 1(b) are "threshold" matters, and resolving them will dictate what further action, if any, is appropriate for the 22 remaining issues identified.

This recommendation only addresses Issues 1(a) and 1(b) of this proceeding. Resolving these issues should precede the consideration or disposition of the remaining disputed issues.

The Commission is vested with jurisdiction over this subject matter by the provisions of Chapters 364 and 120, F.S.

⁴ In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes.

⁵ Issue 1(a): What service(s) does Intrado currently provide or intend to provide in Florida?

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

Discussion of Issues

Issue 1(a): What service(s) does Intrado Comm currently provide or intend to provide in Florida?

Recommendation: Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of "telephone exchange service" pursuant to 47 U.S.C. 153 (47) because it will not provide the ability both to originate and terminate calls. **(Tan)**

Position of the Parties

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

AT&T: Intrado Comm only provides or intends to provide emergency services to PSAPs, not telephone exchange service or exchange access.

Staff Analysis: This issue examines Intrado Comm's service offering, which involves the provision of 911/E911 service to Public Safety Answering Points (PSAPs)⁶ and government entities. An important consideration in this issue is whether Intrado Comm's service offering meets the definition of a "telephone exchange service," as the term is defined in §3 of the Act.

SEC. 3. [47 U.S.C. 153] DEFINITIONS.

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

Intrado Comm believes its "Intelligent Emergency Network"TM service meets this definition. (Intrado Comm BR at 7) AT&T disagrees with Intrado Comm's assertion. (AT&T BR at 6) This determination is key to the other primary sticking point in this matter, which examines whether AT&T (as an incumbent local exchange carrier) must enter into an interconnection agreement with Intrado Comm pursuant to the obligations set forth in §251(a) or in §251(c) of the Act. Further arguments are summarized below.

⁶ For purposes of the "911" system, §365.172, F.S., defines an "[a]nswering point" to mean "the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls."

Parties' Arguments

Intrado Comm contends that when it provides its end-to-end 911/E911 service offering to Florida public safety agencies, Intrado Comm provides telephone exchange service. (Intrado Comm BR at 7) AT&T contends that this service does not constitute telephone exchange service or exchange access service. AT&T asserts that Intrado Comm is offering a service that does not serve the end users who place 911/E911 calls, but rather aggregates the 911/E911 traffic from end users of other carriers to deliver to Intrado Comm's customer, who is a PSAP. (AT&T BR at 6) The parties agree that Intrado Comm will be offering alternative 911/E911 service to Florida counties, public safety agencies and PSAPs, but they disagree whether the service should be classified as a telephone exchange service. (Intrado Comm BR at 2, AT&T BR at 2)

Intrado Comm witness Hicks⁷ admits that its service is not exchange access service but states that Intrado Comm will provide telephone exchange service to PSAPs. (TR 173-174) The FCC has stated that exchange access service involves traffic originated in one exchange that terminates in another exchange.⁸ Therefore, AT&T argues that because Intrado Comm has admitted that it will not offer exchange access, the only remaining issue is whether Intrado Comm will offer telephone exchange service. (AT&T BR at 6) Intrado Comm witness Hicks testified that:

251 telephone exchange traffic is predicated on the fact that facsimile lines are basically one-way lines . . . that have been considered to be telephone exchange service . . . basically the services that Intrado [Comm] intends to provide provides two-way voice communications. (TR 176-177)

AT&T asserts that because the service that Intrado Comm intends to provide to PSAPs cannot be used to originate calls, this service does not qualify as telephone exchange service. (AT&T BR at 7)

Intrado Comm asserts that the FCC determined that "telephone exchange service [is] not limited to traditional voice telephony, but include[s] non-traditional means of communicating information within a local area."⁹ Intrado Comm notes that the FCC has also stated that "a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area."¹⁰ (Intrado Comm BR at 7) Intrado Comm argues that its service fulfills the FCC stated goal of intercommunication because it allows 911/E911 users to be connected with PSAPs and communicate with local emergency personnel. (Intrado Comm BR at 7)

⁷ Intrado Comm witness Thomas Hicks adopted the pre-filed testimony of Carey Spence-Lens, who was unable to attend the hearing.

⁸ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) (Order on Remand) ¶35.

⁹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 17 (1999) ("Advanced Services Order").

¹⁰ Advanced Services Order ¶ 30.

