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September 11, 2009

Via Hand Delivery

Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2450 Shumard Oak Blvd.
Tallahassee, FL 32399

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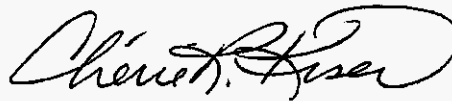
Re: Docket No. 080134-TP

Dear Ms. Cole:

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, respectfully submits this supplemental authority in connection with the above-referenced case. On September 10, 2009, the North Carolina Utilities Commission issued its final order in the arbitration between Intrado Comm and AT&T in North Carolina. Specifically, the North Carolina commission reaffirmed its earlier Recommended Arbitration Decision (*see* Intrado Comm Supplement dated April 29, 2009) that Intrado Comm's 911/E911 service is a "telephone exchange service" as defined in the Communications Act of 1934, as amended ("Act"), for which AT&T is required to offer interconnection pursuant to Section 251(c) of the Act.

A copy of the North Carolina commission's decision is attached. If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Chérie R. Kiser

Counsel for Intrado Communications Inc.

- COM _____
- ECR _____
- COL _____
- OPC _____
- ECI _____
- SSC _____
- NGA _____
- ADM _____
- CLK _____

Attachment

cc: Parties of Record

51893.1

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-1187, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Intrado Communications Inc. for)
Arbitration Pursuant to Section 252(b) of the)
Communications Act of 1934, as Amended, with)
BellSouth Telecommunications, Inc. d/b/a)
AT&T North Carolina)

ORDER RULING ON
OBJECTIONS AND
REQUIRING THE FILING
OF A COMPOSITE
AGREEMENT

BEFORE: Commissioner Lorinzo L. Joyner, Presiding, Chairman Edward S. Finley, Jr., and Commissioner William T. Culpepper, III

BY THE COMMISSION: On April 24, 2009, the Commission Panel issued its *Recommended Arbitration Order (RAO)* in this docket. The Commission Panel made the following:

FINDINGS OF FACT

1. Intrado seeks to provide competitive 911/E911 service to public safety answering points (PSAPs) and other public safety agencies in North Carolina.
2. The services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.
3. The interconnection agreement (ICA) should contain rates in instances when AT&T is the 911 service provider to the Public Safety Answering Point (PSAP) and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.
4. AT&T's 9-state template is not the appropriate starting point for negotiations. The 13-state template is the appropriate starting point for negotiations for the parties in this proceeding. Based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template

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since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

5. The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to competing local provider (CLP) trunking obligations in the 9-state region.

6. AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center. The primary selective router should be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

7. The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

8. AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T.

9. The parties may negotiate and establish multiple POIs, or different POIs for different types of services.

10. AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the Federal Communication Commission (FCC) rules.

11. The Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations, if agreed upon.

12. The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other incumbent local exchange companies (ILECs) in North Carolina. In addition, automatic number identification (ANI) and automatic location identification (ALI) information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

13. Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado

proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

14. The ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

15. It is not appropriate to include Intrado's proposed language in Section 3.4.3 of Appendix 911 concerning the interoperability of ALI. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

16. The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

17. The parties should modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, Switched Access Traffic in the General Terms and Conditions (GTC) section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, the *Appendix Intercarrier Compensation (IC)* and *Appendix ITR* should retain the references to "wireline" and "dialtone" service.

18. Language specifying the actions to be taken to remove misrouted Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix C of the parties' ICA. Also, the blocking of switched access traffic should not be included in the ICA as an option.

19. The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

20. Matrix Issue No. 18 concerning the term of the ICA and notification for a successor ICA has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

21. Matrix Issue No. 20 concerning the appropriate terms and conditions regarding billing and invoicing audits has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 20.

22. Matrix Issue No. 22 concerning Intrado's ability to assign the ICA to an affiliated entity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 22.

23. Matrix Issue No. 23 concerning individual case basis pricing for specific administrative activities has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 23.

24. AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

25. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

26. Matrix Issue No. 25 concerning late payments has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 25.

27. Reciprocal compensation should be rounded up to the next whole minute, and airline mileage should be rounded up to the next whole mile.

28. AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 concerning non-recurring charges is appropriate and should be adopted for inclusion in the interconnection agreement.

29. Matrix Issue No. 33 concerning providing unbundled network elements (UNEs) at parity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 33.

30. It is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix concerning non-standard collocation requests from the 13-state template without the additional language proposed by Intrado.

31. Matrix Issue No. 35 concerning references to applicable law has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

32. If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

On May 26, 2009, Intrado Communications Inc. (Intrado) and BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina (AT&T) each filed Objections to the RAO.

The following table summarizes the Objections to the RAO:

Finding of Fact No.	Intrado	AT&T
1		Object
2		Object
3	Object	Object
7	Object	
8	Object	
9	Object	
10	Object	
11	Object	

Finding of Fact No.	Intrado	AT&T
12	Object	
13		Object

AT&T further noted in its Objections that the Commission should “modify the Panel’s Recommended Order and remove the portions of its Findings of Fact and Conclusions regarding Issue No. 6 – Finding of Fact No. 5, Issue No. 14 – Finding of Fact No. 13, and Issue No. 16 – Finding of Fact No. 15 that Intrado and AT&T North Carolina have resolved.” AT&T stated that it understands that the portion of Issue No. 6 – Finding of Fact No. 5 regarding Intrado’s proposed clarifying language for Appendix OET Section 1.1 (incorrectly referred to as “Appendix OET 1.4” in the RAO), the portion of Issue No. 14 – Finding of Fact No. 13 regarding Section 6.1 of Appendix ITR regarding trunk forecasting and the portion of Issue No. 16 – Finding of Fact No. 15 regarding Intrado’s proposed language for Section 3.4.3 of Appendix 911 have been resolved¹.

On May 28, 2009, the Commission issued an *Order* requesting comments and reply comments on the Objections filed concerning the RAO.

Initial comments were filed by AT&T, Intrado, and the Public Staff on Thursday, June 18, 2009. The Public Staff filed corrections to its initial comments on July 9, 2009. Reply comments were filed by AT&T and Intrado on Monday, July 13, 2009.

Following is a discussion, by Finding of Fact, of the outstanding Objections to the RAO.

FINDINGS OF FACT NOS. 1 AND 2 (ISSUE NOS. 1 & 2 - MATRIX ISSUE NOS. 1(a) and 1(b)):

ISSUE NO. 1 - MATRIX ISSUE NO. 1(a): What service(s) does Intrado currently provide or intend to provide in North Carolina?

ISSUE NO. 2 - MATRIX ISSUE NO. 1(b): Of the services identified in Issue No. 1(a), which, if any, is AT&T required to offer interconnection under Section 251(c) of the Act?

