

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

In the Matter of the Petition)	
of Intrado Communications of Virginia Inc. for Arbitration)	WC Docket No. 08-33
Pursuant to Section 252(b) of the Communications Act)	
of 1934, as amended, to Establish an Interconnection)	
Agreement with Central Telephone Company of Virginia)	
and United Telephone - Southeast, Inc.)	
(collectively, "Embarq"))	

SIXTH STATUS REPORT OF INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Communications of Virginia Inc. ("Intrado Comm"), by its attorneys, respectfully submits this Sixth Status Report in response to the request from staff of the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("Commission"). This report provides information regarding the status of negotiations between Intrado Comm and Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq"), including the status of other state arbitration proceedings pending between the Parties. The following activities have occurred since Intrado Comm's Fifth Status Report filed on November 6, 2008:

- On November 12, 2008, the Public Utilities Commission of Ohio granted Intrado Comm's application for rehearing of the Ohio commission's September 24, 2008 arbitration award (Attachment 1 to Intrado Comm's Fifth Status Report). The Ohio commission found that "sufficient reasons have been set forth by Intrado to warrant further consideration of the matters specified in [Intrado Comm's] application for rehearing" (Finding 6). A copy of this decision is set forth as Attachment 1.
- On November 13, 2008, the Florida Public Service Commission approved the Staff recommendations in the Florida arbitration proceeding between Intrado Comm and

Embarq. The Florida commission is required to issue a final order, but no date has been set for that order. A copy of the staff recommendation and the Florida commission's vote sheet is set forth in Attachment 2.

Respectfully submitted,

**INTRADO COMMUNICATIONS OF
VIRGINIA INC.**

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Dated: November 20, 2008

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 20th day of November 2008, I served a copy of the foregoing Status Report on the following via the method indicated:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Via ECFS

Christi Shewman
Heather Hendrickson
Stephanie Weiner
Wireline Competition Bureau
445 12th Street, SW
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Via Electronic Mail

John E. Benedict
Director - Federal Regulatory Affairs
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Mailstop: NCWKFR0313
Via Electronic Mail

/s/ Angela F. Collins

Angela F. Collins

Attachment 1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Intrado Communications,)
Inc. for Arbitration of Interconnection Rates,)
Terms, and Conditions and Related)
Arrangements with United Telephone) Case No. 07-1216-TP-ARB
Company of Ohio dba Embarq and United)
Telephone Company of Indiana dba Embarq,)
Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)

ENTRY ON REHEARING

The Commission finds:

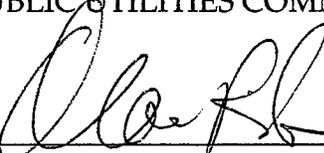
- (1) On November 28, 2007, Intrado Communications, Inc. (Intrado) filed a petition for arbitration of numerous issues to establish an interconnection agreement with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq (collectively, Embarq). Intrado filed the petition pursuant to Section 252(b) of the Telecommunications Act of 1996 (1996 Act).
- (2) On September 24, 2008, the Commission issued its arbitration award in this proceeding.
- (3) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (4) On October 24, 2008, Intrado filed an application for rehearing of the Commission's arbitration award.
- (5) Embarq filed a memorandum contra Intrado's application for rehearing on November 6, 2008.
- (6) The Commission grants Intrado's application for rehearing. We believe that sufficient reasons have been set forth by Intrado to warrant further consideration of the matters specified in that application for rehearing.

It is, therefore,

ORDERED, That Intrado's application for rehearing be granted for further consideration of the matters specified therein. It is, further,

ORDERED, That copies of this entry on rehearing be served upon parties of record.

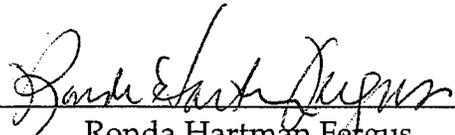
THE PUBLIC UTILITIES COMMISSION OF OHIO



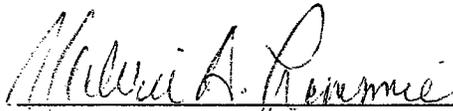
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

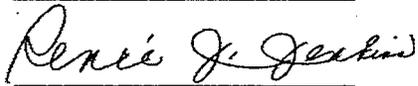


Cheryl L. Roberto

JML:ct

Entered in the Journal

NOV 12 2008



Renee J. Jenkins
Secretary

Attachment 2

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State of Florida



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Public Service Commission

COMMISSION
CLERK

STATE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 30, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Tan) *TLT A*
Division of Regulatory Compliance (Barrett, King) *mcb*
Division of Economic Regulation (Dowds) *TD*

RE: Docket No. 070699-TP – Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.

