

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 08-23
AT&T ILECs Petition for Declaratory Ruling)	DA 08-391
)	

COMMENTS OF INTRADO COMMUNICATIONS INC.

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Intrado Communications Inc. (“Intrado Comm”), by its attorneys, hereby respectfully submits its comments on the Petition for Declaratory Ruling (“Petition”) filed by the AT&T incumbent local exchange carriers (“ILECs”) (collectively referred to as “AT&T”) in the above-referenced proceeding. AT&T’s Petition should be denied and the Federal Communications Commission (“Commission”) should confirm that competitors may freely port interconnection agreements in and among each state in AT&T’s 22-state operating territory as contemplated by the *AT&T/BellSouth Merger Order*^{1/} without the unlawful limitations requested or unilaterally applied by AT&T.

INTRODUCTION AND OVERVIEW

AT&T’s Petition and the numerous related proceedings at the state level demonstrate that AT&T is failing to comply with the spirit and the purpose of its merger commitments. Like Sprint, Intrado Comm has faced similar difficulties securing pro-competitive, mutually beneficial interconnection arrangements from AT&T. The goal of Merger Commitment 7.1 is to reduce

^{1/} *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662 (2007) (“*AT&T/BellSouth Merger Order*”). The commitments adopted in the *AT&T/BellSouth Merger Order* were based in large part on the conditions previously adopted by the Commission in the *Bell Atlantic/GTE Merger Order* and the *SBC/Ameritech Merger Order*. See *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032 (2000) (“*Bell Atlantic/GTE Merger Order*”); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, 14 FCC Rcd 14712 (1999) (“*SBC/Ameritech Merger Order*”).

competitors' transaction costs when negotiating and implementing interconnection agreements with AT&T. This goal is not being achieved. Competitors like Sprint and Intrado Comm are expending additional and unnecessary resources simply to secure their rights under the law and to enforce AT&T's compliance with its commitments to this Commission. AT&T's effort to narrowly tailor the application of Merger Commitment 7.1 by expansively interpreting "state-specific" is not consistent with the intent of that commitment.^{2/} Indeed, AT&T's position only serves to further its efforts to maintain separate and distinct operating regions (9-state and 13-state) in contravention of its previous arguments and commitments to integrate the companies, which it made to garner support for the approval of the merger. AT&T's disregard of state commission jurisdiction over the negotiation and arbitration of interconnection agreements also further dilutes the force and effect of Merger Commitment 7.1 and violates its acceptance of the merger commitments, which recognize the continuing authority state commissions. AT&T's refusal to honor the commitments it made to the Commission, which the Commission relied upon in approving the merger, should not be tolerated.

BACKGROUND

Intrado Comm and its affiliates hold authority to provide competitive local telecommunications services, including competitive emergency services, in thirty-eight states. In addition to other local exchange services, Intrado Comm seeks to offer public safety answering points ("PSAPs") and other public safety agencies a competitive alternative to the incumbent 911 network and services. Intrado Comm's next-generation 911 network offering provides routing, transmission, and transport of traditional and non-traditional emergency call traffic to the appropriate PSAP. The Commission has recognized for more than two years now that 911/E911

^{2/} Petition at 4-5.

services may be provided by utilizing a CLEC like Intrado Comm.^{3/} Through its interconnection agreement with AT&T, Intrado Comm seeks to provide the types of local exchange services and innovative solutions contemplated by the Communications Act of 1934, as amended (“Act”) and the FCC that are desperately sought by public safety agencies, Voice over Internet Protocol (“VoIP”) service providers, and other communications providers. Most importantly, Intrado Comm is poised to offer an alternative, IP-based technology that will “enable the public safety community to focus on future needs rather than requiring more from legacy systems, offer more redundancy and flexibility, and contribute greatly to improving compatibility between public safety systems that operate using different proprietary standards.”^{4/}

In this respect, Intrado Comm is bringing competition to a market that, as the Commission has recognized, has been primarily dominated by ILECs like AT&T.^{5/} To do so, however, Intrado Comm requires interconnection with ILECs such as AT&T to ensure that the customers of each carrier can seamlessly complete, transfer, or receive calls, including life-saving emergency calls. In order to provide these local exchange services, which include the aggregation, transport, and call-routing database management services essential for access to emergency services, Intrado Comm must interconnect its network with the ILECs that have connections with and provide services to PSAPs and other end users. To achieve the interconnection and interoperability between carrier networks needed for the provision of 911

^{3/} *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 38 (2005) (“*VoIP E911 Order*”).