INITIAL COMMISSION DECISION

The Commission concluded that, with respect to Matrix Issue No. 1(a), Intrado seeks to provide competitive 911/E911 services to PSAPs and other public safety agencies in North Carolina. With respect to Matrix Issue No. 1(b) the Commission concluded that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. The Commission further concluded that AT&T is required to offer

¹ The Commission’s rulings on these issues in the RAO stand, but, as always, parties are free to negotiate resolutions contrary to the Commission’s rulings that are acceptable to each party.

interconnection as to any other telephone exchange services or exchange access service Intrado may offer.

MOTIONS FOR RECONSIDERATION

AT&T: AT&T sought reconsideration of Matrix Issue No. 1(b) which concluded that the services that Intrado is seeking to provide are “telephone exchange services” and that, therefore, Intrado is entitled to interconnection with AT&T under Section 251(c) of the Act. AT&T denied that the competitive 911/E911 services Intrado seeks to provide utilizing its Intelligent Emergency Network (IEN) meet any of the relevant criteria set forth in the definition of “telephone exchange service” set forth in 47 U.S.C. 153(47)(A) and (B) as follows:

The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange access 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.

In support of its argument, AT&T included citations to decisions by the Florida and Illinois commissions holding that the IEN services do not meet the above definition. See *In re: Petition by Intrado Communications, Inc. for Arbitration*, Fla. Public Service Comm’n. Docket No. 070736-TPP, Final Order (December 3, 2008) (*Florida Order*), rehearing denied March 16, 2009 and *Intrado, Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934 as amended, to establish an Interconnection Agreement with Illinois Bell Telephone Company*, Ill. Commerce Comm’n, Docket No. 08-0545, Arbitration Order (March 17, 2009) (*Illinois Order*). AT&T also relied heavily on the FCC’s order in *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) (*Advanced Telecommunications Capability Order* or *ATCO*) and *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as amended*, 16 FCC Rcd. 2736 (2001) (*DA Call Completion Order*).

Specifically, AT&T denied that Intrado’s service provides intercommunication and that, furthermore, it does not provide for origination. It fails to meet the requirement that the service be “within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area,” and it also fails to meet the requirement that the service be “of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.” Furthermore, it is not comparable to any service the FCC has held meets the definition of telephone exchange service. With respect to AT&T’s own 911 tariff, AT&T denied that it labels its 911 service as a

“telephone exchange service” but rather as a “telephone exchange communication service.” In any event, AT&T maintained that this sub-issue is irrelevant.

INITIAL COMMENTS

INTRADO: Intrado maintained that AT&T in its Motion for Reconsideration has relied on the same arguments that it presented in its Initial and Reply Briefs and has again failed to provide any justification for the Commission to depart from its original decision in the *RAO*. Intrado’s Reply Comments *per se* were relatively brief and focused, but Intrado also attached a copy of its memorandum before the Ohio PUC which contained Intrado’s legal arguments relevant to this issue for the purpose, serving as arguments by reference.²

Intrado summarized its points pertinent to this issue as follows: (1) that Intrado’s service meets the federal definition of “telephone exchange service” and hence Intrado is entitled to interconnection under Section 251(c); (2) that Intrado’s service satisfies each prong of that definition; and (3) that the *RAO*’s determination is consistent with the decision by the Ohio PUC.

Intrado’s memorandum to the Ohio PUC addressed the instant issue as follows:

With respect to whether Intrado’s IEN service constituted a “telephone exchange service,” Intrado noted that in 47 U.S.C. 153(47) the FCC had recognized that the definition was not intended as a litmus test to screen out all but the most traditional forms of communications but rather should be construed broadly in light of evolving voice and data technologies in order to aid the pro-competitive purposes of the Act. See, e.g., *ATCO* at Paras. 21 and 31. With respect to the “call origination” part of the definition, Intrado observed that origination is relevant only to Part B of the definition and, in any event, Intrado does provide call origination by enabling two-way communication between the PSAP and the 911 caller or between a PSAP and another PSAP, thus necessarily affording a PSAP the ability to originate and terminate a call.

With respect to “intercommunication,” Intrado stated that AT&T was wrong to characterize Intrado’s 911 service as only allowing “the PSAP to connect...with designated entities (i.e., emergency personnel).” Rather, the PSAP is purchasing the 911 service from Intrado so it can receive calls from *all* callers programmed to reach the caller’s designated PSAP—i.e., so that the PSAP can intercommunicate with those 911 callers. As required by the *DA Call Completion Order*, Intrado’s 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls. Intercommunication may also take the form of

² The Ohio PUC found in Intrado’s favor in Ohio Case No. 07-119-TP-ACE, *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order (Ohio P.U.C., February 5, 2008) Ohio reinforced its conclusions that Intrado’s proposed service qualified as telephone exchange service under both 47 U.S.C. (47)(A) and (B) in its arbitration award in Case No. 07-1280-TP-ARB (issued March 4, 2009) (*Ohio Arbitration Award*).

PSAP-to-PSAP communications. Furthermore, the concepts of "geographical areas" and "community of interconnected customers" ties into the origination and conferencing abilities provided by Intrado.

With respect to the requirement that Intrado's service must be "within a telephone exchange, or within a connected system of the telephone exchanges within the same exchange area", Intrado noted that AT&T had conceded that Intrado's 911/E911 service area does not necessarily have to match that of the ILEC's. With Intrado's service, all 911 callers, whether fixed or nomadic within the PSAP community of interest, can be connected to the designated PSAP, together with PSAP-to-PSAP connection capability in the event of misdirected calls. The FCC has conclusively determined that the telephone exchange service definition "does not require a specific geographic boundary." See *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599, Para. 30 (1998).

With respect to whether Intrado's service is "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge," Intrado argued that its service to PSAPs is analogous to exchange access service and is therefore entitled to Section 251(c) interconnection on that basis as well. The Commission correctly found that Intrado's service meets the "exchange service charge" requirement which is met by the PSAP service fee. AT&T's argument that this charge is "not enough" is in fact the exact opposite of the truth. See *ATCO*, Para. 27.

PUBLIC STAFF: The Public Staff stated its belief that the Commission had thoroughly considered the arguments presented by the parties and had arrived at well-reasoned conclusions on these issues in the *RAO*. This is a case of first impression in North Carolina, and the Commission correctly applied the relevant federal law. AT&T has adduced no new argument to shed any new, much less convincing, light on these issues.

