Attachment 1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) On September 24, 2008, the Commission issued its arbitration award (Award) in this proceeding resolving those disputed issues brought before the Commission for resolution. Additionally, the Commission directed the parties to incorporate the Award into their entire interconnection agreement and file it for the Commission's consideration.

(2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(3) On October 24, 2008, Intrado Communications, Inc. (Intrado) filed an application for rehearing asserting that the Commission incorrectly decided the following five arbitrated issues:

(a) Section 251(c) of the Telecommunications Act of 1996 (1996 Act) does not apply when Intrado is the 9-1-1/E9-1-1 service provider (Issue 1).

(b) Within the interconnection agreement, United Telephone Company of Ohio dba Embarq/United Telephone Company of Indiana dba Embarq (collectively, Embarq) and Intrado are required to delineate which provisions relate to Section 251(c) and which provisions relate to Section 251(a) (Award at 15).

(c) Embarq is not required to establish two points of interconnection on Intrado's network or to deliver its traffic to an Intrado selective router located outside of Embarq's service territory (Issues 10 and 13).

(d) Intrado is required to establish additional points of interconnection on Embarq's network for the exchange of non 9-1-1 traffic (Issue 10).

(e) Inter-selective routing agreements are subject to Section 251(a) and, therefore, the obligations of Embarq under Section 251(c) would not apply (Issue 14).

(4) Additionally, with respect to Issue 14, Intrado seeks clarification specific to the requirements regarding transfer of automatic location information (ALI) between selective routers.

(5) On October 30, 2008, Embarq filed a motion for an extension of time to file its memorandum contra Intrado's application for rehearing and a request for an expedited ruling. Specifically, Embarq seeks an additional three days for the purpose of responding to Intrado's application for rehearing. In support of its request, Embarq states that it was not served with the application for rehearing until late on Friday October 24, 2008. Further, counsel for Embarq explains that he "was unable to devote any time to preparing Embarq's memorandum contra because he has been involved in an arbitration [Case No. 08-45-TP-ARB] . . ." (Memorandum in Support at 2, October 30, 2008). Finally, Embarq represents that counsel for Intrado has agreed to the requested extension of time and the expedited ruling.

(6) Embarq's motion for an extension of time and request for an expedited ruling are reasonable and should be granted.

(7) On November 6, 2008, Embarq filed its memorandum contra Intrado's application for rehearing. Embarq opines that Intrado's application for rehearing raises no new arguments for the Commission's consideration and, therefore, the application for rehearing should be summarily denied.

(8) In an entry on rehearing issued on November 12, 2008, the Commission granted rehearing in order to further consider the arguments raised on rehearing.

(9) Issue 1 pertains to the question of whether Intrado is entitled to Section 251(c) interconnection and Section 252 arbitration. In considering this issue, the Commission noted that Section 251(c) applies to the situation in which a telecommunications carrier seeks to interconnect with the incumbent local exchange company (ILEC) for the purpose of the transmission and routing of telephone exchange service and exchange access. The Commission found that Section 251(a), and not Section 251(c), applies when Intrado is the 9-1-1 service provider and when Intrado and Embarq each serve a different public safety answering point (PSAP) and transfer calls between each other. The Commission did determine that Section 251(c) is applicable when Embarq is the 9-1-1 service provider to the PSAP.

(10) In its application for rehearing, Intrado asserts that the Commission erred by creating an unreasonable distinction that has no basis in law and deprives Intrado of the rights that it is entitled to by virtue of its status as a competitive telecommunications carrier providing telephone exchange service. Intrado submits that Section 251(c) governs interconnection between an ILEC and a competitor in all circumstances and that the Commission does not have the discretion to determine that an ILEC is only required to comply with its obligations based on case-specific facts as raised in the parties' proposals.

