

# Attachment 6

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December 1, 2008

**Via Hand Delivery**

Sandra Squire  
Executive Secretary  
Public Service Commission  
P. O. Box 812  
Charleston, West Virginia 25323

Re: Case No. 08-0298-T-PC

INTRADO COMMUNICATIONS INC., and VERIZON WEST  
VIRGINIA INC.

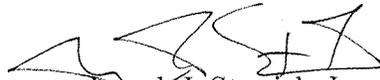
Petition for compulsory arbitration of the interconnection agreement  
between Intrado Communications, Inc., and Verizon West Virginia Inc.

Dear Ms. Squire:

Enclosed for filing in the above-referenced case please find the original and twelve (12) copies of the **Verizon West Virginia Inc.'s Reply To Intrado's Exceptions** in the referenced matter.

Thank you for your attention to this matter.

Very truly yours,



Joseph J. Starsick, Jr.  
WV State Bar ID No. 3576

Enclosure

cc: Parties of Record

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

CASE NO. 08-0298-T-PC

INTRADO COMMUNICATIONS INC., and  
VERIZON WEST VIRGINIA INC.

Petition for compulsory arbitration of the  
interconnection agreement between Intrado  
Communications Inc., and Verizon West Virginia Inc.

VERIZON WEST VIRGINIA INC.'S REPLY TO INTRADO'S EXCEPTIONS

Verizon West Virginia Inc. ("Verizon") responds to the "Exceptions to Arbitration Award and Brief in Support" ("Exceptions") filed by Intrado Communications Inc. ("Intrado") on November 21, 2008. Intrado asks the Commission to reject several portions of the interconnection agreement the parties jointly filed on November 21, 2008 to comply with the Arbitration Award issued on November 14, 2008 ("*Arb. Award*"). Intrado accuses the Arbitrator of ignoring relevant law and evidence and, therefore, making "arbitrary and capricious" rulings. (Exceptions at 2.)

Intrado is wrong. The Arbitrator explicitly considered and correctly rejected the same arguments Intrado repeats in its Exceptions. Intrado's repetition of those arguments does not make them any less "ludicrous on their face" than they were when the Arbitrator considered them. (*Arb. Award* at 13.) Intrado simply disagrees with the Arbitrator's conclusions, and that is not sufficient basis for the Commission to reject those conclusions and the related language in the conformed interconnection agreement.

Indeed, Intrado does not even cite, let alone attempt to satisfy, the narrow legal standard for rejection of arbitrated interconnection agreement provisions—that is, that

they fail to meet the requirements of section 251 of the Communications Act of 1934, as Amended (“Act”). (47 U.S.C. § 252(e)(2); 150 CSR6-15.5(k)(3).) That lapse alone justifies a denial of Intrado’s exceptions and its requests for the Commission to reject the filed interconnection agreement.

If the Commission, however, wishes to consider the substance of Intrado’s arguments that the Arbitrator has acted arbitrarily and capriciously, it will recognize, as the Arbitrator did, that Intrado does not seek a genuine interconnection agreement, but rather a fundamental shift in the ILEC-CLEC paradigms carefully constructed by the Act. Although Intrado sought arbitration of an interconnection agreement as a competitive local exchange carrier (“CLEC”) under the Act, it asks the Commission to deviate from the requirements that apply to every other CLEC. Intrado claims it deserves more favorable treatment than any other West Virginia CLEC because it plans to provide only 911 services, rather than also providing telephone service to residential or business end users, as other CLECs do.

There is no law supporting Intrado’s claim for special privileges. The interconnection requirements of the Act and the FCC’s rules do not change depending on a CLEC’s particular business plan or the type of customers it plans to serve. As Intrado itself admits (Exceptions at 6) and the Arbitrator correctly found, section 251 does not distinguish between 911 services and “plain old telephone service.” Contrary to Intrado’s view, the fact that West Virginia permits competition for 911 services certainly does *not* mean that the Commission must adopt Intrado’s or any other provider’s specific proposals for deploying those services, no matter how anticompetitive or unlawful they may be. Intrado can provide its 911 services using any kind of network it wishes

(consistent with state law and regulation of 911 services). But Intrado has no right to force Verizon and its customers to build and pay for Intrado's new 911 network, as Intrado openly seeks to do in this arbitration.

Intrado has offered no legitimate basis for the Commission to reject any portion of the conformed interconnection agreement or to change anything in the *Arbitration Award*. The Arbitrator committed no legal error. The interconnection agreement, as filed, fully complies with section 251 of the Act and the FCC's implementing rules, so it must be approved.

#### **I. Intrado Has Not Alleged Grounds Sufficient to Reject the Interconnection Agreement**

Intrado asks the Commission to reject the Arbitrator's findings on a number of issues and to replace the interconnection agreement language she ordered with Intrado's proposed language. The legal grounds for rejecting portions of an arbitrated agreement, as Intrado asks the Commission to do, are very narrow.

Section 252(e)(1) of the Act and this Commission's Rule 150CSR6-15.5(k)(1) require the Commission to approve or reject an arbitrated agreement, "with written findings as to any deficiencies." Section 252(e)(2) permits a state Commission to reject an arbitrated agreement, or any portion thereof, only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251, or the standard set forth in subsection (d) of this section." (Subsection (d) sets forth the standard for pricing of interconnection and unbundled network elements.)

Rule 15.5(k)(3) of the Commission's Rules and Regulations for the Government of Telephone Utilities, CSR § 150-6-15.5(k)(3), tracks section 252(e)(2) of the Act, allowing the Commission to reject an arbitrated agreement or a portion of that agreement only "if the Commission finds that the agreement does not meet the requirements of this subdivision, or the pricing standards set forth in §150CSR6-15.5.d." The "subdivision" referenced in the rules addresses interconnection, and it, as well as the pricing standards in CSR § 150-6-15.5.d, track the analogous interconnection and pricing requirements in sections 251 and 252 of the Act.

Intrado has not alleged, let alone tried to prove, that anything in the Arbitration Award or the conforming interconnection agreement violates section 251 or this Commission's analogous rules. On the contrary, as explained in section II below, Intrado is urging the Commission to *ignore* section 251(c)'s requirement for CLECs to interconnect within the ILEC's network, not within the CLEC's network.

Instead of arguing that anything in the conformed agreement violates section 251, Intrado urges the Commission to reject the Arbitrator's decisions and associated contract language on vague "arbitrary and capricious" grounds. (Exceptions at 2.) As discussed below, none of the Arbitrator's findings Intrado challenges are arbitrary and capricious. In any event, alleging that particular rulings are arbitrary and capricious, without any claim that they violate section 251 or the pricing standards of section 252, does not satisfy the only standard for rejection of arbitrated contract provisions under the Act and this Commission's rules. Because Intrado has not even claimed that the contract provisions at issue fail to satisfy the interconnection and pricing requirements in the Act

and the Commission's analogous rules, the Commission should reject Intrado's Exceptions out of hand.

If the Commission, nevertheless, wishes to consider the substance of Intrado's arguments that the Arbitrator acted arbitrarily and capriciously in resolving the parties' disputes over contract language, the rest of this filing demonstrates why Intrado's arguments are wrong.

## **II. The Arbitrator Committed No Legal Errors**

Intrado asks the Commission to reject the Arbitrator's rulings and associated contract language with respect to 6 of the 17 issues resolved in this arbitration (Issue numbers 3, 6, 12, 14, 34 and 35) and to strike parts of the *Arbitration Award* addressing the Commission's jurisdiction over the arbitration and the Ohio Public Utilities Commission's decisions in Intrado's arbitrations there.<sup>1</sup> Again, Intrado does not argue that the Arbitrator's rulings on these disputed issues violate the Act or the FCC's implementing rules, so Intrado has given the Commission no basis for rejecting the contract language the Arbitrator ordered. If the Commission, however, wishes to consider Intrado's arguments, Verizon's responds to each exception below.

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<sup>1</sup> Exceptions at 2-6. Intrado also takes issue with the Arbitrator's statement that Intrado will not be serving any "end users" (*id.* at 6), but does not ask the Commission to take any action with respect to this statement and does not dispute the Arbitrator's correct observation that Intrado's only customers will be public safety agencies.

**Issues 3 and 12: Verizon Cannot Be Required to Interconnect on Intrado's Network and Establish Direct Trunks to Take 911 Traffic to Intrado's Network**

Issue numbers 3 and 12 together embody the parties' dispute about the network architecture that will be used to effect interconnection between Verizon and Intrado. Intrado's network architecture proposal for issues 3 and 12 would give Intrado the right to designate an unlimited number of points of interconnection ("POIs") on its own network, anywhere inside or outside West Virginia; force Verizon to establish new direct trunks to get 911 traffic to those POIs on Intrado's network; and require Verizon to deploy so-called "line attribute routing" or some other, unknown new form of call routing instead of using Verizon's selective routers that today sort calls to the appropriate PSAP. Intrado's proposal would require Verizon to bear all the cost of this new network architecture established for Intrado's benefit. (*See, e.g., Verizon Ex. 1.0, Direct Testimony ("DT") at 15-17.*)

The Arbitrator rejected Intrado's proposed network architecture because "[t]he law is clear and unequivocal" that CLECs must interconnect with ILECs, like Verizon, within the ILEC's network, not within the CLEC's network. (*Arb. Award at 13.*) Because Verizon need not interconnect with Intrado on Intrado's network (Issue 3), the Arbitrator determined that there was no need for Verizon to establish direct trunks to take 911 traffic to Intrado's network (Issue 12): "Intrado's proposals for direct trunking, line attribute routing and the elimination of the use of Verizon's selective routers are all rejected, since, with the establishment of the point of interconnection on Verizon's network, those requests by Intrado intrude upon Verizon's right to engineer its own system in the manner that it deems best." (*Arb. Award at 20.*)

To support her decision, the Arbitrator cited section 251(c)(2)(B) of the Act and the FCC's implementing rule, section 51.305(A)(2). Section 251(c)(2)(B) states that each incumbent local exchange carrier has the duty to provide "interconnection with the local exchange carrier's network...at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2)(B). The FCC's rule implementing this provision, Rule 51.305, likewise makes clear that the incumbent LEC must provide interconnection with its network "[a]t any technically feasible point *within the incumbent LEC's network*" (emphasis added). (*Arb. Award* at 13-14.) Section 150-6-15.2 of this Commission's Rules and Regulations for the Government of Telephone Utilities also require interconnection to occur "*within the incumbent's network*" (emphasis added).

Despite the unambiguous federal law requiring a CLEC to interconnect within the ILEC's network, not within the CLEC's network, Intrado claims that the Arbitrator's rulings on Issue 3 and 12 should be reversed, not because they violate section 251, but because they "fail to take into account record evidence and established law." (Exceptions at 6.) Intrado is wrong, and granting its exceptions would violate federal law.

As explained above and in the Arbitration Award, the "established law" that applies here plainly requires Intrado to interconnect with Verizon on Verizon's network: "Section 251 makes no distinction between interconnection for POTS [plain old telephone service] and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection." (*Arb. Award* at 13.) Intrado never cited any law establishing different interconnection requirements for CLECs that provide telephone service to end users and CLECs that provide only 911 service to PSAPs. It still has not done so, because no such law exists.

Indeed, Intrado recognizes that section 251(c)(2)(B) is a “requirement that the POI be on the ILEC’s network” (Intrado’s Initial Brief (“Br.”) at 7; Intrado’s Petition for Arbitration at 24-25; Intrado Ex. 1.0, Hicks DT at 14) and it admits that the language of section 251 does not distinguish between interconnection for POTS and interconnection for 911 service. (Exceptions at 6.) Intrado nevertheless tells the Commission that it may deviate from federal law and require Verizon to haul 911 traffic to anywhere Intrado wishes on Intrado’s own network because (1) “FCC precedent” requires the POI to be at the selective router serving the PSAP (Exceptions at 7-8, 2); (2) the “equal-in-quality” requirement of section 251(c)(2)(C) trumps section 251(c)(2)(B)’s requirement for the POI to be on Verizon’s network (Exceptions at 2, 4, 8-13); and (3) section 253(b) of the Act authorizes the Commission to deviate from the requirement for the POI to be on the ILEC’s network (Exceptions at 2, 14-16).

These arguments are not only wrong, but frivolous. The Arbitrator explicitly considered and correctly rejected Intrado’s attempts to torture the law to fit its novel “interconnection” requests and the Commission should do the same.

**A. There Is No FCC Precedent Requiring the ILEC to Interconnect on the CLEC’s Network for 911 Traffic**

Intrado states: “The *Arbitration Award* makes no mention of the FCC’s determination that the point of interconnection and the ‘cost allocation point’ for 911/E-911 traffic is at the selective router serving the PSAP to which the call is destined.” (Exceptions at 7.) Intrado concludes that the Arbitrator’s “complete failure” to consider

“this well-established precedent” addressing “the location of the POI in the 911/E-911 context” is reversible error. (Exceptions at 8.)

The “well-established precedent” Intrado cites to support its argument that the POI must be on Intrado’s network at Intrado’s selective router is the FCC’s *King County Order* and a Wireless Telecommunications Bureau Letter that led to that *Order*.<sup>2</sup> Intrado mentioned the *King County* case only once in its briefs, in a footnote in connection with one sentence in the text, and did not go so far as to claim, as it does here, that the case required the POI for 911 traffic to be at the selective router serving the PSAP.<sup>3</sup> So, as an initial matter, neither Verizon nor the Arbitrator could have ignored an argument Intrado didn’t make.

In any event, Intrado has blatantly misrepresented the *King County* case, as the Commission can see for itself (*see* Exhibits 1 and 2, attached). *King County* did not determine that the POI must be at the selective router of the carrier serving the PSAP; indeed, it had nothing at all to do with POIs, section 251, interconnection agreements, or any aspect of CLEC-ILEC relationships. In *King County*, the FCC settled a dispute between *wireless carriers and PSAPs* with respect to the allocation of costs between them for *wireless E911 implementation*. The FCC affirmed its Wireless Telecommunications Bureau’s interpretation of FCC rule 20.18(d) to require that: “The

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<sup>2</sup> Exceptions at 7-8, *citing Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, Order on Reconsideration, 17 FCC Rcd 14789 (2002) (“*King County*”) (attached as Ex. 1); Letter from Thomas J. Sugrue, Chief, Wireless Telecomm. Bureau, FCC, to Marlys R. Davis, E911 Program Manager, Dep’t of Information and Admin. Services, King County, Washington, WT Docket No. 94-102 (dated May 9, 2001) (“*King County Letter*”) (attached as Ex. 2).

<sup>3</sup> Intrado Initial Br. at 9 n. 41, *citing King County* for the statement that the FCC found “that the ‘cost-allocation point’ for 911/E-911 traffic should be at the selective router.”

proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC).” (*King County*, ¶ 4, quoting King County Letter at 1.) The FCC’s establishment of a paradigm for allocating the costs of implementing wireless E911 services as between wireless carriers and PSAPs has nothing do with the issue of where the POI must be under a section 251(c) interconnection agreement between a CLEC and an ILEC. There is no FCC precedent authorizing this Commission to ignore the Act and the FCC’s rule requiring CLECs to interconnect within the ILEC’s network.

**B. The Act’s “Equal-in-Quality” Requirement Does Not Cancel Out the Act’s Requirement for the POI to Be on the ILEC’s Network**

Intrado claims that the Arbitration Award does not discuss or analyze the evidence that Verizon deploys dedicated trunking to get its own end users’ 911 calls to selective routers on Verizon’s network when Verizon serves a PSAP; that Verizon “requires” CLECs to use dedicated trunks, as well, to get their end users’ 911 calls to Verizon’s selective routers that provide access to Verizon-served PSAPs; and that Verizon does not require adjacent ILECs to interconnect at Verizon’s selective routers (Exceptions at 9.) Intrado argues that “[t]he *Arbitration Award’s* failure to consider the applicability of the undisputed use of these arrangements is contrary to law.” (Exceptions at 11-12.) The “applicability” of this evidence, Intrado contends, is that it shows the “quality” of interconnection Verizon provides to itself and others (Exceptions at 13), and Intrado is entitled to this same “quality” interconnection under the equal-in-quality criterion in section 251(c)(2)(C) of the Act. Intrado states: “Section 251(c)(2) was intended to prevent an ILEC from discriminating between itself and a requesting

competitor with respect to the quality of the interconnection provided. Accordingly, the *Arbitration Award*'s findings to the contrary should be summarily rejected as inconsistent with established law." (Exceptions at 13, footnote omitted.)

Intrado has, once again, misrepresented the Arbitration Award and the governing law. The Arbitrator *did* explicitly consider the evidence Intrado says she ignored (*Arb. Award* at 11-12), and she did *not* make any findings that an ILEC is permitted to discriminate against a CLEC with respect to the quality of interconnection. Instead, she disagreed with Intrado's unprecedented interpretation of the law: "Intrado's argument that Section 251(c)(2)(C) requires Verizon to interconnect at a POI on Intrado's network, because otherwise it is not providing interconnection that is at least equal in quality to that which it provides itself, is simply unsupported by law or reason." (*Arb. Award* at 13.)