Furthermore, Intrado Comm points out that AT&T's own tariff refers to its 911/E911 service as a telephone exchange service.¹¹ (Intrado Comm BR at 9)

AT&T contends that to qualify as a telephone exchange service, the service must be within an exchange boundary and capable of both originating and terminating intraexchange calls. AT&T argues that the service Intrado Comm intends to provide PSAPs does neither. (AT&T BR at 7) AT&T states that Intrado Comm's own tariff filing indicates that it "is not responsible for the provision of local exchange service to its Customers." (AT&T BR at 7; EXH 17) AT&T believes this is significant because Intrado Comm asserts that it does not intend to replace all of a PSAP's local exchange services, acknowledging that a PSAP or a Florida county may subscribe to additional local exchange service for placing administrative calls. An administrative call is made from an administrative line that is connected to the PSAP system, which can call out to the public switched telephone network. (TR 179)

Intrado Comm further argues that it is requesting an interconnection agreement from AT&T for the mutual exchange of traffic. Intrado Comm contends that while 911/E911 trunks are generally one-way trunks, a "mutual exchange of traffic" need not occur over the same trunk. Intrado Comm asserts that this exchange may be "properly reflected by traffic flows of originating and terminating traffic" through trunking configurations. (Intrado Comm BR at 10) Intrado Comm believes the FCC has lent credence to its argument. Specifically, Intrado Comm cites the FCC's finding that established "intercommunication" as a hallmark for telephone exchange service. In doing so, Intrado Comm argues that the FCC recognized that without interconnection between an ILEC and an entrant, a customer would not be able to complete calls. Intrado Comm further argues that the FCC found that an ILEC has little incentive to aid new entrants' entry into the marketplace, which is a matter Congress addressed in §251(c). (Intrado Comm BR at 6) Intrado Comm notes that AT&T witness Pellerin's testimony stated that a competitor must be interconnected with the Public Switched Telephone Network in order to provide 911/E911 service, which offers further support that Intrado Comm provisions telephone exchange service because entrants must be allowed to effectively compete.¹²

Intrado Comm witness Hicks states that the "services that the PSAP uses would only be able to generate and originate a call transfer. They would not be able to utilize Intrado Comm's offering to generate a traditional local call." (TR 178) AT&T argues that Intrado Comm witness Hicks admits that Intrado Comm's service cannot be used to originate a call. (AT&T BR at 8) AT&T states that Intrado Comm's inability to call back to a disconnected 911/E911 caller indicates that the 911/E911 service cannot be used to originate a call, and therefore does not meet the definition of telephone exchange service. (AT&T BR at 8-9)

¹¹ The AT&T tariff states that "911 service is a telephone exchange communication service whereby a PSAP designed 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 with the serving area who dial 911." (EXH 22).

¹² EXH 10.

Analysis

The term “service” is central to this issue. Both parties acknowledge that Intrado Comm offers a service, but differ as to what type of service is being offered. Establishing the nature of the service Intrado Comm is offering is important to determine whether Intrado Comm and AT&T should enter into an arrangement under §251(a), a general contract, or §251(c), an interconnection agreement. Section 251(c) specifically provides for an interconnection agreement between a competitive local exchange carrier and an incumbent local exchange carrier, whereas §251(a) allows for a general contract, commonly referred to as a commercial agreement. Section 251(c) imposes specific, asymmetric obligations on ILECs. Section 252 gives rise to an interconnection agreement incorporating the §251(c) obligations.

911/E911 Service

Section 365.172(3)(i), F.S., defines E911 service as the “enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated.” Both Intrado Comm and AT&T agree that Intrado Comm will provide its services as a competitive 911/E911 provider. (Intrado Comm BR at 2, AT&T BR at 5) Upon Intrado Comm’s entry into the marketplace, PSAPs will have the opportunity to choose an alternate 911/E911 service provider.

