

ATTACHMENT 2

VERIZON'S STATEMENT OF RELEVANT AUTHORITY

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ATTACHMENT 2 – VERIZON'S STATEMENT OF RELEVANT AUTHORITY

In this proceeding, Intrado seeks arbitration of interconnection agreements with Embarq and Verizon in Virginia under Section 251(c) of the Communications Act of 1934, as amended (“Act”). One of the threshold issues raised in this consolidated arbitration – and that was the basis for Intrado’s preemption request – is whether Intrado is entitled to Section 251(c) interconnection and thus to petition for arbitration in order to obtain such interconnection.

Intrado is not seeking Section 251(c) interconnection in order to offer competitive local exchange telephone service or exchange access. Rather, Intrado seeks Section 251(c) interconnection in order to offer alternative 911 services to public safety answering points (“PSAPs”).¹ Intrado will not serve any end user customers that make 911 or other calls to Verizon’s end user customers; Intrado instead wants to establish Section 251(c) interconnection arrangements solely for the purpose of receiving 911 calls from Verizon’s end users and then delivering those 911 calls to PSAPs that purchase Intrado’s 911 services.

As explained more fully below, Section 251(c) interconnection is available only “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c). The 911 services Intrado intends to provide are neither “telephone exchange services,” nor “exchange access,” as those terms are defined in the Act. Intrado therefore has no right to Section 251(c) interconnection under the Act. Intrado can obtain the interconnection services that will enable it to receive 911 calls from Verizon’s end users through negotiation of a commercial agreement with Verizon or through Verizon’s existing tariffs. There is therefore no reason for the Bureau to proceed with this arbitration.

¹ “911” includes enhanced 911 (“E911” or “E-911”), as well.

If the Bureau nonetheless decides that Intrado is entitled to Section 251(c) interconnection for these services and proceeds with this arbitration (which it should not), the Bureau should reject Intrado's specific interconnection proposals, because Section 251(c) does not require Verizon to provide the unprecedented interconnection arrangements Intrado seeks. Verizon has already offered to Intrado the same Section 251(c) interconnection arrangements that Verizon routinely provides to CLECs. Specifically, Verizon has offered to interconnect with Intrado at a technically feasible point "within Verizon's network" or to establish a "meet point" interconnection arrangement with Intrado.² Either of these forms of interconnection would enable Intrado to provide its 911 services to PSAPs. Intrado, however, has rejected these Section 251(c) interconnection arrangements offered by Verizon.

Intrado instead proposes that Verizon interconnect at multiple, as-yet-unidentified points *within Intrado's network*, haul all traffic to those points at Verizon's expense (again, traffic will flow only one way – from Verizon to Intrado), and implement and pay for some new kind of call-sorting mechanism in place of Verizon's selective routers. But Section 251(c) does not permit Intrado to force any of these extreme measures upon Verizon. Section 251(c) only requires an ILEC to allow a requesting carrier to obtain "interconnection with the local exchange carrier's network . . . at any technically feasible point within the [incumbent] carrier's network." 47 U.S.C. § 251(c)(2). The Commission's rule implementing this provision, Rule 51.305, likewise confirms that the ILEC must provide interconnection with its network "[a]t any

² The Commission has held that "[i]n a meet point arrangement, the 'point' of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on 'the local exchange carrier's network' (e.g., main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ¶ 553 (1996) ("*Local Competition Order*") (subsequent history and footnotes omitted).

technically feasible point *within the incumbent LEC's network.*" 47 C.F.R. § 51.305(a) (emphasis supplied). Intrado's proposal for Verizon to interconnect within Intrado's own network, therefore, violates the plain language of the Act and the Commission's rules.

In addition, Intrado's proposal for Verizon to establish redundant direct trunks to get 911 traffic from Verizon's end offices to the points of interconnection ("POIs") Intrado designates within its own network undermines the fundamental principle that the POI defines each party's respective responsibility for network facilities. In a Section 251(c) interconnection arrangement, each party is solely responsible for its network facilities and arrangements on its side of the POI. The Act does not give Intrado the right to prevent Verizon from using its existing network facilities and to require Verizon to develop and deploy an expensive, untested new call-sorting mechanism to replace the industry-standard selective routing system.

Intrado's unlawful interconnection proposals are the basis for Intrado's positions and related language on many of the issues in this arbitration. The rejection of Intrado's unlawful interconnection proposals will automatically lead to rejection of Intrado's positions on many other issues.

Threshold Issue: Section 251(c) Interconnection

Intrado seeks to provide 911 services to public safety answering points ("PSAPs"). These services are not "telephone exchange service" or "exchange access," as defined in 47 U.S.C. Sections 153(47) and 153(16), and therefore do not fall within the types of services for which carriers may request interconnection from incumbents under Section 251(c). In addition, Intrado is not entitled to arbitration under Section 251(c) merely because it is a "competitor."

Because Intrado is not entitled to the Section 251(c) interconnection it seeks, the Bureau should dismiss this arbitration petition.

Contrary to Intrado's assertion, Verizon has not agreed that Intrado has a right to Section 251(c) interconnection for its 911 services,³ and the issue of Intrado's right to Section 251(c) interconnection is necessarily an issue in this arbitration because that issue was the very basis for Intrado's request for the Commission to preempt the Virginia Commission's jurisdiction over Intrado's arbitration with Verizon in Virginia; and because it has been squarely presented in Intrado's arbitration with Embarq, now consolidated with the Verizon/Intrado arbitration.