AGENDA: 11/13/08 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place immediately before Docket No. 070736-TP.

FILE NAME AND LOCATION: S:\PSC\RCP\WP\070699.RCM.DOC

Case Background

On November 27, 2007, Intrado Communications, Inc. (Intrado Comm) filed its Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc. (Embarq), pursuant to Section 252(b) of the

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Communications Act of 1934, as amended¹ (Act), and Section 364.162, Florida Statutes (F.S.). An evidentiary hearing was held July 9, 2008.

Arbitration

Part II of the Act sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act addresses interconnection between carriers, and §252 sets forth the procedures for negotiation, arbitration, and approval of agreements. Arbitration occurs when parties are unable to reach a comprehensive negotiated agreement as contemplated by §252 of the Act.

Once a CLEC submits a request for negotiation of an interconnection agreement, §252(b) permits either party to the negotiation to petition a state commission to "arbitrate any open issues" unresolved by voluntary negotiation.² Section 252(b)(4)(c) sets forth that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required.

An ILEC is obligated to arbitrate requests pursuant to §252(b)(1).³ An ILEC is not obligated to arbitrate matters not required pursuant to §251(c), but can agree to do so. Intrado Comm believes the type of interconnection it desires is required pursuant to §251(c). Embarq believes that §251(a) is the appropriate section under which Intrado Comm may seek interconnection with Embarq. If all parties agree to look at an issue outside of §251(c), the Florida Public Service Commission (Commission) may assist in its resolution.

911/E911 service

Intrado Comm and Embarq are before the Commission regarding Intrado Comm's request for interconnection so that it may provide competitive 911/E911 service. The terms "911" and "E911" are used throughout the recommendation. For ease of understanding, "911" is described in §365.171(2), F.S., as the designated emergency communications number to "provide citizens with rapid direct access to public safety agencies . . ." As a general rule, when a telephone subscriber dials "911" seeking emergency assistance, specific trunking and call routing is employed so that the call is delivered to the appropriate public safety entities (e.g., police, fire, medical assistance, etc.) as quickly and efficiently as possible. The earliest applications of 911 call routing did not provide public safety entities with "location-specific" data; however, more modern iterations and systems use databases that are more advanced than earlier versions, and this capability is appropriately described as being "enhanced," which is how the term "E911" was born. The task of seamlessly providing "location-specific" data has been

¹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et seq. (1996)).

²Section 252(b)(1):Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

³Section 364.012, F.S., does not limit or alter the duties of a "local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements to the extent that those elements are required under 47 U.S.C. §251 and §252 . . ."

Docket No. 070699-TP

Date: October 30, 2008

largely answered for land-based phone lines, although solutions for mobile-based applications are still being developed and implemented.

Several aspects of this matter and the similar proceeding in Docket No. 070736-TP⁴ are “cases of first impression” for the Commission. Although the parties were successful in resolving certain issues prior to the July 9, 2008 hearing, there are unresolved issues. The most notable unresolved issues are Issues 1(a) and 1(b).⁵ The crux of Issue 1(b) is whether the parties should forge a commercial agreement, or one subject to certain sections of the Act. Staff believes Issues 1(a) and 1(b) are “threshold” matters, and resolving them will dictate what further action, if any, is appropriate for the 9 remaining issues identified.

This recommendation only addresses Issues 1(a) and 1(b) of this proceeding. Resolving these issues should precede the consideration or disposition of the remaining disputed issues.

The Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 364 and 120, F.S.

⁴ In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

⁵ Issue 1(a): What service(s) does Intrado currently provide or intend to provide in Florida?

Issue 1(b): Of the services identified in (a), for which, if any, is Embarq required to offer interconnection under section 251(c) of the Telecommunications Act of 1996?

Discussion of Issues

Issue 1(a): What services does Intrado Comm currently provide or intend to provide in Florida?