The Arbitrator explained that federal law clearly requires the POI to be on the ILEC's network, and that the equal-in-quality criterion in section 251(c)(2)(C) of the Act and FCC Rule 51.305(a)(3) addressed technical criteria and service standards, not placement of the POI. (*Arb. Award* at 13.) She concluded that "[t]he subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection. It simply means that the technical standards which apply at that point of interconnection must be equal in quality to those technical standards which the ILEC applies to itself throughout its network and to other carriers it has allowed to interconnect on its network." (*Arb. Award* at 13.)

The Arbitrator's analysis was correct; she made no "error of law" (Exceptions at 2) in determining that Verizon is not required to take its 911 traffic to Intrado. The fact

that Verizon trunks its 911 calls to selective routers *on its own network* and that CLECs interconnect with Verizon at selective routers *on Verizon's network* does not mean that Verizon must interconnect with Intrado *on Intrado's network*, as Intrado contends.

Verizon thoroughly addressed Intrado's convoluted, and plainly wrong, argument in its Briefs (Verizon's Initial Br. at 8-13; Reply Br. at 11-17), but will briefly review it again here.

Section 251(c)(2) includes four separate criteria, *all* of which apply to the interconnection ILECs are required to offer under section 251(c), and each of which addresses a different aspect of the interconnection relationship. Section 251(c)(2)(C), the section upon which Intrado hangs its argument, provides that an ILEC must offer interconnection:

that is at least *equal in quality* to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

(47 U.S.C. § 251(c)(2)(C) (emphasis added).)

This subsection appears right after subsection 251(c)(2)(B), which, as discussed above, requires interconnection within the ILEC's network.

Subsections 251(c)(2)(B) and 251(c)(2)(C) are, likewise, implemented through two discrete FCC rule provisions, again one after the other. The equal-in-quality requirement is implemented through FCC Rule 51.305(a)(3), which follows section 51.305(a)(2)'s prescription for the POI to be "within the incumbent LEC's network." Rule 51.305(a)(3) makes clear that the equal-in-quality rule addresses service *quality*, not POI placement. It requires "an incumbent LEC to design interconnection facilities to

meet the same *technical criteria* and *service standards* that are used within the incumbent LEC's network." (47 C.F.R. § 51.305(a)(3) (emphasis added).)

The FCC's *Local Competition Order*, where the FCC adopted Rules 51.305(a)(2) and (a)(3), further confirms that the Act's equal-in-quality interconnection requirement is distinct from its requirement for the POI to be on the ILEC's network. The latter requirement is discussed within the "Technically Feasible Points of Interconnection" portion of the Order, where the FCC states that "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network."<sup>4</sup>

The equal-in-quality requirement is discussed later, in the "Interconnection that is Equal in Quality" portion of the Order. Here, the FCC makes clear that section 251(c)(2)(C) of the Act "requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks." The FCC also mentions conditions relating to "pricing and ordering of services" as examples of items within the equal-in-quality criterion. (*Local Competition Order*, ¶ 224.)

There is, therefore, no doubt that the equal-in-quality requirement in section 251(c)(2)(C) of the Act and FCC rule 51.305(a)(3) address a different subject—that is, service quality and technical design criteria—from the POI placement directive in section 251(c)(2)(B) and FCC Rule 51.305(a)(2). Indeed, the requirements appear one after the other in the *very same statute*—so, on the face of the statute itself, Congress *already decided* that there is no conflict between requiring interconnection on the ILEC's network

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<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("*Local Competition Order*"), ¶ 209 (1996).

and requiring equal-in-quality interconnection. As the Arbitrator observed, one subsection cannot be read to obliterate another, as Intrado urges (*Arb. Award* at 13). Contrary to Intrado's suggestion (*Exceptions* at 10), there is no indication anywhere that Congress intended anything other than what it clearly expressed in the Act.

As Verizon explained in its testimony and Briefs, Intrado's claim that Verizon is denying Intrado interconnection arrangements Verizon provides to other CLECs, other ILECs, or itself is wrong. (*See, e.g., Verizon Initial Br.* at 10-13; *Verizon Ex. 1.0, DT* at 18-19; *Verizon Ex. 2.0, Rebuttal Testimony ("RT")* at 19-20.) Once again, the "interconnection" arrangements Intrado seeks here just for 911 traffic—POIs on its own network, direct trunking from Verizon's end offices, and some new kind of 911 call routing—have, to Verizon's knowledge, never been implemented anywhere under any interconnection agreement, and Intrado has not argued otherwise.

Intrado's argument that it is only asking to "mirror" the same kind of arrangements Verizon requires of CLECs rests on its incorrect legal position that Intrado is entitled to establish POIs on its own network. CLECs bring their traffic to Verizon's network, because the Act, the FCC's rules, and this Commission's rules require it. (*Verizon Initial Br.* at 10.) There is no reciprocal obligation for ILECs to take their traffic to CLEC networks, and the Commission cannot create one based on Intrado's policy arguments.<sup>5</sup>

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<sup>5</sup> In addition, it is not "undisputed" that Verizon requires CLECs to interconnect at Verizon's selective routers, as Intrado states (*Exceptions* at 8-12). As Verizon repeatedly clarified during the arbitration, CLECs typically opt for this arrangement, because it is efficient for them to have Verizon route their 911 calls. (*See Verizon Initial Br.* at 10; *Transcript ("Tr.")* at 58-59, 147-48.)

Nor do Verizon's arrangements for exchanging 911 traffic with adjacent ILECs support Intrado's extreme network architecture proposals. As Verizon has repeatedly pointed out (*see, e.g.*, Verizon Ex. 2.0, RT at 19; Verizon's Initial Br. at 11-13), its meet-point arrangements with other ILECs are *not* section 251 interconnection agreements and do not, in any event, require Verizon to take its traffic to the other carrier's selective router, so these arrangements provide no support for Intrado's demands. In any event, Verizon *did* offer Intrado meet-point arrangements, but Intrado was not interested in such arrangements. (Verizon Ex. 2.0, RT at 19.)

The Arbitrator did not overlook any evidence and did not make any findings "inconsistent with established law." (Exceptions at 13.) She correctly concluded, based on the plain language of the Act and the FCC's rules, that the equal-in-quality requirement does not govern POI placement. Intrado has not cited any legal authority that contradicts this conclusion; its arguments are, instead, rooted in policy, and misguided policy discussions cannot override federal law. State Commissions are not free to read 251(c)(2)(B) out of the Act and to find that section 251(c)(2)(C) means just the *opposite* of what section 251(c)(2)(B) requires—that is, the POI must be within the ILEC's network.

**C. Neither Section 253(b) nor Anything Else in the Act Justifies  
Rejection of the Arbitrated Interconnection Agreement**

Intrado argues that the Arbitration Award "ignores" FCC and state Commission "precedent" permitting the Commission to establish, for 911 traffic, different interconnection arrangements from those that apply to all other telephone traffic. In this respect, Intrado cites section 253(b) of the Act, an Illinois Commission decision

mentioning section 253(b), and the FCC's *VoIP E911 Order*'s discussion of sections 251(e) and 706 of the Act. (Exceptions at 14.) Nothing in these sources or anything else supports Intrado's claim that the Arbitrator erred in refusing to create new and different interconnection obligations just for 911 traffic. There is nothing in the Act or any "precedent" allowing the Commission to ignore the requirement for the POI to be on the ILEC's network.

The Arbitrator explicitly addressed and correctly rejected Intrado's misguided reliance on section 253(b):

Intrado also argued that the provisions of Section 253(b) of TA96 provide the Commission with the requisite authority to modify the way interconnection is provided for 911/E911 services, because that Section provides that, "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis,...requirements necessary to...protect the public safety and welfare...." However, State regulatory authorities are still required to comply with all provisions of the Telecommunications Act of 1996. (Intrado Initial Brief, p. 19). Section 253(b) does not speak in any way to interconnection requirements between an ILEC and a CLEC. It is simply irrelevant to an interconnection determination.

Intrado cites nothing in its Exceptions that makes section 253(b) any more relevant to this arbitration than it was when the Arbitrator considered it.

As Verizon pointed out in its briefs, section 253 entitled "Removal of Barriers to Entry," is completely separate from the substantive interconnection requirements set forth in section 251 and the interconnection agreement negotiation and arbitration procedures in section 252. (Verizon Initial Br. at 13-14; Reply Br. at 17-20.) Section 253(a) ("In General") states that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide an interstate or intrastate telecommunications service."

Section 253(b) (“State Regulatory Authority”), upon which Intrado relies for its proposals, states:

STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [“Universal Service”], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Nothing in this section permits the Commission to adopt unique interconnection requirements for 911 traffic. (*Arb. Award* at 13-14.) This is a section 252 arbitration to implement the section 251(c) interconnection requirements. Section 253 doesn’t impose any interconnection requirements, so there is nothing in section 253(b) to implement through a section 252 arbitration. Section 253(b) is, rather, a “safe harbor” reserving to the states their existing regulatory authority over certain matters, despite 253(a)’s prohibition on state requirements precluding any entity from providing telecommunications services.<sup>6</sup> Nothing in section 253(b)’s general reservation of rights speaks to, let alone overrides, the specific requirements for ILEC-CLEC interconnection in section 251(c)(2), including the requirement for the POI to be within the ILEC’s network. Regardless of whether section 253(b) “sets aside a large regulatory territory for State authority,”<sup>7</sup> that territory does *not* include the authority to ignore unambiguous directives in the Act and the FCC rules, and neither the Illinois Commission case Intrado cites (Exceptions at 16) nor any case anywhere else interprets section 253(b) in this way. Moreover, general FCC statements in its *VoIP E911 Order* that the FCC and state

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<sup>6</sup> See, e.g., *BellSouth Telecomms., Inc. v Town of Palm Beach*, 252 F.3d 1169, 1188 (11 Cir. 2001).

<sup>7</sup> Exceptions at 15, citing *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999).

commissions have authority to “oversee deployment of 911 services;”<sup>8</sup> that the uniform availability of E911 services may spur broadband deployment; that 911 services are critical to promoting public safety; and that the FCC supports state efforts to deploy emergency communications infrastructure and programs (Exceptions at 14-15) do not require or permit the Commission to adopt Intrado’s particular network plan.

Even if section 253 did allow the Commission to elevate “policy considerations” and “principles” (Exceptions at 14) over the law requiring the POI to be on Verizon’s network—and it does not—the Commission could not accept Intrado’s assumption that its proposals would “protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers,” as Intrado contends. (Exceptions at 15.) As Verizon has testified, Intrado’s plans—which have not been implemented anywhere—are more likely to undermine than promote public safety and welfare. Among other things, Intrado cannot assure the Commission that, if its proposal is adopted, CLECs’ and wireless carriers’ calls will get to Intrado-served PSAPs (*see* Verizon Ex. 2.0, RT at 39-40; Verizon Initial Br. at 16); and Intrado’s proposal for line attribute routing is not materially different from the obsolete and error-prone class marking approach used before selective routing was the standard (*see* Verizon Initial Br. at 26-27; Verizon Ex. 2.0, RT at 34-36). Indeed, the Ohio and Florida Commissions, as

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<sup>8</sup> Here, Intrado insinuates that sections 251(e) and 706 of the Act provide authority for the Commission to override the federal requirement for the POI to be on Verizon’s network. These sections, like everything else Intrado cites, have nothing to do with interconnection obligations. Section 251(e) addresses numbering administration and section 706 directs state commissions and the FCC to encourage the deployment of “advanced telecommunications capability to all Americans.”

well the West Virginia Enhanced 9-1-1 Council, have, among others, cited reliability and public safety issues related to Intrado's proposals.<sup>9</sup>

West Virginia's authorization of competitive 911 services does not compel this Commission to sanction Intrado's unlawful, anticompetitive, and risky plan for such services. All competitors, regardless of what services they provide, must stand or fall on their own merits. If Intrado cannot implement its business plan without the subsidization it openly seeks from Verizon and its customers, then Intrado needs to come up with a new business plan.

**D. There Is No Reason to Strike the Arbitrator's Discussion of the  
Ohio Commission's Arbitration Orders**

In the context of Issue 3, with respect to placement of the POI, the *Arbitration Award* (at 14-15) discussed the Ohio Public Utilities Commission's decisions in Intrado's arbitrations with Embarq and Cincinnati Bell Telephone ("CBT"). The Arbitrator noted that Embarq had agreed, as a commercial term under section 251(a) of the Act, to

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<sup>9</sup> See generally *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with AT&T Florida, Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended*, Docket No. 070736-TP, Staff Recommendation ("*Fla. Intrado/AT&T Staff Rec.*"), at 15-16 (Oct. 30, 2008), approved at the Commission's Nov. 13, 2008 Agenda Conference (attached as Ex. B to Verizon's Reply Brief); *Petition by Intrado Comm., 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 Comm. Act, as Amended*, Docket No. 070699-TP, Staff Recommendation ("*Fla. Intrado/Embarq Rec.*"), at 12-13 (Oct. 30, 2008), approved at the Commission's Nov. 13, 2008 Agenda Conference (attached as Ex. C to Verizon's Reply Brief); *Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Embarq*, Arbitration Award, Case No. 07-1216-TP-ARB, Arbitration Award ("*Ohio Intrado/Embarq Order*"), at 33 (Sept. 24, 2008) (Verizon Cross-Ex. Ex. 1); Letter from Robert Hoge, Secretary, WV Enhanced 9-1-1 Council, to Sandra Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n, submitted in this docket (dated Nov. 7, 2008).

interconnect at a point on Intrado's network within Embarq's service territory, but that the Commission rejected Intrado's request for multiple POIs on its own network. (*Arb. Award* at 14.) The *Arbitration Award* observed that the Ohio Commission, likewise, required CBT to interconnect at one point within CBT's Local Access and Transport Area ("LATA"). (*Id.*) The Arbitrator further explained that the Ohio Commission had analyzed Intrado's interconnection request under section 251(a), rather than section 251(c), the provision that governs the POI issue in this arbitration: "The major difference between the two is that, under Section 251(c), the ILEC cannot be required to establish a point of interconnection on the CLEC network, while, under Section 251(a), the carriers are free to enter into agreements without consideration of the requirements under Sections 251(b) and (c)" (*Arb. Award* at 15.) The Arbitrator reasoned that if a carrier files a petition for an interconnection agreement under section 251(c), a commission should arbitrate that request under section 251(c), without analyzing some issues under section 251(a). (*Id.*)

Intrado asks the Commission to strike much of the Arbitrator's discussion of the Ohio decisions, claiming that it is inaccurate and irrelevant. (Exceptions at 3.)

Intrado cannot credibly argue that "there is no reason for this discussion" of the Ohio decisions in the *Arbitration Award*, because, as the Arbitrator pointed out, *Intrado itself relied upon the Ohio proceedings* in its arguments here. (*Arb. Award* at 14; see, e.g., Intrado's Initial Br. at 30, 34; Intrado's Reply Br. at 7-8, 15.) It was important for the Arbitrator to discuss the difference between the Ohio Commission's section 251(a) analysis and the *Arbitration Award's* section 251(c) analysis, because Intrado failed to explain the significance of the differing analyses to the resolution of the POI issue. In

particular, the Arbitrator was obliged to explain why Intrado's reliance on the Ohio Commission decisions to support its proposal here was misguided—that is, because section 251(c), which governs this arbitration, does not require the POI to be on the CLEC's network. If the Commission strikes any part of the Arbitration Award's discussion of the Ohio cases (and it should not), it should retain the discussion of the difference between section 251(a) and 251(c), which is indisputably correct and directly relevant to responding to Intrado's own arguments in this arbitration.<sup>10</sup>

Intrado does not ask the Commission to strike or change anything in the Arbitrator's discussion of the Ohio decisions in the first two full paragraphs on page 14, but it does argue that the Arbitration Award's characterization of these decisions “is not accurate and misstates the findings of the Ohio Commission.” (Exceptions at 3.) Again, Intrado, not the Arbitrator, mischaracterizes the Ohio cases.

Intrado suggests that Embarq did not, as the *Arbitration Award* states (at 14) agree to interconnect at Intrado's selective router on Intrado's own network, but that the Commission ordered Embarq (and CBT) to do so “in light of the FCC precedent and industry-standard practice.” (Exceptions at 3.) On the contrary, the Ohio

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<sup>10</sup> In arguing that the Arbitration Award mischaracterized the procedural posture of the Ohio arbitrations, Intrado states: “The issue of whether Intrado Comm's interconnection agreements with Embarq in Ohio should be governed by Section 251(a) or by Section 251(c) was a specific issue presented for arbitration to the Ohio commission.” This is not correct. As the Commission can see from a review of the *Ohio Intrado/Embarq Order*, Section 251(a) was not identified in any of the interconnection issues, which were framed in terms of section 251(c). Although Intrado sought negotiation and arbitration of interconnection arrangements under section 251(c), the Commission chose to analyze the situation where Intrado carries the ILEC's 911 traffic to an Intrado-served PSAP as a “request for voluntary interconnection” under section 251(a). (Ohio Intrado/Embarq Order at 9.) Section 251(a) became a focus during the case, not because it was presented as an arbitration issue, but because Intrado demanded arrangements to which it was not entitled under section 251(c).

*Intrado/Embarq Order* makes clear that Embarq and Intrado *agreed* to establish a POI at Intrado's selective router (*Ohio Intrado/Embarq Order* at 33). Should there be any doubt that Embarq did, in fact, agree to interconnect with Intrado on Intrado's network, Verizon has attached Embarq's response to Intrado's application for rehearing of the *Intrado/Embarq Order*.<sup>11</sup> Embarq's filing states: "under a commercial agreement, Embarq has agreed to interconnect at Intrado's selective router." (Embarq Ohio Response, at 8.)

