

# Attachment 2

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 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 United Telephone ) Case No. 07-1216-TP-ARB  
Company of Ohio and United Telephone Company of )  
Indiana, Inc. (collectively, “Embarq”) )

**MEMORANDUM CONTRA OF UNITED TELEPHONE COMPANY OF OHIO  
AND UNITED TELEPHONE COMPANY OF INDIANA, INC DBA EMBARQ  
TO INTRADO COMMUNICATIONS INC.’S APPLICATION FOR REHEARING**

In accordance with OAC 4901-1-35(B), United Telephone Company of Ohio and United Telephone Company of Indiana, Inc. (collectively, “Embarq”) submit this Memorandum Contra to the Application for Rehearing filed by Intrado Communications, Inc. (“Intrado”) on October 24, 2008. Intrado has demonstrated no error or omission of fact or law to support its request for rehearing. Instead, Intrado’s Application and Memorandum in Support simply reargue its positions as set forth in its Initial and Reply Briefs (in some cases virtually verbatim). Commission precedent is clear that an Application for Rehearing will be denied if it presents no new arguments for the Commission’s consideration but merely reargues positions already raised and considered by the Commission. Because Intrado does not offer any valid basis for rehearing, Intrado’s Application should be denied as discussed fully below.

**I. INTRODUCTION**

In its Application and Memorandum of Support, Intrado has failed to demonstrate that the Commission’s Arbitration Award should be vacated as a matter of fact or law. Because Intrado’s Memorandum merely reiterates the arguments previously presented in

Intrado's briefs, arguments which the Commission fully considered in rendering its Award, Intrado's Application for Rehearing should be denied. Specifically, the Commission's Award correctly considered the record evidence, arguments and the applicable law in concluding that:

- Section 251(a), not section 251(c), applies to Embarq's interconnection with Intrado when Intrado is the 911/E911 Service provider to a public safety answering point (PSAP).
- Embarq's standard interconnection language regarding POIs for non-911 traffic should be included in the 251(c) portion of the parties' interconnection agreement.
- Embarq's establishment of a POI on Intrado's network is governed by section 251(a) and multiple POIs are not required.
- Embarq must transfer ALI only under the specific circumstances enumerated in the order.

## **II. STANDARD OF REVIEW OF AN APPLICATION FOR REHEARING**

Under established Commission precedent, an application for rehearing must be denied if it contains no new arguments for the Commission's consideration, but merely reargues points previously made and considered when the Commission rendered its decision. This precedent is aptly articulated by the Commission in its order addressing the Office of Consumer Counsel's Application for Rehearing of the Commission's Order approving Embarq's request for alternative regulation.<sup>1</sup> In its Entry on Rehearing, entered February 13, 2008, the Commission denied rehearing, stating "We find that the OCC, in

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<sup>1</sup> *In the Matter of Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code, Case No. 07-760-TP-BLS.*

its application for rehearing, has raised no new arguments for the Commission's consideration. Therefore, the OCC's application for rehearing pertaining to the Commission's adoption of the BLES rules....is denied."<sup>2</sup> Intrado's Application and accompanying Memorandum in Support merely rehash arguments previously made by Intrado, in many cases replicating virtually verbatim the arguments in its Initial and Reply Briefs.<sup>3</sup> Because Intrado's Application does not comply with established Commission precedent for granting a request for rehearing, the Application should be summarily denied.

**III. THE COMMISSION CORRECTLY CONCLUDED THAT SECTION 251(a) NOT SECTION 251(c) APPLIES WHEN INTRADO IS THE 911/E911 SERVICE PROVIDER.**

Intrado requests that the Commission reconsider its decision that section 251(a), rather than section 251(c), applies to the interconnection arrangements between Embarq and Intrado when Intrado is the 911 provider to a PSAP and Embarq interconnects on Intrado's network at Intrado's selective router to deliver Embarq customers' 911 calls to

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<sup>2</sup> Entry on Rehearing in Case No. 07-760-TP-BLS at par. 7. See, also, *Consolidated Duke Energy Ohio, Inc. Rate Stabilization Plan Remand and Rider Adjustment Cases, Case Nos. 03-93-El-ATA et. al.*, Entry on Rehearing entered July 31, 2008 at par. 14 and *In the Matter of American Municipal Power-Ohio, Inc. for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio*, Case No. 06-1358-EL-BGN, Entry on Rehearing entered April 28, 2008 at par. 8.