Telephone Exchange Service

Intrado Comm’s Intelligent Emergency Network™ is a service that allows a PSAP to receive emergency calls. (TR 9) By identifying its service as “telephone exchange service” because it “allows Florida consumers to be connected with PSAPs and communication with local emergency personnel,” Intrado Comm attempts to interpret 47 U.S.C. 153(47) to fit its own circumstances. 47 U.S.C. 153(47) defines “telephone exchange service” as one which can **both** originate and terminate calls. However, in the current service offering, Intrado Comm provides a service that cannot be used to originate a call. Intrado Comm witness Hicks states that Intrado Comm both originates and terminates calls from a 911/E911 caller because Intrado Comm can transfer calls from one PSAP to another PSAP. Intrado Comm witness Hicks, however, also admitted that the PSAP would not be able to call out with its service, which means that an outbound call cannot be placed unless a separate administrative local line is used. (TR 178-181)

Staff believes that in order for a service to be considered a telephone exchange service, pursuant to 47 U.S.C. 153(47), it must provide for both the origination and termination of calls. Without the ability both to originate and terminate calls, staff believes that Intrado Comm’s proposed services do not meet the definition of “telephone exchange service.” The Intelligence Emergency Network™ does not offer a PSAP the ability to call back a 911/E911 user, and administrative lines not offered by Intrado Comm would be required to place such a call.

Conclusion

Staff recommends that the Commission find that Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of “telephone exchange service” pursuant to 47 U.S.C. 153(47) because it will not provide the ability both to originate and terminate calls.

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

Recommendation: If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues. **(Tan)**

Position of the Parties

INTRADO COMM: 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.

AT&T: None. AT&T Florida is only obligated to offer §251(c) interconnection for telephone exchange service and exchange access.

Staff Analysis: This issue focuses on whether AT&T is required to offer interconnection to Intrado Comm under §251(a) or §251(c) of the Act. Section 251(a) of the Act describes the general duty of all telecommunications carriers to interconnect, while §251(c) addresses specific obligations imposed only on incumbent local exchange carriers (ILECs). Two aspects of §251(c) are particularly significant:

- Section 251(c)(2) includes a reference to "telephone exchange service;" and
- Section 251(c)(3) addresses the ILEC's obligation to provide access to unbundled network elements (UNEs). In essence, this concern is a "rates" issue since AT&T would be obligated to offer these UNEs to Intrado Comm at Total Element Long-Run Incremental Cost (TELRIC) based rates, as opposed to the more general pricing standard applicable to items provided pursuant to §251(a).

Intrado Comm contends that a §251(c) agreement is appropriate since its service offering meets the definition of "telephone exchange service." It believes AT&T is obligated to offer it cost-based, unbundled access to the elements it wants pursuant to §251(c) of the Act. (Intrado Comm BR at 5) AT&T disagrees with both assertions. (AT&T BR at 5)

AT&T believes Intrado Comm's "Intelligent Emergency Network"™ service is not a "telephone exchange service," and as such, the consideration of interconnection with Intrado Comm pursuant to §251(c) is moot. AT&T summarily contends that Intrado Comm is not providing "telephone exchange service" subject to any portion of §251(c), and is therefore not entitled to a §251(c) interconnection agreement. AT&T further states that "the proper denial of

this request obviates the need to entertain any of the other issues in this proceeding.” (AT&T BR at 6)

Parties’ Arguments

Intrado Comm contends that it cannot offer 911/E911 service in Florida without interconnecting to the Public Switched Telephone Network under §251(c). (Intrado Comm BR at 5) AT&T disputes this claim, stating that Intrado Comm can purchase wholesale services through commercial agreements negotiated pursuant to §251(a). (AT&T BR at 2) AT&T argues that Intrado Comm’s emergency services are not telephone exchange service or exchange access. AT&T further argues that without telephone exchange service or exchange access offerings, it is not obligated to offer Intrado Comm rates and terms pursuant to §251(c).

Intrado Comm asserts that §251 and §252 were designed to allow competitors to enter the marketplace quickly and §252 specifically addresses interconnection on a level playing field. The benefit Intrado Comm believes §251(c) will provide it is a level playing field, the provision of service at TELRIC rates, and different connection standards that are established by the Act. Intrado Comm argues that it is a competitive local exchange carrier and, as such, is entitled to interconnection with AT&T pursuant to §251(c). (Intrado Comm BR at 6) AT&T counters that without offering both the origination and termination of calls, Intrado Comm does not offer telephone exchange service. Absent the provision of telephone exchange service, AT&T asserts that Intrado Comm may only negotiate pursuant to §251(a), not §251(c). AT&T further asserts that §251(c)(2)(A) provides that an ILEC has a duty to interconnect “for the transmission and routing of telephone exchange service and exchange access.” (AT&T BR at 6) Intrado Comm contends its right to interconnect pursuant to §251(c) is established because competitors are entitled to interconnect with ILECs. (Intrado Comm BR at 6)