In the *Ohio Intrado/CBT Order*, it appears the Commission simply followed the *Ohio Embarq/Intrado Order* with respect to POI placement, without referring specifically to what the parties agreed upon. CBT contends that it and Intrado agreed to exchange all traffic at the same point on CBT's network,<sup>12</sup> and raised the same issue the Arbitrator here did about recasting Intrado's section 251(c) interconnection request as a section 251(a) request. CBT stated that "neither Intrado nor CBT identified interconnection under § 251(a) as an "open issue" for arbitration"...CBT has not requested interconnection to Intrado at all, under § 251(a) or otherwise." (CBT Rehearing App. at 5.) "Under § 251(c), Congress and the FCC refused to require ILECs to build out to or

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<sup>11</sup> *Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Tel. Co. of Ohio dba Embarq and United Tel. Co. of Indiana dba Embarq, Pursuant to Section 252(b) of the Telcomm. Act of 1996*, Case No. 07-1216-TP-ARB, Memorandum Contra of United Tel. Co. of Ohio and United Tel. Co. of Indiana, Inc. dba Embarq to Intrado Comm. Inc.'s Application for Rehearing ("Embarq Ohio Response") (filed Nov. 6, 2008) (attached as Ex. 3.).

<sup>12</sup> *Petition of Intrado Comm., Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Case No. 08-537-TP-ARB, Application for Rehearing of Cincinnati Bell. Tel. Co. LLC ("CBT Rehearing App."), at 3 (filed Nov. 7, 2008) (Attached as Ex. 4).

establish POIs on their competitors' networks. It would turn § 251 on its head to find that competitors have *greater* rights under § 251(a) than they do under § 251(c)(2).” (*Id.* at 6).

In any event, whatever the parties agreed to in Ohio, and whatever the Ohio Commission decided, that decision was plainly *not* based on section 251(c) (but rather section 251(a)) and it did not identify any “FCC precedent” requiring an ILEC to interconnect on a CLEC’s network. On the contrary, the Ohio Commission and the parties made clear that section 251(c) requires interconnection *within the ILEC’s network*. (See *Ohio Intrado/CBT Order* at 8-9; *Ohio Intrado/Embarq Order* at 8, 28-29, 32.) Even Intrado acknowledged in Ohio that the interconnection requirements of section 251(c) and 251(a) are different. Citing the FCC’s *Local Competition Order*, Intrado stated: “There is no question that the ‘interconnection obligations under Section 251(a) differ from the obligations under Section 251(c).’”<sup>13</sup> The *Local Competition Order*, of course, makes clear that that section 251(c) requires interconnection “in an incumbent LEC’s network.” (*Local Competition Order*, ¶ 993.)

There is no reason for the Commission to strike or otherwise revise any part of the Arbitration Award’s discussion of the Ohio arbitration orders.

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<sup>13</sup> *Petition of Intrado Comm., Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Case No. 08-537-TP-ARB , Application for Rehearing of Intrado Comm. Inc., at 7 (filed Nov. 7, 2008), quoting *Local Competition Order*, ¶ 997 (attached as Ex. 5).

**Issue 6: The Arbitrator Correctly Decided That There Is No Reason for Trunk Forecasting Provisions to Be Reciprocal**

The disputed language for this issue addressed forecasting of trunks for traffic exchanged between the parties' networks. The language the Arbitrator adopted for section 1.6.2 of the 911 Attachment requires Intrado to provide a semi-annual forecast of the number of trunks Verizon will need to provide for the exchange of traffic with Intrado. The Arbitrator rejected Intrado's proposal to make this language reciprocal, which would require Verizon to provide forecasts of the number of trunks Intrado would need to provide for the exchange of traffic with Verizon. The *Arbitration Award* accepted Verizon's arguments that Intrado's revision would serve no useful purpose and impose an unnecessary burden on Verizon. (*Arb. Award*, at 19; Verizon Ex. 1.0, DT at 46-47.)

Intrado claims the Arbitration Award "ignores the majority of evidence in the record as to why reciprocal forecasting obligations are appropriate." (Exceptions at 16). In particular, Intrado alleges the Arbitrator overlooked evidence that "[o]nly Verizon, not the PSAP, has knowledge of Verizon's switch consolidation plans and anticipated line growth expectations, both of which can significantly affect 911 trunk quantity needs." (Exceptions at 16.)

As an initial matter, Intrado never introduced any evidence about "switch consolidation plans" into the evidentiary record. The citations Intrado provides to the evidentiary record (that is, its witness Clugy's testimony) do not mention "switch consolidation plans" at all, and Verizon is not even sure what "switch consolidation" is

supposed to mean. “Anticipated growth” is treated only generally,<sup>14</sup> with no specific discussion of “line growth expectations.”

The Arbitrator could not have ignored evidence that was not in the record,<sup>15</sup> and the Commission, of course, cannot consider extra-record evidence.<sup>16</sup> With respect to the evidence that *was* in the record, the Arbitrator was justified in finding Verizon’s evidence more credible than Intrado’s.

As Verizon discussed during the arbitration (see, e.g. Verizon Ex. 2.0, RT at 7; Verizon Initial Br. at 21-22), there will be no mutual exchange of traffic between Intrado and Verizon, so Intrado’s argument that it is “entitled to the same forecasts” (Exceptions at 17) Verizon receives from Intrado makes no sense. Again, Intrado does not plan to provide service to any end users that would make emergency (or other) calls, and Intrado’s only customers, the PSAPs, will not be making emergency calls. Intrado’s suggestion that it will be “originating” 911 calls to Verizon’s PSAPs (Exceptions at 17)

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<sup>14</sup> Clugy DT at 6 (“Forecasts will allow the Parties to work together to ensure that the growth of both Parties’ networks is well managed and planned”; Clugy RT at 2 (“Verizon should provide Intrado a trunk forecast based on current call volumes and anticipated growth”); at 3 (“Trunk forecasts are based on call volumes and anticipated growth for the switches originating 911 calls....”).

<sup>15</sup> If Verizon had had an opportunity to respond to Intrado’s extra-record allegations, it would have emphasized that the volume of traffic Intrado will receive is much more directly tied to the number of PSAPs served by Intrado than the number of lines served by Verizon (or to “switch consolidation,” whatever Intrado intended that to mean). Adding one PSAP would more substantially increase the number of trunks Intrado would need than any likely growth in the number of Verizon lines. In any event, Verizon, like ILECs around the country, is experiencing line loss, not line gains.

<sup>16</sup> Intrado has made a habit of referring to information outside the record and making new factual allegations in its post-hearing filings, when it is too late to test Intrado’s assertions through cross-examination. *See, e.g.*, Intrado’s Initial Br. at 14 n. 69; 15 n. 78; 18 n. 91; 23 n. 111; 42 n. 193; Intrado’s Reply Br. at 12 n. 79; Intrado’s Exceptions at 5 (Intrado discussion of alleged customary practices with respect to interexchange services); 19-20 (allegations with respect to transfer or wireless and VoIP 911 calls). This practice is obviously impermissible, and the Commission should admonish Intrado for it.

is, therefore, misleading. The only calls from Intrado's network to Verizon's will be occasional calls that were originally misdirected to an Intrado-served PSAP when they should have gone to a Verizon-served PSAP. (Verizon Initial Br. at 21-22.) Because there is no reciprocal call flow of 911 calls between the parties, there is no basis to make the forecasting obligation reciprocal.<sup>17</sup>

As the Arbitrator found (Exceptions at 19), Intrado-served PSAPs will be in at least as good a position as Verizon to undertake forecasting of the number of trunks necessary for traffic flowing from Verizon to Intrado (*Arb. Award* at 19), so there is no reason to impose the forecasting burden upon Verizon. To the extent Intrado signs up PSAPs as customers, those PSAPs will have the best knowledge of call volumes from all carriers (not just Verizon) from Verizon's serving area to the PSAP. Only Intrado knows how many PSAP customers it will serve and, therefore, how many trunks will be needed. Verizon cannot predict Intrado's success in the market. Therefore, Verizon cannot produce the forecasts Intrado seeks with any accuracy. (Verizon Ex. 1.0, DT at 46-47; Verizon Ex. 2.0, RT at 24-25.) Requiring Verizon to make forecasts that it cannot make

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<sup>17</sup> Intrado claims that under the Arbitration Award's "construct," there would be no need for any forecasts at all, because "Verizon PSAP customers, not Intrado Comm, would be in the best position to determine the trunking requirements for Intrado Comm-originated calls destined for Verizon PSAPs." (Exceptions at 17.) This allegation is not in evidence and it is not true. For Verizon-served PSAPs, Verizon will need an estimate of the volume of misdirected calls to be transferred to it from Intrado-served PSAPs (again, only misdirected calls will come to Verizon from Intrado's network; Intrado will have no customers making 911 calls)--provided the PSAPs even agree to transfer calls. While the Verizon-served PSAPs may be able to estimate the number of these calls coming from Intrado, the Intrado-served PSAPs will have the same ability, because they will be sending the transferred calls to Verizon.

In addition, since Verizon typically provides trunks between the CLEC network and the POI and from the POI to switches in Verizon's network, and because the volume of traffic will depend upon the number customers served by the CLEC, it is important for VZ to get regular forecasts of the volume of trunks Verizon will be expected to provide.

accurately does not promote the proper sizing of the Parties' networks, but undermines it and would impose a needless burden upon Verizon.

In any event, as the Arbitrator found, to the extent Intrado has a legitimate need for forecasts, that need will be fully met through the agreed-upon language in 911 Attachment section 1.5.5, which states:

Upon request by either Party, the Parties shall meet to: (a) review traffic and usage data on trunk groups; and (b) determine whether the Parties should establish new trunk groups, augment existing trunk groups, or disconnect existing trunks.

This language, which requires Intrado and Verizon to cooperate in updating arrangements for traffic exchange, will assure that Intrado receives the type and quantity of information it needs to assure adequate trunking between the parties' networks. (Verizon Ex. 2.0, RT at 25.) In other words, forecasting obligations already *do* apply equally to both parties under language to which the parties have already agreed, when it makes *sense* for those obligations to apply equally. Intrado's insistence on forecasts that Verizon is ill-equipped to produce (and that Intrado can better undertake), let alone produce accurately, is inexplicable.

Intrado argues that section 1.5.5 must serve a different purpose from section 1.6.2 because both are included in "the Verizon template interconnection agreement." (Exceptions at 18.) Verizon does not know what Intrado means by this statement, but if Intrado is suggesting that Verizon's template interconnection agreement includes the reciprocal forecasting obligation Intrado is trying to impose here, that is not true. Verizon's template agreement requires the same exchange of information the parties have already agreed to here—that is, section 1.5.5.

The Arbitrator made no error of law in deciding Issue 6; Intrado simply disagrees with the Arbitrator's conclusion. That is not sufficient basis to reject the approved language for section 1.6.2 of the conformed contract.

**Issue 14: The Arbitrator Made No Error in Rejecting Intrado's ALI-Related Provisions**

The Arbitrator rejected Intrado's language for Issue 14, which would have required Verizon to "maintain" automatic location information ("ALI") steering tables for areas where Intrado is the 911/E911 service provider and manages the ALI database. (*Arb. Award* at 21; Intrado's proposed § 1.2.1, 911 Att.)<sup>18</sup> The Arbitrator pointed out that Verizon should not be compelled to perform a maintenance function on an ALI database managed by Intrado and that, in any event, the Parties had already agreed upon language obligating them to establish mutually acceptable arrangements and procedures to include Verizon's end users' data in the ALI database.<sup>19</sup>

Intrado, once again, accuses the Arbitrator of failing to address "undisputed record evidence" (Exceptions at 20), when the "evidence" at issue is not in the record. None of the allegations Intrado raises about storage of "pANI" numbers associated with adjacent PSAPs; call transfers from networks other than that of the PSAP transferring the call; or the percentage of wireless 911 calls that Intrado claims require transfer to another

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<sup>18</sup> Intrado's proposed language for section 1.2.1 states: "The Parties shall work cooperatively to maintain the necessary ALI steering tables to support display of ALI between the Parties' respective PSAP Customers upon transfer of 911/E911 Calls."

<sup>19</sup> *Arb. Award* at 21. That agreed-upon language states: "For areas where Intrado Comm is the 911/E-911 Service Provider and Intrado Comm manages the ALI Database, Verizon and Intrado Comm shall establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database."

PSAP (Exceptions at 19) are in the record, so the Commission cannot consider them or Intrado's (incorrect) conclusions based on these allegations outside the record.

In addition to failing to ground its arguments in the record, Intrado's position on Issue 14 sought to impose obligations upon Verizon that have nothing to do with a section 251 interconnection agreement. The FCC has determined that the provision of caller location information to a PSAP is an information service, not a telecommunications service: "storage and retrieval functions associated with the BOCs' automatic location identification databases....cannot be classified as telecommunications services."<sup>20</sup> Because provision of ALI information is *not* a telecommunications service, it is outside the scope of interconnection agreements under the Act. (Verizon Ex. 2.0, RT at 45.) Indeed, Intrado acknowledged in its testimony that the ALI function is an information service (Intrado Ex. 2.0, Spence-Lenss DT at 15), but tried to convince the Arbitrator that, in the case of Intrado's particular 911 offering, it shouldn't be considered an information service. (Intrado's Initial Br., at 37-38.) The Arbitrator declined to change the law to suit Intrado. The Commission should do so as well.

Verizon has not disagreed that the parties should cooperate to ensure that misdirected 911 calls are directed to the right PSAP, and, as noted, Verizon agreed to language requiring the parties to "establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database" for areas where Intrado is the 911 provider and manages the ALI database. (911 Att., § 1.2.) As the

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<sup>20</sup> *Bell Operating Companies Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, CC Docket 96-149, Memorandum Opinion and Order, 13 FCC Red 2627, at ¶ 18 (1998).

Arbitrator found (*Arb. Award* at 21), this language is sufficient to address any legitimate concerns about call transfers under the interconnection agreement.

Moreover, Verizon does have agreements that address the creation of steering tables, including one with Intrado, but they are commercial agreements, and there is no language in them that says Verizon must “maintain” another E911 Service Provider’s steering tables. (Verizon Ex. 2.0, RT at 45-46.) To Verizon’s knowledge, Verizon’s commercial agreement with Intrado provides Intrado with everything it needs to conduct its business with respect to ALI database arrangements between the Parties. If Intrado believes that the existing commercial agreement needs to be modified, that issue is properly addressed outside the context of the section 251/252 interconnection agreement that will result from this arbitration. (*Id.* at 46.) There is no reason to change the language of the conformed interconnection agreement.

**Issues 34 and 35: There Is No Need for Clarification of the Award With Respect to Prices that Will Apply to Services Intrado Might Order from Verizon**

Intrado does not except to the *Arbitration Award*’s decision on Issues 34 and 35 and does not ask the Commission to reject the contract language the Arbitrator ordered with respect to those Issues. Rather, Intrado claims to seek “clarification” of the Award “to ensure that Verizon does not impose tariffed rates on Intrado Comm that were developed outside of Section 251/252 for services that should otherwise be subject to the pricing parameters of Section 252(d)” (Exceptions at 5), which requires application of the FCC’s TELRIC (total element long-run incremental cost) pricing standard.

As Verizon has made clear, Intrado, like any CLEC, is entitled to TELRIC pricing for the elements the FCC has identified for such pricing. These elements, as well as

appropriate references to Verizon's tariff rates, are already included in the undisputed Appendix A to the Pricing Attachment (or, in the case of collocation, in Verizon's collocation tariff referenced in Appendix A). Verizon does not intend to charge Intrado non-TELRIC rate for services the FCC has identified for TELRIC pricing, and nothing in the interconnection agreement would permit Verizon to do so. There is, therefore, no need for any clarification.

Intrado's "clarification" request appears intended to advance Intrado's position that anything Intrado might claim to need for "interconnection" must be priced at TELRIC. (See Intrado Ex. 3.0, Clugy DT at 13; Intrado Ex. 2.0, Spence-Lenss DT at 17.) That notion is plainly erroneous. Intrado cannot obtain better pricing than any other carrier can for the same service simply by claiming that Intrado needs it for interconnection, regardless of whether the FCC requires TELRIC pricing for the element. Intrado's clarification request would serve no legitimate end, but would only invite unnecessary controversy. The Commission should reject it.

### **III. There Is No Reason for the Commission to Strike the Arbitration Award's Discussion of Commission Jurisdiction to Arbitrate an Interconnection Agreement Between Intrado and Verizon**

Intrado asks the Commission to strike the entire section of the Arbitration Award discussing the matter of Intrado's right to request arbitration of a section 251(c) interconnection agreement for just 911 traffic. (Exceptions at 5, *citing Arb. Award* at 10-11.) Intrado asserts that the jurisdictional issue was not presented for arbitration by the parties and "serves as a distraction to the issues to be addressed by the Commission." (Exception at 5.) Intrado also takes issue with the Arbitration Award's reference to

Intrado's 911 service to PSAPs as interexchange service ("Under Intrado's proposal, providing service only to PSAPs, Intrado appears to be seeking solely to originate its interexchange traffic on an ILEC's (Verizon's) network." (*Arb. Award* at 11.)