Indeed, this fact was the basis of Intrado's petition asking the FCC to preempt the jurisdiction of the Virginia State Corporation Commission over Intrado's arbitration with Verizon. Intrado pointed out that the Virginia Commission had deferred to the FCC Intrado's arbitrations with both Verizon and Embarq because they raised the same threshold issue of Intrado's entitlement to Section 251(c) interconnection. Intrado observed that the Virginia Commission "explicitly determined that '[n]othing distinguishes the jurisdictional nature of [the Verizon] arbitration petition from the Embarq matter'" so the FCC "'should be able to apply a similar determination for these two parties'" on the threshold issue of Intrado's right to arbitrate a Section 251(c) interconnection agreement.⁴ The Bureau agreed with Intrado that its

³ Petition of Intrado Comm. of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc., WC Docket 08-185, at 15 (filed Dec. 15, 2008) ("Intrado/Verizon Petition").

⁴ Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon), WC Docket No. 08-185, at 4 (filed July 18, 2008).

preemption petition with respect to the Verizon arbitration “involve[d] virtually identical issues” as those addressed in its earlier *Intrado/Embarq Preemption Order*.⁵ After having obtained preemption from the FCC to address the issue of Intrado's entitlement to Section 251(c) interconnection, Intrado cannot credibly claim that that issue is irrelevant to its arbitration with Verizon.

Moreover, regardless of any differences in how the issues for arbitration were framed in Intrado's respective arbitrations with Embarq and Verizon, the 911 services for which Intrado seeks interconnection with both incumbents are exactly the same. Therefore, if the Bureau determines that Intrado is not entitled to Section 251(c) interconnection for its 911 services, that ruling must apply to Intrado's arbitrations with both Embarq and Verizon. The same law must be applied to the same services to reach the same result in both cases.

Intrado's 911 Services Do Not Meet The Requirements For Section 251(c) Interconnection, Because Intrado Does Not And Will Not Provide Telephone Exchange Service or Exchange Access. As described in Intrado's Petition for Arbitration, Intrado intends to offer only 911 services only to PSAPs. Intrado will not serve any end user customers who place 911 calls, and the PSAPs that are Intrado's only customers will not be able to use Intrado's 911 services to call Verizon's customers. Intrado's one-way 911 service merely allows its PSAP customers to receive calls originated by other carriers' end user customers. Intrado incorrectly claims that this 911 service entitles it to Section 251(c) interconnection.

⁵ *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon), WC Docket No. 08-185, DA 08-2307, Memorandum Opinion and Order, ¶ 4 (rel. Oct. 16, 2008).*

Intrado is wrong for several reasons. Under Section 251(c)(2)(A), a carrier may request interconnection with an incumbent's network only "for the transmission and routing of telephone exchange service and exchange access."⁶ Intrado has not claimed that it is providing any exchange access and, in fact, admitted in Florida that it will not do so.⁷ Nor is there any plausible argument that Intrado is providing exchange access. Exchange access is defined at 47 U.S.C. § 153(16) and means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Telephone toll service is defined at 47 U.S.C. § 153(48) and means "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." The 911 services Intrado plans to offer are not exchange access services because they do not provide any carrier access to any exchange services or facilities that would permit them to originate and terminate toll calls and 911 calls are not toll calls because no separate charge applies to 911 calls.

Therefore, the question of Intrado's entitlement to Section 251(c) interconnection depends on whether it will provide telephone exchange service. But the 911 service Intrado plans to provide does not meet the Act's definition of telephone exchange service.

Telephone exchange service is defined at 47 U.S.C. § 153(47):

⁶ 47 U.S.C. § 251. *See also, Local Competition Order*, ¶ 191 (a carrier "that requests interconnection" that is "not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2)").

⁷ *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, Final Order at 2 (Dec. 3, 2008). ("Fla. AT&T/Intrado Order") (attached as Exhibit A).

The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.⁸

As this definition makes clear, a “telephone exchange service” gives subscribers within an exchange or system of exchanges in the same exchange area the ability to communicate with one another in return for an exchange service charge. The Commission has explained that “intercommunication” “refers to a service that ‘permits a *community of interconnected customers to make calls to one another* over a switched network.’”⁹ The Commission considers the ability to “interconnect *all* subscribers within a geographic area” essential to defining telephone exchange service.¹⁰

The fundamental requirement of intercommunication among subscribers within an exchange or its equivalent applies under both subparts A and B of the definition of telephone exchange service. The Commission has explicitly “reject[ed] the argument that subparagraph

⁸ 47 U.S.C. § 153(47) (emphasis added).

⁹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, ¶ 23 (1999) (“*Advanced Services Order*”).

¹⁰ *Id.* ¶ 20 (emphasis added). *See also Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd. 2736, ¶ 17 (2001) (“*DA Call Completion Order*”) (“[t]o come within the definition of ‘telephone exchange service’ . . . a service must permit ‘intercommunication’ *among subscribers within the equivalent of a local exchange area*. . . . We believe that the call-completion service offered by many competing DA providers constitutes intercommunications because it permits *a community of interconnected customers to make calls to one another* in the manner prescribed by the statute”) (emphasis added); *Id.* ¶ 21 (“Call completion offered by a DA provider . . . ‘allows a local caller at his or her request to connect to another local telephone subscriber’ . . . thereby permitting a *community of interconnected customers to make calls to one another*”) (emphasis added).