Recommendation: Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of "telephone exchange service" pursuant to 47 U.S.C. 153(47) because it will not provide the ability both to originate and terminate calls. (Tan)

Position of the Parties

INTRADO COMM: Intrado Comm's competitive 911/E911 services are telephone exchange services and are appropriately classified as telecommunications services. The classification of the service provider used by the 911 caller to reach Intrado Comm's PSAP customer has no bearing on the classification of the 911/E911 service Intrado Comm provides to the PSAP.

EMBARQ: Intrado Comm has indicated that it will offer 911/E911 services to PSAPs through its IP-based Intelligent Emergency Network and is aggressively pursuing the provisioning of Next-Generation 911 services. Intrado Comm currently does not provide local exchange services to end users to dial 911 or wholesale services to carriers or other wholesale providers.

Staff Analysis: This issue examines Intrado Comm's service offering, which involves the provision of 911/E911 service to Public Safety Answering Points (PSAPs)⁶ and government entities. An important consideration in this issue is whether Intrado Comm's service offering meets the definition of a "telephone exchange service," as the term is defined in §3 of the Act.

SEC. 3. [47 U.S.C. 153] DEFINITIONS.

(47) TELEPHONE EXCHANGE SERVICE.--The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Intrado Comm contends its "Intelligent Emergency Network"TM service meets this definition. (Intrado Comm BR at 9) Embarq disagrees that Intrado Comm's service qualifies as telephone exchange service. (Embarq BR at 4) This determination is key to the other primary sticking point in this matter, which examines whether Embarq (as an incumbent local exchange carrier) must enter into an interconnection agreement with Intrado Comm pursuant to the obligations set forth in §251(a) or in §251(c) of the Act. Further arguments are summarized below.

⁶ For purposes of the "911" system, §365.172, F.S., defines an "[a]nswering point" to mean "the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls."

Parties' Arguments

Intrado Comm contends the 911/E911 service it provides to PSAPs qualifies as telephone exchange service. Embarq asserts that Intrado Comm may be a telecommunications carrier entitled to interconnection under §251(a), but disagrees that the provision of 911/E911 service entitles Intrado Comm access to UNEs under §251(c).

Both parties agree that how competitive 911/E911 service is designated or categorized is the key issue in this case. Embarq contends that 911/E911 service is not telephone exchange service, and therefore not contemplated under §251(c). Intrado Comm asserts that while it does not currently offer dial tone local exchange service, Intrado Comm's provision of its end-to-end 911/E911 service offering to Florida PSAPs amounts to providing telephone exchange service. (Intrado Comm BR at 9)

In support of its argument that Intrado Comm does not offer telephone exchange service subject to §251(c) interconnection and unbundling requirements, Embarq argues that federal law requires that all providers of voice services provide their end users access to 911/E911 service. Embarq notes that the FCC defines the Wireline E911 Network as a separate network from the Public Switched Telephone Network. Embarq states that the PSAP chooses only one provider who will provide a service that is one-way in nature and jurisdictionally agnostic. (TR 21) Embarq further asserts that intercarrier compensation does not apply to 911/E911 service and funding is provided by end user surcharges. (Embarq BR at 4)

Intrado Comm asserts that the FCC determined that "telephone exchange service [is] not limited to traditional voice telephony, but include[s] non-traditional means of communicating information within a local area."⁷ The FCC has also stated "a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area."⁸ Intrado Comm argues that its service fulfills the FCC stated goal of intercommunication because it allows 911/E911 users to be connected with PSAPs and communicate with local emergency personnel. (Intrado Comm BR at 9)

Embarq believes that 911/E911 is a unique service, and §251(c) is not applicable to 911/E911 traffic. (Embarq BR at 5) Embarq argues that "providing a service that involves telecommunications is not the same as providing a telecommunications service." Embarq further contends that when a provider uses telecommunications to provide an information service, an information service is being provided to the end user. (Embarq BR at 6) Intrado Comm asserts that the nature of the service defines the classification, and the combined service it provides has an element of telecommunications. (Intrado Comm BR at 16)

Intrado Comm argues that its use of Internet protocol should not influence the classification of its 911/E911 service, stating that "[h]ow Intrado Comm may transport calls within its network has no bearing on the classification of the ultimate 911/E911 service offering

⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 17 (1999) ("Advanced Services Order").

