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1.

Embarq Response to Intrado Comm's Petition for
Arbitration

Embarq Motion to Dismiss Intrado Comm's Petition for
Arbitration

Embarq Disputed Issues Matrix

Voice | Data | Internet | Wireless | Entertainment



2007 DEC 26 P 1:00

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December 21, 2007

Joel H. Peck, Clerk
State Corporation Commission
1300 East Main Street, First Floor
Richmond, Virginia 23218

Re: Central Telephone Company of Virginia's and United Telephone-Southeast,
Inc.'s Response to Intrado Communications Inc.'s Petition for Arbitration.
Case No. PUC-2007-00112

Dear Mr. Peck:

Enclosed for filing in the above-referenced case is the original and five (5) copies of the Response and an attached Disputed Issues Matrix submitted on behalf of Central Telephone Company of Virginia and United Telephone-Southeast, Inc., (collectively, "Embarq"). Please note that Intrado Communications Inc. ("Intrado") failed to file any prefiled direct testimony in conformity with 20 VAC 5-419-30.1 with its November 27, 2007 petition. As a result of this failure and the fact the burden of proof rests with Intrado, Embarq is not filing any prefiled testimony with its Response.

An extra copy of this letter is enclosed for date-stamping and return in the usual manner. Finally, please do not hesitate to contact me with any questions concerning this matter.

Sincerely,


Edward Phillips

HEP:sm

Enclosures

cc: Parties of Record

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Central Telephone Company of Virginia's and United Telephone-Southeast, Inc.'s Response to Intrado Communications Inc.'s Petition for Arbitration upon all parties of record in this proceeding by depositing a copy in the United States Mail, first-class postage prepaid.

This the 21st day of December, 2007.

Rebecca Ballesteros
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Central Telephone Company of Virginia
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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Petition of Intrado Communications of Virginia,)
Inc. for Arbitration Pursuant to Section 252(b) of)
The Communications Act of 1934, as amended,) Case No. PUC-2007-00112
To Establish an Interconnection Agreement with)
Central Telephone Company of Virginia and)
United Telephone-Southeast, Inc. (collectively,)
“Embarq”))

**Central Telephone Company of Virginia and United Telephone-Southeast, Inc.’s
Response to Intrado Communications Inc.’s Petition for Arbitration**

Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (collectively “Embarq”)¹ responds to the Petition for Arbitration² filed by Intrado Communications of Virginia, Inc. (“Intrado”) on November 27, 2007, with the Virginia State Corporation Commission (“Commission”) as follows:

As set forth in Embarq’s Motion to Dismiss filed contemporaneously with its Response, Embarq believes that Intrado has failed to comply with the requirement for good faith negotiations and Intrado’s Petition is substantively and procedurally deficient under the Telecommunications Act of 1996 (the “Act”). For these reasons, Intrado’s Petition should be dismissed. However, both the Commission’s Rules, specifically 20 VAC 5-419-30.2, and 47 USC §252 of the Act require, without exception, that any response to a petition for arbitration

¹ On November 9, 2007, United Telephone-Southeast, Inc. was converted to a limited liability company. Embarq’s request for approval of the name change was filed with the Commission on December 13, 2007.

² Intrado’s Petition for Arbitration will be referred to in Embarq’s Response as the “Petition” or “Intrado’s Petition.”

must be filed no later than 25 days after the petition is served. To ensure that it meets this requirement, Embarq will respond to the best of its ability to the issues raised by Intrado in its Petition.

Because the majority of issues identified in Intrado's Petition were never raised during negotiations, it is extremely difficult for Embarq to respond. Embarq is seeing many of these issues for the first time. As a result, it is important to bear in mind that Embarq understands the new issues raised by Intrado only as they are depicted in Intrado's Petition or the redlines in Intrado's November 27 version of the interconnection agreement. This response represents Embarq's best efforts to evaluate and present its positions regarding the issues raised within the applicable time and procedural constraints.

INTRODUCTION

Contrary to the suggestions in Intrado's Petition:

- At no point during the negotiations has Embarq taken the stand that it will not interconnect with Intrado where Embarq is the Wireline E-911 Network provider to the Public Safety Answering Positions ("PSAP").
- At no point during the negotiations has Embarq refused to allow Intrado to interconnect with Embarq's Automatic Line Identification ("ALI") databases.
- At no point during the negotiations has Embarq refused to allow Intrado to interconnect with Embarq's Selective Routers or E-911 Tandems.
- At no point during the negotiations has Embarq refused to provide Intrado with unbundled access to E-911 databases.

Embarq has sought to negotiate with Intrado on the same basis that Embarq has conducted business with other providers of emergency services. Some of the technical

arrangements proposed by Intrado are currently handled by Embarq under commercial agreements with other providers (including Intrado), some of the services are appropriately available under tariff, and other portions of Intrado's proposals are appropriately the subject of a 251(c) interconnection agreement.

Unfortunately, Intrado has insisted on including all aspects of its proposed technical arrangements with Embarq within the context of a 251(c) interconnection agreement even though it is contrary to current industry practices, as experienced by Embarq, and it is simply not necessary or appropriate. Embarq has been providing access to the E-911 routing and databases that it manages for PSAPs for years. Embarq also provides those services directly to Voice over Internet Protocol ("VoIP") providers, and Embarq currently connects its ALI databases with Database Management System ("DBMS") Integrators such as Intrado for ALI steering arrangements.

Embarq has been working actively and cooperatively with all entities involved in the provision of E-911 emergency services and Embarq takes seriously its role in providing emergency services to the public. Embarq is also aware of recent trends in emergency services technology and is fully prepared to provide those forward looking technologies, either directly or on a wholesale basis.

BACKGROUND

Because of the specialized nature of emergency services and the highly technical nature of the Wireline Network, some background on these services and facilities may be helpful to the Commission in placing the disagreement of the parties into the proper context.

All providers of voice services that are interconnected to the PSTN are obligated to provide their customers with access to E-911 service, and therefore such carriers have an

obligation to arrange access to the Wireline E-911 Network.³ The Wireline E-911 Network is a specialized network that is totally separate from, but interconnected with, the Public Switched Telephone Network (“PSTN”).⁴ The FCC described the components of the Wireline E-911 Network as follows:

In a typical implementation, the Wireline E-911 Network includes the Selective Router, which receives 911 calls from competitive and incumbent LEC central offices over dedicated trunks. The Selective Router, after querying an incumbent LEC-maintained Selective Router Database (SRDB) to determine which PSAP serves the caller’s geographic area, forwards the calls to the PSAP that has been designated to serve the caller’s area, along with the caller’s phone number (ANI). The PSAP then forwards the caller’s ANI to an incumbent LEC maintained Automatic Location Information database (ALI Database), which returns the caller’s physical address (that has previously been verified by comparison to a separate database known as the Master Street Address Guide (MSAG)). The Wireline E-911 Network thus consists of: the Selective Router; the trunk line(s) between the Selective Router and the PSAP; the ALI Database; the SRDB; the trunk line(s) between the ALI database and the PSAP; and the MSAG.⁵

These various components of the Wireline E-911 Network can be broadly categorized into the following categories:

- Voice Network. The voice portion of the Wireline E-911 Network carries E-911 calls from end user customers to special switching equipment (or Selective Routers) that direct the calls to the appropriate PSAP based on the geographic location of the caller.
- Data Network. After an E-911 call has been routed to the appropriate PSAP, the data portion of the Wireline E-911 Network is then accessed by the PSAP to retrieve the location information of the caller based on the caller’s telephone number or pseudo-telephone number.

³ Title 47 C.F.R. §9, §20.3, §64.3

⁴ Title 47 C.F.R. §9.3

⁵ *In the Matters of IP-Enabled E-911 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, Released June 3, 2005, “IP 911 Order”, ¶15 (footnotes omitted)

With respect to the voice portion of the Wireline E-911 Network, the FCC has designated the input to the selective router as the point of delineation between carriers and PSAPs for allocating responsibilities and costs:

Thus, a wireless carrier is responsible for all hardware and software components and functionalities that precede the Selective Router, including the trunk from the carrier's Mobile Switching Center to the Selective Router, and the particular databases, interface devices, and trunks lines that may be needed to deliver E-911 data to the PSAP. The PSAP is responsible for any costs associated with the Selective Router itself, any required upgrades to the Selective Router, the ALI Database and any upgrades thereto, the SRDB and any upgrades thereto, the MSAG, the trunk from the Selective Router to the PSAP, and the PSAP CPE.⁶

While the FCC determined this in the context of the wireless E-911 proceedings, this description is also a good summary of the individual responsibilities in a typical arrangement for the provision of E-911 by wireline carriers.