Intrado Comm asserts that its proposed interconnection arrangements will ensure a level playing field for any alternative 911/E911 service providers. Intrado Comm contends that it is not required to enter into commercial agreements because of §251(c). Intrado Comm explains that a §251(c) interconnection agreement is its right as a CLEC and that leaving agreements to be made under §251(a) would be detrimental to the goals of the Act because it would favor AT&T over any other carrier, including any other providers of competitive 911/E911 service. (Intrado Comm BR at 15) Upon questioning from AT&T, Intrado Comm witness Hicks acknowledges that Intrado Comm chose to request a §251(c) interconnection agreement and that all of the services it desires could have been obtained through a commercial agreement. (TR 183) AT&T argues that because Intrado Comm’s service to PSAPs cannot be used to originate calls, the service does not qualify as telephone exchange service and therefore does not qualify for interconnection pursuant to §251(c). (AT&T BR at 9-10)

Analysis

Section 251 establishes the interconnection rights and obligations of telecommunications carriers, including local exchange telecommunications carriers. More specifically, §251(a) imposes a general obligation on all telecommunications carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Section 251(c)

goes beyond the general obligation and imposes specific obligations on incumbent local exchange carriers (like AT&T) to allow interconnection by competing carriers on the incumbent's network.

Staff notes that if Intrado Comm becomes the 911/E911 service provider to PSAPs, AT&T becomes the carrier requesting interconnection on Intrado Comm's network in order to provide access to 911/E911 to AT&T's end user customers. AT&T believes the requirements imposed on ILECs do not support the type of interconnection arrangements currently requested by Intrado Comm. AT&T would be in a situation where it would be both the ILEC providing interconnection and a carrier seeking access. Staff believes this situation could present a serious disadvantage to AT&T, who would pay for Intrado Comm establishing its 911/E911 service. (TR 188) Staff is concerned that the costs for interconnection would be borne by AT&T. AT&T witness Pellerin expressed concern as well. (TR 347)

Intrado Comm seeks a §251(c) interconnection agreement with AT&T to gain access to the Public Switched Telephone Network to offer its competitive services to PSAPs throughout the State of Florida. (TR 165) However, staff notes that the service Intrado Comm intends to provide is not one that will both originate and terminate calls. Staff believes that §251(c) applies when a telecommunications carrier requests interconnection with an ILEC such as AT&T to offer telephone exchange service and exchange access. However, §251(c) does not apply or impose specific obligations on an ILEC when the ILEC seeks interconnection on the CLEC's network. In its brief, Intrado Comm states that §251(c) plays a critical role in allowing it a "fair opportunity to compete in the Florida marketplace." Intrado Comm asserts that §251(c) provides it the ability to "obtain the interconnection and interoperability arrangements it needs to provide its 911/E911 service to Florida counties and PSAPs while, at the same time, promoting the reliability and redundancy critical to public safety." (Intrado Comm BR at 3)

Staff disagrees, and notes that since Intrado Comm does not offer telephone exchange service, staff believes that AT&T is not obligated to interconnect with Intrado Comm pursuant to §251(c). In addition, Intrado Comm has the ability to offer the services it wants without a §251(c) interconnection agreement through the use of a commercial agreement or AT&T's tariffs. (TR 183-184, 347) Therefore, staff believes that AT&T is not required to offer interconnection pursuant to §251(c).

Finally, staff notes that the Commission has arbitrated issues outside of §251(c) when both parties agreed to Commission action. To date, the Commission has not reviewed any interconnection arrangements pursuant solely to §251(a).¹³

¹³ Recently, a similar issue was addressed by the Virginia State Corporation Commission (Virginia Commission), which deferred Intrado Comm's petition for arbitration to the FCC, stating the FCC should first decide whether Intrado Comm is entitled to §251(c) interconnection. *Petition of Intrado Comm. of Virginia, Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Tel.-Southeast, Inc. d/b/a Embarq, under Section 252(b) of the Telecommunications Act of 1996*, Order of Dismissal, Case No. PUC-2007-00112, at 2-3 (Feb. 14, 2008). As a result, Intrado Comm petitioned the FCC for resolution of the issues. *Petition of Intrado Comm. of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corp. Commission Regarding arbitration of an Interconnection Agreement with Central Tel. Co. of Virginia and United Tel.-Southeast, Inc.*, FCC WC Docket No. 08-33, filed

Conclusion

If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues.

