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Subject: 070699 EQ Response to Motion for Reconsideration
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Docket No. **___070699_____**

Title of filing: **Embarq Florida, Inc.'s Response In Opposition To Intrado Communications, Inc.'s Motion For Reconsideration**

Filed on behalf of: **Embarq**

No of pages: ***_____20_____***

Description: **Embarq Florida, Inc.'s Response In Opposition To Intrado Communications, Inc.'s Motion For Reconsideration**

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December 26, 2008

FILED ELECTRONICALLY
Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 070699-TP

Dear Ms. Cole:

Enclosed please find Embarq Florida, Inc.'s Response in Opposition to Intrado Communications Inc.'s Motion for Reconsideration in the above referenced docket matter.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at (850) 599-1560.

Sincerely,

/s/ Susan S. Masterton
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CERTIFICATE OF SERVICE
DOCKET NO. 070699-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by regular U.S. Mail and electronic mail on this 26th day of December, 2008 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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, F.S.

Docket No. 070699-TP

EMBARQ FLORIDA, INC.'S RESPONSE IN OPPOSITION TO INTRADO COMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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, F.S.	DOCKET NO. 070699-TP Filed: December 26, 2008

EMBARQ FLORIDA, INC.'S RESPONSE IN OPPOSITION TO INTRADO COMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

Embarq Florida, Inc. ("Embarq"), in accordance with Rule 25-22.060, F.A.C., hereby files its Response in Opposition to the Motion for Reconsideration ("Motion") of Order No. PSC-08-0799-FOF-TP ("Order") filed by Intrado Communications, Inc. ("Intrado") on December 18, 2008.[1] Intrado has presented no valid grounds for the Commission to reconsider its Order and, therefore, Intrado's Motion should be denied.

I. INTRODUCTION

Intrado seeks reconsideration of the Commission's ruling that the 911/E911 services it proposes to offer to Public Safety Answering Points ("PSAPs") in Florida is not telephone exchange service and therefore is not subject to §251(c) of the Telecommunications Act.[2] Intrado makes no new arguments and offers no new evidence to support its request for reconsideration, but merely reiterates the arguments in its Post-hearing Brief relating to its interpretation of FCC precedent and its need for §251 interconnection in order to compete.

[1] Embarq has filed separately its Response in Opposition to Intrado's Request for Oral Argument this same day. Embarq's Response was due within 7 days, or by December 25th. Since the 7th day was a holiday (i.e., Christmas Day), Embarq's Response is due on the at "the end of the next day which is not a Saturday, Sunday, or legal holiday" in accordance with Rule 28-106.103, F.A.C. Embarq has filed separately its Response in Opposition to Intrado's Request for Oral Argument this same day.

[2] 47 U.S.C. §§151 et.seq.

Intrado's Motion wholly fails to meet the standard for reconsideration, that is, Intrado fails to identify a point of fact or law that the Commission overlooked or failed to consider in reaching its decision. In addition, Intrado is wrong in its interpretation of the relevant FCC precedent and is wrong in its assertion that it can only compete through interconnection arrangements under §251(c). Intrado's Motion provides no cognizable basis for the Commission to reconsider its decision and should be denied.

II. STANDARD FOR MOTION FOR RECONSIDERATION

As the Commission has recognized consistently in its numerous rulings on Motions for Reconsideration, the standard for granting reconsideration is that the Motion must identify a point of fact or law that the Commission overlooked or failed to consider in rendering its Order. See, *Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). The Commission has held that it is not a sufficient basis for a Motion for Reconsideration that the Movant merely believes that a mistake was made, nor is it appropriate for the Movant to reargue the same points of fact or law that were considered in the original ruling. See, *Stewart Bonded Warehouse*, 294 So. 2d at 317; *State ex.rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

Intrado's Motion implies that because the Commission did not specifically discuss in the Order every piece of evidence or every argument presented by Intrado, then it must have overlooked this evidence or these arguments. More reasonably, the Commission considered all of the evidence offered by both parties in reaching its conclusions, but discussed only the evidence and arguments most relevant to support its conclusion.[3] Of course, once the Commission reached

[3] See, *Jaytex Realty* at page 819. See, also, *In re: Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay, by Embarq Florida, Inc.*, Order No. PSC-07-0635-

the conclusion that §251(c) did not apply to Intrado's 911/E911 service (as required to resolve Issue 1) then it was unnecessary for the Commission to consider or discuss the remaining nine issues regarding the applicability of §251 to specific interconnection provisions.