The database network portion of the Wireline E-911 Network consists of the following two separate types of databases:

- (A) Automatic Location Information ("ALI") databases: ALI databases are used by PSAPs to determine the geographic location of callers who dial 911. Each carrier essentially maintains its own internal ALI database for its own customers and uses that database to upload its customer information to the ALI database maintained by the Wireline E-911 Network provider. There are times when carriers should validate the accuracy of their internal ALI by obtaining a copy of the records contained in the ALI database of the Wireline E-911 Network provider for such carrier's customers. The Wireline E-911 Network provider should only provide other carriers with the ALI information for such carrier's own customers and not customers of any other service providers. National Emergency Number

⁶ ¶18, IP 911 Order, (footnotes omitted)

Association (“NENA”) standards support this position and Embarq provides downloads on an annual basis today.⁷

(B) Master Street Address Guide (“MSAG”) database. This database is used by carriers to validate the street addresses of the customers that they serve. These addresses have to be in a very specific format in order to accurately match up with the other detailed location information contained in the ALI. Carriers must have access to regular downloads of the MSAG so that they can incorporate a copy with their service order system and their provisioning systems and to ensure that the information that they load into the ALI database is accurate. MSAG downloads (as opposed to access to the database itself) allow carriers to use the data without adversely affecting the MSAG maintained by the Wireline E-911 Network provider. NENA standards require such downloads.⁸

The ALI and MSAG databases are typically operated and maintained by the Wireline E-911 Network provider, but they are sometimes maintained by Database Management System (“DBMS”) Administrators or Integrators. For example, the ALI database maintained by a Wireline E-911 Network provider won’t necessarily have the geographic information for an E-911 caller that uses a wireless phone or a VoIP phone, and in those situations, the Wireline E-911 Network provider must arrange to have access to other ALI databases in order to secure the appropriate geographic information about such E-911 callers. DBMS Administrators maintain such ALI databases and typically provide access to such databases to wireless and VoIP providers under commercial arrangements (i.e. non-251).

⁷ NENA 02-011, §2.21, §19.5

⁸ NENA 06-002, §2.63-§2.64; NENA 06-001, §2.1.1.7; NENA 02-011, §10.2

PSAPs purchase components of the Wireline E-911 Network, such as selective routing and DBMS services, from a provider such as Embarq or Intrado via contract and/or tariff offerings. The Wireline E-911 Network costs are usually publicly funded, many times via fees that are included by LECs on the billing statements of each end user customer, and the amounts collected by the LECs are remitted to the PSAP.

Emergency calls from end users to the PSAP are jurisdictionally agnostic. That is, the calls are emergency service calls that are not considered either local or long distance for compensation purposes. They generally originate and terminate within a state, but not necessarily. They are directed to the PSAP based on the geographic location of the customer originating the call rather than based upon the number called (keeping in mind that the called number is universally 911, which terminates to the applicable PSAP). Intercarrier compensation does not apply to these calls. In other words, carriers do not charge originating or terminating switched access for these calls to each other or any third party, such as an interexchange carrier. E-911 calls are also not considered traffic subject to reciprocal compensation under 47 USC 251(b)(5).

PENDING DISPUTES

It is critical to understanding the disputes between Embarq and Intrado to recognize that the obligations and duties of each party depend upon which party is acting as the Wireline E-911 Network provider at any given point in time. This role may vary between the parties from one serving area to the next, and from time to time, depending on which party has entered into a contract with the PSAP for that particular area. Or, both parties might be acting as a Wireline E-911 Network providers at the same time for different PSAPs in adjoining areas.

The obligations and duties of each party also depend upon the particular service arrangements in question, which could potentially include any or all of the following scenarios:

- (1) Intrado Providing Local Voice Service to End User Customers. Under such circumstances, Intrado would have a statutory obligation to provide the users with access to E-911 service. Dedicated, one-way, E-911 trunks are typically used to carry emergency calls from a LEC's switch to the E-911 router. Facilities are also needed for the LEC to upload its end user information into the ALI database. These arrangements are provided through §251(c) interconnection agreements and tariffed services.
- (2) Router to Router and ALI Steering Arrangements. When both parties are acting as Wireline E-911 Network providers for different PSAPs in adjoining areas, industry practices have often involved connections between routers and/or databases for various purposes that will be described further in this Response. Such arrangements have typically been handled under commercial contracts outside the context of §251(c).
- (3) Intrado Acting as the Wireline E-911 Network Provider. If a PSAP that provides emergency services to Embarq's end users enters into a contract with Intrado that designates Intrado as the Wireline E-911 Network provider, then Intrado will have an obligation to provide Embarq with access to Intrado's Selective Router. Because Intrado is not an ILEC, it is doubtful that such arrangements would be governed by 47 USC §251 of the Act.

Intrado's petition does not do a good job of distinguishing between these different arrangements, and it incorrectly assumes that these different arrangements should be governed

under a single agreement that is subject, in its entirety, to arbitration under §§251 and 252 of the Act. This leads to confusion, misunderstanding, and misapplication of concepts and perceived obligations. A more detailed description and analysis of each of these scenarios is included as Attachment 1 to this Response.

RESPONSE TO SPECIFIC ISSUES

In its Petition, Intrado has identified broadly several issues it represents as unresolved. As discussed in Embarq's Motion to Dismiss, Intrado never presented the majority of these issues to Embarq prior to filing the arbitration, so Embarq was never given an opportunity to formulate a position or response to these issues prior to the initiation of this arbitration. In this context, Embarq will attempt to briefly state its position on the issues identified by Intrado, with the caveat that these positions are, by necessity, preliminary positions. Embarq reserves the right to alter or expand on these positions in future filings. In addition, for the purposes of this Response, Embarq has reiterated the statement of the issues as presented in Intrado's petition. Embarq reserves the right to suggest different wording for the issues at the appropriate time. Finally, Embarq has prepared a Matrix, included as Attachment 2 to this Response, which details each change Intrado has suggested in its November 27 redline of the interconnection agreement, identifies whether the proposed change was previously discussed by the parties, presents Embarq's position on the suggested change and identifies which of the three scenarios described above is applicable to the issue.

Issue 1: Intrado is Entitled to Section 251(c) Interconnection and Section 252 Arbitration

Issue Presented: N/A

Embarq's Position: Embarq has sought to negotiate with Intrado on the same basis that has Embarq has conducted business with other providers of emergency services. Some of the technical arrangements proposed by Intrado are currently handled by Embarq under commercial agreements with other providers (including Intrado), some of the services are appropriately available under tariff, and other portions of Intrado's proposals are appropriately the subject of a 251(c) interconnection agreement.

Issue 2: Intrado is a Telecommunications Carrier Offering Telephone Exchange Service, Exchange Access, and Telecommunications Services

Issue Presented: Whether Embarq may deny Intrado its rights under Sections 251(c) and 252 of the Act or Florida law by claiming that Intrado (1) does not offer telephone exchange service or exchange access and (2) does not serve retail end users.

Embarq's Position: The fact that Intrado is certificated as a CLEC in Virginia is not dispositive of the issue concerning whether Intrado is entitled to interconnection under section 251(c) of the Act for *all* of the services it proposes to provide. While some of the services Intrado has requested from Embarq are governed by Embarq's obligations under section 251(c), many of the services Intrado has requested are not and, instead, arrangements for provision of those services should be established through commercial agreements.

Issue 3: Section 251(c) Interconnection Agreements Can Go Beyond Section 251(c) and Section 252 Arbitration Process is Not Limited to Section 251(c) Obligations

Issue Presented: Whether Intrado is entitled to arbitration pursuant to Section 252 of the Act.

Embarq's Position: Embarq does not disagree that voluntarily negotiated provisions of interconnection agreements can go beyond §251(c). If the parties voluntarily agree to negotiate such provisions, they can be included in any arbitration filed in accordance with §252. In this case, Embarq has not agreed to include the services Intrado has requested outside the scope of

§251 (c) in this negotiation initiated under the provisions of §251. Intrado cannot unilaterally force Embarq to negotiate such provisions in an arbitration under 47 USC §252.⁹

Issue 4: Local Interconnection Arrangements (Section 55.1)

Issue Presented: Whether 911 Service and E-911 Service should be included in the section regarding local interconnection and whether one-way trunks should be used by the Parties for the interconnection of the Parties' 911/E-911 networks and E-911 Tandems through inter-Selective Router trunking.

Embarq's Position: The interconnection arrangements proposed by Intrado are not governed by §251 (b) or (c) and are not properly included in negotiations initiated or arbitrated under these provisions. However, Embarq is willing to discuss the merits of the proposed arrangements with Intrado on a commercial basis, outside the context of a 251/252 arbitration.

Issue 5: Interconnection of Embarq's Network to Intrado Network, Technical Requirements for Interconnection, Point of Interconnection, and Mid-Span Meet (Sections 55.2, 55.3, 55.4 80.1)

Issue Presented: What is the most efficient, cost-effective physical architecture arrangement to achieve the greatest benefit for consumers.

Embarq's Position: Intrado incorporates numerous distinct issues under the umbrella of this broad topic. Please see the Matrix included as Attachment 2 for Embarq's comments related to each specific change to the interconnection agreement proposed by Intrado, corresponding to the interconnection agreement sections noted above.

