Attachment 1

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 19, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Barrett)
Office of the General Counsel (Tan)

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

AGENDA: 03/03/09 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

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

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

Case Background

On November 27, 2007, Intrado Communications, Inc. (Intrado Comm) filed its Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc. (Embarq), pursuant to Section 252(b) of the Communications Act of 1934, as amended[1] (Act), and Section 364.162, Florida Statutes (F.S.). An evidentiary hearing was held July 9, 2008.

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

On December 3, 2008, the Florida Public Service Commission (Commission, or FPSC) issued its Final Order in this matter, Order No. PSC-08-0799-FOF-TP. On December 18, 2008, Intrado Comm filed a Motion for Reconsideration (Motion) and a Request for Oral Argument on the Motion for Reconsideration (Request).

On December 29, 2008, Embarq filed its Responses in Opposition to the Intrado Comm pleadings (Response to Request and Response to Motion, respectively). Issue 1 addresses the Intrado Comm Request for Oral Argument, and Issue 2 addresses the Motion for Reconsideration.

The Commission is vested with jurisdiction over these matters pursuant to the provisions of Chapters 364 and 120, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Intrado Comm's Request for Oral Argument?

Recommendation: No. The Commission should deny Intrado Comm's Request for Oral Argument. (Tan, Barrett)

Staff Analysis: Rule 25-22.0022(3), Florida Administrative Code (F.A.C.), states that granting or denying a request for oral argument is within the sole discretion of the Commission or the Prehearing Officer, whichever presides over the matter to be argued. The respective arguments are summarized below.

Intrado Comm's Request for Oral Argument

Intrado Comm believes the Commission "overlooked critical issues of fact and law and misunderstood the law and facts it did consider." (Request at 3) Intrado Comm claims that the Commission has not heard argument on the "threshold issue,[2]" nor has it heard argument relating to its obligation to arbitrate the parties' disputes pursuant to state law. Although it presented information on the "threshold issue" in its brief, Intrado Comm states that pre-imposed page limitations hampered its ability to fully discuss this critical legal issue. (Request at 3) Intrado Comm seeks the opportunity to "enhance the Commission's understanding of the issues at hand." (Request at 2)

Embarq's Response to Request

Embarq's Response in Opposition to Oral Argument states that oral argument is unnecessary. Embarq believes the record evidence and post-hearing briefs "provided more than a sufficient basis for the Commission's [Final] Order." (Embarq Response to Request at 1) In addition, both parties made opening presentations, and participated in cross-examining the opposing witnesses in order to set forth the facts and respective positions for the Commission. (Embarq Response to Request at 2) The Company acknowledges that Rule 25-22.0022, F.A.C., gives the Commission the latitude to grant a request for oral argument, but only when "the request for oral argument . . . would aid the Commissioners in understanding and evaluating the issues to be decided." (Embarq Response to Request at 2) Embarq believes in this instance, Intrado Comm's request should be denied.

Analysis

In pertinent part, Rule 25-22.0022(1), F.A.C., sets forth the rationale for granting a request for oral argument: The moving party should

> state with particularity why oral argument would aid the Commissioners . . . in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

[2] The "threshold issue" considered whether Intrado Comm's service offering met the definition of 'telephone exchange service' as defined in 47 U.S.C. § 153(47), and if Embarq was required to provide interconnection pursuant to the provisions of §§ 251(a) or 251(c).

Staff is not swayed by the notion that additional argument "would aid the Commissioners" in considering the matters that were fleshed out in the hearing and the briefs, and memorialized in Order No. PSC-08-0799-FOF-TP. Staff agrees with Embarq on this point.

Staff does not believe that it would be beneficial for the Commission to hear from the parties. However, should the Commission, in its discretion, allow oral argument, staff recommends that each party be allowed 5 minutes to present its arguments.

Conclusion

Staff recommends that Intrado Comm's Request for Oral Argument be denied.

Issue 2: Should the Commission grant Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0799-FOF-TP?

Recommendation: No. The Commission should deny Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0799-FOF-TP. (Tan, Barrett)

Staff Analysis:

Intrado Comm's Motion for Reconsideration

Intrado Comm asserts that "the Commission has overlooked, misunderstood, and inaccurately interpreted the governing federal law and the relevant facts on the threshold legal issue that . . . [Order No. PSC-08-0799-FOF-TP] decides." (Motion at 3) Intrado Comm claims that the Commission

- entirely overlooks Intrado Comm's request for arbitration under Florida law;
- entirely overlooks half of the relevant definition from 47 U.S.C. § 153(47)(A);
- runs afoul of FCC precedent in interpreting 47 U.S.C. § 153(47)(B); and
- misunderstood the record evidence, which resulted in an "erroneous decision."

(Motion at 3-4) In addition, Intrado Comm claims new factual information has come to light that supports its Motion for Reconsideration.[3] Intrado Comm has entered into three contracts to provide 911/E-911 services in Florida. The Company states that it "cannot" provide service to these or any other customers in Florida without a section 251(c) interconnection agreement. Intrado Comm believes the Commission erred in its conclusion that "the parties may negotiate a commercial agreement pursuant to §251(a)." (Order No. PSC-08-0799-FOF-TP at 8; Motion at 5)

Arbitration pursuant to Florida Law

Intrado Comm believes the Commission simply failed to consider state law in its Order. In doing so, it "missed the opportunity . . . to ensure that Florida citizens receive the benefits of a competitive 911/E911 services industry." (Motion at 22) The Company states that its original pleading (to request arbitration) was clear in that it sought relief pursuant to state and federal law. However, in rendering its decision, the Commission relied upon portions of 47 U.S.C. § 153(47) that are not found in Florida law. (Motion at 23) In pertinent part, Section 364.161(1) states that "parties . . . may petition the commission to arbitrate the dispute *and the commission* ***shall*** *make a determination within 120 days*." (Motion at 23)(Emphasis in original) Intrado Comm states a three-part litmus test must be met before either party can engage the arbitration procedures pursuant to Florida law:

[3] In Order No. PSC-97-0637-FOF-TL, issued on June 3, 1997, in Docket No. 961153-TL, Intrado Comm asserts that the Commission granted a similar motion based on "substantial pertinent information that was not in the record originally." (Intrado Comm Motion at 5)

- First, a Florida-certified local exchange company must have received a request to unbundle "all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes;"

- Second, the above-described request must have come from any other telecommunications provider; and

- Third, the parties must demonstrate that they have been unable to reach a resolution within 60 days.

(Motion at 24-25) Intrado Comm believes it has satisfied these requirements and that "Florida law [has] triggered the Commission's unmitigated duty to arbitrate the parties' disputes." (Motion at 25) In its Motion, Intrado Comm states that in other cases, this Commission has asserted its state-law authority over interconnection matters. (See footnotes 72-81, Motion at 26-29)

Consideration of 47 U.S.C. § 153(47)

Order No. PSC-08-0799-FOF-TP states that Intrado Comm is not entitled to arbitration under Section 251(c) of the Act since it will not be providing "local exchange service." Intrado Comm believes that when the Commission considered the definition in 47 U.S.C. § 153(47), it only considered a portion of the full definition shown below:

> **SEC. 3. [47 U.S.C. 153] DEFINITIONS.**
> (47) TELEPHONE EXCHANGE SERVICE.--The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Intrado Comm believes the word "or" means that it must only satisfy only one of the "parts" from this definition. The Company contends that the Commission "misconstrued section 153(47)(B) and altogether failed to consider the definition of telephone exchange service under section 153(47)(A)." (Motion at 7) Intrado Comm believes the Commission erred and contends that it satisfies both parts of the definition.

Regarding section 153(47)(A), Intrado Comm believes its service provides subscribers the ability to intercommunicate, and the Commission's Order is silent on this matter. Intrado Comm contends that the Commission restricted its analysis to the "B-part" of 47 U.S.C. § 153(47), wherein it stated that "Intrado Comm's service is incapable of originating calls and is therefore not a telephone exchange service." (Motion at 7) However, Intrado Comm argues that the Commission failed to acknowledge that a PSAP served by Intrado Comm could "hookflash" to obtain a dial tone in order to originate a bridged call to a third party – essentially connecting

the originating caller to the 3rd party by using more modern technology than what other providers currently offer. (Motion at 7-8)

Intrado Comm notes that its service compares favorably with a scenario the FCC faced in 2001. In its *Provision of Directory Listing information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 ("*DA Call Completion Order*"), the FCC examined the service directory assistance providers offered – specifically whether call completion services were providing a "telephone exchange service" pursuant to 47 U.S.C. § 153(47). Intrado Comm states:

> The FCC held that the call-completion service allows a "local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call." It was irrelevant that the originated call did not start with an ordinary telephone call. The same should be said of the fact that Intrado Comm does not originate calls in the form of an ordinary telephone call. (Motion at 9)

In addition, Intrado Comm argues that the Commission failed to consider what the FCC's *Advanced Services Order* said regarding "telephone exchange service." Intrado Comm claims that the Commission erred because it took such a narrow posture in considering 47 U.S.C. § 153(47), whereas the *Advanced Services Order* advocates a broader view. (Motion at 13-14) The Company asserts that "nothing in 153(47)(B) supports the conclusion that the meaning of 'originate a call' was locked in and keyed to the ways in which older technologies have operated." (Motion at 13-14) Intrado Comm states that its product offering "bridges the gap between the inferior, antiquated telephone exchange services of the past and those of the future." (Motion at 12) Intrado Comm contends that the decision rendered in Order No. PSC-08-0799-FOF-TP hampers it in providing safe and accurate 911/E911 service to the citizens of Florida.

<u>The Commission misunderstood evidence</u>

Intrado Comm asserts that the Commission erred in its belief that a Commercial Agreement under §251(a) is a viable alternative for Intrado Comm. Intrado Comm claims its witness Hicks addressed this topic, and its brief did as well. (Motion 20-22) The Company believes it needs to negotiate pursuant to §251(c) in order to obtain interconnection with Embarq that is "at least equal in quality to that provided to itself, an affiliate, or [to] other carriers." (Motion at 20) According to Intrado Comm, testimony that explained this viewpoint was not adequately considered by the Commission.

<u>Embarq's Response to Motion</u>

Embarq states that the law is clear regarding the standard of review for a motion for reconsideration. The Commission has consistently looked at whether such a motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order.[4] (Embarq Response to Motion at 1-2) Embarq believes that Intrado Comm's Motion fails to meet this standard since it offers no new evidence and merely reiterates the assertions it made in its

[4] <u>See</u> *Stewart Bonded Warehouse v. Bevis*, 294 So. 2d 315 (Fla 1974); *Diamond Cab Co. v King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla 1st DCA 1981).

post-hearing briefs. (Embarq Response to Motion at 1-2) According to Embarq, Intrado Comm has presented no valid grounds for the Commission to reconsider Order No. PSC-08-0799-FOF-TP. (Embarq Response to Motion at 1) Embarq counters the Intrado Comm assertions, and states that

- the Commission did not overlook evidence and argument, even though it may not have explicitly addressed every aspect of Intrado Comm's case. Embarq believes that the Commission evaluated everything, but only discussed the most relevant evidence and argument; (Embarq Response to Motion at 2)

- Intrado Comm's Motion offers the same arguments as those proffered in it's post-hearing brief. In its Motion and brief, Intrado Comm argues that the FCC's *DA Call Completion Order* and its *Advanced Services Order* are applicable to the instant case. By repeating these assertions in the manner it has, Embarq believes Intrado Comm fails to raise additional or new arguments. The same can be said for Intrado Comm's argument regarding 47 U.S.C. § 153(47); and (Embarq Response to Motion at 2-10)

- the Commission properly found that the services that Intrado Comm provides do not give their customers (PSAPs) the ability to originate calls, or "intercommunicate," with end users dialing 9-1-1. (Embarq Response to Motion at 6) According to Embarq, certain arguments Intrado Comm made in its brief and reiterated in its Motion were in conflict with its own price list.[5] Specifically, the price list describes the "hook flash" option as a "Manual Transfer" whereas the Motion describes the "hook flash" method as a means to originate a call. (Intrado Comm Motion at 8; Embarq Response to Motion at 6) Embarq believes this is significant because "end user originated calls [to 911] are terminated to PSAPs served by Intrado, which means that Intrado [Comm's] services meet the terminating aspects of intercommunication." However, Intrado Comm's price list does not indicate that Intrado Comm services can be used to originate calls, "because they cannot," according to Embarq. (Embarq Response to Motion at 6)

Embarq reiterates that the Commission should not reconsider Order No. PSC-08-0799-FOF-TP, and notes that two other state commissions have reached conclusions that are similar to Florida's.[6] Embarq believes reconsideration is not warranted because

- nothing that Intrado Comm alleges in its Motion is "new evidence." The mere existence of the "new" contracts "does nothing to alter the evidence on which the Commission based its decision . . .." (Embarq Response to Motion at 12-13); and

[5] An original version of Intrado Comm's Price List was identified as Hearing Exhibit 17, and a revised one as Hearing Exhibit 26.

[6] 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 d/b/a Embarq and United Telephone Company of Indiana d/b/a Embarq, Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Case No., 07-1216-TP-ARB, Arbitration Award, issued September 24, 2008, and *Intrado Communication Inc. and Verizon West Virginia, Inc., Petition for Arbitration*, Case No. 08-0298-T-PC, Arbitration Award, issued November 14, 2008. The West Virginia Commission affirmed the Arbitrator's decision on December 16, 2008.

- at no time during the negotiations for interconnection did Intrado Comm "state or even suggest" that it intended the negotiations to be pursuant to Florida law. (Embarq Response to Motion at 14) Embarq believes it would be improper to "start over" and delve into the applicability of state statutes at this juncture. (Id. at 15)

Analysis

The Commission has looked on numerous occasions[7] to the Stewart Bonded Warehouse, Inc. v. Bevis and to the Diamond Cab Co. v. King cases for guidance in reviewing motions for reconsideration. Relevant portions of these cases are summarized below:

- In Stewart Bonded Warehouse, Inc. v. Bevis, the primary consideration was "whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order." See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

- In the Diamond Cab case, the court stated, in part: "The purpose of a petition for rehearing is merely to bring . . . [out] some point which . . . [the Commission] overlooked or failed to consider when it rendered its order in the first instance . . . It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order . . .." (Diamond Cab, 146 So. 2d at 891.)

The Commission has also looked to State ex. rel. Jaytex Realty Co. v. Green (Jaytex) to consider the scope of its review for motions for reconsideration, and whether it is necessary for a respondent to answer every argument and fact raised by each party. In Jaytex, the court found

> the sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision . . . (Jaytex, 105 So. 2d at 818.)

[7] See In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp., Order No. PSC-08-0817-FOF-TP, issued on December 18, 2008, in Docket No. 070369-TP, and In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone, Order No. PSC-08-0549-PCO-TP, issued on August 19, 2008, in Docket No. 080036-TP, and In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million, Order No. PSC-08-0136-FOF-EI, issued on March 3, 2008, in Docket No. 060658-EI.

. . .

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered. (Id. at 819)

In considering the standard of review for motions for reconsideration, staff believes the Intrado Comm Motion falls short. Specifically, staff believes the Motion fails because:

- The information in Intrado Comm's Motion was reargument of facts previously considered. Reargument in a Motion for Reconsideration is procedurally improper;

- Intrado Comm never made a demonstrative "state law argument" in the case it built through testimony and exhibits. In this proceeding, both parties cited more to "federal law" than to "state law" to support for their respective positions. Although Order No. PSC-08-0799-FOF-TP relied on federal law, staff believes it is erroneous to claim that the Commission "failed to consider" the state law. Because state law was not in conflict with any aspect of the federal law that the Commission cited, a separate argument was not tendered. Staff believes state law was fully considered by the Commission in its Final Order, and a motion for reconsideration is not the proper avenue to pursue new arguments;

- A decision the Prehearing officer imposed (by setting the page limits for briefs) did not adversely impair Intrado Comm in briefing this case. The decision regarding page limits for briefs applied to both parties, and both adhered to it when post-hearing briefs were filed. Either party could have sought timely relief in this regard, but did not. Staff believes Intrado Comm's Motion is not the avenue to seek relief after the fact; and

- The recent contractual arrangements that Intrado Comm touts as "new" are immaterial to the Commission's finding in Order No. PSC-08-0799-FOF-TP. Staff does not believe this Order addressed whether Intrado Comm could establish contracts to provide emergency services in Florida, nor was this Order predicated on the existence or lack of any such contracts.

Staff believes Intrado Comm has not met the standard of review for its Motion. Therefore, staff recommends that the Commission deny Intrado Comm's Motion for Reconsideration.

Conclusion

Staff recommends that the Commission deny Intrado Comm's Motion for Reconsideration.

Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed. (Tan, Barrett)

Staff Analysis: If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed.

Attachment 2

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Intrado, Inc.	:	
	:	
Petition for Arbitration pursuant to	:	
Section 252(b) of the Communications	:	**08-0545**
Act of 1934 as amended, to Establish	:	
an Interconnection Agreement with	:	
Illinois Bell Telephone Company.	:	

PROPOSED ARBITRATION DECISION

By the Commission:

I. PROCEDURAL HISTORY

On September 22, 2008, Intrado, Inc. ("Intrado"), filed a Petition for Arbitration ("Petition") pursuant to subsection 252(b)[1] of the federal Telecommunications Act of 1996 ("Federal Act")[2]. The Petition seeks to create an interconnection agreement ("ICA") between Intrado and Illinois Bell Telephone Company ("AT&T"), an incumbent local exchange carrier ("ILEC") in certain geographic areas of Illinois. Intrado has certificates of telecommunications operating authority in Illinois, issued by this Commission.[3] Intrado asserts that AT&T has a duty under subsection 251(c)(2) of the Federal Act[4] to interconnect with it, so that Intrado can provide telecommunications services in areas in which AT&T also provides local exchange services. Intrado's principal intention is to provide services related to 911/E911 telecommunications (for brevity, "911 service") to Emergency Telephone Systems Boards ("ETSBs") for the operation of Public Safety Answering Points ("PSAPs"). Intrado presents several issues for arbitration.

AT&T filed its Response to Intrado's Petition ("AT&T Response") on October 17, 2008. In that filing, AT&T notes that it has added two issues for arbitration, as it is permitted to do under subsection 252(a)(4)(A) of the Federal Act[5]. The parties have settled numerous issues over the course of this litigation and this Arbitration Decision addresses only the remaining unresolved issues.

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[1] 47 U.S.C. § 252(b).
[2] 47 U.S.C. §§ 151 *et seq*.
[3] SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in the Stare of Illinois, Dckt. 00-0606, Order, Dec. 20, 2000 & Amendatory Order, Jan. 31, 2001. SCC subsequently became Intrado, Inc. Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services.
[4] 47 U.S.C. § 25(c)(2).
[5] 47 U.S.C. § 252(a)(4)(A).

Two Administrative Law Judges ("ALJ's") of the Commission conducted a pre-arbitration conference on October 1, 2008 and an evidentiary hearing on December 3, 2008, each in Chicago, Illinois. Appearances were entered at each hearing on behalf of Intrado, AT&T and Commission Staff ("Staff"). At the December 3 hearing, Intrado presented the testimony of Thomas Hicks, and Carey Spence-Lenss. AT&T presented the testimony of Patricia Pellerin and Mark Neinast. Staff presented the testimony of Jeffrey Hoagg, Marci Schroll, and Kathy Stewart, each of the Commission's Telecommunications Division. The ALJ's marked the evidentiary record "heard and taken" on February 4, 2008.

Intrado, AT&T and Staff each filed an Initial Brief ("IB") on January 5, 2009 and a Reply Brief ("RB") on January 20, 2009. An ALJ's Proposed Arbitration Decision was served on all parties on February 13, 2008. The Parties each filed Briefs on Exceptions ("BOE") on February 20, 2009 and Reply Briefs on Exceptions ("RBOE") on February 27, 2009.

II. JURISDICTION

Subsection 252 of the Federal Act provides that within a specified time period "after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." Both Intrado's Petition and AT&T's Response assert that there are open issues between the parties. There is no dispute that the Petition was timely filed. Consequently, the Commission has jurisdiction to arbitrate the issues presented.

Section 252 of the Federal Act proscribes certain procedures, standards and outcomes for arbitrations conducted under that section. In addition, the Commission has adopted rules and procedures for such arbitrations in 83 Ill.Adm.Code 761. The foregoing federal and state provisions apply to this proceeding.

III. PROPOSED SERVICES & CURRENT AGREEMENTS

Intrado proposes to provide its 911 service through its Intelligent Emergency Network® ("IEN"), which would facilitate voice and data transmission and retrieve and deliver both Automatic Number Identification ("ANI") (the calling party's telephone number) and Automatic Location Information ("ALI") (the calling party's location) to PSAP customers. The three integrated elements of Intrado's system are switching (utilizing selective call routers or 911 tandems), call information databases (for ANI and ALI) and transport infrastructure between the PSAP and, respectively, the selective routers and the information databases.

Intrado's customers will be PSAPs and related public agencies, not the individual end-users that initiate 911 calls. With respect to wireline telecommunications, the physical components of Intrado's 911 service will not handle a 911 call until it has been

relayed from the end office of the ILEC receiving the call. Consequently - and regardless of whether Intrado is "interconnected" to AT&T within the meaning of subsection 251(c)(2) of the Federal Act - Intrado's 911 service must be physically linked to the public switched telephone network ("PSTN") in order to deliver wireline 911 calls to PSAPs. All telecommunications carriers have an interconnection duty under subsection 251(a)(1) of the Federal Act, and AT&T states that it would enter into a "commercial agreement" with Intrado, as it has with other carriers, to provide the necessary physical linkage. AT&T Ex. 1.0 (Pellerin) at 6. Intrado maintains that its 911 service qualifies for interconnection within the meaning of subsection 251(c)(2) and that Intrado is therefore entitled to the statutory benefits associated with such interconnection.

Intrado does not presently provide the 911 service involved in this proceeding in Illinois. Intrado Ex. 1 (Hicks) at 5. There are two current agreements between Intrado and AT&T for processing voice-over-Internet Protocol ("VOIP") traffic from third parties, under which AT&T supplies telephone exchange service and other services to Intrado. AT&T Ex. 1.0, Sch. PHP-9 (Intrado response to AT&T Data Request 5). There is also an expired ICA, by which Intrado could have transported 911 calls aggregated from third parties. *Id*. Intrado did not conduct operations under that ICA. AT&T Ex. 1.0 at 5; Tr. 160-61 (Pellerin).

IV. ISSUES FOR RESOLUTION

Issue 1:

Does Intrado have the right to interconnection with AT&T under Section 251(c) of the Act for Intrado's Provision of competitive 911/E911 services to PSAPs?

A. Parties Positions and Proposals

1. Intrado

Intrado maintains that AT&T is required by subsection 251(c)(2) of the Federal Act to provide interconnection to Intrado because, among other reasons, Intrado intends to furnish "telephone exchange service" within the meaning of subsection 251(c)(2)(A). There are two alternative definitions of "telephone exchange service" in the Federal Act[6], and Intrado avers that its proposed services comport with either alternative (Parts A and B). According to Intrado, the Federal Communications Commission ("FCC") has taken an expansive view of telephone exchange service, placing non-traditional arrangements such as DSL-based service and directory assistance call completion service within that category. Intrado contends that its proposed handling of 911/E911 transmissions should be similarly regarded as telephone exchange service. That result, Intrado believes, would further the pro-competitive policy reflected in the Federal Act.

[6] The definitions appear at 47 USC §153(47).

Intrado relies on certain FCC decisions for the proposition that the "key component" of telephone exchange service is that it enables "intercommunication" among a "community of subscribers" within an exchange area. Intrado asserts that its proposed 911 service will perform this intercommunicating function by connecting end-users and Intrado's PSAP subscribers. Intercommunication does not require that a proposed service supplant a subscriber's existing local service in order to qualify as telephone exchange service, Intrado argues.

Moreover, Intrado stresses, this Commission has already determined that Intrado provides "telephone exchange service," in a previous arbitration involving predecessors of, respectively, Intrado and AT&T[7]. In that proceeding, the Commission held that the service contemplated by Intrado's successor "falls within the definition of telephone exchange service found in 47 USC §153(47)."[8]

Intrado also emphasizes that AT&T, in effect, characterizes its own 911 service as telephone exchange service in its tariffs. Intrado alleges that its 911 service tariff is substantially similar to AT&T's and should also be regarded as telephone exchange service.

2. AT&T

AT&T argues that Intrado's proposed service is not "telephone exchange service" within the meaning of the Federal Act. For that reason, AT&T asserts, Intrado is not entitled to either subsection 251(c)(2) interconnection or an arbitrated ICA with AT&T. Specifically, AT&T contends that Intrado's 911 service does not permit subscribers to originate an outbound telecommunications transmission, as Part B of the federal definition requires (a requirement AT&T would also read into Part A). The public agencies using Intrado's service will need to subscribe to the telephone exchange service of another provider to initiate an outbound or non-911 call. AT&T emphasizes that the Florida Public Service Commission dismissed Intrado's arbitration requests with AT&T's Florida affiliate[9] and with another ILEC[10] precisely because, that Commission found, Intrado's 911 service does not enable call origination.

Intrado's 911 service also falls outside the definition of telephone exchange service, AT&T charges, because it is not the intercommunicating service explicitly required by Part A (and, according to the FCC, implicitly required by Part B) of

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[7] In the Matter of the Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc., Dckt. 00-0769 (March 21, 2000) ("SCC Arbitration"). As previously noted, SCC did not conduct operations under the ICA resulting from that proceeding.

[8] *Id*., at 6.

[9] Petition by Intrado Communications, Inc., for Arbitration with BellSouth Telecommunications, Inc., d/b/a AT&T Florida, Fla. Pub. Serv. Comm'n. Dckt. 070736-TP, Final Order (Dec. 3, 2008).

[10] Petition by Intrado Communications, Inc., for Arbitration with Embarq Florida, Fla. Pub. Serv. Comm'n. Dckt. 070699-TP, Final Order (Dec. 3, 2008).

§153(47). Intercommunication means that an end-user can call the other end-users in the exchange area, and not merely a pre-designated PSAP, AT&T maintains.

AT&T further avers that Intrado's planned service is not "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area," as expressly required by Part A of the pertinent definition. Nor, AT&T insists, is Intrado's service covered by the "exchange service charge," as Part A also specifies.

As for this Commission's conclusions in the SCC Arbitration, AT&T argues that the telecommunications services involved in the present case are different and that our earlier analysis was inconsistent with certain FCC orders issued prior to or contemporaneous with that arbitration decision.

AT&T additionally suggests that this Commission has the discretion to decline to arbitrate the unresolved issues in this case, and that we can use that discretion in order to await the results of arbitration decisions elsewhere.

3. Staff

Staff maintains that Intrado is entitled to subsection 251(c) interconnection with AT&T, principally because the Commission previously reached that conclusion in the SCC Arbitration. As Staff sees it, "Intrado proposes to provide essentially the same service here as it proposed to provide in" that case. Staff IB at 10. Staff cautions, however, that the terms and conditions of Intrado's interconnection should closely conform to the requirements of subsection 251(c), despite Intrado's request, in certain instances, for non-traditional arrangements. In Staff's view, Intrado should not be permitted to claim the benefits of the Federal Act while simultaneously avoiding its requirements.

4. Analysis and Conclusions

As framed by the parties, the fundamental question in Issue 1 is whether Intrado's 911 service constitutes "telephone exchange service" under Part A or Part B in §153(47). The full statutory definition of "telephone exchange service" is as follows:

> (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.

Given that §153(47) presents two alternative definitions conjoined by "or," a provider's service can constitute telephone exchange service under either alternative. The FCC has not commented on whether stand-alone 911 service like Intrado's is telephone exchange service. For purposes of comparison, the FCC has held that directory assistance call completion[11] and xDSL-based advanced services[12] are telephone exchange service, but paging service is not[13].

Although Intrado and AT&T dispute the meaning of several elements in the alternative definitions of telephone exchange service, two elements warrant particular emphasis – call origination and intercommunicating service. Call origination is significant because the Florida Commission rejected Intrado's claim that 911 service is telephone exchange service, on the ground that the service does not include call origination[14]. Intercommunicating service is essential because, as Intrado correctly observes, the FCC has called it the "key criterion for determining whether a service falls within the scope of the telephone exchange service definition."[15]

Intrado and AT&T have each commingled their discussion of call origination and intercommunicating service. Intrado addresses both elements in a single sub-heading in its Initial Brief, at 6. AT&T contends that call origination and termination are "part and parcel" of intercommunicating service. AT&T IB at 7, fn. 6. The Commission does not

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[11] Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, 16 FCC Rcd. 2736 (2001) ("Directory Assistance Order").

[12] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd. 385 (1999) ("Advanced Services Order").

[13] In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd (1996).

[14] The parties dispute whether the Florida Commission is the only state commission to decide this issue during the current round of Intrado interconnection filings. Intrado contends that the Ohio Commission "specifically determined that Intrado's [911 service] is telephone exchange service." Intrado RB at 10, citing Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services, P.U.C.O. Case No. 07-1199-TP-ACE, Finding and Order (Feb. 5, 2008) ("Ohio Certification Order"). AT&T rejoins that Intrado misrepresents the Ohio decision. AT&T RB at 21. We note that the Ohio proceeding was a certification proceeding, not an interconnection arbitration. The Ohio Commission concluded that end-users have "no relationship" with Intrado and that Intrado is not a CLEC. Ohio Certification Order, Finding 7. However, the Ohio Commission created a new carrier category for Intrado ("competitive emergency services telecommunications carrier") and stated that "Intrado is a telecommunications carrier *engaged in* the provision of telephone exchange service pursuant to Section 251 of the [Federal Act]". *Id*. (emphasis added). In a subsequent interconnection arbitration, Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company, P.U.C.O. Case No. 08-537-TP-ARB, Arbitration Award (Oct. 8, 2008), the ILEC and Intrado debated the meaning of "engaged in" in the Ohio Certification Order, with the ILEC claiming that the Commission was merely acknowledging that Intrado's 911 service performed a function within *other carriers'* telephone exchange service. The Ohio Commission did not address that argument directly and ordered the parties to incorporate the disputed language in their ICA without further interpretation. The Ohio Commission ultimately ordered the parties to interconnect, but pursuant to Section 251(a) of the Federal Act when Intrado is a PSAP's 911 provider (*i.e.*, the service Intrado seeks to offer here). Intrado-Cincinnati Bell Arbitration, Entry on Rehearing (Jan. 14, 2009). Neither carrier party requests that we replicate the Ohio arbitration result here by turning to subsection 251(a).

[15] Advanced Services Order, para. 26.

agree that call origination/termination and intercommunicating service are the same thing. When Congress added Part B to the §153(47) definition, it employed different language (origination/termination) rather than re-employing "intercommunicating service" in the new sub-part. Moreover, the FCC would not have needed to read an intercommunicating service requirement into Part B, as it did in the Advanced Services Order[16], if intercommunicating service already carried the same meaning as call origination/termination. In this Commission's view, intercommunication pertains to the accessibility of end-users to each other, while origination/termination pertains to an individual end-user's ability to initiate or receive a call[17]. Accordingly, these elements will be addressed separately here.

(a.) Call Origination

To analyze the call origination requirement in the context of emergency services, the Commission finds it helpful to describe 911 communications. The emergency response system is designed for urgent circumstances. Callers need only enter three universally recognized digits into a telecommunications path specifically created for those circumstances. To minimize the potential for error, failure or overload, the telecommunications path is not designed for calls in the opposite direction (from PSAPs to emergency sites). Indeed, in Illinois, 911 service is defined as "a terminating only service"[18] and outbound calls on 911 circuits are prohibited[19].

Intrado has appropriately included these facts and policies in its proposed 911 service[20]. Intrado thus acknowledges that its 911 service does not include the capability to originate a call (except via transfer by the PSAP of an inbound call placed by a 911 end-user). A PSAP that subscribes to Intrado's 911 service will need one or more additional telephone lines, not associated with 911 service, to originate calls[21]. The PSAP will not be able to return the call of a 911 end-user via Intrado's 911 service if a call is dropped. AT&T Ex. 1.0 at 21.

Nevertheless, Intrado maintains that its 911 service furnishes call origination within the meaning of the federal definition. As Intrado sees it, the call transfer mechanism (which Intrado also refers to as "hookflashing") is a form of call origination by the subscribing PSAP. As Intrado witness Spece-Lenss described in oral testimony:

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[16] Advanced Services Order, para. 20.

[17] In the practical sense, of course, a telecommunications end-user must be able to originate or terminate communications with other accessible users. But for statutory construction, we are obliged to discern the intended meaning of each of the discrete terms chosen by the legislature.

[18] 83 Ill. Adm. Code 725.500(a).

[19] 83 Ill. Adm. Code 725.500(d).

[20] "Intrado has purposefully designed its 911 service to be unable to originate an outgoing call except in the instance of conferencing or call-transfer disconnect processes." AT&T Cross-Ex. 3 (Intrado response to AT&T Data Request 18).

[21] "Illinois public safety agencies subscribe to local exchange service for administrative purposes, such as to receive other emergency or non-emergency calls, including any which might be relayed by operators or terminated on PSTN-accessible local exchange telephone lines." Intrado IB at 21.

> [T]he call process has two parts. You have the consumer, the citizen who is dialing 911. The PSAP receives the call and then the PSAP originates the transfer. So it's originating the call through the hook flash, either the selective transfer feature or the 10-digit transfer feature and it's originating the call.

Tr. 110.

The Florida Commission rejected this argument and denied Intrado's request for subsection 251(c)(2) interconnection on that basis. The Florida Commission did not elaborate upon its conclusion, perhaps because it found it self-evident. Although this Commission will supply additional discussion of this issue, we will reach the same conclusion as the Florida Commission.

Simply, hookflashing is not call origination. It is a call transfer procedure that reroutes a call *originated by the person placing the inbound 911 call to the PSAP*. While Intrado is correct that call transfer is commonly used, Intrado IB at 14, that does not mean it is a call origination mechanism. That is particularly so in the 911 context in Illinois, in which call transfer, as defined by our regulations, is limited to rerouting of the originated call to an emergency services provider or another PSAP ("`Call Transfer' – a 9-1-1 service in which the PSAP telecommunicator receiving a call transfers that call to the appropriate public safety agency or another provider of emergency services"[22]). We believe that the reference to "that call" in our regulatory definition is significant, because it captures what in fact occurs during an emergency call transfer – the PSAP works collaboratively with an emergency responder or another PSAP to address the ongoing request for assistance. The Commission therefore disagrees with the viewpoint of Intrado's witness who "wouldn't consider it the same call when a PSAP [needs] to do a transfer." Tr. 112 (Spence-Lenss). Indeed, Intrado's own tariff characterizes call transfer as the "[t]he act of adding an additional party to an *existing call*."[23]

The call transfer capability in Intrado's planned service thus reflects the limited scope of transferability contemplated in the 911 architecture. Such transfers are confined to other PSAP's served by Intrado, although transfers to non-Intrado PSAPs and related public safety agencies are possible if certain infrastructure and arrangements are in place with Intrado[24]. Moreover, PSAP-to-PSAP call transfer capability is not mandated by law, Staff Ex. 2 at 13, and Intrado (and AT&T) would only implement it (through interconnection of selective routers) upon customer request.

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[22] 83 Ill. Adm. Code 725.105.

[23] AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging") (emphasis added). Intrado describes its Illinois tariff, which was not offered for the record here, as "similar" to its Ohio tariff. Intrado IB at 20, fn. 85.

[24] Specifically, Intrado can transfer calls to "any Intrado served PSAP, to other non-Intrado served PSAPs if the non-Intrado served PSAP's service provider has deployed the selective router-to-selective router feature and is interconnected with Intrado's national network, and to any authorized agency that is directly interconnected to the nationwide Intrado 911/E911 network." AT&T Cross Ex. 4 (Intrado response to AT&T Data Request 20).

Intrado Ex. 2 at 11. Thus, insofar as call transfer by an Intrado-served PSAP will be technically enabled, it will be appropriately limited to continuous handling of the caller-originated assistance request.

Although it is not entirely clear (given the parties' commingled analyses of call origination and intercommunication), Intrado apparently suggests an analogy between its 911 call transfer function and the DA services that the FCC found to be telephone exchange service in the Directory Assistance Order. If that is so, the Commission does not find the analogy apt. In the Directory Assistance Order, the FCC held that DA providers perform telephone exchange service when they furnish call completion service (that is, when they enable the party requesting number lookup to place a call to the requested number). Without call completion, "the competing directory assistance provider is not providing telephone exchange service within the meaning of section 3(47)."[25] In the Illinois 911 context, an Intrado-served PSAP (or any other PSAP) could not originate a new communication with a party of the 911 caller's choice for a purpose unrelated to the emergency at hand. The PSAP can only transfer the call, without terminating it, to a single authorized respondent[26], and may continue to participate in the call[27]. That is not like DA call completion, which originates a new call to the end-user's selected destination somewhere in the exchange area, without further involvement by the DA provider (who may provision number look-up and call completion without live human participation).

Nonetheless, this Commission did conclude, in the SCC Arbitration, that Intrado (as SCC) provided a service "by which a subscriber can originate and terminate an emergency or 9-1-1 call."[28] However, the 911-related services SCC proposed to provide in 2001 are not the same as Intrado's proposed 911 service here and they differ meaningfully with respect to call origination. SCC customers included ILECs, CLECs and wireless carriers, for whom it intended to deliver originated 911 traffic to AT&T's (then, Ameritech's) selective routing tandems, for transmission to an appropriate PSAP[29]. SCC did not intend to serve PSAPs, the terminators of 911 traffic. AT&T Ex.

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[25] Directory Assistance Order, para. 22.

[26] "A 9-1-1 system should be designed so that a call will never be transferred more than once." 83 Ill. Adm. Code 725.505(g).

[27] Indeed, the transferring PSAP *must* remain involved with the call until it is safe to disengage. "At such time as the telecommunicator verifies that the transfer has been completed *and the telecommunicator's services are no longer required*, the telecommunicator may manually release himself from the call." *Id*. (emphasis added). Intrado's Ohio 911 tariff is consistent with this requirement and it reflects the fact that call handling by a PSAP does not usually end at transfer. "The term `Call Bridging' is preferred because 9-1-1 call handlers rarely transfer calls without staying connected to ensure the call is effectively handled (no `blind' transfers)." AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging").

[28] SCC Arbitration at 6.

[29] SCC Arbitration at 5. The Commission notes that its discussion of the SCC proceeding is based solely on the final Arbitration Decision there. Neither the Commission nor the parties can utilize other matter from that docket for decision-making purposes in this case, unless it has been admitted as record evidence here. One mechanism for admitting such matter is administrative notice, pursuant to 83 Ill. Adm. Code 640(2) & (3). Administrative notice was not utilized in this case, and matter filed in Docket 00-0769 did not enter the record here by other means. Consequently, Intrado's citation to its filing in Docket

1.0 at 20 (Pellerin). In the present case, Intrado's service will begin at the selective router and proceed to the PSAP. Intrado does not intend to "aggregate originating 911 calls from other carriers for delivery to [AT&T's] selective routers," AT&T Ex. 1.0, Sch. PHP-9, and it does not intend to "provide non-wire line telephone exchange service to customers in Illinois." *Id*. Thus, Intrado will not enable 911 call origination for any party[30], much less for its subscriber PSAPs (the relevant entity for purposes of Part B of the federal definition of telephone exchange service). Accordingly, the Commission will not repeat here our conclusion in the SCC Arbitration that Intrado originates telecommunications service.

In sum, the Commission finds that Intrado's 911 service does not enable a subscriber to initiate telecommunications service within the meaning of Part B of the federal definition of telephone exchange service.