<sup>3</sup> For instance, in its Memorandum at pages 2 and 5, Intrado argues (incorrectly) that the Commission should grant rehearing because it has erred in not finding that "Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC." Intrado made this same point in its Reply Brief at page 4. And the Commission discussed and rejected Intrado's position at page 4 of the Arbitration Award. Another example is Intrado's argument on page 6 of its Memorandum that the Commission erred in not finding that section 251(c) applies to any interconnection arrangement Intrado requests because the purpose of applying section 251(c) to ILEC-CLEC interconnection is to address the unequal bargaining power of ILECs. This same argument is presented to support Intrado's position in Intrado's Initial Brief at page 8 and its Reply Brief at page 7. And Intrado's arguments are acknowledged by the Commission at page 5 of the Arbitration Award. There are a multitude of similar examples, many of which are further identified in Embarq's discussion of specific issues herein.

the Intrado-served PSAP. Intrado's arguments regarding the meaning and applicability of sections 251(c) and 251(a) were thoroughly considered and addressed in the Arbitration Award. On this basis, alone, Intrado's requests for rehearing of this issue should be denied.

**A. Section 251(c) only governs a competitor's interconnection on the ILEC's Network.**

In addition to merely rehashing the same arguments already considered by the Commission, Intrado's arguments continue to have no basis in the facts or law. As in its initial filings, Intrado ignores the language of section 251(c), the applicable FCC rule (47 C.F.R. §51.305) and the Commission's own regulations (Rule 4901:1-7-06), which clearly state that interconnection under section 251(c) must be at a point within the ILEC's network.<sup>4</sup> Since Intrado is demanding that Embarq interconnect at Intrado's selective router on Intrado's network, indisputably section 251(c) does not apply.

Intrado also reiterates its misrepresentations of the FCC's rulings regarding the applicability of section 251(a). Contrary to Intrado's arguments, neither the Local Competition First Report and Order<sup>5</sup> nor the Virginia Arbitration Order<sup>6</sup> state that 251(c)

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<sup>4</sup> Section 251(c)(2) provides 4 separate and adjunctive criteria, ALL of which apply to the interconnection required of ILECs under section 251(c). While the equal in quality standard may apply to how Embarq interconnects with adjacent ILECs, it is irrelevant to where the Parties interconnect. As to where, section 251(c) requires that the interconnection be at a point within the ILEC's network. The FCC discusses the meaning of the "equal in quality" criterion at ¶ 224 of the Local Competition First Report and Order. It is evident from this discussion that the FCC considers this criterion to encompass "technical and service standards."

<sup>5</sup> *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*; First Report and Order in CC Docket No. 96-68; CC Docket No. 95-185; Release Number FCC 96-185; Released August 8, 1996; 11 FCC Rcd 15499 (hereafter "Local Competition First Report and Order").

<sup>6</sup> *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding*

applies to all ILEC-CLEC interconnections or that section 251(a) applies only to CLEC-CLEC or ILEC-ILEC interconnections. As discussed in Embarq's Initial and Reply Briefs, in ¶220 of the Local Competition First Report and Order, the FCC rejected a request to find that ILECs must interconnect on competitive carriers' networks under certain circumstances. Instead the FCC found that interconnection on a competitive carrier's network is governed by section 251(a) and that these interconnection arrangements should be addressed "in negotiations and arbitrations between the parties." Therefore, the Commission's ruling in the Arbitration Award that section 251(a) applies to Embarq's interconnection on Intrado's network is entirely consistent with the FCC's decision in the Local Competition First Report and Order.<sup>7</sup>

Intrado has invented out of whole cloth its proposition on page 7 of its Memorandum that "the key to determining whether 251(a) or 251(c) is the bargaining power of the parties. When parties with equal bargaining power seek interconnection, section 251(a) applies, when parties with unequal bargaining power....seek interconnection, section 251(c) applies." Intrado has not cited to any FCC or Commission order or rule to support this proposition because there is none. And in any event, it is disingenuous for Intrado to portray itself as having no bargaining power in situations where it has been selected as the Wireline 911 Network provider, since FCC