⁹ See, *Coserv v. SBT*, 350 F. 3d 482 (5th Cir. 2003) in which the Fifth Circuit held that a CLEC could not unilaterally insert into a 252 arbitration an issue outside the scope of §251 (b) and (c) if the ILEC did not voluntarily agree to include the issue in the arbitration.

Issue 6: Inter-Selective Router Trunking (Section 55.5)

Issue Presented: Whether the Parties should implement Inter-Selective Router Trunking to allow emergency calls to be transferred between Selective Routers and the PSAPs connected to those Selective Routers while retaining the critical information associated with the emergency call.

Embarq's Position: The interconnection arrangements proposed by Intrado are not governed by section 251 (b) or (c) and are not properly included in negotiations initiated or arbitrated under these provisions. However, Embarq is willing to discuss the merits of the proposed arrangements with Intrado on a commercial basis, outside the context of a 251/252 arbitration.

Issue 7: Indirect Traffic (Section 60)

Issue Presented: Whether the provisions regarding indirect traffic pertain to the indirect exchange of 911 Service or E-911 Service calls.

Embarq's Position: The changes proposed by Intrado are inappropriate because E-911 traffic is not indirect traffic.

Issue 8: Intrado's Right to 911 and E-911 Services from Embarq (Section 75.1)

Issue Presented: Whether the Parties are required to make certain services and functions available to each other on a reciprocal basis.

Embarq's Position: Section 75 includes the terms and conditions for providing 911 and E-911 for Scenario A, described in the summary of the Pending Disputes section of this Response beginning on page 6, and where CLECs are reselling Embarq's retail telecommunications services. Section 75 also includes the terms and conditions for providing directory listings and directory assistance. There is no reason for making all of these requirements reciprocal. Also, to the extent Embarq seeks interconnection with Intrado under Scenario C, described in the

summary of the “Pending Disputes” section on page 6, that should be done via a commercial agreement.

Issue 9: Basic 911 and E-911 Service (Sections 74.15, 75.2.3-75.2.5)

Issue Presented: How the parties will provide 911 and E-911 Services to each other when the primary provider of 911 and E-911 services in a particular geographic area is: (1) Embarq; (2) Intrado; or (3) a third-party and whether Embarq is required to designate a contact to provide information to Intrado regarding 911 and E-911 calls.

Embarq’s Position: Again, Intrado has combined numerous distinct issues under this single broad topic. Please refer to the Matrix included as Attachment 2 for Embarq’s position on each issue corresponding to the relevant section of the agreement.

Issue 10: Basic 911 and E-911 Databases (Section 75.2.6)

Issue Presented: How the Parties will obtain access to each other’s basic 911 and E-911 databases.

Embarq’s Position: Please see the Matrix included as Attachment 2 for Embarq’s position on each of the distinct issues encompassed by Intrado’s proposed changes to Section 75.2.6 of the interconnection agreement.

Issue 11: MSAG and SIG (Sections 1.76, 1.111 and 72.3)

Issue Presented: Whether the term “MSAG” should be used instead of “SIG” and whether both Parties have obligations to provide MSAG updates to each other.

Embarq’s Position: Please see the Matrix included as Attachment 2 for Embarq’s position on each of the distinct issues encompassed by Intrado’s proposed changes to the cited sections of the interconnection agreement.

Issue 12: 911 and E-911 Related Definitions (Sections 1.9, 1.46, 1.50, 1.55, 1.81, 1.96, 1.100, 1.101, 1.104, 1.106, 1.108)

Issue Presented: Whether certain definitions related to the Parties's provision of 911 and E-911 Service should be included in the interconnection agreement and what definitions should be used.

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement.

Issue 13: Intercarrier Compensation (Section 56.11)

Issue Presented: Whether 911 Service and E-911 Service calls exchanged between Intrado and Embarq should be subject to intercarrier compensation.

Embarq's Position: Embarq agrees that it is inappropriate for any party to attempt to extract compensation from another party for 911 calls.

Issue 14: Term and Termination (Sections 5.1, 5.3, 5.5, 96.1)

Issue Presented: The issues presented are (1) what term should apply to the interconnection agreement; (2) whether Embarq can delay the effective date of the interconnection agreement based on unrelated past due obligations with Embarq or any of its affiliates; (3) whether the requirement to establish a customer account should be reciprocal; (4) whether Embarq may unilaterally dictate when Intrado initiates service by having the unilateral right to terminate the agreement (5) whether Embarq may terminate the agreement based on information it locates in public sources regarding Intrado; (6) whether Embarq must provide certain notices to Intrado

when Embarq intends to sell its assets; and (7) whether Embarq may terminate the agreement without notice to Intrado in the event of Intrado's bankruptcy.¹⁰

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement.

Issue 15: Post-Expiration Interim Service Arrangements (Sections 6.2, 6.3.2)

Issue Presented: Whether Embarq may arbitrarily terminate its provision of critical services to Intrado after expiration of the agreement and whether Embarq may unilaterally dictate the terms and conditions on which it will provide services to Intrado after expiration of the agreement.

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement.

Issue 16: Billing and Payment of Intrado Charges and Dispute Resolution (Sections 7.1-7.10, 25.3)

Issue Presented: Whether the interconnection agreement should include reciprocal language governing the billing, payment, and dispute resolution process for both Parties.

Embarq's Position: Embarq generally accepts the concept of reciprocity. But, please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement, because some of Intrado's proposed changes to these sections go beyond the concept expressed in Intrado's statement of the issue.

Issue 17: Audits (Section 8.1)

Issue Presented: Whether audits should be performed by independent, third-party auditors.

¹⁰ Obviously, what Intrado presents as a single topic encompasses several distinctly separate issues. Embarq has followed Intrado's presentation of a single topic to maintain consistency with Intrado's Petition.

Embarq's Position: Embarq opposes this suggested change because it imposes a requirement that unnecessarily increases the costs of such audits. Audit provisions that do not require a third party are standard throughout the industry, and any confidentiality concerns that Intrado may have are covered by other provisions of the Agreement.

Issue 18: Intellectual Property (Sections 9.2, 9.5, 9.6)

Issue Presented: Whether the language governing intellectual property rights should be reciprocal.

Embarq's Position: Embarq accepts these modifications.

Issue 19: Limitation of Liability (Section 10.2)

Issue Presented: Whether the language governing limitation of liability should apply equally to both parties.

Embarq's Position: Embarq accepts these modifications.

Issue 20: Indemnification (Sections 11.7, 11.9-11.13, 93)

Issue Presented: There are three issues: (1) whether the indemnification language should be reciprocal; (2) whether certain indemnification provisions should be qualified as only applying to Intrado's use of physical collocation; and (3) whether the indemnification language needs to be repeated in the physical location (*sic*) section of the interconnection agreement.

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement.

Issue 21: Insurance (Sections 12.7, 12.9)

Issue Presented: Whether Intrado's liability to Embarq should be limited by the amounts of insurance Intrado carries and whether the insurance provisions of the interconnection agreement

should be consistent with the certificate of insurance (“COI”) forms Intrado is required to complete.

Embarq’s Position: Intrado has not provided any rationale for why Embarq should bear the burden for any liability caused by Intrado in situations where the damages caused by Intrado exceeds any policy of insurance that Intrado carries. Intrado’s proposed deletion of Section 12.7 is nothing more than an improper attempt to shift this risk and responsibility to Embarq, and to effectively make Embarq an uncompensated insurer of Intrado’s negligence.

Issue 22: Modification of Parties’ Networks (Section 54)

Issue Presented: Whether Intrado is permitted to make modification to its network in the same manner as Embarq is permitted to do.

Embarq’s Position: Embarq cannot agree to the terms without further discussion and explanation. Generally, Embarq’s position is that all parties should work together in the provision of 911 services. No party has a unilateral right to change its technology and force other carriers to incur costs and upgrade their equipment.

Issue 23: Forecasting (Section 58.3, 58.6, 58.7)

Issue Presented: Whether Embarq is required to provide forecasts for E-911 trunks to Intrado and whether the forecasting provisions should be reciprocal.

Embarq’s Position: Please see the Matrix included as Attachment 2 for Embarq’s position on each of the distinct issues encompassed by Intrado’s proposed changes to the cited sections of the interconnection agreement.

Issue 24: Ordering Processes (Section 72.14)

Issue Presented: Whether the process for Embarq ordering services from Intrado should be included in the interconnection agreement.

Embarq's Position: If Embarq does indeed need to order services from Intrado it will do so via the appropriate systems and processes. However, Embarq cannot agree to include these terms in a 251(c) agreement. The terms should be negotiated in a commercial agreement.

Issue 25: Pricing and Other Attachments

Issue Presented: What Embarq will charge Intrado for interconnection and unbundled network elements ("UNEs") and what list of wire centers should be included in the interconnection agreement.

Embarq's Position: Embarq proposes to charge its standard rates for the provision of services governed by 251(c) of the Act. The prices for other services should be negotiated as commercial arrangements or should be the prices set forth in the applicable Embarq tariffs.