(b.) Intercommunicating Service (or "Intercommunication")

As previously noted, while intercommunicating service is not an explicit element of Part B of the statutory definition of telephone exchange service, the FCC regards it as part of the requisite comparability among services under Parts A and B[31]. This Commission defers to the FCC's interpretation of the Federal Act. Therefore, Intrado's 911 service must provide intercommunicating service in order to constitute telephone exchange service under either part of the federal definition.

Despite their opposing views of Intrado's 911 service with respect to intercommunication, both Intrado and AT&T cite the same text in the Advanced Services Order: "a service satisfies the 'intercommunication' requirement of section 3(47)(A) as long as it provides customers with the capability of intercommunicating with other subscribers."[32] The parties also each rely on the same language in both the Advanced Services Order and the Directory Assistance Order that intercommunicating service "refers to a service that permits a community of interconnected customers to make calls to one another."[33]

00-0769 (which we understand to have been made in good faith), appearing in Intrado's RB at 11, fn. 52 (and any similar citation by any participant here), cannot be considered.

[30] We note that Intrado is not authorized to provide dial tone in Illinois. In its certification proceeding in this state (as SCC), Intrado expressly stated that it would not supply dial tone, SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in Illinois, Dckt. 0-0606, Order at 2 (Dec. 20, 2000) and Amendatory Order, (Jan. 31, 2001) (together, "SCC Certification Order"), and we included that fact in formal findings (Findings 6 & &) in that case.

[31] "Because we find that the term 'comparable' means that the services retain the key characteristics and qualities of the telephone exchange service definition under subparagraph (A), we reject the argument that subparagraph (B) eliminates the requirement that telephone exchange service permit 'intercommunication' among subscribers within a local exchange area." Advanced Services Order, para. 30.

[32] Advanced Services Order, para. 23; cited at Intrado IB at 13 and AT&T IB at 6.

[33] Advanced Services Order, para. 23; Directory Assistance Order, para. 17; cited at Intrado IB at 13 and AT&T IB at 6.

The parties interpret the quoted terms differently, however. AT&T asserts that virtually *all* customers in an exchange area must be able to intercommunicate with virtually *all other* customers in the exchange area via the requesting carrier's service. AT&T IB at 6-7. Intrado argues that the interconnected community need only consist of the intended subscriber (a PSAP) and its potential "customers" (persons needing emergency services) with the exchange area. The issue thus framed by the parties is whether intercommunicating service must inter-link (like a traditional CLEC) all potential subscribers or just the providers and potential users of a niche service (in this case, 911 service).

While the FCC has not precisely defined the scope of intercommunication that a provider must offer to meet the definition of telephone exchange service, the inferences reasonably drawn from the cited FCC decisions do not favor Intrado. In the Directory Assistance Order, on which Intrado places considerable reliance, the FCC concluded that certain DA providers furnish the requisite intercommunication for telephone exchange service[34]. But, as discussed above, the key attribute of such DA service, the FCC found, is not the basic number look-up function. Rather, it is the call completion service (to the caller's requested telephone number) that certain DA providers offer[35]. Call completion enables the end-user to reach telecommunications customers beyond the DA service provider.

Thus, nothing in the Directory Assistance Order suggests that performing traditional number look-up service, or establishing a part of the telecommunications pathway for performing that service, constitutes the requisite intercommunication for telephone exchange service. Intercommunication between callers and DA number retrieval systems (or live personnel) is not enough. The caller must be able to communicate, via the DA provider's service, with other interconnected telecommunications customers. Is Intrado's 911 service, then, sufficiently like the call completion service the FCC characterized as an intercommunicating service?

As discussed above, Intrado's planned service permits the personnel of its PSAP customer to receive an inbound emergency call and transfer it, when necessary, to another PSAP. The transferring PSAP remains involved in the call, at least initially, via the conference function. Such transfers are limited to other PSAP's served by Intrado (and to non-Intrado PSAPs and related agencies under certain circumstances previously described). Such transfers remain within the designated 911 network (Intrado's or - with connected selective routers - another 911 telecommunications provider's), in order to retain ALI and properly provide the emergency response that the caller seeks. Tr. 74 (Hicks).

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[34] The Commission notes that the Directory Assistance Order did not address interconnection under subsection 251(c)(2) of the Federal Act. Rather, the FCC considered whether DA providers furnish telephone exchange service for the purpose of determining their eligibility for nondiscriminatory access to ILEC DA databases under subsection 251(b)(3).

[35] Moreover, not all call completion falls within the statutory definition. Call completion has to occur through the DA's own facilities or via resale, with a separate charge to the caller. Directory Assistance Order, para. 22.

The Commission therefore finds that Intrado's call transfer capability is not sufficiently like the call completion service that met the intercommunication test in the Directory Assistance Order. In the DA context, after the caller obtains information from the DA provider, s/he can elect to communicate with a large and diverse number of other telecommunications customers connected to the PSTN in the exchange area (at least those customers with published numbers), for purposes entirely different than the purpose of the initial call to the DA provider (*i.e.*, to obtain a telephone number). In contrast, Intrado's 911 service permits no more than a transfer to another PSAP for further (and joint) handling of the original purpose of the call. Thus, the "community of interconnected customers" made accessible to the DA caller is dramatically different than the single transferee made accessible through Intrado's 911 service.

In the Advanced Services Order, on which Intrado also relies, the FCC held that telecommunications accomplished through xDSL-based advanced services provide intercommunication (and constitute telephone exchange service)[36]. The FCC rejected an ILEC's suggestion that the relevant xDSL-based service was analogous to private line service[37], which is not telephone exchange service. Although an xDSL subscriber must initially designate an internet service provider or other third-party for receipt of high speed data transmissions, the FCC emphasized that the subscriber, "with relative ease," can "rearrange the service to communicate with any other subscriber on [the packet switched] network."[38] The FCC also stressed that the customer can perform that rearrangement without disconnecting service or requesting an additional line. In contrast, a private line subscriber would have to order an additional line to communicate with additional telecommunications customers.

A comparison between xDSL-based advanced services and Intrado's 911 service can be performed from the perspective of the end-user or the PSAP subscriber. For the end-user, 911 service enables communication only with a predetermined PSAP served by Intrado. At most, the PSAP can, in turn, transfer the call to another PSAP (also served by Intrado, unless there are connected selective routers). Transfer is not at the end-user's behest, and the end-user, by design, cannot communicate with any other person or entity via 911 dialing. From the PSAP's perspective, call transfer is the only enabled and permissible outbound telecommunications option under Intrado's service. Any other outbound call, including a call-back to the end-user, requires an additional administrative line over the PSTN.

The Commission finds it significant that the FCC did not reject the ILEC argument in the Advanced Services Order that "services offered over a predesignated transmission path do not constitute telephone exchange service."[39] Rather, it found the cases cited in support of that argument "readily distinguishable," because the services

[36] Advanced Services Order, para. 24.
[37] Private line service is "a service whereby facilities for communications between two or more designated points are set aside for the exclusive use or availability of a particular customer and authorized users during stated periods of time." 47 CFR §21.2.
[38] Advanced Services Order, para's. 24 & 25.
[39] *Id*., para 25.

involved in those cases were offered via private lines. While AT&T implies that Intrado's 911 service is equivalent to private line service, AT&T RB at 7, the Commission need not and does not reach that conclusion. For our purposes here, we simply determine that Intrado's 911 service is not sufficiently similar to xDSL-based advanced services to sustain a finding, based on the Advanced Services Order, that Intrado's 911 service provides intercommunication. The services involved in the Advanced Services Order afforded the end-user subscriber substantially greater access to, and control over, communication with other subscribers and end-users than does Intrado's 911 service, which enables communication solely between end-users and a designated PSAP (with possible call transfer to another PSAP).

That said, the Commission is mindful of Intrado's recommendation to interpret these FCC decisions broadly, with a predilection toward fostering competitive entry. That is a constructive request, and the Commission has endeavored to ascertain the meaning of each relevant decision as a whole. Intrado is correct that the FCC has construed the Federal Act in a manner that accommodates technological advancement and advanced product offerings. The FCC has not, however, relaxed the intercommunication requirement.

In the Advanced Services Order, for example, the FCC determined that, "in this era of converging technologies," it would not limit the federal definition to voice service[40] and it would construe the law to include packet switching (along with the traditional circuit switching). But the FCC did not modify the scope of the "community of interconnected customers"[41] necessary for telephone exchange service. To the contrary, it reiterated that it had "long interpreted the traditional telephone exchange definition to refer to 'the provision of individual two-way voice communication by means of a central switching complex to interconnect *all subscribers* within a geographic area.'"[42] And the FCC twice expressly stated in the Advanced Services Order that xDSL-based service permitted interconnection because a customer could reconfigure the service "to communicate with *any other customer*" located on the packet-switched network.[43]

The Directory Assistance Order relies upon the Advanced Services Order without explicitly or implicitly altering the treatment of intercommunication contained in the latter decision. When the FCC says, in the Directory Assistance Order, that the call completion feature of some DA services allows "an interconnected community of customers to make calls to one another,"[44] it is plainly referring to call recipients other than the DA service itself (the functional equivalent of the PSAP in this analysis).

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[40] *Id*. at 21.
[41] *Id*. at 23.
[42] Advanced Services Order, para. 20, (emphasis added), citing, among other cases, its post-1996 decision in Application of Bell South for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, 20621 (1998) ("Bell South Order").
[43] *Id*., para. 24 & para. 25, fn. 61 (emphasis added).
[44] Directory Assistance Order, para. 17.

Consequently, the Commission does not agree with Intrado that "911 callers, PSAPs and first responders," Intrado IB at 14, constitute an interconnected community within the meaning of the FCC orders discussed here. We need not adopt AT&T's concept of the interconnected community - virtually *all* telephone subscribers in an exchange area (a effectively impossible standard for any carrier today) - to conclude that the interconnected community, for purposes of defining telephone exchange service, encompasses a more varied inter-customer communication than an inbound-only hub-and-spoke arrangement in which all calls must end with the hub PSAP (or another PSAP via call transfer).

This is not a question, as Intrado suggests (Intrado RB at 6), of whether intercommunication is limited to voice communication or whether non-traditional services or technologies can provide interconnection. The FCC decisions discussed here have already answered those questions. The real issue posed by the intercommunication requirement is whether telecommunications customers have access to a multiplicity of other customers of their own choosing within the exchange area. The x-DSL service in the Advanced Services Order and the call completion service in the Directory Assistance Order supply such access, while Intrado's 911 service does not.

Accordingly – and as we did with regard to call origination - the Commission will diverge from the result we reached with respect to intercommunication in the SCC Arbitration. In that docket, we said that "SCC transports a portion of an Emergency 9-1-1 call" and found that sufficient for intercommunication. SCC Arbitration at 6. There are important differences between that case and this one. Intrado has altered its array of services, the Directory Assistance Order was not analyzed in our 2001 Order and, as AT&T observes, our 2001 Order can be fairly read to have assigned to AT&T's predecessor the burden of proof and persuasion regarding intercommunication. AT&T IB at 14. Nonetheless, the Commission did say in the SCC Arbitration that transport of 911 calls constituted intercommunication and we expressly acknowledge that we are revising our position here. Transport of 911 calls from an ILEC's 911 tandem to a terminating PSAP, by itself, is not intercommunication under the Federal Act, as interpreted by the FCC. Unlike the call completion service in the Directory Assistance Order, terminating 911 transport does not interconnect a community. It delivers a single-purpose communication to a pre-designated termination point.

(c.) Service Within a Telephone Exchange or Connected Exchange System of the Character Ordinarily Furnished by a Single Exchange

Part A of the federal definition of telephone exchange service also requires "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." With regard to the first clause in this quotation, the FCC said that "`exchange service' generally refers to service within local calling areas which is covered by an exchange service charge, as distinct from 'toll

service' between exchanges for which there is a separate additional charge."[45] In more common parlance, service within a telephone exchange is "local" calling.

The second clause in the quoted text refers to a group of exchanges that are treated like a single exchange, for reasons of public policy or local custom (often denominated as "extended [or expanded] area service"). In such circumstances, calls that traverse exchange boundaries within the connected group of exchanges are still "local."

The FCC also said that, "[t]he concept of an exchange area is based on geography and regulation, not equipment. An exchange might have one or several central offices."[46] Consequently, the FCC differentiates between local (telephone exchange) service and toll (exchange access) service by "looking to the end points of the communication,"[47] to determine whether they are in the same geographic unit. Thus, to constitute telephone exchange service, a service must enable calling from one point within the geographic exchange area to another point in that area.

Applying the foregoing principles to the xDSL service in the Advanced Services Order, the FCC determined that some xDSL traffic terminated locally (and was, therefore, telephone exchange service) and some did not (and was, therefore, classifiable as exchange access). Importantly, however, the fact that xDSL-based communications could fall into either category did not mean that ILECs were excused from the obligations imposed on them by subsection 251(c), including interconnection. Rather, *insofar as xDSL was terminated locally*, the FCC expressly found that the duties associated with local exchange service were applicable[48]. The FCC reiterated this principle in the Directory Assistance Order. The "ability [to provide exchange access] does not cancel or otherwise nullify the telephone exchange service that the DA provider has the ability to provide."[49]

Thus, even assuming for the sake of argument that Intrado's proposed 911 service would handle some calls that terminated beyond the local exchange area, the service would still constitute local exchange service (if it satisfied the other elements of the federal definition), *to the extent that* the service enabled local calling. There is no question that Intrado's 911 service will facilitate 911 calls that originate and terminate within the same exchange area. Indeed, 911 service is essentially local, since its core purpose is to link the caller to the responders that can most quickly and readily provide

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[45] Advanced Services Order, para. 17, fn. 42.
[46] Bell South Order, 13 FCC Rcd. 20623, fn. 68.
[47] Advanced Services Order, para. 16.
[48] For clarity: in the Advanced Services Order, the principal proponent of the argument that xDSL is not telephone exchange service was an ILEC that provided xDSL. The ILEC did not want such service classified as either telephone exchange service or exchange service, so that the unbundling requirements of subsection 251(c)(3) would be inapplicable. Thus, the Advanced Services Order was not addressing the nature of a CLEC's competitive services and it was not about interconnection (except insofar as interconnection would be an additional ILEC obligation if xDSL constituted either telephone exchange service or exchange access).
[49] Directory Assistance Order, para. 19, fn. 54.

assistance. Thus, Intrado satisfies the "geographic" element in the federal definition of local exchange service, and it does not matter, in this context, that it might also facilitate 911 calling to PSAPs outside the local exchange area[50].

(d.) Exchange Service Charge

The federal definition of telephone exchange service additionally requires that the service within the pertinent exchange area be covered by the exchange service charge. This requirement is difficult to apply, because the FCC has not been entirely clear about its purpose or its contours. For example, in the Advanced Services Order, the FCC stated that the exchange service charge "comes into play only for the purposes of distinguishing whether or not a service is a local (telephone exchange) service, by virtue of being part of a 'connected system of exchanges,' and not a `toll' service."[51] To that extent, the FCC seems to conflate the exchange service charge component of the federal definition with the telephone exchange boundary component discussed in the preceding section of this Decision.

The FCC also said in the Advanced Services Order that "in a competitive environment, where there are multiple local service providers and multiple services, there will be no single 'exchange service charge.'"[52] This suggests that the exchange service charge component of the federal definition should be applied functionally, by including charges associated with a service that is equivalent to the service a subscriber receives for a traditional exchange service charge.

Applying the foregoing principles in the Advanced Services Order, the FCC concluded that an x-DSL charge constituted an exchange service charge, because "an end-user obtains the ability to communicate with the equivalent of an exchange area as a result of entering into a service and payment agreement with a provider of a telephone exchange service."[53] In the Directory Assistance Order, the FCC, relying expressly on the principles articulated in the Advanced Services Order, found that the per-call charge paid by an end-user for DA call completion was also an exchange service charge, primarily because call completion was "unquestionably local in nature."[54]

In the present case, Intrado's potential customers would be PSAPs, not end-users. Are the rates that an Intrado-served PSAP would pay for 911 service analogous to an end-user's exchange service charge? In light of the FCC's flexible treatment of the exchange service charge in the Advanced Services Order and the Directory Assistance Order, we conclude that Intrado's 911 service rates are analogous insofar as

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[50] In fact, Intrado would be entitled to interconnection under subsection 251(C)(2)(A) if it provided *both* telephone exchange service and exchange access. However, it expressly denies that it will offer exchange access, Tr. 109 (Spence-Lenss), and, as we hold above, it does not satisfy other elements of the federal definition of telephone exchange service.

[51] Advanced Services Order, para. 27. (The FCC reiterated this principle in the Directory Assistance Order, at para. 19.)

[52] *Id*., para. 28.

[53] *Id*., para. 27. (The FCC also repeated this principle in the Directory Assistance Order, at para. 19.)

[54] Directory Assistance Order, para. 19.

they would enable a PSAP to receive inbound local calls from points throughout an exchange area. The Commission thus distinguishes what the FCC described (in the Advanced Services Order and the Directory Assistance Order) as the "ability to communicate" - which a PSAP receives pursuant to its 911 service charge - from the intercommunication and call origination elements of the federal definition of telephone exchange service (which are not provided by Intrado's 911 service). Although limited to inbound calling, the PSAP's "ability to communicate" throughout an exchange is sufficient service for the "exchange service charge" under the FCC's analysis in the cited cases.

The Commission notes that our assessment of this element of the federal definition is largely abstract, since Intrado's recurring 911 service charges are only described summarily in the tariff in evidence here[55]. Consequently, the Commission cannot definitively determine that Intrado's proposed rates include a charge that is, in fact, analogous to an exchange service charge.

(e.) Comparison to AT&T'S 911 Service

In addition to its argument that its own proposed 911 service falls within the federal definition of telephone exchange service, Intrado emphasizes that AT&T's 911 service is much like Intrado's and is referred to in AT&T's tariffs as a "telephone exchange communication service." Intrado IB at 20. This is further proof, Intrado says, that its own service is telephone exchange service.

The Commission does not agree that the text in AT&T's tariff is significant or that it permits the inference Intrado makes. The tariff language and the federal definition, while similar, are differently worded and there is no apparent reason to assume that AT&T was trying to track the federal definition. Since "telephone exchange communication service" is not a statutory term in either Illinois or federal law, we accept AT&T's explanation that it is merely a functional description of the service[56].

A more substantial concern is whether AT&T's comparable 911 service enables either call origination or intercommunication. The tariff suggests it does not. Although it is a detailed document, the tariff (and the service it contemplates) can be fairly summarized (like Intrado's comparable 911 service) by one of its "Terms and Conditions" - "911 Service is furnished to the customer only for the purpose of *receiving* reports of emergencies from the public."[57]

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[55] AT&T Ex. 1, Sch. PHP-3, P.U.C.O., Tariff No. 1, Sec. 5, Orig. Page 11 ("Intelligent Emergency Network Rates and Charges"). In Intrado's Ohio tariff (which Intrado describes as similar to its Illinois tariff), the precise elements that comprise recurring services such as 911 Routing Service and ALI Management Services are not delineated. Moreover, these services are priced on an individual case basis. Also, the Commission cannot determine whether these services involve usage-sensitive pricing, but such pricing can properly be included within an exchange service charge. Bell South Order, 13 FCC Rcd at 20623.

[56] "[The AT&T tariff] refers to 'telephone exchange communication service' because it is a communication service that is offered in an exchange." AT&T RB at 14.

[57] Intrado Ex. 4 (Spence-Lenss), Attach. 3 (AT&T tariff, Ill. C.C. No. 20, Part 8, Sec. 3, 1st Revised Sheet No. 10, Sec. C ("Terms and Conditions"), sub. 2 (emphasis added).

Also, whether AT&T provides telephone exchange service is not dependent upon the nature of its 911 service. AT&T is an ILEC, and it unquestionably supplies telephone exchange service, apart from its 911 offerings. If, however, AT&T (like Intrado) proposed to provide *only* the 911 service described in its tariff, the Commission would presumably reach the same conclusion it reaches today concerning Intrado's 911 service[58].

(f.) The Pro-Competitive Policy in Applicable Law

More generally (as we noted earlier), Intrado has called upon this Commission to consider its arbitration Petition in light of the pro-competitive policies and intentions embedded in both federal and Illinois law. Additionally, Intrado stresses the critical importance of reliable 911 service, emphasizing the technological innovations Intrado's 911 service ostensibly includes. The Commission agrees with Intrado's view of applicable telecommunications and public safety policies, and we have no reason to doubt the quality of Intrado's 911 services (or, for that matter, the quality of AT&T's 911 services). The Commission is therefore receptive to statutory interpretation that advances the law's intentions and enhances public safety.

Nevertheless, the Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that *any* market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.

The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily. It may also occur that the FCC, whether in its own right or through its Wireline Bureau, will construe the Federal Act differently than we do here. In either case, this Commission would certainly consider another interconnection request with those new circumstances in mind. Today's result is limited to the record in this particular case and the current state of the law, including the absence of an FCC ruling regarding the status of stand-alone 911 service as "telephone exchange service."

[58] Indeed, AT&T states (albeit for purposes of this litigation) that its 911 service is not a telephone exchange service. AT&T RB at 15.

(g.) Commission Discretion to Arbitrate

As an alternative to its preferred outcome (rejection of Intrado's request for interconnection under subsection 251(c)(2)), AT&T contends that the Commission has discretion under the Federal Act to decline to entertain Intrado's interconnection Petition. AT&T IB at 14. Intrado disagrees. Intrado RB at 13, fn. 62. AT&T does not cite authority expressly conferring discretion on the state commissions. Instead, AT&T apparently relies on what it believes to be the absence of compulsory language in subsection 252(b) of the Federal Act (even though the title of that subsection is "Agreements Arrived at Through Compulsory Arbitration"). However, AT&T overlooks subsection 252(b)(4)(C), which provides that "[t]he State commission *shall* resolve each issue set forth in the petition and the response…and *shall* conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." (Emphasis added). "Shall" is a compulsory term in a statute. It precludes discretion with regard to what "shall" be done. Unless there is precedent from the FCC or a superior court that interprets the Federal Act differently on this point (and AT&T has not cited any), the Commission cannot decline to consider Intrado's Petition.

That said, the Commission recognizes that the State Corporation Commission of Virginia "deferred" Intrado's comparable interconnection petitions in that state to the FCC[59]. The Virginia Commission concluded that the FCC was "the more appropriate agency" to determine the threshold issue of Intrado's right to interconnection under Section 251[60]. That commission cited a Virginia statute that apparently provides discretion to defer arbitration issues. It is not clear how a state statute trumps the mandatory federal provision quoted above, but, in any event, the Virginia Commission dismissed the petitions there (an action that arguably constitutes the resolution of issues contemplated by subsection 252(b)(4)(C)). After dismissal, Intrado successfully petitioned the FCC, under subsection 252(e)(5) of the Federal Act, to assume preemptive jurisdiction of Intrado's Virginia interconnection petitions, on the ground that the state commission had "fail[ed] to carry out its [arbitration] responsibility," as subsection 252(e)(5) stipulates. The FCC's Wireline Competition Bureau issued orders preempting the Virginia Commission[61].

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[59] *E.g.*, Petition of Intrado Comm. of Virginia Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Telephone-Southeast, Inc. d/b/a Embarq, under Sec. 252(b) of the Telecommunications Act of 1996, Order of Dismissal, Feb. 14, 2008.

[60] *Id.*, at 2. Although the Virginia Commission focused on the threshold issue of Intrado's interconnection rights, it deferred to the FCC all of the issues presented by the arbitrating parties.

[61] The procedural history of the FCC's preemption of Intrado's Virginia petitions is summarized in the Wireline Competition Bureau's December 9, 2008 Order that consolidates Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Co. of Virginia and United Telephone-Southeast, Inc., FCC WC Dckt. 08-33, and Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc., FCC WC Dckt. 08-185.

We will not defer this proceeding to the FCC. As stated above, this Commission does not possess the authority to refrain from resolving the issues framed by the parties. Intrado's Virginia arbitrations were preempted by the FCC pursuant to Intrado's petitions under subsection 252(e)(5), and we assume that deferral by us would be similarly regarded as a failure to arbitrate. Moreover, we believe that, like the Florida Commission, we have correctly interpreted and applied the Federal Act by concluding that Intrado's proposed 911 service is not telephone exchange service within the meaning of the federal definition. And since the Virginia Commission's deferral has already caused that threshold issue to be presented to the FCC, deferral by this Commission would add nothing to the process of discerning the Federal Act's meaning. The FCC's Wireline Competition Bureau will issue a decision and it will resonate among the state Commissions (including this one)[62]. Furthermore, by issuing a final arbitration decision, we enable Intrado to seek review in the federal District Courts under subsection 252(e)(6), thereby obtaining additional federal guidance on the meaning of the Federal Act.

(h.) Summary – "Telephone Exchange Service"

Intrado's 911 service is not telephone exchange service within the meaning of the federal definition in §153(47). It does not enable its PSAP customers to originate calls, as required by Part B of that definition. It does not facilitate intercommunication, whether by its PSAP customers or by the end-users initiating emergency calls, as required by Parts A and B of that definition. It does provide service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area (even if it also provides service beyond an exchange area). It appears to furnish service under an exchange service charge (although the precise nature of its recurring charges cannot confirmed by the evidentiary record). Based on the foregoing conclusions, the Commission resolves this issue as AT&T recommends, concluding that AT&T has no duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act.

Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36

The Commission resolved Issue 1, above, with the finding that AT&T has no duty to interconnect with Intrado pursuant to subsection 251(c)(2) of the Federal Act, because Intrado's proposed 911 service is not "telephone exchange service" within the meaning of the federal definition at 47 USC §153(47). Accordingly, no mandatory ICA will emanate from this arbitration. It necessarily follows that the ICA terms proposed by the parties in connection with the other issues in this proceeding cannot be approved. Therefore, in order to implement subsection 252(c)(1) of the Federal Act, which

[62] When the FCC preempts a state arbitration under subsection 252(e)(5), it "assume[s] the responsibility of the State Commission…and act[s] for the State Commission," not in its own right. Moreover, decisions are rendered by the FCC's Wireline Competition Bureau, rather than by the FCC Commissioners. Nevertheless, the Bureau's decisions are accorded considerable persuasive weight and frequent citation by the state commissions. Thus, with a successful outcome before the Bureau, Intrado would presumably re-petition for interconnection in states that had rejected its original request.

mandates that our resolution of open issues "meet the requirements of Section 251," the Commission resolves each of the other issues in this arbitration with the finding that no proposed ICA language is consistent with the requirements of Section 251, since no ICA is required under subsection 251(c)(2). All disputes regarding proposed ICA terms have been rendered moot and superfluous by our resolution of Issue 1.

V. STAFF'S REQUEST FOR A GENERIC PROCEEDING

Staff requests a Commission directive to prepare a report and draft order initiating a generic proceeding for issues relating to competitive 911 service. Staff asserts that this arbitration "raises issues that implicate the rights and interests of numerous entities" outside the case. Staff IB at 36. Presumably, Staff is principally referring to the PSAPs and ETSBs that manage and fund the 911 system. Staff's testimony suggests some of the issues that might be constructively addressed in a generic proceeding (such as modification of existing ETSB system planning), and posits further that 83 Ill. Adm. Code 725 might need to be revised to accommodate competitive entry for 911 service. Staff Ex. 3 (Schroll).

Staff's interest in a comprehensive approach to 911 competitive entry is patently sensible. But the Commission cannot discern whether Staff's request would survive this Arbitration Decision, which concludes that AT&T does not have a duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act. Would Staff still propose a generic proceeding, in view of this Decision? Will Intrado (or other potential 911 telecommunications services providers) elect to enter into an agreement outside of subsection 251(c)(2) in order to facilitate 911 service? If not, are the relevant stakeholders, particularly the ETSBs, interested in a generic proceeding?

Instead of presuming to answer the foregoing questions, the Commission will leave it to Staff's discretion to determine, in light of this Decision, whether to prepare a report on 911 competitive entry and request a generic docket.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Intrado has petitioned this Commission for arbitration under subsection 252(b) of the Federal Act, for the purpose of executing an Interconnection Agreement with AT&T;

(2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;

(3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(4) Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act; therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado and Issue 1 herein should be resolved accordingly;

(5) based on Finding (4), above, no interconnection agreement should be required under subsection 251(c)(2), and all other issues presented in this proceeding (Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36), which pertain to the terms and conditions to be included in such an agreement, should be resolved by declaring them superfluous and moot.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Issue 1 in this arbitration shall be resolved by determining that Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act and that, therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado.

IT IS FURTHER ORDERED that Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36 shall be resolved by determining that no interconnection agreement between Intrado and AT&T is required under subsection 251(c)(2), and that, therefore, those issues are superfluous and moot.

DATED:	February 13, 2009
BRIEFS ON EXCEPTIONS DUE:	February 20, 2009
REPY BRIEFS ON EXCEPTIOND DUE:	February 27, 2009

David Gilbert,
Bonita Benn,
Administrative Law Judges

Attachment 3

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of the Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois	))))))	Docket No. 08-0545

Intrado Inc. Brief on Exceptions

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Dated: February 23, 2009

Its Attorneys

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CERTIFICATE OF SERVICE

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of the Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois	))))))	Docket No. 08-0545

Intrado Inc. Brief on Exceptions

Intrado Inc. ("Intrado"), by its attorneys, hereby submits its Brief on Exceptions in connection with Intrado's Petition for Arbitration ("Petition") to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois ("AT&T") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").[1] The Illinois Commerce Commission ("Commission") should adopt the exceptions set forth herein, reject the finding in the Proposed Arbitration Decision ("PAD")[2] that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and direct the Administrative Law Judges ("ALJs") to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, Section 251(a) of the Act.

Intrado's 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission ("FCC") because it allows Intrado's public safety answering point ("PSAP")[3] customers to receive 911 calls and intercommunicate

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[1] 47 U.S.C. § 252(b).

[2] Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Proposed Arbitration Decision (Feb. 13, 2009) ("PAD").

[3] For ease of reference, Intrado uses the term "PSAP" to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

with all 911 callers programmed to reach the particular PSAP. In the alternative, the Commission should direct the ALJs to grant Intrado's request for an interconnection agreement consistent with Intrado's positions and proposed interconnection agreement language for all unresolved issues pursuant to Section 251(a) of the Act. As the PAD acknowledges, Intrado is a telecommunications carrier[4] and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer "telephone exchange service."[5] As explained below, the Commission has previously recognized the public benefit of regulating 911 services as well as its authority to arbitrate and oversee 251(a) interconnection agreements. The Commission should therefore direct the ALJs to arbitrate the remaining issues between the Parties pursuant to either Section 251(c), Section 251(a), or both. Such a ruling will promote the goals of the Act by removing the barriers to entry erected by AT&T and the PAD.[6]

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[4] PAD at n.3 ("Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services."); *see also* Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order (Dec. 20, 2000); Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Amendatory Order (Jan. 31, 2001); *SCC Communications Corp. Name Change to Intrado, Inc.* (filed Oct. 11, 2001).

[5] PAD at 3; *see also* 47 U.S.C. § 251(a) (setting forth the interconnection obligation of all telecommunications carriers); 47 U.S.C. § 153(47) (defining "telephone exchange service").

[6] 47 U.S.C. § 251. Section 251 was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [incumbent carriers]." *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 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The process established by Section 251 and the FCC's implementing rules eliminates these barriers to entry to give competitors like Intrado "a fair opportunity to compete" in the marketplace. *See id.* ¶ 18. The opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets." *Id.* ¶ 4. To ensure that the competition contemplated by Section 251 would flourish, the Act specifically condemns state statutes, regulations, or legal requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Thus, no state may "erect legal barriers to entry to telecommunications markets that would frustrate the 1996 Act's explicit goal of opening local markets to competition." *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253*, 13 FCC Rcd 16400, ¶ 8 (1998).

ARGUMENT

I. THE PROPOSED ARBITRATION DECISION SHOULD BE REJECTED BECAUSE IT MISCONSTRUES FEDERAL LAW WITH RESPECT TO THE DEFINITION OF TELEPHONE EXCHANGE SERVICE

Interconnection pursuant to Section 251(c)(2) of the Act requires a carrier to provide "telephone exchange service" or "exchange access" as defined in the Act.[7] The PAD correctly recognizes that the Act's definition of "telephone exchange service" presents two alternative meanings and a carrier's service can qualify as telephone exchange service under either alternative.[8] The PAD also correctly determines that Intrado's 911 service satisfies the "within a telephone exchange" and "exchange service charge" requirements of the telephone exchange service definition.[9] The PAD further recognizes that to "minimize the potential for error, failure or overload, [Intrado's 911 service] telecommunications path is *not* designed for calls in the opposite direction."[10] The PAD further concludes that Intrado's 911 service design as "a terminating only service" that prohibits outbound calls on 911 circuits is consistent with the Illinois rules for a carrier to provide 911 services.[11]

Thus, despite the PAD's finding that Intrado's 911 service meets all of these other qualities of the federal definition and Illinois rules, the PAD incorrectly interprets federal law with respect to the "intercommunication" prong of the federal definition.[12] Specifically, the PAD states that call transfer "reroutes a call originated by the person placing the inbound call to

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7 47 U.S.C. § 251(c)(2).

8 PAD at 6.

9 PAD at 15-16, 16-17.

10 PAD at 7 (emphasis added).

11 PAD at 7; *see also* 83 ILL. ADM. CODE 725.500(a), (d).

12 PAD at 12.

the PSAP"[13] and concludes that Intrado's call transfer capability does not satisfy the intercommunication test set forth in the FCC's *Directory Assistance Order*.[14] The PAD's discussion of the intercommunication prong, however, wrongly fixates on the transfer of 911 calls rather than the ***service being purchased by the PSAP***. The finding that Intrado does not offer telephone exchange service should therefore be rejected.

The PSAP is purchasing 911 service from Intrado so that it can receive calls from all 911 callers programmed to reach that PSAP, *i.e.*, so that the PSAP can intercommunicate with those 911 callers. Indeed, in another section of the PAD, the ALJs recognize that the "core purpose" of 911 service "is to link the caller to the responders that can most quickly and readily provide assistance."[15] Yet, when evaluating whether Intrado's service provides intercommunication, the ALJs ignore this critical "core purpose" of the service.

As required by the FCC's *Directory Assistance Order*,[16] Intrado's 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls.[17] The PAD's conclusion that Intrado's 911 service "enables communication only with a predetermined PSAP"[18] ignores the nature of the service being purchased by the PSAP. Analysis of Intrado's 911 service should not be from the perspective of the 911 caller. The relevant inquiry is whether Intrado's customer (end user/PSAP) purchasing the 911 service will receive the intercommunication it seeks with the 911 callers needing to reach emergency

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[13] PAD at 8.

[14] PAD at 12.

[15] PAD at 15-16.

[16] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001) ("*Directory Assistance Order*).

[17] Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; *see also Directory Assistance* Order ¶¶ 17, 21; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 17, 23, 30 (1999) ("*Advanced Services Order*").

[18] PAD at 12.

assistance. It makes no difference whether the "end-user" can communicate with any other entity via 911 dialing;[19] it only matters whether the PSAP can communicate with any person dialing 911 to reach that PSAP.

As the FCC has determined, a service satisfies the "intercommunication" requirement "as long as it provides customers with the capability of intercommunicating with other subscribers."[20] Intrado's 911 service ensures that its PSAP customers are able to communicate with those making 911 calls. By virtue of Intrado's 911 service, PSAPs are able to communicate with others within a local calling area, which is a hallmark of "intercommunication."[21]

Further, the PAD's conclusion that transport of 911 calls from an incumbent local exchange carrier ("ILEC") 911 tandem to a terminating PSAP is not intercommunication is irrelevant.[22] As explained above, the relevant communication is that which occurs between the 911 caller on one end of the call and Intrado's PSAP customer on the other end of the call, not a portion of the transmission between an ILEC 911 tandem and a PSAP. Transport of a call between two entities (*i.e.*, two customers) is intercommunication regardless of the type of call that is being transported because it "permit[s] communications among subscribers within an exchange or within a connected system of exchanges."[23] The fact that Intrado will pick up the 911 call at the ILEC's selective router does not change the intercommunication provided to Intrado's PSAP customer and 911 callers or vice versa when the ILEC is the 911 system provider that Intrado 911 callers must reach. Indeed, all competitors routinely pick up plain old telephone

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19 *Cf.* PAD at 12.

20 *Advanced Services Order* ¶ 23.

21 *Directory Assistance Order* ¶ 21; *see also* PAD at 15 ("There is no question that Intrado's 911 service will facilitate 911 calls that originate and terminate within the same exchange area.").

22 PAD at 14.

23 *Advanced Services Order* ¶ 20.

service ("POTS") calls at an ILEC tandem and transport those calls to their customer or deliver 911 calls to ILEC selective routers for delivery to ILEC PSAP customers. Intrado's interconnection arrangement for 911 service to its PSAP customers will be no different. Thus, the remaining unresolved issues should be addressed pursuant to Section 251(c) of the Act and, to the extent necessary, Section 251(a) of the Act.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD DIRECT THE ALJS TO ARBITRATE THE OUTSTANDING ARBITRATION ISSUES PURSUANT TO SECTION 251(A) OF THE ACT

Under Section 251(a) of the Act, all telecommunications carriers are required to interconnect directly or indirectly with all other telecommunications carriers.[24] As the Commission has previously found, this section of the Act "contains no restrictions on who may interconnect with whom."[25] Thus, there is no requirement that a carrier provide telephone exchange service or any service other than telecommunications service to obtain interconnection under Section 251(a).[26]

The PAD wrongly concludes that Section 251(a) is not at issue in this proceeding.[27] Intrado's Petition for Arbitration contemplated a review of the outstanding issues between the Parties pursuant to Sections 251 and 252 of the Act. Indeed, Intrado invoked Section 251

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[24] 47 U.S.C. § 251(a); *see also* Transcript at 139 (Pellerin) (AT&T's witness noting that "all telecommunications carriers have obligations under 251A").

[25] Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff'd Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

[26] It is not disputed that Intrado qualifies as a telecommunications carrier. The PAD recognizes that Intrado is certificated by the Commission to provide intrastate facilities-based and resold local and interexchange telecommunications services. *See* PAD at n.3.

[27] PAD at n.14.

generally when it made its negotiation request to AT&T.[28] Further, the issue of whether Intrado is entitled to Section 251(c) interconnection or some other form of interconnection has been discussed at length in this proceeding. AT&T acknowledged that its proposal for a "commercial agreement" could be a Section 251(a) agreement.[29] Moreover, AT&T urged the ALJs to adopt the findings of the Florida commission, which determined that AT&T and Intrado could negotiate an interconnection agreement pursuant to Section 251(a) in Florida.[30]

While Intrado is entitled to interconnection under 251(c) as explained above, the issue of whether AT&T and Intrado's interconnection agreement should be established pursuant to Section 251(a) is squarely before the Commission and the Commission has recognized its authority to analyze interconnection requests under Section 251(a) in the past. In the arbitration proceedings between Sprint and several rural carriers, the Commission recognized that the rural carriers were required to negotiate interconnection terms and conditions with Sprint pursuant to Section 251(a)[31] and subsequently arbitrated the interconnection agreements between Sprint and

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[28] Letter from Thomas Hicks, Intrado, to AT&T Contract Manager (Apr. 11, 2008) (Attachment 2 to Intrado Petition for Arbitration) (requesting negotiation of an interconnection agreement in the state of Illinois pursuant to Section 251).

[29] Transcript at 132, lines 12-16 (Pellerin) ("AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don't have an opinion on that."); Transcript at 139, lines 8-19 (Pellerin) ("Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.").