⁸ Advanced Services Order ¶ 30.

it provides to Florida PSAPs.” (Intrado Comm BR at 14). Embarq cites to the FCC’s definition of an IP-enabled service as any service or application that relies on Internet Protocol,⁹ stating that “this IP-based service is not a telecommunications service or a telephone exchange service.” (Embarq BR at 7). Embarq believes that Intrado Comm’s use of IP technology should be considered when establishing whether Intrado Comm’s proposed service arrangements constitute telephone exchange service for the purposes of §251(c).

Intrado Comm argues that the classification of its service does not depend on whether the PSAP has implemented IP customer premises equipment. Intrado Comm asserts that its Intelligent Emergency Network™ is a “Next Generation” 911/E911 network. Embarq counters that Intrado Comm’s network provides an IP-based information service, which is a type of service which has never been deemed by the FCC to be entitled to §251(c) rights. (Embarq BR at 8) Intrado Comm states that its network incorporates IP-based technologies and thus accommodates legacy analog services and the IP-based services being offered today, while allowing for next generation technology not generally supported by existing 911/E911 networks. (Intrado Comm BR at 17)

Analysis

The term “service” is central to this issue. Both parties acknowledge that Intrado Comm offers a service, but differ as to what type of service is being offered. Establishing the nature of the service Intrado Comm is offering is important to determine whether Intrado Comm and Embarq should enter into an arrangement under §251(a), a general contract, or §251(c), an interconnection agreement. Section 251(c) specifically provides for an interconnection agreement between a competitive local exchange carrier and an incumbent local exchange carrier to be filed by the parties with this Commission, whereas §251(a) allows for a general contract, commonly referred to as a commercial agreement. Section 251(c) imposes specific, asymmetric obligations on ILECs. Section 252 gives rise to an interconnection agreement incorporating the §251(c) obligations.

911/E911 Service

Section 365.172(3)(i), F.S., defines E911 service as the “enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated.” Both Intrado Comm and Embarq agree that Intrado Comm will provide its services as a competitive alternative 911/E911 provider. (Intrado Comm BR at 2; Embarq BR at 5) Upon Intrado Comm’s entry into the marketplace, PSAPs will have the opportunity to choose an alternate 911/E911 service provider.

⁹ *In the Matter of IP-Enabled Services*; WC Docket No. 04-36; Notice of Proposed Rulemaking; Released March 10, 2004; 19 FCC Rcd 4863.

Telephone Exchange Service

Intrado Comm's Intelligent Emergency Network™ is a service that allows a PSAP to receive emergency calls. (TR 13) By identifying its service as "telephone exchange service" because it "allows Florida consumers to be connected with PSAPs, and communication with local emergency personnel," Intrado Comm attempts to interpret 47 U.S.C. 153(47) to fit its own circumstances. 47 U.S.C. 153(47) provides that a telecommunication service which can **both** originate and terminate calls, can constitute telephone exchange service. However, Intrado Comm provides a service that cannot be used to originate a call.

Staff believes that in order for a service to be considered a telephone exchange service, pursuant to 47 U.S.C. 153(47), it must provide for both the origination and termination of calls. Without the ability both to originate and terminate calls, staff believes that Intrado Comm's proposed services do not meet the definition of "telephone exchange service." The Intelligent Emergency Network™ does not offer a PSAP the ability to call back a 911/E911 user, and administrative lines not offered by Intrado Comm would be required to place such a call.

Conclusion

Staff recommends that the Commission find that Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of "telephone exchange service" pursuant to 47 U.S.C. 153(47) because it will not provide the ability both to originate and terminate calls.

Issue 1(b): Of the services identified in Issue 1(a), for which, if any, is Embarq required to offer interconnection under Section 251(c) of the Telecommunications Act of 1996?

Recommendation: If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that Embarq is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 9 issues identified in the Prehearing Order, Order No. PSC-08-0401-PHO-TP. (Tan)

Position of the Parties

INTRADO COMM: Intrado Comm is entitled to interconnect its network with Embarq to access the PSTN, which Intrado Comm needs to provide 911/E911 services to Florida counties and PSAPs. Sections 251/252 were designed to promote the type of interconnection and interoperability Intrado Comm seeks.