Intrado's Motion for Reconsideration does no more than reargue the positions it advanced through its testimony and evidence and the arguments in its Post-hearing Brief. In rendering its decision the Commission fully considered and weighed the evidence and arguments presented by both Intrado and Embarq. Therefore, Intrado's Motion should be denied.

III. ARGUMENT

A. Intrado's service is not "telephone exchange"

Intrado makes no new arguments to support its position that the Commission's Order was incorrect in ruling that Intrado's service does not meet the definition of "telephone exchange service" set forth in the Telecommunications Act. Rather, Intrado repeats the same arguments that it made in its Post-hearing Brief, where Intrado relied extensively on the *Advanced Services Order*[4] and the *DA Call Completion Order*[5] to support its position that its 911/E911 service to PSAPs is telephone exchange service subject to interconnection under §251(c). (See, e.g., pages 9-10 and 13 of Intrado's Post-hearing Brief.) In fact, Intrado repeats many of the same arguments it made in its Post-hearing brief almost verbatim. Compare, for instance, the arguments on page 9 of Intrado's Post-hearing Brief, regarding the relevance of the Advanced Services Order with page 8 of its Motion, where Intrado discusses the Advanced Services Order to support its request for Reconsideration. Again, compare the discussion of the DA Completion Order on page 10 of

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FOF-TL issued Aug. 3, 2007, at page 9, where the Commission denied a Motion for Reconsideration, stating that "we considered, either explicitly or implicitly, each of the items on Embarq's list...".

[4] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) ("Advanced Services Order").

[5] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001) ("DA Call Completion Order").

Intrado's Post-hearing Brief with the same discussion on page 9 of Intrado's Motion. And, finally, compare the discussion of Intrado's ability to "hook flash" calls on page 12 of its Post-hearing Brief, with the same discussion on page 8 of its Motion.

In its Motion Intrado primarily relies on the Advanced Services Order and the DA Call Completion Order (the same two orders that underlie similar arguments in Intrado's Post-hearing Brief), stating that the Commission overlooked factual evidence that was presented in the case and that the Commission did not fully consider the services that Intrado intends to provide in Florida. Intrado focuses on the statutory definition of telephone exchange service, treating the two parts of the definition separately and claiming that Intrado's service meets both.[6] As discussed in detail below, Intrado errs in its interpretation of the definition of "telephone exchange service" and these FCC orders.

1. The definition of "telephone exchange" does not support reconsideration.

The federal statutes define "telephone exchange service" in 47 U.S.C. §153 as follows:

> (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.

[6] In its Post-hearing Brief, Intrado itself appears to acknowledge that its service does not meet paragraph A of the definition of telephone exchange. On page 10, Intrado argues that "the provision of telephone exchange service is not limited to services that must be provided over the competitive carrier's exchange." Citing to the FCC's Stevens Report to Congress, which discusses the definition of "telephone exchange" and focuses on the meaning of paragraph (B) of §153(47), Intrado argues that its 911/E911 services meet this definition even though "the wireline 911 network is interconnected to but separate from, the PSTN." Now that the Commission has rejected Intrado's position that it meets the definition of "telephone exchange" under paragraph (B), Intrado should not be permitted to retract its previous arguments and seek to have the Commission find that it meets the definition of "telephone exchange" under paragraph (A).