(B) eliminates the requirement that telephone exchange service permit 'intercommunication' among subscribers within a local exchange area."¹¹ "We conclude that a service falls within the scope of section 3(47)(B) if it permits intercommunication within the equivalent of a local exchange area and is covered by the exchange service charge."¹²

Intrado's 911 service fails to meet the statutory definition of "telephone exchange service" because it does not permit intercommunication within any local exchange area and it is not covered by any exchange service charge. Indeed, as Intrado admitted in West Virginia, its 911 services cannot be defined in terms of the exchange concept that is the foundation of Section 153(47): "911/E-911 services are not based on the concept of an 'exchange.' Rather, 911 calls are routed based on the calling number, which is linked to a particular geographic area or political jurisdiction, not a defined exchange area."¹³ Intrado's Petition confirms that its only customers will be "public safety answering (PSAPs) and other public safety agencies," which are based on political subdivisions, not exchanges.¹⁴

Nor will Intrado's service allow its subscribers to "intercommunicate" (Section 153(47)(A)) or "originate and terminate a telecommunications service" (Section 153(47)(B)).

Intrado's 911 service is designed as a one-way service that merely allows its PSAP customers to

¹¹ *Advanced Services Order*, ¶ 30 ("[a]s prior Commission precedent indicates, a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area").

¹² *Id.* ¶ 29.

¹³ *Intrado Comm. Inc. and Verizon West Virginia Inc., Petition for Arbitration Filed Pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.1.5.5*, Case No. 08-0298-T-PC, Intrado Comm. Inc. Exceptions to Arb. Award and Brief in Support, at 5-6 (filed Nov. 21 2008), citing *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245 n. 32 (2005) ("*VoIP E911 Order*").

¹⁴ *See, e.g.*, Intrado/Embarq Petition at 2.

receive calls originated by customers of other carriers. It will not allow Intrado's PSAP customers to connect to *any* subscribers in the local exchange without using the local exchange service provided by another carrier. Because an Intrado PSAP customer cannot place any calls or receive non-911 calls using Intrado's service, it cannot use Intrado's service to intercommunicate with all (or any) others throughout the exchange. Such intercommunication could occur only by using the local exchange service the PSAP buys from a *different* carrier.

Because Intrado's 911 service lacks the critical characteristics that would make it "telephone exchange service" under Section 153(47), Intrado has no right to seek Section 251(c) interconnection for that service.

Intrado's treatment of Issue 1 in its Petition and its Reply to Embarq's Response to its Petition¹⁵ does not include any explicit discussion of how its Section 251(c) interconnection request fits within the governing law. Intrado does not even mention Sections 251(c)(2)(A) or 153(47). However, presumably because Intrado knows its Section 251(c)(2) interconnection request depends upon whether it seeks to provide telephone exchange service, Intrado suggests that, despite its open recognition that its 911 service is *not* exchange-based, this service still constitutes "providing telephone exchange service." Intrado/Embarq Petition, Attachment 1 at 6.

Intrado makes three arguments in this regard, all of which ignore the relevant law, and none of which is convincing.

First, without explaining how its 911 services fit the statutory definition, Intrado argues that its 911 services "have the same qualities as other telephone exchange service recognized by the Commission." Intrado/Embarq Petition, Attachment 1 at 6. Intrado's discussion here

¹⁵ Intrado Reply to Embarq Response to Intrado's Petition for Arbitration, WC Docket 08-33 (filed Sept. 19, 2008).

focuses on Commission observations that telephone exchange service is not necessarily limited to traditional voice-based telephony, but may also include “non-traditional” technologies such as DSL-based services. Intrado/Embarq Petition, Attachment 1 at 6-7. This discussion is irrelevant to the inquiry into whether Intrado’s 911 service is a “telephone exchange service” that merits Section 251(c) interconnection. The relevant inquiry under Sections 251(c)(2)(A) and 153(47) is not whether Intrado will provide traditional voice telephony, but whether its service will offer exchange-based connectivity among subscribers. Indeed, the Commission quotes Intrado uses in its discussion only emphasize that “telephone exchange service” must involve “‘intercommunication’ among subscribers within a local exchange area”¹⁶; “‘communicating information within a local area’”;¹⁷ “‘communication among subscribers within an exchange or within a connected system of exchanges’”;¹⁸ and service “‘comparable’ to the provision of local loops by a traditional local telephone exchange carrier”¹⁹ that “‘permits a community of interconnected customers to make calls to one another.’”²⁰

Intrado makes no attempt to explain how its 911 service fits the exchange-based intercommunication criterion for telephone exchange service that is reflected in each of the Commission passages Intrado cites. Its only argument appears to be that its 911 service is not traditional telephone service, so it must be telephone exchange service. That argument is a *non sequitur*; it deserves no serious consideration.

¹⁶ Intrado/Embarq Petition, Attachment 1 at 6, quoting *Advanced Services Order*, ¶ 30.

¹⁷ Intrado/Embarq Petition, Attachment 1 at 6, quoting *Advanced Services Order*, ¶ 17.

¹⁸ Intrado/Embarq Petition, Attachment 1 at 7, quoting *Advanced Services Order*, ¶ 20.

¹⁹ Intrado/Embarq Petition, Attachment 1 at 7, quoting *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 54 (1998).

²⁰ Intrado/Embarq Petition, Attachment 1 at 7, quoting *DA Call Completion Order*, ¶ 17.

Intrado's second, and equally frivolous, argument is that its 911 service must be telephone exchange service because Embarq classifies its own 911 services as such. Verizon is not familiar with Embarq's 911 tariffs, so Verizon will not speculate as to how those tariffs might define Embarq's 911 service or telephone exchange service. But Verizon does know that both Embarq and Verizon provide actual telephone exchange service, as defined in the Act, and neither is claiming Section 251(c)(2) interconnection rights for just 911 services. Other companies' tariffs have nothing to do with the question of whether Intrado may seek Section 251(c) interconnection for its 911 services.