The Public Staff added that it would be reasonable to contend that AT&T is estopped from disputing that the service Intrado proposes to provide, a one-way service, is not a "telephone exchange service," when it has already entered into ICAs with one-way paging companies treating one-way traffic as local traffic. The Public Staff also referred to the Intrado arbitration case filed before the Virginia PUC, which has been referred to the FCC. In that case, the Wireline Competition Bureau of the FCC has sought comments from parties on the "general policy issue of the competitive provision of 911 voice services" in consolidated arbitration proceedings between Intrado Communications of Virginia and Central Telephone Company of Virginia and Verizon South, Inc. and Verizon Virginia, Inc. in WC Docket Nos. 08-33 and 08-185. The request for comments concerns the specific issues of how competition in provisioning the 911 network might impact the PSAPs and other public safety services in Virginia. Thus, in this request for comments the Wireline Competition Bureau is seeking comments on the "general policy issue of the competitive provision of 911 voice

services”; it is *not* seeking comments specifically on the legal question of Intrado’s right to interconnect subject to Section 251(c) of the Act.³

REPLY COMMENTS

AT&T: Responding to the Public Staff’s and Intrado’s comments, AT&T reiterated its view that Intrado’s proposed 911/E911 service does not constitute telephone exchange service and Intrado is thus ineligible for interconnection pursuant to Section 251(c) of the Act. More specifically, AT&T denied the Public Staff’s suggestion that it was estopped from disputing Intrado’s service because it has entered into ICAs with one-way paging companies. AT&T stated that paging companies were providing telecommunications service, not telephone exchange service, and are thus ineligible to purchase Section 251(c) UNEs. AT&T added that it had entered into the paging agreement solely to fulfill its obligations pursuant to Section 251(b)(5) to enter into reciprocal compensation arrangements with Commercial Mobile Radio Service (CMRS) providers. As for the Virginia arbitration before the Wireline Competition Bureau, AT&T stated that the Public Staff was incorrect in suggesting that Intrado’s entitlement to a Section 251(c) agreement is not an issue to be decided in that proceeding.

INTRADO: Intrado filed no Reply Comments on this issue, except to state that “it has already addressed the large majority of AT&T’s Initial Comments in its briefs and comments previously filed in this proceeding. AT&T raises nothing new that supports rejection of Intrado Comm’s Comment/Objections or adoption of AT&T’s Objections.”

DISCUSSION

Matrix Issue No. 1(b) is the threshold issue in this arbitration. It poses the question of whether Intrado is entitled to interconnection under Section 251(c) for the 911 and E911 services that it is proposing to competitively provide. The answer to this question depends on whether those services fall under the definition of “telephone exchange services” pursuant to 47 U.S.C. 153(47)(A) or (B). In the *RAO*, the Commission examined at length the text of 47 U.S.C. 153(47), the decisions of other states (with particular reference to the *Ohio Arbitration Award*), the arguments of the parties, and the relevant FCC cases (notably, *ATCO* and *DA Call Completion Order*). Ultimately, the Commission found for Intrado that the competitive 911/E11 services sought to be offered by Intrado were entitled to interconnection under Section 251(c) with AT&T.

³ See Public Notices issued by the Wireline Competition Bureau: (1) “Procedures Established for Arbitration of an Interconnection Agreement Between Intrado Communications of Virginia and Verizon,” WC Docket No. 08-185, December 9, 2008, and (2) “Comment Sought on Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings/Pleading Cycle Established,” WC Docket No. 08-33 and WC Docket No. 08-185, June 4, 2009 (justifying the unusual step of seeking comment from other parties within the context of an arbitration proceeding). The Bureau wrote in the June 4, 2009, Public Notice: “While Intrado’s petitions raise a number of contractual issues specific to Intrado, Embarq, and Verizon, the arbitration proceeding also has raised the more general policy issue of the competitive provision of 911 voice services. Resolution of that issue in the context of this arbitration proceeding could have a significant impact on persons and entities that are not parties to the proceedings....” (at 2).

AT&T has, of course, disputed that Intrado is entitled to such interconnection. In its Objections to the RAO, however, AT&T has failed to advance the argument. Instead, AT&T has in large measure merely repeated or, at most, slightly embellished its arguments from its original brief and has offered no new facts or argumentation that would compel the Commission to change its mind. Both Intrado and the Public Staff have provided cogent arguments in reply to AT&T with respect to this issue.

The Commission, of course, recognizes that there is a division of authority among the states as to whether Intrado's competitive 911/E911 services - and, by extension, those of other competitive 911/E911 providers - meet the definition of "telephone exchange services" under 47 U.S.C. 153(47) and hence are qualified for interconnection under Section 251(c) of the Act. The Commission also knows of no definitive pronouncement as yet on the matter from a federal court or the FCC. This simply means that the Commission must reach a decision according to its best judgment. The Commission has been persuaded by the preponderance of the evidence that the better interpretation is that Intrado's competitive 911/E911 services meet the definitions set forth in 47 U.S.C. 153(47) and that the better course of action is to approve an interpretation which more closely conforms to the overall purpose of the Act - that is, one that allows for competition in telecommunications.

CONCLUSIONS

The Commission finds it appropriate to reaffirm its original conclusion that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection, as well as for any other telephone exchange service or exchange access service Intrado may offer.

FINDING OF FACT NO. 3 (ISSUE NOS. 3 AND 4 - MATRIX ISSUE NOS. 1(c) and 1(d)):

ISSUE NO. 3 - MATRIX ISSUE NO. 1(c): Of the services identified in Matrix Issue No. 1(a), for which, if any, should rates appear in the ICA?

ISSUE NO. 4 - MATRIX ISSUE NO. 1(d): For those service identified in Matrix Issue No. 1(c), what are the appropriate rates?

INITIAL COMMISSION DECISION

The Commission concluded that the ICA should contain rates in those respective instances in which AT&T is the 911 service provider to the PSAP and in which Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 [when AT&T is the 911 provider to the PSAP] and that part of Scenario 3 [when Intrado and AT&T each serve a different PSAP and transfer call between each other] pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 [when Intrado is the 911 service provider to the PSAP] and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, the Commission directed

AT&T and Intrado to resume negotiations and include any agreement in the composite agreement. If the parties could not agree, each party was to submit filings to the Commission setting forth why its proposals were more reasonable than the other's.

MOTIONS FOR RECONSIDERATION

AT&T: Assuming for the purposes of argument that Intrado is entitled to interconnection pursuant to Section 251(c) of the Act, the appropriate rates are those proposed by AT&T, which should be applied on a reciprocal basis. In the *RAO*, the Commission indicated that the "rates arising under Section 251(c) must be included in the ICA" but conceded that it was "less clear whether the rates under Section 251(a) must also be included in the ICA."⁴ However, the Commission also stated that "since the parties have presented these issues . . . , it would be administratively efficient for the parties to include Section 251(a) rates in the ICA."