The definition of telephone exchange service was modified by the Telecommunications Act of 1996 to add subparagraph (B), which lists the characteristics of a service that would be comparable to the original definition included in subparagraph (A).[7] In the Advanced Services Order, the FCC defined comparable to mean that "...the services retain the key characteristics and qualities of the telephone exchange definition under subparagraph (A)."[8] For that reason the FCC determined that subparagraph (B) also encompassed the "intercommunication" characteristic contained in subparagraph (A).[9] Intrado's petition incorrectly implies that the two subparagraphs are different, when they are not, but simply amplify one another. This fact is significant in that it indicates that the definition of "intercommunication" is essentially the same as "origination and termination".

According to the FCC, "intercommunication" refers to a service that "permits a community of interconnected customers to make calls to one another over a switched network."[10] The FCC reiterated this concept in the DA Call Completion order at ¶17 by stating that intercommunication allows customers to make calls to one another. When customers call one another that means that customer A can call customer B and similarly customer B can call customer A, which is origination and termination.

There is no dispute that Intrado intends to provide services to Public Safety Answering Points (PSAPs) in Florida. Intrado witness Spence-Less filed Intrado's Florida price list with her direct testimony (Hearing Exhibit 17, Exhibit CSL-4 filed April 21, 2008) which was subsequently revised (Hearing Exhibit 26, Exhibit CSL-4 filed July 8, 2008). The services were discussed and described at length throughout the proceeding. There should be no dispute that the

[7] *In the Matter of Federal State Joint Board on Universal Service*, 13 FCC Rcd 11501 (1998) ("Stevens Report") 31).
[8] Advanced Services Order at ¶30.
[9] Advanced Services Order at ¶29 and ¶30.
[10] Advanced Services Order at ¶ 23.

originator of a 9-1-1 call is the end user that dials 9-1-1. Intrado's price list validates this when it describes the E9-1-1 trunks that it provides as part of its service offering:

> E9-1-1 Trunks
>
> The trunks that connect from the end office serving the individual telephone that ***originates*** a 9-1-1 call to the E9-1-1 Selective Router. (Exhibit CSL-4, 2nd Revised Sheet 12, Page 13 of 55) (Emphasis Added)

These end-user originated calls are terminated to PSAPs served by Intrado, which means that Intrado's services meet the terminating aspect of intercommunication. However, the description of Intrado's services in its tariff does not show that Intrado's services can be used to originate calls, because they cannot. It is this aspect of Intrado's service in relation to the statutory definition of telephone exchange service that the Commission correctly addressed in its Order. The Commission properly found that the services that Intrado provides do not give their customers (PSAPs) the ability to originate calls, that is, to "intercommunicate," with the end users dialing 9-1-1.

Intrado states that it provides such intercommunication via its "hook flash" option. This is a direct reference to the manual transfer option that is contained in Intrado's price list.

> Manual Transfer
>
> A PSAP call taker may transfer an incoming call manually by depressing the hook switch of the associated telephone or the "add" button on approved Customer telephone system, and dialing either an appropriate seven or 10 digit telephone number. (Exhibit CSL-4, 3rd Revised Sheet 45, Page 47 of 55)

This optional feature is listed in Intrado's tariff along with two other transfer options, Fixed Transfer and Selective Call Transfer. In each case these options allow the PSAP to take the call originated by the 9-1-1 caller and forward it to another PSAP or Emergency Responder, as necessary. The originating point of the call is the end user making the call and the terminating

point is not the intermediate connection provided by Intrado, but the ultimate terminating point, be it another PSAP or Emergency Responder.

Some of these calls will be forwarded via inter-selective routing between PSAPs and some will be forwarded over telephone lines furnished to the PSAP by another LEC, not Intrado. These lines will also be used to call the 9-1-1 call originator back should the call be dropped. This configuration is apparent in Intrado's Revised Price List.