[30] Transcript at 132, lines 7-11 (Pellerin) ("Q: The Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That's my understanding.").

[31] Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005).

those carriers pursuant to Section 251(a).[32] On review, the Commission's findings were upheld by the United States District Court for the Southern District of Illinois.[33]

The Commission's decisions in the interconnection proceedings between Sprint and the rural carriers are consistent with the findings of numerous other state commissions, including those in California, Indiana, Iowa, New York, North Dakota, and Washington.[34] Further, the Ohio commission recently found that it has authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c).[35] Indeed, the Ohio

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[32] Docket No. 05-0402, *Sprint Communications L.P. d/b/a Sprint Communications Company L. P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act of 1996*, Arbitration Decision (Nov. 8, 2005).

[33] *Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

[34] *See, e.g.*, California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated."); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc*., Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

[35] Ohio 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 15 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*") (Spence-Lenss Direct at Attachment No. 2).

commission found that "[e]ven though neither party raised the application of Section 251(a) as an issue, the [Ohio commission] is not barred by mere omission from applying applicable law [because the Ohio commission] has the authority and the requirement to consider Section 251(a) where it is applicable."[36] Based on those findings, the Ohio commission determined that Section 251(a) along with its broad authority over 911 service supported the adoption of Intrado's proposed interconnection arrangements.[37] Arbitration is clearly permitted for provisions outside of 251(c).[38]

Arbitration of Intrado's interconnection agreement with AT&T pursuant to Section 251(a) will ensure that the Commission retains critical oversight over 911 interconnection and 911 services generally.[39] While the PAD proposes that the Commission reverse several of the conclusions in the *SCC Order*, the PAD does not address the significant public interest findings made by the Commission in that decision. Specifically, the Commission has already determined that it is "of the utmost importance that the continuance and quality of a 9-1-1 call be preserved and enhanced."[40] As "a matter of public safety," the Commission determined that competitive

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[36] Ohio Case No. 08-537-TP-ARB, *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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*Ohio CBT Rehearing Award*")

[37] *Ohio Embarq Arbitration Award* at 15.

[38] *See, e.g.*, *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) ("where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original).

[39] Intrado Initial Brief at 28-30.

[40] Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) ("*SCC Order*").

911/E911 services should be regulated because the "public interest is protected when [such] services are regulated."[41] The Commission reaffirmed these findings five years later:

> The prospect of competitively offering E9-1-1 services is, from our perspective, a matter of far greater importance than the mere offering of local or interexchange retail service to customers. E9-1-1 service makes emergency, lifesaving protection available to every individual in even the most remote corners of the state. It further helps to safeguard residential and commercial property, protecting against the risk of loss of home or business. It is an indispensable lifeline for every individual present within Illinois.[42]

Thus, use of Section 251(a) is consistent with the public interest standards already established by the Commission.[43]

The Commission's previous findings are also on par with those of the Public Utilities Commission of Ohio, which "highlight[ed] the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provision of 9-1-1 service."[44] The Ohio commission found that "Commission oversight and resolution of disputes raised in [an arbitration] proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service."[45] Accordingly, arbitration of Intrado's interconnection agreement with AT&T pursuant to Section 251(a) is in the public interest.

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41 *SCC Order* at 8.

42 Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order at 13 (May 17, 2005), *aff'd Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

43 *See* PAD at 18 ("The Commission is therefore receptive to statutory interpretation that advances the law's intentions and enhances public safety.").

44 Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) ("*Ohio Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Ohio Certification Rehearing Order*").

45 *Ohio Embarq Arbitration Award* at 15.

CONCLUSION

For the foregoing reasons, Intrado respectfully requests that the Commission reject the PAD's finding that Intrado does not offer telephone exchange service and direct the ALJs to arbitrate the remaining issues between the Parties. In the alternative, the Commission should direct the ALJs to arbitrate the remaining issues between the Parties pursuant to Section 251(a).

Respectfully submitted,

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Dated: February 23, 2009

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 23rd day of February 2009, I electronically filed a copy of the foregoing Brief on Exceptions of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.

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Attachment 4

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Intrado Inc.:	:	
	:	**Docket No. 08-0545**
Petition for Arbitration pursuant to	:	
Section 252(b) of the Communications	:	
Act of 1934, as amended, to Establish	:	
an Interconnection Agreement with	:	
Illinois Bell Telephone Company.	:	

BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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February 23, 2009

NOW COMES the Staff of the Illinois Commerce Commission, by and through its counsel and pursuant to Section 761.430 of the Commission's Rules, 83 Ill. Adm. Code 761.430, states, for its Brief on Exceptions in the above-captioned proceeding, as follows:

Exception No. 1

The PAD makes a number of determinations which, taken separately and together, lead to a conclusion that Intrado is not entitled to interconnection under Section 251(c) of the federal Act. The Staff takes one very general exception to these findings.

On a very general level, the PAD correctly observes:

> Intrado has called upon this Commission to consider its arbitration Petition in light of the pro-competitive policies and intentions embedded in both federal and Illinois law. Additionally, Intrado stresses the critical importance of reliable 911 service, emphasizing the technological innovations Intrado's 911 service ostensibly includes. The Commission agrees with Intrado's view of applicable telecommunications and public safety policies, and we have no reason to doubt the quality of Intrado's 911 services (or, for that matter, the quality of AT&T's 911 services). The Commission is therefore receptive to statutory interpretation that advances the law's intentions and enhances public safety.
>
> Nevertheless, the Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that *any* market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.

PAD at 18

It has been the Staff's view throughout this proceeding that the Commission should adhere with some rigor to Section 251(c) and associated rules. However, Staff

notes that the threshold jurisdictional question is the one area in which the Commission has, in the past, afforded petitioners for arbitration a certain amount of latitude in making their case. By way of example, in its Order in Cambridge Telephone Exchange, *et al*.: Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251 (f)(2) of that Act; and for any other necessary or appropriate relief, ICC Docket Nos. 05-0259 through 05-0265; 05-0270; 05-0275; 05-0277; 05-0298 (July 13, 2005) (hereafter "Cambridge Order"), the Commission rejected an ALJ's Proposed Order finding that a certain entity was a "telecommunications carrier" entitled to arbitration under Section 251(c), in part for the following reasons:

> Sprint and MCC's interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures into the relevant exchanges.
>
> …
>
> [I]t seems that the Commission's findings are greatly serving the public interest. Competition in the telecommunications industry has brought about significant technological advances that few who live in rural areas in Illinois have been able to take advantage of. The type of arrangement between MCC and Sprint potentially allows those in rural areas to benefit from the competitive telecommunications market.
>
> Cambridge Order at 11, 13

While the Staff does not seek to ascribe too much significance to the matter, similar conditions obtain here, at least with respect to the novel status of the competitive entrant. The Staff notes this for Commission consideration.

Exception No. 2

The Staff believes that determinations made in the PAD regarding the technical and jurisdictional nature of services Intrado intends to provide are in some cases infirm, and should be amended in the final Arbitration Decision.

The Staff's position that Intrado intends to provide "telecommunications exchange service" or "exchange access" within the meaning of Section 251(c) of the federal Act is based on the Commission's previous finding that Intrado intended to provide such services at the time it sought arbitration with AT&T in 2001. *See, generally*, Arbitration Decision, In the Matter of the Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc., ICC Docket No 00-0769 (March 21, 2000) ("Arbitration Decision"). There, the Commission saw Intrado as proposing to provide services as follows:

> SCC contends that it provides its services to a wide variety of types of customers, including, but not limited to, ILECs and CLECs, but also, business and governmental agencies. SCC concludes that it does provide services to the public and therefore, it falls within the federal definition of a telecommunications carrier. SCC additionally contends it falls within the federal definition of an exchange service provider because it transports emergency call traffic to its subscribers, within a telephone exchange, through the use of transport and switching. SCC also contends that its services are comparable to traditional telephone exchange services, because its services allow subscribers to originate and terminate a 9-1-1 or other emergency call.

Arbitration Decision at 3

It is not clear to Staff how the facts obtained in the instant matter differ from those in the prior matter. Staff understands that Intrado intends to provide much the same service here, specifically that Intrado "transports emergency call traffic to its

subscribers, within a telephone exchange, through the use of transport and switching." Assuming that it does, however, the PAD must be amended to conform to its own internal logic.

The PAD appears to subscribe to endorse, to a significant degree, the logic of the Arbitration Decision, finding that:

> [T]his Commission … conclude[d], in the SCC Arbitration, that Intrado (as SCC) provided a service "by which a subscriber can originate and terminate an emergency or 9-1-1 call." [fn] However, the 911-related services SCC proposed to provide in 2001 are not the same as Intrado's proposed 911 service here and they differ meaningfully with respect to call origination. SCC customers included ILECs, CLECs and wireless carriers, for whom it intended to deliver originated 911 traffic to AT&T's (then, Ameritech's) selective routing tandems, for transmission to an appropriate PSAP [fn]. SCC did not intend to serve PSAPs, the terminators of 911 traffic. AT&T Ex. 1.0 at 20 (Pellerin). In the present case, Intrado's service will begin at the selective router and proceed to the PSAP. Intrado does not intend to "aggregate originating 911 calls from other carriers for delivery to [AT&T's] selective routers," AT&T Ex. 1.0, Sch. PHP-9, and it does not intend to "provide non-wire line telephone exchange service to customers in Illinois." *Id*. Thus, Intrado will not enable 911 call origination for any party [fn], much less for its subscriber PSAPs (the relevant entity for purposes of Part B of the federal definition of telephone exchange service). Accordingly, the Commission will not repeat here our conclusion in the SCC Arbitration that Intrado originates telecommunications service.
>
> PAD at 9-10 (footnotes omitted)

The PAD, in other words, appears to find that the service Intrado intends to provide in this proceeding fails to qualify as "telephone exchange service" within the meaning of Section 153(47) of the federal Act, 47 U.S.C. §153(47), in that subscribers using it cannot both "originate and terminate a telecommunications service". The PAD bases this reasoning on a finding that Intrado will not enable call origination, and thus its service "differs meaningfully" from the service it planned to provide in 2001.

This finding cannot be reconciled with the known facts. Assuming that the PAD's interpretation of the Arbitration Order is substantially accurate, Intrado (then in its SCC

incarnation) planned to deliver traffic originated by other carriers, to selective routers operated by other carriers, for termination to PSAPs that were not Intrado customers. Accordingly, the notion that Intrado has significantly altered its service offerings since 2001 to remove origination is simply infirm; if anything, Intrado has added termination. If the Commission decides to conclude here that the ability to originate and terminate are both required to bring a service within the aegis of "telephone exchange service" as defined in Section 153(47) of the federal Act, it must take the same step it took with respect to its finding regarding 'intercommunication service" which is to "expressly acknowledge that [it is] revising its position here[.]" PAD at 14.

Consistent with this, the Staff recommends the following changes to the PAD:

> Nonetheless, this Commission did conclude, in the SCC Arbitration, that Intrado (as SCC) provided a service "by which a subscriber can originate and terminate an emergency or 9-1-1 call." [fn] ~~However, the 911-related services SCC proposed to provide in 2001 are not the same as Intrado's proposed 911 service here and they differ meaningfully with respect to call origination. SCC customers included ILECs, CLECs and wireless carriers, for whom it intended to deliver originated 911 traffic to AT&T's (then, Ameritech's) selective routing tandems, for transmission to an appropriate PSAP [fn]. SCC did not intend to serve PSAPs, the terminators of 911 traffic. AT&T Ex. 1.0 at 20 (Pellerin). In the present case, Intrado's service will begin at the selective router and proceed to the PSAP. Intrado does not intend to "aggregate originating 911 calls from other carriers for delivery to [AT&T's] selective routers," AT&T Ex. 1.0, Sch. PHP-9, and it does not intend to "provide non-wire line telephone exchange service to customers in Illinois." *Id*. Thus,~~ It is now apparent to us that, contrary to our finding in the SCC Arbitration, Intrado will not enable 911 call origination for any party [fn], much less for its subscriber PSAPs (the relevant entity for purposes of Part B of the federal definition of telephone exchange service). Accordingly, the Commission will not repeat here our conclusion in the SCC Arbitration that Intrado originates telecommunications service, and in fact expressly acknowledges that it is revising its position here.

> In sum, the Commission finds that Intrado's 911 service does not enable a subscriber to initiate telecommunications service within the meaning of Part B of the federal definition of telephone exchange service.

Exception No. 3

In addressing Intrado's argument that AT&T's 911 service is substantially the same as Intrado's, the PAD finds as follows:

> In addition to its argument that its own proposed 911 service falls within the federal definition of telephone exchange service, Intrado emphasizes that AT&T's 911 service is much like Intrado's and is referred to in AT&T's tariffs as a "telephone exchange communication service." Intrado IB at 20. This is further proof, Intrado says, that its own service is telephone exchange service.
>
> The Commission does not agree that the text in AT&T's tariff is significant or that it permits the inference Intrado makes. The tariff language and the federal definition, while similar, are differently worded and there is no apparent reason to assume that AT&T was trying to track the federal definition. Since "telephone exchange communication service" is not a statutory term in either Illinois or federal law, we accept AT&T's explanation that it is merely a functional description of the service [fn].
>
> A more substantial concern is whether AT&T's comparable 911 service enables either call origination or intercommunication. The tariff suggests it does not. Although it is a detailed document, the tariff (and the service it contemplates) can be fairly summarized (like Intrado's comparable 911 service) by one of its "Terms and Conditions" - "911 Service is furnished to the customer only for the purpose of *receiving* reports of emergencies from the public." [fn].
>
> Also, whether AT&T provides telephone exchange service is not dependent upon the nature of its 911 service. AT&T is an ILEC, and it unquestionably supplies telephone exchange service, apart from its 911 offerings. If, however, AT&T (like Intrado) proposed to provide *only* the 911 service described in its tariff, the Commission would presumably reach the same conclusion it reaches today concerning Intrado's 911 service [fn].
>
> PAD at 17-18 (footnotes omitted)

Staff takes exception to the fact that the PAD insofar as it makes a determination on a matter that has not been the subject of substantial evidence in this proceeding, and which, moreover, the Commission need not decide. The threshold issue in this proceeding is whether or not Intrado is entitled to Section 251(c)(2) interconnection with respect to its proposed 911 service. The Commission has not been called upon to make such determinations here or elsewhere with respect to AT&T's 911 service. Nor is AT&T seeking to exercise any Section 251(c)(2) rights with respect to its own 911 service provision in this proceeding. Therefore, the PAD need not and should not, particularly given an incomplete record on matters not directly before the Commission, evaluate the status of AT&T's 911 service in this proceeding. Consistent with this, Staff recommends that the PAD be amended as follows:

> In addition to its argument that its own proposed 911 service falls within the federal definition of telephone exchange service, Intrado emphasizes that AT&T's 911 service is much like Intrado's and is referred to in AT&T's tariffs as a "telephone exchange communication service." Intrado IB at 20. This is further proof, Intrado says, that its own service is telephone exchange service.
>
> The Commission does not agree that the text in AT&T's tariff is significant or that it permits the inference Intrado makes. The tariff language and the federal definition, while similar, are differently worded and there is no apparent reason to assume that AT&T was trying to track the federal definition. Since "telephone exchange communication service" is not a statutory term in either Illinois or federal law, we accept AT&T's explanation that it is merely a functional description of the service [fn].
>
> <u>In any case, the Commission has not previously made any determinations regarding any 251(c)(2) interconnection rights that AT&T might or might not have with respect to its 911 service. For this and other reasons, we decline to determine the status of AT&T's service with respect to Section 251(c)(2) and, as a result, any similarities or differences between AT&T's 911 service and Intrado's 911 service have no bearing on the our determinations in this proceeding.</u>

> ~~A more substantial concern is whether AT&T's comparable 911 service enables either call origination or intercommunication. The tariff suggests it does not. Although it is a detailed document, the tariff (and the service it contemplates) can be fairly summarized (like Intrado's comparable 911 service) by one of its "Terms and Conditions" - "911 Service is furnished to the customer only for the purpose of *receiving* reports of emergencies from the public." [fn].~~
>
> ~~Also, whether AT&T provides telephone exchange service is not dependent upon the nature of its 911 service. AT&T is an ILEC, and it unquestionably supplies telephone exchange service, apart from its 911 offerings. If, however, AT&T (like Intrado) proposed to provide *only* the 911 service described in its tariff, the Commission would presumably reach the same conclusion it reaches today concerning Intrado's 911 service [fn].~~
>
> PAD at 17-18 (footnotes omitted)

Exception No. 4

As the Staff has made clear throughout this proceeding, the Commission should not render determinations in this arbitration that would affect the rights of any third party not before the Commission in this proceeding. Staff notes that interconnecting with AT&T is only the *first* step Intrado must take in providing regulated competitive 911 services in AT&T's service territory in Illinois. Staff Ex. 1.0 at 6. Pursuant to Sections 10 and 11 of the Emergency Telephone System Act, 50 ILCS 75010, 750/11 and 83 Ill. Adm. Code Part 725, the Commission must examine in detail and approve (based upon 911 system considerations and requirements) provision of competitive 911 services by Intrado to any specific Emergency Telephone Systems Board ("ETSB"). Id.; Staff Ex. 3.0 at 3-4. Any ruling that presupposes that a certain 911 plan wherein Intrado offers service to an ETSB is consistent with the Commission's rules, and the public safety, should therefore be assiduously avoided.

Further, Staff believes the Commission will need to resolve certain issues relating to competitive 911 offerings outside of this proceeding. Whatever AT&T and Intrado agree to, or the Commission decides in this two-party arbitration, may be acceptable for purposes of forming this ICA; however, these may not be sufficient to satisfy 911 requirements and adequately ensure the public safety. Staff Ex. 3.0 at 6. Some of these issues affect not only AT&T and Intrado, but multiple carriers and ETSBs in the state.

Consistent with this, it is clear that the Arbitration Decision entered in this proceeding should, regardless of whatever else it does, make clear that the only issues being decided are those arising under federal law that the Commission is required by Section 252(b)(4)(C) to resolve. Specifically, it is neither necessary nor advisable to classify 911 service under state law, and the Commission should refrain from doing so.

Consistent with this, the Staff requests that the following be incorporated into the "Commission Findings":

> The Commission having considered the entire record and being fully advised in the premises, is of the opinion and finds that:
>
> …
>
> (x) <u>this Arbitration Decision is confined to the federal law issues squarely before the Commission at this time, and specifically does not reach any state law issues, which the Commission expects that the Staff will explore in the generic competitive 911 proceeding that the Commission, by this order, directs to be implemented</u>;

<u>Exception No. 5</u>

With respect to the Staff's request for a generic proceeding, the PAD states that:

> Staff requests a Commission directive to prepare a report and draft order initiating a generic proceeding for issues relating to competitive 911 service. Staff asserts that this arbitration "raises issues that implicate the

> rights and interests of numerous entities" outside the case. Staff IB at 36. Presumably, Staff is principally referring to the PSAPs and ETSBs that manage and fund the 911 system. Staff's testimony suggests some of the issues that might be constructively addressed in a generic proceeding (such as modification of existing ETSB system planning), and posits further that 83 Ill. Adm. Code 725 might need to be revised to accommodate competitive entry for 911 service. Staff Ex. 3 (Schroll).
>
> Staff's interest in a comprehensive approach to 911 competitive entry is patently sensible. But the Commission cannot discern whether Staff's request would survive this Arbitration Decision, which concludes that AT&T does not have a duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act. Would Staff still propose a generic proceeding, in view of this Decision? Will Intrado (or other potential 911 telecommunications services providers) elect to enter into an agreement outside of subsection 251(c)(2) in order to facilitate 911 service? If not, are the relevant stakeholders, particularly the ETSBs, interested in a generic proceeding?
>
> Instead of presuming to answer the foregoing questions, the Commission will leave it to Staff's discretion to determine, in light of this Decision, whether to prepare a report on 911 competitive entry and request a generic docket.

Staff's interest in a generic proceeding dealing comprehensively with issues surrounding 911 competitive entry is of long standing, and exists independent of this proceeding. It is apparent from Intrado's desire to provide such services, as well as the attempts of other carriers to seek certification to provide such services, *see, e..g.,* Order, Ramsey Emergency Services, Inc.: Application for a certificate of local authority to operate as a provider of telecommunications services in all areas in the State of Illinois, ICC Docket No. 04-0406 (November 17, 2005) ("RES Order") that competitive provision of 911 services is likely to come to Illinois sooner rather than later, and all stakeholders should be prepared for its advent. Moreover, Staff has made it clear that,

in its view, the public safety and welfare demand that controversial matters associated with competitive 911 service be resolved prior to any carrier providing such service.

Accordingly, Staff recommends modification of the PAD as follows:

> Staff's interest in a comprehensive approach to 911 competitive entry is patently sensible. ~~But the Commission cannot discern whether Staff's request would survive this Arbitration Decision, which concludes that AT&T does not have a duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act. Would Staff still propose a generic proceeding, in view of this Decision? Will Intrado (or other potential 911 telecommunications services providers) elect to enter into an agreement outside of subsection 251(c)(2) in order to facilitate 911 service? If not, are the relevant stakeholders, particularly the ETSBs, interested in a generic proceeding?~~ While we find here that Section 251(c) is not the proper vehicle for concluding interconnection agreements between competitive 911 providers and ILECs, we assume that competitive 911 providers may still wish to serve Illinois ETSBs. Furthermore, as Staff correctly notes, we are charged by the terms of the ETSA with establishing technical and operational standards to govern the provision of 911 service, competitive or otherwise, within this state. Accordingly, we consider Staff's recommendation to be well-taken, and direct that it be implemented.
>
> ~~Instead of presuming to answer the foregoing questions, the Commission will leave it to Staff's discretion to determine, in light of this Decision, whether to prepare a report on 911 competitive entry and request a generic docket.~~
>
> …
>
> (x) based upon the directives contained in the Emergency Telephone Systems Act, the Commission has the authority to determine the technical and operational standards for 911 systems including interconnection and should open a generic proceeding with the intent of promulgating regulations regarding the provision of competitive 911 services, and directs Staff to initiate such a proceeding;

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

_____

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February 23, 2009

Attachment 5

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 Verizon North Inc.	)	Case No. 08-198-TP-ARB

INITIAL BRIEF OF INTRADO COMMUNICATIONS INC.

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ATTACHMENT 1 - INTRADO COMM RESPONSES TO VERIZON DATA REQUESTS

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 Verizon North Inc.	)	Case No. 08-198-TP-ARB

INITIAL BRIEF OF INTRADO COMMUNICATIONS INC.

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, hereby submits its Initial Brief in connection with Intrado Comm's Petition for Arbitration ("Petition") to Establish an Interconnection Agreement with Verizon North Inc. ("Verizon") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").[1] The Public Utilities Commission of Ohio ("Commission") should adopt Intrado Comm's positions and proposed interconnection agreement language as set forth herein and the Joint Issues Matrix[2] for the unresolved issues between the Parties.

INTRODUCTION AND SUMMARY

911/E-911 services save lives and property by helping emergency services personnel respond more quickly and efficiently.[3] Intrado Inc. has been providing 911 database management services to incumbent local exchange carriers ("ILECs") since 1979.[4] Since its

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[1] 47 U.S.C. § 252(b).

[2] Per the Hearing Examiner's request, the Parties filed on February 13, 2009 an updated Joint Issues Matrix reflecting citations to the Transcript for each issue.

[3] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, ¶ 5 (1996).

[4] Intrado Comm Hearing Exhibit 1, Direct Testimony of Robert C. Currier, ENP on behalf of Intrado Communications Inc. at 6, lines 3-4 (filed Dec. 30, 2008) (hereinafter "Currier").

formation in 1999, Intrado Comm has built on its parent's emergency service expertise to become an integral part of the public safety industry.[5] Intrado Comm is poised to offer Ohio counties, public safety agencies, and Public Safety Answering Points ("PSAPs") a competitive alternative for their 911/E-911 services, which have traditionally been provided by ILECs like Verizon.[6] The pro-competitive actions taken by the Commission in certifying Intrado Comm as a Competitive Emergency Services Telecommunications Carrier ("CESTC") will allow Intrado Comm to bring the benefits of competition to Ohio PSAP customers;[7] however, Intrado Comm can only deliver this alternative if it has equal access to all end users – PSAPs and 911 callers.[8]

Intrado Comm's competitive 911/E-911 service offering directly responds to the goals of Congress and the Federal Communications Commission ("FCC") by providing "meaningful automatic location identification information that permits first responders to render aid, regardless of the technology or platform employed" by the caller.[9] As the FCC has determined, it is imperative that public safety officials receive "accurate and timely information concerning the current location of an individual who places an emergency call, notwithstanding the platform or technology used by the provider or the means by which the individual places the call."[10] In order to offer its innovative 911/E-911 service offering to Ohio counties and PSAPs, Intrado Comm must first establish mutually beneficial interconnection and interoperability arrangements

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5 Currier at 6, lines 3-23.

6 Currier at 7, lines 2-8.

7 Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order (Feb. 5, 2008) ("*Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Certification Rehearing Order*").

8 Currier at 8, lines 12-21.

9 *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 10609, ¶ 6 (2007).

10 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) ("*TRS 911 Order*").

with the ILECs who control access to the public switched telephone network ("PSTN").[11] The interconnection Intrado Comm seeks with Verizon will allow Verizon's end users to reach Intrado Comm's initial end users (*i.e.*, Ohio PSAPs) and vice versa.[12] Interconnection with Verizon is essential to permit Intrado Comm to meet the primary 911/E-911 service needs of its Ohio PSAP customers, *i.e.*, to ensure the PSAP customer receives 911 calls from all users of wireline, wireless, voice over Internet Protocol ("VoIP"), and other future types of services destined for the Intrado Comm PSAP customer.[13] This interconnection arrangement also will meet the goal of ensuring that "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service."[14]

Verizon's claim that this is simply another arbitration proceeding between an ILEC and a competitive local exchange carrier ("CLEC") and the type of competitive service to be offered - 911 service to PSAPs - is irrelevant to evaluating interconnection arrangements, should be rejected.[15] There is not a single CLEC that is interconnected with Verizon for the purpose of ***competing with Verizon*** to provide 911/E-911 services to PSAPs.[16] The CLECs interconnected with Verizon today provide competitive residential and business services. This proceeding, however, is about interconnection arrangements to be established between Intrado Comm and Verizon that will permit Intrado Comm to provide competitive 911 services to PSAPs. As

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[11] Intrado Comm Hearing Exhibit 2, Direct Testimony of Thomas W. Hicks on behalf of Intrado Communications Inc. at 8, lines 18-20 (filed Dec. 30, 2008) (hereinafter "Hicks").

[12] Currier at 8, lines 14-16.

[13] Transcript at 88, line 15 to 89, line 11 (Hicks).

[14] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*").

[15] Verizon Hearing Exhibit 1.0, Refiled Testimony on behalf of Verizon North Inc. at 12, line 241 (filed Jan. 8, 2009) (hereinafter "Verizon Panel Testimony").

[16] Transcript at 97, lines 5-8 (D'Amico) ("Q: And how many CLECs in Ohio compete with Verizon to provide services to PSAP customers today? A: None that I'm aware of.").

Section 251(c) recognizes, the interconnection arrangements established between the Parties as a result of this arbitration proceeding will have a direct effect on the quality of service provided to Ohio public safety agencies, and consequently, to Ohio consumers.[17] If Intrado Comm is denied access to physical interconnection arrangements that are at least equal in quality to what Verizon has established for its own 911 service to PSAPs today, PSAPs will not realize the benefits of competition intended by the Act.[18]

Section 251(c) Supports Adoption of Intrado Comm's Proposals. Section 251(c) contemplates and supports the adoption of Intrado Comm's interconnection proposals for the competitive provision of 911 service to PSAPs despite Verizon's arguments to the contrary.[19] Existing 251(c) requirements have focused on interconnection for plain old telephone service ("POTS") traffic. While those rules and regulations are important, they do not foreclose a review of the statute, rules, and policies from the perspective of the best interconnection arrangements for the competitive provision of 911/E-911 services to PSAPs, which is at issue here. Verizon itself has decided that network interconnection arrangements for the provision of 911 services to PSAPs should be different from those used for POTS traffic.[20] Interconnection arrangements and the rules designed for the competitive provision of POTS should not alter or

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[17] Transcript at 102, lines 21-23 (D'Amico) ("I think the goal of everyone is to have service quality for 9-1-1. It's a very important issue.").

[18] The use of dedicated direct trunks to the appropriate selective router has been the arrangement used for 911 services since their inception. *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (discussing the routing of emergency telephone calls "over dedicated telephone lines").

[19] Verizon Panel Testimony at 7, lines 152-53.

[20] Transcript at 105, lines 1-13 (D'Amico).

prevent the application of the statutory requirement that competitors are entitled to interconnection that is equal in quality to what the ILEC provides to itself.[21]

The critical question is: how does Verizon provide 911/E-911 services to PSAPs today? The only provider of 911/E-911 services to PSAPs in the Verizon service territory is Verizon. Thus, Verizon's own practices (as well as those of the ILECs operating in other geographic areas) have established the standard for service to PSAPs and defined the appropriate network arrangements to be used for the exchange of 911/E-911 traffic in a competitive market. As discussed below, this ILEC-developed network interconnection standard for 911 service has also been embraced by the FCC and other state commissions.[22] Verizon itself has decided that 911 interconnection arrangements should be different from those used for POTS traffic, and Verizon is required to give Intrado Comm the same arrangements it provides to ***itself*** when Verizon is serving the PSAP.[23] To find otherwise would undermine the entire foundation of Section 251(c) - to ensure competitors receive interconnection that "is at least indistinguishable from that which the incumbent provides itself."[24] It would be foolish for this proceeding to ignore the existing arrangements used for the provision of 911/E-911 service to PSAPs today. The history of the

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[21] 47 U.S.C. § 251(c)(2)(C).

[22] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*") (finding the selective router is the "cost allocation" point); ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring all carriers to use dedicated direct trunking "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); TEXAS P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[23] 47 U.S.C. § 251(c)(2)(C).

[24] *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, ¶ 224 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

implementation of 911 service demonstrates that the current physical interconnection architecture was established to ensure public safety.[25]

Interconnection for 911 Traffic Occurs at the Selective Router Serving the PSAP. Verizon requires all CLECs and wireless carriers to interconnect at the appropriate selective router, *i.e.*, the Verizon selective router serving the Verizon PSAP customer to which the 911 call is destined.[26] This is consistent with the FCC's mandates that the selective router should be the "cost allocation" point for the exchange of 911/E-911 traffic.[27] Although that finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.[28] This arrangement is also consistent with the 911 interconnection arrangements used by Embarq and AT&T,[29] as well as the requirements mandated by several states.[30] Indeed, it is for these reasons that the Commission previously determined that that the point of interconnection ("POI") when Intrado Comm is serving the PSAP should be at the selective router of the 911/E-911 network provider and that an ILEC

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[25] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (noting the establishment of 911 network arrangements to ensure that emergency calls "are recognized and answered as emergency calls by professionals trained to assist callers in need of emergency assistance"); *see also id.* ¶ 1 ("we intend to ensure that the effective operation of 911 services is not compromised by new developments in telecommunications").

[26] Hicks at Attachment 1, 911 Attachment § 3.2.

[27] *King County Order* ¶ 1.

[28] *King County Order* ¶ 11.

[29] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[30] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(x) (requiring all telecommunications carriers to adopt practices and procedures "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[31]

Dedicated Direct Trunking Is the Standard for Routing 911/E-911 Calls. Verizon's template interconnection agreement mandates the use of dedicated direct trunks for the transmission of 911 calls to the selective router serving the PSAP to which the 911 call is directed.[32] This requirement is consistent with the 911 network interconnection arrangements used by other ILECs,[33] as well as those mandated by other state commissions.[34] Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[35]

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[31] 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 33 (Sept. 24, 2008) ("*Embarq Arbitration Award*"); *see also* Case No. 08-537-TP-ARB, *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*, Arbitration Award at 8-9 (Oct. 8, 2008) ("*CBT Arbitration Award*").

[32] Hicks at Attachment 1, 911 Attachment § 3.2.

[33] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[34] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring the use of dedicated direct trunking to the selective router serving the PSAP); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[35] Illinois Docket No. 08-0550, Direct Testimony of Jeffrey H. Hoagg on behalf of Staff of the Illinois Commerce Commission at 10, lines 221-23 (filed Dec. 19, 2008) ("Illinois Hoagg Staff Testimony"), *available at*

Intrado Comm Is Entitled to Interconnection Arrangements that Are Equal in Quality.

There is no support in the law for the use of different POI or interconnection arrangements when Intrado Comm is the 911/E-911 service provider for the PSAP. Verizon cannot use Section 251(c)(2)(B) as applied to POTS traffic to undermine its equal in quality obligations under 251(c)(2)(C). Verizon itself has ignored 251(c)(2)(B)'s requirements, which permit CLECs to establish a single POI on Verizon's network and avoid physical or financial obligations beyond the POI.[36] Verizon has adopted interconnection agreement arrangements for CLECs that support a different network architecture for 911 calls to promote public safety.[37] The Verizon 911 interconnection arrangements require the CLEC to establish multiple POIs in addition to the POI for POTS and dictate the trunking arrangements to be used on the CLEC's side of those POIs for 911 (two dedicated direct one-way trunks to each 911 POI) if they want their 911 calls to be completed to Verizon served PSAP customers.[38] Everything that Verizon complains about with respect to Intrado Comm's proposed contract language was designed by Verizon and is

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http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117; Illinois Docket No. 08-0550, Direct Testimony of Kathy Stewart on behalf of Staff of the Illinois Commerce Commission at 4, lines 98-100 (filed Dec. 19, 2008) ("Illinois Stewart Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

[36] *See, e.g.* OHIO ADMIN. CODE § 4901:1-7-06(A)(5); *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, ¶ 52 (2002) ("*Virginia Arbitration Order*") ("competitive LECs may request interconnection at any technically feasible point"); *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, ¶ 112 (2001) ("*Intercarrier Compensation NPRM*") ("an [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point"); *see also* 47 C.F.R. § 51.703; *Virginia Arbitration Order* ¶ 53 (noting the rules "prohibit any [local exchange carrier] from charging any other carrier for traffic originating on that [local exchange carrier]'s network").

[37] Transcript at 102, lines 15-23 (D'Amico).

[38] It is important to note that Verizon requires the CLEC to route all 911 calls to the "designated" selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers also. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that. *See* Transcript at 157, line 12 to 158, line 16 (Sannelli).

embodied in Verizon's own template agreements for CLECs to ensure Verizon receives 911 calls destined for its PSAP customers in a specific way.[39] The interconnection arrangements sought by Intrado Comm here are the same that Verizon and other ILECs have established for themselves to serve their PSAP customers and are the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs.[40]

In sum, Intrado Comm's proposals reflect industry practices established by ILECs like Verizon, are consistent with Section 251(c), are consistent with 911 policy, and should be adopted. It would be a complete reversal of sound engineering, physical architecture decision making, and regulatory policies deemed to serve the public interest to deny a competitor providing 911/E-911 services to PSAPs any interconnection arrangement other than that which mirrors the arrangements established between Verizon and competitive carriers needing access to Verizon served PSAPs. This is consistent with the laws of statutory construction and the intent of the Act. The Act is dynamic so that it can be flexibly applied to adapt to the ever-changing communications industry.[41] Accordingly, Intrado Comm's proposed language should be adopted for inclusion in the Parties' interconnection agreement so that Ohio public safety agencies and Ohio citizens dialing 911 receive the most reliable, redundant, and diverse 911 network possible.

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[39] Intrado Comm agrees with regulators and the ILECs that the best POI for 911 service to PSAPs is at the selective router of the carrier providing the service to the PSAP. When Intrado Comm has customers who call 911 and Verizon is the 911 service provider for the PSAP, Intrado Comm will have a POI at Verizon's selective router for the delivery of the 911 call to the appropriate PSAP. *See* Blackline ICA, 911 Attachment § 1.3.1.

[40] Transcript at 25, lines 20-24 (Currier).

[41] *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 21 (1999) ("*Advanced Services Order*") (recognizing "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act").

COMMISSION AUTHORITY

The Commission's oversight is critical to the rollout of 911 services. Sections 251(e) and 706 of the Act give the Commission the authority to oversee the deployment of 911 services.[42] The FCC has recognized that the "uniform availability of E911 services may spur consumer demand" for broadband services, which accomplishes the goals of the Act.[43] The FCC has emphasized that 911/E-911 services also play a "critical role" in achieving the Act's goal of promoting safety of life and property and that "promoting an effective nationwide 911/E911 emergency access system has become a primary public safety responsibility under the Act."[44] The state's role in overseeing 911 services and promoting public safety is without question: "In the 911 Act, Congress made a number of findings regarding wireline and wireless 911 services, including that 'improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce,' and that 'emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency [services].'"[45] These Congressional mandates support and necessitate the adoption of Intrado Comm's proposals in their entirety.

Section 253(b) of the Act also gives the Commission authority to adopt "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."[46]

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[42] *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 31, 33 (2005) ("*VoIP E911 Order*"); *see also* Currier at 18, lines 9-20 (discussing the Commission's role in the oversight of 911 services).

[43] *VoIP E911 Order* ¶ 31.

[44] *VoIP E911 Order* ¶ 29 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 7 (1994)).

[45] *VoIP E911 Order* ¶ 32 (citing 911 Act § 3(a)).

[46] 47 U.S.C. § 253(b); *see also* Currier at 17, line 16 to 18, line 6 (discussing the Commission's authority under Section 253(b)).

This statutory provision "set[s] aside a large regulatory territory for State authority" and gives the Commission ample support for adoption of Intrado Comm's proposals, which serve to protect the public safety and welfare and the rights of consumers.[47] In further support of this state authority, the FCC has reminded carriers that Sections 251 and 252 of the Act create a partnership between the FCC and state commissions in defining the precise parameters of those sections' requirements[48] and that the Act makes clear that states play a role in the development of competitive telecommunications markets.[49]

Section 253(b) gives the Commission "broad regulatory authority to achieve [its] public interest objectives,"[50] and Intrado Comm's proposed physical architecture arrangements meet the objectives set forth in the Act. In an arbitration proceeding between AT&T and a predecessor of Intrado Comm, the Illinois Commerce Commission determined that 911 calls are a matter of the utmost public interest, and therefore it had authority under Section 253(b) to make decisions in the arbitration proceeding to protect the public safety and welfare, ensure the continued quality

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[47] *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999).

[48] *American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, 14 FCC Rcd 21579, ¶ 35 (1999).

[49] *The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, ¶ 52 (1997).

[50] *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916, ¶ 29 (2002).

of telecommunications services and safeguard the rights of consumers.[51] The same holds true here as the Commission has previously determined.[52]

There is no merit to Verizon's claim that the Commission cannot analyze Intrado Comm's request under any provision other than Section 251(c) of the Act.[53] The Commission has correctly found that it has authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c).[54] Moreover, while Intrado Comm is entitled to interconnection under 251(c), arbitration is permitted for provisions outside of 251(b) and 251(c) in certain circumstances.[55]

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[51] Currier at Attachment 3, Illinois Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (I.C.C. Mar. 21, 2001) ("*Illinois SCC Decision*").

[52] *Certification Order* at Finding 7.

[53] Verizon Panel Testimony at 9, lines 179-89; *see also* Transcript at 115, lines 1-24 (D'Amico).

[54] *Embarq Arbitration Award* at 15; Case No. 08-537-TP-ARB, *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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*CBT Rehearing Award*") ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. . . . the Commission has the authority and the requirement to consider Section 251(a) where it is applicable").