In support of its position, Intrado asserts that the 1996 Act and the Federal Communications Commission's (FCC) rulings are clear that all ILEC-competitive local exchange company (CLEC) interconnection is governed by Section 251(c), and not Section 251(a). Intrado focuses on its need for assurance that it will receive interconnection that is at least equal in quality to that provided by the ILEC to itself or to any of the ILEC's affiliates. As examples of the need for interconnection that is at least equal in quality to what the ILEC provides to itself, Intrado references Issues 10 and 13 regarding the required number and location of the points of interconnection. Additionally, Intrado refers to Issue 14 and contends that the Commission erred by determining that Section 251(a) should apply to the interconnection and interoperability of networks through interselective router trunking (fifth assignment of error). Specifically, Intrado posits that the Commission, in its Finding and Order in Case No. 07-1199-TP-ACE (07-1199), In the Matter of the Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio, mandated interoperability

through the implementation of inter-selective router trunking. Intrado contends that this interoperability falls directly under the auspices of Section 251(c), which is intended to ensure the seamless exchange of information between an ILEC and a competitor.

Intrado believes that its position regarding Section 251(c) is justified based on the need to address the unequal bargaining power inherent in the negotiations between ILECs and competitors. Intrado opines that Section 251(a) is applicable to those scenarios in which the parties have equal bargaining power (e.g., ILEC-ILEC or CLEC-CLEC), whereas Section 251(c) is intended for those scenarios in which the parties to an interconnection agreement have unequal bargaining power (e.g., ILEC-CLEC).

(11) Embarq contends that Intrado has incorrectly ignored that Section 251(c), 47 C.F.R. 51.305 and Rule 4901:1-7-06, Ohio Administrative Code (O.A.C.), all provide that interconnection under Section 251(c) must be at a point within the ILEC's network. In light of the fact that Intrado is demanding that Embarq interconnect at Intrado's selective router on Intrado's network, Embarq opines that Section 251(c) does not apply. Additionally, Embarq disputes Intrado's contention that the FCC previously determined that Section 251(c) applies to all ILEC-CLEC interconnections or that Section 251(a) applies only to CLEC-CLEC or ILEC-ILEC interconnections. Finally, Embarq disputes Intrado's contention that Section 251(a) applies when parties have equal bargaining power and that Section 251(c) applies when parties have unequal bargaining power.

(12) Upon a review of the arguments set forth specific to the first and fifth assignments of error, the Commission finds that Intrado fails to raise any new arguments for the Commission's consideration. Therefore, Intrado's application for rehearing with respect to these assignments of error are denied.

While denying Intrado's application for rehearing based on the aforementioned rationale, the Commission will address some of the specific arguments raised by Intrado. In response to Intrado's argument that it is entitled to Section 251(c) interconnection under each of the proposed scenarios, the Commission points out that, while this statutory provision establishes obligations on the ILEC for the purpose of providing interconnection for the facilities and equipment of any requesting telecommunications carrier, under the scenario in which Intrado is the 9-1-1 service provider, it is Embarq that will be seeking to establish interconnection with Intrado's net-

work for the purpose of terminating traffic. Therefore, Intrado misapplies Section 251(c) for its own purpose and is seeking obligations from the ILEC that are not applicable in this case, including the request for interconnection on Embarq's network that is of equal quality to what Embarq provides to itself.

Section 251(c) provides protections to help ensure that a CLEC's customers can place and receive calls from customers of an ILEC. Based on Intrado's acknowledgement that it will not be engaged in the transmitting of calls to the ILEC's subscribers (See Case No. 07-1199-ACE, Finding and Order at 1, 5, February 5, 2008) the interconnection arrangement in this case is best addressed pursuant to Section 251(a), which deals with the interconnection of facilities and equipment between two telecommunications carriers.

Additionally, while we previously determined that competitive emergency services telecommunications carriers are generally entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act, we did not specifically state that Section 251(c) is applicable (Id. at 5; Case No. 07-1199-TP-ACE, Entry on Rehearing at 14, April 2, 2008).

In response to Intrado's arguments regarding the existence of unequal bargaining power between Intrado and the ILECs, the Commission notes that it is the very issue of unequal bargaining power that prompted the Commission to engage in its analysis of the three scenarios delineated in its Arbitration Award for Issue 1. Under the scenario in which Intrado is the 9-1-1 service provider, to the extent that any party maintains leverage and controls a "bottleneck facility," it would be Intrado. The Commission bases this conclusion on the fact that Embarq has no choice but to interconnect with Intrado in order to ensure that its end users have the capability of completing 9-1-1 emergency calls to the PSAP.