> 5.2.3 Intelligent Emergency Network Service is not intended as a total replacement for the local telephone service of the various public safety agencies which may participate in the use of this service. The Customer must subscribe to additional local exchange services for purposes of placing administrative outgoing calls and for receiving other calls. (Exhibit CSL-4, 1st Revised Sheet 49, Page 51 of 55)
> 5.2.9 The Customer must furnish the Company its agreement to the following terms and conditions.
> D. That the Customer will subscribe to local exchange service at the PSAP location for administrative purposes, ***for placing outgoing calls***, and for receiving other calls. (Exhibit CSL-4, 1st Revised Sheet 50, Page 52 of 55) (Emphasis Added)

This call transfer option does not equate to call origination as included in the definition of telephone exchange service, but is essentially the continuation of the same call.[11]

2. The Advanced Services Order does not support reconsideration.

The FCC determined in the Advanced Services Order that ILEC xDSL based services are telephone exchange and subsequently ordered ILECs to unbundle those facilities.[12] Intrado argues that this proves that non-traditional services can be characterized as telephone exchange services. (See, Intrado's Motion at page 12) While this may be true,[13] the FCC did not determine that xDSL based services were telephone exchange because they were non-traditional but

[11] See, Hearing Exhibit 8, Hicks Deposition at p. 67, where Mr. Hicks clarifies that he is not saying that Intrado "originates" these calls but merely that these calls are "outgoing." This fact does not change the nature of the traffic, that is, that it originates from the end user dialing 911.
[12] Advanced Services Order at ¶8.
[13] Advanced Services Order at ¶17.

because they provided the intercommunication that was essential and met the other criteria contained in the statutory definition. As the FCC found, "Rather, the key criterion for determining whether a service falls within the scope of the telephone exchange service definition is whether it permits "intercommunication".[14]

xDSL services allow the customer (the purchaser of the xDSL service) to "originate" communications. These communications can be in the form of queries to Internet websites, work at home access to company networks, or placing a VoIP call. xDSL services can also be used to receive communications ("terminate") initiated by other "callers". Instant messaging services as well as VoIP calls are examples of xDSL services that meet these criteria. Clearly, Intrado's 911/E911 service does not.

Subsequent to the Advanced Services Order the FCC eliminated the ILEC obligation to unbundle advanced services[15] and de-classified ILEC xDSL as telecommunications service in the ILEC Broadband Order.[16] In that decision the FCC determined that ILEC broadband Internet access service, including its transmission component, is an information service and that the transmission component (which is xDSL) is not a telecommunications service.[17] The FCC

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[14] Advanced Services Order at ¶26.

[15] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338; CC Docket No. 96-98; CC Docket No. 98-147; Release Number FCC 03-36; Released August 21, 2003; 18 FCC Rcd 16978 ("TRO").

[16] *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*; CC Docket No. 02-33; CC Docket No. 01-337; CC Docket Nos. 95-20, 98-10; WC Docket No. 04-242; WC Docket No. 05-271; First Report and Order and Notice of Proposed Rulemaking; Released September 23, 2005; 20 FCC Rcd 14853 ("ILEC Broadband Order").

[17] ILEC Broadband Order at ¶5.

reiterated that information services and telecommunication services were mutually exclusive, even though information services are provided via telecommunications, noting that it had not been entirely consistent on the matter.[18] This issue is relevant given the confusing discussion of information services in the Advanced Services Order and the fact that the statutory definition of telephone exchange service explicitly refers to the origination and termination of a telecommunication's service, therefore excluding information services. Importantly, today's xDSL services offered by ILECs such as Embarq do not qualify as telephone exchange services.

3. The DA Call Completion Order does not support reconsideration.

In the DA Call Completion Order the issue addressed by the FCC was whether or not competing directory assistance providers should get access to LEC local directory assistance databases. The FCC found that some DA call completion services did qualify as telephone exchange service but not all, an important distinction which Intrado failed to address in its Motion. The FCC found that in order for the call completion service to be classified as telephone exchange service the DA provider had to complete the call on its own facilities and not merely hand the call off for completion.[19] The FCC also found that the DA provider had to charge the caller for completing that call.[20] Intrado's services do not meet those two criteria.