[55] *See, e.g., Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) ("where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that <u>*any issue*</u> left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original); *CBT Rehearing Award* at 11-12 ("The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements."); *see also* Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc*., Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

ARGUMENT

The framework for local competition established in 1996 supports the arrangements requested by Intrado Comm. 911/E-911 services are unique and different.[56] The physical architecture arrangements Intrado Comm seeks in this proceeding are critical to issues of reliability, redundancy, and minimizing points of failure for 911/E-911 services.[57] These are the key considerations when establishing interconnection arrangements for public safety providers.[58] These considerations are reflected in the interconnection and routing arrangements ILECs have established for themselves and the arrangements ILECs impose on CLECs today for access to these ILEC provided services.

I. 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?

Intrado Comm's proposed physical architecture arrangement benefits public safety. As the Commission has already found,[59] interconnection on Intrado Comm's network is appropriate when Intrado Comm is the designated 911/E-911 service provider and is consistent with the

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[56] Transcript at 99, lines 1-11 (D'Amico) (discussing the differences between interconnection arrangements for POTS and 911 traffic); *see also, e.g., TRS 911 Order* ¶ 29 (recognizing "the importance of emergency call handling for all Americans"); *VoIP E911 Order* ¶ 6 ("the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services").

[57] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954, ¶ 2 (1999) (adopting rules to "improve 911 reliability, [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (expressing intent of statute to establish a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Katrina Order* ¶ 96 (recognizing goal to ensure "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service"); New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (recognizing importance of reliable 911 systems).

[58] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) (recognizing the goal to have the most efficient and most reliable 911/E-911 network possible regardless of the platform or technology used by end user's service provider or the means by which the individual places the call).

[59] *See, e.g., Embarq Arbitration Award* at 33.

purpose of Section 251(c), the way in which ILECs compel CLECs to interconnect on their networks, and industry recommendations and guidelines.

A. Interconnection on the ILEC Network Was Required for the Benefit of Competitors like Intrado Comm, Not Incumbents like Verizon

In enacting and implementing the Act, the goal of both Congress and the FCC was to ensure that new entrants could effectively compete with the entrenched incumbent provider. Section 251(c)(2) has four components to ensure effective interconnection arrangements between ILECs and competitors are achieved. Interconnection is to be for the transmission and routing of telephone exchange service and exchange access;[60] at any technically feasible point within the carrier's network;[61] 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;[62] and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with Section 252 of the Act.[63] The FCC, in its rules to implement the Act, gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC.[64] The FCC found that Section 251(c)(2) gave competitors "the right" to interconnect on the ILEC's network rather than obligating competitors to transport traffic to less convenient or efficient points.[65] Giving competitors this "right" was intended to lower barriers to entry.[66] Thus, Section

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60 47 U.S.C. § 251(c)(2)(A).

61 47 U.S.C. § 251(c)(2)(B).

62 47 U.S.C. § 251(c)(2)(C).

63 47 U.S.C. § 251(c)(2)(D).

64 *Local Competition Order* ¶ 172.

65 *Local Competition Order* ¶ 209.

66 *Local Competition Order* ¶ 209.

251(c)(2)(B)'s requirement that the POI be on the ILEC's network was established for the benefit of the competitor, not the ILEC.

To provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, which protected competitors from ILEC demands to interconnect at multiple points on the ILEC network.[67] The FCC found that the single point of interconnection rule benefits the *competitor* by permitting it to interconnect for delivery of its traffic at a single point on the ILEC's network.[68] While the single point of interconnection rule was available to competitors, the FCC expressly recognized competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor.[69] Indeed, the FCC recognized that, while the Act *permits* a competitor to choose where it will deliver its traffic, "carriers do not always deliver originating traffic and receive terminating traffic at the same place."[70]

The FCC further concluded that these were intended to be minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection to offset the imbalance in bargaining power.[71] The FCC clarified that the term "nondiscriminatory" in the 1996 Act was not synonymous with "unjust and unreasonable discrimination" used in the 1934

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67 *Intercarrier Compensation NPRM* ¶ 112 ("[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.").

68 *Virginia Arbitration Order* ¶ 71.

69 *Virginia Arbitration Order* ¶ 71.

70 *Virginia Arbitration Order* ¶ 71.

71 *Local Competition Order* ¶ 216.

Act; it is a more stringent standard.[72] The FCC determined that for Section 251 purposes, if an ILEC provides interconnection to a competitor in a manner that is less efficient than the ILEC provides itself, the ILEC violates the duty to be "just" and "reasonable" under Section 251(c)(2)(D). The FCC went on to add that ILECs may not discriminate against parties based upon the identity of the carrier.[73]

B. ILECs Have Historically Required Competitors to Bring 911/E-911 Traffic to the ILEC or Delivered 911/E-911 Traffic to the Network of the Entity Serving the PSAP

Interconnection that is at least equal in type, quality, and price to the interconnection arrangements the ILEC provides to itself and others was required of ILECs to ensure effective local competition emerged.[74] The FCC determined that 251(c)(2)(C) interconnection that is *at least* equal in quality to that enjoyed by the ILEC itself was the minimum requirement.[75] Intrado Comm's proposal is consistent with the arrangements Verizon uses within its own network for the delivery of its end users' 911 calls to Verizon served PSAPs and those arrangements Verizon requires of competitors seeking to terminate their end users' 911 calls to Verizon served PSAPs.[76] For example, Verizon's template interconnection agreement requires CLECs:

- to establish interconnection at a point on Verizon's network for the transmission and routing of POTS traffic[77] with each party being responsible for the transport facilities on its side of that POI[78] ***and***

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72 *Local Competition Order* ¶ 217.

73 *Local Competition Order* ¶ 218.

74 S. Rep. No. 104-23, at 20 (1995).

75 *Local Competition Order* ¶ 225.

76 Transcript at 97, lines 14-19 (D'Amico).

77 Verizon Template Interconnection Agreement, Interconnection Attachment § 1 (Attachment 5 to Intrado Comm Petition for Arbitration).

78 Verizon Template Interconnection Agreement, Interconnection Attachment § 2.1 (Attachment 5 to Intrado

- to interconnect with each Verizon 911/E-911 selective router that serves the exchange areas in which the CLEC offers service[79] ***and***

- to provide a minimum of two (2) one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 calls from the CLEC's switch to each designated Verizon 911/E-911 selective router[80] ***and***

- to compensate Verizon for the provision of 911/E-911 services pursuant to the rates set forth in the pricing attachment to the agreement.[81]

This network architecture arrangement was developed by Verizon based on Verizon's determination that this interconnection arrangement provides the most reliable and efficient 911 network.[82] Intrado Comm seeks nothing different when it is the designated 911/E-911 service provider.

In fact, Verizon has admitted that the POI for connecting to the 911/E-911 network is at the selective router,[83] and that connecting to Intrado Comm's selective router would be appropriate when 911 calls are destined for PSAPs served by Intrado Comm.[84] This is consistent with the FCC's finding that the "cost-allocation point" for the exchange of 911/E-911 traffic should be at the selective router.[85] This decision was based on "the nature and configuration of

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Comm Petition for Arbitration); *see also* Transcript at 104, line 15 to 105, line 13 (D'Amico) (acknowledging that the originating carrier is only responsible for delivering traffic to the point of interconnection and is not financially responsible beyond the point of interconnection).

79 Hicks at Attachment 1, 911 Attachment § 3.2.1.

80 Hicks at Attachment 1, 911 Attachment § 3.2.2.

81 Hicks at Attachment 1, 911 Attachment § 4.2.

82 Transcript at 166, lines 22-23 (Sannelli) (noting that the manner in which Verizon is currently routing 911 traffic "is the most cost effective and reliable way of doing it").

83 Transcript at 99, line 19 to 100, line 24 (D'Amico) (stating that competitive carriers establish a POI at the Verizon selective router consistent with the language of Verizon's template interconnection agreement).

84 Transcript at 126, lines 3-6 (D'Amico).

85 *King County Order* ¶ 1.

the existing network components used to provide wireline E911 service"[86] and input from PSAPs that asserted the selective router was the appropriate demarcation point for allocating responsibility and associated costs between carriers.[87] Although the finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.[88] Thus, the FCC determined that, when a 911 call is made, the carrier must bring the 911 call, as well as the information about the caller (*i.e.*, the caller's phone number and location) to the 911/E-911 network for processing, and specifically, the equipment that analyzes and distributes the call - the 911 selective router serving the PSAP.[89] Based on this precedent, the Commission also has confirmed that the point of interconnection should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[90]

Consistent with these principles, Verizon routinely requires all competitive carriers serving end users in the Verizon geographic service area to bring their end users' 911 calls to the "designated" Verizon selective router serving the PSAP to which the 911 call is destined,[91] even though those carriers have established a POI at a different location for all other POTS traffic. Thus, while Section 251(c)(2)(B) and the FCC's rules entitle competitors to designate a

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86 *King County Order* ¶ 4.

87 *King County Order* at n.4.

88 *King County Order* ¶ 11.

89 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, WT Docket No. 94-102 (rel. May 7, 2001).

90 *Embarq Arbitration Award* at 33.

91 Transcript at 158, lines 13-16 (Sannelli) ("they do send only calls that serve PSAPs of that selective router"); *see also* Hicks at Attachment 1, 911 Attachment § 3.2.

single POI on the ILEC network, Verizon's template interconnection agreement compels CLECs to interconnect at every Verizon selective router to deliver 911 calls to Verizon's PSAP customers if they want their customers' 911 calls to be completed to Verizon served PSAPs.[92] Intrado Comm seeks interconnection arrangements with Verizon for the provision of 911/E-911 services to PSAPs that are at parity with what Verizon provides itself and others when it is the designated 911/E-911 service provider.[93] Verizon has not demonstrated why the interconnection arrangements it imposes on CLECs when Verizon is the designated 911/E-911 service provider are not equally applicable when Intrado Comm is the designated 911/E-911 service provider.

Further, Verizon does not require other 911/E-911 service providers to interconnect with Verizon at Verizon's selective router when Verizon's end user customers make 911 calls to the PSAP customers of another 911/E-911 service provider. Rather, Verizon takes its originating end users' 911 calls destined for another 911/E-911 service provider's network to a meet point established with the adjacent carrier or all the way to the adjacent carrier's selective router.[94] Verizon does not require adjacent, non-competing ILECs to establish a POI on Verizon's selective router or otherwise pick-up 911 calls at Verizon's selective router as Verizon would impose on Intrado Comm here.[95]

The Act entitles Intrado Comm to interconnection "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."[96] The FCC's rules echo this requirement and state that the

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92 Transcript at 158, lines 13-16 (Sannelli).

93 Hicks at 16, lines 1-13.

94 Transcript at 103, line 12 to 104, line 3 (D'Amico).

95 Transcript at 103, lines 12-20 (D'Amico).

96 47 U.S.C. § 251(c)(2)(C).

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.[97] Interconnection to the PSTN "is an essential component of [the] end-to-end" 911/E-911 service Intrado Comm intends to provide in Ohio.[98] The FCC has recognized the importance of ensuring competitors receive interconnection for 911/E-911 services in the same manner that incumbents provide such service to themselves (*i.e.*, parity).[99] Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs like Verizon to provide competitors like Intrado Comm interconnection that is at least equal in quality to the interconnection Verizon provides itself for routing 911 and E-911 calls to PSAPs.[100]

Verizon's 911 POI arrangements for itself, including those arrangements established in a competitive market to receive 911 calls from CLEC customers destined for Verizon served PSAPs, demonstrate that establishing the POI for the exchange of 911 traffic at the selective router serving the appropriate PSAP is the *preferred* method of interconnection for completing calls to the appropriate 911/E-911 service provider and is technically feasible.[101] Verizon is required under 251(c)(2)(C) to make the same arrangement available to Intrado Comm.[102]

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97 47 C.F.R. § 51.305(a)(3); *Local Competition Order* ¶ 224.

98 *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282, ¶ 25 (2002) ("*City of Richardson Order*").

99 *Local Competition Order* ¶ 16.

100 *Virginia Arbitration Order* ¶ 652.

101 Transcript at 152, lines 5-7 (Sannelli) ("We do our utmost best to have an extremely reliable and efficient 9-1-1 system that routes calls to the correct PSAP.").

102 *Local Competition Order* ¶ 225.

Verizon cannot use 251(c)(2)(B) to undermine its obligations under 251(c)(2)(C).[103] Simply because the interconnection arrangement Verizon has chosen for itself does not fall neatly within Section 251(c)(2)(B) does not mean that Verizon is able to forego its obligations under 251(c)(2)(C). On the contrary, since 1996 Verizon has ignored the benefit extended to CLECs under Section 251(c)(2)(B) entitling CLECs to a single POI when the traffic at issue is 911 calls.[104] Appropriately, the ILECs and regulators have adopted requirements that support a different network architecture for 911 calls to promote public safety.[105] The CLECs have accepted the network interconnection arrangements demanded beyond the single POI for 911 traffic.[106] This is the interconnection arrangement Verizon and other ILECs have established for themselves to serve their PSAP customers and it is the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs such as Intrado Comm's request.

The FCC has determined that, if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar

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[103] *See, e.g.*, *Caldwell v. State*, 115 Ohio St. 458, 463 (Ohio 1926) ("The rules of interpretation require that some meaning and effect should be given to every part of the statute."); *State v. Kasnett*, 30 Ohio App.2d 77, 84-85 (1973) (subsequent history omitted) ("a cardinal rule is that the legislature will be presumed to have inserted every part of a statute for a purpose and to have intended that every part should be carried into effect. Indeed, it is also a cardinal rule that significance and effect should be accorded every part of the statute including every section, paragraph, sentence, clause, phrase and word) (citing *United States v. Fisher*, 109 U.S. 143 (1883) and *McDonald v. Thompson* 305 U.S. 263 (1938)).

[104] Transcript at 99, lines 1-11 (D'Amico).

[105] Transcript at 102, lines 21-23 (D'Amico) ("I think that's the goal of everyone is to have service quality for 9-1-1. It's a very important issue.").

[106] Transcript at 100, lines 22-24 (D'Amico) ("I'm not aware of any CLECs or wireless carriers that have elected not to adopt that language or use that language.").

network architectures.[107] Further, successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point ***or at substantially similar points in networks employing substantially similar facilities***.[108] In comparing networks, the FCC determined that the substantial similarity of network facilities may be evidenced by their adherence to the same interface or protocol standards.[109] Verizon bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point.[110] Verizon has not made such a showing.

C. Intrado Comm's Proposal for Two Geographically Diverse POIs Is Consistent with Industry Recommendations and Guidelines

Intrado Comm has requested that Verizon establish interconnection to a minimum of two, geographically diverse POIs on Intrado Comm's network for reliability and redundancy purposes, which will benefit public safety.[111] Verizon is wrong when it claims that Intrado Comm's language would allow Intrado Comm to choose as many POIs as it wishes.[112] Intrado Comm has informed Verizon, and it is a matter of record evidence in numerous states, that Intrado Comm intends to place a minimum of two selective routers in each state in which it offers 911/E-911 service. In fact, Intrado Comm specifically informed Verizon of the locations of those two POIs in Ohio.[113] The agreed-upon provisions of the Parties' interconnection

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107 *Local Competition Order* ¶ 554.

108 *Local Competition Order* ¶ 204.

109 *Local Competition Order* ¶ 204.

110 *Local Competition Order* ¶ 554.

111 Hicks at 18, lines 9-18; *see also generally Katrina Order*.

112 Verizon Panel Testimony at 20, lines 440-47.

113 Transcript at 155, line 13 to 156, line 6 (Sannelli); *see also* Intrado Communications Inc. Response to Verizon North Inc. Data Requests at Response to Request #29 (submitted Dec. 10, 2008) (set forth in Attachment 1).

agreement also make clear that the agreement applies to the State of Ohio, not other states.[114] Thus, there is no merit to Verizon's claim that the POIs will be outside of Ohio.[115] While there will be additional POIs available to Verizon (and other carriers) outside of Ohio as explained below, there will be at least two available at the locations specified in Ohio.[116]

Implementation of Intrado Comm's proposal would ensure that 911 calls are diversely routed, which is consistent with the FCC's recommendations.[117] In addition, the FCC is currently reviewing whether it should require the deployment of redundant trunks to each selective router or require that multiple selective routers be able to route calls to each PSAP.[118] Intrado Comm has designed its network to do both.

Intrado Comm's proposal is also consistent with industry recommendations. The public benefit of the type of diversity and redundancy requested by Intrado Comm has been supported by the FCC's Network Reliability and Interoperability Council ("NRIC"), which found "[w]hen all 9-1-1 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure (e.g., cable cut). The ECOMM Team recommends diversification of 9-1-1 circuits over multiple, diverse interoffice facilities."[119] Likewise, a National Emergency Number Association ("NENA") 911 Tutorial states:

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114 Blackline ICA § 43.1.

115 Verizon Panel Testimony at 20, line 443.

116 Hicks at 21, lines 4-23; *see also* Transcript at 42, line 16 to 43, line 5 (Hicks) (explaining that Intrado Comm's network is national in scope).

117 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 3, n.6 (1994) ("the American public depends on 911 services in its emergencies" and that reliability in the 911 network results from the deployment of diverse routing of interoffice facilities, multiple 911 tandem switch architectures, and diverse links for ALI database access).

118 *VoIP E911 Order* ¶ 59.

119 Hicks at Attachment 2, Network Reliability Council Focus Group IV, Essential Communications During

> 9-1-1 systems are expected to function without interruption. However, expecting every network and PSAP component to work perfectly forever is unrealistic. Stuff happens – things break. Reliability, then, is achieved through diversity and redundancy. One method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to its 9-1-1 tandem. Each trunk group should be large enough to carry the entire traffic load for that end office.[120]

Thus, Intrado Comm's proposed language implements industry best practices for diversity and redundancy.

Verizon has established diversity and redundancy within its own 911/E-911 network.[121] In other states, Verizon uses "mated" or "paired" selective routers to ensure 911 call completion is unimpeded and a PSAP is not isolated from the 911/E-911 network should a facility path failure or selective router switch failure occur. Verizon has established dedicated trunks from each of its end offices to each selective router[122] and Verizon requires competitors to interconnect at each selective router, plus at an additional POI for the exchange of POTS traffic.[123] These CLECs will need to re-home their POIs for 911 service because Verizon is deploying two new selective routers in Ohio, which will require competitors to establish new dedicated direct trunks to each selective router.[124] Verizon's witness admitted that Verizon is eliminating its existing five selective routers and reducing the number of selective routers in Ohio to two selective routers to "modernize" its network, "provide additional cost benefits," and

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Emergencies Team Report (Jan. 12, 1996), *available at* http://www.nric.org/pubs/nric2/fg4/nrcfinal.pdf.

[120] Hicks at Attachment 3, NENA 9-1-1 Tutorial at 13 (Jan. 19, 2000), *available at* http://www.nena.org/florida/Directory/911Tutorial %20Study%20Guide.pdf.

[121] Hicks at 18, line 22 to 19, line 5; *see also* Transcript at 101, lines 1-14 (D'Amico) (discussing the requirement in Verizon's template interconnection agreement that 911 calls be diversely routed).

[122] Verizon Panel Testimony at 13, lines 278-80.

[123] Hicks at Attachment 1, 911 Attachment § 3.2.

[124] Transcript at 161, lines 4-10 (Sannelli); *see also* Verizon Panel Testimony at 14, lines 290-92.

to "gain additional efficiencies and lower costs."[125] Thus, Verizon likewise recognizes the efficiencies and benefits of establishing a "dual POI" arrangement within its own network.

D. LATA Boundaries Do Not Apply to 911/E-911 Service Traffic

LATA boundaries are inapplicable to 911/E-911 services. The FCC and the federal district court overseeing the Modified Final Judgment recognized that many 911/E-911 "transmissions cross LATA boundaries."[126] The district court specifically waived the LATA restrictions to ensure the Bell Operating Companies ("BOCs") could "provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary,"[127] thus allowing "the BOCs to provide multiLATA 911 services, including E911 services."[128] Moreover, Verizon (formerly GTE) was never subject to the interLATA restrictions governing BOCs under Section 271 and has been providing long distance service since 1997.[129] Therefore, Verizon is not restricted from carrying any traffic, let alone 911/E-911 service traffic destined for Intrado Comm's network, outside of a LATA.

E. Other Ohio Carriers Will Not Be Disadvantaged by Intrado Comm's POI Proposal

As Intrado Comm's witness explained, CLECs and other carriers in Ohio will have numerous options for reaching Intrado Comm's PSAP customers in Ohio.[130] Many voice service

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125 Transcript at 159, line 16 to 160, line 2 (Sannelli).

126 *Bell Operating Companies; Petitions for Forbearance form the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 20 (1998).

127 *United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984).

128 Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991).

129 *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, ¶ 7 (2000).

130 Hicks at 21, lines 4-23; *see also* Transcript at 42, line 16 to 43, line 5 (Hicks) (explaining that Intrado

providers have regional or nationwide footprints. Intrado Comm plans to deploy at least two, and possibly more, selective routers in every state in which Intrado Comm plans to offer service, including Ohio.[131] By connecting to any Intrado Comm selective router, a carrier can reach any PSAP connected to Intrado Comm's network. As an example, interconnecting to Intrado Comm's selective routers in Florida will still permit 911 call delivery to one of Intrado Comm's PSAP customers in Ohio. This means that Verizon, a CLEC, or any other carrier could connect to any two Intrado Comm Intelligent Emergency Network® access ports anywhere in Intrado Comm's nationwide network if it chooses to do so to reach an Ohio PSAP.[132] Given that Verizon, its affiliates, and many other carriers provide services throughout the nation, interconnecting outside of Ohio may be more efficient for many providers. In either case, however, there will be at least two geographically diverse Intrado Comm selective routers located in Ohio at which Verizon, CLECs, and other carriers can interconnect with Intrado Comm to deliver 911/E-911 calls destined for Intrado Comm's Ohio PSAP customers. Verizon's concerns about the effect of Intrado Comm's POI proposal on other carriers are therefore misplaced and not relevant to its interconnection arrangement with Intrado Comm.[133]

Further, Verizon's so-called concerns are not justification for Verizon's planned use of transit arrangements to send 911/E-911 service traffic to Intrado Comm from other third party carriers interconnected with Verizon.[134] Transit arrangements are not used for 911/E-911 service

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Comm's network is national in scope).

131 Hicks at 21, lines 4-23; Transcript at 42, line 16 to 43, line 5 (Hicks); *see also* Intrado Communications Inc. Response to Verizon North Inc. Data Requests at Response to Request #29 (submitted Dec. 10, 2008) (set forth in Attachment 1).

132 Hicks at 21, lines 11-23.

133 Verizon Panel Testimony at 37, lines 844-47.

134 Verizon Panel Testimony at 39, line 895 to 40, line 906; *see also* Transcript at 106, lines 4-11 (D'Amico).

traffic today.[135] In today's environment, competitive carriers must deploy dedicated trunks to Verizon's selective routers to reach the appropriate PSAP. There is a good reason for using such an arrangement (reliability as confirmed by Verizon's witness)[136] and it makes no sense to alter this sensible network arrangement designed by Verizon presumably to increase the odds of saving lives. Verizon's proposal is inconsistent with its own treatment of 911/E-911 service calls and should be rejected.

Indeed, Verizon's template interconnection agreement encourages competitors to enter into direct interconnection relationships with those carriers with which they are exchanging traffic.[137] Further, Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement.[138] As Verizon's FCC filings state, "nothing in the Act requires Verizon to accept any CLEC traffic that is destined for another carrier (such as another CLEC or a non-Verizon ILEC)" and thus Verizon only "voluntarily provides these services."[139] A service as important as 911 should not be relegated to "voluntary" transit service arrangements that, in Verizon's view, it is under no obligation to provide.[140]

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[135] Transcript at 106, lines 21-23 (D'Amico) (admitting that Verizon does not transit 911 calls today); *see also* Hicks at 48, lines 19-21.

[136] Transcript at 166, lines 22-23 (Sannelli) (stating that Verizon's current call delivery method is "the most cost effective and reliable way of doing it").

[137] Verizon Template Interconnection Agreement, Interconnection Attachment § 12 (Attachment 5 to Intrado Comm Petition for Arbitration).

[138] Transcript at 113, lines 4-10 (D'Amico) ("we voluntarily offer it, but we also have the caveat, if you will, that to the extent that Verizon has tandem exhaust issues, that we should also have the ability to manage and care for our tandems and our network exhaust issues as well as the pricing associated with transit rates").

[139] *See, e.g.*, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, Reply Comments of Verizon at 25, 26-27 (Nov. 5, 2001), *available at* http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512773351.

[140] Transcript at 111, lines 17-19 (D'Amico) (noting Verizon would have "option" to offer transit of 911 calls to CLECs and wireless carriers).

Allowing 911/E-911 service traffic to be exchanged via a transit service arrangement also affects quality of service, network reliability, and network efficiency.[141] As explained by Intrado Comm's witness, it is common for different call types (*e.g.*, wireless) to be routed over different PSAP trunks to ensure the incident-driven nature of wireless does not saturate all PSAP call takers.[142] Indeed, a news report regarding a Verizon 911 outage in Michigan confirmed the benefits of separate 911 trunks for different types of services.[143] During the outage of Verizon's wireline 911 service, wireless 911 service remained available because those calls were on a separate trunk group.[144] Under the transit arrangement proposed by Verizon, Verizon would put every call originating on its network (or delivered to it by another carrier) onto a common trunk group for delivery to Intrado Comm.[145] This would not provide Ohio PSAPs with the ability to discern 911/E-911 calls by type, which removes or severely limits their call management control options for determining the location of the caller, which is critical to saving lives.[146]

Transit service arrangements are simply inapplicable to 911/E-911 service traffic.[147] As discussed above and in more detail below, Verizon utilizes dedicated trunking within its own network for 911/E-911 service traffic and requires competitors seeking to terminate 911 calls to Verizon's PSAP customers to also use dedicated trunking to deliver 911 calls to Verizon's selective routers. Imposing a different type of interconnection arrangement on Intrado Comm is

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141 Hicks at 47, line 19 to 48, line 15.

142 Hicks at 48, lines 8-15.

143 "State Telecom Activities," COMMUNICATIONS DAILY (Sept. 23, 2008).

144 *Id.* (noting that during the outage, wireless E-911 worked because it is "carried on a different cable").

145 Transcript at 89, line 12 to 90, line 10 (Hicks).

146 Hicks at 48, lines 8-15.

147 *Compare* Transcript at 111, lines 20-24 (D'Amico) (stating Verizon would charge for transit of 911 calls) *with* Verizon Panel Testimony at 80, line 1898 (noting the Parties' agreement not to bill for transport of 911 calls).

discriminatory and violates Intrado Comm's right to interconnection arrangements that are equal in quality to those Verizon provides itself or any other carrier.[148]

II. 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?

Inter-selective router trunking allows emergency calls to be transferred between selective routers (and the PSAPs connected to those selective routers) while retaining the critical access to the caller's number and location information associated with the emergency call.[149] This type of interoperability between 911/E-911 networks allows 911/E-911 calls to be transferred among carriers to ensure misdirected emergency calls are transferred to the appropriate PSAP while still retaining access to the critical caller location information associated with the call.[150] If the call is required to be transferred over the PSTN (rather than via the 911 network), the caller's automatic number information ("ANI") and automatic location information ("ALI") is lost. Establishment of inter-selective router trunking ensures that PSAPs are able to communicate with each other and more importantly, that misdirected calls can be quickly and efficiently routed to the appropriate PSAP.

Section 251(c)(5) of the Act requires ILECs like Verizon to provide public notice of changes in their network "that would affect the interoperability of those facilities and networks."[151] The importance of interoperability between competing networks is highlighted by the FCC's rules that ILECs must provide public notice of any changes that "[w]ill affect the

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148 47 U.S.C. § 251(c)(2)(C).

149 Hicks at 23, lines 1-9.

150 Hicks at 23, lines 11-21.

151 47 U.S.C. § 251(c)(5).

[I]LEC's interoperability with other service providers."[152] For the purposes of Section 251(c)(5) and its implementing rules, the FCC defined "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[153] The FCC determined "that the concepts of seamlessness and transparency are already adequately incorporated into" its adopted definition and thus a specific reference to these concepts in the definition is not necessary.[154]

It is for this reason that the Commission mandated that (1) Intrado Comm and the ILEC operate in a cooperative manner to ensure that emergency 911 calls continue unimpeded between 911 callers and PSAPs and (2) Intrado Comm implement the capability to transfer 911 calls and the associated data across county lines.[155] The Commission specifically recognized the need for "seamless 911 service" when it mandated that competitive 911/E-911 service providers like Intrado Comm "interconnect" with adjacent county 911 systems.[156]

A. Intrado Comm's Inter-Selective Routing Language Should Be Adopted

Verizon's claim that the interconnection agreement should not contain the specifics regarding the Parties' inter-selective router arrangements should be rejected.[157] The FCC has recognized that 911/E-911 services are important to overall public safety, and thus has found that more detailed interconnection language is better suited for 911/E-911 interconnection

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[152] 47 C.F.R. § 51.325(a)(2).

[153] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("*FCC Interoperability Order*").

[154] *FCC Interoperability Order* ¶ 178.

[155] *Ohio Certification Order* at Findings 9, 12.

[156] *Ohio Certification Order* at Finding 12; *see also* Transcript at 155, lines 5-8 (Sannelli) (acknowledging that Verizon has inter-selective router arrangements with other carriers in Ohio).

[157] Verizon Panel Testimony at 29, lines 646-48.

arrangements.[158] Indeed, the FCC determined that "the need for greater detail" in relation to 911/E-911 services overrides Verizon's goal of "more uniform agreements."[159]

Verizon is also wrong when it claims that Intrado Comm is trying to "impose upon PSAPs specific interoperability provisions without their consent."[160] Intrado Comm strongly supports the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back up routing, default routing, night transfer routing, call transfer routes, etc., with its designated 911/E-911 service provider.[161] Further, the Commission has already found that some PSAPs may not desire to provide input into the trunking to be established, and thus there is no requirement that the interconnection agreement contain specific language regarding the need for a separate agreement with a PSAP prior to implementing inter-selective routing capabilities.[162]

Nonetheless, the Parties have agreed to language indicating that inter-selective router trunking arrangements would be established between the Parties when each Party's customer ***agrees*** that 911 calls should be transferred between PSAPs served by each Party:

> Where the Controlling 911 Authority for a PSAP for which Verizon is the 911/E-911 Service Provider and the Controlling 911 Authority for a PSAP for which Intrado Comm is the 911/E-911 Service Provider agree to transfer 911/E-911 Calls from one PSAP to the other PSAP and each Controlling 911 Authority requests its 911/E-911 Service Provider to establish arrangements for such 911/E-911 Call transfers, each Party shall. . . .[163]

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158 *Virginia Arbitration Order* ¶ 660.

159 *Virginia Arbitration Order* ¶ 660.

160 Verizon Panel Testimony at 29, lines 641-42.

161 Transcript at 13, lines 21-24 (Currier).

162 *Embarq Arbitration Award* at 36.

163 Blackline ICA, 911 Attachment § 1.4.1.

Verizon's argument is contrary to the language of the interconnection agreement, and its claim that Intrado Comm is trying to "control the conduct of third parties" is simply not true.[164]

Verizon also wrongly assumes that it would have to pay for any inter-selective router capabilities requested by the Parties' PSAP or government municipality customers.[165] Today, a government municipality or PSAP requesting call transfer capabilities is responsible for paying for that service just like any other service the customer requests.[166] Intrado Comm expects that same practice to continue under the Parties' interconnection agreement. How such costs will be recovered from the PSAPs should be determined by each Party's contract with its PSAP customer rather than language in the interconnection agreement between Intrado Comm and Verizon. There is no factual or legal support for Verizon's contention that Intrado Comm's proposed language would require Verizon to pay for the implementation of inter-selective router capabilities.

Like other 911/E-911 service traffic to be exchanged by the Parties, inter-selective router calls should be exchanged by the Parties at the POI established by each Party for the exchange of 911/E-911 calls, and should be spelled out in the interconnection agreement. Thus, for transfers of 911/E-911 calls destined for an Intrado Comm PSAP customer, the Parties would exchange that call at the POI(s) established by Verizon on the Intrado Comm network.[167] For transfers of 911/E-911 calls destined for a Verizon PSAP customer, the Parties would exchange that call at the POI(s) established by Intrado Comm on the Verizon network.[168] This is how Verizon

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164 *Cf.* Verizon Panel Testimony at 29, line 647.

165 Verizon Panel Testimony at 28, lines 616-30.

166 Hicks at 26, lines 10-23.

167 Hicks at 25, lines 7-13.

168 Hicks at 25, lines 7-13.

transfers such calls to other PSAPs served by non-competing, adjacent 911/E-911 service providers today,[169] and there is no reason Intrado Comm should be subject to a different type of interconnection arrangement than Verizon provides to others to ensure 911 calls reach the appropriate PSAP.[170]

B. Intrado Comm's Dial Plan Language Should Be Adopted

The Parties should also be required to notify each other of changes in dial plans that support inter-selective router trunking, and such language should be included in the interconnection agreement.[171] Dial plans are used to determine to which PSAP emergency calls should be routed based on the route number passed during the call transfer.[172] Intrado Comm has proposed language that would require the Parties to notify each other of any changes, additions, or modifications to 911-related call transfer dial plans that could affect inter-selective router arrangements.[173] Use of dial plans ensures interoperability between the Parties' networks.

Verizon has provided no support for its argument that Intrado Comm seeks an "excessive level" of dial plan information in the interconnection agreement.[174] Intrado Comm's proposed language could not be more straightforward:

> The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions, or deletions to their inter-PSAP transfer dial plans.[175]

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169 Transcript at 116, line 22 to 117, line 3 (D'Amico).

170 47 U.S.C. § 251(c)(2)(C).

171 Hicks at 27, lines 1-10.

172 Hicks at 27, lines 1-10.

173 Transcript at 47, lines 1-24 (Hicks).

174 Verizon Panel Testimony at 29, lines 656-60; *see also* Transcript at 123, line 19 to 124, line 11 (D'Amico).

175 Blackline ICA, 911 Attachment § 1.4.4.

Verizon admits that it provides dial plan information to other 911/E-911 service providers,[176] and Intrado Comm should be treated no differently.[177] It is for this reason that the West Virginia commission adopted Intrado Comm's position[178] and the Staff of the Illinois commission has recommended adoption of Intrado Comm's language based on their finding that Intrado Comm's language "seems reasonable and not 'excessive.'"[179] Intrado Comm's proposed language ensures the interoperability needed between the Parties' networks and should be adopted.

III. ISSUE 3: WHETHER THE FORECASTING PROVISIONS SHOULD BE RECIPROCAL?

Intrado Comm has modified Verizon's proposed language to make the forecasting provisions related to ongoing trunk forecasts applicable to both Parties rather than solely an obligation imposed on Intrado Comm. Intrado Comm must have some indication from Verizon as to how many 911/E-911 trunks will be required to support calls between the Parties' networks to adequately groom its network.[180] It is very important to size trunk groups properly, which is the reason Intrado Comm seeks reciprocal forecasting from Verizon.[181] Forecasts are integral to ensuring the Parties' networks meet industry standards and are properly sized to accommodate

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176 Verizon Panel Testimony at 29, lines 655-56; *see also* Transcript at 48, lines 18-20 (Hicks).

177 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51.305(a)(3).

178 Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award, at 16-17 (Nov. 14, 2008) ("*West Virginia ALJ Award*"), *approved by* Commission Order (Dec. 16, 2008).

179 Illinois Stewart Staff Testimony at 8, lines 179-80, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

180 Hicks at 28, lines 12-14; Transcript at 65, lines 9-24 (Hicks).

181 Transcript at 128, lines 1-3 (D'Amico) (agreeing that forecasting is used to help a carrier adequately plan for the future of its network).

both immediate and anticipated growth, without experiencing implementation delays.[182] Forecasting obligations should apply equally to both Parties as Verizon's witness admitted.[183]

The primary purpose of trunk forecasts, especially in the 911 context, is to alert interconnecting parties of anticipated growth plans so that the interconnecting party may engineer, furnish and install the equipment necessary to accommodate such growth.[184] Only 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.[185] Verizon will therefore be in the best position to determine the trunking needs between the Parties' networks.[186]

Other provisions of the interconnection agreement will not provide Intrado Comm with the trunk forecasting information it needs.[187] The agreed-upon language in Section 1.5.5 of the 911 Attachment requires the Parties to meet to discuss the establishment of new trunk groups, augmentation of existing trunk groups, or the disconnection of existing trunk groups.[188] By contrast, the forecasting language at issue in Section 1.6.2 of the 911 Attachment is specific to the 911/E-911 trunking to be deployed between the Parties' networks to support their exchange of 911/E-911 service traffic. The discussions required by Section 1.5.5 will not provide Intrado Comm with the same type of information a trunk forecast would provide as Verizon's witness

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182 Hicks at 28, lines 14-17; Transcript at 66, lines 7-15 (Hicks).

183 Transcript at 128, lines 4-6 (D'Amico).

184 Transcript at 65, lines 8-24 (Hicks).

185 Transcript at 66, lines 1-5 (Hicks); *see also* Hicks at 29, lines 13-23.

186 Transcript at 68, lines 15-22 (Hicks).

187 Verizon Panel Testimony at 32, lines 712-27.

188 Blackline ICA, 911 Attachment § 1.5.5.

acknowledged.[189] Indeed, the fact that Verizon's template interconnection agreement includes each provision is evidence that Verizon believes the contract provisions serve different purposes.

Verizon incorrectly assumes that reciprocal forecasting language is not necessary because there will be no 911 calls flowing from Intrado Comm to Verizon.[190] In fact, there are likely to be numerous 911 calls flowing between the Parties' networks. The huge popularity of mobile technologies, and future services such as 911 text messaging, will make it even more critical to ensure 911 calls reach the appropriate PSAP. Thus, it is likely that the number of calls transferred from Intrado Comm to Verizon will be significantly more than the "minimal" number of calls Verizon predicts.[191] Indeed, news articles support this position: "Cell phone 911 calls often get routed to the wrong 911 centers because of the location of cell phone towers. This leads to delays in sending help because operators have to figure out where a caller is and which police or fire department should respond, and then transfer the call to that jurisdiction."[192] Intrado Comm has a legitimate need for Verizon's trunk forecasts, which Staff of the Illinois commission agreed with when they recommended adoption of Intrado Comm's language because ***both Parties*** have "valuable information regarding trunking levels."[193]

Furthermore, only Verizon can determine whether calls are being blocked ***within its network***, which is a key component to determining whether trunk groups are adequately sized to

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189 Transcript at 131, lines 1-10 (D'Amico) (admitting that Section 1.5.5 is not the same as a forecast).

190 Verizon Panel Testimony at 31, lines 699-700.

191 Transcript at 123, line 13 (D'Amico).

192 Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008.

193 Illinois Stewart Staff Testimony at 9, lines 215-16, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

handle the 911 calls made from an originating office.[194] Intrado Comm would only be able to make such determinations if its PSAP customers received complaints from callers who were unable to complete their 911 call attempt, which many 911 callers fail to report. Accordingly, Intrado Comm's proposed language should be adopted.

IV. ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION?

Verizon's proposed language requires Intrado Comm to provide certain notices and other information to Verizon when Intrado Comm seeks to establish interconnection arrangements with Verizon.[195] This information includes the location of the POIs, the activation date, and an initial forecast. Intrado Comm has revised this language to make it reciprocal.[196] In areas in which Intrado Comm is the 911/E-911 service provider, Intrado Comm will require the same type of information from Verizon to effectuate the Parties' interconnection arrangement.[197] As interconnected co-carriers, the Parties will need to exchange information about their networks to ensure the network implemented is reliable, redundant, and diverse. Intrado Comm's proposed language should be adopted.

V. ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH OTHER?

The optimal way for a carrier to route 911/E-911 traffic to the appropriate 911/E-911 service provider should be based on the interconnection arrangements designed by Verizon for completion of its customers' 911 calls and CLEC customers' 911 calls made to Verizon's PSAP

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194 Transcript at 66, line 16 to 67, line 8 (Hicks); *see also* Hicks at 29, line 18 to 30, line 6.

195 Blackline ICA, 911 Attachment § 1.5.

196 Blackline ICA, 911 Attachment § 1.5; *see also* Hicks at 32, lines 15-16.

197 Hicks at 32, line 19 to 33, line 2.

customers.[198] This interconnection arrangement is dedicated direct one-way trunks from the end office of the 911 caller to the appropriate selective router.[199] The use of dedicated direct trunking promotes competition by putting all 911/E-911 service providers on equal footing. Establishing dedicated direct trunking from Verizon's end offices to Intrado Comm's selective router is consistent with established industry practice, is technically feasible, and provides the most reliable 911 network. Intrado Comm's language should therefore be adopted.

A. Dedicated Direct Trunking of 911/E-911 Calls to the Selective Router Serving the PSAP Is a Standard Industry Practice

Dedicated direct trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E-911 network, as evidenced by Verizon's use of direct trunking arrangements within its own network when it is the 911/E-911 service provider.[200] Verizon recognizes that service quality and industry standards call for the use of dedicated connections.[201] It is for this reason that Verizon does not unnecessarily switch its customers' 911/E-911 calls before delivering those calls to Verizon's PSAP customers.[202] Inserting another stage of switching in the call processing path - such as Verizon proposes here - increases the possibility of additional points of failure[203] thereby undermining the reliability provided by direct dedicated trunking. In reviewing this issue, Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider because "[i]ntermediate switching [of

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198 *See, e.g.*, Hicks at Attachment 1, 911 Attachment § 3.2.

199 Transcript at 97, lines 20-24 (D'Amico); Hicks at Attachment 1, 911 Attachment § 3.2.

200 Hicks at Attachment 1, 911 Attachment § 4.

201 Transcript at 166, lines 22-23 (Sannelli) (stating that Verizon's current network arrangements are "the most cost effective and reliable way of doing it").

202 Hicks at 40, lines 11-17.

203 Hicks at 40, line 21 to 41, line 3.

911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[204]

While Verizon claims that Intrado Comm's proposal would dictate how Verizon engineers its network,[205] Verizon imposes similar requirements on competitors when it is the designated 911/E-911 service provider. This includes providing the requisite number of diversely routed 911/E-911 trunks, engineering the 911/E-911 trunks pursuant to industry recommended grades of service, monitoring 911/E-911 trunk volumes, and coordinating testing and maintenance activities for 911/E-911 trunks between the Parties' networks.[206] For example, Verizon's template interconnection agreement states:

> In order to interconnect with Verizon for the transmission and routing of 911/E-911 Calls, CLEC shall:
>
> interconnect with each Verizon 911/E-911 Tandem Offices(s)/Selective Router(s) . . .;
>
> provide a minimum of two (2) one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 Calls from the CLEC switch to each designated Verizon 911/E-911 Tandem Office(s)/Selective Router(s) or Verizon interface point(s), using SS7 signaling where available, as necessary.[207]

Thus, despite the single point of interconnection rule, Verizon's interconnection language only offers competitors the option to connect to its network to establish POI(s) for exchanging POTS traffic and separate ***additional*** points of interconnection and dedicated direct trunking on Verizon's side of the network for the sole purpose of delivering 911 calls to the "designated"

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204 Illinois Hoagg Staff at 10, lines 221-23; Illinois Stewart Staff Testimony at 4, lines 98-100.

205 Verizon Panel Testimony at 36, line 836.

206 Blackline ICA, 911 Attachment § 1.3.

207 Hicks at Attachment 1, 911 Attachment §§ 3.2, 3.2.1, 3.2.3.

Verizon selective router serving the Verizon PSAP customer.[208] Intrado Comm's proposed language seeks the same interconnection arrangement for delivery of 911 calls to Intrado Comm when it is the 911/E-911 service provider and should be adopted.[209]

Verizon's arguments that Intrado Comm's dedicated trunking proposal would require Verizon "to haul [911] calls for free to Intrado-served PSAPs" should also be rejected.[210] As Commission Staff pointed out, Intrado Comm's language contains no requirement for Verizon to transport its 911 calls to Intrado Comm's PSAP customers.[211] Further, Verizon claims it should be compensated for delivering 911 calls to the appropriate selective router, but admits that CLECs and wireless carriers are not compensated when Verizon requires those carriers to transport their end users' 911 calls to the appropriate Verizon selective router.[212] Verizon's argument ignores the arrangements it imposes on competitive carriers today as well as its role when it is no longer the designated 911/E-911 service provider. As the Commission has recognized, once a public safety agency designates a competitive carrier like Intrado Comm as its 911/E-911 service provider, the ILEC is put in the position of any other carrier with obligations to deliver its end users' 911 traffic over dedicated direct trunks to the appropriate selective router.[213]

Moreover, Verizon's proposal to use a common trunk group for all 911/E-911 service traffic destined for Intrado Comm's network, rather than dedicated connections, is inconsistent

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208 Transcript at 102, lines 6-14 (D'Amico).

209 Hicks at 37, line 18 to 38, line 3.

210 Verizon Panel Testimony at 11, lines 218-23; *see also* Transcript at 118-19 (D'Amico).

211 Transcript at 118-19 (D'Amico).

212 Transcript at 119, line 117 to 120, line 21 (D'Amico).

213 *Embarq Arbitration Award* at 8.

with NENA recommendations and industry practice.[214] The use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado Comm to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities.[215] Industry recommendations, therefore, call for identifiable end office trunk groups for default routing.[216] This configuration readily assists both the 911 network service provider and the PSAP in quickly troubleshooting 911 service problems or redirecting 911 traffic from an end office on demand.[217] This arrangement can be accomplished by Verizon aggregating (but not switching) 911 traffic destined for Intrado Comm at Verizon's selective router and handing off that traffic to Intrado Comm over segregated trunks that identify the end office from which those calls originated.[218]

B. Intrado Comm's Language Does Not Require Verizon to Implement Line Attribute Routing

Verizon's testimony wrongly focuses on the concept of "line attribute routing." At no place in Intrado Comm's proposed contract language does Intrado Comm seek to require Verizon to use line attribute routing.[219] Rather, Intrado Comm seeks the use of dedicated direct

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214 Hicks at 45, lines 6-10; *see also* Hicks at Attachment 7.

215 Transcript at 89, line 12 to 90, line 11 (Hicks).

216 *See, e.g.*, Hicks at Attachment 7, NENA Technical Information Document on Network Quality Assurance, NENA TID 03-501, Issue 2 at 11-12 (revised Oct. 3, 2005) ("Serving End Office to E9-1-1 Control Office Switched Message Trunks must be route diverse. There should be at least two trunks from each central office to the E9-1-1 Control Office. A pair of diverse circuits may be assigned on a fiber ring system or a fiber system with diversely routed protection."), *available at* http://www.nena.org/media/File/03-501_20051003.pdf; NENA Standard for Enhanced 9-1-1 (E9-1-1) Default Routing Assignments and Functions, NENA 03-008 at 9 (Jan. 19, 2008) ("It must be recognized that 'default call routing' by definition may result in having some emergency calls reach a PSAP not directly responsible for the subscriber's location. Local authorities, E9-1-1 System Service Providers and carriers should ensure that default call routing impacts are minimized through the appropriate association of trunk groups with defined geographic areas."), *available at* http://www.nena.org/media/File/03-008_20080119.pdf

217 Hicks at 42, lines 1-12.

218 Transcript at 90, lines 1-11 (Hicks).

219 Transcript at 25, lines 8-11 (Currier) ("Intrado Communications has not referenced line attribute routing, to my knowledge, anywhere in this proceeding or in the interconnection discussions."); Transcript at 82, lines 4-7

trunking from Verizon's end offices to Intrado Comm's selective router, just as Verizon requires competitive carriers to implement today and just as Verizon configures its own network for service to its own PSAP customers. When a competitive carrier's customers receive emergency services from PSAPs that are served by the ILEC 911/E-911 network, it is necessary for the competitive carrier's switch to be configured to select the appropriate direct and redundant trunk group to the 911 selective router connected to the PSAP that is designated to respond to the 911 caller, as determined by the location of the caller.[220]

Intrado Comm's language is similar to Verizon's template language. Verizon does not require CLECs to use a certain method to determine to which selective router a 911 call should be delivered. Rather, Verizon's interconnection agreement merely states that the CLEC is required to deliver its end users' 911 calls to the "designated" selective router.[221] Verizon does not need to focus on how the CLEC achieves this because, under the contract, the CLEC must route its 911 traffic over dedicated trunks to the "designated" selective router serving the PSAP. Verizon has assured through its interconnection agreement template that it is not Verizon's problem how the CLEC sorts its 911 calls to reach the "designated" Verizon selective router and Verizon PSAP customer.[222] Once a competitor accepts this interconnection agreement language, which many have,[223] a failure to comply will render the CLEC in breach of the agreement.

(Hicks) ("Intrado's position was to simply offer up one solution and one viable way from our perspective on how to do it"); *see also* Hicks at 39, lines 2-11.

[220] Hicks at 35, line 17 to 36, line 2.

[221] Hicks at Attachment 1, 911 Attachment § 3.2.

[222] Transcript at 159, lines 5-11 (Sannelli) (admitting that Verizon does not know how CLECs sort 911 traffic destined for Verizon PSAP customers).

[223] Transcript at 100, lines 22-24 (D'Amico) ("I'm not aware of any CLECs or wireless carriers that have elected not to adopt that language or use that language").

Like Verizon's template interconnection agreement language, Intrado Comm's proposed interconnection agreement language does not dictate how Verizon will sort its end users' 911 calls for delivery to Intrado Comm.[224] Rather, Intrado Comm's proposed language indicates that Verizon will interconnect with Intrado Comm to deliver its 911 calls to Intrado Comm over dedicated trunks from Verizon's end offices. There is no contract language requiring Verizon to use line attribute routing. Intrado Comm has simply suggested line attribute routing as a possible method for Verizon to use to determine which dedicated trunk to route its 911 calls over to reach the appropriate Intrado Comm PSAP customer.[225] As Intrado Comm's witness explained, Verizon could also use the NPA/NXX method of routing 911 traffic as employed by some CLECs today in order to comply with the requirement that 911 calls be delivered to the selective router serving the PSAP using dedicated direct connections.[226]

C. The Equal in Quality and Non-Discrimination Requirements of the Act Mandate the Use of Dedicated Direct Trunking

Ohio public safety entities must have assurances that 911/E-911 service traffic destined for first responders will be treated equally in a competitive environment. As Congress and the FCC recognized, there are numerous operational barriers faced by competitors, which require that all aspects of local services be available to all competitors on an equal basis.[227] They determined that equal access was absolutely necessary for competition in the local market to succeed.[228] The routing technique proposed by Intrado Comm – dedicated direct routing of

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[224] Hicks at 39, lines 2-11; *see also* Transcript at 25, lines 8-11 (Currier); Transcript at 82, lines 4-7 (Hicks).

[225] Transcript at 82, lines 4-7 (Hicks) ("Intrado's position was to simply offer up one solution and one viable way from our perspective on how to do it").

[226] Hicks at 40, lines 1-8; *see also* Transcript at 50, line 3 to 51, line 17 (Hicks) (explaining that NPA/NXX is one viable method for routing 911 calls to the appropriate selective router).

[227] *Local Competition Order* ¶ 16.

[228] *Local Competition Order* ¶ 17.

911/E-911 calls to the selective router serving the PSAP - is based on this equal access concept and the essential need for smart network design that ensures reliability and resiliency for these unique public safety services.

The equal in quality requirements of Section 251(c)(2) also support Intrado Comm's proposed language. The FCC has determined that "Verizon must provide [Intrado Comm] interconnection with [a 911-related switch] 'at least equal in quality' to the interconnection Verizon provides itself for routing 911 and E911 calls."[229] Verizon's attempt to impose differing interconnection arrangements for Intrado Comm's PSAP customers than Verizon uses within its own network to serve its PSAP customers violates the equal in quality requirements of the Act.[230]

Likewise, the 911 calls of all Ohio citizens should be routed using the most reliable process available – dedicated direct trunking to the selective router serving the PSAP.[231] When Verizon is the designated 911/E-911 service provider, its customers' 911 calls are directly trunked to the selective router serving the relevant Verizon PSAP customer. Verizon's refusal to utilize dedicated trunking when Intrado Comm is the designated 911/E-911 service provider means that some Verizon Ohio 911 callers (*i.e.*, those calling a PSAP served by Intrado Comm) will be treated differently than other Verizon Ohio 911 callers (*i.e.*, those calling a PSAP served by Verizon). All Ohio Verizon 911 callers should be treated in the same manner – directly trunked from the Verizon 911 caller's end office to the selective router serving the appropriate PSAP – regardless of who is the service provider for the PSAP.

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229 *Virginia Arbitration Order* ¶ 652.

230 Hicks at 16, lines 1-13.

231 Currier at 21, line 9 to 22, line 2.

If Verizon is permitted to relegate Intrado Comm to a different and lesser form of interconnection than what Verizon provides to itself, Verizon will be discriminating among its own Ohio customers who dial 911. Verizon customers trying to reach a PSAP served by Intrado Comm will be treated differently than Verizon customers trying to reach a PSAP served by Verizon, which is a violation of the non-discrimination requirements found in Section 202 of the Act.[232] Intrado Comm's proposed interconnection method, by contrast, is consistent with the method Verizon uses for itself, that ILECs have developed for themselves, and that ILECs require CLECs to utilize to reach ILEC-served PSAPs in a competitive market.

D. Dedicated Direct Trunking from the End Office to the Selective Router Serving the PSAP is Technically Feasible

Intrado Comm's witness demonstrated that use of dedicated direct trunking is technically feasible.[233] Despite Verizon's attempt to shift the burden to Intrado Comm, the threshold issue is whether Intrado Comm's interconnection proposal is technically feasible. Under the FCC's rules, interconnection and access requests shall be deemed technically feasible absent technical or operational concerns that prevent fulfillment of the requests, and the determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns.[234] *Once Intrado Comm has demonstrated that its proposal is technically feasible, the burden shifts to Verizon to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that "specific and significant adverse impacts" would result from Intrado Comm's requested interconnection arrangement*.[235] The FCC has determined that the

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232 47 U.S.C. § 202.

233 Hicks at 43, lines 6-18; Transcript at 54-61 (Hicks).

234 47 C.F.R. § 51.5 (defining technical feasibility).

235 *Local Competition Order* ¶¶ 198, 203.

ILEC, not the competitor, has the burden to prove technical infeasibility to the relevant state commission.[236]

Verizon's unsupported and unsubstantiated claims regarding the potential cost to implement Intrado Comm's interconnection proposals should also be rejected.[237] While Verizon claims Intrado Comm should be responsible for any "expensive" form of interconnection it requests,[238] Verizon has provided no evidence supporting its allegation that implementation of Intrado Comm's proposals would impose cost on Verizon. The sole consideration is whether Intrado Comm's interconnection proposals are technically feasible. The need for Verizon to modify its network to accommodate dedicated trunking, if any exists, does not affect the analysis of technical feasibility. Under the FCC's requirements, Verizon is obligated to make the requisite changes in its network and operational practices that will accommodate the interconnection of competing local exchange networks and the mutual exchange of traffic between those networks.[239] The FCC has stated that incumbent carriers like Verizon are required to adapt their facilities to interconnection or use by other carriers, and an ILEC must accept the novel use of, and modification to, its network facilities to accommodate the interconnector.[240] The FCC recognized that ILEC networks were not designed to accommodate third party interconnection, and the purposes of the Act would be frustrated if ILECs were not required, at least to some extent, to adapt their facilities.[241]

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236 *Local Competition Order* ¶ 198; 47 C.F.R. § 51.5.

237 Verizon Panel Testimony at 44, lines 1000-03.

238 Verizon Panel Testimony at 38, lines 876-77.

239 *Local Competition Order* ¶ 202.

240 *Local Competition Order* ¶ 202.

241 *Local Competition Order* ¶ 202.

If Verizon is unable to utilize dedicated direct trunking for technical reasons, Intrado Comm proposes the following language to address those situations:

> Split Wire Center Call Delivery Exception – Where it is technically infeasible for Verizon to segregate Verizon End Users' 911/E-911 Calls associated with an End Office Wire Center and where an End Office Wire Center serves Verizon End Users both within and outside of the Intrado Comm's 911/E-911 network serving area, Verizon shall work cooperatively with Intrado Comm and the affected Controlling 911 Authority(ies) to establish call routing and/or call handoff between the Parties.[242]

Intrado Comm's proposed language should be adopted because it takes into consideration how the affected public safety agency would like 911 calls to be handled.[243]

VI. ISSUE 6: WHETHER 911 ATTACHMENT SECTION 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES?

Verizon's proposed language in Section 1.1.1 of the 911 Attachment contains a sentence that describes the service, equipment, and software that Intrado Comm will provide and maintain when Intrado Comm is the 911/E-911 service provider.[244] There is no dispute with respect to that sentence. Intrado Comm, however, has proposed an identical sentence to govern instances in which Verizon is the 911/E-911 service provider. A reciprocal sentence is appropriate because the interconnection agreement addresses both Intrado Comm's obligations, rights, and responsibilities when Verizon is the 911/E-911 service provider ***and*** Verizon's obligations, rights, and responsibilities when Intrado Comm is the 911/E-911 service provider.[245] Thus, if the interconnection agreement lists what components comprise Intrado Comm's 911/E-911 service

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242 Blackline ICA, 911 Attachment § 1.3.2.3.

243 Hicks at 46, lines 19-23.

244 Blackline ICA, 911 Attachment § 1.1.1.

245 Hicks at 51, lines 18-20.

offering and network, the interconnection should contain a reciprocal listing of what components comprise Verizon's 911/E-911 service offering and network.

Verizon's proposed language identifying the components of its network is unacceptable because it erroneously describes the access from Verizon end users as part of the Verizon network.[246] It is inappropriate to include this type of language in a generic description of 911/E-911 arrangements. This is consistent with the *West Virginia ALJ Award*'s determination that Intrado Comm's proposed language should be adopted.[247] Intrado Comm's proposed language should therefore be adopted.

VII. 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

Intrado Comm has proposed language to ensure that the Parties can maintain interoperability between their databases when exchanging 911 traffic or transferring 911 calls between each Party's selective router. For this reason, Intrado Comm requests that the Parties adopt arrangements to maintain ALI steering tables, which will enable access to ALI when performing 911 call transfers via inter-selective router trunking. The transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak. Verizon has implemented this capability in other areas.[248] Language regarding exchange of ALI information is therefore necessary to ensure interoperability between the Parties' networks as contemplated by Section 251(c).[249]

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246 Hicks at 52, lines 10-14.

247 *West Virginia ALJ Award* at 21.

248 Transcript at 81, lines 1-6 (Hicks).

249 47 U.S.C. § 251(c)(5).

Verizon's claims that ALI steering falls outside the scope of Section 251 should be rejected.[250] Verizon's own witness admitted that there is a distinct difference between ALI steering and the ALI database.[251] When the ALI database function is provided as a stand-alone service, it is viewed as an information service.[252] The comprehensive 911/E-911 service offering to be provided by Intrado Comm in Ohio, however, combines the three integrated components that are necessary to provide 911/E-911 service – the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP into one integrated product.[253] The switching and transmission components would be useless without the ALI database functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records.[254] The FCC also recognizes that all of the various components come together to form an all-inclusive service offering known as the "wireline E-911 network."[255] Further, the FCC has found ALI provisioning so essential to the 911 call process that it has imposed outage reporting requirements on ALI service providers when ALI services are disrupted for specified periods.[256] Segmenting the physical switching and routing of 911 calls from the database that provides the routing information for such calls, as Verizon appears to

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250 Verizon Panel Testimony at 60, lines 1397-1403.

251 Transcript at 164-65 (Sannelli).

252 *Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 17 (1998). However, in a carrier-to-carrier relationship pursuant to Section 251, ALI databases are considered to be telecommunications services that ILECs are required to offer on an unbundled basis. *See* 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 557 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted).

253 Hicks at 8, line 18 to 9, line 21.

254 Hicks at 9, lines 18-21; Currier at 25, lines 15-22.

255 *VoIP E911 Order* ¶ 15 (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

256 47 C.F.R. § 4.5(e)(4).

suggest, would significantly diminish the viability and reliability of 911 services. The bottom line is that the three integrated components are so intertwined that "one would be useless without the other."[257]

Failure to include Intrado Comm's proposed language in the interconnection agreement will have a significant effect on Ohio PSAPs[258] despite Verizon's claims to the contrary.[259] As many as 30-40 percent of wireless 911 calls ***routinely*** require transfer to another PSAP, regardless of the 911/E-911 service provider involved.[260] Without the language requested by Intrado Comm, Ohio PSAPs opting for a competitive 911 provider will lose the ability to receive a call transfer with ALI from a Verizon served PSAP, and Verizon served PSAPs will also be unable to receive a call transfer with ALI from a PSAP served by a competitive provider. Accordingly, Intrado Comm's proposed language should be adopted.

VIII. 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

There are six definitions at issue between the Parties: (1) definition of "Automatic Number Information" or "ANI"; (2) definition of "911/E-911 Service Provider"; (3) definition of "911 Tandem/Selective Router"; (4) definition of "Point of Interconnection or "POI"; (5) definition of "Verizon 911 Tandem/Selective Router"; and (6) definition of "Verizon 911 Tandem/Selective Router Interconnection Wire Center." The issues between the Parties with

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257 Hicks at 9, lines 18-19.

258 Hicks at 55, lines 13-22; Transcript at 80, lines 1-6 (Hicks).

259 Transcript at 123, lines 14-15 (D'Amico) ("I believe normally it gets to the right spot and they don't need to transfer it.").

260 Transcript at 72, lines 1-23 (Hicks); *see also* Hicks at 55, lines 15-16.

respect to the definition of "911/E-911 Service Provider" and the definition of "POI" deal with the location of the POI and are addressed under Issue 1.

Intrado Comm's proposed definition of "ANI" should be adopted.[261] The definition proposed by Intrado Comm is set forth in the NENA Master Glossary.[262] Intrado Comm proposed that this term and definition be included in the interconnection agreement because the term is used in Intrado Comm's proposed language in other sections of the interconnection agreement.[263] It does not appear that Verizon has an issue with the substance of the definition. Rather, Verizon does not agree with Intrado Comm's proposed language in other sections of the interconnection agreement and thus does not think inclusion of the term is necessary. Intrado Comm's proposed definition should be included in the interconnection agreement.

Intrado Comm's proposed language with respect to the definition of "911 Tandem/Selective Router" accurately reflects the functions that will be performed by a 911 Tandem/Selective Router.[264] In discussing the functions of the wireline 911 network, the FCC has stated that a selective router receives 911/E-911 calls and forwards those calls to the PSAP that has been designated to serve the caller's area.[265] The FCC thus recognizes that a selective router terminates 911/E-911 calls to a PSAP as Intrado Comm's proposed language reflects. In addition, it is well-established that selective routers are used to transfer 911/E-911 calls between PSAPs. Intrado Comm's language should be adopted.

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261 Blackline ICA, Glossary § 2.6.

262 *NENA Master Glossary of 9-1-1 Terminology, NENA-00-001, Version 11,* at 17 (May 16, 2008).

263 Hicks at 56, lines 14-17.

264 Hicks at 57, lines 18-19.

265 *VoIP E911 Order* ¶ 15.

By contrast, Verizon's proposed language for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" should be rejected. These two Verizon-proposed definitions are unnecessary and repetitive of the general definitions for these terms. The terms "911 Tandem/Selective Router" and "Interconnection Wire Center" are already defined in the interconnection agreement.[266] There is no reason for separate, Verizon-specific definitions for these terms. To the extent the language of the interconnection agreement needs to state that the 911 Tandem/Selective Router belongs to Verizon, it should be sufficient to say "a Verizon 911 Tandem/Selective Router" without developing a separate definition for that term. If Verizon's proposed language is included in the interconnection agreement, Intrado Comm-specific definitions for these terms should also be included. There is no reason to include Verizon-specific terms and definitions without including reciprocal terminology for Intrado Comm.[267] This is consistent with the *West Virginia ALJ Award*'s determination that Verizon's proposed definitions were "superfluous since there is already a definition of 911 tandem/selective router" in the interconnection agreement.[268]

IX. ISSUE 9: SHOULD 911 ATTACHMENT § 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?

Verizon has proposed language that would allow Verizon to directly deliver 911/E-911 calls to one of Intrado Comm's PSAP customers.[269] Intrado Comm has proposed deleting this language.[270] Originally, Intrado Comm had proposed that the language ***be reciprocal*** and be qualified so that either Party would only be permitted to directly deliver 911/E-911 calls to the

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266 Hicks at 58, lines 14-20.

267 Hicks at 59, lines 10-12.

268 *West Virginia ALJ Award* at 17-18.

269 Blackline ICA, 911 Attachment § 2.5.

270 Transcript at 85, lines 1-14 (Hicks).

other Party's PSAP customer if the PSAP customer specifically authorized the requesting Party to do so.[271] Intrado Comm understands there may be instances where a PSAP may select more than one 911/E-911 service provider.[272] For example, a PSAP could choose to have both Verizon and Intrado Comm provide 911/E-911 services. The language should therefore reflect that such arrangements are driven by the PSAP (who is the customer of record), not Verizon's unilateral mandates.[273] The PSAP must make an affirmative decision to subscribe to additional 911/E-911 services before such services are provided by either Party.[274]

Verizon rejected this proposal, and instead proposed language for Section 2.6 of the 911 Attachment purporting to address Intrado Comm's concerns for reciprocity.[275] Verizon's language, however, does not address Intrado Comm's concerns. Verizon's language would still allow it to bypass the Intrado Comm selective router and deliver 911/E-911 calls directly from its end offices to a PSAP served by Intrado Comm. Neither Party should be permitted to route 911/E-911 service traffic in this manner without express permission from the PSAP. In addition, the Verizon-proposed provision is not exactly reciprocal and contains additional limitations, such as whose facilities are to be used to deliver the 911/E-911 call.

Therefore, the language in Sections 2.5 and 2.6 should be stricken or, at a minimum, be exactly reciprocal and qualified to reflect that such arrangements are driven by the PSAP, the customer of record. Verizon is correct that whether a party has a right to deliver calls to a PSAP

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271 Hicks at 60, lines 6-16.

272 Transcript at 86, lines 19-22 (Hicks).

273 Transcript at 87, lines 3-14 (Hicks).

274 *Cf.* 47 C.F.R. § 64.1100, *et seq.*; *United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*, 8 FCC Rcd 5563, ¶ 5 (1993) (finding that only customers that order service are responsible for the charges associated with that service); *Atlantic Telco, Inc. and Tel. & Tel. Payphones, Inc.*, Order, 8 FCC Rcd 8119, ¶ 6 (1993) (same).

275 Blackline ICA, 911 Attachment § 2.6.

is a matter outside of the Section 251(c) interconnection agreement.[276] That is precisely why Intrado Comm has proposed deleting Verizon's language from the Parties' interconnection agreement.[277] This is consistent with the *West Virginia ALJ Award*'s determination that Verizon's proposed language should be rejected, and if there is a legitimate reason for either Verizon or Intrado Comm to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the interconnection agreement.[278] Accordingly, Intrado Comm's proposal to delete Verizon's proposed language for Sections 2.5 and 2.6 should be adopted.

X. ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?

A. The Rates to Be Charged by Verizon Must Conform with Section 252 Pricing Standards Subject to Limited Exceptions

Verizon should not be permitted to impose unspecified tariff rates on Intrado Comm for interconnection-related services. In some instances, Verizon's proposed language would allow Verizon to impose charges on Intrado Comm for 911 interconnection services based on "applicable" tariffs.[279] As a competitor, Intrado Comm is entitled to interconnection facilities and unbundled network elements ("UNEs") at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act.[280] Section 252(d) sets forth the pricing standards for three categories of charges: (1) interconnection and network element charges; (2)

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276 Verizon Panel Testimony at 69, lines 1621-23.

277 Blackline ICA, 911 Attachment §§ 2.5, 2.6.

278 *West Virginia ALJ Award* at 28.

279 Currier at 26, lines 19-21.

280 47 U.S.C. §§ 251(c)(2)(4); 252(d)(1).

transport and termination charges; and (3) wholesale telecommunications services charges.[281] Tariffs are not the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection arrangements concerning any of these categories.[282] Rather, an ILEC's rates for interconnection and unbundled network elements must meet the standards set forth in Section 252(d)(1) of the Act.

Verizon cannot use tariffs to circumvent the requirements of 251/252.[283] While Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon (*i.e.*, non-TELRIC services),[284] interconnection arrangements for the competitive provision of 911 services do not fall within that framework. If there are non-252(d)(1) services that Intrado Comm would purchase from Verizon, those services and the pricing for those services must be identified in the interconnection agreement. If the relevant pricing for non-252(d)(1) services is set forth in a tariff, the interconnection agreement should contain a specific reference to the tariff for that service rather than a generic reference to "applicable" tariffed rates as Verizon's proposed language would allow.[285] Intrado Comm's proposed language should therefore be adopted.[286]

B. Intrado Comm's Rates Are Reasonable and Should Be Included in the Interconnection Agreement

Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic should be included in the interconnection

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281 47 U.S.C. § 252(d).

282 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

283 *Virginia Arbitration Order* ¶ 602.

284 Transcript at 20, lines 106 (Currier).

285 Transcript at 21, lines 16-21 (Currier).

286 Blackline ICA, 911 Attachment §§ 1.3, 1.4, 1.7, Pricing Attachment §§ 1.3, 1.5, Appendix A.

agreement. As the Commission has already determined, to offer 911 calling services to its end users, Verizon is required to secure access to Intrado Comm's network when Intrado Comm serves as the designated 911/E-911 service provider.[287] Intrado Comm has proposed rates for access or "interconnection" ports on its network that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP.[288] Intrado Comm is not preventing Verizon from using its own facilities or the facilities of a third party to reach Intrado Comm's network, but even if Verizon uses its own facilities, Verizon will be required to pay Intrado Comm for the physical connection to Intrado Comm's switch (*i.e.*, the selective router port).

Intrado Comm is under no obligation to make any demonstration regarding its rates in a Section 252 proceeding. The FCC has stated that Section 252 authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable and provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding.[289] If Verizon seeks to challenge the "reasonableness" of Intrado Comm's rates, it should do that in a separate proceeding before this Commission.[290] There is no requirement for the Commission to make such a determination here.[291]

Nonetheless, Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic are reasonable and appropriate, and Verizon has made no demonstration otherwise. Indeed, Verizon has not refuted the

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287 *Embarq Arbitration Award* at 8.

288 Currier at 29, lines 1-6; *see also* Currier at Attachment 6 (providing Intrado Comm's proposed rates).

289 *Virginia Arbitration Order* ¶ 588.

290 *Virginia Arbitration Order* ¶ 589.

291 Transcript at 23, lines 1-11 (Currier).

Commission's previous determination that Intrado Comm's proposed port or connection charges are "reasonable" and "are not beyond the range of other companies."[292]

Verizon imposes similar charges on competitors seeking interconnection to Verizon's network.[293] The language of the Parties' interconnection agreement specifically states that Intrado Comm will be responsible for any charges related to "interconnection of Intrado Comm's network with Verizon's network at the POI(s)."[294] In general, such "interconnection" can be accomplished in one of two ways - use of entrance facilities or via a collocation arrangement. Under the Parties' Pricing Schedule, Verizon will charge Intrado Comm a "facility termination" charge per DS0, DS1, or DS3 in connection with any collocation arrangement established by Intrado Comm for "interconnection" (in addition to the general fees for establishing the collocation arrangement).[295] Similarly, in the entrance fee category,[296] Verizon imposes a "transport termination" fee for DS1 and DS3 offerings to cover the costs of the "arrangements necessary to terminate . . . at a serving wire center."[297] Intrado Comm is entitled to impose the same types of charges for interconnection on its network. Accordingly, Intrado Comm's proposed charges should be adopted for inclusion in the interconnection agreement as well as Intrado Comm's proposed language referencing those charges.

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292 *CBT Arbitration Award* at 21.

293 Transcript at 22, lines 17-20 (Currier); *see also* Currier at 29, lines 7-10.

294 Blackline ICA, 911 Attachment § 1.7.3; *see also* Joint Issues Matrix at 25 (noting Verizon's position that "Intrado Comm must pay Verizon for interconnection at the POI").

295 Blackline ICA, Pricing Schedule § A.IV.

296 Verizon Tariff FCC No. 14, 4th Revised Page 5-12 (effective Jan. 6, 2009).

297 Blackline ICA, Pricing Schedule § A.I. The Pricing Schedule indicates entrance facilities for interconnection will be assessed pursuant to Verizon's intrastate access tariff, P.U.C.O. No. 2. Verizon's P.U.C.O. No. 2, however, refers to Verizon's interstate access tariff, FCC No. 14.

XI. ISSUE 11: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT, WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT

There are three main disputes under this issue. *First*, Intrado Comm objects to Verizon's proposed language that would incorporate all "applicable" tariff provisions into the interconnection agreement.[298] *Second*, tariff charges should not be permitted to trump those interconnection-related charges contained in the Pricing Appendix without a specific reference in the Pricing Appendix. Any charges to be imposed by either Party should be specifically set forth in the Pricing Appendix to the interconnection agreement. *Third*, Verizon should not be permitted to automatically supersede any rates marked as "TBD" in the Pricing Attachment with tariff charges, which may or may not be developed pursuant to the requirements of Sections 251 and 252 of the Act.[299]

Intrado Comm seeks certainty in the Parties' interconnection relationship and cannot agree to unspecified terms and conditions that Verizon may later determine are "applicable" to the services being offered in the interconnection agreement.[300] Tariffs may not always be the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection-related services.[301] Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon

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298 Blackline ICA, General Terms and Conditions §§ 1.1, 911 Attachment § 1.3, 1.4.2, 1.7.3, Pricing Attachment §§ 1.3, 1.5; Appendix A.

299 Currier at 32, lines 11-15.

300 Transcript at 21, lines 3-21 (Currier).

301 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

for which a tariff is the appropriate pricing mechanism. If Verizon seeks to have a tariff apply to the interconnection agreement for a non-252(d)(1) service, it should identify that tariff in the agreement rather than a generic reference to "applicable" tariffed rates as Verizon proposes. Intrado Comm could accept a reference to relevant, applicable tariffs for interconnection-related services, but Verizon has not identified such tariffs.[302]

The *West Virginia ALJ Award* agreed with Intrado Comm and found that

> If Verizon intends to charge Intrado for a particular service, it ought to be able to figure out what tariff contains that charge or service. All tariffs which might generate charges to Intrado must be specifically listed in the Agreement or the Pricing Attachment.[303]

The West Virginia ALJ also determined that references to tariffs in phrases such as "notwithstanding any other provision of this Agreement **<u>or tariff</u>**" or "as set out in **<u>Verizon's applicable tariffs</u>**" must be eliminated from the interconnection agreement.[304] Further, the West Virginia ALJ also ruled that charges stated in the interconnection agreement cannot be automatically superseded by subsequent tariff changes as would be permitted by Verizon's proposed language because doing so would be inconsistent with FCC mandates.[305] The Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempt to impose similar language, finding that rates contained in a pricing schedule to an interconnection agreement cannot be secondary to rates contained in a filed tariff.[306] Indeed, the Bureau determined that, unless the parties otherwise agree, it would be inappropriate for "a tariff to supersede an

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302 Currier at 28, lines 19-21.

303 *West Virginia ALJ Award* at 24.

304 *West Virginia ALJ Award* at 24 (emphasis in original).

305 *West Virginia ALJ Award* at 24.

306 *Virginia Arbitration Order* ¶ 608.

interconnection agreement."[307] Tariffs that are "approved or allowed to go into effect" should not supersede rates approved in an arbitrated interconnection agreement.[308] Adoption of Verizon's language would "thwart [Intrado Comm]'s statutory right to ensure that the new rates comply with the requirements of sections 251 and 252" because the tariffed rates "would not be the subject of a determination under section 252."[309] Intrado Comm's proposed language should therefore be adopted.

XII. ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS

Intrado Comm objects to Verizon's attempt to dictate what the rates and charges will be for the Parties' same services, facilities, and arrangements. Verizon's proposed language is one-sided and could have the effect of forcing Intrado Comm to lower its rates without competitive justification.[310] Neither federal nor state law requires Intrado Comm's rates or the rates of other competitors to be capped at the rate that Verizon and other incumbents charge (with the exception of intercarrier compensation charges, which are inapplicable here).[311] In fact, the Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempts to cap competitors' rates at the prevailing ILEC rate for facilities and services other than intercarrier compensation.[312] Likewise, the New York, New Jersey, and Connecticut commissions have rejected Verizon's attempt to cap the rates of competitors through such language in other

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307 *Virginia Arbitration Order* ¶ 608.

308 *Virginia Arbitration Order* ¶ 600.

309 *Virginia Arbitration Order* ¶ 601.

310 Currier at 33, lines 20-21.

311 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

312 *Virginia Arbitration Order* ¶¶ 581-89.

interconnection agreements.[313] Indeed, the *West Virginia ALJ Award* also rejected Verizon's proposed language based on the prior FCC precedent.[314]

Intrado Comm, like other competitive providers in Ohio, is entitled to operate independently of Verizon. No competitive provider of telecommunications services can conduct business where its business model is determined by the price setting whims of its competitor, particularly the incumbent. If Verizon seeks to challenge Intrado Comm's rates, it should do that in a separate proceeding before this Commission because Section 252 – the standard governing this proceeding – does not apply to Intrado Comm's rates.[315] Accordingly, Verizon's proposed language should be deleted.

XIII. 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 COMM BY OTHER PROVISIONS OF THE AGREEMENT?

Intrado Comm has proposed language to ensure that each Party is able to bill the other Party for services or items set forth in the interconnection agreement at the rates contained in the Pricing Attachment to the agreement.[316] Intrado Comm's proposed language does not address intercarrier compensation[317] or create a "loophole" to allow Intrado Comm to impose intercarrier

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313 *See, e.g.*, NY Case 99-C-1389, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell-Atlantic New York Inc.*, Order Resolving Arbitration Issues, at 10 (Jan. 28, 2000); CT Docket No. 00-10-22, *Petition of Cablevision Lightpath-CT, Inc. for Arbitration*, Decision, at 4 (CT DPUC Apr. 11, 2001); NJ Docket No. TO01080498, *Petition of Cablevision Lightpath-NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Order Approving Interconnection Agreement (NJ BPU Mar. 1, 2002).

314 *West Virginia ALJ Award* at 25.