March 6, 2008. The FCC granted Intrado Comm's petition, preempting the jurisdiction of the Virginia Commission in a Memorandum Order and Opinion, issued October 16, 2008, *In the matter of Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, FCC WC Docket 08-185, stating that the Virginia Commission explicitly deferred action to the FCC.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed. The parties may negotiate a commercial agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining 22 issues. Apart from the consideration of Issues 1(a) and 1(b), staff has become aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, staff recommends that the Commission direct staff to further explore these matters. **(Tan)**

Staff Analysis: If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed and the parties may negotiate an interconnection agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining issues.

Public Interest Considerations

With the emergence of a competitive 911/E911 provider in the Florida marketplace, staff believes the Commission should be aware of potential unintended consequences that affect more than just the current parties to this docket, impacting all carriers in Florida, including wireless and VoIP providers. Most carriers are directed by statute to provide their end users access to 911/E911 service. These carriers may incur higher costs to access 911/E911 service or be forced to rehome circuits,¹⁴ if a competitive provider's selective router is located outside of Florida. Staff notes that Intrado Comm currently has no selective routers in Florida, although it will eventually deploy a minimum of two selective routers within the state. (TR 190) Staff is concerned that carriers could potentially be transporting 911/E911 emergency calls up and down the state or perhaps even out of state. Intrado Comm witness Hicks states that it would be up to the connecting party to determine which points on Intrado Comm's network would be the most efficient for connection. The witness points out that AT&T currently has one selective router in each of the 10 LATAs AT&T serves in Florida. (TR 195)

Staff believes Commission involvement in the provisioning of 911/E911 service is important because of the potential impact on the health and safety of Florida citizens. Staff further notes that 911/E911 service is an essential service in Florida. Pursuant to §364.01(4)(a), F.S., the Commission is entrusted with protecting the public health, safety and welfare and must ensure access to basic local service, which includes access to 911/E911 service. Staff believes it is imperative that access to 911/E911 service continue uninterrupted regardless of the 911/E911 service provider. Staff's belief is further supported by the FCC which has acknowledged the importance of a state's role in 911/E911 matters.¹⁵

¹⁴ Rehoming is when there is a major network change which involves moving customer services from one switching center to another and establishing the necessary trunking facilities to do so. Harry Newton, Newton's Telecom Dictionary, 19th ed. 2003.

¹⁵ The Wireless Telecommunications and Public Safety Act of 1999 mandates that the Federal Communications Commission "shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service."

Staff notes that the Commission is not the only agency or entity with an interest in monitoring of 911/E911 service. Intrado Comm witness Melcher acknowledges that 911/E911 service impacts many entities, stating that “[p]ublic safety deserves state of the art solutions and they should be able to pick and choose providers that offer products and services that best fit the needs and the budgets of those public safety communications professionals.” (TR 226) At the hearing in Docket No. 070699-TP, this witness stated that:

Public safety is the customer. It's the public safety leaders that should be involved in the decision-making process. And what is so sad to me is that as these kinds of hearings are going on around the country today, the person not sitting at the table that needs to be represented is the public safety leader. They have to be provided choices, they have to be given options that they've not been given in the past. (TR 218-219)

AT&T witness Pellerin also acknowledged the multi-faceted nature of 911/E911 service, stating that:

[i]t is essential that the requesting PSAPs participate in negotiating an arrangement that meets their specific and unique needs; otherwise, 911 call transfers may not work the way they intended or expected, possibly resulting in loss of life. . . . It's important that the PSAPs have a bona fide need to transfer calls between them and that their need is met by including them in the arrangement to provide that service, and that is not in a two-party Section 251(c) interconnection agreement between an ILEC such as AT&T and a CLEC such as Intrado [Comm]. (TR 20)

Sections 365.171-175, F.S., address Florida's 911/E911 plan. Any changes involving 911/E911 require the facilitation and cooperation of all affected agencies and entities to resolve any changes or complications that affect 911/E911 in Florida. Staff notes that decisions affecting the provision of 911/E911 service in Florida are made by several different agencies, including the Department of Management Services, local and state officials, providers and PSAPs. Accordingly, staff believes that any discussion regarding the provisioning of competitive 911/E911 service in Florida requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters.

Conclusion

If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed. The parties may negotiate a commercial agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining 22 issues. Apart from the consideration of Issues 1(a) and 1(b), staff has become aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, staff recommends that the Commission direct staff to further explore these matters.