When end users originate a call to a DA provider, they ask for the telephone number of the party that they want to call. If the DA provider offers call completion the DA provider offers to complete the call for the end user and charges the end user for that call completion service. When an end user dials 9-1-1 and is connected to a PSAP and the PSAP forwards that call to another PSAP or an Emergency Responder, neither the PSAP nor Intrado bills the end user for completing that call. Unlike the call completion found by the FCC to be telephone exchange

[18] ILEC Broadband Order at footnotes 32 and 328.
[19] DA Call Completion Order at ¶15 and ¶22.
[20] DA Call Completion Order at ¶22.

service, Intrado's 911/E911 service does not meet the "charge" requirement included in the definition of telephone exchange service. While Intrado may "charge" the PSAP for the call forwarding capability, that is not the same as the end user charge contemplated by the FCC in the an DA Call Completion Order.

Furthermore, Intrado does not complete these forwarded calls over its own facilities but, in fact, hands them off for completion, thus failing to meet the other key requirement. This is true when Intrado uses inter-selective routing to another carrier's facilities and is equally true when the 91-1-1 call is forwarded over telephone lines secured from another local exchange provider.

4. Recent state commission decisions are consistent with the Commission's Order.

In an attempt to further support its position regarding the nature of its 911/E911 service, Intrado discussed to the decisions of two other state Commission decisions that Intrado says found that its services were, indeed, telephone exchange. These decisions were issued in 2001, which appears to predate Intrado's 911/E911 service to PSAPs which is the subject of this arbitration. Far more relevant to the Commission's Order in this arbitration are the very recent decisions by two other Commission's that are consistent with the Commission's ruling that §251(c) does not apply to Intrado's 911/E911 service.[21]

In a similar arbitration between Embarq and Intrado in Ohio, the Ohio Commission found that §251(a), and not §251(c), applies when Intrado is the 911 service provider and when Intrado and Embarq each serve a different PSAP and transfer calls between each other.[22] The Ohio

[21] Of course, other state commission decisions are not binding on this Commission in any event, though they may be instructive.

[22] *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection, Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Case No. 07-1216-TP-ARB, Arbitration Award issued Sept. 24, 2008 (Ohio Arbitration Award) at page 8.

Commission subsequently upheld its original decision that §251(c) does not apply to Intrado's 911/E911 service in its Entry ruling on Intrado's Request for Rehearing.[23]

In an arbitration between Intrado and Verizon in West Virginia, the West Virginia Commission reached a similar conclusion.[24] In denying Intrado's request that Verizon interconnect with Intrado under §251(c) the Arbitration Award found that §251(c) does not apply to Intrado's request for interconnection when Intrado is the 911/E911 service provider to a PSAP because "Verizon cannot be required to interconnect on Intrado's network, as there is no legal requirement for them to do so."[25]

5. Section 251(c) does not apply to Intrado's 911/E911 service.

The Commission's determination that Intrado's service does not meet the definition of "telephone exchange" traffic because it cannot be used to originate a call is a sufficient basis, standing alone, for the Commission's finding that §251(c) does not apply to the interconnection Intrado is requesting with Embarq. Nevertheless, in its testimony and Post-hearing Brief Embarq enumerated several additional characteristics of Intrado's 911/E911 service that support that conclusion as well. As stated in Embarq's Post-hearing Brief, and recognized by the Commission in its Order:

> Embarq believes that these 911/E911 emergency services are not local telephone exchange services, but rather are unique services that do not fall into the categories contemplated under section 251(c) of the Act. Embarq's position is based on the unique characteristics of 911 service, enumerated by Embarq's witness James M. Maples in his direct testimony. These characteristics include: 1) the requirements of federal law that all

[23] Ohio Arbitration Award, Entry on Rehearing, issued Dec. 10, 2008.