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*Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.; Memorandum Opinion and Order in CC Docket No. 00-218; CC Docket No. 00-249; CC Docket No. 00-251 ; Released July 17, 2002, 17 FCC Rcd 27039 (hereafter "Virginia Arbitration Order").*

<sup>7</sup> Again, as discussed in Embarq's Initial and Reply Briefs, in ¶71 of the Virginia Arbitration Order, the FCC recognizes that parties may agree to a different point of interconnection, other than the single point of interconnection that the CLEC is entitled to select on the ILEC's network. In fn 200, the FCC explains that interconnection with the ILEC within the ILEC's network is governed by section 251(c), while interconnection with nonincumbent carriers is governed by section 251(a). Embarq's interconnection with Intrado's network is just this sort of interconnection on a nonincumbent network that is contemplated by ¶71 and fn 200.

Rules require all other providers of voice services that are interconnected to the Public Switched Telephone Network to provide their customers with access to E911 service, and therefore such carriers (including Embarq) would have an obligation under these circumstances to request interconnection with Intrado as the Wireline E911 Network provider.<sup>8</sup> And Intrado publicly claims to provide the core of the nation's 9-1-1 system, supporting over 200 million calls to 9-1-1 each year, which totally contradicts Intrado's attempt to portray itself as a poor underdog.<sup>9</sup>

Intrado also points (again) to the Commission's Order granting Intrado certification as a competitive emergency services telecommunications carrier (CESTC)<sup>10</sup> to support its position that the Commission erred by not acknowledging that it has already held that section 251(c) applies to the interconnection arrangements Intrado seeks in this arbitration. (Intrado's Memorandum at pages 3-5) Intrado made these same arguments in its Initial Brief at pages 21-22 and in its Reply Brief at pages 10-11. In this reiteration of its arguments, Intrado again distorts the Commission's ruling in the original Certification Order and again ignores the Commission's further clarification in the Entry on Rehearing of that Order.<sup>11</sup> The Certification Order does not specify the provisions of section 251 that apply to any rights Intrado has to interconnect with ILECs to provide its competitive emergency telecommunications services. Rather, the Certification Order states that "competitive emergency services telecommunications carriers are entitled to all rights and obligations of a telecommunications carrier pursuant to sections 251 and 252 of the

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<sup>8</sup> James M. Maples Direct Testimony, Embarq Exhibit 5, at page 18.

<sup>9</sup> Carrie F. Spence-Lenss Direct Testimony, Intrado Exhibit 5, at pages 4-5.

<sup>10</sup> *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE, Finding and Order, issued 2/5/08 (hereafter "Certification Order").

<sup>11</sup> *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE, Entry on Rehearing issued 4/8/08 (hereafter "Certification Rehearing Entry").

Act.” (Certification Order at page 5) And as the Commission notes in the Arbitration Award at page 7, the Entry on Rehearing further clarifies that any decision regarding Intrado’s rights as they relate to specific interconnection requests are to be determined in individual arbitration proceedings.(Certification Rehearing Entry at page 14) Therefore, the Commission’s finding in the Arbitration Award that section 251(a) rather than section 251(c) applies to Embarq’s interconnection with Intrado at Intrado’s selective router is entirely consistent with both the Certification Order and the Certification Rehearing Entry.<sup>12</sup>

The Commission has considered fully all of Intrado’s and Embarq’s arguments concerning whether section 251(c) or 251(a) applies when Intrado is the 911 provider and Embarq must establish interconnection on Intrado’s network. Based on this consideration, the Commission properly has concluded that this type of interconnection is governed by section 251(a). Because Intrado has presented no new arguments or any basis in law or fact for the Commission to reconsider its findings on this issue, the Commission should deny Intrado’s request for rehearing on this point.

**B. Intrado is not prevented from competing when interconnection is accomplished under a Section 251(a) agreement.**

Intrado also reargues the position asserted in its Initial and Reply Briefs that it cannot effectively compete to provide its 911 services unless it is allowed interconnection with Embarq under the provisions of section 251(c).<sup>13</sup> The Commission has already considered and rejected this argument and should do so again. (Arbitration Award at page

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<sup>12</sup> Ironically, Intrado’s argument on pages 4 and 5 of its Memorandum that the Commission’s ruling to consider specific interconnection requests in individual arbitrations is unlawful amounts to the same attempt to inappropriately gain reconsideration of a prior Commission order that Intrado complains of in relation to Embarq.