Issue 26: Definition of "Central Office Switch" and "Tandem Office Switch" (Sections 1.19, 1.114)

Issue Presented: Whether the definitions of "Central Office Switch" and "Tandem Office Switch" should be modified to include E-911 Tandem Switches or Selective Routers and whether the definition of "Tandem Office Switch" should be modified to include PSAPS.

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on each of the distinct issues encompassed by Intrado's proposed changes to the cited sections of the interconnection agreement.

Issue 27: Definition of Common Transport (Section 1.28)

Issue Presented: Whether the definition of "Common Transport" should be limited to Embarq's network and whether the definition should include remote switches.

Embarq's Position: Please see the Matrix included as Attachment 2 for Embarq's position on Intrado's proposed changes to the cited section of the interconnection agreement.

Issue 28: Definition of “End User” (Section 1.54)

Issue Presented: Whether the agreement should contain a definition of “End-User” and what definition should be used.

Embarq’s Position: Intrado’s proposed definition is overly broad. Embarq and Intrado both sell services to carriers, which are not end users as the term is generally understood. The myriad of replacements throughout the document proposed by Intrado as a result of adding this definition (i.e., changing customer or subscriber to end user) are therefore inappropriate in many cases.

Issue 29: Definition for “Internet Protocol” and “Voice over Internet Protocol” (Sections 1.68, 1.127)

Issue Presented: Whether the interconnection agreement should contain definitions for “Internet Protocol” and “Voice over Internet Protocol” and what definitions should be used.

Embarq’s Position: Please see the Matrix included as Attachment 2 for Embarq’s position on each of the distinct issues encompassed by Intrado’s proposed changes to the cited sections of the interconnection agreement.

Issue 30: Definition of “Technically Feasible” (Section 1.116)

Issue Presented: Whether the definition of “Technically Feasible” should refer to the FCC’s rules.

Embarq’s Position: Please see the Matrix included as Attachment 2 for Embarq’s position on Intrado’s proposed changes to the cited section of the interconnection agreement.

Issue 31: Cover Page and Whereas Clauses

Issue Presented: Whether Embarq can include language on the cover page of the agreement limiting Intrado’s rights and whether the Whereas clauses should be consistent with the services to be offered by the Parties and the Parties’ obligations under the interconnection agreement.

Embarq's Position: The language on the cover page is intended to reflect Embarq's position related to the purpose and intent of the draft interconnection agreement. It is not a part of the interconnection agreement executed by the parties and filed with the state commission. Embarq does not object to the additional language in the Whereas clause proposed by Intrado in its November 27 redlines.

Issue 32: Call-Related Databases (Section 69.1)

Issue Presented: Whether the interconnection agreement should clarify that certain call-related databases are still governed by Section 251 of the Act.

Embarq's Position: Embarq proposes to substitute the following terms for that recommended by Intrado:

Call-related databases under this Part I excludes E-911 databases. Further, Embarq proposes to add the following terms to Section E, which addresses Embarq's unbundling obligations and is consistent with the Federal Regulations included in Title 47 §51.319(f).

Embarq shall provide Intrado with nondiscriminatory access to 911 and E-911 databases on an unbundled basis, in accordance with section 251(c)(3) of the Act. This includes the MSAG and ALI databases.

Issue 33: Brokers and Agents (Section 98.1)

Issue Presented: Whether Intrado is required to warrant that it did not have dealings with a broker or agent in connection with the interconnection agreement.

Embarq's Position: Embarq proposes the following alternative language:

Intrado covenants to pay, hold harmless and indemnify Embarq from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or agent for Intrado with respect to this Agreement or the negotiation thereof.

Issue 34: Capitalization and Consistency of Definitions

Issue Presented: Whether certain terms of the interconnection agreement should be capitalized and used consistently throughout the agreement.

Embarq's Position: The inclusion of this issue as an "unresolved" issue emphasizes the prematurity of Intrado's request for arbitration and also the lack of good faith exhibited by Intrado in the negotiation of this agreement. The issue primarily addresses technical corrections rather than substantive issues. Had Intrado appropriately brought these discrepancies to Embarq's attention at any point in the negotiation process, Embarq would have willingly accepted the corrections. Instead, Intrado has chosen to waste Embarq's and the Commission's time and resources to address these corrections as an issue in the arbitration. As far as the substitution of the term "End User" for "customer" or "subscriber" please see Embarq's Position on Issue 28.

Conclusion

Intrado improperly included in its arbitration petition a multitude of issues that it had never presented to Embarq during 160 day period allotted by the Act for negotiations. In addition, Intrado inappropriately included in its Petition numerous issues that are not properly addressed in a 251/252 arbitration. For these reasons Embarq has set forth in its contemporaneously filed Motion to Dismiss, Intrado's Arbitration Petition should be dismissed. However, to meet the requirements of the Commission's Rules and the Act's time frame for filing a Response to the Arbitration Petition, Embarq has endeavored to articulate a preliminary position to each of the issues Intrado has raised. If the Commission does not dismiss Intrado's Petition, Embarq reserves the right to alter or expand on its positions in future filings and to suggest revisions to Intrado's statement of the issues at the appropriate time.

Respectfully submitted this 21st day of December, 2007.

A handwritten signature in cursive script that reads "Edward Phillips". The signature is written in black ink and is positioned above a horizontal line.

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Attachment 1

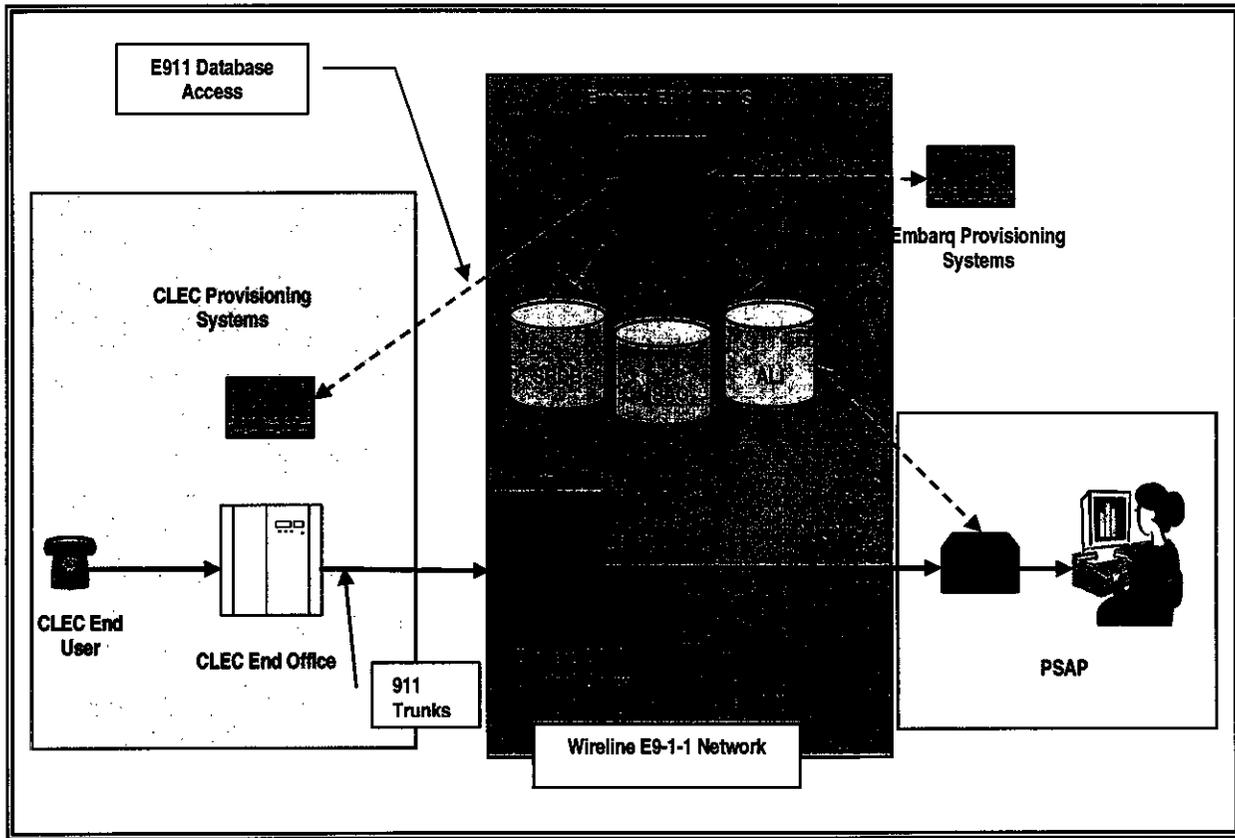
DETAILED DISCUSSION OF EACH SCENARIO

Scenario 1 - Intrado Providing Local Voice Service to End User Customers

This is the most typical arrangement dealt with in the context of negotiating an interconnection agreement (“ICA”) under the Act. If Intrado provides end users voice service that connects to the PSTN (either directly or indirectly), then Intrado would legally be obligated to provide its end user’s access to E911 service.¹ Under such circumstances, Intrado would need to obtain access to an E911 selective router and to E911 databases in order to provide that service. This would require one-way E911 trunks from each Intrado local switch to the E911 router as well as a means to enable Intrado to upload its end user customer information into the ALI database. Embarq provides mediated access to the ALI database via Embarq’s DBMS for this purpose. No carrier except the DBMS provider gets direct access to the databases. Intrado would also need to obtain downloads of the Master Street Address Guide (“MSAG”) in order to ensure that the addresses that it uses exactly match those included in the ALI database.