^{4/} *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶¶ 74-75, 80-82 (2007).

^{5/} *VoIP 911 Order* ¶ 14.

services, Intrado Comm is in the process of negotiating and in many cases arbitrating interconnection agreements with ILECs in various states.^{6/}

I. AT&T APPEARS TO BE ENGAGED IN A SYSTEMATIC PATTERN TO AVOID COMPLIANCE WITH MERGER COMMITMENT 7.1

A. The Factual Similarities of AT&T's Refusal to Comply with the Spirit and Purpose of Merger Commitment 7.1 Is Not Limited to Its Interconnection Arrangements with Sprint

In May 2007, Intrado Comm requested interconnection from AT&T for each state in its 22-state operating territory, and emphasized its desire to utilize a single agreement that would cover

^{6/} Docket No. 30708, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Alabama*, Petition for Arbitration (filed Dec. 21, 2007) ("Alabama Arbitration Proceeding"); Docket No. 070736-TP, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Petition for Arbitration (filed Dec. 21, 2007) ("Florida Arbitration Proceeding"); Docket No. P-1187, Sub 2, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Petition for Arbitration (filed Dec. 21, 2007) ("North Carolina Arbitration Proceeding"); Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with The Ohio Bell Telephone Company d/b/a AT&T Ohio*, Petition for Arbitration (filed Dec. 21, 2007) ("Ohio Arbitration Proceeding"). Intrado Comm already has interconnection agreements in place with Qwest, as well as agreements with AT&T for Illinois and California. Nonetheless, AT&T is now challenging Intrado Comm's efforts to secure 251 interconnection arrangements based on its claims that not all of the interconnection arrangements requested by Intrado Comm are eligible for 251 interconnection. *See, e.g.*, Alabama Arbitration Proceeding, AT&T Alabama's Verified Response to Petition for Arbitration at 3 (filed Jan. 15, 2008) ("The Petition also contains issues that AT&T Alabama believes are not proper for an arbitration conducted pursuant to § 252."); AT&T Alabama's Motion to Dismiss or, in the Alternative, to Hold in Abeyance, Intrado Communications Inc.'s Petition for Arbitration (filed Jan. 15, 2008) ("AT&T Alabama believes that at least some of the issues raised by Intrado are not the proper subject of an arbitration pursuant to § 252 of the Act."). Intrado Comm's requested interconnection arrangements reflect its needs as a facilities-based provider for physical interconnection with the legacy ILEC system in order to provide a competitive, robust, advanced 911 emergency system that is fully interoperable with the ILEC network for the delivering of emergency services. This is precisely the type of interconnection Section 251 was designed to promote. AT&T's and other ILECs' lack of experience with competitive 911 emergency service interconnection requests does not justify refusing to negotiate arrangements that will achieve the intended goals of the Act and provide consumers emergency services that have long been overdue. *See, e.g.*, *Implementation of the Local Competition Provisions in the Telecommunications Act 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 1 (1996) ("*Local Competition Order*") (finding that the goal of the Telecommunications Act of 1996 was to "remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Review of the Emergency Alert System*, 22 FCC Rcd 13275, ¶ 29 (2007) ("Recent experience demonstrates that natural disasters and terrorist incidents can adversely impact terrestrial telecommunications infrastructure" and thus the FCC must take actions to "ensure that the Secretary of Homeland Security can implement the President's directive to provide 'as many communications pathways as practicable' to reach the American people during crises").

the entire 22-state territory (or to replicate the same agreement in each state). On three separate occasions, AT&T indicated to Intrado Comm that AT&T was developing a 22-state template interconnection agreement from which to start negotiations.^{7/} In the interim, AT&T provided Intrado Comm with its 13-state template agreement (covering the legacy SBC/Ameritech region) and its 9-state template agreement (covering the legacy BellSouth region). After AT&T extended the date for delivery of a 22-state agreement a third time, Intrado Comm kept the negotiation process moving forward by revising AT&T's 13-state agreement for use throughout the 22-state territory while reserving its right to insist upon a 22-state agreement. Proceeding in this manner was consistent with Intrado Comm's goal for uniform interconnection arrangements throughout the AT&T operating territory and Merger Commitment 7.1, which contemplates the use of a single agreement throughout AT&T's 22-state operating territory.