AT&T denied that there was any evidence that AT&T had "voluntarily negotiated" what are alleged to be Section 251(a) issues. AT&T stated that its position has always been that Intrado is not entitled to a Section 251(c) ICA, and that it has only been negotiating with Intrado in the context of a commercial agreement, having agreed to disagree about whether Intrado is entitled to a Section 251(c) ICA. In effect, the *RAO* has found that when Intrado, in competing with AT&T, interconnects with AT&T's telephone exchange service, such interconnection is pursuant to Section 251(c); but when AT&T interconnects to Intrado's telephone exchange service, this is under Section 251(a) - but only when the telephone exchange service is to PSAPs. AT&T doubted that Congress in passing the Act intended that different telephone exchange services interconnected between CLECs and ILECs competing in the ILEC's territory should be treated differently.

Moreover, AT&T argued that the *RAO*'s reliance on Section 251(a) to decide portions of the above issues was inappropriate and unlawful, because Section 251(a) issues and rates are not subject to Section 252 arbitration. See Section 252(b)(4)(A) ("The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any...."). Neither party asked for an interconnection ruling under Section 251(a), and thus a Section 251(a) question did not constitute an "open issue" for the Commission to decide. The limitation of arbitrations to "open issues" presented by the parties is an important limitation because negotiations between the parties are the centerpiece of the Act.

Furthermore, AT&T argued that the *RAO*'s invocation of Section 251(a) is unlawful. The only provision that requires ILECs to negotiate ICAs with competitors under Section 251(a) is Section 251(c)(1), and the only negotiation requirement imposed on ILECs under Section 251(c)(1) is the duty to negotiate terms and conditions for the

⁴ Section 251(a) reads in pertinent part: "GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.—Each telecommunications carrier has the duty—(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."

duties imposed on ILECs under Sections 251(b) and (c). See *Coserv Limited Liability Corp. v. Southwestern Bell Telephone*, 350 F3d 482, 485 (5th Cir. 2003)(*Coserv*) (An ILEC's Section 251(c) duty to negotiate is limited in scope to particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and (c)) Moreover, the FCC has found that only those agreements that contain an ongoing obligation relating to Section 251(b) or (c) must be filed under Section 252(a)(1) of the Act. See, e.g., *In the Matter of 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)*, fn. 26, WC Docket 02-89, 17 FCC Rcd. 19337 (October 4, 2002). AT&T maintained that this FCC decision supports AT&T's position that Section 251(a) issues are not arbitrable, as there is no obligation to file or obtain approval of an agreement that addresses Section 251(a) issues. Even if AT&T were compelled to enter into a Section 251(a) agreement, it would be completely separate from a Section 251(c) ICA. See, also, *Sprint Communications Co., L.P. v. Public Utilities Commission of Texas*, 2006 WL 4872346, *5 & n.4 (W.D. Tex. 2006); Arbitration Award, *Intrado Comms. Inc. and Verizon West Virginia, Inc., Petition for Arbitration filed Pursuant to Section 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, at 15 (Pub. Serv. Comm'n of W. Va., November 14, 2008) (adopted and affirmed by full West Virginia Commission on December 17, 2008) and *Petition of Level 3 Communications LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, 2003 Colo. PUC LEXIS 109, *22-*23 (Colo. Pub. Utils. Comm'n, Jan. 17, 2003). In summary, AT&T maintained that the only way a state commission would have the authority to implement Section 251(a) would be if Congress expressly gave it that authority, since such power cannot be inferred.

INTRADO: Intrado objected to the idea that the Commission might apply AT&T rates to AT&T-to-Intrado traffic. Intrado applauded the RAO's recognition that the rates governing AT&T's interconnection to Intrado should be included in the ICA. Intrado also agreed with the RAO's decision that "reasonableness" should be the Commission's guide. Furthermore, Intrado believed that the interconnection rates it proposed were reasonable and should be adopted by the Commission. AT&T has not shown that those rates are not reasonable, while the Ohio PUC in Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Arbitration Award at 21 (Oct. 8, 2008) (Ohio Arbitration Award) recently determined that the Intrado proposed rates were "reasonable" and "not beyond the range of other companies."

INITIAL COMMENTS

AT&T: AT&T's initial comments regarding Intrado's objection concerning this issue were in many respects a recapitulation of AT&T's arguments in its Motion for Reconsideration, especially its argument that Sections 251 and 252 contain no language delegating to state commissions the authority to arbitrate and decide Section 251(a) issues. However, if the Commission ultimately decides that Intrado is entitled to a Section 251(c) agreement, then the RAO's conclusion that AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide

interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible points with AT&T within North Carolina would also include the *mutual* exchange of traffic between the parties' respective customers. See 47 C.F.R. 51.5. Such traffic includes 911 traffic in the same manner as it does for *local* traffic, with no separate interconnection required based on traffic flow.

INTRADO: Intrado argued in Reply to AT&T's brief that the Commission had properly arbitrated the ICA under Section 251(a) and Section 251(c) of the Act. Among other points, Intrado maintained that, because of AT&T's dominance of the public switched telephone network, Intrado must be able to invoke all of the provisions of Sections 251 and 252 of the Act. Furthermore, AT&T's claim that Section 251(a) was never an open issue in this proceeding is without merit. For instance, AT&T discussed Section 251(a) at length in arguing against Intrado's desire to have AT&T establish a point of interconnection on its network. It is well-established that the Commission has the authority to render a decision on interconnection pursuant to authorities other than those cited by the parties. State commissions have the well-supported right to arbitrate under Section 251(a), as the Commission has acknowledged in other dockets. In the *Coserv* case cited by AT&T elsewhere, the Fifth Circuit wrote: "Congress contemplated that voluntary negotiation might include issues other than those listed in Section 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]" (emphasis in original).

PUBLIC STAFF: The Public Staff noted that AT&T and Intrado both objected to this Finding of Fact, but for different reasons. AT&T objected that the Commission exceeded its jurisdiction in grounding rates involving AT&T-to-Intrado traffic under Section 251(a). Interestingly, AT&T did not argue this point in its proposed order, nor were other sources in the joint matrix or testimony very clear. For example, in AT&T witness Pellerin's testimony, she stated that the rates for AT&T-to-Intrado traffic should not fall under Section 251(c), but she also testified at page 22 of her direct testimony that "it is only appropriate to include relevant prices in the ICA for Scenarios 2 and/or 3 to the extent that the Commission requires inclusion of terms and conditions for such interconnection." Also, AT&T witness Constable Exhibit JEC-1 set out the responsibilities of the parties in various scenarios. Accordingly, it was reasonable for the Commission to conclude that AT&T had voluntarily negotiated these terms and to order the parties to pursue further negotiations.

For its part, Intrado resisted further negotiations on the rates it may charge AT&T, contending that the interconnection rates it had proposed were reasonable and, as such, should be adopted by the Commission.

The Public Staff agreed with the Commission that there is a lack of evidence in the record regarding the reasonableness of Intrado's proposed rates. Intrado has the burden of showing that its proposed rates are reasonable, but it has not provided cost studies or any other support for its rates, other than to cite to Ohio's having adopted

those rates. Such citation, in the absence of other evidence, which the parties had the opportunity to provide, is insufficient to sustain a finding for Intrado.