Third, Intrado argues that it is providing telephone exchange service, because the interconnection arrangements it seeks "are for the mutual exchange of traffic." Intrado/Embarq Petition, Attachment 1 at 8, *citing* 47 C.F.R. § 51.5. But mutual exchange of traffic (whatever Intrado means by that term) is not an element in the statutory definition of telephone exchange service, so it has nothing to do with whether Intrado's 911 service meets that definition. Intrado seems to be mixing up the concept of mutual exchange of traffic with that of intercommunications among subscribers – recognizing, without saying so, that such intercommunication is an essential element of telephone exchange service under Section 153(47). As discussed above, Intrado will not provide any service that allows exchange-based intercommunication among subscribers.

Although Intrado admits that "911 trunks are generally one-way trunks" and that "these trunks are engineered as one-way" from the network of the subscriber making an emergency call to Intrado (Intrado/Embarq Petition, Attachment 1 at 8-9), it, nevertheless, tries to bring its 911 service within the definition of telephone exchange service by claiming that the PSAP is "capable of originating a call in a conferencing capacity." Intrado/Embarq Petition, Attachment

1 at 8. In this regard, Intrado argues that “once a 911 call is delivered over the one-way trunks to the PSAP, the PSAP may then ‘hookflash’ to obtain dial tone to originate a bridged call to a third-party” over a different trunk. Intrado/Embarq Petition, Attachment 1 at 8. Intrado analogizes its 911 service to the directory assistance call completion the Commission found to be telephone exchange service in its *DA Call Completion Order*. Intrado/Embarq Petition Attachment 1 at 9-10.

Contrary to Intrado's novel theory, a PSAP operator's ability to bridge in a third party does not transmute Intrado's 911 service into a genuine telephone exchange service allowing end user customers to make calls to and receive calls from one another. In Intrado's bridge scenario, the 911 caller, not the PSAP, would be originating the call; the PSAP, not Intrado's switch or other facilities, would be connecting the emergency responder with the 911 caller; and the dial-tone the PSAP obtains for the outbound bridged call would not be on a line Intrado provides, but on local exchange service provided by another carrier. As the Florida Commission concluded in dismissing Intrado's requests for arbitration of Section 251(c) interconnection with Embarq and AT&T, “Intrado Comm's proposed services do not meet the definition of ‘telephone exchange service.’ The Intelligent Emergency Network does not offer a PSAP the ability to call back a 911/E911 user, and administrative lines not offered by Intrado Comm would be required to place such a call.”²¹

Moreover, Intrado's 911 service, even in the bridged call scenario it posits, has none of the characteristics that prompted this Commission to classify some directory assistance call completion services as telephone exchange service within the meaning of Section 153(47). Unlike the competing directory assistance providers in the *DA Call Completion Order*, Intrado

²¹ Fla. AT&T/*Intrado Order* at 5.

would not be completing the call to the third party through Intrado's own or resold switching and transmission equipment; it would not charge the 911 caller to complete his call; and the 911 call would not necessarily begin and end within a local calling area. *See DA Call Completion Order*, ¶¶ 17-22.

Because Intrado's 911 service is not telephone exchange service, Intrado is not entitled to compel arbitration of a Section 251(c) interconnection agreement for that service.

Intrado Is Not Entitled to Section 251(c) Interconnection Just Because It Is a "Competitor." Intrado makes the bald claim that "[i]nterconnection between a CLEC and an ILEC for the purpose of providing competitive 911/E911 services to PSAP customers is governed by 251(c) of the Act." Intrado/Embarq Petition, Attachment 1 at 10. Intrado cites nothing to back up this assertion, other than the Commission's stated expectation, in its *VoIP E911 Order*, that incumbents will "provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act." Intrado/Embarq Petition, Attachment 1 at 10, *quoting VoIP E911 Order*, ¶ 38.

Intrado, of course, disregards the Commission's explicit recognition in the quoted passage that all interconnections are not Section 251(c) interconnections, but may be Section 251(a) interconnections. In any event, Intrado itself recognizes that the quote is irrelevant to its arbitration request here, because it "was focused on ensuring providers would have interconnection to complete *their customers'* 911 calls to PSAPs." Petition, Attachment 1 at 10 (emphasis added). Indeed, the Commission has made clear that carriers may only "obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating

from their customers residing in the same telephone exchange.”²² As discussed above, Intrado is not seeking interconnection to terminate calls from its own customers; it is seeking interconnection to carry other carriers' customers' calls. Intrado will have no customers except for PSAPs that will not make calls and Intrado, as a practical matter, is not seeking interconnection to the incumbents' 911 facilities, the situation contemplated in the *VoIP E911 Order*. Intrado is, instead, trying to force Verizon and Embarq to interconnect with Intrado's 911 facilities.

While it may be true, as Intrado contends, that “[t]he Act does not limit a competitor's right to seek 251(c) interconnection for certain kinds of telephone exchange services,” that does not help Intrado's case, because Intrado will not be providing *any kind* of telephone exchange service. Intrado/Embarq Petition, Attachment 1 at 10. The Bureau cannot disregard the explicit constraints on ILECs' duties to provide Section 251(c) interconnection and conclude, as Intrado urges, that Intrado is entitled to Section 251(c) interconnection for any purpose just because it is a “competitor.” Intrado/Embarq Reply at 12. Only competitors that provide “telephone exchange service and exchange access” are entitled to Section 251(c) interconnection. Because Intrado will provide no such services, it has no right to arbitration of a Section 251(c) interconnection agreement.

Issue 1: Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?