Like Sprint's request to AT&T as attached to AT&T's Petition,^{8/} Intrado Comm indicated that it would be happy to discuss any revisions necessary to the 13-state template to address state-specific pricing, performance measures, and technical feasibility issues consistent with the requirements of Merger Commitment 7.1.^{9/} AT&T simply rejected Intrado Comm's request, and to date, has never identified any of the language in Intrado Comm's proposed interconnection agreement that would need to be revised to accommodate state-specific issues. Like many of the proceedings initiated by Sprint at the state level, the issue of whether the Parties can use AT&T's 13-state template interconnection agreement as the starting place for

^{7/} See, e.g., Florida Arbitration Proceeding, Petition for Arbitration at 14, 16, Attachment 11, Attachment 13.

^{8/} Petition at Exhibit 1.

^{9/} Email correspondence from Thomas Hicks, Intrado Comm, to Jim Tamplin, AT&T (Jan. 31, 2008) (attached as Attachment 1). It appears that although AT&T has prepared a 13-state template and 9-state template for negotiation purposes, its delay in producing a 22-state template is to avoid compliance with its merger commitments. Forcing competitors to negotiate from different templates depending on the region where service is to be provided significantly raises a competitor's transactional costs.

negotiations is currently an open arbitration issue before the Florida, North Carolina, and Alabama commissions.

Throughout its discussions with Intrado Comm, AT&T has indicated that it is unwilling to use the 13-state template agreement as the starting point for negotiations in any of the legacy BellSouth states because of the numerous revisions that would be necessary. AT&T, however, has yet to inform Intrado Comm what any of those changes may be. This is similar to AT&T's arguments in its state proceedings with Sprint regarding the "arduous process" to make the "magnitude" of revisions needed to the 13-state template for use in the 9-state territory.^{10/} AT&T's arguments are without merit. In its state proceedings with Sprint, AT&T has provided a complete mark-up of a Wisconsin interconnection agreement (*i.e.*, based on the 13-state template) identifying all of the revisions that would be necessary to utilize that interconnection agreement in Florida (*i.e.*, one of the legacy BellSouth states).^{11/} To the extent that AT&T can go through such an exercise for one competitor, there is no justification for AT&T's refusal to do the same for Intrado Comm and other competitors.

B. Adopting AT&T's Limited Interpretation of Merger Commitment 7.1 Would Eviscerate the Application of the Commitment and Is Inconsistent with the Act

There is nothing that supports AT&T's interpretation that "state-specific pricing" includes a voluntarily negotiated bill-and-keep arrangement covering the nine legacy BellSouth

^{10/} Docket No. 07-0629, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P., SprintCom, Inc., WirelessCo, L.P. Nextel West Corp., and NPCR, Inc. v. Illinois Bell Telephone Company*, Verified Answer to Verified Complaint and Request for Declaratory Ruling at 6 (filed Jan. 8, 2008).

^{11/} *See, e.g.*, Docket No. 07-0629, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P., SprintCom, Inc., WirelessCo, L.P. Nextel West Corp., and NPCR, Inc. v. Illinois Bell Telephone Company*, Verified Answer to Verified Complaint and Request for Declaratory Ruling at Exhibit 1 (filed Jan. 8, 2008); Docket 35112, *Sprint's Complaint for Post-Interconnection Dispute Resolution with Southwestern Bell Telephone Company d/b/a AT&T Texas Regarding Adoption of Interconnection Agreement Pursuant to Merger Conditions*, AT&T Texas' Response to and Motion to Dismiss Complaint of Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel of Texas, Inc., and NPCR, Inc. at Attachment B (filed Dec. 21, 2007).