EMBARQ: Section 251(c) applies when Embarq is the 911 provider to a PSAP and Intrado Comm seeks interconnection to terminate end user 911 calls. When Intrado Comm is the 911/E911 provider to a PSAP, Section 251(a) applies and interconnection terms and conditions should be included in a commercial agreement.

Staff Analysis: This issue focuses on whether Embarq is required to offer interconnection to Intrado Comm under §251(a) or §251(c) of the Act. Section 251(a) of the Act describes the general duty of all telecommunications carriers to interconnect, while §251(c) addresses specific obligations of incumbent local exchange companies (ILECs). Two aspects of §251(c) are particularly significant:

- Section 251(c)(2) includes a reference to "telephone exchange service;" and
- Section 251(c)(3) addresses the ILEC's obligation to provide access to unbundled network elements (UNEs). In essence, this concern is a "rates" issue since Embarq would be obligated to offer these UNEs to Intrado Comm at TELRIC (Total Element Long-Run Incremental Cost) rates, as opposed to the more general pricing standard applicable to items provided pursuant to §251(a).

Intrado Comm contends that a §251(c) agreement is appropriate since its service offering meets the definition of "telephone exchange service." It believes Embarq is obligated to offer it cost-based, unbundled access to the elements it wants pursuant to §251(c) of the Act. (Intrado Comm BR at 5)

Embarq believes that Intrado Comm's "Intelligent Emergency Network"TM service is not a "telephone exchange service," and as such, the consideration of interconnection with Intrado Comm pursuant to §251(c) is moot. It contends that Intrado Comm is not providing "telephone exchange service" to end users to dial 911/E911, or wholesale services to carriers or other

wholesale providers. Embarq believes that Intrado Comm's 911/E911 service is a unique service that is not contemplated by §251(c), and therefore is not entitled to a §251(c) interconnection agreement. (Embarq BR at 3)

Parties' Arguments

Both Intrado Comm and Embarq believe that the core issue is whether §251(c) or §251(a) applies to the interconnection between the parties when Intrado Comm is the 911/E911 service provider to a PSAP. The benefit Intrado Comm believes §251(c) will provide it is a level playing field, the provision of service at TELRIC rates, and connection standards that are established by the Act. Intrado Comm asserts that in order to provide its 911/E911 services to Florida PSAPs, Intrado Comm must interconnect with Embarq. Intrado Comm states that CLECs are entitled to interconnect with ILECs pursuant to §251(c). (Intrado Comm BR at 8)

Embarq disagrees with this assertion. Rather, Embarq argues that Intrado Comm is not a competitive local exchange provider that provides telephone exchange service and thus §251(a) is the appropriate section of the Act that governs the parties' interconnection arrangements. Embarq believes that §251(a) rather than §251(c) applies to the interconnection of the parties' networks when Intrado Comm is the 911/E911 service provider to a PSAP. Embarq asserts that §251(c) would only apply if Embarq is the 911/E911 provider to a PSAP, and Intrado Comm seeks interconnection with Embarq to terminate its end users' 911/E911 calls. (Embarq BR at 8)

Intrado Comm believes that it is not required to use a commercial agreement (*i.e.*, a §251(a) agreement) because the FCC has recognized that without interconnection between competitors and ILECs, competitors would be unable to effectively enter the market. This problem was addressed by the Act offering §251(c) interconnection between competitors and ILECs. Embarq witness Maples describes §251(c) as placing additional obligations on ILECs to open up the markets for competition, such as allowing the CLEC to select a POI (Point of Interconnection) as a way to manage the CLEC's costs. (TR 384) Intrado Comm asserts that its request for §251(c) interconnection is based on the same principles of competitive fairness and market entry. (Intrado Comm BR at 8)

Conversely, Embarq asserts that Intrado Comm incorrectly requests interconnection pursuant to §251(c) because Intrado Comm does not qualify for §251(c) provisions. (Embarq BR at 11) Embarq argues that Intrado Comm's 911/E911 traffic is unique. (Embarq BR at 4) In pursuing a §251(c) agreement, Embarq asserts that Intrado Comm is seeking the same treatment as other CLECs under §251(c), even as it requests exceptions to these arrangements due to its service's distinctive nature.