REPLY COMMENTS

AT&T: AT&T repeated its view that the appropriate rates to be applied should be those proposed by AT&T, which should be applied on a reciprocal basis, as well as its view that the Commission does not have the authority to arbitrate rates arising under Section 251(a) and include such rates in an interconnection agreement. AT&T concurred with the Public Staff's observation that Intrado has the burden of showing that its proposed rates are reasonable, that Intrado has provided no cost studies in support of those rates, and that the fact that Ohio has adopted those rates is insufficient grounds for adopting them here in the absence of other evidence. However, AT&T continues to disagree with the Public Staff and Intrado that it was reasonable to conclude that AT&T had voluntarily negotiated Section 251(a) rates or that the Commission has jurisdiction under Section 251(a) to include rates governing AT&T-to-Intrado interconnection.

INTRADO: Intrado argued that AT&T was wrong in saying that the RAO's reliance on Section 251(a) of the Act was unlawful. Intrado concurred with the Public Staff's observation in Initial Comments that AT&T had not shed any new light on this issue and there was thus no need for the Commission to alter its conclusions. Intrado also noted that AT&T treats 911 traffic in its interconnection agreements by requiring CLPs to establish a point of interconnection for "plain old telephone service" (POTS), which is governed by Section 251(c). Intrado reiterated that it had proposed wholesale, cost-based rates which are reasonable and which the Ohio PUC has approved. While Intrado generally supports the notion of reciprocal terms and conditions between the parties, Intrado has never agreed that each Party's pricing should or must be reciprocal.

DISCUSSION

The two points in contention concerning these issues were (1) the appropriate rates for AT&T-to-Intrado traffic and (2) whether the basis for such rates lies in Section 251(a).

There was universal agreement that AT&T's rates should apply concerning Intrado-to-AT&T traffic. With respect to AT&T-to-Intrado traffic as set forth in Scenario 2 and that portion of Scenario 3 involving a transfer of calls from AT&T-to-Intrado, the Commission asked the parties to negotiate an appropriate rate. If they could not agree, they were to come back to the Commission for resolution. The Commission indicated that its decision would be based on a standard of "reasonableness." Regrettably, the parties appear to have chosen not to follow the Commission's suggestion to negotiate and have, instead, once again presented their same rate recommendations to the Commission. Intrado supported its rates solely by reference to their having been approved by the Ohio PUC, while AT&T argued that its TELRIC rates should apply.

The Commission agrees with the Public Staff's comments that it was reasonable for the Commission to have concluded that AT&T had voluntarily negotiated these items and to have ordered the parties to pursue further negotiations. The Commission also agrees with the Public Staff that Intrado should have the burden of proof to show that its proposed rates were reasonable. Intrado has not done so. In the absence of cost studies or any other support for its rates, the fact that Ohio has adopted the rates is, standing alone, insufficient grounds to adopt Intrado's proposed rates. By contrast, AT&T is subject to TELRIC rates; and, as the RAO observed, these rates "have been validated and are acceptable to Intrado for Intrado-to-AT&T interconnection." Accordingly, the Commission has no other choice but to find that AT&T's rates are better substantiated and more reasonable than those proposed by Intrado and should thus apply in all scenarios.

Since the Commission has concluded that AT&T's rates should apply in all scenarios, the question of whether the basis for the rates for AT&T-to-Intrado interconnection lies in Section 251(a) is, for all practical purposes, moot; and it is not necessary for the Commission to further address questions relating to the application of Section 251(a) to rates in this docket.

CONCLUSIONS

The Commission finds it appropriate to conclude that the AT&T rates should apply as to all scenarios and that it is not necessary for the Commission to address the question of the application of Section 251(a).

FINDING OF FACT NO. 7 – MATRIX ISSUE NO. 3(b): What trunking and traffic routing arrangements should be used for the exchange of traffic when AT&T is the designated E911/911 service provider?

INITIAL COMMISSION DECISION

The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

MOTIONS FOR RECONSIDERATION

INTRADO: In its Objection to this Finding of Fact, Intrado requested that the Commission further explain the RAO's requirement that the parties provide reciprocal trunk group arrangements to include facilities and to ensure the reliable exchange of traffic between their networks. Intrado believes that further explanation will ensure both parties are aware of their rights and obligations for trunking.

INITIAL COMMENTS

AT&T: AT&T commented that no clarification was necessary on this issue from the Commission.

PUBLIC STAFF: The Public Staff noted that the Commission concluded that ICA the language should clearly allow Intrado to establish trunking either through its own facilities or those of a third party. Furthermore, the Public Staff suggested that, in the context of this issue and the Commission's conclusion, the phrase "reciprocal trunk group arrangements" simply refers to each party's equal responsibility to establish any necessary trunking to the other party's selective router under the same terms and conditions available to both parties.

REPLY COMMENTS

AT&T: AT&T agreed with the Public Staff's position that the phrase reciprocal trunk group arrangements simply refers to each party's equal responsibility to establish any necessary trunking to the other party's selective router under the same terms and conditions. AT&T asserted that no additional clarification was needed on this issue.

DISCUSSION

In the RAO, the Commission concluded that the parties would reciprocate in exchanging forecast information to ensure that each party agreed to the trunk equipment and facility requirements necessary to meet forecasted demand. In reaching this conclusion, the Commission utilized the phrase "reciprocal trunk group arrangements." The use of this phrase apparently caused some uncertainty in the minds of the parties. The Public Staff in its comments observed that the phrase "reciprocal trunk group arrangements" simply refers to each party's equal responsibility to establish any necessary trunking to the other's selective router under the same terms and conditions available to both parties. The Commission agrees with this Public Staff conclusion. The Commission determines that the exchange of trunk forecast information between service providers is fundamental to providing 911/E911 service to the respective end users. Accordingly, the Commission clarifies that the exchange of reciprocal trunk group arrangements simply refers to each party's responsibility to exchange trunking forecast to the other's selective router under the same terms and conditions available to both parties.

CONCLUSIONS

The Commission concludes that the original Finding of Fact is clarified as discussed above.

FINDINGS OF FACT NOS. 8, 9, 10, AND 11 (ISSUE NOS. 9-12 - MATRIX ISSUE NOS. 4, 4(a), 4(b), and 4(c)): What terms and conditions should govern points of interconnection (POIs) generally, and when: (a) Intrado Communications is the

designated 911/E911 service provider; (b) when AT&T is the designated 911/E911 service provider; and (c) when a fiber mid-span meet is used?

INITIAL COMMISSION DECISION

The Commission concluded that, with respect to Matrix Issue No. 4, AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. With respect to Matrix Issue No. 4(a), the parties may negotiate and establish multiple POIs, or different POIs for different types of services. With respect to Matrix Issue No. 4(b), AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the FCC rules. With respect to Matrix Issue No. 4(c), the Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations.