The Arbitrator had every right to discuss the Commission's jurisdiction to entertain Intrado's arbitration, and there is no reason to strike that discussion. As the Arbitrator correctly observed, "[o]bviously, jurisdiction is a matter which can be raised at any time and which can be raised by a commission on its own." (*Arb. Award* at 10.) It did not need to be raised by the parties as a specific issue to be resolved in the case. Indeed, state commissions and courts routinely discuss their own jurisdiction to hear a case at the outset of their decisions. That kind of discussion was particularly apt in this case, where the parties discussed other state cases in which Commissions wrestled with the question of Intrado's right to arbitration under the Act. Indeed, in view of these other proceedings—including Florida, which dismissed Intrado's arbitrations with AT&T and Embarq, and Ohio, which determined that Intrado was not entitled to section 251(c) interconnection for carrying the ILEC's 911 traffic—the Arbitrator would have been remiss in neglecting to explain her decision to move forward with the arbitration, despite Intrado's "questionable" right to request interconnection. (*Arb. Award* at 10.)

Intrado's criticism of the Arbitrator's characterization of Intrado's traffic as "interexchange" is also unjustified. Intrado does not deny that 911 traffic from Verizon's end users to Intrado will cross telephone exchange boundaries. In fact, Intrado's argument is rooted in the very fact that 911 services are *not* linked to "a defined exchange area," but rather a "particular geographic area or political jurisdiction." (Exceptions at 5-6.). Instead of arguing that 911 calls do not travel beyond exchange boundaries, Intrado

comes up with the novel theory that the “concept” of an exchange does not apply to its 911 services. (Exceptions at 5.) In other words, 911 traffic travels beyond exchange boundaries, but Intrado doesn’t want the Arbitration Award to call it interexchange traffic. This is nonsense. A 911 call that crosses exchange boundaries is no less an interexchange call than any other call that crosses exchange boundaries. The extra-record facts Intrado offers to support its theory (for example, that there is no retail “toll” charge for 911 services and that 911 services are often included in intrastate tariffs) cannot change the fact that 911 calls routinely originate and terminate in different exchanges. There is no reason to strike the Arbitration Award’s correct statement that 911 traffic is interexchange in nature.

Respectfully submitted,

Verizon West Virginia Inc.



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LEXSEE 17 FCC RCD 14789

In the matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request of King County, Washington

CC Docket No. 94-102

**RELEASE-NUMBER:** FCC 02-146

FEDERAL COMMUNICATIONS COMMISSION

*17 FCC Rcd 14789; 2002 FCC LEXIS 3595*

July 24, 2002 Released; Adopted May 14, 2002

**ACTION:**

[\*\*1] ORDER ON RECONSIDERATION

**JUDGES:** By the Commission: Commissioner Copps issuing a statement

**OPINION:**

[\*14789] **I. INTRODUCTION**

1. In May 2001, the Wireless Telecommunications Bureau (Bureau) issued a decision identifying the 911 Selective Router as the demarcation point for allocating Enhanced 911 (E911) implementation costs between wireless carriers and Public Safety Answering Points (PSAPs), in those instances where the parties cannot agree on the appropriate demarcation point. n1 In response to a Petition for Reconsideration, the Commission hereby affirms the Bureau's decision. We find that the cost-allocation point for E911 implementation should be that point at which the system identifies the appropriate PSAP and distributes the voice call and location data to that PSAP. We also find that clarifying the demarcation point for E911 cost allocations will expedite the roll-out of wireless E911 services by helping to eliminate a major source of disagreement between the parties so as to facilitate the negotiation process.

n1 *See* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington (May 7, 2001)(*King County Letter*).

[\*\*2] **II. BACKGROUND**

2. The Commission initially required that a cost recovery mechanism be in place for both the wireless carrier and the PSAP before the carrier would be obligated to deliver E911 service. n2 In the *E911 Second Memorandum Opinion and Order*, the Commission found that disputes about cost recovery had become a significant impediment to the implementation of E911 Phase I and elimi-

nated the carrier cost-recovery requirement, but not the PSAP cost-recovery requirement. n3 On May 25, 2000, the King County, [\*14790] Washington E911 Program Office filed a request with the Bureau for assistance in resolving a conflict related to the implementation of wireless E911 Phase I service in Washington State. Specifically, King County inquired whether the funding of Phase I network and database components, and the interface of these components with the existing E911 system, is the responsibility of the wireless carrier or the PSAP. n4

n2 See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18692-97, paras. 29-42, (1996)(*E911 First Report and Order*).

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n3 See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850 (1999)(*E911 Second Memorandum Opinion and Order*). In consequence, a carrier's obligation to provide E911 service is presently contingent upon the carrier's receipt of a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service and for which a mechanism for the recovery of such PSAP's E911 costs is presently in place. See 47 C.F.R. 20.18(d); see also *City of Richardson*, in which the Commission established readiness criteria for determining the validity of a PSAP's request under section 20.18(j) of its rules, based on the parties' respective obligations for the implementation of Phase I as set forth in the *King County Letter*. See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, FCC 01-293, rel. Oct. 17, 2001, at n.28 (*City of Richardson*).

n4 Letter from Marlys Davis, E-911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, CC Docket No. 94-102 (filed May 25, 2000)(*King County Request*). On August 16, 2000, the Bureau put this request out for public comment. See Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues, *Public Notice*, CC Docket No. 94-102, DA 00-1875 (August 16, 2000)(*First Public Notice*). PSAPs and other public safety organizations asserted that the appropriate demarcation point for allocating responsibility and associated costs between wireless carriers and PSAPs should be the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). A majority of wireless service providers, on the other hand, contended that the appropriate demarcation point should be the carrier's Mobile Switching Center (MSC).

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3. In its response to King County's request, the Bureau determined that, in the absence of an agreement to the contrary between the parties, the 911 Selective Router serves as the demarcation point for allocating E911 implementation costs. However, the Bureau emphasized that "the Commission continues to favor negotiation between the parties as the most efficacious and efficient

means for resolving disputes regarding cost allocations for implementing Phase I." n5 Noting that a variety of situations exists in approximately 6,000 PSAPs across the nation, including differences in state laws, the configuration and technical sophistication of existing network components used to provide E911 service, and agreements between carriers and PSAPs, the Bureau observed that the application of "a uniform federal mandate that prevents the relevant stakeholders from reaching other, mutually-acceptable arrangements" should be avoided unless, as ultimately proved to be the case in the Bureau's dealings with wireless carriers and PSAPs in King County, n6 the parties are unable to resolve the dispute.

n5 *King County Letter* at 3.

n6 The Bureau noted in the *King County Letter* that it had "spent considerable time in discussions and multiple face-to-face meetings with the parties involved attempting to help them reach agreement." *Id.* at 3.

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4. The Bureau identified the 911 Selective Router as the demarcation point for allocating E911 costs based on the language of section 20.18(d) and the nature and configuration of the existing network components used to provide wireline E911 service. The Bureau explained that, in order for a wireless carrier to satisfy its obligation under section 20.18(d) to provide Phase I information to the PSAP, the carrier must deliver that information to the equipment in the existing 911 system that "analyzes and distributes it"--the 911 Selective Router. n7 The Bureau's conclusion on the cost allocation issue states as follows: n8

The proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). Thus, under section 20.18(d) of the Commission's regulations governing Enhanced 911 [\*14791] Service (E911), wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, [\*\*6] interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP. PSAPs, on the other hand, must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE).

n7 *Id.* at 4.

n8 *Id.* at 1.

5. On June 6, 2001, Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. (Petitioners or Joint Petitioners) jointly filed a Petition for

Reconsideration requesting that the Bureau reconsider its determination that the cost-allocation demarcation point is the input to the 911 Selective Router and find, instead, that the proper demarcation point is the output of the wireless carrier's MSC. n9 The Joint Petitioners challenge the Bureau's decision on procedural, as well as substantive, grounds. With respect to the latter, they [\*\*7] argue that the decision: (1) violates and renders superfluous the regulatory language of section 20.18(j); n10 (2) deviates from the cost allocation for Wireline E911 and discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers; (3) is based on an erroneous assumption that the network components used to provide wireline E911 service do not include the trunkline from the MSC to the 911 Selective Router; and (4) ignores long-standing cost causer principles and state law. Procedurally, the Joint Petitioners argue that (1) the decision exceeds the Bureau's delegated authority because it contravenes Commission rules, policy and precedent; (2) the scope of the inquiry and conclusion reached require a notice and comment rulemaking proceeding under the Administrative Procedure Act (APA); n11 (3) the decision ignores significant carrier comments contained in the record compiled in response to the *First Public Notice*; n12 and (4) King County's request should have been dismissed as an untimely request for reconsideration and an impermissible collateral attack on the Commission's decisions in earlier E911 orders.

n9 Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Petition for Reconsideration, filed June 16, 2001. (*Petition for Reconsideration*).

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n10 47 C.F.R. 20.18(j).

n11 5 U.S.C. section 553(b) and (c).

n12 See fn. 4, *supra*.

### III. DISCUSSION

6. As indicated, the Joint Petitioners have raised both substantive and procedural challenges to the Bureau's decision on the E911 cost allocation issue. We will address first the substantive arguments, then the procedural arguments, identified above.

#### A. Substantive Arguments

7. *Section 20.18 and Related Commission Orders.* We reject Joint Petitioners' arguments that the Bureau's designation of the 911 Selective Router as the cost-allocation demarcation point contravenes the regulatory language of section 20.18(j) and portions of related Commission Orders and that it constitutes a new, Bureau-created policy at variance with the Commission's rules and previous orders. n13 Both sections 20.18(d) and 20.18(j) are ambiguous regarding the specific respective responsibilities of [\*14792] the parties in implementing Wireless E911 service. Section 20.18(d), *Phase I enhanced 911 services*, states as follows in subparagraph (1): n14

(1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering [\*\*9] Point as set forth in paragraph (j) of this section, whichever is

later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

Section 20.18(j), *Conditions for enhanced 911 services*, states as follows with respect to PSAPs' responsibilities: n15

The requirements set forth in paragraphs (d) through (h) [Phase I and Phase II requirements] of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

We find that neither section 20.18(d) nor section 20.18(j) clearly specifies to what point in the 911 network the carrier must bring the required data or at what point in the 911 network the PSAP must be capable of receiving [\*\*10] and utilizing that data.

n13 Petition for Reconsideration at 8-15. *See also* Cal-One Comments at 8-9, CenturyTel Comments at 2-3, Dobson Comments at 3-4, Joint Petitioners' Reply Comments at 6-7.

n14 47 C.F.R. 20.18(d)(1).

n15 47 C.F.R. 20.18(j).

8. We also find that the Bureau correctly interpreted these regulatory provisions, in light of the nature and configuration of the existing network components used to provide wireline E911 service, by determining that the analysis of the Phase I data to determine which PSAP should respond to the call and the distribution of that call to the proper PSAP are central to a wireless carrier's obligation to "provide" emergency wireless E911 services. Because it is the 911 Selective Router that performs these functions, the Bureau rightly determined that a wireless carrier must deliver the Phase I data to the 911 Selective Router in order to fulfill its obligations under section 20.18(d). n16 This is the case whether a Non-Call Associated Signaling (NCAS) technology, a Call Associated Signaling (CAS) technology, or a Hybrid CAS technology is employed for implementing Phase I. n17 Thus, we agree with the Bureau that a cost-allocation [\*\*11] [\*14793] demarcation point at the input to the 911 Selective Router is most appropriate because, until the proper PSAP has been identified, no PSAP can "receive" and "utilize" the location data under section 20.18.

n16 We note that, although most wireless carriers disagree with this interpretation, Nextel appears, by its actions, to acknowledge that the wireless carrier's responsibilities under section 20.18 extend to the input to the 911 Selective Router and thus include the trunkline between the MSC and the 911 Selective Router. Nextel Reply Comments at 7-8.

n17 With an NCAS solution to Phase I, the caller's voice and the actual 20-digit Phase I data (10-digit phone number and 10-digit cell sector number) are transmitted to the PSAP on separate paths. At the time the wireless carrier's MSC receives the call from the base station, it sends the 20-digit information to the Service Control Point (SCP), where it is encoded under a 7-digit ESRK (code) that (1) tells the 911 Selective Router to which PSAP the voice call should be sent and (2) facilitates the PSAP's retrieval of the 20-digit Phase I information from the ALI database. The SCP sends the ESRK back to the MSC, where it is linked to the voice call and forwarded to the 911 Selective Router. Based on the ESRK provided, the 911 Selective Router forwards the call to the appropriate PSAP. Simultaneous with sending the ESRK to the MSC, the SCP sends the ESRK and encoded 20-digit Phase I information to the ALI database, where the cell sector number is used to identify the cell site/sector address. This address, as well as the caller's phone number, are stored until the PSAP retrieves them using the ESRK sent through the 911 Selective Router with the voice call. With Hybrid CAS, the functions performed by the SCP are performed by the Wireless Integration Device (WID), which is installed at, but precedes "the input to," the 911 Selective Router. CAS transmits all 20 digits of Phase I information with the voice call and requires that the trunkline installed between the MSC and the 911 Selective Router and the trunkline existing between the 911 Selective Router and the PSAP use signaling protocols that will support the transmission of 20 digits of Phase I data. Under a CAS technology, too, the PSAP-identification function is performed by the 911 Selective Router.

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9. The Bureau's letter is in the nature of a declaratory ruling concerning the respective responsibilities of the parties under the Commission's regulations governing Phase I of E911 service. We affirm that guidance here. The Bureau did not specifically address the parties' responsibilities with respect to the provision of Phase II information. However, we find that it is the interests of the parties and the public that we continue to anticipate those issues that may create stumbling blocks in the future to a smooth and efficient roll out of Phase II service. To that end, we find that the analysis applied by the Bureau with respect to Phase I logically extends to the obligations imposed on carriers by section 20.18(e). n18

n18 As is discussed in further detail *infra* in Section III.B., a reasonable interpretation of existing Commission regulations does not require APA notice and comment.

10. Section 20.18(e), *Phase II enhanced 911 services*, provides in pertinent part, "Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, *i.e.*, the location of all 911 calls by longitude and latitude . . . ." Like [\*\*13] section 20.18(d), section 20.18(e) does not specify to what point in the network the carrier must bring the required Phase II data. We find it appropriate to interpret section 20.18(e) consistently with section 20.18(d), given that the same infrastructure is used to transmit Phase I and Phase II information from the wireless carrier to the appropriate PSAP. Thus, we hereby clarify that, in the absence of an agreement to the contrary between the parties, the input to the 911 Selective Router shall serve as the demarcation point for allocating costs between wireless carriers and PSAPs, both with respect to the delivery of Phase I information and with respect to the delivery of Phase II information. This clarification is consistent with our objectives in enacting section 20.18, namely, the rapid and ubiquitous deployment of wireless E911 capabilities.

11. We reject Petitioners' argument that statements in various Commission orders support interpreting these regulations to locate the cost allocation demarcation point at the output from the carrier's MSC. n19 The statements cited are inconclusive regarding which party bears what costs for implementing E911. Rather, we find that these statements, [\*\*14] if anything, tend to support the interpretation adopted by the Bureau. For example, the Commission's inventory of PSAP costs, in both the *E911 First Report and Order* and the *E911 Second Memorandum Opinion and Order*, n20 includes only network "upgrades" and omits: (1) the new trunkline between the MSC and the 911 Selective Router needed for all three Phase I technologies--CAS, NCAS, and Hybrid CAS; (2) network components such as the SCP [\*14794] for an NCAS solution or the WID for a Hybrid CAS solution, n21 and (3) associated trunklines connecting these components to other parts of the network. All of these components "precede" the input to the 911 Selective Router in the sequencing of network components for handling a wireless 911 call. Their omission from the Commission's inventory of PSAP costs suggests that they are the responsibility of the wireless carrier, not the PSAP. When they are coupled with other Commission statements concerning cost-sharing by the parties in implementing E911, n22 we conclude that the statements cited by the Petitioners tend to support, rather than contradict, a cost allocation point beyond the wireless carrier's MSC and the Bureau's determination that [\*\*15] the most appropriate point is the input to the 911 Selective Router.

n19 Petition for Reconsideration at 12-13. Specifically, Petitioners point to the Commission's statement in the *E911 First Report and Order* that a carrier's obligation does not arise until the "PSAP . . . has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service." See *E911 First Report and Order*, 11 FCC Rcd at 18708-09, para. 63. They cite to the Commission's observation that a PSAP's anticipated investment includes "switches, protocols, and signaling systems that will allow them to obtain the calling party's number from the transmission of ANI." See *id.* at 18709 n.119. They also cite the Commission's statement in the *E911 Second Memorandum Opinion and Order* that "the bulk of [the] selective routers . . . ALI databases, and 9-1-1 trunks, as well as the PSAP's own equipment, will have to be upgraded at the PSAP's own expense to handle the additional ANI and ALI information that will be provided by wireless carriers." See *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20877-78, para. 66.

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n20 See fn. 19, *supra*.

n21 Because it transmits the location data with the 911 voice call, a CAS methodology does not require the use of such components.

n22 Implicit in its discussions of E911 implementation costs, in general, and its elimination of the carrier cost-recovery prerequisite, in particular, is the Commission's assumption that such costs will accrue to both wireless carriers and PSAPs. Although it did not state which costs would be attributable to, and thus recoverable by, carriers under the carrier cost-recovery prerequisite, the Commission noted this issue in observing that the parties' "naturally competing interests" in determining which carrier costs are to be funded had become a major impediment to fulfillment of the prerequisite and to the rapid implementation of E911 service. See *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20869-70, para. 47.