Analysis

Section 251 establishes the interconnection rights and obligations of telecommunications carriers, including local exchange telecommunications carriers. More specifically, §251(a) imposes a general obligation on all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section §251(c) goes beyond the general obligation and imposes specific obligations on incumbent local

exchange carriers (like Embarq) to allow interconnection by competing carriers on the incumbent's network.

Staff notes that if Intrado Comm becomes the 911/E911 service provider to PSAPs, Embarq becomes the carrier requesting interconnection on Intrado Comm's network in order to provide access to 911/E911 to Embarq's end user customers. Embarq believes the requirements imposed on ILECs do not support the type of interconnection arrangements currently requested by Intrado Comm. If they did, Embarq would be in a situation where it would be both the ILEC providing interconnection and a carrier seeking access. Staff believes this situation could present a serious disadvantage to Embarq, who would pay for Intrado Comm establishing its 911/E911 service. Staff is concerned that the costs for interconnection would be borne by Embarq.

Intrado Comm seeks a §251(c) interconnection agreement with Embarq to gain access to the Public Switched Telephone Network to offer its competitive services to PSAPs throughout the State of Florida. (Intrado Comm BR at 6) However, staff notes that the service Intrado Comm intends to provide is not one that will both originate and terminate calls. Staff believes that §251(c) is applicable when an entrant seeks interconnection arrangements with an ILEC in order to offer telephone exchange service and exchange access. However, §251(c) does not apply or impose specific obligations on an ILEC when the ILEC seeks interconnection on the ILEC's network. Intrado Comm states that §251(c) is the "appropriate mechanism for Intrado Comm to secure "nondiscriminatory access to, and interconnection with Embarq's networks for the provision of 911/E911 services." (Intrado Comm BR at 18) Staff disagrees, and notes that since Intrado Comm does not offer telephone exchange service, staff believes that Embarq is not obligated to interconnect with Intrado Comm pursuant to §251(c).

Finally, staff notes that the Commission has arbitrated issues outside of §251(c) when both parties agreed to Commission action. To date, the Commission has not reviewed any interconnection arrangements pursuant solely to §251(a).¹⁰

Conclusion

If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then

¹⁰ Recently, a similar issue was addressed by the Virginia State Corporation Commission (Virginia Commission), which deferred Intrado Comm's petition for arbitration to the FCC, stating the FCC should first decide whether Intrado Comm is entitled to §251(c) interconnection. *Petition of Intrado Comm. of Virginia, Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Tel.-Southeast, Inc. d/b/a Embarq, under Section 252(b) of the Telecommunications Act of 1996*, Order of Dismissal, Case No. PUC-2007-00112, at 2-3 (Feb. 14, 2008). As a result, Intrado Comm petitioned the FCC for resolution of the issues. *Petition of Intrado Comm. of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corp. Commission Regarding arbitration of an Interconnection Agreement with Central Tel. Co. of Virginia and United Tel.-Southeast, Inc.*, FCC WC Docket No. 08-33, filed March 6, 2008. The FCC granted Intrado Comm's petition, preempting the jurisdiction of the Virginia Commission in a Memorandum Order and Opinion, issued October 16, 2008, *In the matter of Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, FCC WC Docket 08-185, stating that the Virginia Commission explicitly deferred action to the FCC.

Docket No. 070699-TP

Date: October 30, 2008

staff recommends that the Commission find that Embarq is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 9 issues identified in the Prehearing Order, Order No. PSC-08-0401-PHO-TP.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed and the parties may negotiate a commercial agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining 9 issues. Apart from the consideration of Issues 1(a) and 1(b), staff has become aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, staff recommends that the Commission direct staff to further explore these matters. (Tan)

Staff Analysis: If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed and the parties may negotiate an interconnection agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining issues.

Public Interest Considerations

With the emergence of a competitive 911/E911 provider in the Florida marketplace, staff believes the Commission should be aware of potential unintended consequences that affect more than just the current parties to this docket, impacting all carriers in Florida, including wireless and VoIP providers. Most carriers are directed by statute to provide their end users access to 911/E911 service. These carriers may incur higher costs to access 911/E911 service or be forced to rehome circuits,¹¹ if a competitive provider's selective router is located outside of Florida. Staff notes that Intrado Comm currently has no selective routers in Florida, although it will eventually be deploying a minimum of two selective routers within the state of Florida. (TR 281) Staff is concerned that carriers may be forced to transport 911/E911 calls over great distances, perhaps even out of state.