states.^{12/} On the contrary, this qualification was intended to address situations where a single state has issued an order based on an evidentiary proceeding that has reviewed a carrier's cost support and established specific pricing for that carrier's operations in that state.^{13/} This conclusion is further supported by the plain language of the Act that permits an ILEC to enter into a binding agreement without regard to the standards of Sections 251(b) and (c).^{14/} In such instances, the state can only reject an interconnection agreement (or any portion thereof) if the agreement discriminates against another telecommunications carrier not a party to the agreement or the agreement is not consistent with the public interest, convenience and necessity.^{15/}

Thus, neither the pricing standards of Section 252(d)(2)^{16/} nor any other state-specific pricing requirements apply to a voluntarily negotiated agreement unless the state-specific pricing would be justification for rejecting the agreement (*e.g.*, if the pricing would result in discrimination or the agreement was not consistent with the public interest, convenience and necessity). This clearly was not the case with respect to the underlying AT&T-Sprint agreement at issue in AT&T's Petition because it was approved in all nine states where it was filed. This is also consistent with the FCC's determination in the *SBC/Ameritech Merger Order* that voluntarily negotiated interconnection arrangements were the appropriate type of arrangements to be subject to most favored nations requirements.^{17/} AT&T's arguments to the contrary should be rejected.

^{12/} Petition at 4-5.

^{13/} *Cf. Bell Atlantic/GTE Merger Order*, Conditions Index ¶ 31 (indicating that the reference to state-specific performance measures was to "the performance measures applicable to the state where the agreement will be performed").

^{14/} 47 U.S.C. § 252(e)(2).

^{15/} 47 U.S.C. § 252(e)(2).

^{16/} 47 U.S.C. § 252(d)(2).

^{17/} *SBC/Ameritech Merger Order* ¶ 491.

C. AT&T's Actions Are Part of Its Effort to Maintain Two Separate Operating Regions Despite Its Commitments Otherwise

The Act, like the Merger Commitments, was designed to protect competitors from experiencing unreasonable delays in entering the marketplace formerly controlled exclusively by the incumbent.^{18/} The Act's framework seeks to address the very unequal bargaining power manifest in negotiations between ILECs and competitors in order to advance Congress's goals of increased competition.^{19/} Likewise, the purpose of Merger Commitment 7.1 is to reduce the transactional costs associated with negotiating interconnection agreements, and to diminish AT&T's incentives to discriminate against competitors through the terms of access offered or by raising competitors' costs.^{20/} Indeed, the cable companies that recommended adoption of the commitment noted that "AT&T/BellSouth (whose negotiating and arbitration resources dwarf those of its cable competitors) has the ability to increase cable's relative costs of providing competitive phone service to consumers far above the relative costs that AT&T/BellSouth incurs for such activities."^{21/}

^{18/} See *Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, 2000 U.S. Dist. LEXIS 19649, 99-CV-4915 (ARR) (E.D. Va 2000) (noting that "[t]he tight schedule set out in the Act manifests an intention of Congress to resolve disputes expeditiously" and Congress' desire to open up local exchange markets to competition without undue delay) (quoting *AT&T Communications Sys. v. Pacific Bell*, 203 F.3d 1183, 1186 (9th Cir. 2000)) and that "the legislative history explains that the purpose of the Act is 'to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition'" (quoting H.R. Conf. Rep. No. 104-458, at 113 (1996) reprinted in 1996 U.S.C.C.A.N. 10, 124)).

^{19/} *Local Competition Order* ¶ 15 (the "statute addresses this problem [of the incumbent's "superior bargaining power"] by creating an arbitration proceeding in which the new entrant may assert certain rights"); see also *id.* ¶ 134 (noting that because it is the new entrant's objective to obtain services and access to facilities from the incumbent and thus "has little to offer the incumbent in a negotiation," the Act creates an arbitration process to equalize this bargaining power).

^{20/} *AT&T/BellSouth Merger Order*, Concurring Statement of Jonathan S. Adelstein; see also *AT&T/BellSouth Merger Order*, Appendix F (placing this condition under the general heading of "Reducing Transaction Costs Associated with Interconnection Agreements").

^{21/} WC Docket No. 06-74, *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, Comments on AT&T's Proposed Conditions, at 10 (filed Oct. 24, 2006).