MOTIONS FOR RECONSIDERATION

INTRADO: Intrado made the following Objections to these Findings of Facts:

Matrix Issue No. 4 – What terms and conditions should govern POIs generally?

The Commission should exercise its discretion under Section 251(a) of the Act to order AT&T to interconnect on Intrado's network when Intrado is the designated 911/E911 service provider.

Matrix Issue No. 4(a) – What terms and conditions should govern points of interconnection when Intrado is the designated 911/E911 service provider?

The Commission should exercise its discretion under Section 251(a) to locate the POI on Intrado's network when Intrado is the designated 911/E911 service provider. Intrado stated that this practice is consistent with the rulings of the FCC and the practices of several other states.

Moreover, Intrado argued that sound discretion and equity require the POI to be located on Intrado's network when Intrado is the designated 911/E911 service provider. Intrado suggested that, since AT&T is the only provider of 911/E911 services to PSAPs in the AT&T service territory, AT&T cannot separate itself from the practices which AT&T has established in providing 911/E911 services.

Intrado noted that AT&T has decided that 911 interconnection arrangements should be different from those used for plain old telephone service traffic. Because of this decision, the equities require AT&T to be subject to the same interconnection arrangements it imposes on CLPs when AT&T is the designated 911/E911 service provider.

Intrado noted that AT&T requires all CLPs and wireless carriers to interconnect at the appropriate selective router, i.e., the selective router serving the PSAP to which the 911 call is destined. That practice is consistent with the FCC's mandates that the selective router should be the cost allocation point for the exchange of 911/E911 traffic. Intrado asserted that, although the finding resulted in a cost allocation point beyond the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice. For these reasons, the Ohio PUC determined that, when Intrado is serving the PSAP the POI should be the selective router of the 911/E911 network provider and that an ILEC sending 911/E911 calls to Intrado PSAP customers is responsible for delivering those 911/E911 calls to an Intrado selective router location.

Matrix Issue No. 4(b) – What terms and conditions should govern points of interconnection when AT&T is the designated 911/E911 service provider?

The Commission should eliminate any ambiguity in the RAO that would undermine Intrado's right to designate the location of the POIs on AT&T's network, including a single POI, when Intrado seeks to interconnect with AT&T to deliver traffic to AT&T's customers.

Matrix Issue No. 4(c) – What terms and conditions should govern POIs when a fiber mid-span meet is used?

Intrado is entitled to designate the location of any meet point interconnection arrangement to be used by the parties and eliminate the suggestion that the parties are required to negotiate mutually agreeable meet point locations.

INITIAL COMMENTS

AT&T: The Commission allowed the parties flexibility in deciding on a POI, noting that the parties are free to choose to interconnect at a single POI, or at several different POIs, as may be decided at their discretion. The Commission should reject Intrado's request to modify the RAO.

AT&T agreed with the Commission that AT&T should not be required to establish interconnection at two geographically diverse locations on Intrado's network when Intrado serves as the designated 911/E911 service provider; and, that it is unreasonable to expect AT&T to interconnect with Intrado at Intrado's selective routers, which may be miles apart, or removed from a particular AT&T exchange service area by LATA boundaries. AT&T also argued that Intrado must not be allowed to make the ILECs and other telecommunications competitors incur operating expenses which are unreasonable or unwarranted because of Intrado's operating paradigm.

AT&T noted that Intrado had requested that the Commission clarify the RAO to indicate that Intrado is entitled to designate the location of the POI on AT&T's network, including a single POI, when Intrado seeks to interconnect with AT&T for the exchange of traffic and to designate the meet point interconnection arrangement to be used by the parties.

AT&T objected to Intrado's requested modifications because the RAO clearly provides that AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. AT&T noted that the RAO provided that AT&T may choose to interconnect with Intrado or any other carrier in a contractual arrangement which is satisfactory to both parties and that AT&T and Intrado may negotiate a meet point arrangement that meets both parties' needs.

INTRADO: Intrado maintained that the diversity and redundancy requirements of 911 communications demand the establishment of one-way POIs on AT&T's and Intrado's networks. Intrado protested that AT&T's selective interpretation of Sections 251(a) and 252(c)(2) of the Act to support a position that only one POI should be implemented ignores several truths concerning AT&T's 911/E911 service: namely, the manner in which AT&T requires CLPs to interconnect with AT&T's network to reach AT&T's PSAP customers; the way in which AT&T currently provides 911/E911 services between its own 911 calling customers and PSAP calling customers and PSAP customers; and well-established industry practices. Intrado seeks a POI arrangement equal to AT&T's, as guaranteed under statute. The diversity and redundancy requirements supported by Intrado are vital to ensuring that Intrado can fully carry out its public safety duties under Section 251(c)(3) of the Act.

AT&T has argued that matters under Section 251(a)(1) are not subject to arbitration under Section 252 and that there is no language anywhere in Sections 251 or 252 that delegates to state commissions the authority to arbitrate or decide issues under Section 251(a)(1). AT&T has also argued that the only time ILECs have a duty to negotiate with a requesting carrier under Section 252(b) is when the carrier requests an agreement to implement Sections 251(b) and (c), not Section 251(a)(1); and the only time an ILEC can be compelled to arbitrate an agreement under Section 252(b) is in cases where it had a duty to negotiate under Section 251(b). AT&T's argument in this regard is unsupportable.

Intrado argued that Section 252 does not foreclose a state's authority to arbitrate disputes arising under Section 251(a), nor does it restrict such arbitration to Sections 251(b) and 251(c). Clearly, Section 251(a) affords any party to a Section 252 negotiation the right to petition a state commission for arbitration, and Section 252(a)(1), which concerns voluntary negotiations, enables parties to enter into an ICA without regard to Sections 251(b) or 251(c).

Intrado stated that AT&T suggested that the issue of selective router POIs was not truly open for the purpose of arbitration. The Commission has well-established authority to apply any applicable law, if it determines that the interconnection framework advanced by Section 251(a) was the appropriate basis for interpretation. The Commission has properly considered the issue of one-way POIs using appropriate statutory interpretation.

Intrado argued that AT&T has misled the Commission into thinking that there must be separate POIs on each carrier's network. Not only is Section 251(c)(2) silent on whether particular types of services warrant special treatment, but a POI on an ILEC's network can be used for the mutual exchange of all kinds of traffic between the ILEC and the CLP. Furthermore, AT&T claimed that Sections 251(c)(2) and 251(a)(1) do not impose cumulative, redundant duties on the ILEC. Once the ILEC interconnects to a carrier under Section 251(c)(2), it has fulfilled any conceivable duty it could have under Section 251(a)(1) as well.