The Act and the FCC's implementing regulations require Intrado to interconnect with Verizon at a technically feasible POI on Verizon's network. Section 251(c), under which Intrado

²² *Local Competition Order*, ¶ 190 (emphasis added).

seeks interconnection, states that each incumbent local exchange carrier has the duty to allow a requesting carrier to obtain “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). The Commission’s rule implementing this provision, Rule 51.305, likewise makes clear that the incumbent LEC must provide a requesting carrier with interconnection “[a]t any technically feasible point within the incumbent LEC’s network” 47 C.F.R. § 51.305.

Intrado proposes that Verizon build its network out and interconnect at “a minimum of two geographically diverse POIs” that Intrado will unilaterally designate *within Intrado’s own network*. Intrado/Verizon Petition, Attachment 1 at 11. Intrado’s proposal is contrary to the legal requirement noted above for the POI(s) to be within Verizon’s network. As the West Virginia Arbitrator found, “this issue is quite simple to decide,” because “[t]he law is clear and unequivocal” that Intrado must interconnect within Verizon’s network.²³ Verizon has no obligation to interconnect to Intrado’s network, let alone to any number of POIs Intrado designates anywhere in Intrado’s network.

Although Intrado recognizes and even quotes the Act and the Commission’s rule requiring the POI to be “within the incumbent LEC’s network” (Intrado/Verizon Petition, Attachment 1 at 5 n.11), it contends that “911 traffic is different from other traffic and requires that it be handled differently from the traditional single POI arrangement used by competitors for the exchange of POTS traffic.” Intrado/Verizon Petition, Attachment 1 at 6. Intrado is wrong. The arrangement under which the ILEC and CLEC exchange traffic at a POI on the ILEC’s network is “traditional” for a reason – that is, because it is required under federal law. Intrado

²³ *Intrado Comm., Inc. and Verizon West Virginia Inc., Petition for Arbitration Filed Pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Case No. 08-0298-T-PC, Arbitration Award at 12-13 (Nov. 14, 2008) (“*W.V. Award*”) (attached as Exhibit G), affirmed by Commission Order at 3 (“*W.V. Order*”) (Dec. 16, 2008) (attached as Exhibit H).

cites no authority that would permit the Commission to deviate from this “traditional,” lawful POI arrangement, because there is none. As the West Virginia Arbitrator correctly found, “Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection.” *W.V. Award* at 13, affirmed by *W.V. Order* at 3.

Instead of relying on any relevant law, Intrado claims that it is only asking for “the same method of interconnection Verizon provides to itself and requires of other carriers seeking access to Verizon PSAP customers.” Intrado/Verizon Petition, Attachment 1 at 6. Intrado’s argument that it is asking for the same kind of arrangements Verizon requires of other carriers is based on the notion that because Verizon requires CLECs to bring their traffic to a POI within Verizon’s network, it is only fair to require Verizon to bring its traffic to a POI within Intrado’s network. This *policy* argument again ignores the *law*, which states that the POI must be within the ILEC’s network, so that is why CLECs exchange their traffic and Verizon traffic at the POI within Verizon’s network.

Intrado also argues that its proposal “results in the most efficient and effective network architecture and provides the highest degree of reliability for the provision of 911 services.” Intrado/Verizon Petition, Attachment 1 at 6. Leaving aside the fact that Intrado’s proposal would undermine, rather than promote network reliability, Intrado’s *policy* arguments are irrelevant because they cannot override the *law* requiring the POI(s) to be within Verizon’s network. This is not a proceeding to decide what the best 911 network for Virginia might be; that kind of proceeding would have to involve all interested state agencies and carriers, and this is not the proper forum for such decisions. To the extent Intrado is entitled to request Section 251(c) interconnection in a Section 252(b) arbitration (which it is not), that arbitration is governed by

the specific interconnection requirements in the Act and the Commission's rules applicable to Section 251(c) interconnection.

Issue 2: Whether the Parties should implement inter-selective router trunking and what terms and conditions should govern the exchange of 911/E-911 calls between the Parties?

Verizon agrees with Intrado that inter-selective router trunking should be established. A 911 call may be directed to the wrong PSAP and the PSAP that received the call may wish to transfer the call to the correct PSAP. Inter-selective router trunking would facilitate such transfers. However, Intrado's inter-selective router trunking proposals are not lawful or appropriate for a Section 251(c) interconnection agreement.

First, call transfer routing capability between PSAPs does not involve interconnection with the public switched telephone network or the provision of telephone exchange services or exchange access. Intrado therefore has no right to interconnection for that purpose under Section 251(c). *See Ohio Intrado/AT&T Order* at 36; *Ohio Intrado/Embarq Order* at 8, 36. Any such interconnection arrangements should be addressed in a separate commercial agreement.

Second, Intrado's inter-selective router trunking proposal is unlawful because it would force Verizon to deliver 911 calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP at POIs within Intrado's network. As Verizon explained in response to Issue 1, Verizon cannot lawfully be forced to interconnect at POIs within Intrado's network. Section 251(c) requires that the POI for inter-selective router trunking be a POI within Verizon's network.