By allowing the portability of interconnection agreements throughout the AT&T/BellSouth territory, Merger Commitment 7.1 contemplates that a single interconnection agreement could be used in each state of AT&T's 22-state operating territory (subject to technical feasibility and state-specific pricing and performance plans). Requiring competitors like Intrado Comm to separately negotiate agreements for each of AT&T's former legacy regions would undermine the purpose of the condition and hamper the promotion of competition.^{22/} AT&T's Petition is a further step in its systematic effort to maintain two separate operating regions - the legacy 9-state BellSouth region and the legacy 13-state SBC/Ameritech region - in direct violation of its statements to this Commission that the merged entity would operate as a single, unified entity and its commitment to reduce competitors' transactional costs.^{23/}

The merger commitments have a limited "shelf life" and AT&T appears to be using that fact to its advantage. The merger commitments only apply for forty-two (42) months from the merger closing date, which was December 29, 2006.^{24/} It is now more than fourteen (14) months into the effective period of the commitments and AT&T is still functioning as if the merger never occurred by effectively denying competitors the benefits of the conditions. The Commission

^{22/} Cf. *AT&T/BellSouth Merger Order*, Concurring Statement of Commissioner Michael J. Copps (stating that the "portability of interconnection agreements" condition is an "important step[] for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition").

^{23/} See, e.g., *AT&T/BellSouth Merger Order* ¶ 210 (noting operation of AT&T and BellSouth "as a single company"); *BellSouth Corporation and AT&T Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T Inc.*, WC Docket No. 06-74, Application for Transfer of Control, Description of Transaction, Public Interest Showing and Related Demonstration, at 42-43 (filed Mar. 31, 2006) (noting integration of networks); *id.* at 43 (merger will "create a seamless, high-quality and cost-effective end-to-end network for next-generation applications"); *id.* at 44 (stating that "network integration will permit the merged entity to offer a wider range of services to its broad range of customers"); *id.* at 45 ("Network integration will result in more traffic being carried entirely on the combined company's network, thus avoiding the latency and reliability issues associated with traversing multiple networks."); *id.* at 54 (noting "consolidation of traffic will lead to reduced transport costs for that traffic").

^{24/} *AT&T/BellSouth Merger Order*, Appendix F at 147; see also *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Letter to Marlene H. Dortch, FCC, from Wayne Watts, AT&T (Jan. 29, 2007) (indicating the merger was consummated December 29, 2006).

recognized the consolidated entity's threat to competition and near dominance over the telephone network in its 22-state operating territory and only allowed the merger to go forward based on AT&T's voluntary commitments.^{25/} There are only twenty-eight (28) months remaining in the effective period of the conditions and it appears that few, if any, competitors have experienced reduced transactional costs as a result of the AT&T commitments. The Commission should therefore deny AT&T's Petition and ensure that AT&T upholds its commitments and provides competitors the protections originally intended by those commitments. It may be useful to also remind AT&T that failure to comply with Commission orders, rules, and regulations is subject to enforcement actions including substantial forfeitures.^{26/}

II. STATE COMMISSIONS HAVE JURISDICTION TO APPROVE, REJECT, INTERPRET, AND ENFORCE INTERCONNECTION AGREEMENTS, INCLUDING THOSE THAT ADHERE OR FAIL TO ADHERE TO THE MERGER CONDITIONS CONCERNING INTERCONNECTION AGREEMENTS

There is no merit to AT&T's argument that state commissions do not have jurisdiction to address which interconnection agreements are subject to Merger Commitment 7.1.^{27/} The Act specifically designates state commissions as the proper entity to address issues surrounding the implementation of interconnection agreements.^{28/} In addition, the Commission and courts have

^{25/} *AT&T/BellSouth Merger Order*, Concurring Statement of Commissioner Michael J. Copps ("This merger initially raised the specter of a consolidated entity - one owning nearly all of the telephone network in roughly half the country - using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether. To mitigate this concern, the merged entity has agreed to allow the portability of interconnection agreements and to ensure that the process of reaching such agreements is streamlined. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.").

^{26/} 47 U.S.C. Title V; 47 C.F.R. § 1.80; *see also AT&T Inc. Compliance with the Commission's Rules and Regulations Governing Customer Proprietary Network Information*, 22 FCC Rcd 16285 (2007) (entering a consent decree, terminating an investigation into AT&T's customer proprietary network information compliance, and noting AT&T's voluntary contribution of \$350,000 to the United States Treasury).