315 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

316 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

317 Transcript at 29, lines 21-24 (Currier).

compensation charges on Verizon.[318] Nor is it Intrado Comm's "objective" to bill Verizon charges in connection with the ALI database or the Master Street Address Guide ("MSAG")[319] unless the interconnection agreement specifically permits such charges.[320] In fact, a review of the agreed-upon language demonstrates that charges for reciprocal compensation, intercarrier compensation, exchange access service, ALI database, and MSAG have been specifically excluded from the types of charges the Parties are permitted to impose on each other.[321]

Verizon's proposed language would eliminate Intrado Comm's ability to impose "any" charges "in connection with 911/E-911 Calls" on Verizon even if those charges were set forth in the interconnection agreement.[322] By contrast, Intrado Comm's proposed language ensures that each Party may bill the other Party appropriate interconnection-related charges for their exchange of 911/E-911 calls to the extent such charges are permitted by or set forth in the interconnection agreement. Examples of such charges may include the access or "interconnection" port charges that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP.[323] Intrado Comm's proposed language should be adopted.

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318 *Cf.* Verizon Panel Testimony at 80, line 1892.

319 *Cf.* Verizon Panel Testimony at 80, lines 1902-04.

320 Transcript at 30, lines 1-10 (Currier); Transcript at 31, lines 9-13 (Currier).

321 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

322 Blackline ICA, 911 Attachment § 1.7.2.

323 *Cf.* Transcript at 28, line 15 to 29, line 4 (Currier).

XIV. ISSUE 14: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"?

Intrado Comm has proposed language to ensure that neither Party may operate outside Commission-approved rates or Commission regulation for their retail services to PSAPs.[324] Without Intrado Comm's suggested qualification, either Party could have the ability to bill Ohio public safety agencies for a range of services even if the Party no longer provided those services.[325] Indeed, it is important to note that Intrado Comm's proposed language applies equally to ***both Parties*** and is not intended to "restrict the potential relationship and charges" between Verizon and the PSAP.[326] The reference to "tariffs" in Intrado Comm's proposed language means both Parties' tariffs.[327]

Nor is Intrado Comm attempting to restrict Verizon's ability to charge PSAPs to which ***Verizon will continue to provide services***.[328] Intrado Comm's proposed language would not prevent Verizon from imposing lawful charges on Ohio counties or PSAPs as authorized by state or federal law, Commission-approved tariffs, or Commission rules and regulations.[329] The key is

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[324] Blackline ICA, 911 Attachment §§ 2.3, 2.4

[325] Transcript at 16, lines 1-4 (Currier) ("Intrado Communications' concern is that public safety not be billed by providers for services which they are not receiving.").

[326] Transcript at 31, lines 21-24 (Currier).

[327] *Cf.* Transcript at 142, line 23 (D'Amico) ("I think the reference there is anybody's tariff, the way I look at that.").

[328] Transcript at 32, lines 5-11 (Currier); *see also, e.g., Embarq Arbitration Award* at 42 ("the Commission agrees with Intrado that Embarq should have no right to charge Ohio counties for services the company no longer provides"); Currier at Attachment 1, Florida Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (Fla. P.S.C. June 4, 2008) ("The law is clear that telecommunications companies may not charge for services they do not provide. Section 364.604(2) provides that '[a] customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.'").

[329] Transcript at 15, line 21 to 16, line 4 (Currier).

whether Verizon will actually be providing such services to PSAPs when Intrado Comm is the designated 911/E-911 service provider. When questioned by Staff, Verizon's witness could not explain what services, other than call delivery, Verizon would provide to a PSAP once Intrado Comm is the designated 911/E-911 provider.[330] Switching via Verizon's selective router is no longer necessary when Intrado Comm is the designated provider.[331] Selective routing involves termination of a call to a PSAP, and when Intrado Comm is the designated provider, Verizon will no longer be terminating calls to the PSAP.[332] Thus, Verizon will no longer provide selective routing services, ALI database services, or database management services to a PSAP when Intrado Comm is the designated 911/E-911 service provider.[333]

Moreover, Verizon's argument that Intrado Comm could control the actions of Verizon via Intrado Comm's tariff is simply nonsensical.[334] As Verizon's witness admitted, Intrado Comm cannot control the pricing actions of Verizon,[335] just as Verizon should not be permitted to control the pricing actions of Intrado Comm (as discussed further above). The only entity that may control the Parties' pricing actions is the Commission as reflected in Intrado Comm's proposed language indicating that applicable law, tariffs, and Commission rules are the determining factor for the Parties' ability to charge for certain services.[336] Intrado Comm's proposed language ensures that both Parties operate within Commission-sanctioned parameters, and should therefore be adopted.

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330 Transcript at 168, lines 1-8 (Sannelli); *see also* Transcript at 138, lines 11-18 (D'Amico).

331 Transcript at 58, lines 9-14 (Hicks) (comparing selective routing to "passing traffic").

332 Currier at 13, lines 12-15; Currier at 23, lines 14-17.

333 Currier at 13, lines 6-9.

334 Verizon Panel Testimony at 82, lines 1948-52.

335 Transcript at 138, lines 5-10 (Sannelli).

336 Transcript at 33, lines 22-24 (Currier).

XV. ISSUE 15: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS?

Recognizing that it might offer additional telephone exchange services in Ohio, Intrado Comm has proposed language that would allow Intrado Comm to seek to amend the interconnection agreement to include any additional arrangements that would be necessary to facilitate Intrado Comm's provision of other telephone exchange services.[337] If Intrado Comm obtains the necessary certification and decides to offer additional telephone exchange services, the Parties should build on their existing agreement and incorporate any additional provisions necessary to support the provision of the additional services Intrado Comm decides to offer.[338] The negotiation and arbitration of interconnection agreements involves a significant amount of time and resources.[339] There is no reason for the Parties to re-start the process, which will likely lead them back to arbitration before this Commission. Intrado Comm's proposed language ensures that Intrado Comm is not forced to re-negotiate, re-litigate, or re-arbitrate provisions that have already been resolved by the Parties or by the Commission. This is consistent with the findings of the FCC that "any carrier attempting to arbitrate issues that have previously been resolved in an arbitration solely to increase another party's costs would be in violation of the duty to negotiate in good faith and could be subject to enforcement."[340]

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337 Blackline ICA, General Terms and Conditions § 1.5.

338 Currier at 36, line 20 to 37, line 2.

339 Transcript at 33, lines 9-16 (Currier).

340 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 13494, ¶ 28 (2004).

Verizon offers no support for its unreasonable position, other than it seeks to prevent Intrado Comm from being able to "pick-and-choose" favorable contract provisions.[341] Verizon's argument, however, fails to acknowledge that any amendment to be made to the interconnection agreement will be subject to negotiations between the Parties, dispute resolution before the Commission, and possibly arbitration before the Commission pursuant to the agreement already reached by the Parties:

> . . . . If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party ***may pursue any remedies*** available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.[342]

To the extent Verizon seeks to change certain contract language based on Intrado Comm's provision of additional services, Verizon can do it at that time. This approach would save the Parties and the Commission the time and energy of renegotiating and re-litigating provisions that have already been resolved by the Parties.

Further, an order by the Commission modifying Intrado Comm's status in Ohio would be considered a "change in law affecting provisions of the agreement."[343] The agreed-upon change of law provision in the Parties' interconnection agreement specifically contemplates that a "change in law" may be an action such as a change in Intrado Comm's certification status:

> If ***any*** legislative, ***regulatory***, judicial or other governmental ***decision, order, determination or action***, or any change in Applicable Law, ***materially affects*** any material provision of this

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341 Joint Issues Matrix at 32 (noting Verizon's position).

342 Blackline ICA, General Terms and Conditions § 4.6 (emphasis added).

343 Verizon Panel Testimony at 84, line 2017.

> Agreement, ***the rights or obligations of a Party hereunder***, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. . . .[344]

Commission decisions have the force of law and a change in Intrado Comm's certification status would certainly "impact something that's within the contract."[345] Intrado Comm's proposed language should therefore be adopted.

XVI. 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 COMM?

Section 1.1.1 of the 911 Attachment contains general statements about 911/E-911 arrangements. Verizon's proposed language states that 911/E-911 arrangements provide ***a caller*** access to the appropriate PSAP. Intrado Comm views inclusion of the phrase "a caller" as unnecessary and has requested that the language be deleted.[346]

Indeed, Verizon's inclusion of the term appears to be an attempt to inappropriately limit the definition of 911/E-911 arrangements. The Verizon-proposed inclusion of "a caller" is too restrictive.[347] Verizon's witness admitted that its proposed term is intended to limit 911 arrangements to "fixed line subscriber dial tone."[348] Under the Verizon interpretation of "a caller," not even 911 calls from wireless devices or interconnected VoIP services would be able to be completed to Intrado Comm PSAP customers.[349] This so called "clarification"[350] is

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344 Blackline ICA, General Terms and Conditions § 4.6 (emphasis added).

345 Transcript at 143, lines 20-23 (D'Amico).

346 Hicks at 61, line 22.

347 Transcript at 83, lines 8-17 (Hicks).

348 Transcript at 169-70 (Sannelli).

349 Transcript at 169-70 (Sannelli); *see also* Currier at 9, lines 20-23 ("The Intelligent Emergency Network® will extend the usefulness of the 911 infrastructure to handle numerous 911 call types regardless of technology -

inconsistent with the types of 911/E-911 calls that PSAP customers expect to be able to receive from their 911 service provider. The inclusion of "a caller" is unnecessary, serves only to restrict Intrado Comm's ability to provide service to PSAPs, and should therefore be rejected.

wireline, wireless, Internet telephony, and other technologies in use today.").

[350] Verizon Panel Testimony at 86, line 2065.

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission adopt Intrado Comm's positions and proposed contract language as set forth herein and the Joint Issues Matrix.

Respectfully submitted,

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Dated: February 13, 2009

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 13th day of February 2009, the foregoing Initial Brief of Intrado Communications Inc. was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio and one (1) copy was served on each of the following via electronic mail.

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Attachment 1
to Intrado Comm Initial Brief

Before the
STATE OF OHIO
PUBLIC UTILITIES COMMISSION

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 Verizon North Inc.	)))))))	Case No. 08-198-TP-ARB

INTRADO COMMUNICATIONS INC. RESPONSE TO
VERIZON NORTH INC. DATA REQUESTS

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, hereby responds and objects to the First Set of Data Requests of Verizon North Inc. ("Verizon") as follows. Any answers provided by Intrado Comm in response to these data requests are provided subject to, and without waiver of, the following general and specific objections.

GENERAL OBJECTIONS

1. Intrado Comm reserves all objections as to relevance and materiality. Where Intrado Comm submits responses and produces materials in response to the requests, it does so without conceding the relevancy or materiality of the information or materials sought or produced, or their subject matter, and without prejudice to Intrado Comm's right to object to further discovery, or to object to the admissibility of proof on the subject matter of any response, or to the admissibility of any document or category of documents, at a future time. Any disclosure of information not responsive to the requests is inadvertent and is not intended to waive Intrado Comm's right not to produce similar or related information or documents.

2. Intrado Comm objects to the requests to the extent they seek information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges and protections. Intrado Comm hereby claims all applicable privileges and protections

to the fullest extent implicated by the requests and excludes privileged information and materials from its responses. Any disclosure of such information or materials as a result of Intrado Comm's responses or otherwise is inadvertent and is not intended to waive any applicable privileges or protections.

3. Intrado Comm objects to the requests of Verizon to the extent that Verizon attempts to impose upon Intrado Comm obligations different from, or in excess of, those imposed by the orders, rules and regulations of the Public Utilities Commission of Ohio or Ohio law.

4. Intrado Comm objects to all Requests that seek information about Intrado Inc. or any other Intrado Comm affiliate. Intrado Inc. and other affiliates are not parties to this proceeding and information regarding them is beyond the scope of this proceeding and not likely to result in admissible evidence in this proceeding. Therefore Intrado Comm will ignore any inquiries concerning affiliates.

Subject to and without waiving the foregoing General Objections, each of which are incorporated by reference into the responses below as if fully restated therein, Intrado Comm provides the following responses to Verizon's requests. Intrado Comm's responses are based on the best information presently available; Intrado Comm reserves the right to amend, supplement, correct or clarify answers if other or additional information is obtained, and to interpose additional objections if deemed necessary.

REQUEST #29:

At page 23 of its Petition for Arbitration, Intrado states: "[i]n geographic areas in which Intrado Comm is the designated 911/E-911 services provider, Verizon would interconnect with Intrado Comm on its network so that customers of Verizon located in that geographic area can complete emergency calls to the appropriate PSAP (i.e., Intrado Comm's end user customer)." Please identify where the point or points of interconnection on Intrado's network will be located under Intrado's proposal.

RESPONSE:

There will be a minimum of two points of interconnection within the state of Ohio, as well as a minimum of two points in every state in which Intrado Comm plans to offer its competitive 911/E911 service to PSAPs. Intrado Comm's initial points of interconnection in Ohio are located in Columbus and West Chester.

RESPONSIBLE PERSON:
Thomas Hicks, Director-Carrier Relations

Attachment 6

STATE OF OHIO

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 Verizon North, Inc.	)))))))	Case No. 08-198-TP-ARB

INITIAL BRIEF OF

VERIZON NORTH INC.

February 13, 2009

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STATE OF OHIO

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 Verizon North, Inc.	))))))	Case No. 08-198-TP-ARB

INITIAL BRIEF OF VERIZON NORTH INC.

I. INTRODUCTION AND BACKGROUND

In this arbitration, Intrado seeks interconnection with Verizon, under section 251(c) of the Telecommunications Act of 1996 ("Act"), to provide 911/E911 services to Public Safety Answering Points ("PSAPs"). Intrado will not provide local exchange service to its PSAP customers, and it will not serve any end users of its own who place 911 (or any other) calls over Intrado facilities. [1] It will instead interconnect with Verizon to receive Verizon's end users' 911 calls and deliver those calls to its PSAP customers. (*See* Intrado Petition at 22; Verizon Ex. 1.0 DT at 5-6.)

In Intrado's arbitrations with United Telephone Company of Ohio d/b/a Embarq ("Embarq"), and with Cincinnati Bell Telephone Company ("CBT"), this Commission already determined that Intrado is not entitled to section 251(c) interconnection when Intrado handles

[1] *See*, Intrado Petition for Arbitration ("Petition") at 5; Verizon Ex. 1.0, Direct Testimony ("DT") at 5-6. *See also Application of Intrado Communications Inc. to Provide Local Exchange Services in the State of Ohio*, Finding and Order (Feb. 5, 2008) ("*Certification Order*") and Entry on Rehearing (April 2, 2008) ("*Certification Rehearing Order*"); Intrado Communications Inc., P.U.C.O. Tariff No. 1 "Intrado Ohio Tariff").

ILECs' end users' 911 calls.[2] Verizon agrees that Intrado is not entitled to section 251(c) interconnection,[3] because its 911/E911 services are not "telephone exchange service" or "exchange access" that would entitle it to such interconnection. 47 U.S.C. § 251(c)(2)(A). This is the same finding the Florida Public Service Commission made in dismissing Intrado's arbitrations with Embarq and AT&T and advising Intrado that it could provide its services through the use of commercial agreements.[4]

This Commission should take the same approach. It has already decided that Intrado is not entitled to the section 251(c) interconnection Intrado has petitioned for here, so there is no reason to reach the substantive issues. The Commission should, as the Florida Commission did, advise Intrado to seek a commercial agreement with Verizon. Verizon stands ready to negotiate

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[2] *Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and conditions and Related Arrangements with Embarq Pursuant to Section 252(b) of the Telecomm. Act of 1996*, Arbitration Award (*Embarq/Intrado Order*) (Sept. 24, 2008), at 8; *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.*, Arbitration Award, Case No. 08-537-TP-ARB (Oct. 8, 2008) (*CBT/Intrado Order*), at 8-9.

[3] Verizon Ex. 1.0, DT at 7-8. To the extent Intrado suggests that Verizon has agreed that Intrado is entitled to section 251(c) interconnection for its 911 services (Intrado Ex. 1.0, Currier DT at 9), Intrado is mistaken. Verizon had no choice but to negotiate and arbitrate with Intrado because, in Intrado's certification proceeding, the Commission determined that Verizon and other ILECs had to do so under sections 251 and 252 of the Act. (*Certification Order*, at 6; *Certification Rehearing Order*, at 14.)

[4] *See Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomm., Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*Fla. AT&T/Intrado Order*") (attached to Verizon's DT as Exhibit 1.6), at 7; *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 of 1934, as Amended, and Section 364.162, F.S.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Fla. Embarq/Intrado Order*") (attached to Verizon's DT as Exhibit 1.7), at 8.

such an agreement with Intrado and remains willing to offer Intrado interconnection arrangements that are comparable to the interconnection arrangements Verizon has in place today with competing local exchange carriers.

The Act does not authorize the Commission to force Verizon and Intrado into arbitration of a commercial agreement under section 251(a) (which requires all carriers to interconnect with each other) or otherwise. The Act limits the Commission's consideration of Intrado's Petition to only the issues set forth there and to Verizon's response, 47 U.S.C. § 252(b)(4)(A), and the Commission must resolve these issues on the basis of the facts and arguments in this record. In that regard, Verizon has *not* sought interconnection with Intrado under section 251(a); Verizon has *not* agreed to interconnect with Intrado on Intrado's network under section 251(a) or otherwise; Intrado did *not* seek to negotiate section 251(a) terms with Verizon; and neither Intrado nor Verizon has asked the Commission to resolve any issues under section 251(a). Indeed, although Verizon and Intrado vigorously disagree about the nature of Verizon's obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado's arbitration petition here and the issues it raises. (*See, e.g.*, Intrado Ex. 1.0, Currier DT at 8-9.)

The ILEC's "duty to negotiate" interconnection terms is specifically set forth in section 251(c)(1);[5] section 251(a) says nothing about negotiations or arbitration. As a federal District Court in Texas found in ruling that a company cannot be compelled to arbitrate an agreement with respect to duties under section 251(a), "[a]lthough there are duties established by § 251(a)…the Court cannot find any language in the Act indicating that these duties independently

[5] 47 U.X.C. § 251(c)(1). *See also* 47 C.F.R. § 51.301(a) ("[a]n incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act"). Section 51.100 of the FCC's rules, which addresses the duties of telecommunications carriers under section 251(a) of the Act, never mentions a duty to negotiate. 47 C.F.R. § 51.100.

give rise to a duty to negotiate or to arbitrate."[6] So even if Intrado and Verizon had already tried and failed to negotiate commercial interconnection terms under section 251(a) (and they have not), this section 252 arbitration would not be the appropriate vehicle for resolution of their disputes.

Verizon's positions on the specific issues in this arbitration are offered only in the event the Commission decides to go forward, despite its ruling that Intrado is not entitled to section 251(c) interconnection for its 911 services, and despite the fact that no one has asked the Commission to arbitrate anything under section 251(a).

If the Commission reaches the merits of Intrado's interconnection proposals, it must reject them as unreasonable and anticompetitive under any analysis. Intrado demands that Verizon interconnect with Intrado *on Intrado's network*, at unspecified locations-at as many points of interconnection ("POIs") as Intrado wishes and as far from Verizon facilities as Intrado wishes. (Intrado Ex. 2.0, Hicks DT at 12; 911 Att., § 1.3.1.) Intrado would require Verizon to incur the cost of at least two direct trunks from each affected Verizon end office to those POIs on Intrado's network. (Verizon Ex. 1.0, DT at 35; Intrado Ex. 2, Hicks DT at 33-34; Intrado proposed 911 Att., § 1.3.4(ii).) In addition, Intrado would require Verizon to deploy an unknown, new kind of call-sorting technology in place of Verizon's selective routers used today. (Verizon Ex. 1.0, DT at 10-11, 40; Transcript ("Tr.") at 81-82.) Under Intrado's plan, Verizon and its customers would have to bear the entire cost of this new network for Intrado. Intrado has never denied this fact. (Verizon Ex. 1.0, DT at 50.)

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[6] *Sprint v. Pub. Util. Comm'n of Texas, Order and Brazos Tel. Coop., Inc.*, Case No. A-06-CA-0650-SS, 2006 U.S. Dist. LEXIS 96569 (Aug. 14, 2006), at 16. (Supplied as Attachment 1.)

Intrado's business plan is, therefore, to force Verizon to provide facilities and services that Intrado will market to PSAPs, but that Verizon would actually provide and pay for. Under Intrado's plan, Verizon would still carry its end users' 911 calls (to Intrado's network, instead of directly to the PSAPs), but instead of being paid to do so by the PSAPs, as Verizon is today, Verizon would have to haul those calls **for free** and then, on top of that, **pay** Intrado for interconnecting on Intrado's network. This extreme plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can. When Verizon serves a PSAP, it must charge its tariffed rates for services and facilities provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still provide them-thus allowing Intrado to price its overall service more attractively and providing it an unfair competitive advantage.

Contrary to Intrado's case presentation, this bilateral arbitration is not the appropriate forum to determine the best 911 "policies and arrangements" for the State of Ohio. (*See* Intrado Ex. 2.0, Currier DT at 15; Intrado Ex. 1.0, Hicks DT at 7-8, 13.) This arbitration is, instead, about the scope of Verizon's legal obligations, if any, to provide section 251(c) interconnection to Intrado for the 911 services Intrado seeks to provide.

Verizon is not trying to maintain a "monopoly over service to PSAPs," as Intrado charges (Intrado Ex. 1.0, Currier DT at 14), and Verizon has not refused to interconnect with Intrado. But Intrado has no right to the particular interconnection arrangements it proposes. Intrado can provide its services using any kind of network it wishes (as long as it is consistent with Ohio's 911 statutes and regulations), but Intrado cannot force Verizon to pay for that network, as it is openly seeking to do. Indeed, even while dismissing Intrado's arbitration petitions, the Florida Commission raised the same concerns about Intrado's cost-shifting proposals that Verizon has here. It observed that the type of interconnection arrangements Intrado is requesting "could

present a serious disadvantage to [the ILEC], who would pay for Intrado Comm establishing its 911/E911 service. We are concerned that the costs for interconnection would be borne by [the ILEC]." (*Fla. AT&T/Intrado Order* at 7; *Fla. Embarq/Intrado Order* at 6.)

This concern is well justified. If the Commission considers Intrado's proposals under section 251(c), as Intrado has asked it to do, it must reject Intrado's unsupported position that section 251(c) grants 911 providers like Intrado special, more favorable interconnection rights over companies that provide 911 service to their end users as part of actual local exchange service.

II. UNRESOLVED ISSUES

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?

Intrado's broad language for Issue 1 would allow Intrado to designate POIs on its own network-at least two, but as many as it wishes, anywhere on its network that it wishes, within or outside Ohio.[7] Intrado's proposed language does not specify where the POIs will be, but during the arbitration, Intrado indicated that it planned to place "initial points of interconnection" in Ohio in Columbus and West Chester (Tr. at 155-56 (citing Intrado Response to Request #29); Intrado Ex. 2.0, Hicks DT at 20), neither of which is in Verizon's service territory. Intrado witness Hicks also admitted that Intrado's proposed contract language does not require the POIs

[7] Intrado's proposed § 1.3.2 of the 911 Attachment states:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm shall provide to Verizon, in accordance with this Agreement, interconnection at a minimum of two (2) geographically diverse technically feasible Point(s) of Interconnection on Intrado Comm's network for the transmission and routing of 911/E-911 Calls to PSAPs for which Intrado Comm is the 911/E-911 Service Provider.

to be in Ohio, and he confirmed Intrado's plans to place POIs outside the State. (Intrado Ex. 2.0, Hicks DT at 21-22.) Although Mr. Hicks suggests that these points outside of Ohio would be for Verizon's convenience (*id.*), Intrado's language would not permit Verizon to choose the POIs. Instead, the choice of POIs on Intrado's network would be completely within Intrado's discretion-and the Commission must, of course, decide this issue on the basis of the contract language, rather than Intrado's claimed intentions.

Forcing Verizon to interconnect on Intrado's network, anywhere Intrado designates, is the foundation of Intrado's cost-shifting scheme, because it would compel Verizon to bear all the costs of transporting traffic to Intrado's POIs, no matter how distant they may be. As Verizon discusses further in response to Issue 5, Intrado's proposal would require Verizon to build or lease a minimum of two new direct trunks (for "diverse routing") from each of Verizon's affected end offices to each of Intrado's POIs on Intrado's network and to develop and implement some kind of new mechanism to sort calls from end offices (which is not possible today). Again, Verizon and its customers would bear the expense of this entirely new configuration. (Verizon Ex. 1.0, 10-11, 40, 50-51.)

As the Arbitrator observed in resolving the POI placement dispute in Intrado's arbitration with Verizon West Virginia, "this issue is quite simple to decide," because "[t]he law is clear and unequivocal."[8] Section 251(c), the FCC's regulation implementing section 251(c), and this Commission's own rules unambiguously provide that the point(s) of interconnection must be within the ILEC's network. Intrado seeks interconnection with Verizon under section 251(c)

[8] *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 ("*W.V. Arb. Award*"), at 12-13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*").

(and only section 251(c)) of the Act, so (if the Commissions declines to dismiss this arbitration), it must resolve Issue 1 in accordance with section 251(c). There are no special interconnection rules for 911 traffic, nor can the Commission create any. Having chosen to arbitrate an interconnection agreement under section 251(c), Intrado cannot change the requirements of section 251(c) because they don't fit its business plan. The Commission must, therefore, reject Intrado's proposal to designate POIs on its own network, which is designed to unlawfully shift Intrado's network costs to Verizon.

This issue with respect to location of the POI is driving Intrado's network architecture proposal and, therefore, this arbitration. As Verizon points out in its positions on other issues, Intrado's proposals and related language for resolving a number of issues in the arbitration incorrectly assume that Verizon must interconnect with Intrado on Intrado's network. Once the Commission rejects Intrado's unlawful position on Issue 1, many of the other issues in this arbitration will be resolved.

A. The POI for Mutual Exchange of Traffic Must Be on Verizon's Network.

Under FCC Rules, "interconnection" is "the linking of two networks for the mutual exchange of traffic."[9] A point of interconnection ("POI") is a point where that linking of networks occurs. The location of the POI is a significant issue in part because the POI is the demarcation of financial responsibility; each carrier is financially responsible for the facilities to deliver its traffic to the POI.[10]

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[9] 47 C.F.R § 51.5.

[10] *See, e.g., 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, etc.,* Memorandum Opinion and Order, 17 FCC Rcd 27039 ("*Virginia Arbitration Order*") at ¶ 53 (2002).

Intrado proposes different POI arrangements depending on whether Verizon or Intrado serves the PSAP in a particular geographic area. Where Verizon is the designated 911/E911 service provider for a PSAP, Intrado agrees to deliver its 911/E911 calls to Verizon at a point on Verizon's network-specifically, the selective router serving the PSAP. (Intrado Ex. 2.0, Hicks DT at 15.) This proposal correctly reflects the legal requirement, for Intrado to establish a POI on Verizon's network. However, it will have little practical effect because Intrado's only customers will be PSAPs, and they will not be making any emergency 911 calls. The parties' dispute with respect to Issue 1 is, rather, about where the POI will be when Intrado is the designated 911 provider-that is, when Verizon's end users make emergency calls to PSAPs served by Intrado. In that case, Intrado's proposed language would require Verizon to build or lease transport facilities to, and interconnect within, Intrado's network at multiple points. (*See* Intrado's proposed 911 Att., § 1.3.2.)

Intrado's proposed language is directly contrary to federal law. Section 251(c) 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). Ohio's interconnection rule correctly reflects federal law that "[e]ach ILEC shall provide interconnection to requesting telephone companies at any technically feasible point within its network." (Ohio Admin. Code § 4901: 1-7-06(A)(5)). These rules apply to all traffic exchanged between an ILEC and an interconnecting carrier. Neither section 251(c) nor anything else in the Act prescribes different rules for 911/E911 calls and all other calls. As noted, Intrado requests

this interconnection pursuant to section 251(c) of the Act (and only section 251(c) of the Act). (Tr. at 15; Intrado Ex. 1.0, Currier DT at 8-9.)

Indeed, Intrado openly recognizes that the Act requires the POI to be within the incumbent LEC's network. Intrado's Petition for Arbitration (at 23) states: "Under the law, Intrado Comm has the right to choose the location of the point of interconnection *on the incumbent's network*, including the right to establish a single POI." (Emphasis added.) Intrado even cites this Commission's rules, which provide "that competitors are entitled to a single POI and that each party has responsibility on its side of the POI." (Petition at 23, note 65 (citing Ohio Admin. Code § 4901: 1-7-06(A)(5).) Mr. Hicks, likewise, answers "yes" to the question: "Does the Act require the POI to be on the ILEC's network?" (Intrado Ex. 2.0, Hicks DT at 20.) Nevertheless, he asks the Commission to deviate from this "traditional" POI arrangement required by law. (*Id*. at 13.)

The Commission must reject Intrado's position. There is no way the explicit federal (and state) requirement for the POI to be "within the incumbent LEC's network" can also mean "outside the incumbent LEC's network." Intrado may choose where the POI is located, but only at a technically feasible point *within* Verizon's network.

In addition, Intrado cannot require Verizon to hand off traffic at a POI at a different location than Intrado hands off its traffic to Verizon. FCC rules provide that POIs are for "the linking of two networks for the *mutual exchange of traffic*."[11] Thus, while Intrado may select the technically feasible location of the POI on Verizon's network, Verizon must be permitted to hand off its traffic to Intrado at the same POI location.

[11] *See* 47 C.F.R. § 51.5 (emphasis added).

Intrado's proposed language is, therefore, unacceptable in at least two ways: First, Intrado seeks to require Verizon to deliver Verizon's originating traffic to POIs that Intrado designates on its own network, rather than within Verizon's network. Second, Intrado improperly seeks to force Verizon to accept a dual POI arrangement, in which Intrado selects one point on Verizon's network to deliver traffic to Verizon, but then forces Verizon to drop off its traffic to Intrado at *different* points Intrado selects on Intrado's network. (*Id*., at 36-37.) The Commission must reject Intrado's proposal for POI placement, because it would violate the explicit requirements of the law and regulations under which Intrado seeks interconnection.

B. The "Equal-in-Quality" Requirement Does Not Cancel Out the Requirement for the POI to Be on the ILEC's Network.

Even though Intrado recognizes that the Act requires the POI to be on the ILEC's network, Mr. Hicks suggests that section 251(c)(2)(C)'s "equal-in-quality" requirement trumps the POI placement directive in section 251(c)(2)(B). (Hicks DT, at 15-16, 20.) Intrado contends that, regardless of the requirement for the POI to be within the ILEC's network, section 251(c)(2)(C) requires Verizon to build out to and interconnect with points of interconnection on Intrado's network. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even through section 251(c)(2)(B) explicitly addresses POI placement.

Intrado's convoluted arguments are, as the West Virginia Arbitrator concluded, "ludicrous on their face." (*W.V. Award* at 13.)

Section 251(c)(2)(C) 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.)

Section 251(c)(2)(C), by its plain terms, relates to the *way* in which Verizon interconnects with CLECs, not *where* the interconnection occurs.

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. These criteria include that interconnection must be provided by the ILEC: (A) for transmission and routing of telephone exchange services and exchange access; (B) at any technically feasible point within the ILEC's network; (C) at least equal in quality to that provided by the ILEC to itself or others; and (D) on just, reasonable and nondiscriminatory rates, terms and conditions. Where a requesting carrier is seeking interconnection of its facilities with the ILEC's network, the ILEC has a duty to comply with *each* subsection of section 251(c)(2) of the Act.

The "equal-in-quality" subsection (C) appears right after the subsection requiring interconnection within the ILEC's network (B). 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), right after section 51.305(a)(2), which requires 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."[12] 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 criterion reflected 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). This fact was readily apparent to the West Virginia Arbitrator: "The subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection." (*W.V. Arb. Award* at 13.)

Because they address distinct subjects, it would be impossible for Verizon to rely on section 251(c)(2)(B) to "forego its obligations under 251(c)(2)(C)," as Intrado accuses Verizon of doing. (Hicks DT at 20.) This is why Intrado's arguments are "ludicrous on their face." As the West Virginia arbitrator stated: "On the one hand, Intrado argues that Verizon cannot use on obligation under Section 251(c) to 'obliterate' another obligation under Section 251(c). That is

[12] *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).

certainly true enough. However, Intrado's own argument would require exactly that outcome." (*W.V. Award* at 13.)

Indeed, subsections (B) and (C) appear one after another in the ***very same statute***-meaning that Congress *has already decided* that there is no conflict between requiring interconnection on the ILEC's network and the equal-in-quality requirement; both requirements must be applied. 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 within the ILEC's network. Intrado's advancement of this unique and bizarre statutory construction shows its desperation to come up with some kind of legal argument, no matter how frivolous, to support its unprecedented network architecture proposals.

Even if there were any merit to Intrado's legal argument that the "equal-in-quality" requirement cancels the POI location requirement (and there is not), that argument would still fail because it is based on Intrado's incorrect factual premise that Verizon is somehow denying Intrado interconnection arrangements Verizon provides to other CLECs, other ILECs, or itself. As Verizon has testified, the section 251(c) "interconnection" arrangements Intrado seeks-POIs on its own network, direct trunking from the ILEC's end offices, and some unknown new form of call routing from end offices-have never been implemented anywhere by anyone under any interconnection agreement.

Intrado argues that it is only asking to "mirror" the same kind of arrangements Verizon uses with CLECs (Intrado Ex. 2.0, Hicks DT at 13-14). But that argument rests on Intrdo's incorrect legal position that it 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. There is no reciprocal obligation for ILECs to take their traffic to CLEC networks, and the Commission cannot create one based on Intrado's misguided policy arguments. Again,

there are no special interconnection requirements for 911 traffic, as the West Virginia Arbitrator correctly observed: "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." (*W.V. Award* at 13.)

In any event, Verizon's "template 251(c) interconnection agreement" does not (and, as a template, cannot) "require" CLECs to interconnect at Verizon's selective routers, as Mr. Hicks contends (Intrado Ex. 2.0, Hicks DT at 14); in negotiations over that template agreement, CLECs nevertheless typically opt for this arrangement, because it is efficient for them to have Verizon route their 911 calls. (Verizon Ex. 1.0, DT at 49; Tr. at 41, 46.)

Nor do Verizon's arrangements for exchanging 911 traffic with adjacent ILECs support Intrado's extreme network architecture proposals, as Intrado also contends. (Intrado Ex. 2.0, Hicks DT at 15.) In its ILEC-to-ILEC arrangements, Verizon typically provides facilities to a meet point at its service area boundary and the other ILEC provides the facilities in its service territory. These meet-point interconnection arrangements do not involve Verizon building facilities and transporting traffic to points on another carrier's network or outside Verizon's service area, as Intrado's proposal would.

Moreover, because the facilities that are constructed by Verizon carry all sorts of traffic between Verizon and the adjacent ILEC (and not just 911 calls) the cost and administrative burdens associated with the facilities are not restricted to 911 calls but are spread over the many different types of traffic Verizon exchanges with the adjacent ILEC. In addition, ILEC-to-ILEC arrangements provide switched and special access revenues that help to cover the costs of those arrangements. Under Intrado's proposal, though, Verizon would be required to establish facilities over potentially very long distances and that would be dedicated only to 911 calls for which Verizon collects no revenue.

In addition, the arrangements Verizon has with adjacent ILECs for the exchange of 911 traffic are not section 251 interconnection agreements, which is what Intrado seeks here, and they generally pre-date the Act.[13] Therefore, such arrangements, could not, in any event, guide the Commission's resolution of the parties' disputes about their rights and obligations under section 251(c). Having chosen to seek interconnection through a section 251(c) agreement, Intrado cannot claim entitlement to arrangements Verizon is not required to offer under section 251(c).

As noted, Verizon offered Intrado meet-point interconnection arrangements, as it does to CLECs, on terms and conditions consistent with the FCC's requirements for section 251(c) agreements. Because Intrado expressed no interest in using this method of interconnection, the meet-point language was removed from the draft interconnection agreement. (Verizon Ex. 1.0, DT at 24.) Verizon, however, remains willing to provide meet point interconnection arrangements to Intrado on the same terms and conditions it provides such arrangements to CLECs. For all of these reasons, Intrado's claim that it is seeking interconnection similar to that which Verizon has with any other carriers is wrong as a matter of fact-and Verizon cannot, in any event, be forced to interconnect with Intrado on Intrado's network as a matter of law.

C. Section 253(b) of the Act Does Not Authorize the Commission to Adopt Intrado's Extreme Interconnection Arrangements.

Aside from Intrado's erroneous section 251(c)(2)(C) argument, Mr. Currier suggests that Section 253(b) of the Act "necessitates the adoption of Intrado Comm's proposed physical

[13] The FCC has recognized that only interconnection agreements negotiated under sections 251(b) and 251(c) of the Act must be filed with and approved by state commissions. *See Qwest Communications International Inc. Petition for Declaratory Ruling of the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under 252(a)(1)*, Memorandum Opinion and Order, 17 FCC Rcd 19337, at n. 26.

interconnection arrangements in their entirety." (Intrado Ex. 1.0, Currier DT at 17.) This argument is no more credible than Intrado's recommendation to read section 251(c)(2)(B) out of the Act.

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. 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 provision supports, let alone "necessitates" the adoption of Intrado's proposal. Intrado is, once again, engaging in its own, peculiar brand of statutory interpretation.

First, 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.[14] Nothing in section 253(b)'s general reservation of rights speaks to, let alone overrides, the specific interconnection requirements in section 251(c)(2), including the requirement for the POI to be within the ILEC's network. Section 253(b)'s general reference to protection of the public safety and welfare certainly does not authorize state commissions to ignore unambiguous directives in the Act and the FCC rules, as Intrado urges the Commission to do.

Second, even if section 253 were relevant to resolving the parties' rights and duties under section 251(c) (and it is not), the Commission could not assume that Intrado's proposals will protect the public safety and welfare and the rights of consumers, as Intrado's legal argument necessarily presumes. As Verizon has testified, and as detailed in response to Issue 5, Intrado's proposals 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 (Verizon Ex. 1.0, DT at 39); or that anyone will be able to develop a reliable call routing alternative to the industry-standard selective routing used today. Indeed, this Commission, the Florida Commission, the West Virginia Enhanced 9-1-1 Council, and a coalition of Texas 911 authorities have all cited reliability and public safety issues related to Intrado's proposals.[15]

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[14] See, e.g., *BellSouth Telecomms., Inc. v Town of Palm Beach*, 252 F.3d 1169, 1188 (11 Cir. 2001).

[15] Verizon DT at 20-21, *citing Embarq/Intrado Order*, at 33; *Fla. AT&T/Intrado Order*, at 8 ("We are concerned that carriers could potentially be transporting 911/E911 emergency calls up and down the state or perhaps even out of state."); *Fla. Embarq/Intrado Order*, at 7 ("We are concerned that carriers may be forced to transport 911/E911 calls over great distances, perhaps even out of state."); Letter from Robert Hoge, Secretary, West Virginia Enhanced 9-1-1 Council, to Sandra Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (dated Nov. 7, 2008) ("*WV 911 Council Letter*") (Verizon DT, Ex. 1.8); *Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*,

Intrado's allegations that its POI-on-its-own-network proposal is "consistent with industry recommendations" relating to network reliability (Intrado Ex. 2.0, Hicks DT at 19) are, likewise, unfounded, as Verizon has testified. (Verizon Ex. 1.0, DT at 20-21.) Despite Intrado's speculation, Intrado cannot prove that its not-yet-built network is any more reliable than Verizon's existing network, which indisputably complies with industry standards, and which, even Intrado admits, is already diverse and redundant. (Intrado Ex. 2.0, Hicks DT at 18-19.) Most importantly, though, nothing in any 911 industry guidelines addresses *section 251(c) interconnection requirements*, which are the only requirements the Commission is charged with implementing in this section 252 arbitration. Again, this is not a proceeding to decide the best 911 polices and arrangements for the State of Ohio; Intrado's speculation about the relative merits of its planned services and network are not relevant to determining Verizon's interconnection obligations.