Intrado's inter-selective router trunking proposal is also unlawful because it would impose upon PSAPs specific interoperability provisions without their consent. A Section 251(c)

interconnection agreement between Intrado and Verizon is limited to matters between these two parties and does not bind third parties. The Bureau has previously declined to adopt language for a Section 251(c) interconnection agreement that would directly affect third parties. In *Petition of Cavalier Telephone LLC 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 Arbitration*, WC Docket No. 02-359, 18 FCC Rcd 25887 ¶ 142 (2003) (“*Cavalier Arbitration Order*”), the Bureau found that “the process contemplated by Cavalier’s proposed language would affect the interests of numerous entities not parties to this Agreement” and that “[t]hese parties may refuse to embrace a unified process, resulting in Verizon’s inability to implement the process advocated by Cavalier even if we were to adopt Cavalier’s proposed language.” *Id.*

To the extent Intrado is proposing that PSAPs have the same arrangements that they do today to transfer calls between one ILEC-served PSAP and another, that is not a matter for a Section 251(c) agreement between Verizon and Intrado. Where PSAPs have agreed to transfer calls between themselves, Verizon will work with Intrado to establish arrangements for these transfers. But the 251(c) interconnection agreement between Intrado and Verizon cannot purport to control the conduct of third parties or the services that can be sold to them.

Issue 3: Whether the forecasting provisions should be reciprocal.

Intrado proposes that Verizon provide forecasts of the number of trunks Intrado would need to carry 911 calls from Verizon’s end user customers to the PSAPs that purchase Intrado’s 911 services. Intrado, not Verizon, will be in the best position to undertake forecasting of the number of trunks necessary for traffic flowing from Verizon to Intrado. These trunking needs

will depend on Intrado's success in the market, which is something Verizon cannot predict, and Intrado will be able to track the volume of traffic passing through its network to the PSAP. In addition, to the extent Intrado signs up PSAPs as customers, those PSAPs will have the best knowledge of the volume of all calls (not just Verizon's) from Verizon's serving area to the PSAP. As the West Virginia Commission found, Intrado's "PSAP customers will be known to and will have a business relationship with Intrado, but not with Verizon," so "Intrado will be better positioned than Verizon to compile the data Intrado seeks." *W.V. Order* at 4.

Issue 4: What terms and conditions should govern how the Parties will initiate interconnection?

This issue is related to Issue 1. As explained in connection with Issue 1, Section 251(c) requires that interconnection occur within the ILEC's network. Verizon's proposed language correctly recognizes that interconnection will occur on Verizon's network, and that certain steps need to be taken to initiate service at technically feasible points on Verizon's network where the Parties are not already interconnected.

Intrado's proposed language is unlawful because it assumes that Intrado may require as many POIs within its network as it wishes and that Verizon will provide Intrado information about those interconnection arrangements; and, further, that there will be a need, each time Intrado signs up a new PSAP customer, for Verizon to establish new direct trunks from Verizon's end offices to POIs within Intrado's network. Because Intrado's proposed language is based on its erroneous interpretation of Section 251(c), it must be rejected. *See W.V. Award* at 19 ("[f]or all of the reasons set out in Issue No. [1], it is equally appropriate to reject Intrado's arguments and language on Issue [4]").

Issue 5: How should the Parties route 911/E-911 calls to each other?

This issue, again, is related to Issue 1. When Verizon interconnects with a CLEC under Section 251(c), Verizon is responsible for transporting traffic originated by Verizon's end users to the technically feasible POI on Verizon's network, where it is handed off to the CLEC for transport and termination to the CLEC's end users. Verizon manages the network facilities on its side of the POI necessary to carry a Verizon end user's call to the POI, and the CLEC manages the network facilities on its side of the POI to transport calls to its end user. Consistent with this arrangement, a 911 call from a Verizon end user would be routed to Verizon's selective router and then sent to the POI on Verizon's network, where Intrado assumes responsibility for getting that call to its PSAP customer.

Intrado proposal is unlawful because it seeks to control how Verizon will route Verizon's end users' 911 calls through Verizon's own network on Verizon's side of the POI. Intrado's proposal would require Verizon to buy or build a minimum of two additional direct trunks from its end offices in areas where Intrado is the designated 911 service provider to an unspecified number of POIs somewhere within Intrado's network.

Intrado does not, and cannot, cite any law to support its unprecedented proposal. The Ohio Commission rejected Intrado's direct trunking proposal twice in Intrado's recent arbitrations with Embarq and Cincinnati Bell Telephone. *Ohio Intrado/Embarq Order* at 33; *Ohio Intrado/CBT Order* at 14-15.

The West Virginia Arbitrator did so, as well, concluding that Intrado's arguments for its network architecture were "ludicrous on their face" and "unsupported by law or reason." *W.V. Award* at 13, affirmed *W.V. Order* at 3. The West Virginia Arbitrator found that "[w]ith the

point of interconnection established on Verizon's network, it is not Intrado's business how Verizon routes the 911 and E911 calls made by its end users on its network to its selective routers. Verizon is entitled to engineer its system on its side of the point of interconnection in the manner it deems to be the most efficient and secure." *Id.* at 20. In affirming the West Virginia Arbitrator's award, the West Virginia Commission found that "the arbitrator properly determined that Verizon may organize its call delivery to the POI as it sees fit and properly rejected the Intrado demand for dedicated trunk lines from every end office to the Intrado network." *W.V. Order* at 3.

The Florida Public Service Commission, in dismissing Intrado's arbitration petitions there, emphasized that Intrado's proposal would unfairly require ILECs to "pay for Intrado Comm establishing its 911/E911 service." *Fla. Intrado/Embarq Order* at 6; *Fla. Intrado/AT&T Order* at 7.

Even if Intrado were entitled to the kind of extreme and expensive "interconnection" arrangements it seeks (and it is not), the Commission has made clear that Section 252(d)(1) of the Act would require Intrado to bear the cost of such special interconnection. As the Commission explained in the *Local Competition Order*, "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."²⁴

Issue 6: Whether 911 Attachment Section 1.1.1 should include reciprocal language describing both parties' 911/E-911 facilities.