<sup>13</sup> Intrado’s Initial Brief at pages 7-8; Intrado’s Reply Brief at page 6.

4) Once again, Intrado's argument is disingenuous, because Embarq has offered to interconnect with Intrado under many of the same terms that Intrado has proposed, in the context of a section 251(a) commercial agreement. For instance, under a commercial agreement, Embarq has agreed to interconnect at Intrado's selective router and to implement interselective routing. While Intrado argues that including these provisions in a separately delineated section of the interconnection agreement (as ordered by the Commission) "leaves the parties with an interconnection agreement that is vulnerable to interpretation and ongoing disputes," Intrado fails to provide any concrete examples of how this might occur. Notably, in its initial filings, Intrado argued that both 251(c) and 251(a) terms could be contained in the same agreement. (Intrado's Initial Brief at pages 26-28) Embarq agreed as long as the 251(c) and 251(a) terms were clearly delineated, and the Commission accepted the representations of both parties in ordering a single agreement with separately delineated terms. (Arbitration Award at pages 14-15) The conforming agreement that Embarq and Intrado submitted to the Commission for approval on October 27, 2008, contains these commercial terms, which allow Intrado to immediately and effectively compete to provide 911 services to PSAPs in Ohio.

Intrado also incorrectly argues that Embarq's agreements with other carriers do not separately delineate certain non-251 provisions. In fact, Part I of Embarq's standard interconnection agreement template does just that, by separately delineating certain services that fall outside of 251(c). The contract filed with the Commission by the Parties in this docket following the Arbitration Award delineates the separate terms proposed by Intrado in an Appendix and moves the existing non-251(c) provisions of Part I to an Appendix as well, to avoid confusion.

Because Intrado has presented no new arguments or any basis in law or fact for the Commission to reconsider its findings, the Commission should deny Intrado's request for rehearing on this issue.

**IV. THE COMMISSION WAS CORRECT IN ITS DETERMINATIONS REGARDING REQUIRED POIs.**

**A. Since Intrado will not exchange non-911 traffic, it is not entitled to change Embarq's standard POI language for non-911 traffic.**

Intrado's Memorandum replicates the exact arguments that it made in its Initial Brief regarding Embarq's POI language for non-911 traffic.<sup>14</sup> In the Arbitration Award, the Commission fully considered these arguments and properly concluded that the provisions were not applicable to Intrado under its current certification. (Arbitration Award at page 29) The Commission also properly recognized that these terms are standard terms in interconnection agreements Embarq has with CLECs who deliver the type of non-911 traffic to which these provisions are intended to apply. (Id.) Intrado offers no new arguments for why the Commission should grant rehearing on this issue, nor does Intrado dispute that the provisions are irrelevant to Intrado under its current certification, thus making the issue moot, presenting no case or controversy that is ripe for consideration. Because Intrado has presented no arguments that were not fully considered by the Commission in its decision, and because the challenged provisions are irrelevant in the context of the services Intrado is certificated to provide, the Commission should deny Intrado's Application for Rehearing on this issue.

**B. Intrado's arguments that Embarq must establish two POIs at geographically diverse locations are not supported by the law.**

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<sup>14</sup> Intrado's Initial Brief at pages 41-42.

Once again, Intrado duplicates its arguments regarding the applicability and meaning of section 251(c) in requesting rehearing on the Commission's ruling that Embarq is not required to establish multiple POIs on Intrado's network. Just as the Commission considered and rejected Intrado's arguments in the first instance, it should do so again. As in its Initial Brief, Intrado's Memorandum continues to advance the blatantly inconsistent positions that a CLEC must establish only a single POI on an ILEC's network while Embarq must establish multiple POIs on Intrado's network. Of course, Intrado offers no new arguments or legal precedents to support this position, because there are none. Instead, as it did in its prior filings, Intrado resorts to exhortations about the importance of redundancy and reliability in the 911 network (though necessarily acknowledging that the FCC has yet to conclude that such redundancy should be required).<sup>15</sup>