If Embarq has entered into a contract with the PSAP to provide the components of the Wireline E911 Network that Intrado needs to utilize in order to provide E911 service to Intrado’s customers, then Intrado would have to negotiate with Embarq to make arrangements to use such components of the Wireline E911 Network provided by Embarq. Such components could include the selective routing, ALI and MSAG databases, as well as the transmission facilities connecting these components. The diagram below illustrates Scenario 1.

¹ Title 47 C.F.R. §9, §20.3, §64.3



Scenario 1

Typical E911 Arrangement between a CLEC and Embarq Where Embarq is the Wireline E911 Network Provider

Embarq regularly negotiates the terms and conditions of these types of arrangements in the context of a 251(c) ICA and has agreed to do so with Intrado. Embarq's standard ICA includes the necessary terms and conditions to accomplish this and, as a certified CLEC, Intrado can negotiate the ICA or opt into a current existing agreement to accomplish this. Embarq will be happy to negotiate more specific terms related to this scenario should Intrado desire to do so; however, many if not most of the changes proposed by Intrado in its Petition (including the attachments) do not apply to this scenario.

The Point of Interconnection (“POI”) between Intrado and Embarq for this scenario is where the Wireline E911 Network begins, which is at the selective router. Intrado has the obligation of securing the transport facilities and providing the dedicated trunks between its switches and the selective router. Embarq provides the facilities from the selective router to the PSAP to the emergency services provider, not Intrado. This position is consistent with the FCC’s description of the Wireline E911 Network included above and Embarq’s experience with providing the services to CLECs for many years.

The trunks connecting Intrado’s switches and the selective router are dedicated solely to providing E911 service. Calls are one-way -- that is, they are originated by Intrado’s end user customers when they dial 911, and they are delivered to the PSAP through the selective router. If the PSAP needs to perform a call back, they use different facilities (not the Wireline E911 Network), usually making the call over the PSTN just like any other normal call.

Embarq does not have an obligation to unbundle any facilities connecting the selective router and a CLEC switch.² As with any interconnection arrangement, Intrado would be responsible for its facilities on its side of the POI, which is at the selective router.³ Thus, Intrado could purchase transmission service from Embarq’s access tariffs for those facilities or Intrado could self-provision such facilities or lease them from a third-party.

Embarq also agrees that in situations where Embarq is the DBMS provider, it has an obligation to provide unbundled access to the MSAG and ALI databases in accordance with §251(c)(3) of the Telecommunications Act of 1996 (“Act”).⁴ That is clearly the intent of the FCC’s unbundling requirement and it is consistent with historical experience that the DBMS

² Title 47 C.F.R. §51.319(e)(2)

³ ¶18, IP 911 Order, (footnotes omitted)

⁴ Title 47 C.F.R. §51.319(f)

providers were usually ILECs. Since Embarq has an obligation to offer unbundled access to E911 databases under such circumstances, Intrado would be entitled to purchase access to the databases at TELRIC rates.

However, Embarq does not agree that it has an obligation to provide such unbundled access to the MSAG and ALI databases when Embarq is not the DBMS provider. The unbundling obligations do not require Embarq to act as an intermediary between the DBMS provider and other carriers. In those situations, Embarq would not maintain the official MSAG and, Embarq would have to negotiate the right to secure downloads the same as any other carrier. Similarly, under such circumstances Embarq would not be providing the official ALI used by the PSAP to determine the geographic location of all end users that dial 9-1-1, and like any other carrier, Embarq would must secure access to the DBMS ALI and upload its end user information.

The compensation arrangement between carriers for the provision of E911 service, as described in this first scenario, should be maintained, and Intrado should not be allowed to shift costs that have been paid for by PSAPs onto Embarq, as will be discussed further in connection with other scenarios below.

Scenario 2 - Router to Router and ALI Steering Arrangements

Separate Wireline E911 Network providers often agree to interconnect their networks in order to provide additional functionality for emergency services to the PSAPs that each of the providers serve. These types of configurations are not between competing providers operating in the same area; rather, they are arrangements established between peers providing service in adjacent areas. Such arrangements are not developed in a vacuum but require the cooperative

efforts of multiple parties, including the Wireline E911 Network providers, public safety authorities, and state and local governments.

As noted in the Background portion of this Response, there are times when a call that is routed into one PSAP needs to be redirected to another PSAP based on the location of the end user. For example, an end user making an E911 call from their mobile phone might be directed to one PSAP based on the location of the tower, but the end user may actually be geographically located within an adjacent PSAP service territory.

There are also situations where E911 database services are provided to wireless providers and VoIP providers by independent Database System Integrators.⁵ The ALI information for the customers of such wireless providers and VoIP providers isn't contained in the E911 databases that Embarq maintains with respect to its Wireline E911 Network services. Therefore, when a wireless customer's E911 call is directed to a PSAP over the Wireline E911 Network that Embarq provides to a PSAP, and the PSAP issues a query to Embarq's ALI database to retrieve the end user's geographic location, Embarq must in turn query the ALI database managed by a Database System Integrators for the wireless or VoIP carrier for the information. Many times, the Database System Integrator is Intrado, which has been providing this service for some time. This type of connectivity is called ALI steering.

Connectivity between Wireline E911 Networks can also be used to provide redundancy in case the facilities to one PSAP are interrupted.

Embarq has established such router to router connections with other Wireline E911 Network providers, generally ILECs. Embarq has ALI steering arrangements with wireless and VoIP 911 DBMS providers but does not have any ALI steering arrangements with any other

⁵ NENA 06-002, §2.6.12

Wireline E911 Network provider. The terms and conditions of these arrangements are contained in commercial agreements or tariffs, not pursuant to 251(c) interconnection agreements. Intrado, however, is seeking to require Embarq to provide such router to router arrangements and connectivity between E911 databases under the disputed interconnection agreement that is the subject of this docket. For the reasons explained below, Embarq does not believe that such arrangements fall under §251(b) or §251(c) of the Act, and they are therefore not subject to arbitration under §252 of the Act.

In its negotiations with Intrado Embarq took the position that the requested configurations in Scenario 2 are subject to Embarq's requirement to interconnect facilities and equipment under §251(a) of the Act. This is consistent with how Embarq does business with other Wireline E911 Network Providers today, and this is how the FCC depicted interconnections in the IP 911 Order.⁶ **In fact, this is how Embarq currently does business with Intrado for various ALI steering arrangements for wireless and VoIP service providers.**

Intrado is now apparently abandoning its previous practice and is now seeking to include these types of router to router and ALI steering arrangements under the §251(c) interconnection agreement that is the subject of Intrado's arbitration petition.

As stated above, the router to router and ALI steering arrangements that Intrado is seeking (as described in Scenario 2 of this Response) do not fall within the 251(c) obligations. Therefore Embarq has no obligation to provide access to network elements on an unbundled basis or to provide interconnection for the transmission of telephone exchange and exchange access traffic in this instance. These obligations will be considered in reverse order below.

⁶ IP 911 Order, ¶38 and footnote 128

The number of network elements that ILECs must offer on an unbundled basis to requesting carriers such as Intrado is relatively few including the following:

- Network Interface Devices (“NIDs”);
- DS0 loops, DS1 loops, and DS3 loops;
- DS1 dedicated transport, DS3 dedicated transport, and dark fiber dedicated transport;
- E911/911 databases; and
- Operations Support Systems (OSS).

The router to router connectivity and ALI steering requested by Intrado in its petition do not involve any of these network elements.

A loop is a facility between an ILEC wire center and the point of demarcation at an end user’s premises.⁷ Wireline E911 Network providers are not end users, and consequently a transmission facility connecting two Wireline E911 Networks would not constitute a loop. In addition, loop facilities are wholly located within an exchange, whereas two separate Wireline E911 Networks that are involved in a router to router or ALI steering arrangement are likely to reside in separate exchanges.

Similarly, transmission facilities that are used to connect routers or for ALI steering purposes also do not qualify as unbundled *dedicated transport*. ILECs only have to unbundle transport between their own wire centers, not between an ILEC wire center and a CLEC wire center.⁸

Embarq has already indicated its willingness to provide Intrado access to Embarq’s E911 databases under the circumstances described in Scenario 1, where Embarq is acting as the

⁷ Title 47 C.F.R. §51.319(a)

⁸ Title 47 C.F.R. §51.319(e)(2)

Wireline E911 Network provider for a PSAP and Intrado needs to fulfill its obligation to provide access to 911 services to Intrado's end users. Access to the databases under such circumstances is necessary to provide Intrado with the ability to load its end user customers into the official ALI database used by the PSAP and to obtain downloads of the MSAG. However, the router to router and ALI steering arrangements requested by Intrado under Scenario 2 are distinct from these functions described in Scenario 1, and such arrangements are not needed in order for Intrado to fulfill an obligation to provide its end-user customers with access to E911 service.