12. We also reject the argument made by some wireless carriers that the Bureau's decision constitutes an unauthorized shift of responsibility to wireless carriers for network "add-ons," such as the SCP or the WID." n23 These carriers contend that PSAPs must bear [\*\*17] not only the cost of updating the 911 Selective Router but also, where an NCAS or Hybrid CAS Phase I solution is being used, the cost of the SCP or WID. n24 However, under Section 20.18(d), the carrier is responsible for providing Phase I information to the appropriate, or "designated," PSAP. When a CAS technology is used, the carrier, in order to satisfy Section 20.18(d), simply provides the 10-digit ANI and 10-digit p-ANI to the input of the Selective Router--which, in turn, uses the p-ANI to determine the PSAP to which Phase I information, as well as the 911 call itself, should be sent (*i.e.*, the designated PSAP). n25 When an NCAS or Hybrid CAS technology is used, the carrier must deliver Phase I information to the 911 Selective Router in a form that the router can accept and process, and this can only be accomplished through the use of an SCP or a WID. Thus, in order to fulfill its Section 20.18(d) obligations, the carrier, if NCAS or Hybrid CAS is employed, must provide the SCP or WID. We thus do not agree with commenters that such devices are network "add-ons;" rather, they are devices that carriers must furnish in order to satisfy their E911 requirements under our rules. [\*\*18]

n23 Nextel Reply Comments at 8-10, Sprint Comments at 2-3; *see also* Nextel Comments to *First Public Notice* at 2, TX-CSEC Comments at 3-5, TX-CSEC Reply Comments at 5.

n24 The SCP and WID are devices that provide the information that enables the 911 Selective Router to direct the 911 call to the appropriate PSAP. *See* fn. 18 *supra*.

n25 Ordinarily, the 911 Selective Router can only accept 8 digits of data. If CAS technology is employed, the Selective Router must be updated so that can accept the 20 digits provided by the carrier.

13. Moreover, in the case of an NCAS solution, for example, the approach advocated by these wireless carriers could push the line of demarcation as far back as the output of the MSC, requiring that the PSAP bear the costs of the trunklines between the MSC and the SCP and, arguably, between the MSC and the 911 Selective Router, as well as the costs of the SCP itself. In addition, the cost allocation would vary depending on the type of Phase I technology chosen by the parties. n26 The Commission has strenuously avoided solutions that are other than technology-neutral in crafting regulatory requirements [\*14795] for E911 implementation. n27 [\*\*19] The argument proffered by the Petitioners and others contradicts this important Commission policy.

n26 Were a CAS solution adopted, the cost allocation demarcation point would be the 911 Selective Router; were an NCAS or a Hybrid CAS solution adopted, the demarcation point would be further back in the network.

n27 In the *E911 Third Report and Order*, for example, the Commission expressed reluctance to mandate a handset solution for Phase II. *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17398-405, paras. 19-34, (1999)(*E911 Third Report and Order*).

14. *Wireless E911 Cost Allocation and Configuration of Wireline Network Components*. We reject Petitioners' argument that the Bureau erred in treating wireless carriers differently from wireline

carriers for E911 cost-allocation purposes. n28 In the first place, the Bureau did not base its decision on the appropriate demarcation point for allocating costs for the provision of wireless E911 service on the configuration of the network components used to provide wireline [\*\*20] E911 service. Nor was it constrained to adopt a wireline cost allocation methodology for the purpose of allocating E911 implementation costs in the wireless context. Thus, we reject Joint Petitioners' assertion that the Bureau's decision discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers. We agree with TX-CSEC that *US Cellular* provides judicial support for the Bureau's decision. That case, concerning cost recovery, and the case at hand, concerning the nature and extent of the costs themselves, are analogous. In *US Cellular* the court sanctioned the Commission's disparate treatment of wireless and wireline carriers, stating that "an important difference in the way [wireless and wireline] service is regulated," provides "more than sufficient reason" for eliminating the cost recovery prerequisite for wireless carriers, despite wireline carriers' ability to recover their costs through PSAP tariffs. n29 Thus, the Petitioners' arguments based on cost-allocation practices in the wireline industry are without merit.

n28 Petition for Reconsideration at 7 *citing King County Letter* at 3-4; Joint Petitioners' Reply Comments at 7-9. *See also* Cal-One Comments at 4-7, CenturyTel Comments at 3, Dobson Comments at 4-5, Sprint Comments at 3-5, Nextel Reply Comments at 4-7. Nextel, in particular, contends that there is "nothing fundamentally different" in the functions performed by both that would justify their disparate treatment, and that TX-CSEC's reliance on *US Cellular* to support the Commission's disparate treatment is misplaced because *US Cellular* dealt with the "alteration of the cost recovery scheme," whereas the present proceeding concerns "imposing any particular E911 responsibilities." Nextel Reply Comments at 4-7 *citing United States Cellular Corporation v. Federal Communications Commission*, 254 F.3d 78 (D.C. Cir. 2001)(*US Cellular*); *see also* TX-CSEC Comments at 6-7, Joint Petitioners' Reply Comments at 9, Joint Commenters Opposition at 5-7.

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n29 *US Cellular*, 254 F.3d at 87.

15. Furthermore, we recognize, as did the Bureau, that no single E911 cost allocation paradigm exists for the wireline industry--the PSAP bears the costs of funding the trunkline between the 911 Selective Router and the wireline carrier's end office in some instances, but not in all instances. In many jurisdictions, ILECs, whose rates are regulated, are treated differently from Competitive Local Exchange Carriers (CLECs), whose rates are not regulated. Specifically, the costs associated with the transmission of an E911 call from the ILEC's end office to the 911 Selective Router are generally borne by the PSAP, but this is not necessarily true for CLECs. The E911 cost allocation for CLECs varies by jurisdiction, and, in many cases, the CLEC is responsible for the costs of transmitting a customer's 911 call from its end office to the 911 Selective Router. n30 Had the Bureau viewed wireline E911 cost allocation practices as determinative, the more analogous cost allocation methodology would arguably have been that applicable to CLECs, because both CLECs and wireless carriers can recover their costs from customers in [\*\*22] any reasonable manner.

n30 *See* Joint Commenters Opposition at 3 n.6.

16. Finally, we reject the Petitioners' argument that the Bureau mischaracterized the configuration of the network components used to provide wireline E911 service by failing to include the trunk between the carrier's MSC and the 911 Selective Router in its enumeration of network [\*14796] components. n31 The Bureau did not misunderstand the parameters of the network used to provide wireline E911 service. When read in context, the sentence at issue neither states nor implies that the trunkline between the wireline carrier's end office and the 911 Selective Router is not one of the network components used to provide wireline E911 service. In some instances, in fact, it is. However, as discussed above, this configuration is neither universal in the wireline context nor determinative as to the resolution of the cost allocation issue in the wireless context.

n31 The language at issue reads, in pertinent part, as follows: "Thus, an interpretation of section 20.18(d) must account for the presence of the existing E911 Wireline Network, which is maintained by the ILEC and paid for by PSAPs through tariffs. . . . The E911 Wireline Network thus consists of: the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP." See King County Letter at 3-4.

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17. *Other Substantive Arguments.* We reject Joint Petitioners' unsubstantiated argument that several issues raised by commenters in their response to the *First Public Notice*, and allegedly ignored by the Bureau, provide potential bases for reversing the Bureau's decision on the cost allocation issue. Petitioners assert, without elaboration, that the Bureau's allocation of costs to wireless carriers is contrary to "long-standing cost causer principles." n32 This contention is without merit. As TX-CSEC notes, n33 the cost causer argument has been laid to rest by the court's decision in *US Cellular* that "on no plausible theory are the PSAPs the cost causers." n34 Petitioners also argue that the decision is incompatible with state law n35 and "historic practice." n36 They neither elaborate on, nor provide substantiation for, these arguments. We are unable to find support in the record for these arguments and therefore reject them.

n32 See Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 2-4, VoiceStream Comments to *First Public Notice* at 6-8, 10-11, Sprint Comments to *First Public Notice* at 7, 14-15; VoiceStream *ex parte* filing of February 6, 2001 at 4-6, 8-9 (VoiceStream *Ex Parte Filing*).

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n33 See TX-CSEC Comments at 11.

n34 *US Cellular*, 254 F.3d at 84.

n35 Petition for Reconsideration at 5 citing Sprint Comments to *First Public Notice* at 9-11.

n36 Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 3-5, VoiceStream Comments to *First Public Notice* at 6-11, Qwest Comments to *First Public Notice* at 10-14.

18. We also reject arguments made by Cal-One and Dobson that the Bureau's decision ignores the disproportionate impact of E911 costs on small and rural wireless carriers. n37 The argument that E911 costs will have a disparate, negative effect on small and rural carriers because they have a substantially smaller customer base from which to recoup their costs has been raised and addressed previously by the Commission in the E911 context. n38 There, as here, the conclusion must be the same. Because the risk incurred where the dispatcher cannot locate a 911 wireless caller does not vary with the size of the wireless carrier that picks up the call, the Commission's E911 requirements should apply equally to small and rural wireless carriers and to larger carriers. Where [\*\*25] our rules impose a disproportionate burden on a particular carrier, the carrier may work with the public safety entities involved to mitigate that burden and, if necessary, may seek individual relief from the Commission.

n37 See Cal-One Comments at 9, Dobson Comments at 2-3; *but see* TX-CSEC Reply Comments at 3-4.

n38 See *US Cellular*, 254 F.3d at 88-89. See also *City of Richardson* at paras. 28-29.

19. Finally, we reject Petitioners' contention that the Bureau's decision constitutes a "new [Bureau-created] policy" of assigning costs based on a wireless carrier's ability to recoup those costs from its customers. n39 The Bureau's observation that wireless carriers can recoup their costs from their [\*14797] customers is not, and was not, determinative of the cost allocation question. It did, however, track the Commission's comments in the *E911 Second Memorandum Opinion and Order* that removal of the carrier cost recovery requirement in section 20.18(j) would have no negative impact on carriers because they could recoup their costs from customers through surcharges or increased rates. n40 It also addresses a fundamental difference between wireline [\*\*26] and wireless carrier cost recovery mechanisms that justifies any disparate treatment in allocating E911 costs between carriers and PSAPs.

n39 Petition for Reconsideration at 8-10; *see also* Joint Petitioners' Reply Comments at 7-9.

n40 *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20867, para. 40.

## **B. Procedural Arguments**

20. *APA Notice and Comment Requirement and Delegated Authority.* Because the Bureau's decision is a reasonable interpretation of existing Commission rules, policy and precedent, we reject the Joint Petitioners' arguments that it violated the notice and comment requirement in section 553(b) and (c) of the APA. n41 Since 1994, when the Commission initiated the E911 proceeding, it has sought public comment on a variety of issues germane to the implementation of E911 service for wireless callers and has issued a series of orders and accompanying regulatory amendments in response to those comments. n42 Given the scope and evolving nature of this process, these regulations and orders have necessarily required additional interpretation as the wireless industry moves toward the implementation of E911, and location [\*\*27] technologies are developed or modified in response to the Commission's requirements. As discussed previously, section 20.18 is ambiguous concerning the demarcation point for costs associated with the implementation of Wireless E911. Contrary to Petitioners' assertions, the Bureau's decision did not create new law but, instead, constituted a reasonable interpretation of the existing regulation, in view of the Commission's policy goals

for the implementation of wireless E911. n43 Thus, the Petitioners' [\*14798] citations to *Martin* and other cases, in support of its APA argument, are inapposite. n44

n41 See Petition for Reconsideration at 8-14. See also, e.g., Cal-One Comments at 3-4, Nextel Reply Comments at 2-4. Section 553(b) and (c) of the APA provides, with exceptions not relevant here, that a "general notice of proposed rule making shall be published in the *Federal Register*" and that, "after notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments."

n42 Those issues include the use of a handset as opposed to a network solution in implementing Phase II (see *E911 Third Report and Order*, 14 FCC Rcd at 17391-92, paras. 6-8); call validation and 911 calls from non-service-initialized phones (see *E911 First Report and Order*, 11 FCC Rcd at 18689-99, paras. 24-46; Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22673, paras. 13-14, (1997)(*E911 First Memorandum Opinion and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Report and Order*, 14 FCC Rcd 10954 (1999)(*E911 Second Report and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order*, rel. Apr. 17, 2002); measurement technologies and accuracy requirements for Phase II caller location requirements (see *E911 First Report and Order*, 11 FCC Rcd at 18711-12, paras. 70-72; *E911 Third Report and Order*, 14 FCC Rcd at 17417-23, paras. 66-77), and wireless carrier cost recovery (see *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20852-54, paras. 3-6).

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n43 Petition for Reconsideration at 8-14. In *Martin*, for example, the Supreme Court stated that, "in situations in which 'the meaning of [regulatory] language is not free from doubt,' the reviewing court should give effect to the agency's interpretation so long as it is 'reasonable,' that is, so long as the interpretation 'sensibly conforms to the purpose and wording of the regulations.'" *Martin v. Occupational Safety and Health Rev. Comm'n*, 499 U.S. 144, 151 (1991)(*Martin*) citing *Ehlert v. United States*, 402 U.S. 99, 105 (1971) and *Northern Indiana Pub. Serv. Co. v. Porter County Chapter of Izaak Walton League of America, Inc.*, 423 U.S. 12, 15 (1975). Bracketed language in original. Petitioners' citation to *Caruso*, in which the court held that an "agency cannot adopt vague requirements 'and then give it concrete form only through subsequent less formal interpretations'" is also inapposite. *Caruso v. Blockbuster-Sony Music Entertainment*, 174 F.3d 166, 174-75 (3d Cir. 1999)(*Caruso*). See Petition for Reconsideration at 8 n.30.

n44 See also *Trinity Broadcasting of Florida, Inc. v. Federal Communications Commission*, 211 F.3d 618 (D.C. Cir. 2000), *Cassell and Kelley Communications, Inc. v. Federal Communications Commission*, 154 F.3d 478 (D.C. Cir. 1998).

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21. With respect to Joint Petitioners' related argument on delegated authority, the Commission is unable to reach a majority on whether the Bureau exceeded its delegated authority in this matter. That issue is rendered moot, however, since the Commission is addressing the merits of the Joint Petitioners' substantive claims. n45

n45 See *Beehive Telephone, Inc. v. Bell Operating Cos.*, 12 FCC Rcd. 17930, 17938-39, para. 16, (1997), petition for review dismissed in part and denied in part, *Beehive Telephone Co., Inc. v. FCC*, 179 F.3d 941 (D.C. Cir. 1999).

22. *Other Procedural Issues.* We also reject the Joint Petitioners' argument that the decision is invalid because it fails to address significant carrier comments submitted in response to the *First Public Notice*. n46 First, except for the delegated authority issue, which is now moot, all of the comments cited by the Joint Petitioners have been addressed, either in the underlying *King County Letter*, or in this reconsideration decision. n47 Secondly, this argument is based on case law concerning decisions subject to the APA's notice and comment requirement. However, [\*\*30] as previously indicated, the Bureau's decision was a reasonable interpretation of the Commission's existing regulation. n48 As such, it did not constitute an amendment of the regulation and did not require notice and the opportunity for comment prior to its implementation. The Bureau's decision is subject only to the more general requirement in section 706 of the APA that an agency provide a reasoned basis for its decision to facilitate judicial review thereof. The Bureau's decision complies with this requirement. n49

n46 See Petition for Reconsideration at 4-6; see also CenturyTel Comments at 2, Dobson Comments at 3, Joint Petitioners' Reply Comments at 2-3.

n47 For example, in this order, we address arguments that: (1) King County's request is an impermissible collateral attack and an untimely petition for reconsideration (para. 23); (2) the Bureau's decision contravenes cost-causer principles, state law, and historic practice (para. 17); and (3) the Bureau's decision unreasonably discriminates among wireless and wireline carriers (para. 13-14).

n48 See para. 17 *supra*.

n49 The fact that the Bureau did, in fact, solicit comments on the cost allocation issue, in an attempt to promote a dialogue among the parties, does not alter this result.

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23. Finally, we reject the Petitioners' argument that King County's request should have been dismissed as an untimely request for reconsideration of the Commission's earlier decisions regarding PSAP obligations or as an impermissible collateral attack on those decisions. n50 King County was neither seeking reconsideration of, nor mounting a collateral attack on, earlier Commission decisions regarding a PSAP's E911 obligations under section 20.18. It merely sought clarification of a Commission rule and associated orders that are acknowledged to be ambiguous. Its request was tantamount to a Petition for [\*14799] Clarification. n51 Such petitions are a commonplace of regulatory practice and may be filed whenever a member of the public requires assistance regarding the proper construction of a Commission rule or order.

n50 Petition for Reconsideration at 5 *citing* VoiceStream *Ex Parte Filing* at 2-3. Petitioners' assertion references an earlier argument made by VoiceStream in response to the *First Public Notice*. In its comments, VoiceStream contended that the King County request must be dismissed, "insofar as it seeks a redefinition of the PSAP E911 network to exclude the facilities and database components needed for wireless E911 calls." *See* VoiceStream *Ex Parte Filing* at 2-3. VoiceStream's argument is predicated on a misconstruction of the nature of King County's request.