[24] *Intrado Communications, Inc. and Verizon West Virginia, Inc., Petition for Arbitration*, Case No. 08-0298-T-PC, Arbitration Award, entered Nov. 14, 2008 ("WVA Arbitration Award"). The Arbitrator's decision was affirmed by the West Virginia Commission on Dec. 16, 2008.

[25] WVA Arbitration Award at page 15. While the parties agreed not to argue specifically the issue of whether a 251(c) agreement is appropriate for Intrado's service to PSAPs, the Arbitrator noted that "A fair reading of the applicable provisions of the Telecommunication Act of 1996 and the FCC's rules promulgated in response to TA96 would indicate that Intrado's right to request interconnection solely for the provision of 911/E911 service pursuant to Section 251(c) may be questionable." WVA Arbitration Award at page 10.

> voice providers must provide end user access to 911 service; 2) the FCC's description of the Wireline E911 Network as "separate from" the Public Switched Telephone Network ("PSTN"); 3) the exclusive nature of the service, once the PSAP chooses a Wireline E911 Network provider; 4) the one-way nature of the traffic, i.e., it flows only from the end user who dials 911 to the PSAP who will provide the 911 service; 4) the fact that 911 traffic is jurisdictionally agnostic; 5) the fact that intercarrier compensation does not apply to 911 service; and 6) the funding of 911/E911 services and the Wireline E911 Network through end user surcharges. (See, Embarq's Post-hearing Brief page 4, footnotes omitted; Order at page 2).

In addition, as Embarq previously argued in its testimony and Brief, the specific interconnection arrangements requested by Intrado are not governed by §251(c). Intrado is requesting that Embarq establish a point of interconnection (POI) on its network (i.e., at Intrado's selective router) for termination of Embarq's end user 911 calls to PSAPs served by Intrado. However, as Embarq argued in its Post-hearing Brief, §251(c) applies to interconnection by a competitive carrier within an ILEC's, i.e., Embarq's, network. Interconnection on a competing carrier's network, such as Intrado is requesting, is governed by §251(a). (See, Embarq's Post-hearing Brief at pages 13-17.)

B. Intrado is not precluded from competing under commercial arrangements

Like Intrado's reargument that its 911/E911 service is telephone exchange service, Intrado's reiteration of its claim that it cannot compete without an interconnection agreement under §251(c) offers nothing new. Instead, Intrado re-advances the very same arguments it raised in its Post-hearing Brief. (See, Intrado's Post-hearing Brief at pages 3 and 6-8) Contrary to Intrado's assertions, the Commission did not fail to consider Intrado's arguments on this point, rather the Commission rejected Intrado's position in favor of Embarq's countervailing arguments. Intrado's proffer of the contracts it has now entered into with PSAPs also raises no new evidence. Embarq presented evidence regarding Intrado's relationships with PSAPs in

Embarq's territory at the hearing. (Hearing Transcript at 177; Hearing Exhibit 50) The fact that Intrado has now formally entered into contracts with PSAPs does nothing to alter the evidence on which the Commission based its decision and provides no grounds for reconsideration.[26]

The issue of whether interconnection under §251(c) is the only viable method for Intrado to enter the competitive 911 market was fully addressed by both parties in their pre-filed testimonies and briefs. As Embarq previously has stated, it is willing and able to make the interconnection services Intrado has requested available under a commercial arrangement. In fact, Embarq has entered into just such an arrangement with a competitive 911 provider in Indiana and provided a copy of that agreement as evidence in the proceeding. (See, Hearing Exhibit No. 43.)