Lastly, OSS are used by CLECs for activities such as ordering UNEs, reporting trouble, and receiving billing records, none of which are involved in the peer to peer arrangement requested by Intrado.

If Intrado asserts that Embarq may have an obligation to unbundled network elements that are not listed in the FCC regulations, such an argument would also fail. In its petition, Intrado references the unbundling statutes included in the Florida regulations implying that the state can order Embarq to unbundle its network beyond that proscribed by the FCC. This is not wise nor is it necessary. The FCC determined in its TRO Order that any state attempt to order additional unbundling, where the FCC has not made a finding of impairment, would likely be found to be in opposition to FCC findings and "substantially prevent implementation of the federal regime".⁹ Indeed, when various state commissions ordered BellSouth to provide naked DSL on unbundled loops leased by CLECs, the FCC used this principle to reverse the state

⁹ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of the Wireline Services Offering Advanced Telecommunications Capability*, CC Dockets No. 01-338, 96-98, and 98-147, FCC 03-36, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Released August 21, 2003, "TRO", ¶195

decisions, eliminating the modifications to the FCC's unbundling rules.¹⁰ Similarly, Internet protocol and other forms of packet switching and broadband transport do not have to be unbundled, and neither do selective routers.

Embarq is also not required to provide for the router to router and ALI steering arrangements that Intrado is seeking (as described in Scenario 2 of this Response) under §251(c)(2) which requires ILECs to provide interconnection "for the routing and transmission of telephone exchange and exchange access traffic." In this regard, it is instructive to note that when the FCC described the manner in which carriers connect networks for the provision of E911 services in the IP 911 Order, the FCC stated that the networks were connected pursuant to §251(a) of the Act.¹¹ This is consistent with the position that Embarq has taken in its negotiations with Intrado for Scenario 2.

LECs providing telephone exchange service (as well as CMRS and VoIP providers) are legally obligated to provide their end users with the ability to make 911 calls and be connected to the proper PSAP.¹² They therefore connect their networks with a Wireline E911 Network, which is a specialized network separate from the PSTN. This is what occurs in Scenario 1 described above in this Response, and Embarq has expressed its long standing practice and willingness to make such arrangements with Intrado.

By comparison, "telephone exchange service" is essentially local calling within a single exchange. It is a voice service provided to end users allowing them to originate and receive voice calls to other end users within the same local calling area for an exchange service charge.

¹⁰ *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, FCC 05-78, Memorandum Opinion and Order and Notice of Inquiry, Released March 25, 2005

¹¹ IP 911 Order, ¶38 and footnote 128

¹² Title 47 C.F.R. §9, §20.3, §64.3

This is not the same as a Wireline E911 Network provider that contracts with a PSAP to establish a specialized network, separate from the PSTN, to deliver emergency calls, not to enable the PSAP to originate and receive local calls.¹³

Likewise, “exchange access” in the context of 251(c)(2) is a switched tariffed service that LECs provide to Interexchange Carriers (“IXC”) enabling the IXC to sell long distance services to end users. Those services are not involved in routing E911 calls between Wireline E911 Networks nor in connection with ALI steering. As previously described in this Response, emergency 911 calls are jurisdictionally agnostic and are a separate class of calls that are routed over specialized Wireline E911 networks that are separate from, but connected to the PTSN. If anything, router to router peering arrangements and ALI steering of database queries, which involve computer processing and query and response, are more like information services.

There are two additional features of the router to router and ALI steering arrangements proposed by Intrado (as described in Scenario 2 of this Response) that need to be pointed out to the Commission. Wireline E911 Network providers generally connect their networks via a mid-span meet point arrangement with each carrier bearing the costs of the facilities on its side of the meet point. Two way trunks are usually employed for the router to router connections as they are more efficient and 911 emergency calls are usually directed to either router. Nevertheless, Intrado has requested that one-way trunks be installed for these facilities which is inconsistent with typical arrangements that Embarq has with other Wireline E911 Network providers, and is inefficient. Although it may be technically feasible to establish such 1 way trunks, Embarq

¹³ In its petition, Intrado refers to two proceedings in other states where Commissions reached a decision that Intrado does provide telephone “exchange” service. However, Intrado may be able to make a tortured argument that it does provide telephone exchange service by parsing the statutory definition, but the decisions that Intrado references did not distinguish between the arrangements described in Scenario 1 and Scenario 2 of this Response, and they are not determinative in this proceeding

would prefer to establish trunks in the more efficient manner, and pursuant to commercial contracts, apart from this arbitration. .

Intrado also referenced the establishment of one POI per LATA in the context of these router to router and ALI steering configurations. As previously noted in this Response, the selective router of the Wireline E911 Network is the POI for those networks. There may be more than one Wireline E911 Network per LATA and several selective routers. There may also be multiple Wireline E911 Network providers. Under such circumstances, the establishment of a single POI per LATA could require significant network rearrangements and unnecessary costs to provide dedicated transport from the single POI to the selective router, which would shift the cost of Intrado's Wireline E911 Network onto Embarq, even though Intrado would be compensated by the PSAP for establishing that Wireline E911 Network.

Both Intrado and Embarq are DBMS providers in Scenario 2 as described in this Response. Connectivity between the two ALI databases may or may not be necessary. While Embarq already engages in ALI steering arrangements today with Intrado for ALI queries for wireless and VoIP end users, Embarq does not engage in ALI steering arrangements with other Wireline E911 Network providers. Instead, other Wireline E911 Network providers update each other's ALI databases as necessary.

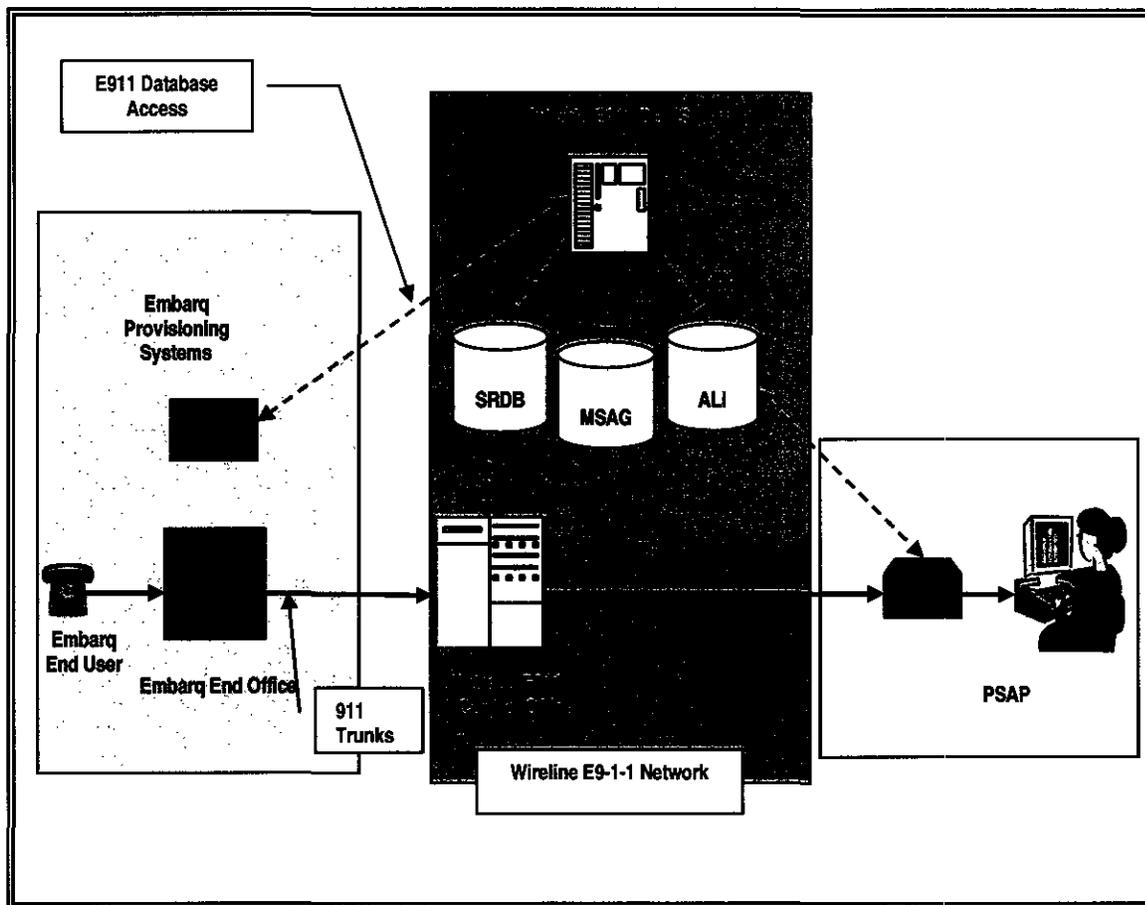
The terms and conditions proposed by Intrado for ALI steering in Scenario 2 require the use of software and protocols not employed by Embarq in its provision of DBMS services or requested by the PSAPs that it serves in this capacity. Embarq believes that it is inappropriate for Intrado to attempt to unilaterally demand that Embarq incur these costs to enable a peer to peer arrangement in a manner that allows Intrado to escape any responsibility for its software and protocol choices.