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n51 *See King County Letter* at 1 n.2.

#### IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

##### A. Regulatory Flexibility Act

24. The Commission is not required by the Regulatory Flexibility Act, 5 *U.S.C.* § 604 to prepare a Regulatory Flexibility Analysis of the possible economic impact of this Order on small entities.

##### B. Paperwork Reduction Act of 1995 Analysis

25. This order does not contain an information collection.

##### C. Ordering Clauses

26. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed jointly by Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. IS DENIED.

Marlene H. Dortch

Secretary

#### CONCUR BY:

COPPS

#### CONCUR:

##### STATEMENT OF COMMISSIONER MICHAEL J. COPPS

RE: Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington, Order on Reconsideration CC Docket No. 94-102).

I agree with the underlying decision of the Wireless Telecommunications Bureau in this matter. However, I believe that the Bureau acted in violation of our delegated authority rules. Because the Commission was not able to reach majority [\*\*33] on whether the Bureau violated our delegated authority rules, that portion of the Order was not adopted. n52 The resulting Order, which holds that the delegated-authority question

is moot, but does not address whether the rule was violated, allows me to support this item.

*n52 In the matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request of King County, Washington; Order on Reconsideration (CC Docket No. 94-102, adopted May 14, 2002) at P21.*

## **APPENDIX:**

### **Appendix A**

#### **Petition:**

Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, Nextel Communications, Inc. (Joint Petitioners)

#### **Comments:**

Cal-One Cellular, LP (Cal-One)  
CenturyTel Wireless, Inc. (CenturyTel)  
Dobson Communications Corporation (Dobson)  
Joint Opposition of NENA, APCO and NASNA as Public Safety Communicators (Joint Commenters)  
Sprint PCS  
Texas 911 Agencies (TX-CSEX)

#### **Reply Comments:**

Joint Petitioners  
Nextel Communications, Inc. (Nextel)  
TX-CSEC

#### **Legal Topics:**

For related research and practice materials, see the following legal topics:  
Administrative Law Agency Adjudication Decisions Stare Decisis Administrative Law Agency Rule-making General Overview Communications Law Telephone Services Wireless Services

May 9, 2001

Marlys R. Davis  
E-911 Program Manager  
King County E-911 Program Office  
Department of Information and Administrative Services  
7300 Perimeter Road South, Room 128  
Seattle, Washington 98108-3848

Re: King County, Washington Request Concerning E911 Phase I Issues

Dear Ms. Davis:

This letter responds to your letter dated May 25, 2000, in which you request assistance in resolving a conflict concerning implementation of Phase I of Enhanced 911 (E911) service in Washington State. Specifically, you inquire as to “whether the funding of network and database components of Phase I service, and the interface of these components to the existing 911 system [is] the responsibility of the wireless carriers or the [Public Safety Answering Points] PSAPs.”<sup>1</sup>

Based on the language of the Commission’s E911 rules and its E911 orders, discussed below, the Wireless Telecommunications Bureau (Bureau) clarifies the question of cost allocations for Phase I implementation in King County, based on the record before us.<sup>2</sup> Specifically, under the Commission’s rule at section 20.18(d) requiring wireless carriers to provide Phase I service, the Bureau clarifies that the proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). Thus, under section 20.18(d) of the Commission’s regulations governing Enhanced 911 Service (E911), wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier’s Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP. PSAPs, on the other hand, must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and

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<sup>1</sup> Letter from Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated May 25, 2000 (King County Letter).

<sup>2</sup> See 47 CFR §§ 0.131(a) and 0.331(a). The Bureau has interpreted this request as an inquiry concerning the Commission’s Phase I requirements in section 20.18, and not a request pursuant to paragraphs seven and 92 of the *E911 Second Memorandum Opinion and Order*, concerning which party has authority to select the particular Phase I implementing technology. See Revision of the Commission’s Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20854, 20886 (paras. 7, 92)(1999) (*E911 Second Memorandum Opinion and Order*).

the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE).

### Background

*The Commission's E911 Second Memorandum Opinion and Order.* The cost-allocation question you have raised derives, in part, from the Commission's decision in the *E911 Second Memorandum Opinion and Order*.<sup>3</sup> There, the Commission decided to eliminate its previous requirement that a carrier cost recovery mechanism be in place before a wireless carrier is obligated to implement E911 services.<sup>4</sup> Following removal of the carrier cost recovery requirement, the prerequisites for a carrier's E911 obligation are: (1) the carrier's receipt of a valid request from a PSAP capable of receiving and utilizing the data elements associated with the service; and (2) the existence of a cost recovery mechanism for recovery of the PSAP's E911 service costs. Accordingly, the Commission's implementing regulation at section 20.18(j) imposes E911 requirements on wireless carriers if the PSAP has requested Phase I services and "is capable of receiving and utilizing the data elements associated with the service."

*Basis for Request.* In the King County Letter, you state that King County and several other counties in Washington State have ordered Phase I service from wireless carriers who offer service within the State. You assert that PSAPs in King County and in the other counties in Washington State are capable of receiving the Phase I information over the existing E911 network, and displaying the information on the existing E911 equipment. Therefore, King County asserts that it has met the requirements in section 20.18(j) for ordering Phase I service and the wireless carriers are obligated to provide that service within six months of the orders.

*Public Notice.* On August 16, 2000, the Bureau issued a *Public Notice* seeking comment on King County's request, including four issues implicated in the inquiry: (1) whether a clear demarcation point exists in the E911 network that distinguishes between carriers' and PSAPs' responsibilities for E911 Phase I implementation; (2) whether that point varies according to the technology employed to provide Phase I services; (3) whether there is a rationale or precedent respecting wireline 911 services that provides guidance in allocating responsibility and costs between wireless carriers and PSAPs; and (4) whether certain costs associated with implementing Phase I technologies should be borne or shared by ILECs.<sup>5</sup>

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<sup>3</sup> *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20866-67 (paras. 38-40).

<sup>4</sup> The Commission found that the carrier cost recovery requirement had been a source of ambiguity and controversy and had impeded the implementation of Phase I. It further found that, since wireless carrier rates are unregulated, there was no need for a government-mandated carrier cost recovery mechanism, noting that carriers are free to recover these costs in their charges to customers, either through their service rates or through specific surcharges on customer bills. Nevertheless, the Commission emphasized that states are free to have a carrier cost recovery mechanism in place if they so choose. *Id.* See also 47 CFR § 20.18(d)(2000).

<sup>5</sup> Public Notice, DA 00-1875, *Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues*, CC Docket No. 94-102, rel. Aug. 16, 2000. With respect to the fourth question, concerning ILECs, we note our continuing concern, based on numerous reports, over the timely provisioning by ILECs of the necessary network components and associated services for Phase I implementation. While we take no action at this point, we will closely monitor this matter to determine whether the Bureau should recommend that the Commission revisit the issue in the near term.

*Comments.* Eighteen parties filed comments in response to the Public Notice; seven parties filed reply comments. A majority of wireless service providers contend that the PSAP is responsible for any system upgrades necessary to deliver Phase I information in a form compatible with the existing 911 network and, thus, that the appropriate demarcation point is the wireless carrier's MSC. PSAPs and other public safety organizations, on the other hand, assert in their comments that carriers must provide Phase I data in a form usable by the PSAP and, thus, that the appropriate demarcation point for allocating responsibilities and associated costs between wireless carriers and PSAPs is the dedicated 911 Selective Router maintained by the ILEC. For those reasons set forth below, the Bureau views section 20.18(d) as requiring wireless carriers to bear all Phase I costs up to the input of the 911 Selective Router and PSAPs to bear all Phase I costs beyond that point.

### Discussion

At the outset, we emphasize that the Commission continues to favor negotiation between the parties as the most efficacious and efficient means for resolving disputes regarding cost allocations for implementing Phase I. Our experience throughout this proceeding reveals that the variety of situations existing in approximately 6,000 PSAPs across the nation, including differences in state laws and regulations governing the provision of 911 services, the configuration of wireless systems, the technical sophistication of existing 911 network components, and existing agreements between carriers and PSAPs, argue against a uniform federal mandate that prevents the relevant stakeholders from reaching other, mutually-acceptable arrangements on how to satisfy the Commission's location accuracy mandates. It was for this reason that the Commission adopted a case-by-case approach in addressing disputes over the locus of authority in selecting the Phase I implementation methodology for a particular jurisdiction.<sup>6</sup> Indeed, the Bureau has spent considerable time in discussions and multiple face-to-face meetings with the parties involved attempting to help them reach agreement. Because they have been unable to resolve this dispute in the period since King County filed its request for assistance almost a year ago, however, the Bureau clarifies the obligations of the parties under section 20.18 as follows.

Section 20.18(d)(1) of the Commission's rules states that wireless carriers must "provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo ANI."<sup>7</sup> This obligation is contingent on the requesting PSAP's being "capable of receiving and utilizing the data elements associated with the [Phase I] service."<sup>8</sup> The Commission, by this rule, has made carriers responsible for *providing* Phase I information to PSAPs.

Thus, an interpretation of section 20.18(d) must account for the presence of the existing E911 Wireline Network,<sup>9</sup> which is maintained by the ILEC and paid for by PSAPs through tariffs. It includes the 911

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<sup>6</sup> See n. 2, *supra*.

<sup>7</sup> The ANI is a caller's 10-digit phone number (including the 3-digit area code). The Pseudo ANI, or p-ANI, is the unique 10-digit number that identifies the cell sector location of the base station handling the call.

<sup>8</sup> See 47 CFR § 20.18(j).

Selective Router, which receives 911 calls from the Central Offices of the various LECs (*e.g.*, the regional ILEC and any number of Competitive Local Exchange Carriers) and forwards the calls to the particular PSAP that serves the caller's area. The caller's phone number is transmitted to the PSAP along with the 911 voice call. The PSAP uses that phone number to obtain various information about the caller from the ALI database, *e.g.*, the caller's name and address, *etc.* The E911 Wireline Network thus consists of: the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP.

When a wireless 911 call is made, the wireless carrier must bring the wireless call, as well as the information about the caller (*i.e.*, the caller's phone number and location) to the E911 Wireline Network for processing. The E911 Wireline Network processes data received from the wireless carrier with the voice call. Thus, in order for wireless carriers to satisfy their obligation under section 20.18(d) to *provide* Phase I information to the PSAP, carriers must deliver that information to the equipment that analyzes and distributes it – *i.e.*, to the input to the 911 Selective Router. We thus agree with parties who believe that the appropriate demarcation point for allocating responsibilities and costs between wireless carriers and PSAPs is the input to the 911 Selective Router.

As compared with the wireline E911 system, there are additional costs for the transmission of wireless Phase I information to the PSAP that are attributable to certain complexities not involved with the simpler operation of transmitting a wireline caller's eight-digit phone number.<sup>10</sup> These complexities derive from the fact that Phase I information (ANI and p-ANI) contains a total of 20 digits, but that neither 911 Selective Routers, the trunks from 911 Selective Routers to PSAPs, nor PSAPs' CPE were initially designed to handle more than eight digits.<sup>11</sup> Various techniques have been developed to enable the provision of Phase I data to the PSAP. These techniques involve enhancements and/or "add-ons" to the existing 911 Wireline Network. The techniques are referred to as: Non-Call Path Associated Signaling (NCAS); Call Path Associated Signaling (CAS); and Hybrid CAS (HCAS). Having determined that the input to the 911 Selective Router marks the point for allocating Phase I costs between the wireless carriers and the PSAPs, we now provide guidance with respect to the various additional/specific responsibilities carriers and PSAPs will be expected to meet in implementing these signaling techniques.<sup>12</sup>

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<sup>9</sup> See, *e.g.*, *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd 20886-87 (paras. 92, 94); Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18710 (para. 66)(1996).

<sup>10</sup> The wireline caller's phone number, in this context, is the caller's standard seven-digit phone number plus an additional digit to indicate the caller's area code.

<sup>11</sup> These components generally support Centralized Automated Message Accounting signaling, which is an in-band signaling protocol that is designed to transport up to eight digits.

<sup>12</sup> The following discussion of Phase I data transmission techniques contains information provided in Sprint PCS's Comments filed on Sept. 18, 2000 and in the "Enhanced 911 Funding Study for Wireless Telecommunications in Washington State" dated Dec. 31, 1998, and filed on Mar. 30, 1999, by the Washington State Department of Revenue.

NCAS requires the use of a Service Control Point (SCP), which is a database that receives a caller's 20-digit ANI and p-ANI from the carrier's MSC and returns to the MSC a seven or eight-digit routing key.<sup>13</sup> The routing key is then sent to the 911 Selective Router, and thence to the appropriate PSAP via a Centralized Automated Message Accounting (CAMA) trunk. At the same time, the routing key and the caller's ANI and p-ANI are forwarded to the ALI database. The PSAP retrieves the caller's ANI and p-ANI information (*i.e.*, the caller's phone number and cell sector location) from the ALI database by requesting the information that is associated with the routing key it receives from the 911 Selective Router.<sup>14</sup> NCAS thus requires a trunk from the wireless carrier's MSC to the SCP, the SCP itself, and a trunk from the SCP to the ALI database. If a wireless carrier employs NCAS, in addition to being responsible for the trunk from its MSC to the 911 Selective Router, the carrier must implement these additional components in order to meet its obligation to provide Phase I information to the PSAP.

With CAS, the 20 digits of Phase I data are transmitted over the trunk from the wireless carrier's MSC to the 911 Selective Router. These trunks must therefore be capable of effectively transporting this number of digits.<sup>15</sup> The 911 Selective Router contains a database that links the caller's p-ANI to a particular PSAP. Once the appropriate PSAP has been identified, the 911 Selective Router forwards the 20 digits, along with the voice call, to that PSAP. An additional requirement of CAS is that the trunk from the 911 Selective Router to the PSAP, the 911 Selective Router itself, and the PSAP's CPE, must each be capable of handling 20 digits. If CAS is employed, the wireless carrier will be responsible for providing trunks that are capable of handling the 20 digits of Phase I information from its MSC to the 911 Selective Router. The PSAP will be responsible for any required upgrades to the 911 Selective Router itself, the trunk from the 911 Selective Router to the PSAP, and the PSAP CPE.

HCAS contains certain elements found in CAS and NCAS. It employs a Protocol Converter, or Wireless Integration Device (WID), which is located at the 911 Selective Router. This device receives the caller's ANI and p-ANI from the carrier's MSC and converts the 10-digit p-ANI into a seven or eight-digit routing key, which is sent to the 911 Selective Router and then transported to the PSAP on the CAMA trunk that connects the 911 Selective Router to the PSAP. At the same time, the caller's ANI and p-ANI are transmitted from the WID to the ALI database. The routing key performs the same function as the NCAS routing key (*i.e.*, enabling the retrieval of the caller's Phase I information from the ALI database). In order to implement HCAS, the WID and the trunk from the WID to the ALI database must be added to the E911 Wireline Network, and the trunk from the carrier's MSC to the WID must be capable of handling 20 digits. Thus, if HCAS is employed, the carrier will be responsible for the cost of the WID, the trunk from the WID to the ALI database, and the trunk from the carrier's MSC to the WID.

While the costs of installing, maintaining, and upgrading components necessary to deliver Phase I

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<sup>13</sup> The routing key is a seven or eight-digit number that is uniquely associated with a particular 911 call, and is used by the 911 Selective Router to determine the appropriate PSAP to which to send the call.

<sup>14</sup> The ALI database provides to the PSAP, *inter alia*, the caller's phone number and cell sector location, and the name of the caller's wireless carrier.

<sup>15</sup> The 20 digits may be transported on the trunk from the MSC to the 911 Selective Router using either Signaling System 7 or Feature Group D signaling.

information to the 911 Selective Router are not insubstantial, we believe that these costs properly repose with the wireless carrier rather than with the PSAP. These Phase I costs are directly attributable to the unique nature of the service provided, *i.e.*, the mobility of the wireless caller, which generates costs associated with identifying the caller's phone number and location. A major reason consumers give for subscribing to wireless services is security and safety, which includes access to 911 services. Thus, it does not seem inappropriate to make the carriers responsible for those expenditures necessary to deliver location information in a usable form to the E911 Network so as to ensure that their customers have access to enhanced 911 services. Moreover, as telecommunications carriers whose rates are not regulated, wireless carriers have the option of covering these Phase I costs through their charges to customers, either through their prices for service or through surcharges on customer bills.

We note that the decision we reach today does not impose the entire cost burden for Phase I implementation on wireless carriers, but places a share of these costs on PSAPs. For example, under the Commission's rules, PSAPs are responsible for any upgrades necessary to the 911 Selective Router, the trunking from the 911 Selective Router to the PSAP, and the trunking from the PSAP to the ALI database, as well as upgrades to PSAP hardware and software necessary to make use of the location information. In any event, whether the wireless carrier or the PSAP initially bears a particular set of Phase I costs, wireless customers will, in all likelihood, eventually bear the bulk of the overall costs of implementing Phase I, since in most jurisdictions, the PSAPs' costs of implementing wireless E911 are recovered through a tax or surcharge imposed on wireless subscribers.