Intrado also makes several inaccurate factual assertions, including extra-record and incorrect allegations regarding the number and location of Embarq's selective routers in Ohio and the manner and arrangements by which Embarq transports competitive carrier customers' 911 calls to Embarq's selective router for termination to Embarq-served PSAPs.<sup>16</sup> The interconnection agreement provision cited multiple times by Intrado (§55.1.3) says simply that "separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem". Since the interconnection agreement typically covers an entire state, it contemplates situations where Embarq might have more than one selective

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<sup>15</sup> See Intrado's Memorandum at page 13. In its Memorandum, Intrado also shamelessly mischaracterizes the reservation of state commissions' rights set forth in 47 U.S.C. § 253(b) as a "mandate." The purpose of the section is to make clear that the Act is not intended to pre-empt certain state regulatory authority over telecommunications services. Section 253(b) categorically does not impose any mandates on state commissions and specifically it does not impose any requirement on the Commission to require Embarq to interconnect on Intrado's network in the manner Intrado demands.

<sup>16</sup> Embarq does not maintain multiple routers in each geographic area. Rather, Embarq maintains one mated-pair for all of Ohio (in Lima and Mansfield). In addition, Embarq does not require geographically diverse POIs on its network. It only requires a single POI at one of the Embarq selective routers.

router (i.e. 911/E911 tandem”) in the state, but that is a far cry from Intrado’s unfounded assertion that “Embarq maintains multiple selective routers within each of its [unspecified] geographic service areas...” (Intrado’s Memorandum at page 15)

As with the other issues Intrado has raised in its Memorandum, the Commission fully considered and discussed these very arguments in rendering its Arbitration Award. (at page 29) Intrado presents absolutely no basis for the Commission to change its decision and, therefore, Intrado’s request for rehearing on this point should be denied.

**V. CLARIFICATION OF THE COMMISSION’S DECISION REGARDING ALI TRANSFER IS UNNECESSARY.**

Intrado also seeks rehearing for the purposes of requesting “clarification” of the Commission’s findings regarding the circumstances where Embarq must transfer ALI to Intrado. Embarq disagrees with Intrado’s request that the Commission clarify that the three criteria for Embarq to transfer ALI between selective routers are disjunctive as opposed to conjunctive.<sup>17</sup> Rather, Embarq believes that the Commission intended the requirements to be read together, to ensure that Embarq receives appropriate cost-recovery for transferring ALI to Intrado, even where Embarq provides for ALI transfer to itself. Therefore, the Commission should deny Intrado’s request for clarification on this point. Rather, the Commission should confirm that Embarq is entitled to recover any costs it incurs for providing ALI transfer functionality to Intrado , irrespective of whether Embarq transfers ALI on its own network. While the Commission correctly intends for there to be interoperability between Wireline E911 Networks, there is no evidence in the record concerning the interoperability or compatibility of any such ALI transfer

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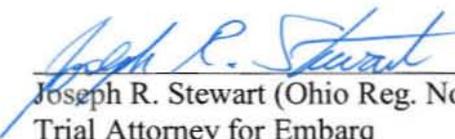
<sup>17</sup> As set forth in the Arbitration Award at page 37, these criteria are: (1) Embarq deploys this functionality in its own network, (2) Intrado agrees to compensate Embarq for ALI transfer functionality, or (3) the parties come to a mutual agreement on ALI transferability between PSAPs.

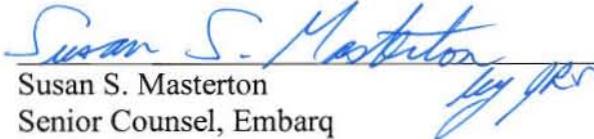
“functionality” that Embarq provides to itself, let alone any evidence concerning the ALI transfer “functionality” that Intrado contemplates.<sup>18</sup> Further, the technical aspects of such transfer capability might change depending on geography, PSAP capability or request, existing facilities, or other relevant factors. As such, *each* of such arrangements should be the subject of mutual agreement among the parties.

## VI. CONCLUSION

Wherefore, the Commission should deny Intrado’s Application for Rehearing for the reasons and in the manner set forth above.

Respectfully submitted,

  
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<sup>18</sup> Indeed, the Award (at page 37) states that “the Commission finds that the record is not clear regarding the extent to which Embarq provides such functionality today.”

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing Memorandum Contra was served via e-mail and first class mail, postage prepaid, on the parties listed below on this 6<sup>th</sup> day of November 2008.

  
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