²⁴ *Local Competition Order* ¶ 199.

Contrary to Intrado's misleading statement of the parties' dispute with respect to Issue 6 (Intrado/Verizon Petition, Attachment 1 at 22-23), Verizon does not refuse to list Verizon's 911 network components in the interconnection agreement. Rather, Verizon opposes Intrado's language inaccurately describing those components. Intrado's language with respect to Verizon's "Tandem/Selective Router(s)" is deliberately vague as to the function of these routers – which Verizon's language makes clear is to route 911 calls to PSAPs – in order to advance Intrado's objective of forcing Verizon to bypass its own 911 Tandem/Selective Routers. As discussed under Issue 2, that is not appropriate under the Commission's regulations implementing Section 251(c). In addition, Intrado's language does not reflect the location of a 911 Tandem/Selective Router in Verizon's network – that is, at a point between Verizon's end offices and the PSAPs. Only Verizon's proposed language accurately describes Verizon's network arrangements and capabilities, so it should be adopted.

Issue 7: Whether the agreement should contain provisions with regard to the parties maintaining ALI steering tables, and, if so, what those provisions should be.

Verizon and Intrado agree that they must cooperate to ensure that misdirected 911 calls are directed to the right PSAP. However, Intrado's specific proposals with regard to Automatic Location Information ("ALI") steering tables are outside the scope of Section 251(c).

As Intrado has acknowledged in other arbitrations, the ALI function is an information service. Because the Commission has determined that the provision of caller location information to a PSAP is an information service, not a telecommunications service,²⁵ it falls

²⁵ See, *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 Rcd 2627 ¶ 17 (1998).

outside the scope of an interconnection agreement arbitrated under Sections 251 and 252 of the Act. Verizon does have agreements that address ALI issues (including one with Intrado), but they are commercial agreements. If Intrado believes that it needs new terms relating to ALI arrangements, those terms are properly addressed outside a Section 251/252 arbitration.

The West Virginia Arbitrator rejected Intrado's proposal. As the West Virginia Arbitrator explained, "[i]f Intrado is managing the ALI database, Verizon should not be compelled to perform functions which are Intrado's obligations." *W.V. Award* at 21, affirmed by *W.V. Order* at 4.

Issue 8: Whether certain definitions related to the Parties' provision of 911/E-911 Service should be included in the interconnection agreement and what definitions should be used.

This issue is related to Issue 1. Intrado's proposed language is based on the notion that Verizon can be forced to interconnect at POIs within Intrado's network. For the reasons stated with regard to Issue 1, Section 251(c) interconnection must occur at a point on Verizon's network. Because Intrado's definitions for Issue 8 incorrectly assume that Intrado can force Verizon to interconnect at POIs within Intrado's own network, they should be rejected.

Issue 9: Should Section 2.5 of the 911 Attachment be made reciprocal and qualified as proposed by Intrado?

Verizon and Intrado agree that each party should have the ability to deliver 911 calls directly to a PSAP for which the other party is the 911 service provider. Intrado's proposal, however, goes a step further and would require that the PSAP authorize such interconnection. Intrado's proposal is unlawful because goes beyond the matters between Verizon and Intrado.

As Verizon explained in connection with Issue 2, a Section 251(c) interconnection agreement between Intrado and Verizon is limited to matters between these two parties and does not bind third parties. The Bureau has rejected “proposed language [that] would affect the interests of numerous entities not parties to this Agreement.” *Cavalier Arbitration Order* ¶ 142. Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP. It is not a matter for a Section 251(c) agreement between Verizon and Intrado. The interconnection agreement cannot purport to control the conduct of third parties or the arrangements that can be made with them.

Issue 10: What should Verizon charge Intrado for 911/E-911 related services and what should Intrado charge Verizon for 911/E-911 related services?

This issue is related to Issue 1. Intrado has proposed rates that it would charge Verizon for interconnection at POIs within Intrado's network and for facilities to reach such POIs within Intrado's network. As explained with regard to Issue 1, Section 251(c) interconnection must occur on Verizon's network. Because Intrado must interconnect with Verizon on Verizon's network, Intrado should not be billing Verizon any charges for interconnection or facilities for transport of 911 calls. There is no legal basis for including such charges in the parties' Section 251(c) interconnection agreement. The Commission should, therefore, strike all Intrado-proposed charges from the draft agreement, as the West Virginia Arbitrator did. *W.V. Award* at 15, 24.

Intrado also opposes Verizon's references to tariffed pricing. Under Section 251 and 252, Intrado has no right to receive more favorable pricing for the same services that Verizon provides to CLECs. The application of tariffed rates, where they exist, is appropriate to ensure

that Intrado receives the same, non-discriminatory pricing that CLECs receive (and that Intrado does not receive more favorable treatment than CLECs).

Issue 11: Whether all “applicable” tariff provisions shall be incorporated into the interconnection agreement; whether tariffed rates shall apply without a reference to the specific tariff; whether tariffed rates may automatically supersede the rates contained in Appendix A of the Pricing Attachment without a reference to the specific tariff; and whether the Verizon proposed language in Section 1.5 of the Pricing Attachment with regard to “TBD” rates should be included in the interconnection agreement.

Verizon files tariffs for the services it provides. Applying tariff rates for the services Intrado may purchase from Verizon is appropriate because these rates are subject to Commission review and approval in accordance with applicable legal standards. Moreover, Verizon has a duty of nondiscrimination under the Act with regard to the pricing of its tariffed services. 47 U.S.C. § 251(c)(2)(D). Using tariff rates helps ensure that Intrado receives the same, nondiscriminatory prices that Verizon charges to CLECs (and that Intrado does not receive more favorable rates than CLECs). The same tariff rate references are typically included in Verizon's Section 251(c) interconnection agreements filed with and approved by the Virginia Corporation Commission.