With respect to the issue of inter-selective router trunking, the Commission reiterates its prior determination that "inter-selective routing involves a cooperative peering arrangement between the two carriers. Inasmuch as peering arrangements do not involve interconnection of a competing carrier's network with an ILEC's network, Section 251(c) does not apply (See 07-1216, Opinion and Order at 8).

(13) In its second assignment of error, Intrado asserts that the Commission erred in requiring the parties to delineate, in the interconnec-

tion agreement, those provisions that relate to Section 251(c) and those provisions that pertain to Section 251(a). Intrado submits that this requirement results in the parties having an interconnection agreement that is vulnerable to misinterpretation and ongoing disputes. Further, Intrado opines that Embarq's other Section 251 agreements are not similarly delineated and, therefore, are not subject to the same misinterpretation and confusion. As a result, Intrado avers that requiring it to have a different structured interconnection agreement is discriminatory and in violation of Embarq's duties pursuant to Section 251(c)(2)(D).

(14) Embarq asserts that Intrado has failed to substantiate its claim that the inclusion of both Section 251(a) and Section 251(c) provisions within the same interconnection agreement results in misinterpretation and ongoing disputes. Embarq points out that Intrado, in its own initial brief, recognized that both Section 251(a) and Section 251(c) could be incorporated within the same agreement (Memorandum Contra at 8 citing Intrado Initial Brief at 26-28). In regard to Intrado's contention that Embarq's agreements with other carriers do not separately delineate non-Section 251(c) provisions, Embarq responds that Part 1 of Embarq's standard interconnection agreement template does specifically provide for such delineation.

(15) Upon a review of the arguments set forth specific to this assignment of error, the Commission finds that Intrado's application for rehearing with respect to this assignment of error is denied. To the extent that Embarq's other Section 251 interconnection agreements may not be structured to delineate specific provisions pertaining to Section 251(c) and specific provisions pertaining to Section 251(a), such an occurrence does not establish that discrimination has occurred resulting in the granting of rehearing. One logical explanation for such an outcome is that the prior Embarq agreements likely do not result from arbitration proceedings in which the issue of the applicability of Section 251(a) and Section 251(c) was raised for the Commission's consideration. Another distinguishing factor is that the existing interconnection agreements do not pertain to the same services and factual scenario (i.e., the competitive provision of 9-1-1/E9-1-1) as those being considered in this proceeding. Additionally, the Commission notes that the proposed agreement incorporates a dispute resolution process and that the parties can utilize the Commission's complaint process for the purpose of resolving subsequent disputed issues.

(16) In its third assignment of error, Intrado asserts that the Commission incorrectly rejected Intrado's contention that Embarq should be required to establish two points of interconnection at geographically diverse locations on Intrado's network. Consistent with Section 253(b), Intrado opines that the Commission should reverse its prior decision and require the establishment of two geographically diverse points of interconnection on Intrado's network for delivery of 9-1-1 calls in order to benefit public safety. In support of its position, Intrado states that two geographically diverse points of interconnection are appropriate inasmuch as this is precisely the quality of interconnectivity that Embarq provides to itself when it is functioning as a 9-1-1 provider and that Section 251(c) requires parity. Specifically, Intrado avers that when Embarq is serving as the 9-1-1 provider, it maintains multiple selective routers and requires carriers to connect to each one in order that their end user's calls can be connected.

(17) Embarq considers Intrado's position to be a repetition of its prior arguments regarding the need for Embarq to establish multiple points of interconnection on Intrado's network due to the importance of redundancy and reliability in the 9-1-1 network. Embarq notes that the FCC has not yet concluded that such redundancy should be required.

(18) Upon a review of the arguments set forth specific to this assignment of error, the Commission finds that Intrado fails to raise any new arguments for the Commission's consideration and, therefore, the application for rehearing should be denied. The Commission again notes that, while Section 251(c) is intended to provide certain protections to CLECs seeking interconnection, Intrado has inappropriately attempted to apply these obligations to situations in which the requested interconnection is to occur on Intrado's network, and not that of Embarq's.