Lastly, even if such the router to router and ALI steering arrangements (as described in Scenario 2 of this Response) were determined to qualify as a §251(c)(2) arrangement, Embarq should not be required to incur any costs to provision the connection because carriers that request technically feasible but expensive §251(c)(2) interconnections must pay for the additional costs of such modifications.¹⁴ When Wireline E911 Network providers establish such peer to peer arrangements, each entity usually bears their own costs, neither one billing the other, except for the potential for network modifications addressed immediately above.

Scenario 3 - Intrado Acting as the Wireline E911 Network Provider for Embarq End Users

Scenario 3 is the reverse of Scenario 1. In Scenario 3, Intrado would be acting as the designated Wireline E911 Service Provider for a PSAP that provides emergency services to Embarq's end users. Intrado would be providing the selective routing and DBMS services previously described in this Response. Since Embarq has a legal obligation to provide 911 dialing to its end users, Embarq would therefore need to negotiate connections between its switches and Intrado's selective router in order to do so. Embarq would also need to obtain downloads of the official MSAG from Intrado, and arrange for the ability to load Embarq's end user location information into the official ALI database maintained by Intrado. The diagram below illustrates Scenario 3.

¹⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, FCC 96-325, First Report and Order, Released August 8, 1996, ("First Report and Order"), ¶199



Scenario 3¹⁵

An E9-1-1 Arrangement between Embarq and Intrado Where Intrado is the Wireline E9-1-1 Network Provider

Because Intrado is not an ILEC, the obligations for ILECs to negotiate interconnection agreements pursuant to §251(c) upon request do not apply to it. Intrado certainly does not have an obligation to provide unbundled access to network elements, although it must provide access to the E911 databases and its selective router in order for 911 calling to occur. That is why Embarq took the position in negotiations with Intrado that the terms and conditions for such connectivity under Scenario 3 should be negotiated as a commercial agreement that is governed by §251(a) of the Act. Intrado seeks to turn this scenario on its head by taking the position that it

¹⁵ Embarq may seek an alternate technical arrangement if it has E9-1-1 routers in place.

is the requesting carrier, when in fact it is Embarq that is requesting services from Intrado, which provides the Wireline E911 Network components.

Like Scenario 1, the POI for Scenario 3 is the selective router, which in this case would be provided by Intrado. Embarq therefore would have the obligation to establish E911 trunks from its switches to the Intrado selective router. The type of trunks will be governed by the E911 technology that is deployed. Embarq may self provision the transmission facilities or lease them from a third party as needed.

Since Intrado is the DBMS provider in Scenario 3, Intrado would have to provide downloads of the official MSAG to Embarq in order for Embarq to ensure that it includes accurate location information in Embarq's ALI records. In addition, Intrado must provide Embarq the means for uploading its end user ALI information into the official ALI database that the PSAP is paying Intrado to maintain as part of the Wireline E911 Network.

In Scenario 3 Embarq would bear the cost of provisioning 911 trunks from its switches to Intrado's selective router, which is consistent with Embarq's analysis when the roles are reversed in Scenario 1. However, Intrado should not attempt to recover the cost of provisioning the Wireline E911 Network from Embarq. Such costs should be obtained by Intrado from the PSAP and any attempt by Intrado to shift Wireline E911 Network costs from the PSAP to Embarq is not appropriate especially given the fact that E911 funding is often determined legislatively.

One way that Intrado might attempt to shift costs for its own Wireline E911 Network onto Embarq, would be to avoid responsibility for maintaining official ALI records by seeking to have Embarq (as well as all carriers subtending the Intrado selective router) maintain such official records, and then gaining access to such records using an ALI steering arrangement of the type described in Scenario 2. This would be an improper shifting of costs from the Wireline

E911 Network provider (Intrado) onto Embarq unless the steering arrangement was established in the manner advocated by Embarq under Scenario 2, under a separate commercial agreement.

Intrado would also have to secure transmission facilities in order to provide services to any PSAP that designates Intrado as the Wireline E911 Network provider. Intrado can do this by building such transmission facilities or by leasing access services from Embarq or a third party. However, Intrado has expressed a desire to secure unbundled network elements from Embarq for this purpose.

Contrary to Intrado's proposal, transmission facilities from Intrado switches or other equipment to the PSAP do not qualify as unbundled network elements for the purpose of establishing Intrado's Wireline E911 Network. Such transmission facilities do not qualify as loops since they do not connect an Embarq wire center with an end user's premises. Nor do they qualify as dedicated transport that must be unbundled since it does not connect two Embarq wire centers.

There are potential scenarios where Intrado could collocate equipment in Embarq wire centers and purchase unbundled network elements from that wire center to various locations; however, Embarq does not believe that this is the intent of the Act to subject additional portions of the Wireline E911 Network to the unbundling regime established by the FCC, other than access to the E911 databases that are specifically identified in FCC regulations. The Wireline E911 Network is a specialized network, that is separate from the PSTN, and the FCC has previously indicated that interconnection for the purpose of providing E911 service falls under 251(a) which is not subject to the unbundling obligations.

Furthermore, as previously noted, Embarq does not have the obligation to provide unbundled access to broadband technologies, such as IP, which might be used in the future E911 network configurations touted by Intrado in its petition.

Voice | Data | Internet | Wireless | Entertainment

2007 DEC 27 AM 11:34



EMBARQTM

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December 21, 2007

Joel H. Peck, Clerk
State Corporation Commission
1300 East Main Street, First Floor
Richmond, Virginia 23218

Re: Central Telephone Company of Virginia's and United Telephone-Southeast, Inc.'s Motion to Dismiss Intrado Communications Inc.'s Petition for Arbitration.
Case No. PUC-2007-00112

Dear Mr. Peck:

Enclosed for filing in the above-referenced case is the original and five (5) copies of the Motion to Dismiss and an attached Disputed Issues Matrix submitted on behalf of Central Telephone Company of Virginia and United Telephone-Southeast, Inc., (collectively, "Embarq").

An extra copy of this letter is enclosed for date-stamping and return in the usual manner. Finally, please do not hesitate to contact me with any questions concerning this matter.

Sincerely,

Edward Phillips

HEP:sm

Enclosures

cc: Parties of Record

Edward Phillips

ATTORNEY

Voice: (919) 554-7870

Fax: (919) 554-7913

edward.phillips@embarq.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Central Telephone Company of Virginia's and United Telephone-Southeast, Inc.'s Motion to Dismiss to Intrado Communications Inc.'s Petition for Arbitration upon all parties of record in this proceeding by depositing a copy in the United States Mail, first-class postage prepaid.

This the 21st day of December, 2007.

Rebecca Ballesteros
Associate Counsel
Intrado Communications Inc.
1601 Dry Creek Drive
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Rebecca R. Geller, Esq.
Mintz Levin
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

A handwritten signature in black ink, appearing to read "Edward Phillips", is written over a horizontal line.

Edward Phillips
Attorney
Central Telephone Company of Virginia
United Telephone-Southeast, Inc.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Petition of Intrado Communications of Virginia,)
Inc. for Arbitration Pursuant to Section 252(b) of)
the Communications Act of 1934, as amended,)
to Establish an Interconnection Agreement with) Case No. PUC-2007-00112
Central Telephone Company of Virginia and)
United Telephone-Southeast, Inc. (collectively,)
“Embarq”))

**Central Telephone Company of Virginia and United Telephone-Southeast, Inc.’s
Motion to Dismiss Intrado Communications Inc.’s Petition for Arbitration**

Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (collectively, “Embarq”),¹ pursuant to 5 VAC 5-20-110 of the Virginia State Corporation Commission (the “Commission”) Rules of Practice and Procedure, hereby moves to dismiss the Petition of Intrado Communications Inc. (“Intrado”) for Arbitration of an Interconnection Agreement with Embarq.²

Introduction

Intrado filed its Petition for Arbitration with the Commission on November 27, 2007, pursuant to 20 VAC 5-419-10 of the Commission’s Rules. Pursuant to Section F of 20 VAC5-419-10, the Commission may decline to act under 47 USC §§ 251 and 252 of the Telecommunications Act of 1996 (the “Act”). The standard under Section F of the foregoing

¹ On November 9, 2007, United Telephone-Southeast, Inc. was converted to a limited liability company. Embarq’s request for approval of the name change was filed with the Commission on December 13, 2007.