As for Intrado's claimed objective of safeguarding the rights of consumers, Intrado doesn't say what consumers or what rights its proposal is supposed to protect. Certainly, it is not in the interest of Verizon's or other carriers' customers who would be forced to pay for Intrado's new network (on top of any 911 fees they already pay) if the Commission adopts Intrado's network architecture proposals. It is indisputable that fair and efficient competition cannot develop if carriers are forced to bear their competitors' costs (Verizon Ex. 1.0, DT at 11), and this Commission has never articulated any such anticompetitive, anti-consumer policy.

Docket. No. 36185, Unopposed Joint Motion of the Tex. Comm'n on State Emergency Comm., The Texas 9-1-1 Alliance, and the Municipal Emergency Comm. Districts Ass'n for Leave to File a Statement of Position (filed Oct. 17, 2008) ("*Texas 911 Alliance Motion*") (Verizon DT, Ex. 1.9).

Mr. Currier suggests that the Illinois Commerce Commission supports Intrado's view that section 253(b) requires adoption of Intrado's proposed network architecture.[16] Mr. Currier is wrong. The Illinois decision Mr. Currier cites did not address Intrado's network architecture proposal and in no way indicated that a state commission could rely on section 253(b) to override section 251(c)'s requirement for the POI to be within the ILEC's network. In fact, in Intrado's ongoing arbitration with Verizon, Illinois Staff has unambiguously advised the Commission to *reject* Intrado's proposal to designate POIs on its own network because "Section 251(c) and applicable rules require that any POI be on the ILEC's network, and there is no exemption for this rule for 911 traffic."[17]

D. There Are No "Other Sources" Authorizing the Commission to Ignore the Requirement for the POI to Be on Verizon's Network

Mr. Currier asserts that Sections 251(e) and 706 of the Act authorize the Commission to adopt Intrado's network architecture proposal (Intrado Ex. 1.0, Currier DT at 18) and claims additional support for that proposal in an alleged FCC determination "that the cost-allocation point for the exchange of 911/E-911 traffic should be at the selective router" (*id.* at 16). None of these "sources" has anything to do with placement of the POI, let alone provides any authority for the Commission to adopt Intrado's proposal to place POIs on its own network. Section 251(e) addresses FCC authority over numbering administration; section 706 addresses broadband

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[16] Intrado Ex. 1.0, Currier DT at 17-18, *citing* his Testimony Atttachment No. 3, *Petition of SCC Comm. Corp.for Arbitration Pursuant to Section 252(b) of the Telecomm. Act. of 1996 to Establish an Interconnection Agreement with SBC Comm. Inc*., Arbitration Decision, Docket No. 00-0769 (March 21, 2001).

[17] Direct Testimony of Jeffrey H. Hoagg, Principal Policy Advisor, Telecomm. Div., Ill. Commerce Comm., *Intrado Inc. Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North, Inc. and Verizon South, Inc*., Docket No. 08-0550 (Dec. 19, 2008, at 9). (Supplied as Attachment 2.)

deployment and instructs the FCC to conduct a rulemaking into broadband availability; and the FCC never made any determination that there is any different point for exchange of 911 traffic than for other traffic under section 251(c) interconnection agreements. With respect to this latter claim, Mr. Currier provides no citation, so the source of the alleged "FCC determination" is unknown, but Verizon looks forward to rebutting Intrado's legal arguments in its reply brief.

E. The Commission's Decision Must Be Based on the Facts and Arguments in This Case.

In Intrado's arbitrations with Embarq and Cincinnati Bell, the Commission determined that the POI when Intrado was the designated E911 provider to a PSAP would be Intrado's selective router on Intrado's network, and that the ILECs should deliver their traffic there. Mr. Currier calls this determination in the Embarq case "relevant" to the POI placement issue in this case, but does not explain why. (Intrado Ex. 1.0, Currier DT at 16.) In fact, the POI placement ruling in the Embarq and Cincinnati Bell cases cannot guide the resolution of the POI issue here.

The Commission must, of course, decide this arbitration on the basis of the record here, and the facts and arguments in this case justify a different outcome from the Embarq and Cincinnati Bell cases. The *Embarq/Intrado Order* reflects that Embarq *agreed*, as the requesting carrier *under section 251(a)*, to take its traffic to Intrado's selective router.[18] In fact, Embarq specifically sought interconnection with Intrado at a point on Intrado's network. (*Embarq/Intrado Order* at 6.) In Intrado's arbitration with Cincinnati Bell, it, likewise, appears that the ILEC's own language reflected establishment of a POI on Intrado's network. (*See CBT/Intrado Entry on Rehearing* at 8.)

[18] *See Embarq/Intrado Order*, at 33.

Here, in contrast to the Embarq and Cincinnati Bell arbitrations with Intrado, Verizon has *not* agreed to take its traffic to Intrado's network. Nor has it made any section 251(a) interconnection proposal, as Embarq did. Indeed, although Verizon and Intrado certainly disagree about the nature of Verizon's obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado's arbitration petition here and the issues it raises. (*See*, *e.g*., Intrado Ex. 1.0, Currier DT at 8-9.) If the Commission does not dismiss this arbitration (as Verizon has urged), it must analyze Intrado's interconnection proposals for consistency with section 251(c). Neither Verizon nor Intrado has sought section 251(c) interconnection, and the Commission cannot force them into section 251(a) terms neither has proposed.

Because Embarq and Cincinnati Bell agreed to establishment of a POI on Intrado's network, there was no need for the Commission to resolve the particular dispute that exists in this case-that is, whether section 251(c) entitles Intrado to designate POIs on its own network. In fact, Embarq pointed out that, if it were interconnecting with Intrado under section 251(c), Intrado would be required to interconnect within Embarq's network: "it is well-established law that, pursuant to Section 251(c) of the Act, the CLEC may choose a point of interconnection that is within the ILEC's network." (*Embarq/Intrado Order*, at 28-29.) As the Commission has observed, section 251(c) imposes specific requirements upon ILECs that section 251(a) does not. (*See*, *e.g*., Embarq/Intrado Order at 8.) Certainly, the Commission cannot rely on section 251(a) to force Verizon to take on greater obligations than it has under section 251(c).

Although Embarq and Cincinnati Bell apparently agreed to take their 911 traffic to Intrado's network, neither agreed to Intrado's specific network architecture proposal, which, as in this case, included interconnection with Intrado at multiple points on its network. The Commission rejected Intrado's proposal: "The Commission agrees with Embarq that nothing in Section 251(a) of the Act requires Embarq to establish multiple points of interconnection on

Intrado's network when Intrado is the 9-1-1/E9-1-1 service provider to the PSAP." (*Embarq/Intrado Order*, at 29; *see also CBT/Intrado Order*, at 9 ("there is no requirement under any part of Section 251 of the Act that the requesting carrier establish more than one point of interconnection.") Although the Commission adopted language reflecting the agreed-to concept (in those arbitrations) of a POI on Intrado's network, it required just *one* POI and it required the POI to be within the ILEC's service territory, unless the parties mutually agree otherwise. (*CBT/Intrado Order* at 9; *Embarq/Intrado Order* at 33.) The Commission's decision, therefore, does not support Intrado's request for multiple points of interconnection on Intrado's network.

Also, as Verizon will discuss further in response to Issue 5, in both the Embarq and Cincinnati Bell cases, the Commission rejected Intrado's proposal for direct trunking and call sorting from the ILECs' end offices: "Embarq is not required to utilize direct end office trunking in conjunction with class marking/line attribute routing." (*Ohio Embarq/Intrado Order*, at 33; *see also CBT/Intrado Order*, at 14 ("the requesting carrier is generally entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection"). Just as there was no authority (even under the Commission's section 251(a) analysis) requiring Embarq or Cincinnati Bell to implement Intrado's extreme interconnection proposals in their arbitrations with Intrado, there is no such authority in this case.

<u>ISSUE 2</u>: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES?

Sometimes, a 911/E-911 Call may be directed to the wrong PSAP. This may occur, for example, in the case of a wireless call because of a lack of identification of the caller's exact location. In the case of a misdirected 911 call, the PSAP that received the call may wish to transfer the call to the correct PSAP. Inter-selective router trunking is trunking between the

parties' respective selective routers. Such trunking allows transfer of calls between PSAPs when, for example, calls are initially directed to the wrong PSAP. (Verizon Ex. 1.0, DT at 27.)

Verizon does not disagree with Intrado that inter-selective router trunking permits PSAPs to communicate with each other and allows misdirected calls to be quickly and efficiently routed to the appropriate PSAP. (Intrado Ex. 2.0, Hicks DT at 23.) (In fact, it is Verizon's position that the interconnection between Verizon and Intrado for *all* 911 calls can and should be accomplished by means of trunking between selective routers. (Verizon Ex. 1.0, DT at 27.)) However, the details of Intrado's specific inter-selective routing proposal are unacceptable for a number of reasons.

First, this dispute is an outgrowth of the parties' dispute with respect to Issue 1, concerning placement of the POI. Because Intrado proposes to designate POIs on its own network, it follows that all of the inter-selective router trunking between Verizon's selective routers and Intrado's selective routers for calls transferred between Verizon-served PSAPs and Intrado-served PSAPs would be on Verizon's side of the POI in this scenario. Therefore, under Intrado's proposal, Verizon would have to pay for the trunking between Verizon's and Intrado's selective routers for calls transferred between Verizon-served PSAPs and Intrado-served PSAPs. (This obligation would be in addition to Intrado's proposal, discussed above and in conjunction with Issue 5, to make Verizon pay for direct trunks from Verizon's end offices to Intrado's selective routers.) In other words, Intrado's inter-selective-router trunking proposal assumes that Intrado may force Verizon to deliver 911 calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP *at a POI on Intrado's network*. As explained above, Verizon cannot lawfully be forced to build out its network to a POI on Intrado's network. Therefore, the Commission should reject Intrado's proposal and associated language for Issue 2, just as it should for Issue 1. (Verizon Ex. 1.0, DT at 28.)

Second, call transfer routing capability between PSAPs doesn't even involve interconnection with the public switched telephone network, so such terms are not appropriate in the section 251(c) interconnection agreement Intrado seeks here. Indeed, the Commission has already found that inter-selective routing is a peering arrangement between two carriers requiring the cooperation of the affected PSAPs-not a section 251(c) interconnection arrangement involving the public switched telephone network. (*Embarq/Intrado Order* at 8.) Therefore, it must reject Intrado's inter-selective routing language for the section 251(c) agreement under arbitration..

Third, Intrado is, once again, trying to force Verizon to pay to implement new capabilities so that Intrado can offer more attractive services to PSAPs. Under Intrado's proposal, Verizon would have to pay to implement Intrado's method for selective router-to-selective router transfers, without any compensation from Intrado or the PSAP, regardless of whether any PSAP requested it. This is unfair and anticompetitive.

Fourth, Intrado's proposed language specifying particular activities to be undertaken by the parties in support of Intrado's proposed call transfer methodology would require the parties to maintain inter-911-selective router dial plans. (Intrado proposed 911 Att., § 1.4.4.) Verizon agrees that dial plans are necessary to ensure proper transfers of calls between companies' selective routers, and Verizon is willing to provide this information to Intrado just as it does to other providers. But Intrado seeks an excessive level of dial-plan detail in the interconnection agreement that is not customary, appropriate, or workable. Therefore, this specification of the methods for transfer of 911/E-911 calls should not be included in the agreement.

For all these reasons, the Commission should reject Intrado's language for Issue 2 and instead direct the parties to incorporate into their interconnection agreement Verizon's proposed §1.4 of the 911 Attachment.

<u>ISSUE 3</u>: WHETHER FORECASTING REQUIREMENTS PROVISIONS SHOULD BE RECIPROCAL.

The disputed language for this issue addresses forecasting of trunks for traffic exchanged between the parties' networks. Verizon's language 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. Intrado proposes to make this language reciprocal, so that Verizon would need to provide forecasts of the number of trunks Intrado would need to provide for the exchange of traffic with Verizon. Intrado's revision would serve no useful purpose, imposes an unnecessary burden on Verizon, and should not be included in the agreement. (Verizon Ex. 1.0, DT at 30-32.)

Intrado suggests that there will be a "mutual exchange of traffic" between Intrado and Verizon, so trunk forecasting requirements should apply equally to both parties. This argument is misleading, because Intrado does not plan to provide service to any end users that would make emergency (or other) calls; therefore, there will be no 911 calls originating from Intrado to Verizon (Intrado's PSAP customers will not make any calls to Verizon's end users). And 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 call volumes from Verizon's serving area to the PSAP. In addition, as the West Virginia Commission concluded in rejecting Intrado's reciprocal forecasting proposal, Intrado-served PSAPs, which have a business relationship with Intrado, will be better positioned than Verizon to

assess call volumes to them (*W.V. Arb. Order*, at 3-4), so there is no reason to place this burden on Verizon. (*Id*. at 31.)

In any event, 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 will receive the type and quantity of information it needs to assure adequate trunking between the parties' networks. (Verizon Ex., DT 1.0 at 32.) The Commission should reject Intrado's proposal and direct the parties to delete Intrado's proposed forecasting language in section 1.6 of the 911 Attachment as it would impose burdens on Verizon for no legitimate reason.

<u>ISSUE 4</u>: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION? (911 Att. § 1.5)

This issue is related to Issue 1, whether Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon's proposed section 1.5 of the 911 Attachment correctly recognizes that interconnection will occur on Verizon's network, and that certain steps need to be taken to initiate service at the POI(s) on Verizon's network. Intrado's competing language, however, assumes that Intrado may require as many POIs on 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 a POI on Intrado's network (*see* Issue 5 below). Because Intrado's language for section 1.5 reflects the erroneous notion that Verizon must interconnect with Intrado on Intrado's network, it must be rejected. (Verizon Ex. 1.0, DT at 33.)

When Intrado interconnects with Verizon on Verizon's network (as it must) and Verizon routes its end users' 911 calls to Intrado through Verizon's 911 selective routers (*see* Issue 5 below), then, while Intrado will have the right to interconnect at as many technically feasible points on Verizon's network as Intrado wishes (either when interconnection is initially established in a LATA or at a later time), as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 911 selective routers are located. These interconnections would probably be established by Intrado when it initially interconnects with Verizon. Thereafter, changes to these interconnection arrangements would be managed under 911 Attachment section 1.5.5. If Intrado for some reason needs additional interconnection arrangements in a LATA, it can order them from Verizon pursuant to Verizon's generally established business practices for CLEC interconnection. Therefore, Intrado's specific language on this point is unnecessary in the interconnection agreement. (*Id*. at 34.)

For these reasons, the Commission should adopt Verizon's proposed language in §§ 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment, which correctly describes how Intrado can initiate interconnection at technically feasible POIs on Verizon's network.

ISSUE 5: HOW WILL THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER?

This issue, again, is related to Issue 1, regarding location of the POI. Intrado has not only proposed for Verizon to take its end users' 911 traffic to multiple, distant POIs on Intrado's network, but would also dictate how Verizon gets it to those POIs. Specifically, Intrado would require Verizon to establish, at Verizon's expense, two direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and would force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Intrado Ex. 2.0, Hicks DT at 43-44; Verizon Ex. 1.0, DT at 10-11, 50-51.) Contrary to Intrado's arguments, Intrado is not simply seeking interconnection arrangements like

those ILECs routinely use with other ILECs and CLECs. Intrado's plan is unlike any interconnection arrangements Verizon has with any ILEC or CLEC, and Intrado's proposed network architecture has not been adopted by any Commission. Intrado is seeking to change the entire 911 network to accommodate its own business plan built on shifting costs to Verizon and other carriers.

Intrado has not supported and cannot support this unlawful and anticompetitive direct trunking proposal. Even if the Commission, contrary to law, forces Verizon to interconnect at a POI on Intrado's network, Intrado has no right to dictate how Verizon gets its 911 traffic to that point-as the Commission has already ruled in both the Embarq/Intrado and CBT/Intrado arbitrations.

A. Intrado Has No Right to Dictate How Verizon Engineers Its Own Network

As discussed in Issue 1 above, Intrado's interconnection proposal would require Verizon to buy or build a minimum of two additional direct trunks from affected Verizon end offices (Verizon has 289 end offices) where Intrado is designated as the 911/E911 service provider for an area containing Verizon end users to an unspecified number of POIs on Intrado's network. (Verizon Ex. 1.0, DT at 35.) Intrado's proposed contract language places no constraints on the number of POIs it may designate on its network or their distance from Verizon's network-as noted, Intrado could and would place POIs even outside Ohio[19]

Other than the two POIs Intrado says it plans to locate *outside* Verizon's territory in Ohio (that is, in Columbus and West Chester), Intrado has not identified the location of any other POIs it may establish or the total number it plans to establish, so Intrado's proposal gives it *carte blanche* to impose unlimited costs upon Verizon.

[19] Intrado's proposed 911 Att., § 1.34(ii); Intrado Ex. 2.0, Hicks DT at 21-22.

If, contrary to law, the Commission directs Verizon to place a POI (or POIs) on Intrado's network, then the transport facilities needed to get 911 calls to that POI will be on Verizon's side of the POI. As a result, Intrado's proposal for Verizon to establish direct trunks to those POIs on Intrado's network and to implement call-sorting capability in its end offices seek to dictate how Verizon engineers its own network on its own side of the POI. There is no basis in law, policy, or equity to support the notion that Intrado may tell Verizon how to configure Verizon's own network and that Verizon must bear the costs of whatever configuration eventually Intrado decides upon. Under the Act and the FCC's rules, the originating carrier is responsible for transporting its traffic to the POI, where it is handed off to the other carrier to transport and terminate to its 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 other carrier manages the network facilities on its side of the POI to transport calls to its end user. (*See, e.g., Virginia Arbitration Order*" at ¶ 53.) This Commission has confirmed that there is nothing that would justify one carrier dictating to another carrier how it transports traffic *within its own network.* (*See, e.g., CBT/Intrado Order*, at 14 (noting that a carrier is "entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection"); *Embarq/Intrado Order*, at 33 ("Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI").) Verizon, not Intrado, has the right to decide how best to configure its own network, and so the Commission must reject Intrado's direct trunking/call sorting proposal, which would instead give Intrado this right.

In addition, as the FCC has repeatedly stated, the requesting carrier is responsible for the costs of interconnection, and must pay the ILEC for any expensive form of interconnection it

requests.[20] So even if section 251(c) did require Verizon to implement Intrado's network architecture proposal (and it does not), Intrado would have to pay the substantial costs that Verizon would incur to implement these proposals. (Verizon Ex. 1.0, DT at 38, 43-44.) If Intrado wants redundant direct trunks from Verizon's end offices to POIs on Intrado's network, then Intrado must bear the cost of those trunks.

B. Intrado Cannot Force Its Network Architecture Proposal on Other Carriers.

Intrado's proposal would not only dictate how Verizon engineers its own network, but would force Intrado's direct trunking/new call-sorting proposal on other carriers. Today, most CLECs and wireless carriers choose to route their 911 traffic through Verizon's selective routers for delivery to PSAPs. . (Verizon Ex. 1.0, DT at 37.) If Intrado's direct trunking plan is approved, Verizon would no longer be able to transport 911 traffic from other carriers to Intrado-served PSAPs, so those carriers would have no choice but to lease or build their own facilities to directly connect on Intrado's network-thereby increasing their costs--or leave their customers without access to 911 service. Neither result is in the public interest. In short, even assuming that Intrado could compel Verizon to comply with its interconnection proposal, there is a gaping hole in Intrado's plan that risks leaving many Ohio customers without access to E911 service. (*Id.* at 39.) Intrado cannot claim and has not claimed that it can force its direct trunking/new call-sorting proposal on all other carriers that may send traffic to Intrado-served PSAPs. It has stated only that it plans to obtain other carriers' agreements to its burdensome proposal. (Intrado Ex. 2.0, Hicks DT at 47.) The Commission cannot accept Intrado's cavalier assurances on this critical matter.

[20] First Report and Order, *supra* n. 9, at ¶¶ 199, 200, 209, 225, 552.

Intrado's proposal would, moreover, interfere with other carriers' ability to utilize existing arrangements that Verizon is required by law to provide. Specifically, section 271(c)(2)(B)(vii)(I) of the Act requires Verizon to provide other carriers with nondiscriminatory access to 911 services-which, as noted, is provided today in most cases through Verizon's selective routers. Intrado's proposal would remove this option for CLECs, disrupt Verizon's agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. (*Id*. at 39-40.)

C. Intrado's Proposal Is Vague, Risky, and Unworkable.

Verizon's end offices do not have the ability to sort 911 calls. This 911 call-sorting capability resides instead in Verizon's selective routers. As a result, if Intrado's proposal for direct trunking from Verizon's end offices is adopted, some kind of new call-sorting method would have to be developed and deployed in those end offices. Intrado recognizes this fact, and in other states and in Intrado's arbitrations with Embarq and CBT here, Intrado recommended that Verizon deploy what Intrado calls "line attribute routing" to get calls to Intrado-served PSAPs. In this case, rather than explicitly advocating the adoption of the vague, unsupportable line attribute routing proposal Intrado recommended-and the Commission rejected--in Intrado's arbitrations with Embarq and CBT, Intrado declined to identify or recommend a specific method for implementing its direct trunking proposal. (Intrado Ex. 2.0, Hicks DT at 39.) This tack does not make Intrado's case any more credible. Whether Intrado proposes line attribute routing or nothing at all for call routing along with its direct trunking proposal, there is no existing, reliable call-sorting alternative to selective routing. Indeed, when asked by Staff how Verizon could implement direct trunking in a split wire center without some form of line attribute routing or class marking, Mr. Hicks said he did not know. (Transcript ("Tr.") at 81.) Verizon does not know, either. There is no information in the record-or, for that matter, anywhere else-about how 911 call sorting might reliably be performed in end offices, how much the development and

implementation of this mystery mechanism might cost, or how long it might take. Intrado simply proposes to leave it up to Verizon to devise, deploy-and to pay for-this new call-sorting capability to make Intrado's direct trunking proposal work.

Given these facts, the Commission can give no credence to Intrado's claims that its direct trunking proposal is necessary-let alone able-to assure network reliability. (Intrado Ex. 2.0, Hicks DT at 41.) Contrary to Intrado's claim (Intrado Ex. 2.0 at 40), selective routing is necessary for calls to be directed to the appropriate PSAP. When a Verizon end office is served by multiple PSAPs, selective routing is the only industry-accepted means available for 911 calls to be routed to the correct PSAP. And, for other carriers (such as CLECs and wireless carriers), unless they establish direct connections to Intrado's network, they will need to continue to route their calls to Intrado-served PSAPs through a Verizon selective router. It would only be potentially unnecessary for a particular Verizon end office if all of the PSAPs serving that end office were served by Intrado and *and all other carriers established direct trunks to route emergency calls to Intrado.* (Verizon Ex. 1.0, DT at 53.)[21]

Even if there were any law to support Intrado's direct trunking proposal (and the Commission has already determined that there is not), the Commission has shown that it will not adopt Intrado's irresponsible stance toward critical 911 call routing issues. The Commission

[21] Intrado is also wrong that its direct trunking proposal would provide benefits for Verizon in terms of easing trunk capacity issues and addressing ALI failures, lengthy repair times, and address validation errors. (Intrado Ex. 2.0, Hicks DT at 42.) First, Verizon, not Intrado, has the right to decide how best to configure its own network, and it is certainly *not* the approach Intrado is proposing in this case. Second, direct end office trunking to Intrado's selective routers would exacerbate, not alleviate, potential problems with trunk capacity. A fundamental traffic capacity principle is that there is greater traffic capacity and less chance of blockage when traffic is aggregated to one group of facilities (Verizon's approach) and a greater chance of 911 call blockage if Verizon is forced to separate its end user traffic to multiple trunk groups (as Intrado proposes). Third, there are no problems that need addressing today in Verizon's 911 network in terms of ALI failures, lengthy repair times, address validation errors, or anything else—certainly nothing that would justify the major network reconfiguration that Intrado would require. (Verizon Ex. 1.0, DT at 56.)

should, as it did twice before, reject Intrado's direct trunking proposal. (*Embarq/Intrado Award*, at 33; *CBT/Intrado Award*, at 15.)

D. Intrado's Proposal Is Not The Same As Verizon's Interconnection Arrangements With Other Carriers.

Intrado claims it "is simply seeking the same types of arrangements Verizon imposes on other carriers when Verizon serves the PSAP." (Intrado Ex. 2.0, Hicks DT at 37.) It argues that its proposal for Verizon to direct trunk its end users' 911 traffic from Verizon's end offices to Intrado's selective routers is consistent with Verizon's use of dedicated trunks to route its own end users' call to its PSAP customers, and the way in which Verizon "imposes" on competitors to deliver their end users' 911 calls to Verizon's selective routers. (*Id*. at 35-39.)

As discussed under Issue 1, interconnection with Verizon's network by CLECs is fundamentally different from Intrado's proposed method of "interconnection" with Verizon's network. Intrado's attempt to defend its network architecture proposal by claiming that it's just the same thing Verizon requires of other carriers is unfounded. Again, when Verizon exchanges traffic through section 251(c) interconnection agreements-like the one Intrado is seeking here-CLECs bring their traffic to Verizon's network because federal law requires them to interconnect within the ILEC's network. And, contrary to Intrado's claim, Verizon does not "require" all CLECs to bring their 911 traffic to Verizon's selective routers, but most do so because it is the most efficient solution for them. (Verizon Ex. 1.0, DT at 48-49.)

E. Intrado's Direct Trunking Proposal Has Not Been Adopted Anywhere.

To date, only this Commission and the West Virginia Commission have ruled on Intrado's direct trunking proposal, and they rejected it. The West Virginia Arbitrator ruled that "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." (*W.V. Award*, at 20; *W.V. Order*, at 3

("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.")

In Intrado's arbitrations with Embarq and CBT, this Commission ruled that the ILECs were "not required to utilize direct end office trunking in conjunction with class marking/line attribute routing." The Commission pointed out that there was no FCC requirement for direct trunking and cited concerns about reliability and expense as additional reasons for rejecting Intrado's direct trunking/line attribute routing proposal.[22]

For all of the foregoing reasons, the Commission should reject Intrado's proposals, which have no basis in law or sound policy. Specifically, the Commission should find that Verizon is not required to: (1) build facilities to and interconnect at a point or points of interconnection on Intrado's network; (2) install direct trunking from each of its end offices to POIs on Intrado's network; (3) implement line attribute routing or any other new call routing methodology to go along with direct trunking; and (4) send all 911 calls from split wire centers to Intrado, even where 911 calls are destined for Verizon-served PSAPs. The Commission should instead direct the parties to incorporate into their interconnection agreement the language Verizon proposes for sections 1.3, 1.4, and 1.7.3 of the 911 Attachment, and sections 2.6, 2.64, 2.94 and 2.95 of the Glossary. (Verizon Ex. 1.0, DT at 57-58.)

ISSUE 6: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES.

Contrary to Intrado's framing of this issue, Verizon does not oppose listing its 911 network components in the interconnection agreement. Verizon proposed compromise language

[22] *Embarq/Intrado Order* at 15; *CBT/Intrado Order* at 15.

in its testimony (Verizon Ex. 1.0, DT at 59) that accurately describes Verizon's 911 facilities and that should have resolved Intrado's asserted "reciprocity" concern. But a dispute appears to remains because Intrado's language continues to describe Verizon's network components inaccurately.

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 from Verizon end offices to PSAPs-in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement line attribute routing. 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. The Commission should adopt Verizon's description of its 911 facilities, not the one proposed by Intrado. Verizon's compromise language accurately describes the key function performed by Verizon's 911 tandem/selective routers in Verizon's network-that is, routing calls from the Verizon end offices from which 911 calls originate to PSAPs. Verizon's compromise language is also consistent with Verizon's proposed definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.64 and properly reflects that Verizon manages the ALI database where Verizon has been selected by the Controlling Authority to do so.

Verizon's proposed language for section 1.1.1 of the 911 Attachment accurately describes Verizon's network arrangements and capabilities and should be adopted.

<u>ISSUE 7</u>: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE.

Verizon does not disagree that the parties should cooperate to ensure that misdirected 911 calls are directed to the right PSAP, and Verizon has 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 (automatic location identification) database. (911 Att., § 1.2.) But Verizon does *not* agree that Intrado's specific language with regard to ALI steering tables belongs in an interconnection agreement.

Intrado acknowledges that the automatic location information ("ALI") function is an information service. (Intrado Ex. 1.0, Currier DT at 24.) Because the FCC has determined that the provision of caller location information to a PSAP is an information service,[23] not a telecommunications service, such services fall outside the scope of interconnection agreements under the Act. (Verizon Ex. 1.0, DT at 60.) 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, as Intrado unreasonably proposes here. 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 61.)

The Commission should reject Intrado's proposed language in section 1.2.1 of the 911 Attachment related to ALI databases. The Parties can negotiate separate commercial terms, if

[23] *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 (1998), at ¶ 17.

necessary, addressing any additional, legitimate needs Intrado may have in relation to ALI database arrangements.

<u>ISSUE 8</u>: WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES' PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED?

Each of the glossary definitions identified in Issue 8 is referenced in one or more of the draft interconnection agreement sections in Issues 1, 2 and 5. (Verizon Ex. 1.0, DT at 62.) The source of the parties' dispute about the definitions under Issue 8, like many others in this arbitration,is Intrado's unlawful network architecture proposal. Because Intrado's definitions for Issue 8 incorrectly assume that Intrado is entitled to select POIs on its own network and that Verizon must interconnect with Intrado by means of direct trunks supplied by Verizon that would bypass Verizon's selective routers, they must be rejected.

In addition, Intrado's language does not accurately reflect the structure of Verizon's network and the location and operation of 911 Tandem/Selective Routers in Verizon's network. Verizon's references to "911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router," unlike Intrado's definitions, make clear that in Verizon's network, the 911 Tandem/Selective Router is located between the Verizon end office and the PSAP and may be used to route calls from the Verizon end office to Intrado's POI. Intrado's opposition to Verizon's language reflects its unlawful proposal to require Verizon to forgo using its selective routers to send 911 calls to Intrado-served PSAPs.

Finally, including Verizon's proposed definition of "Verizon 911 Tandem/Selective Router Interconnection Wire Center" is appropriate because one of the POIs on Verizon's network is specifically stated in the 911 Attachment to be a "Verizon 911 Tandem/Selective

Router Interconnection Wire Center." Intrado has no legitimate reason to propose deleting this language.

The Commission should adopt Verizon's proposed definitions because they accurately reflect the structure of Verizon's network, the location and operation of Verizon's selective routers, and the requirement for the POI to be within Verizon's network. Verizon's definitions add detail that more clearly describes the obligations, rights and responsibilities of the Parties under the agreement. Verizon's proposed definitions should therefore reduce the likelihood of future disputes between the Parties that may arise as a result of definitions, like Intrado's, that are vague and overly broad. (Verizon Ex. 1.0, DT at 62-68.)

ISSUE 9: SHOULD 911 ATT. § 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?

Verizon's proposed Section 2.5 provides that nothing in the agreement will limit Verizon's ability to deliver calls directly to a PSAP served by Intrado. Intrado proposes to make this section reciprocal and to qualify it by limiting the reservation of rights to situations where the PSAP has agreed to the direct interconnection. Verizon does not object to adding a new section 2.6 as follows:

> 2.6 Nothing in this Agreement shall be deemed to prevent Intrado Comm from delivering, by means of facilities provided by a person other than Verizon, 911/E-911 Calls directly to a PSAP for which Verizon is the 911/E-911 Service Provider.

(*See* Verizon Ex. 1.0, DT at 68.)

However, Verizon does not agree that these sections should be qualified by language that interconnection must be authorized by the PSAP. Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside of the scope of the parties' agreement. Because Intrado's language is an unwarranted intrusion upon Verizon's rights with respect to third parties, it should be rejected. (Verizon Ex. 1.0, DT at 68-69.)

<u>ISSUE 10</u>: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD WILL INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?

<u>ISSUE 11</u>: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT.

Intrado does not dispute Verizon's proposed rates in Appendix A to the Pricing Attachment. Appendix A lists the Commission-sanctioned rates for elements that CLECs may take from Verizon, including unbundled network elements, and appropriate references to Verizon's tariff rates for such services as entrance facilities and transport for interconnection, and exchange access services. (Verizon Ex. 1.0, DT at 70.) Verizon's proposed 911 Attachment and the Pricing Attachment would apply applicable tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. In other words, tariffed rates would apply to tariffed services. Intrado objects to these tariff references. (*Id.*)

There appear to be two reasons. First, Mr. Currier states: "Pricing for interconnection and network elements is to be developed pursuant to the pricing standards contained in Section 252(d) of the Act"-that is, the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology. (Intrado Ex. 1.0, Currier DT at 27.) Mr. Currier complains that rates in tariffs "may not be developed pursuant to the requirements of Sections 251 and 252" of the Act. (*Id*. at 32.) Intrado appears to be suggesting that everything it may possibly order from Verizon must be priced at TELRIC simply because Intrado is what it calls a "co-carrier" interconnecting with Verizon. (Intrado Ex. 2.0, Hicks DT, at 32.) That is a plainly erroneous notion. Intrado is entitled to TELRIC pricing only for the elements the FCC has identified for such pricing, and

these elements, as well as appropriate references to Verizon's tariff rates, are already included in Appendix A to the Pricing Attachment. Intrado cannot circumvent Verizon's tariffs and obtain better pricing than any other carrier can for the same service simply by claiming that Intrado needs it for interconnection.

Intrado also argues that without pricing for every element that Intrado may someday take from Verizon, "Intrado Comm cannot effectively compete with Verizon because it will not know its operating costs." (Intrado Ex. 1.0, Currier DT at 27.) Intrado further claims that it needs greater "certainty" (Id. at 31), imagining a scenario in which Verizon knows Intrado is planning to enter a particular geographic area and Verizon suddenly changes its tariffed pricing and contends that such "volatile pricing" would make Intrado's chance of succeeding in the market "tenuous at best." (*Id*. at 28.)

This argument is unconvincing. Verizon's generic tariff references are a standard part of Verizon's Commission-approved interconnection agreements with CLECs. (Verizon Ex. 1.0, DT at 71.) Verizon's approach is proven and workable and has not had any of the nefarious effects Intrado conjures. Contrary to Intrado's arguments, Verizon cannot immediately change its tariffed prices on a whim. While the rates for some of Verizon's tariffed retail services are no longer subject to Commission review and approval, the rates for the wholesale services that Intrado is likely to purchase from Verizon, such as entrance facilities and transport from Verizon's access tariffs and collocation from Verizon's collocation tariff, remain subject to Commission review and approval.

Verizon offers a wide variety of tariffed services that Intrado might someday purchase, including transport services and facilities connecting Intrado's network to Verizon's network and collocation arrangements for interconnection to Verizon's network. Verizon cannot predict which of these tariffed services, if any, Intrado might wish to take in the future and Intrado

probably cannot, either. It would be unreasonable, infeasible, and unnecessary to expect the interconnection agreement to list all of its tariffed rates for all of its services. Verizon's tariff references make clear that Intrado may purchase tariffed services and that it will receive the same, nondiscriminatory rates offered to all CLECs. (Verizon Ex. 1.0, DT at 71.)

Verizon's proposed provisions with regard to "TBD" (to be determined) rates in section 1.5 of the Pricing Attachment are appropriate because they provide for TBD rates to be replaced by applicable tariff rates (when such rates come into effect), or by rates required, approved or allowed to go into effect by the Commission or the FCC.

Unlike the Verizon's charges listed in Pricing Attachment A, Intrado's proposed rates are in dispute. (Id., at 72.) This issue is, again, related to Intrado's Issue 1 proposal to designate POIs on its own network, from which follows Intrado's Issue 5 proposal for Verizon to install and pay for trunks to transport 911 traffic to those POIs. Verizon opposes any charges that assume the implementation of Intrado's "interconnection" proposal.

The entirety of Intrado's pricing proposal is as follows:[24]

A. INTERCONNECTION

Service or Element Description:	**Recurring Charges:**	**Non-Recurring Charge:**
Per DS1	**$ 127.00**	**$ 250.00**
Per DS0	**$ 40.00**	**$250.00**

On its face, it is impossible to tell what Intrado's proposed charges are for. Intrado's proposed language does not specify what services "per DS1" or "per DS0" it proposes to charge for, or what facility arrangements it might have in mind. In his direct testimony, Mr. Currier

[24] Intrado's proposed Appendix A, Pricing Attachment.

suggests that Intrado's proposed charges would be for "port terminations" to interconnect at Intrado's POIs on its network (Intrado Ex. 1.0, Currier DT at 29), but that is not clear from the contract language it asks the Commission to adopt.

Intrado contends that its port termination charges are fair because Verizon imposes trunk port termination charges on carriers terminating traffic on its 911 network. (*Id*.) Intrado's argument has no merit. First, it incorrectly assumes that Intrado may designate POIs on its network at which Verizon will interconnect. Since Intrado must interconnect with Verizon at a technically feasible point on Verizon's network, Intrado has no right to charge Verizon for interconnection and transport facilities to carry 911/E-911 calls to Intrado's network. Therefore, to the extent Intrado would impose port, termination, or other such fees, they are inappropriate. This issue will become moot once the Commission determines, in the context of Issue 1, that Intrado cannot force Verizon to interconnect on Intrado's network. As the West Virginia Arbitrator determined, "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award*, at 24.) With respect to pricing provisions in general, the Arbitrator found:

> The 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network. (*W.V. Award*, at 15.)

This Commission should make the same finding.

Second, it is not clear just what Verizon rates Intrado is comparing Intrado's rates to or, as noted above, what facility arrangement Intrado's rates represent-so it is impossible to draw any comparison between Verizon's and Intrado's proposed rates. Finally, Intrado has offered no cost or other justification for the rate levels it proposes for the unspecified "interconnection"

services in Appendix A. Even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), the Commission would have to reject those rates because Intrado has provided absolutely no support for them. (Verizon Ex. 1.0, DT at 74.)

For all of these reasons, the Commission should find that Verizon's proposed references to "applicable" tariff provisions and "TBD" rates are reasonable and should be adopted. The Commission should find that because Verizon cannot be required to interconnect on Intrado's network (consistent with the resolution of Issue 1), there is no reason to include in the agreement any charges for interconnecting facilities to points on Intrado's network. The Commission should further find that Intrado has not shown that its rates are fair and reasonable rates and that therefore they cannot be adopted.

ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS.

The rates of Verizon, as an ILEC, have historically been subject to thorough Commission scrutiny and therefore are subject to a presumption of reasonableness. If Intrado wants to charge Verizon higher rates for comparable services, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. Intrado complains that Verizon's proposal is "one-sided" and that it "may have the effect of forcing Intrado to lower its rates without competitive justification." (Intrado Ex. 1.0, Currier DT at 33.)

Intrado's claim that Verizon's proposal is one-sided makes no sense; Verizon is not aware of any requirement anywhere for an ILEC to benchmark to CLEC rates. On the other hand, the approach of benchmarking CLEC rates to ILEC rates is a standard part of Verizon's interconnection agreements and commonly used by lawmakers and regulators to prevent CLEC pricing abuses in a number of contexts. without the disastrous consequences Mr. Currier predicts.