(19) In its fourth assignment of error, Intrado avers that the Commission has inappropriately adopted language that would require Intrado to establish multiple points of interconnection on Embarq's network for the exchange of non 9-1-1 traffic. In support of its position, Intrado states that, pursuant to Section 251(c), a competitor is entitled to establish a single point of interconnection on an ILEC's network for the exchange of non 9-1-1 traffic. To the extent that the Commission based its decision relative to this issue on Embarq's concerns regarding the impact that such decision will have on its

interconnection agreements with other parties, Intrado asserts that the decision should be overturned. Additionally, Intrado argues that the fact that there may not be any harm in inserting the language proposed by Embarq should have no bearing on whether Embarq's language should have been adopted.

(20) Embarq asserts that since Intrado will not exchange non 9-1-1 traffic, it is not entitled to change Embarq's standard point of interconnection language for non 9-1-1 traffic. Additionally, Embarq submits that the Commission properly recognized that the disputed language consists of standard terms that are already incorporated in interconnection agreements that Embarq has with CLECs that deliver the type of non 9-1-1 traffic to which these provisions were intended to apply.

(21) Upon a review of the arguments set forth specific to this assignment of error, the Commission finds that Intrado' application for rehearing with respect to this assignment of error fails to raise any new arguments for the Commission's consideration and, therefore, the application for rehearing is denied. Specifically, the Commission finds that the inclusion of Embarq's proposed language will benefit Embarq by allowing the company to continue to utilize its template interconnection agreement language and, at the same time, the inclusion of such language will not negatively impact Intrado. Additionally, exclusion of Embarq's proposed language could possibly adversely affect a carrier's ability to adopt the resulting interconnection agreement pursuant to Section 252(i) if the agreement does not address the scenario in which an Embarq end office subtends a non-Embarq tandem for the exchange of non 9-1-1 traffic from Intrado.

(22) In its last assignment of error, Intrado states that rehearing should be granted for the purpose of clarifying its requirements regarding the transfer of ALI between selective routers. Intrado contends that the Commission's Arbitration Award contradicts its Finding and Order in 07-1199. Specifically, Intrado believes that the Commission, in its Finding and Order, ruled that Intrado is required to ensure call data transferability within countywide systems. Intrado opines that the Commission, in its Arbitration Award, determined that Embarq is required to transfer ALI between selective routers serving PSAP customers to the extent that one of the following three conditions are met: (a) Embarq deploys the functionality in its own network, (b) Intrado agrees to compensate Embarq for the

functionality, or (c) the parties come to a mutual agreement. Based on its understanding, Intrado seeks clarification that Embarq will be required to transfer ALI between selective routers (and Intrado will not be required to compensate Embarq for the functionality) if Embarq deploys the functionality in its own network. Additionally, Intrado seeks clarification that, if Embarq transfers ALI between selective routers on its own network, whether it is the service provider for both PSAPs or another carrier serves one of the PSAPs, the requirement that Embarq deploy that functionality on its own network has been satisfied and Embarq will be required to transfer ALI between selective routers serving PSAP customers.

(23) Embarq disagrees with Intrado's request for clarification. The company believes that the Commission intended that the three criteria for Embarq to transfer ALI between selective routers should be read together in order to ensure that Embarq receives appropriate cost recovery for transferring ALI to Intrado, even where Embarq provides for ALI transfer to itself. Therefore, Embarq asserts that the Commission should deny Intrado's request for clarification and, instead, confirm that Embarq is entitled to recover any costs it incurs for providing ALI transfer functionality to Intrado, regardless of whether Embarq transfers ALI on its own network. Embarq advocates that, considering the lack of evidence concerning the interoperability of any such ALI transferability functionality, such arrangements should be the subject of mutual agreement among the parties.

(24) Intrado's application for rehearing is granted with respect to the requested clarification that Embarq will be required to transfer ALI between selective routers if Embarq deploys the functionality in its own network. Specifically, the Commission confirms that only one of the three conditions delineated in Finding (21) must be individually satisfied in order for Embarq to be required to transfer ALI between selective routers serving PSAP customers without any additional charge to Intrado.

It is, therefore,

ORDERED, That Embarq's motion for an extension of time and request for an expedited ruling are granted. It is, further,

ORDERED, That Intrado's application for rehearing is granted in part and denied in part in accordance with the findings above. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

JSA;geb

Entered in the Journal

DEC 10 2008

Reneé J. Jenkins
Secretary