^{27/} Petition at 16.

^{28/} 47 U.S.C. § 252; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (finding that Section 252 of the Act entrusts state commissions jurisdiction over interconnection agreements).

long recognized the jurisdiction of the state commissions to address issues surrounding the negotiation, arbitration, interpretation, and enforcement of interconnection agreements.^{29/} And the Commission specifically addressed how the merger commitments affect this long-standing law when it stated that:

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs or other policies that are not inconsistent with these commitments.^{30/}

This is consistent with the Commission’s previous statements in the *SBC/Ameritech Merger Order* that “[d]isputes regarding the availability of an interconnection arrangement or unbundled element will be resolved through negotiation between the parties *or by the relevant state commission pursuant to section 252.*”^{31/} To the extent AT&T took issue with the Commission’s statements regarding state jurisdiction in the *AT&T/BellSouth Merger Order*, it had ample opportunity to express that view on reconsideration of the order or as part of the court appeal process initiated by several other carriers.^{32/} The Commission should therefore reject AT&T’s

^{29/} See, e.g., *Local Competition Order* ¶ 137 (“state commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemption, suspension, or modification of the requirements in section 251); *id.* ¶ 143 (“state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith”); *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 2109, ¶ 53 (2005) (stating that “as the Supreme Court has recognized” that Sections 251 and 252 “contemplate a federal-state partnership in the development of competition in the local exchange market”); *BellSouth Telecomms., Inc. v. MCI Metro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1273-74, 1277 (11th Cir. 2003); *Global Naps, Inc. v. FCC*, 291 F.3d 832, 838 (D.C. Cir. 2002) (noting that it is “the state agency’s responsibility to make a determination – that is, to mediate, to arbitrate, to approve, and (possibly) to interpret and enforce an interconnection agreement”).

^{30/} *AT&T/BellSouth Merger Order*, Appendix F at 147.

^{31/} *SBC/Ameritech Merger Order* ¶ 240 (emphasis added); see also *SBC/Ameritech Merger Order*, Appendix C ¶ 43 (emphasis added).

^{32/} See, e.g., *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Letter to Marlene H. Dortch, FCC, from Gary L. Phillips, AT&T (Feb. 7, 2006) (discussing challenges to the conditions in the *AT&T/BellSouth Merger Order*); *Verizon v. FCC*, No. 07-1009 (D.C. Cir. filed Jan. 16, 2007) (challenging one of the conditions adopted in the *AT&T/BellSouth Merger Order*).

request for a ruling that only the Commission can properly address issues related to the merger commitments.

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission deny AT&T's Petition and confirm that competitors may utilize AT&T interconnection agreements throughout the 22-state operating territory without the anti-competitive restrictions and limitations being unilaterally imposed by AT&T in the marketplace today.

Respectfully submitted,

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Dated: February 25, 2008

ATTACHMENT 1

ATTACHMENT 1

From: Hicks, Thomas
Sent: Thursday, January 31, 2008 6:08 PM
To: Tamplin, James
Cc: Hicks, Thomas
Subject: Intrado-AT&T Interconnection Negotiations

Jim:

In light of the North Carolina Utilities Commission order granting the abeyance of 45 days for negotiations, we propose the parties incorporate any North Carolina specific issues into the negotiations we already have scheduled. As you know, Intrado's request for interconnection does not vary based on geographic location and the draft agreement submitted with its Petition for Arbitration in North Carolina is the same as the agreement currently being reviewed by the parties. Intrado expects that any resolution of terms and conditions of the revised AT&T template will apply in all AT&T states unless AT&T indicates that state-specific pricing, performance plans, or technical feasibility require a different arrangement. We recommend that AT&T review the revised AT&T template submitted with Intrado's Petition for Arbitration and make a list of those provisions that meet the criteria necessary to support divergence from the provision agreed to be used elsewhere based on the state-specific difference.

In addition, if there are specific provisions AT&T attendees want to focus on during Friday's negotiation session, per our prior discussion, could you please provide the list in advance of our call.

Thank you and we look forward to our session on Friday.

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