² Intrado’s Petition for Arbitration will be referred to in Embarq’s Motion to Dismiss as the “Petition” or “Intrado’s Petition.”

rule is consistent with the Commission's discretion under Va. Code Ann. § 56-265.4:4 B 4.³ Embarq respectfully requests, for the reasons stated herein, that the Commission decline to act in this matter and dismiss Intrado's Petition.

While Intrado technically initiated negotiations for an interconnection agreement in May 2007, it did not follow up with Embarq to begin serious negotiations until September 2007. As soon as Embarq became aware of the complex nature of the services Intrado was requesting Embarq let Intrado know that: (1) more time was needed for negotiation and (2) many of the services included in Intrado's request were not governed by the §§251 and 252 arbitration process. Nevertheless, Intrado proceeded to arbitration setting forth for the first time in its Petition at least 25 (out of 34) new issues and 130 (out of 155) new redlines to the provisions of the agreement.

Intrado's Petition does not comply with the §§251 and 252. In addition, many of the issues Intrado raises are outside the purview of §251 and the §252 arbitration process. Intrado's Petition is both premature and flawed and, therefore, should be dismissed.

Intrado's Petition Does Not Comply with the Act

I. Intrado has failed to negotiate in good faith

Intrado correctly notes, on page 5 of its Petition, that §251 of the federal Communications Act (47 U.S.C. §251) requires ILECs to negotiate in good faith the terms and conditions of interconnection agreements. What Intrado omits is that §251(c)(1) of the law also requires requesting carriers to negotiate in good faith. Intrado has failed to comply with this fundamental principle of the voluntary negotiation and arbitration procedures established in the Act.

³ It is also important to note that Intrado failed to file any prefiled direct testimony (e.g. supporting evidence) with its Petition pursuant to 20 VAC 5-419-30.1 and such failure alone could result in dismissal of Intrado's Petition under 20 VACC 5-419-10.E. This failure coupled with other deficiencies in Intrado's filing set forth herein should result in dismissal.

Intrado's depiction of the sequence and extent of negotiations between the parties set forth on pages 10 through 12 of its Petition is essentially accurate. Intrado requested negotiations with Embarq (under 47 USC §251) on May 18, 2007 as reflected in the letter included as Attachment 3 to Intrado's Petition. Embarq promptly forwarded to Intrado its standard interconnection agreement template that serves as the starting point for negotiations for any CLEC requesting interconnection with Embarq. (See, Attachment 4 to Intrado's Petition) Embarq responded promptly to Intrado's request for negotiations by providing the same agreement that forms the basis for the interconnection agreements which Embarq has used to successfully negotiate with hundreds of CLECs since 1996. Despite Embarq's efforts, Intrado did not establish a follow up meeting with Embarq until September 4, 2007, which is approximately 105 days after Embarq provided the agreement. (See, Attachment 5 to Intrado's Petition). Given the 160-day window allowed for negotiations under the Act, Intrado's delay in contacting Embarq deprived both parties of the ability to engage in meaningful negotiations.⁴

As Intrado admits that it did not submit its first mark-up to Embarq's standard agreement until September 23, 2007. Intrado's mark-up was submitted after its first meeting with Embarq and a full 120 days after Intrado initiated negotiations. (See, Attachment 6 to Intrado's Petition). As Intrado fully admits, this mark-up was only a partial mark-up, addressing only a few sections of the agreement. The only other specific changes proposed by Intrado were included in a subsequent draft provided to Embarq on October 8, 2007. (See, Attachment 8 to Intrado's Petition). These two mark-ups combined addressed only approximately 9 of the 34 issues raised in Intrado's Petition. Intrado acknowledges in footnote 25 of its Petition that the mark-up of the

⁴ As an ILEC, Embarq has numerous requests to negotiate for agreements within its 18 state territory outstanding at any given time. Many times, after the initial request, the CLEC never contacts Embarq again and actual negotiations are never commenced. It is reasonable that the burden of diligently pursuing negotiations should rest with the requesting carrier, rather than Embarq.

interconnection agreement submitted with the Petition includes additional issues that Intrado never presented to Embarq. What Intrado fails to say is that the additional issues represent the vast majority of what Intrado now represents to be “unresolved.”⁵ Of course, the issues could not be resolved if they were never raised for Embarq’s consideration prior to filing.

Contrary to Intrado’s implications in its Petition, and as the facts set forth in the Petition demonstrate, Embarq acted entirely in good faith in responding to the few issues Intrado did raise for Embarq’s consideration. Upon receiving Intrado’s initial request to negotiate an interconnection agreement under §251(c), Embarq promptly provided a template agreement for Intrado’s consideration. (See Attachment 4 to Intrado’s Petition). Embarq responded to Intrado’s September 23 and October 8 drafts in a reasonable time frame, especially in the context of Intrado’s request to include unique provisions relating to the 911 services it provides in a 251/252 agreement that is not designed for that purpose. (See, Attachments 7, 9 and 11 to Intrado’s Petition). Embarq quickly made Intrado aware that Embarq did not consider these issues properly addressed in the 251 interconnection agreement context, but made it clear to Intrado that Embarq was ready and willing to negotiate the appropriate commercial arrangements to apply to the service Intrado proposed to provide. (See, Attachment 11 to Intrado’s Petition). Intrado ignored Embarq’s positions and concerns and, rather than continue to negotiate with Embarq, filed its Petition with the Commission, exponentially increasing the number of issues to be considered from what it had ever presented to Embarq.

Clearly, Intrado’s failure to timely present Embarq with its proposed modifications to the agreement prevented the parties from engaging in the voluntary negotiations that are a precursor

⁵ Attachment A contains a Matrix identifying each of the redlines proposed by Embarq by the affected section of the Agreement. Of the approximately 155 redlines Embarq identified in the Nov. 27, 2007 draft of the interconnection agreement, at least 130 were not included in the draft interconnection agreements Intrado provided to Embarq prior to filing the arbitration.

to filing an arbitration petition with the state commission under §252 of the Act. It is completely contrary to the procedures set forth in 47 USC §252 to ask the Commission to rule on issues that the parties have never even attempted to negotiate. In fact, it is likely that a great number of the modifications proposed by Intrado for the first time in the November 27th draft could have been voluntarily resolved by the parties if the negotiation process had been allowed to properly progress.

The number of issues Intrado raises for the first time in its petition, coupled with Intrado's dilatory behavior in initiating contact with Embarq to discuss modifications to Embarq's standard terms and conditions for CLEC interconnection, represent a lack of good faith by Intrado in conducting the negotiations required under the Act. As a result of Intrado's failure to comply with this most fundamental requirement of 47 USC §251, Intrado's Petition should be dismissed.

II. Intrado's Petition is procedurally deficient

In addition to Intrado's failure to comply with the Act's requirement to negotiate in good faith, Intrado's Petition does not comply with the requirements for an arbitration petition delineated in 47 USC §252 (b)(2)(A). Specifically, Intrado's Petition fails to describe in detail the nature of the issues that are in dispute. In addition, for the majority of the issues, Intrado fails entirely to provide Embarq's position on the issue, instead stating that Embarq's position is "unknown." Of course, Intrado's inability to identify Embarq's position is directly related to the fact that these issues were never presented to Embarq and emphasizes Intrado's failure to properly initiate and engage in negotiations. In addition, because Intrado included many issues not previously raised in the negotiations, Embarq also may find it necessary to raise issues that have not been negotiated previously by the parties. Surely, this result was not what Congress or

the Commission envisioned when they enacted and implemented the procedures for negotiation and subsequent arbitration of unresolved issues.

Intrado's lack of specificity as to the nature of each issue and what is in dispute regarding each issue precludes the parties and the Commission from properly identifying and addressing the issues to be litigated and ultimately resolved by the Commission. Because Intrado's Petition fails to comply with the essential requirements of 47 USC §252, the Petition should be dismissed.

III. Intrado raises issues that are not subject to arbitration under the federal act

In response to Intrado's request to establish an interconnection agreement, Embarq has negotiated with Intrado on the same basis that Embarq has conducted business with other providers of emergency services. Some of the technical arrangements proposed by Intrado are currently handled by Embarq under commercial agreements with other providers (including Intrado); some of the services are appropriately available under tariff; and other portions of Intrado's proposals are properly the subject of an interconnection agreement under 47 USC §251(c).

All providers of voice services that are interconnected to the Public Switched Telephone Network ("PSTN") are obligated to provide access to E-911 service to their customers.⁶ The Wireline E-911 Network is a specialized network that is separate from, but interconnected with, the PSTN.⁷ It is comprised of a voice network and a data or information network. The FCC has determined that ILECs must provide access to E-911 databases pursuant to the unbundling obligations in 47 USC §251(c)(3). This means that where Embarq is the E-911 database management system ("DBMS") administrator, Embarq must provide access to the Automatic

⁶ Title 47 C.F.R. §9, §20.3, §64.3

⁷ Title 47 C.F.R. §9.3