The decision we reach here addresses the issue of where the responsibilities lie between the wireless carrier and the PSAP in terms of the costs of implementing E911 Phase I service, under the facts and circumstances of this case and the record before us. We do not address the issue of which party – PSAP or carrier – may choose the transmission method and technology to be used to provide Phase I. We note that, rather than establishing a rule, the Commission has encouraged PSAPs and carriers to reach agreement on an appropriate method for transmitting E911 information to the PSAP, given the circumstances of each situation. If disputes occur, however, the Commission has identified certain factors, among others, that Commission staff should consider in addressing the issues; for example, the additional costs of the two methodologies to the PSAP and the wireless carrier; and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

We encourage the parties in King County and elsewhere to work cooperatively to reach agreement on the technology to be used in each case and note the concerns we would have should any carrier unilaterally select a technology that could not be used by the PSAPs in that jurisdiction or that could not be used to meet its upcoming Phase II obligations, in order to shift costs from itself to the PSAP. We expect carriers to negotiate in good faith with the PSAPs concerning the appropriate Phase I technology, based on the totality of the circumstances before them, including what best serves the PSAP and their own subscribers' interest in having timely access to E911 services.

We trust that we have fully answered your questions and that the guidance offered herein will be helpful. Should you have any questions with respect to any portion of this letter, please do not hesitate to contact the Bureau's Policy Division at (202) 418-1310.

Sincerely,

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Thomas J. Sugrue  
Chief, Wireless Telecommunications Bureau

cc: AT&T Wireless Services, Inc.  
Nextel Communications, Inc.  
Qwest Wireless, LLC  
Sprint PCS  
Verizon Wireless  
VoiceStream Wireless Corporation

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 Cincinnati Bell Telephone Company        )

Case No. 08-537-TP-ARB

**APPLICATION FOR REHEARING OF  
CINCINNATI BELL TELEPHONE COMPANY LLC**

Cincinnati Bell Telephone Company LLC (“CBT”) hereby requests rehearing of the Commission’s October 8, 2008 Arbitration Award in this proceeding with respect to Issue 6. The Commission’s ruling is unlawful and unreasonable because: 1) it erroneously stated that, when CBT interconnects with Intrado to deliver 911 traffic to Intrado’s selective router, such interconnection would be pursuant to § 251(a) of the Telecommunications Act, not § 251(c); and 2) in the alternative, if such interconnection would be pursuant to § 251(a) of the Act, the Commission has no authority to establish rates for such an interconnection agreement through arbitration.

Respectfully submitted,

/s/ Douglas E. Hart  
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Attorney for Cincinnati Bell Telephone  
Company LLC

## INTRODUCTION

Issue 6 involved Intrado's attempt to charge CBT for interconnection trunk ports on Intrado's selective router. In its ruling on Issue 6 in this arbitration, the Commission determined that Intrado had the right to charge CBT for interconnection trunk ports pursuant to § 251(a) of the Telecommunications Act:

Additionally, the Commission has previously determined that interconnection for the delivery of an ILEC customer's 911 call to a PSAP served by Intrado falls under the general requirement to interconnect imposed on carriers by Section 251(a), rather than the ILEC-specific requirements of Section 251(c).<sup>6</sup> Under Section 251(a) of the Act, the terms, conditions and pricing of trunk side ports (the only services whose prices are in dispute) are open to negotiation between the parties. However, because CBT has not proposed rates that would be applicable to its interconnection trunk side ports under Section 251(a), the only rates appearing in the record are those of Intrado. Because there is nothing in the record to indicate that these rates are unreasonable and CBT has indicated a desire for reciprocity with regard to charging for trunk side ports, the Commission finds that Intrado's rates for trunk side ports are appropriate for both parties to the extent that the interconnection trunk ports are purchased under Section 251(a). Therefore, the parties are instructed to charge each other the same rate for each trunk side port purchased under Section 251(a), based on the rate proposed by Intrado.

<sup>6</sup> See, *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(h) of the Telecommunications Act of 1996*, Case No. 07-1216-TP-ARB (Arbitration Award issued September 24, 2008).

Arbitration Award, p. 22. CBT disagrees that interconnection between CBT and Intrado for the purpose of CBT delivering 911 traffic to Intrado is subject to § 251(a) of the Act. However, if it is, then the Commission acted beyond its statutory authority in setting rates for a § 251(a) agreement through arbitration. If rates, terms and conditions are subject to negotiations under § 251(a), the Commission erred by imposing a rate on CBT through arbitration.

## ARGUMENT

CLEC<sup>1</sup> to ILEC interconnection agreements are governed by § 251(c) of the Telecommunications Act of 1996.<sup>2</sup> Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC, regardless of who is providing service to whom. It is not the case (as the Commission suggests) that the competitor requests the exchange of traffic one way and the ILEC then requests the exchange of traffic the other way. The parties in this case have already agreed in § 3.2.2 of the Interconnection Agreement that the same POI that Intrado establishes on CBT's network may be used by CBT to send traffic to Intrado's network.<sup>3</sup> There is no need for a second interconnection arrangement or a different POI.

A POI is for the *mutual* exchange of traffic,<sup>4</sup> not a one-way arrangement, yet the Commission appears to envision that Intrado can pick an interconnection point for traffic it delivers to CBT, but that there would be a separate interconnection point where CBT would have to deliver its traffic to Intrado. The Act and the FCC's rules do not contemplate such separate interconnection points over the ILEC's objection. CBT is entitled to use the same POI that Intrado establishes within CBT's network as the location where CBT would deliver its traffic to Intrado. This is not only the law, it is what the parties have already actually agreed to do in § 3.2.2 of the interconnection agreement. Intrado can receive all 911 calls that are destined to its PSAP customers at the same POI at which it delivers traffic to CBT. Thus, there is no need for

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<sup>1</sup> Intrado is not even certified as a CLEC. As a competitive emergency telecommunications services carrier ("CETSC"), it cannot have any greater rights than a CLEC.

<sup>2</sup> 47 U.S.C. § 251(c).

<sup>3</sup> "CBT may use the same Interconnection Point(s) designated by INTRADO COMM to interconnect with INTRADO COMM's network."

<sup>4</sup> "Interconnection is the linking of two networks for the *mutual exchange* of traffic. 47 C.F.R. § 51.5 (definition of "Interconnection") (emphasis added); *First Report and Order*, ¶ 176.

CBT to seek interconnection with Intrado under § 251(a) or to establish a different POI on Intrado's network.

The Commission correctly determined that, *if* Intrado obtains a certification that would allow it to provide dial-tone services, interconnection with CBT for purposes of delivering 911 traffic to CBT would be under the auspices of Section 251(c). However, in deciding Issue 6 the Commission referred to its decision in the Embarq arbitration<sup>5</sup> that when Intrado is the 911/E-911 service provider, the incumbent must request interconnection with Intrado in order to terminate its traffic to a PSAP served by Intrado.<sup>6</sup> The Commission then determined that Intrado could charge CBT for interconnection trunk ports under § 251(a) of the Act when CBT interconnects to Intrado's network. CBT disagrees with that analysis because such an interconnection would still be between CBT as an ILEC and Intrado as a CESTC. After all, Intrado requested interconnection with CBT and pursued this arbitration in order for Intrado to *receive* 911 traffic. Intrado currently has no CLEC certificate to permit it to originate traffic and it is not presently even pursuing one. Even Intrado acknowledges that interconnection with CBT for the purpose of receiving traffic is subject to § 251(c), not § 251(a).<sup>7</sup>

The Commission has confirmed that, when interconnecting under § 251(c)(2), the requesting carrier's point of interconnection must be on the *ILEC's* existing network and that an ILEC has no duty to build out facilities to reach another carrier's network. *Arbitration Award* at

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<sup>5</sup> Case No. 07-1216-TP-ARB.

<sup>6</sup> In its decisions on Issues 2, 3 and 4, the Commission also seemed to conclude that CBT would have to seek interconnection with Intrado when Intrado is the 911/E-911 provider to a PSAP, that CBT was responsible for getting its end users' 911 calls to the POI on Intrado's network, and that § 251(c) would not apply to that arrangement. While CBT has not sought rehearing of Issues 2, 3 and 4 because the Commission made the correct decision on the contract language that was actually in dispute between the parties, CBT does disagree with the Commission's conclusions regarding any duty of CBT to seek interconnection to Intrado.

<sup>7</sup> See Intrado's Application for Rehearing in the Embarq arbitration, Case No. 07-1216-TP-ARB.

9. However, in Issue 6, the Commission stated that Intrado's trunk port would be the location of the point of interconnection on Intrado's network. *Arbitration Award* at 22. But the only place Intrado could obtain interconnection under Section 251(c)(2), which is all it has requested, is at a point in CBT's existing network – which obviously does not include Intrado's selective router. The assumption that Cincinnati Bell would be required to request interconnection on Intrado's network under § 251(a) is erroneous and should be reversed for several reasons.

*First*, neither Intrado nor CBT identified interconnection under § 251(a) as an “open issue” for arbitration. Section 252(b), which governs requests for compulsory arbitration with ILECs, requires the Commission to “limit its consideration” to the open issues raised for arbitration by the parties themselves, and directs the Commission to “resolve each issue” only “as required to implement subsection (c).” 47 U.S.C. § 252(b)(4)(A) & (C). With respect to rates, § 252(c)(2) requires compliance with the pricing standards in § 252(d), which applies only to § 251(c)(2), not § 251(a). Thus, any discussion of pricing under § 251(a) is outside the scope of this case and the Commission's delegated authority under § 252(b)(4).

*Second*, CBT has not requested interconnection to Intrado at all, under § 251(a) or otherwise. Nor does § 251(a) impose any duty on CBT to seek interconnection to Intrado. A § 252(b) arbitration can be initiated *only* by a formal request by one of the parties to the negotiations. 47 U.S.C. § 252(b)(1). Intrado's Petition was filed pursuant to § 251(c) and does not seek arbitration of *any* issue arising under § 251(a). Neither does CBT.

*Third*, a request for interconnection under § 251(a) would not be subject to the compulsory arbitration provisions of § 252(b). The only provision that requires ILECs to negotiate interconnection agreements with competitors under § 252(a) is § 251(c)(1). And the only negotiation requirement imposed on ILECs under § 251(c)(1) is the duty to negotiate terms

and conditions for the duties imposed on ILECs under §§ 251(b) and (c). There is no mention of § 251(a). A state commission cannot compel arbitration of an interconnection agreement under § 251(a) of the Act. By definition, § 252(b) arbitrations can only involve a request for interconnection to an ILEC,<sup>8</sup> and the only “requirements of § 251” that specifically apply to ILECs are in §§ 251(b) and (c).

*Fourth*, using § 251(a) to force CBT to establish a POI on Intrado’s network would conflict with the 1996 Act. Sections 251(a), (b), and (c) of the Act impose an escalating series of requirements, with only § 251(b) and (c) specifically applying to ILECs and requiring ILECs to negotiate or arbitrate interconnection agreements. 47 U.S.C. § 251(c)(1). Section 251(c) and the FCC’s rules represent the extent to which Congress and the FCC have allowed competitors to compel access to an ILEC’s network. Ohio law specifically precludes the Commission from imposing any interconnection requirements that exceed or are inconsistent with or prohibited by federal law.<sup>9</sup> Therefore, Ohio law precludes the Commission from overriding the requirements of § 251(c). Under § 251(c), Congress and the FCC refused to require ILECs to build out to or establish POIs on their competitors’ networks. It would turn § 251 on its head to find that competitors have *greater* rights under § 251(a) than they do under § 251(c)(2).

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<sup>8</sup> 47 U.S.C. §§ 252(a)(1) and (b)(1) refer exclusively to requests made *to* an ILEC for interconnection *to* the ILEC’s network.

<sup>9</sup> Revised Code § 4905.041(A).

## CONCLUSION

Section 251(c) requires an ILEC to enter into an agreement with a new entrant to enable the competitor's customers to place calls to *and receive* calls from the ILEC's subscribers. By declining to require CBT to establish two POIs on Intrado's network, or to deliver its traffic to an Intrado selective router located outside CBT's service territory, the Commission appropriately followed § 251(c), which requires that the point of interconnection be on the ILEC's network. In ruling that it is not § 251(c) interconnection when Intrado is the 911/E911 service provider, the Commission has created an unreasonable distinction that has no legal basis. But, if the Commission believes that § 251(a) controls the terms of CBT's delivery of traffic to Intrado, then establishing a rate that CBT must pay for interconnection trunk ports on Intrado's selective router through arbitration is an error of law because § 252 arbitration does not apply to § 251(a) agreements. The Commission has no jurisdiction to arbitrate the terms of a § 251(a) agreement. The Commission should grant rehearing and reverse its decision on Issue 6 purporting to set rates for interconnection trunk ports pursuant to § 251(a) of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 7th day of November 2008, I electronically served the foregoing  
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**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 Red 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 Telecom, 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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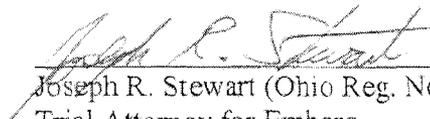
<sup>17</sup> As set forth in the Arbitration Award at page 37, these criteria are: (1) Embarq deploys this functionality in its own network, (2) Intrado agrees to compensate Embarq for ALI transfer functionality, or (3) the parties come to a mutual agreement on ALI transferability between PSAPs.

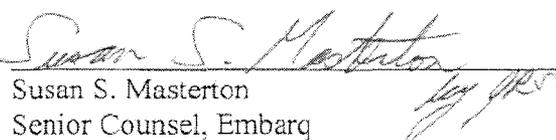
“functionality” that Embarq provides to itself, let alone any evidence concerning the ALI transfer “functionality” that Intrado contemplates.<sup>18</sup> Further, the technical aspects of such transfer capability might change depending on geography, PSAP capability or request, existing facilities, or 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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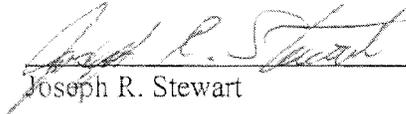
  
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<sup>18</sup> Indeed, the Award (at page 37) states that “the Commission finds that the record is not clear regarding the extent to which Embarq provides such functionality today.”

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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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 07-1216-TP-ARB

Summary: 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 electronically filed by Sonya I Summers on behalf of United Telephone Company of Ohio d/b/a Embarq and United Telephone Company of Indiana d/b/a Embarq

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 Cincinnati Bell Telephone Company

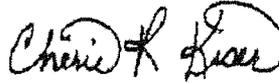
Case No. 08-537-TP-ARB

APPLICATION FOR REHEARING OF INTRADO COMMUNICATIONS INC.

Pursuant to §§ 4903.10 of the Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Intrado Communications Inc. ("Intrado Comm"), by its attorneys, respectfully seeks rehearing of the Commission's October 8, 2008 Arbitration Award as unreasonable and unlawful. The reasons for rehearing are explained in the attached Memorandum in Support.

Respectfully submitted,

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Dated: November 7, 2008

Its Attorneys

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

Intrado Communications Inc. (“Intrado Comm”) appreciates that the *CBT Arbitration Award* issued by the Public Utilities Commission of Ohio (“Commission”) on October 8, 2008 will provide Intrado Comm with the opportunity to offer Ohio counties and public safety answering points (“PSAPs”) a competitive alternative for their 911/E911 services in some manner. The *CBT Arbitration Award*, however, does limit Intrado Comm’s ability to compete because it: (1) fails to find that interconnection between a competitor like Intrado Comm and an incumbent local exchange carrier (“ILEC”) like Cincinnati Bell Telephone Company (“CBT”) is subject to Section 251(c) of the Communications Act of 1934, as amended (“Act”);<sup>1</sup> and (2) fails to adopt Intrado Comm’s proposed interconnection arrangements to ensure Intrado Comm receives interconnection from CBT that is at least equal in quality to that which CBT provides to itself and other parties interconnecting to its own network.<sup>2</sup> Intrado Comm therefore respectfully requests that the Commission grant rehearing on these issues. In addition, Intrado Comm respectfully requests that the Commission clarify the *CBT Arbitration Award* and confirm that Intrado Comm is entitled to obtain unbundled network elements (“UNEs”) pursuant to Section 251(c) to provide service to its PSAP customers.

**I. THE COMMISSION ERRED IN CONCLUDING THAT SECTION 251(C) DOES NOT APPLY WHEN INTRADO COMM IS THE 911/E911 SERVICE PROVIDER**

The Commission concluded in the *Certification Order* that Intrado Comm is entitled to Section 251(c) rights with respect to its 911/E911 service because it is a telecommunications

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<sup>1</sup> 47 U.S.C. § 251(c).

<sup>2</sup> 47 U.S.C. § 251(c)(2)(C).

carrier providing telephone exchange service.<sup>3</sup> This determination was absolutely correct. Section 251(c) provides that all ILECs have the duty to interconnect with a competitor upon request, so long as that competitor is providing “telephone exchange service.”<sup>4</sup> The Commission properly determined that Intrado Comm is a telecommunications carrier and is providing telephone exchange service (the only prerequisites the Act requires) and thus, pursuant to the plain terms of Section 251(c) is entitled to interconnection with an ILEC (like CBT) upon request. This determination is grounded in the law, and was reaffirmed by the Commission in both the *CBT Arbitration Award*<sup>5</sup> and the *Embarq Arbitration Award*.<sup>6</sup>

Given the Commission’s clear ruling that Intrado Comm is a telecommunications carrier providing telephone exchange service and is entitled to Section 251(c) rights, the analysis of this issue should have ended there and the Commission should have proceeded to evaluate the terms of the Parties’ proposed interconnection agreement in order to ensure that Intrado Comm would receive interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection,” as required by Section 251(c).<sup>7</sup> However, the Commission inexplicably and

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<sup>3</sup> *Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*. Finding and Order at Finding 7 (“*Certification Order*”); Order on Rehearing (Apr. 2, 2008) (“*Certification Rehearing Order*”).