Intrado maintained that requiring AT&T to interconnect with Intrado at its selective router is not in addition to the duties imposed by Section 215(c)(2), as claimed by AT&T, but is simply the means by which AT&T compels CLPs to interconnect with AT&T's own PSAP customers. Intrado pointed out that the ILEC-established industry practice is for the POI to connect to the 911/E911 network at the selective router, per the FCC's interpretation of the proper location for the 911/E911- traffic cost-allocation point. Intrado warned that to follow AT&T's recommendations would engender a radical alteration in the organization and functionality of 911/E911 services.

Intrado further stated that Section 251(c)(2) and FCC rules support Intrado's argument for equality in PSAP connection. These provisions instruct AT&T to provide Intrado with interconnection that is at least equal in quality to that provided by AT&T to itself or to any subsidiary, affiliate, or any other party to which AT&T provides interconnection. Intrado reiterated that it simply wants AT&T to comply with an interconnection arrangement on Intrado's network that AT&T designed and implemented (per public safety and concerns and industry standards) when it was the designated 911/E911 service provider.

Intrado argued that Section 251(a) is not redundant to Section 251(c)(2). The Commission has the authority to apply its Section 252 arbitration and enforcement authority over Section 251 agreements. Also, Sections 251(c)(2) and 251(a) are complementary provisions in the case of Intrado's service. Section 251(c)(2) compels AT&T to allow Intrado to enter the competitive 911/E911 marketplace by opening its network under Section 251(c)(2), whereas Section 251(a) governs the substantive arrangements between selective routers that enable 911/E911 service to function as it has under the incumbent. Intrado argued that the two provisions work hand-in-hand at different stages of the competitive process, rendering AT&T's objections void. Intrado stated that the FCC's exclusion of economic concerns from the determination of technical feasibility further fortifies its argument.

Lastly, Intrado commented that AT&T's contention that the duties outlined in Section 251(a) create an unlawful taking is true only if AT&T is not compensated for services. Intrado contended that in order for AT&T's customers to complete their emergency calls to Intrado served PSAPs, AT&T must provide connections to the selective routers of the 911 service provider that serves the caller's designated PSAP.

PUBLIC STAFF: The Public Staff stated that it believes the *RAO* is clear on AT&T's obligations to provide interconnection to Intrado. The Public Staff stated, however, that it is not opposed to the Commission clarifying that Intrado may designate the location of the POI on AT&T's network, including a single POI as provided by Part 51.305 of the FCC's rules.

The Public Staff acknowledged that Intrado requested the Commission to exercise its authority and order that the POI be located on Intrado's network when Intrado is the designated 911/E911 service provider. The Commission explicitly declined to impose the requirement on AT&T that it be required to establish interconnection at Intrado's selective routers when Intrado served as the designated 911/E911 service provider. The Public Staff recommended that the Commission's conclusion to allow the parties to negotiate for the establishment of multiple POIs be upheld and affirmed.

Lastly, the Public Staff noted that Intrado requested the Commission to delete the language allowing the parties to negotiate mutually agreeable meet point locations. The Public Staff noted that the Commission pointed out in its discussion that Part 51.305 of the FCC's rules does not provide guidance for the location of the POI when interconnecting using the meet point. The Public Staff concurred with this assessment. Thus, the Commission should affirm that the parties are free to negotiate mutually agreeable meet point locations.

REPLY COMMENTS

AT&T: AT&T stated that it agreed with the Public Staff on Findings of Fact Nos. 9 and 11, and also stated that the Commission should reject Intrado's request for modifications on these two Findings of Facts.

AT&T did not provide any additional comments on Findings of Fact Nos. 8 and 10.

DISCUSSION

In the *RAO* the Commission allowed the parties flexibility in deciding on a point of interconnection, noting that the parties are free to choose to interconnect at a single point of interconnection or at several different points of interconnection, as may be decided by the parties based upon considerations of basic network design characteristics. As noted by the Public Staff, the *RAO* is clear on AT&T's obligations to provide interconnection to Intrado. Thus, the Commission rejects Intrado's request to modify the *RAO*.

For the reasons stated in the *RAO*, the Commission explicitly declined to require AT&T to establish interconnection at Intrado's selective routers when Intrado served as the designated 911/E911 service provider. We are not inclined to change or modify our decision on this issue, nor, in response to the arguments made in the motion to reconsider, are we inclined to modify our decision regarding the meet points. However,

the Commission reiterates the following point made in the RAO, that nothing prevents the parties from negotiating the establishment of multiple POIs.

Intrado has repeatedly stated that, when it is the designated 911/E911 service provider, it requires ANI and ALI data to insure that the proper emergency services are dispatched to the proper calling party's location. However, the Commission notes that AT&T reiterated in its Reply Comments that when a 911 call is transferred via voice trunks by AT&T, from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call, which the PSAP then uses to query an external database for the ALI. The transmission of ANI information is an embedded characteristic of the signaling and transmission protocol in initiating and completing a telephone call on the public switched telephone network (PSTN). As such, the sending of ALI data appears to be an off-network functionality, i.e., not embedded in the telephone call transmission on the PSTN. Therefore, the operating parameters of Intrado's network are different from that of the PSTN.

CONCLUSIONS

The Commission concludes that Findings of Fact Nos. 8, 9, 10, and 11 should be affirmed.

FINDING OF FACT NO. 12 – MATRIX ISSUE NO. 5: (a) Should specific terms and conditions be included in the ICA for inter-selective router trunking? If so, what are the appropriate terms and conditions? (b) Should specific terms and conditions be included in the ICA to support PSAP-to-PSAP call transfer with automatic location information (ALI)? If so, what are the appropriate terms and conditions?

INITIAL COMMISSION DECISION

The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. In addition, ANI and ALI information transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

MOTIONS FOR RECONSIDERATION

INTRADO: Intrado stated that the Commission's Finding of Fact is not clear and that the Commission should clarify that ANI and ALI information must both be retained and transferred when 911 calls are transferred between the parties' selective routers. Intrado argued that this transfer of information is necessary to provide for the seamless and transparent exchange of information between their networks.

INITIAL COMMENTS

AT&T: AT&T commented that the Commission's RAO provided that ANI and ALI information that were initially transmitted to the serving AT&T central office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. AT&T stated that when AT&T transfers a 911 call via voice trunks, AT&T delivers ANI with the call. To enable the transfer of ALI information as proposed by Intrado AT&T would incur costs to develop the ALI transfer function which neither Intrado nor a PSAP has agreed to pay. AT&T argued that Intrado's proposed clarification request should therefore be rejected as it is another attempt by Intrado to inappropriately shift costs and obligations onto AT&T.