Staff believes Commission involvement in the provisioning of 911/E911 service is important because of the potential impact on the health and safety of Florida citizens. Staff notes that this is a case of first impression which presents unique circumstances and policy concerns not previously addressed by the Commission. Staff further notes that 911/E911 service is an essential service in Florida. Pursuant to §364.01(4)(a), F.S., the Commission is entrusted with protecting the public health, safety and welfare and must ensure access to basic local service, which includes access to 911/E911 service. Staff believes it is imperative that access to 911/E911 services continue uninterrupted regardless of the 911/E911 service provider. Staff's belief is further supported by the FCC which has acknowledged the importance of a state's role in 911/E911 matters.¹²

¹¹ Rehoming is when there is a major network change which involves moving customer services from one switching center to another and establishing the necessary trunking facilities to do so. Harry Newton, Newton's Telecom Dictionary, 19th ed. 2003.

¹² The Wireless Telecommunications and Public Safety Act of 1999 mandates that the Federal Communications Commission "shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service."

Staff notes that the Commission is not the only agency or entity with an interest in monitoring of 911/E911 service. Intrado Comm witness Melcher acknowledges that 911/E911 service impacts many entities, stating that:

Public safety is the customer. It's the public safety leaders that should be involved in the decision-making process. And what is so sad to me is that as these kinds of hearings are going on around the country today, the person not sitting at the table that needs to be represented is the public safety leader. They have to be provided choices, they have to be given options that they've not been given in the past. (TR 218-219)

Embarq witness Maples also acknowledges the need for coordination among all affected entities, stating that the:

different aspects of emergency service is [sic] extremely important to the issue of how the existing emergency service infrastructure will evolve to the NG-911 platform. It is a massive and likely expensive task that will require much coordination in addition to legislation to address how it will be funded. This effort cannot effectively be accomplished through a series of isolated arbitrations and legal disputes between carriers, such as this proceeding, where one carrier is attempting to implement a business plan that depends on imposing unreasonable obligations upon ILECs such as Embarq that go far beyond the Telecommunications Act. (TR 332)

Sections 365.171-175, F.S., address Florida's 911/E911 plan. Any changes involving 911/E911 require the facilitation and cooperation of all affected agencies and entities to resolve any changes or complications that affect 911/E911 in Florida. Staff notes that decisions affecting the provision of 911/E911 service in Florida are made by several different agencies, including the Department of Management Services, local and state officials, providers and PSAPs. Accordingly, staff believes that any discussion regarding the provisioning of competitive 911/E911 service in Florida requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters.

Conclusion

If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed and the parties may negotiate a commercial agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining 9 issues. Apart from the consideration of Issues 1(a) and 1(b), staff has become aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, staff recommends that the Commission direct staff to further explore these matters.

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

November 13, 2008

Docket No. 070699-TP – Petition by **Intrado Communications, Inc.** for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with **Embarq Florida, Inc.**, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, P.S. (Deferred from the October 28, 2008 Commission Conference.)

Issue 1(a): What services does Intrado Comm currently provide or intend to provide in Florida?

Recommendation: Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of "telephone exchange service," pursuant to 47 U.S.C. 153(47) because it will not provide the ability both to originate and terminate calls.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

no a de

Katrina J. McMurrin

[Signature]

[Signature]

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

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Vote Sheet

November 13, 2008

Docket No. 070699-TP – Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.

(Continued from previous page)

Issue 1(b): Of the services identified in Issue 1(a), for which, if any, is Embarq required to offer interconnection under Section 251(c) of the Telecommunications Act of 1996?

Recommendation: If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that Embarq is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0401-PHO-TP.

APPROVED

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1(a) and 1(b), then this docket should be closed and the parties may negotiate a commercial agreement pursuant to §251(a). If the Commission denies staff's recommendations in Issues 1(a) and 1(b), then the docket should remain open for resolution of the remaining 9 issues. Apart from the consideration of Issues 1(a) and 1(b), staff has become aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, staff recommends that the Commission direct staff to further explore these matters.

APPROVED