In addition, as stated in pre-filed testimony, the Maples Deposition, at the hearing and its Post-hearing Brief, Embarq has voluntarily agreed to the majority of the terms Intrado has requested in the context of a commercial agreement. Specifically, Embarq has agreed to 1) establish points of interconnection on Intrado's network (Issue 3); 2) provide direct end office trunking where end offices are served by a single Intrado-served PSAP (Issue 2); 3) not charge for the use of Embarq's selective router to route Embarq's end user 911 calls to an Intrado-served PSAP in split wire centers (Issue 2); and 4) establish trunks for inter-selective routing (Issue 4). In addition, the only dispute related to several other terms proposed by Intrado was whether a 251(c) or a commercial agreement is appropriate. These otherwise undisputed terms include Intrado's ordering processes (Issue 5) and access to Intrado's databases (Issue 6).[27]

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[26] Intrado does not identify the PSAPs with which it has entered into contracts to provide its 911/E911 service, so it is not evident from Intrado's Motion whether these contracts are even factually relevant to Intrado's interconnection with Embarq.

[27] Clearly, the testimony and evidence in the record show that Embarq has not "rebuffed" Intrado's request for interconnection as Intrado alleges at page 13 of its Motion. It is also clear that the commercial agreement terms proposed by Embarq are not "draconian" as Intrado asserts at page 14 of its Motion.

Intrado is flatly wrong in stating at page 18 of its Motion that there is no evidence to support the Commission's "suggestion" that Intrado can gain the interconnection it needs to compete through a commercial arrangement with Embarq. To the contrary, Embarq produced copious evidence demonstrating that a commercial arrangement is readily available and provides a viable mechanism for Intrado to compete to provide services to PSAPs in Florida.

C. Intrado did not pursue its state law claims

Intrado argues in its Motion that the Commission erred in not considering Intrado's request for interconnection separately under ss. 364.16, 364.161 and 364.162, F.S., notwithstanding the Commission's determination that §251(c) of the Telecommunications Act does not apply to Intrado's 911/E911 services. However, as Embarq argued in its Motion to Dismiss (subsequently withdrawn after the parties reached agreement on the issues to be arbitrated), at no time during Intrado's negotiations with Embarq did Intrado state or even suggest that it intended the negotiations to be governed by the negotiation and arbitration provisions of ss. 364.16, 364.161 and 364.162. Rather, all of Intrado's communications with Embarq indicated that Intrado was negotiating under the procedures and parameters of §§251 and 252 of the federal Act. (See, Embarq's Motion to Dismiss, filed on December 17, 2007, at page 6).

In addition, while Intrado's initial Petition may have appeared to rely on state law, as well as federal law, to support its interconnection request, Intrado did not propose separately any issues related to this claim or separately pursue this claim in its pre-filed testimony or Post-hearing Brief. [28] Intrado cannot now, through a Motion for Reconsideration, essentially request

[28] Section 364.162, F.S., has been cited in previous arbitration decisions to support the Commission's state law authority to resolve arbitration disputes under the Telecommunications Act. See, e.g., *In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale*

that the Commission start over and re-insert issues and arguments related to the applicability and meaning of the state statutes into the arbitration.

IV. CONCLUSION

Intrado does not raise any point of fact or law that the Commission overlooked or failed to consider in determining that Intrado's 911/E911 service to PSAPs is not "telephone exchange" service. The Commission's determination that the interconnection arrangements Intrado is requesting should be established in a commercial agreement is fully consistent with Act and the FCC decisions interpreting the Act (as well as the recent decisions of the Ohio and West Virginia commissions), and is fully supported by the evidence and arguments in the record. In addition, the record clearly shows that Embarq is ready and able to enter into a commercial agreement with Intrado that will provide a viable mechanism for Intrado to compete to provide its 911/E911 service to PSAPs in Florida. Finally, Intrado cannot now go back and attempt to arbitrate its claims separately under state law, when it did not raise these issues separately at the procedurally appropriate time during the arbitration or address them in its testimony and briefs.

WHEREFORE, for the reasons set forth in this Response, the Commission should deny Intrado's Request for Reconsideration.

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agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996, Order No. PSC-03-0690-FOF-TP.

Respectfully submitted this 26th day of December 2008.

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