<sup>4</sup> 47 U.S.C. § 251(c).

<sup>5</sup> *CBT Arbitration Award* at 6.

<sup>6</sup> Case No. 07-1216-TP-ARB. *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*. Arbitration Award at 13 (Sept. 24, 2008) (“*Embarq Arbitration Award*”).

<sup>7</sup> 47 U.S.C. § 251(c)(2)(C).

unreasonably reversed course, departing from the clear guidance of the *Certification Order* and the unambiguous terms of the Act.<sup>8</sup>

In the *CBT Arbitration Award*, the Commission looked to its findings in the *Embarq Arbitration Award* to determine Section 251(c) did not apply to Intrado Comm's interconnection arrangements with CBT when Intrado Comm was the designated 911/E911 service provider.<sup>9</sup> This determination was an error of law. The Commission erred in subjecting Intrado Comm to an inequitable and unreasonable double standard — the determination that Section 251(c) governs Intrado Comm's interconnection with CBT in certain situations, but not in others.<sup>10</sup> In ruling that Intrado Comm is not entitled to Section 251(c) interconnection where it is the 911/E911 service provider, the Commission has created an unreasonable distinction that has no basis in law and impermissibly strips Intrado Comm of the rights it is entitled to by virtue of its status as a competitive telecommunications carrier providing telephone exchange service. The *CBT Arbitration Award* thus runs afoul of the plain meaning of the Act and disregards the fundamental policy goal of the Act: to promote competition in the marketplace and provide competitive carriers a reasonable opportunity to access a market historically controlled by the ILECs.<sup>11</sup>

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<sup>8</sup> The Commission's disregard for its earlier findings runs counter to the Ohio courts' instruction that the Commission must "respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law" (*Cleveland Elect. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St. 2d 403, 431 (1975)) and the guidance of the U.S. Court of Appeals for the Sixth Circuit that "[i]t is axiomatic that an administrative agency must conform with its own precedents or explain its departure with them" (*Ohio Fast Freight, Inc. v. U.S.*, 574 F.2d 316, 319 (6<sup>th</sup> Cir. 1978)).

<sup>9</sup> *CBT Arbitration Award* at 8.

<sup>10</sup> *CBT Arbitration Award* at 8-9.

<sup>11</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶¶ 16, 18 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC, so long as that competitor is a “telecommunications carrier” and is providing “telephone exchange service” (which the Commission has already found to be true of Intrado Comm).<sup>12</sup> This is the case regardless of who is providing service to whom or on whose network the connection is to take place. Once interconnection is requested by a competitor, the ILEC is obligated to negotiate an agreement for the mutual exchange of traffic; it is not the case (as the Commission suggests) that the competitor requests the exchange of traffic one way and the ILEC then requests the exchange of traffic the other way. The Act does not leave the Commission with the discretion to adjust its requirements or determine that the ILEC is only required to comply with its 251(c) obligations in certain circumstances. The Commission does not provide any legal or public policy reason to justify this novel interpretation of Section 251(c), the interpretation runs afoul of the plain language and purpose of the Act, and it should be reversed on rehearing.

The interconnection at issue when Intrado Comm is the 911/E911 service provider is between an ILEC (CBT) and a competitor who is a telecommunications carrier providing telephone exchange service (Intrado Comm). Section 251(c) applies *whenever* a competitor like Intrado Comm seeks interconnection from an ILEC like CBT, even when Intrado Comm is the designated 911/E911 service provider. The Act and the rulings of the Federal Communications Commission (“FCC”) are clear that all ILEC-competitor interconnection is governed by Section 251(c), not Section 251(a).<sup>13</sup> Specifically, the FCC has stated that ILECs are required by Section 251(c)(2) to allow competitors to interconnect while interconnection arrangements between

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<sup>12</sup> 47 U.S.C. § 251(c)(2).

<sup>13</sup> *Local Competition Order* ¶ 997.

“non-incumbent carriers” are governed by Section 251(a).<sup>14</sup> This statement reaffirmed the FCC’s earlier findings that the interconnection obligations of ILECs when dealing with other ILECs are governed by Section 251(a).<sup>15</sup> ILEC-to-competitor relationships are governed by Section 251(c).<sup>16</sup>

In enacting Section 251, the FCC was cognizant of the historical reality that ILECs exercised complete dominion over the telecommunications industry and the associated marketplace and thus had no incentive to enter into business arrangements with competitors on fair and commercially reasonable terms.<sup>17</sup> In order to foster competition — which is the grounding principle of the Act — Congress and the FCC specifically designed Section 251 and the implementing rules to address the unequal bargaining power manifest in negotiations between ILECs and competitors.<sup>18</sup> The goal of Section 251(c) is to provide all competitors access to the public switched telephone network (“PSTN”) on equal terms, to equalize bargaining power, and to ensure that new entrants can compete with incumbent providers.<sup>19</sup> The FCC specifically recognized that the “commercial negotiation” of Section 251(a) interconnection

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<sup>14</sup> *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, et al.*, 17 FCC Rcd 27039, n.200 (2002) (“*Virginia Arbitration Order*”).

<sup>15</sup> *Local Competition Order* ¶ 220.

<sup>16</sup> *Local Competition Order* ¶ 997.

<sup>17</sup> *Local Competition Order* ¶ 10.

<sup>18</sup> *Local Competition Order* ¶ 15 (the “statute addresses this problem [of the incumbent’s “superior bargaining power”] by creating an arbitration proceeding in which the new entrant may assert certain rights”); *see also id.* ¶ 134 (noting that because the new entrant has the objective of obtaining services and access to facilities from the incumbent and thus “has little to offer the incumbent in a negotiation,” the Act creates an arbitration process to equalize this bargaining power).

<sup>19</sup> S. Rep. No. 104-23, at 20 (1995).

would not be feasible given the ILECs' "incentives and superior bargaining power."<sup>20</sup>

Commercial negotiations would not provide competitors with the interconnection necessary for competitors to "compete directly with the [ILEC] for its customers and its control of the local market."<sup>21</sup>

To that end, Section 251(c) requires an ILEC to enter into an agreement with a new entrant on just, reasonable, and nondiscriminatory terms to enable the competitor's customers to place calls to and receive calls from the ILEC's subscribers.<sup>22</sup> Section 251(a) — which the Commission applies to Intrado Comm's request for interconnection in certain scenarios — provides no such protection.<sup>23</sup> The reason is obvious — Section 251(a) is designed to address situations where carriers with equal bargaining power (two incumbents or two non-incumbents) seek to interconnect their networks. Because parties with equal bargaining power do not require the protections provided by Section 251(c), Section 251(a) does not require them. In short, the key to determining whether interconnection should be governed by 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 (like Intrado Comm and CBT) seek interconnection, Section 251(c) applies.

By ruling that Intrado Comm is limited to Section 251(a) interconnection in certain scenarios, the Commission has impermissibly and unreasonably restricted the rights and protections Intrado Comm is entitled to as a competitive telecommunications carrier providing

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<sup>20</sup> *Local Competition Order* ¶ 15.

<sup>21</sup> *Local Competition Order* ¶ 55.

<sup>22</sup> 47 U.S.C. § 251(c)(2)(D).

<sup>23</sup> 47 U.S.C. § 251(a).

telephone exchange service. There is no question that the “interconnection obligations under Section 251(a) differ from the obligations under Section 251(c).”<sup>24</sup> For example, the FCC determined that Section 251(c) specifically imposes obligations on ILECs to interconnect with competitors, but that this type of direct interconnection is not required under Section 251(a).<sup>25</sup>

Moreover, interconnection under Section 251(a) would not provide Intrado Comm with interconnection on just, reasonable, and nondiscriminatory terms, or access to UNEs and collocation arrangements. Intrado Comm is entitled to Section 251(c) rights by virtue of its status as a competitive telecommunications carrier providing telephone exchange service, and without these rights, it will face barriers that could make it impossible for it to compete in the marketplace. Intrado Comm does not have equal bargaining power with CBT and thus should not be limited to only the rights provided by Section 251(a).<sup>26</sup> This is precisely the result the Act was designed to avoid and the Commission’s ruling — in promoting its novel determination that Intrado Comm’s entitlement to Section 251(c) is dependent not on its status as a competitive telecommunications carrier providing telephone exchange service, but on the fact specific details of the requested interconnection — is unreasonable and contrary to law.

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<sup>24</sup> *Local Competition Order* ¶ 997.

<sup>25</sup> *Local Competition Order* ¶ 997.

<sup>26</sup> By stripping Intrado Comm of the rights and protections provided by Section 251(c), the Commission is impermissibly treating Intrado Comm like an ILEC with equal bargaining power with CBT. The ability to treat a non-incumbent carrier as an ILEC is strictly limited to the situations outlined in Section 251(h). The Commission has never found — nor could it — that Intrado Comm satisfies the conditions set forth in Section 251(h). Treating Intrado Comm as an ILEC is thus contrary to the requirements of the Act. Likewise the Commission cannot find CBT is entitled to CLEC treatment without a formal finding pursuant to Section 251(h) that it is no longer an ILEC.

**II. THE COMMISSION ERRED WHEN IT FOUND INTRADO COMM'S INTERCONNECTION PROPOSAL WAS NOT SUPPORTED BY SECTION 251(c)(2)(C)**

In the *Embarq Arbitration Award*, the Commission determined that it could not reach the issue of whether Intrado Comm's proposed interconnection arrangements were supported by the equal in quality requirements of Section 251(c)(2)(C) given the Commission's decision that interconnection between Intrado Comm and Embarq was governed by Section 251(a) when Intrado Comm is the designated 911/E911 service provider.<sup>27</sup> In the *CBT Arbitration Award*, by contrast, the Commission undertakes an analysis of Intrado Comm's interconnection proposal based on 251(c)(2)(C) even though it made a determination that the Parties' interconnection relationship was governed by 251(a), not 251(c).<sup>28</sup> The Commission's findings in this respect should therefore be reversed as a matter of law because they are inconsistent with its findings in the *Embarq Arbitration Award*.

Moreover, the Commission's findings should be reversed as a matter of fact because they are not based on the record developed in this proceeding. There is no record evidence, nor does the Commission point to any, demonstrating that Intrado Comm's proposal for dedicated trunking to geographically diverse points on Intrado Comm's network is "superior" to the interconnection that CBT provides to itself and demands of other carriers.<sup>29</sup> The interconnection requested by Intrado Comm is precisely the quality of interconnectivity CBT provides itself when it is functioning as the designated 911/E911 provider.<sup>30</sup>

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<sup>27</sup> *Embarq Arbitration Award* at 33. As discussed in Section I., this determination is an error of law and should be reversed.

<sup>28</sup> *CBT Arbitration Award* at 9.

<sup>29</sup> *CBT Arbitration Award* at 9.

<sup>30</sup> Volume II Transcript at 63, lines 17-23 (Fite) ("We have trunking from each one of CBT's end offices

Intrado Comm is entitled, pursuant to Section 251(c), to interconnectivity “that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.”<sup>31</sup> The FCC’s rules echo this requirement and state that the equal in quality requirement is not limited to the quality perceived by end users because creating such a limitation may allow ILECs to discriminate against competitors in a manner imperceptible to end users while still providing the ILEC with advantages in the marketplace.<sup>32</sup> The Commission’s carrier-to-carrier rules likewise require CBT to provide interconnection to Intrado Comm “with quality at least equal to that provided by [CBT] to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection.”<sup>33</sup> Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs (like CBT) to provide competitors (like Intrado Comm) interconnection that is at least equal in quality to the interconnection the ILEC provides itself for routing 911 and E911 calls to PSAPs.<sup>34</sup>

CBT uses dedicated, diversely routed trunking within its own network to ensure its end user customers dialing 911 reach CBT’s PSAP customers.<sup>35</sup> CBT also imposes similar

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going diverse routes to both of the selective routers. . . . All of CBT switches connect to both of them.”); *see also* Intrado Comm Petition for Arbitration, Attachment 4 at Section 3.8.2(a) (“CBT will also provide CLEC with trunking from the CBT Central Office to the CBT Control Office(s) with sufficient capacity to route CLEC’s originating E9-1-1 calls over Service Lines to the designated primary PSAP or to designated alternate locations. Such trunking will be provided at the rates set forth in Pricing Schedule.”); *id.* at Section 3.8.2(b) (“CLEC will provide itself, or lease from a third person, the necessary trunking to route originating E9-1-1 traffic from CLEC’s Switches to the CBT Control Office(s).”).

<sup>31</sup> 47 U.S.C. § 251(c)(2)(C).

<sup>32</sup> 47 C.F.R. § 51.305(a)(3); *Local Competition Order* ¶ 224.

<sup>33</sup> Rule 4901:1-7-06(A)(5), O.A.C.

<sup>34</sup> *Virginia Arbitration Order* ¶ 652.

<sup>35</sup> CBT Hearing Exhibit No. 9, Pre-Filed Testimony of Robert P. Fite on behalf of Cincinnati Bell Telephone Company LLC at 3, line 7 (“Each end office switch is directly connected to a central tandem switch. A portion of the tandem switch is dedicated to use as a 911 selective router.”).

requirements on competitors when it is the designated 911/E911 service provider by requiring competitors to use dedicated trunking to route their end users' 911 calls destined for CBT's PSAP customers to CBT's selective router.<sup>36</sup> The interconnection CBT provides itself and imposes on competitors connecting to its network to terminate 911 calls to CBT's PSAP customers is no different from what Intrado Comm seeks when it is the 911/E911 service provider.

The type of interconnection Intrado Comm seeks from CBT is to treat CBT with parity in the manner in which the ILECs have treated themselves and other carriers when the ILEC is the 911/E911 service provider. Neither the Commission nor CBT has demonstrated why the interconnection arrangements CBT provides itself and imposes on other competitors when CBT is the designated 911/E911 service provider are not equally applicable when Intrado Comm is the designated 911/E911 service provider. Accordingly, the Commission's findings should be reversed.

### **III. THE COMMISSION SHOULD CLARIFY THAT INTRADO COMM IS ENTITLED TO UNBUNDLED NETWORK ELEMENTS PURSUANT TO SECTION 251(C) TO SERVE ITS PSAP CUSTOMERS**

In the *Embarq Arbitration Award*, the Commission determined that Intrado Comm was entitled to purchase UNE loops under Section 251(c) for the delivery of traffic to PSAPs subject to the limitations contained in the FCC's rules.<sup>37</sup> In this proceeding, CBT's witness

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<sup>36</sup> Intrado Comm Petition for Arbitration, Attachment 4 at Section 3.8.2(a) ("CBT will also provide CLEC with trunking from the CBT Central Office to the CBT Control Office(s) with sufficient capacity to route CLEC's originating E9-1-1 calls over Service Lines to the designated primary PSAP or to designated alternate locations. Such trunking will be provided at the rates set forth in Pricing Schedule."); *id.* at Section 3.8.2(b) ("CLEC will provide itself, or lease from a third person, the necessary trunking to route originating E9-1-1 traffic from CLEC's Switches to the CBT Control Office(s).").

<sup>37</sup> *Embarq Arbitration Award* at 48.

acknowledged that Intrado Comm would be able to purchase local loops from CBT at UNE rates under Intrado Comm's existing certification status.<sup>38</sup>

In the *CBT Arbitration Award*, however, the Commission appears to indicate that Intrado Comm is only entitled to UNEs pursuant to Section 251(c) when Intrado Comm seeks to expand its certification status to offer dialtone services to end user customers other than PSAPs.<sup>39</sup> Intrado Comm therefore requests that the Commission clarify that Intrado Comm is entitled to obtain UNEs from CBT pursuant to Section 251(c) under its current certification status to provide services to Intrado Comm's PSAP customers. This clarification would be consistent with both the *Embarq Arbitration Award* as well as the Commission's *Certification Order* in which it found that Intrado Comm was entitled to all rights under Section 251(c).<sup>40</sup>

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<sup>38</sup> Volume II Transcript at 60, lines 3-15 (Peddicord).

<sup>39</sup> *CBT Arbitration Award* at 22.

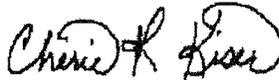
<sup>40</sup> *Certification Order* at Finding 7.

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing, and vacate and clarify the *CBT Arbitration Award* to the extent requested herein.

Respectfully submitted,

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Dated: November 7, 2008

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CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 7th day of November 2008, the foregoing Application for Rehearing of Intrado Communications Inc. was served on the following via electronic mail.



---

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This foregoing document was electronically filed with the Public Utilities

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Case No(s). 08-0537-TP-ARB

Summary: App for Rehearing Intrado Communications Inc. Application for Rehearing electronically filed by Angela F Collins on behalf of Intrado Communications Inc.

CERTIFICATE OF SERVICE

I, Joseph J. Starsick, Jr., Counsel for the aforesaid Verizon companies do hereby certify that I have served the foregoing **Verizon West Virginia Inc.'s Reply To Intrado's Exceptions** upon the party of record, this 1<sup>st</sup> day of December, 2008, addressed as follows:

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