INTRADO: Intrado noted that AT&T objected to the inclusion of selective routing matters in the ICA, stating that the establishment of transfer capability should be the subject of separate negotiations where appropriate terms can be worked out with the PSAPs. AT&T misconstrued the Embarq Arbitration Award, which AT&T cited for the proposition that, because inter-selective routing constitutes a peering arrangement, not the interconnection of a CLP and ILEC networks, Sections 251(a) and 251(c) cannot be invoked.

Intrado stated that inter-selective routing is vital to an efficient and reliable 911/E911 system, as AT&T recognized in the construction of its own heavily redundant 911/E911 system. A call transferred over the PSTN loses ALI data, which increases the risk of misdirection or delay, abrogating the advantages inherent in a modern E911 system. AT&T's plan to engage in PSAP negotiations amounts to a piecemeal approach to safety and directly contravenes the Commission's responsibility to safeguard and promote the public interest.

PUBLIC STAFF: The Public Staff commented that Intrado requested that the Commission clarify that that ANI and ALI information must be retained and transferred when the call is transferred to the other party's router. The Public Staff further commented that it believed that the requirement to transfer ANI and ALI information when the call is transferred between routers was implied in the Commission's conclusion. The Public Staff suggested that since the finding did not explicitly require the retained information to be transferred with the call, the conclusion should be clarified to require that the transferred call should retain the ANI and ALI information.

REPLY COMMENTS

AT&T: AT&T did not agree with the Public Staff that the Commission should clarify the RAO to require that the transferred 911/E911 call retain ANI and ALI information. AT&T reiterated the fact that, today, when a 911 call is transferred via voice trunks by AT&T from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call. The PSAP then uses the ANI information to query an external database for the ALI. AT&T stated that, in order for AT&T to be able

to transfer ALI, it would have to incur costs to develop the ALI transfer function. Neither Intrado nor any PSAP has yet agreed to pay these costs.

INTRADO: Intrado observed that the Public Staff agreed with Intrado that the RAO should be clarified to explicitly require ANI and ALI to both be retained and transferred when a 911 call is transferred between the parties' selective routers. AT&T objected to this clarification because it would allegedly incur costs to transfer the ALI. AT&T should not, at this point, be allowed to raise cost issues associated with the transfer of ALI between the parties' networks.

Intrado said that AT&T is reluctant to adhere to the RAO's implicit requirement that ANI and ALI be transferred when a 911 call is transferred between the parties' selective routers. Intrado reiterated that this capability 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. Intrado believes strongly that the ALI transfer requirement should be explicitly stated in the Commission's final arbitration order to avoid future disputes between the parties and to ensure consumers and public safety agencies receive the most reliable and redundant 911 services available.

DISCUSSION

The Commission notes that, when a 911 call is transferred via voice trunks by AT&T from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call, which the PSAP then uses to query an external database for the ALI. Intrado maintains that the transfer and retention of ANI and ALI capability 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. Both arguments are plausible.

The Commission notes that, Intrado claimed that AT&T raised the issue of the costs to provide the transfer and retention of ANI and ALI between the selective routers as fundamental to its objection to providing this 911 network feature. Actually, AT&T at the outset of this issue suggested that the PSAP, as the customer, must pay for the transfer and retention network feature contemplated by Intrado. Neither party voiced a concern that, technically, the transfer and retention of ANI and ALI as a 911 network feature cannot be provided if subscribed to by the PSAP as a network feature requirement necessary to satisfy contractual 911 service obligations. However, the Commission believes that the 911/E911 service standard to be included in the ICA should be based on the premise that, today, when a 911 call is transferred via voice trunks, it delivers ANI with the call.

The Commission realizes that the PSTN precludes the general applications of a growing list of technology driven advancements, which, it can be argued, are needed by all consumers. However, the standards of the ICA are governed by the primary network structure and its functionality, which serves the general public. These provide a vehicle to provide the general public highly trustworthy access to safety and emergency

services. However, the Commission believes that, where needed, the capability to provide the transfer and retention of ANI and ALI, the proper instrument to provide this 911 network service feature is through a commercial agreement.

CONCLUSIONS

The Commission concludes that no clarification of its original Finding of Fact is warranted on this issue. The Finding of Fact on this issue is affirmed.

FINDING OF FACT NO. 13 – MATRIX ISSUE NO. 6: (a) Should requirements be included in the ICA on a reciprocal basis for: (1) trunk forecasting; (2) ordering; and, (3) service grading? If so, what are the appropriate requirements?

INITIAL COMMISSION DECISION

Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal, and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

MOTIONS FOR RECONSIDERATION

AT&T: AT&T stated that the only appropriate ordering process for use in the ICA is AT&T's, which uses industry standards. This process was developed collaboratively with other carriers, and can be changed only through a formal process; by contrast Intrado's process was developed unilaterally and can be changed at any time. AT&T further stated that, while Intrado proposes a web-based system that only Intrado uses, the rest of the industry is using the Telcordia EXACT system for these ASRs for ordering. AT&T argued that the better, more equitable, and safer approach is to make the ordering procedures reciprocal and conform to industry standards.

INITIAL COMMENTS

INTRADO: Intrado stated that both parties will exchange 911/E911 service traffic and thus purchase services from each other, making language governing the ordering and pricing of services and facilities a vital component of the ICA. Intrado further stated that it is only in this way that interoperability between Intrado and AT&T networks – an essential quality of any ICA – can be assured.

PUBLIC STAFF: The Public Staff noted that parties only provided limited evidence concerning the ordering process. The Public Staff commented that AT&T and Intrado both proposed similar processes in their testimony in that they both use Access Service Requests. The Public Staff stated that AT&T did not provide any new arguments that should compel the Commission to change its ruling requiring AT&T to use Intrado's

ordering process. The Public Staff believes that the Commission should affirm Finding of Fact No. 13.

REPLY COMMENTS

AT&T: AT&T urged the Commission to reject Intrado's language requiring AT&T to follow Intrado's ordering processes as posted on Intrado's website. AT&T further warned that forcing it to use Intrado's new system would impose additional costs on AT&T that it would not incur if Intrado used the industry system that every other carrier uses. AT&T argued that Intrado's system is untested and that no one knows whether it is reliable. According to AT&T, the better, safer, and more equitable approach is to make the ordering procedures reciprocal and conform to industry standards.

DISCUSSION

After carefully reviewing the comments, the Commission agrees with the Public Staff that AT&T did not provide any new arguments that should compel the Commission to change its ruling requiring AT&T to use Intrado's ordering process. Accordingly, the Commission finds it appropriate to affirm Finding of Fact No. 13.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 13 shall be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That, in accordance with the Commission's January 24, 2001 and November 3, 2000 Orders issued in Docket No. P-100, Sub 133, Intrado and AT&T shall jointly file the required Composite Agreement by no later than Monday, October 12, 2009.

2. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of September, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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 and e-mail this 11th day of September, 2009.

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