Intrado claims to be entitled to rates and charges developed pursuant to Section 252(d) of the Act for its interconnection agreements, apparently for anything it might order from Verizon. Intrado is wrong. The mere fact that Intrado (and only Intrado) labels a service or feature an interconnection element does not make it subject to Section 252(d) – that is, TELRIC-pricing. The Commission has determined what elements must be priced at TELRIC and Verizon offers those elements at TELRIC-based prices. Intrado is not entitled to anything else at TELRIC

prices, and Verizon is entitled to have Intrado pay the same tariffed rates that CLECs pay for the same services.

Issue 12: Whether Verizon may require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements.

This issue is related to Issues 1 and 10. Intrado has proposed rates that it would charge Verizon for interconnection at POIs within Intrado's network. As explained with regard to Issue 1, Section 251(c) interconnection must occur on Verizon's network. Because Verizon cannot be forced to interconnect at POIs within Intrado's network, there is no legal basis for including such charges in the parties' Section 251(c) interconnection agreement. The Commission should, therefore, strike all Intrado-proposed charges from the draft agreement, as the West Virginia Arbitrator did. *W.V. Award* at 15, 24.

Issue 13: Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI Database, and MSAG be qualified as proposed by Intrado by other provisions of the Agreement?

This issue is related to Issues 1 and 10. Intrado's proposed language states that Verizon will interconnect within Intrado's network and will pay for any unspecified "services, facilities and/or arrangements" related to that interconnection within Intrado's network. As Verizon explained in response to Issue 1, Verizon cannot be required to interconnect within Intrado's network and cannot be required to pay unspecified, unexplained charges for doing so. Because Intrado must interconnect within Verizon's network, Intrado should not be billing Verizon any charges for interconnection or facilities for transport of 911 calls, as Intrado's language might allow it to do. In addition, Intrado should not be billing Verizon charges in connection with the

ALI database or the MSAG (as Intrado's language might also allow it to do), but must recover these costs from the applicable government agency as part of the 911 services Intrado provides for the PSAP.

Issue 14: Should the reservation of rights to bill charges to 911 Controlling Authorities and PSAPs be qualified as Intrado proposes by "To the extent permitted under the Parties' Tariffs and Applicable Law"?

Although Intrado and Verizon agree that nothing in the interconnection agreement is intended to prevent Verizon or Intrado from billing PSAPs for particular services provided by one party, even where the other party is the designated 911 provider, Intrado proposes to qualify that agreement "[t]o the extent permitted under the Parties' Tariffs and Applicable Law." Intrado/Verizon Petition, Attachment 1 at 35. Intrado's proposal is unlawful because it would address matters between Verizon and a third party. Obviously, no company has free rein to bill an entity for services it does not provide, and nothing in the undisputed portion of the language for Section 2.3 and 2.4 in any way states or implies that Verizon would be able to do so. These provisions are reservations of rights as between Verizon and Intrado; they do not and cannot affect any rights with respect to third parties, including PSAPs.

A Section 251(c) interconnection agreement between Intrado and Verizon is limited to matters between these two parties and does not bind third parties. If a PSAP believes that Verizon is charging it for tariffed services that Verizon is not providing, that is a matter between the PSAP and Verizon. It is not a matter for a Section 251(c) agreement between Verizon and Intrado. As the West Virginia arbitrator found when she rejected Intrado's proposal, "[i]t is inappropriate to attempt to assert or negotiate in this proceeding the rights of entities not parties to the Agreement." *W.V. Award* at 28. *See also Cavalier Arbitration Order* ¶ 142.

Issue 15: Should Intrado have the right to have the interconnection agreement amended to incorporate provisions permitting it to exchange traffic other than 911 calls?

Intrado proposes language that would give it the right to renegotiate the interconnection agreement to expand it to cover not only 911 calls, but other types of traffic, such as reciprocal compensation traffic. Intrado's proposal is inconsistent with the approach contemplated by Congress that all of the provisions of the agreement should be subject to negotiation by the parties, because it would allow Intrado to retain any provisions it finds favorable resulting from the current round of negotiation and arbitration, and then add to them new provisions from another round of negotiation and arbitration.

Intrado's proposal also is inconsistent with the Commission's Section 252(i) adoption rule, 47 C.F.R. § 51.809, which prohibits requesting carriers from being able to "pick-and-choose" favorable contract terms and conditions. If Intrado wishes to greatly expand the scope of the agreement, it should terminate that agreement and negotiate an entirely new interconnection agreement in which all of the provisions will be eligible for renegotiation and the parties will be able to engage in a fair and balanced trade off of one provision against another. The West Virginia arbitrator agreed with Verizon and rejected Intrado's proposal on this issue. *See W.V. Award* at 26.

Issue 16: Should the Verizon-proposed term "a caller" be used to identify what entity is dialing 911, or should this term be deleted, as proposed by Intrado?

Although Intrado seeks interconnection in order to receive 911 calls from Verizon's end users, Intrado does not want to describe 911 arrangements as those that provide "a caller" with access to the appropriate PSAP. Verizon's proposed inclusion of the phrase "a caller" accurately

describes the access that 911 arrangements provide to a caller, and there is no legitimate reason for Intrado to object to this simple clarification. The West Virginia arbitrator agreed with Verizon and ordered the parties to include the phrase "a caller" in their interconnection agreement. *See W.V. Award* at 26.