For instance, as he mentions in passing, CLECs must charge symmetrical reciprocal compensation rates with the ILEC, unless a CLEC can justify higher rates based on its costs. In addition, the FCC requires benchmarking of CLEC interstate access rates to competing ILEC rates and over a dozen states, including this one, have implemented similar requirements.[25]

It is reasonable and consistent with past Commission policy for the Commission also to require that Intrado's rates to other carriers, likewise, either be capped at Verizon's rate or be supported by a cost study that complies with the Commission's rules. Accordingly, the Commission should adopt Verizon's language which would allow Intrado to charge rates above those Verizon charges for comparable services only if Intrado demonstrates that its costs exceeded Verizon's charges for the service. The Commission should, therefore, approve Verizon's proposed § 2 of the Pricing Attachment that would prohibit Intrado from charging more than Verizon charges Intrado for the same services, facilities and arrangements.

<u>ISSUE 13</u>: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT?

The parties have agreed not to charge each other intercarrier compensation for 911/E911 calls. (Verizon Ex. 1.0, DT at 80; Intrado Ex. 1.0, Currier DT at 35.) In §§ 1.7.2 and 1.7.3, however, Intrado has proposed language that would create a loophole that might permit such charges. Specifically, Intrado proposes to add the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment" to the agreed-upon language in § 1.7.2. The Commission should reject this unnecessary and inappropriate qualification, which has no legitimate basis. Aside from undercutting the parties' agreement not to bill for transport of

[25] Verizon Ex. 1.0 at 78 (citing *Establishment of Carrier-to-Carrier Rules*, Entry on Rehearing, Case No. 06-1344-TP-ORD, at 16-18 (Oct. 17, 2007) (capping CLECs' switched access rates at the level of the competing ILEC).

911/E-911 calls, Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network, which, as discussed in Issue 1, incorrectly assumes that Intrado may designate POIs on Intrado's network. Moreover, if Intrado's objective is to allow it to bill charges in connection with the ALI database or the MSAG, Intrado should recover these costs from the applicable government agency as part of the 911 services Intrado provides for the PSAP.

Intrado also proposes language in § 1.7.3 that would require Verizon to pay Intrado to interconnect at POIs on Intrado's network. That is inappropriate for the reasons discussed in Issue 1.

For all of these reasons, the Commission should reject Intrado's proposed qualifying language in §§ 1.7.2 and 1.7.3 and Intrado's proposed language in § 1.7.3 of the 911 Attachment regarding payment of charges for interconnection to POIs on Intrado's network.

ISSUE 14: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"?

The agreed-upon language for sections 2.3 and 2.4 of the 911 Attachment specifies that nothing in the Agreement shall prevent Verizon or Intrado from billing PSAPs for specified services, facilities and arrangements. Intrado seeks to qualify this language with the phrase "[t]o the extent permitted under the Parties' Tariffs and Applicable Law." (Verizon Ex. 1.0, DT at 81.) According to Intrado, this clause is necessary to prevent Verizon from having free rein to bill Ohio PSAPs for services that Verizon no longer provides to them. (Intrado Ex. 1.0, Currier DT at 35.)

Intrado is wrong. Its proposed language is nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for services that it will continue to provide even when Intrado provides 911 services to that same PSAP. Intrado attempted to impose a similar

restriction by filing a petition with the Florida Public Service Commission seeking a declaratory statement that ILECs may not charge PSAPs or Intrado for any tariffed services once a PSAP chooses Intrado as a 911 network services provider. The Florida Commission denied Intrado's petition, finding:

> Intrado either assumes that once it becomes the primary E911 provider to a PSAP, all ILEC 911 services to that PSAP will necessarily cease or it fails to consider the possibility that the ILECs may have to continue to provide certain ancillary services to Intrado or to the PSAP in order for Intrado's primary E911 service to properly function, for which the ILECs are entitled to compensation pursuant to their tariffs.[26]

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. 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-not for an interconnection agreement between Verizon and Intrado. The Commission should reject Intrado's attempt to intrude upon Verizon's relationships with third parties. (Verizon Ex. 1.0, DT at 83.)

Intrado argues that it would be inappropriate for Verizon to continue to bill a PSAP served by Intrado for any selective routing or transport services once the PSAP opts for Intrado's 911 services. (Intrado Ex. 1.0, Currier DT at 13-14, 35.) The foundation of Intrado's positions

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[26] *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications*, Docket No. 080089-TP, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

in this arbitration is that other carriers and their end users who call 911 should bear the cost of Intrado's proposed 911 system. By qualifying the statement of Verizon's right to charge for specified services provided to PSAPs with a reference to Intrado's own (as yet unfiled) tariffs, Intrado will have the opportunity to-and no doubt, will-insert language in its tariff reflecting its view that Verizon cannot charge PSAPs anything when Intrado is serving the PSAP. (Verizon Ex. 1.0, DT at 82.)

The Commission should reject Intrado's attempt to prohibit Verizon from charging for services it will continue to provide to PSAPs even when those PSAPs are also served by Intrado, just as the Florida Commission did and just as the West Virginia Commission did. (*W.V. Award*, at 28.) Adoption of Intrado's position would be fundamentally unfair and contrary to this Commission's policies and Verizon's tariffs.

<u>ISSUE 15</u>: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS? (GT&C § 1.5)

In the event that Intrado seeks to provide services other than 911/E911 services while the interconnection agreement is effective, Intrado wants the right to request and obtain an amendment covering those other services. (Verizon Ex. 1.0, DT at 83-84 (citing Intrado proposed § 1.5, General Terms and Conditions.)) Intrado's proposed language states:

> Notwithstanding the foregoing, the Parties agree that: (a) Intrado Comm may seek to offer telecommunications and local exchange services other than 911/E-911 Calls in the future; and (b) upon Intrado Comm's request, the Parties will amend this Agreement as necessary to provide for the interconnection of the Parties' networks pursuant to 47 U.S.C. § 251(c)(2) for the exchange of traffic other than 911/E-911 Calls.

This language provides Intrado the unilateral right to an amendment, outside of the contract's change of law provisions, which would allow either Party to seek an amendment to the agreement under appropriate circumstances. The change of law provision in § 4.6 of the

agreement, unlike Intrado's proposed language above, specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate. Intrado's language is inappropriate, because the parties agreed to negotiate and arbitrate an agreement based largely on the fact that Intrado is seeking to provide only 911-related services to PSAPs. This interconnection agreement approach is unique; the give-and-take in negotiations and the parties' compromises assumed a much narrower scope of services and operation than the usual CLEC agreement, under which the CLEC, unlike Intrado, will provide basic local exchange services to business and residence end users. Absent a change in law affecting provisions of the agreement which would allow a Party to request an amendment to the agreement (see § 4.6, General Terms and Conditions), Intrado should not have a unilateral right to seek an amendment to the agreement. (Id. at 84.)

It is not appropriate to allow Intrado to retain the benefit of any provisions already obtained through negotiation or arbitration and then seek the benefit of additional provisions associated with exchange of traffic other than 911/E-911 calls. If Intrado wishes to greatly expand the scope of the agreement, it should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in a fair and balanced trade-off of one provision against another. The Commission should, therefore, reject Intrado's proposed language in section 1.5 of the General Terms and Conditions, as the West Virginia Commission did. (*W.V. Award*, at 26.)

<u>ISSUE 16</u>: 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 COMM? (911 Att. § 1.1.1)

Verizon proposes including the term "a caller" in section 1.1.1 of the 911 Attachment to make clear what entity is dialing 911. Intrado contends that there is no reason for the description of "911/E-911 Arrangements" to include what entity is dialing 911. (Verizon Ex. 1.0, DT at 85.)

Section 1.1.1 describes how 911/E-911 arrangements provide access to the appropriate PSAP by dialing a 3-digit universal telephone number, "911." Verizon simply proposes to include "a caller" between the words "provide" and "access" so that the sentence reads: "911/E-911 arrangements provide a caller access to the appropriate PSAP by dialing a 3-digit universal telephone number, '911.'" Verizon's language accurately describes the function of 911/E911 arrangements and provides additional clarity.

Intrado is seeking interconnection with Verizon so that Verizon customers calling 911 can reach PSAPs that are served by Intrado. No other "entities" would call 911. Verizon's customers acquire access to the appropriate PSAP by dialing a 3-digit universal telephone number, "911." In other words, for Verizon's end user customers to summon emergency services, they must place a call to 911-that is, be "a caller." Verizon's proposed inclusion of the phrase "a caller" in § 1.1.1 of the 911 Attachment accurately describes the access that 911/E911 arrangements provide to a caller, and there is no legitimate reason for Intrado to object to this simple clarification. The Commission should, therefore, adopt Verizon's proposed language for section 1.1.1 of the 911 Attachment, as the West Virginia Commission did. (*W.V. Award*, at 26.)

III. CONCLUSION

For all of the reasons in Verizon's testimony and this brief, Verizon asks the Commission to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully submitted,

Dated: February 13, 2009

Verizon North Inc.

By: /s/ *Thomas E. Lodge*

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Attachment 1

LexisNexis

SPRINT COMMUNICATIONS COMPANY L.P., Plaintiff, -vs- THE PUBLIC UTILITY COMMISSION OF TEXAS; PAUL HUDSON, Commissioner of the Public Utility Commission of Texas; JULIE PARSLEY, Commissioner of the Public Utility Commission of Texas; BARRY SMITHERMAN, Commissioner of the Public Utility Commission of Texas; and BRAZOS TELEPHONE COOPERATIVE, INC., Defendants.

Case No. A-06-CA-065-SS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

2006 U.S. Dist. LEXIS 96569

August 14, 2006, Decided
August 14, 2006, Filed

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JUDGES: SAM SPARKS, UNITED STATES DISTRICT JUDGE.

OPINION BY: SAM SPARKS

OPINION

ORDER

BE IT REMEMBERED on the 15th day of June 2006, the Court held a hearing in the above-styled cause, and the parties appeared through counsel. Before the Court were Brazos Telecommunications, Inc.'s ("Brazos") Motion to Dismiss [# 20], Sprint Communications Company L.P.'s ("Sprint") Response [# 23], Brazos's Reply [# 29], the Public Utility Commission's ("PUC") Motion for Summary Judgment [# 27], Sprint's Response [# 33], Brazos's Motion for Summary Judgment [# 31], Sprint's [*2] Response [# 33], Sprint's Motion

for Partial Summary Judgment [# 21], the PUC's Response [# 28], Brazos's Response [# 30], and Sprint's reply [# 33]. Having considered the motions, responses, and replies, the arguments of counsel at the hearing, the relevant law, and the case file as a whole, the Court now enters the following opinion and orders.

Background

This case involves a dispute between two telecommunications companies, Sprint Communications Company L.P. ("Sprint") and Brazos Telecommunications, Inc. ("Brazos"), and the Public Utility Commission of Texas ("the PUC") over the interconnection and arbitration requirements of the Telecommunications Act of 1996 ("the Act"). In order to understand either party's position with respect to the interconnection and arbitration provisions of the Act, it is necessary to begin with a discussion of the context in which those provisions and the rest of the Act arose.

Until the time of the Act's passage, local telephone service was treated as a natural monopoly in the United States, with individual states granting franchises to local exchange carriers ("LECs"), which acted as the exclusive service providers in the regions they served. *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 371, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999). [*3] The 1996 Act fundamentally altered the nature of the market by restructuring the law to encourage the development and growth of competitive local exchange carriers ("CLECs"), which now compete with the incumbent local exchange carriers ("ILECs") in the provision of local telephone services. *Id.* The Act achieved its goal of increasing market competition by imposing a number of duties upon ILECs, the most significant of which is the ILEC's duty to share its network with the CLECs. *Id.*; 47 U.S.C. § 251. Under the Act's requirements, when a CLEC seeks to gain access to the ILEC's network, it may negotiate an "interconnection agreement" directly with the ILEC, or if private negotiations fail, either party may seek arbitration by the state commission charged with regulating local telephone service, which in Texas is the PUC. § 252(a), (b). In either case, the interconnection agreement must ultimately be publicly filed with the state commission for final approval. § 252(e).

Sprint brings this action for a declaration of the rights and duties of the parties under §§ 251, 252, and 253 of the Telecommunications Act of 1996. A brief summary of the procedural events leading to this case is in [*4] order. On November 16, 2004, Sprint requested interconnection with Brazos, and Brazos responded that, as a rural telephone company, it was not obligated to negotiate interconnection with Sprint. [1] On April 25, 2005, Sprint filed a petition for compulsory arbitration under § 252(b)(1) with the PUC, and on May 13, 2005, Brazos filed a motion to dismiss Sprint's arbitration petition, claiming that Brazos was exempt from the interconnection obligations set forth in Sprint's petition because Brazos was a rural telephone company under § 251(f)(1)(A). On June 14, 2005, the PUC granted Brazos's motion to dismiss, finding that Sprint's request was governed by § 251(c), a provision from which Brazos is exempt as a rural telephone company. Sprint appealed this order, and claimed that it was only seeking interconnection under § 251(a) & (b), provisions from which Brazos is not exempt. Then, on August 23, 2005, the PUC referred the case to the Texas State Office of Administrative Hearings for a hearing to develop the evidentiary record. Finally, on December 2, 2005, the PUC denied Sprint's appeal of the PUC's order dismissing Sprint's petition to arbitrate an interconnection agreement between Sprint [*5] and Brazos, reasoning that Brazos was exempt from the type of interconnection agreement sought by Sprint unless and until Sprint successfully

petitioned to lift Brazos's rural exemption. PUC Order Denying Sprint's Appeal at 3.

1 The Act allows carriers to establish interconnection agreements voluntarily; but if they are unable to do so, either carrier may petition the state commission to arbitrate an interconnection agreement. 47 U.S.C. § 252.

Sprint asserts the PUC violated 47 U.S.C. §§ 251(a), 251(b), 252, and 253(a) and engaged in arbitrary and capricious decisionmaking. Sprint further asserts that Brazos violated §§ 251(a) and 251(b). Sprint requests the following relief: (1) declare that § 251(a) imposes a duty on Brazos to interconnect for the mutual exchange of traffic; (2) declare that Brazos has a duty to provide Sprint with number portability and dialing parity and to establish reciprocal compensation under § 251(b); (3) declare that the PUC's final order violated §§ 251(a), 251(b), 252, and 253; (4) declare the PUC's findings arbitrary and capricious; (5) direct the PUC to arbitrate and approve an interconnection agreement; and (6) declare that Brazos violated its duties and [*6] award Sprint damages for Brazos's failure to interconnect.

Brazos has filed a motion to dismiss and a motion for summary judgment. The PUC has filed a motion for summary judgment, and Sprint has filed a motion for partial summary judgment.

Analysis

I. Brazos' Motion to Dismiss

Brazos moves to dismiss Sprint's complaint for lack of subject matter jurisdiction. Brazos claims that the PUC order at issue is not a final determination of an interconnection agreement over which this Court has jurisdiction. The PVC's order finds that Brazos is exempt from the type of interconnection Sprint seeks; therefore, Brazos contends Sprint must first file a petition to remove Brazos's rural exemption before any final, appealable determination of the PUC can issue. Brazos contends that if Sprint were to file a petition to remove Brazos's rural exemption, the PUC's decision to remove the exemption in whole or in part might moot some or all of the relief Sprint seeks, and, alternatively, if the PUC were to uphold Brazos's rural exemption, that decision would be appealable.

Section 252(e)(6) of the Act provides: "In any case in which a State commission makes a *determination* under this section, any party aggrieved [*7] by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section." [2] 47 U.S.C. § 252(e)(6) (emphasis added). Brazos asserts this Court has no jurisdiction over this case because the PUC's order is interlocutory and is not a "determination" as defined by § 252(e)(6). Brazos contends that under § 252(e)(6) federal district courts may only review state commission decisions approving or enforcing an interconnection agreement.

2 Section 251 discusses the general duties and obligations of telecommunications carriers, and it will be discussed below in greater detail. 47 U.S.C. § 251.

Sprint takes the position that the PUC made a final determination subject to this Court's review under § 252(e)(6). In *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, 208 F.3d 475 (5th Cir. 2000), the Fifth Circuit declined to "read section 252(e)(6) so narrowly as to limit its grant of federal district court jurisdiction to review decision of state commissions only to those decisions that either approve or reject interconnection agreements." *Id.* at 480-81. [*8] "[F]ederal court jurisdiction extends to review of state commission rulings on complaints pertaining to interconnection

agreements and ... such jurisdiction is not restricted to mere approval or rejection of such agreements." *Id.* at 481. *Accord AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6, 119 S. Ct. 721, 142 L. Ed. 2d 834 (recognizing that "if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel."). Further, a district court has sustained subject matter jurisdiction under § 252(e)(6) to review a state commission's decision dismissing a portion of a petition for arbitration. *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.*, 112 F. Supp. 2d 1286, 1297-98 (N.D. Fla. 2000), *aff'd*, 298 F.3d 1269 (11th Cir. 2002) (remanding to the state commission for arbitration of the disputed liquidated damages provision as part of the proposed interconnection agreement).

The PUC's counsel admitted in open court that the PUC believes this Court has jurisdiction over this case. *See also* PUC's Amended Answer at P 1 (filed March 10, 2006). This Court agrees with Sprint's position that the PUC's Order Denying Sprint's Appeal, dated December 2, 2005, rendered a final [*9] determination on the issue of whether the rural exemption relieves Brazos from any obligation to negotiate and arbitrate an interconnection agreement with Sprint; therefore, the Court has subject matter jurisdiction to review the PUC's interpretation of the Act and Brazos' motion is denied.

II. Summary Judgment Motions

A. Standard of Review

In evaluating whether the PUC's interpretation of the Telecommunications Act and the FCC's regulations are correct, this Court applies a de novo standard of review. *Southwestern Bell Tel. Co. v. PUC*, 208 F.3d 475, 482 (5th Cir. 2000). The PUC's resolution of all other issues is reviewed under the "arbitrary and capricious" standard. *Id.* The parties agree that summary judgment is appropriate in this case because there are no genuine issues of material fact and this case may be wholly decided as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

B. The PUC's Motion for Summary Judgment

The PUC moves for summary judgment and asks this Court to affirm the PUC's dismissal of Sprint's request for compulsory arbitration and to deny Sprint all relief it seeks. The PUC contends that this [*10] case presents only one question: whether or not Brazos's rural exemption must be removed before Brazos can be compelled to participate in compulsory arbitration with Sprint?

All parties agree, for purposes of this appeal, that Brazos is a rural telephone company as defined by 47 U.S.C. § 153(37) and a "local exchange carrier with fewer than 2 percent of the Nation's subscriber lines" as defined by 47 U.S.C. § 251(f)(2).

The Act imposes varying obligations on telecommunications companies under the subsections of section 251, "[s]ection 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251(b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more stringent obligation on ILECs. Thus, section 251 of the Act create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved." *Total Tecomms. Servs., Inc. & Atlas Tel. Co., Inc. v. AT&T Corp.*, FCC 01-84, File No. E-97-003, Memorandum O. & Order at P 25.

Section 251(a)(1) imposes a universal duty on all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1). [*11] "Interconnection" is "the

linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." 47 C.F.R. § 51.5 (2005). Section 251(b) imposes certain duties on "all local exchange carriers" which include: resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. 47 U.S.C. § 251(b)(1)-(5). Section 251(c) imposes additional duties on "incumbent local exchange carriers" including a duty to negotiate, interconnection duties, unbundled access, resale, notice of changes, and collocation. 47 U.S.C. § 251(c)(1)-(6).

Section 252 sets forth the procedures by which ILECs may fulfill the duties imposed by § 251. An ILEC may reach an agreement with a CLEC to fulfill its § 251 duties either through voluntary negotiations or, should negotiations fail, through arbitration before the State commission. Section 252(a)(1) describes the voluntary negotiations procedure: "Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications [*12] carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title." 47 U.S.C. § 252(a)(1). Should voluntary negotiations not result in a complete interconnection agreement, "the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." *Id.* at § 252(b)(1).

Here, Brazos is an ILEC, but also qualifies as a rural telephone company under the Act. Sprint is a local exchange carrier, but not an ILEC. As discussed above, Sprint asked Brazos to negotiate an interconnection agreement, and Brazos responded that, as a rural telephone company, it was not required to negotiate such an agreement. The PUC essentially agreed with Brazos and decided it could not consider Sprint's petition for arbitration until Brazos's rural exemption was terminated.

Sprint takes the position that the PUC was obligated to require Brazos to comply with its statutory duties under § 251(a) and (b), to which the rural exemption does not apply, instead of merely dismissing Sprint's Petition for Arbitration. 47 U.S.C. § 252(b)(4)(C) ("The State commission shall resolve each issue set forth in the petition . . . by imposing [*13] appropriate conditions as required to implement [the requirements of § 251]."). However, as discussed in detail below, Sprint's interpretation conflicts with the plain language of the Act. Because Brazos was exempt from the duty to negotiate any interconnection agreement with Sprint, the PUC had no authority to arbitrate any agreement between Sprint and Brazos.

Section 251(f)(1), which sets forth the rural exemption, states: "[s]ubsection (c) of this section shall not apply to a rural telephone company until (I) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically. feasible, and is consistent with section 254 of this title . . . ." 47 U.S.C. § 251(f)(1)(A).

Where the parties disagree here is on whether the rural exemption shields Brazos from the duty to negotiate an interconnection agreement with regard to duties arising under § 251(a) and (b). By its plain language, the "rural exemption" only applies to the duties set forth in § 251(c), the third tier of interconnection duties. However, the "duty [*14] to negotiate" the particular terms and conditions of agreements is specifically set forth in § 251(c)(1), [3] and Brazos is exempt from this duty as a rural telephone company. Therefore, Brazos has no duty to negotiate any interconnection agreement with Sprint unless and until its rural exemption is lifted.

3 "In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties: (1) Duty to negotiate--The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." 47 U.S.C. § 251(c)(1).

"An ILEC is clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act when a CLEC requests negotiation pursuant to §§ 251 and 252." *Coserv Ltd. Liab. Corp. v. Southwestern Bell Tel. Co.,* 350 F.3d 482, 487 (5th Cir. 2003). Here, because Brazos is a rural telephone company exempt from § 251(c)(1)'s [*15] duty to negotiate, Brazos is free to refuse to negotiate anything at all with Sprint unless and until the PUC lifts Brazos's rural exemption. The policy evinced in § 251(f) is that rural telephone companies should be shielded from burdensome interconnection requests until the PUC has screened such requests. This policy could be too easily thwarted if a CLEC, such as Sprint, could evade PUC screening by denominating its request for interconnection as one solely under § 251(a) and (b). In this situation, where Brazos has refused to negotiate with Sprint, there are no "open issues" for the PUC to arbitrate under § 252.

Here, Brazos had no duty to negotiate or to submit to arbitration of an agreement with Sprint under § 252. The Fifth Circuit has expressly stated that "[t]he party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations." *Coserv,* 350 F.3d at 487; *see also US WEST Communs., Inc. v. Minnesota PUC,* 55 F. Supp. 2d 968 (D. Minn. 1999) (holding that "open issues" are limited to those that were the subject of voluntary negotiations).

The Court further notes that § 251(a) [*16] and (b) say nothing at all about "agreements," "negotiations," or "arbitration." 47 U.S.C. § 251(a) and (b). Although there are duties established by § 251(a) and (b), and such duties apply to Brazos, the Court cannot find any language in the Act indicating that these duties independently give rise to a duty to negotiate or to arbitrate. [4] Therefore, the Court concludes that the PUC made the proper legal determination when it determined that it could not compel Brazos to arbitrate an interconnection agreement with Sprint with respect to Brazos's duties under § 251(a) and (b) of the Act.

4 The only duty to negotiate arises under § 251(c), a duty from which Brazos is exempt as a rural telephone company.

For the reasons set forth above, the Court grants the PUC's and Brazos's motions for summary judgment [5] and denies Sprint's motion for partial summary judgment. The Court further rejects Sprint's claim that the PUC's order violates 47 U.S.C. § 253. Because the Court has already upheld the PUC's decision, Sprint's claim that the PUC created a legal requirement prohibiting entry into Texas rural telecommunications markets falls flat.

5 Brazos's Motion for Summary Judgment [# 31] is very similar [*17] to the PUC's motion and seeks the same result: denial of Sprint's motion for partial summary judgment and affirmance of the PUC's order. Therefore, the Court grants Brazos's motion for the same reasons it grants the PUC's motion.

Conclusion

In accordance with the foregoing:

> IT IS ORDERED that Brazos's Motion to Dismiss [# 20] is DENIED;
>
> IT IS FURTHER ORDERED that the PUC's Motion for Summary Judgment [# 27] and Brazos's Motion for Summary Judgment [# 31] are GRANTED, and the PUC's dismissal of Sprint's petition for compulsory arbitration is AFFIRMED;
>
> IT IS FURTHER ORDERED that Sprint's Motion for Partial Summary Judgment [# 21] is DENIED; and
>
> IT IS FINALLY ORDERED that all other pending motions are DISMISSED AS MOOT.

SIGNED this the 14<th> day of August 2006.

SAM SPARKS

UNITED STATES DISTRICT JUDGE

JUDGMENT

BE IT REMEMBERED on the 14<th> day of August 2006, the Court entered its order granting summary judgment on behalf of Defendants the Public Utility Commission of Texas and Brazos Telecommunications, Inc. Accordingly, the Court enters the following final judgment:

> IT IS ORDERED, ADJUDGED, and DECREED that Plaintiff Sprint Communications Company, L.P., TAKE NOTHING in this cause against Defendants [*18] the Public Utility Commission of Texas and Brazos Telecommunications, Inc., and that all costs of suit are taxed against Plaintiff, for which let execution issue.

SIGNED this the 14<th> day of August 2006.

SAM SPARKS

UNITED STATES DISTRICT JUDGE

Attachment 2

Docket No. 08-0550
ICC Staff Exhibit 1.0

DIRECT TESTIMONY
OF
JEFFREY H. HOAGG

PRINCIPAL POLICY ADVISOR
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 08-0550

DECEMBER 19, 2008

Issues 1, 2, 3(a), 3(b)

1 **Introduction**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed as the Principal Policy Advisor in the Telecommunications
9 Division of the Illinois Commerce Commission

10

11 **Q. Please briefly describe your educational background and work**
12 **experience.**

13 A. I have been employed by the Illinois Commerce Commission in the
14 Telecommunications Division from 2000 to the present. During this time,
15 I have conducted analyses and provided policy recommendations on a
16 wide range of telecommunications issues, and have provided testimony on
17 behalf of Staff of the Illinois Commerce Commission in various docketed
18 proceedings. Prior to this, I held the positions of Telecommunications
19 Tariffs and Rates Analyst, Telecommunications Policy Analyst, and
20 Special Assistant to the Deputy Chair of the Commission at the New York
21 Public Service Commission. I performed economic and policy analyses
22 of industry and regulatory issues, and formulated recommendations for
23 Commission members and other decision-makers. In 1993-94 I served

as Special Advisor to Commissioner Barrett of the Federal Communications Commission. I provided analyses and policy recommendations on a wide range of telecommunications issues. Among other activities, I prepared testimony, speeches and presentations for delivery to Congress and various regulatory and industry groups, and drafted informal and formal documents for issuance.

I hold a Master of Arts in Economics from Cornell University, and completed all requirements but dissertation for the Ph.D. in Economics from Cornell. My major field of graduate study was Industrial Organization and Regulation.

Q. What is the purpose of your testimony?

A. I first summarize my overall position regarding an appropriate approach the Commission should take regarding this arbitration between Verizon North, Inc. and Verizon South, Inc. ("Verizon") and Intrado, Inc. ("Intrado"). I then provide testimony and recommendations (from a policy perspective) regarding arbitration Issues 1, 2, 3(a) and 3(b). I note that I have prepared this testimony based upon the two parties' Issues Matrix dated November 12, 2008, which the ALJs have directed the parties to revise. Accordingly, the issues as set forth in this testimony may not track with precision those set forth in the final Issues Matrix.

48

49 **General Comments**

50

51 **Q. Intrado contends it is entitled to interconnect with Verizon pursuant**
52 **to Section 251(c) of the 1996 Telecommunications Act. Verizon**
53 **disagrees. What is your position regarding this dispute?**

54 A. Neither I nor other Staff witnesses address this question, which appears to
55 be a legal issue properly addressed by the parties in briefs. Staff's
56 testimony is submitted for the Commission's consideration in the event the
57 Commission determines Intrado is entitled to Section 251 interconnection
58 with Verizon.

59

60 **Q. Ms. Spence-Lenns contends that "interconnection for the purposes**
61 **of providing competitive 911/E-911 services must look beyond the**
62 **traditional interconnection arrangements used for plain old**
63 **telephone service ("POTS") and seek to establish physical**
64 **architecture arrangements that specifically address the special**
65 **needs of 911 callers and first responders." Do you agree?**

66 A. In this proceeding, I believe the Commission can and should (and
67 arguably must from a legal standpoint) adhere to and apply existing
68 Section 251 rules and regulations <u>to this arbitration</u>. I hold this position for
69 two primary reasons – and despite the fact I agree that federal rules do
70 not directly contemplate interconnection for purposes of regulated 911
71 service competition.

First, by adhering to Section 251 and underlying rules, the Commission will be able to take advantage of and apply a well established and consistent set of existing rules, regulations, principles and precedents. Doing otherwise would require resolving many of the issues presented in this arbitration on an *ad hoc* and less well-defined basis. Among such well established Section 251 principles are: the requesting carrier is entitled to designate its point of interconnection (hereafter "POI") (and if it so chooses, it may designate a single POI per LATA); any POI designated must be within the ILEC's network (unless the ILEC agrees otherwise); each party is responsible for costs of bringing its traffic to the POI; and neither party can dictate the manner in which the other party carries such traffic to the POI.

Second, interconnection with Verizon is only the first step Intrado must take before it provides any regulated competitive 911 services in Illinois. Significantly, pursuant to Sections 10 and 11 of the Emergency Telephone System Act (50 ILCS 750) and Ill. Adm. Code Part 725, the Commission must examine in detail and will need to approve (based upon 911 system considerations and requirements) provision of competitive 911 services by Intrado to any specific ETSB. Staff witness Marci Schroll provides an overview and briefly describes the nature of such a required proceeding.

Q. In your opinion, is it incumbent upon Intrado and Verizon to

recognize (in this proceeding) their respective obligations under the ETSA and Commission Code Part 725 in the event Intrado provides regulated 911 services?

A. Yes. I believe both parties to this arbitration can and should recognize and anticipate their respective duties and obligations under the ETSA and Code Part 725 in the event the Commission ultimately does approve provision of regulated 911 services by Intrado. In particular, Intrado needs to recognize that taking full advantage of its Section 251 rights as a CLEC in this proceeding may result in interconnection that is unsuitable for purposes of providing 911 services pursuant to Code Part 725. For example, Intrado is not required in this proceeding to designate more than one POI per LATA for Section 251 purposes. However, one POI per LATA may or may not be sufficient for purposes of competitive 911 service provision pursuant to the ETSA and Code Part 725.

I believe both parties similarly should recognize that any interconnection arrangements resulting from this proceeding will be closely scrutinized by the Commission for consistency with ETSA and Code Part 725 requirements if Intrado ultimately seeks to provide regulated 911 services in Illinois. Moreover, while other Staff witnesses and I do not support Intrado's proposals concerning line attribute routing in this proceeding, we recognize line attribute routing or similar proposals may come before the Commission in future proceedings concerning 911 system providers. Staff's positions in this arbitration should not be construed to either bind

Staff in future proceedings, nor should they be presumed to indicate Staff's potential positions in such proceedings. Verizon should not consider it a foregone conclusion that if the Commission rejects Intrado's line attribute routing proposals here, it necessarily would do so in a future proceeding directly concerned with 911 systems (presumably involving all parties interested in and affected by 911 systems and providers).

Q. Please briefly summarize an interconnection arrangement you believe would be appropriate as a result of this proceeding.

A. I believe an appropriate interconnection arrangement between Intrado and Verizon would involve Intrado interconnecting at (at least one) Verizon selective router in each LATA where Intrado intends to handle 911 traffic. If Intrado became a designated 911 provider, 911 traffic could be routed directly via this interconnection to Intrado's selective router (via dedicated trunks), bypassing the switching (and any related functions) of Verizon's selective router. For split wire centers, as discussed in Ms. Stewart's testimony, it appears a primary/secondary provider methodology currently is the best approach. If Intrado became the primary 911 provider in such circumstances, 911 traffic again could be routed directly from Verizon's selective router to Intrado's selective router (via dedicated trunks), bypassing the switching functions of Verizon's selective router. Intrado could then route back to Verizon any 911 traffic bound for Verizon as the secondary 911 provider. Similarly, where Verizon is the primary 911 provider, it could route all 911 traffic bound for Intrado, as the

secondary 911 provider, over dedicated trunks to Intrado's selective router.

I believe this general interconnection configuration could be accomplished in a manner consistent with Section 251 interconnection rules and regulations. It also appears this could be desirable from the standpoints of network efficiency, reliability and overall costs. Finally, I believe such interconnection arrangements could be consistent with the Commission's requirements of the ETSA and Code Part 725.

Arbitration Issues 1, 2, 3(a) and 3(b)

INTRADO ISSUE 1: WHEN INTRADO IS THE DESIGNATED 911/E-911 SERVICE PROVIDER, IS VERIZON REQUIRED TO ESTABLISH A POI(S) ON INTRADO'S NETWORK?

VERIZON ISSUE 1: CAN VERIZON BE REQUIRED PURSUANT TO SECTION 251(C) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO ESTABLISH A POI(S) ON INTRADO'S NETWORK FOR THE TRANSMISSION AND ROUTING OF 911/E-911 CALLS FROM VERIZON TO PSAPS FOR WHICH INTRADO IS THE 911/E-911 SERVICE PROVIDER?

Q. In your view, what is the crux of Issue 1?

A. I believe the issue reduces itself to which party will pay for transporting traffic from Verizon's network to Intrado's network when and where Intrado is designated as a 911 provider. In this circumstance, if the POI(s) is located within Verizon's network, Intrado will incur the costs to transport traffic from each POI to its own network. If a POI is located on Intrado's

network, Verizon will incur the costs of transporting traffic from its own network to the POI on Intrado's network.

Q. What is your recommendation concerning Issue 1?

A. I recommend that the Commission reject Intrado's proposed language, which would have Intrado designate one or more POIs on its own network, to which Verizon would be obligated to extend facilities and transport 911 traffic. I believe Intrado's proposal is directly inconsistent with applicable Section 251 statutes, rules and regulations governing this interconnection proceeding. Section 251(c) and applicable rules require that any POI be on the ILEC's network, and there is no exemption for this rule for 911 traffic. I recommend that the Commission direct the parties to insert language consistent with - and fully reflecting - the principle that Intrado may designate one or more POI at any technically feasible location(s) within Verizon's network. It is my understanding this principle is well established, and it is clearly set forth in both the 1996 Telecommunications Act, and applicable rules and regulations promulgated pursuant to that Act.

ISSUE 2(a): SHOULD THE COMMISSION REQUIRE VERIZON TO ESTABLISH DIRECT TRUNKS (I.E., TRUNKS THAT DO NOT ROUTE 911/E-911 TRAFFIC THROUGH A VERIZON 911 TANDEM/SELECTIVE ROUTER) TO TAKE 911/E-911 TRAFFIC FROM VERIZON'S END OFFICES TO THE POI(S)?

Q. Please provide your recommendation concerning this issue.

A. I believe that, where Intrado is the sole designated 911 system provider (i.e., no "split wire center" is involved), Verizon should be required to directly trunk 911 traffic from its end offices to each POI, provided Intrado agrees to specify any POI(s) will be located at Verizon selective routers. As discussed above, it is my opinion that any POI should be within Verizon's network. Assuming the Commission so rules, I am aware of no reason for Intrado to locate POIs anywhere other than at Verizon selective routers.[1] Verizon originated 911 traffic could be routed directly through this interconnection to Intrado's selective router (via dedicated trunks), bypassing the switching (and any related functions) of Verizon's selective router.

It appears that, for whatever reason(s), Verizon seeks to switch all 911 traffic at its own selective router, even in instances where Intrado is the sole designated 911 system provider (i.e., no "split wire center" is involved). I understand that in such circumstances, Intrado's selective router(s) could perform all such required functions. Intermediate switching at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy.

ISSUE 2(b): IF VERIZON IS REQUIRED TO ESTABLISH DIRECT TRUNKS FROM ITS END OFFICES TO THE POI(S), SHOULD THE COMMISSION ADOPT INTRADO'S LANGUAGE SPECIFYING

[1] Section 251 (c) and 47 C.F.R. §51.305(a) (2) do authorize Intrado to designate one or more POIs at any technically feasible point within an ILEC's network.

HOW VERIZON WILL ESTABLISH, ENGINEER AND MAINTAIN THOSE TRUNKS ON VERIZON'S SIDE OF THE POI(S)?

Q. Please provide your recommendation concerning this issue.

A. I see no reason detailed engineering and related requirements concerning 911 trunks on Verizon's "side" of a POI should be in this interconnection agreement. If such trunks do not meet Commission requirements, I believe that is a matter for resolution between the Commission and Verizon.

ISSUE 2(c): IF VERIZON IS REQUIRED TO ESTABLISH DIRECT TRUNKS FROM ITS END OFFICES TO THE POI(S), SHOULD THE COMMISSION ADOPT INTRADO'S PROPOSED LANGUAGE WITH RESPECT TO VERIZON END USER 911/E-911 CALLS ORIGINATING OUTSIDE OF INTRADO'S 911/E-911 SERVING AREA?

Q. Please provide your understanding of this issue.

A. I understand this issue to involve the circumstances of split wire centers. Under such circumstances, the model or practice of dedicated direct trunking to a selective router, which would "sort" 911 traffic to deliver it to the appropriate PSAP, breaks down. Practically speaking, either the end offices or the selective router(s) of the 911 system providers involved must perform the call sorting function. If this function is performed at end offices, it would be feasible to deliver 911 calls from split wire centers to the appropriate PSAP over dedicated direct trunks. If this function is performed at the selective router level, split wire center 911 traffic will undergo some amount of "intermediate" switching.

Call sorting at end offices has sometimes been referred to (or discussed as) line attribute routing. I (and other Staff witnesses) do not believe the record in this proceeding sufficiently supports or warrants adoption of approach in this arbitration. This is addressed in some detail in Ms. Stewart's testimony.

Q. Please summarize your understanding of the parties' proposals concerning this issue.

A. Verizon apparently proposes that all 911 traffic originating in split wire centers be switched initially at Verizon selective routers. Verizon would then hand off to Intrado those 911 calls bound for PSAPs served by Intrado. Intrado ostensibly proposes that the parties work cooperatively to establish 911 call routing in the case of split wire centers:

> Verizon shall work cooperatively with Intrado and the affected Controlling 911 Authority(ies) to establish call routing and/or call handoff between the Parties.

In reality, however, it appears that if the Commission were to require direct trunking, with no "exception" for split wire centers (as apparently advocated by Intrado), Verizon would be forced to perform call sorting at its end offices.

Q. Please provide your recommendation concerning this issue.

A. I believe this is the single exception that should be made to the direct trunking requirement recommended above. If - as I and other Staff

witnesses believe - this record clearly is not adequate to support requiring call "sorting" at Verizon's central offices, then at least some 911 calls originating in split wire centers will need to be switched twice, at the selective router(s) of the 911 system providers. Verizon apparently proposes that all 911 calls originating in split wire centers be switched first at its selective router, and then handed off to Intrado. It appears that in the absence of call sorting at Verizon central offices, Intrado (at least implicitly) advocates the reverse: 911 traffic originated in split wire centers should be switched first at its selective router(s) and then handed off to Verizon.[2]

As I understand it, neither of these proposals would minimize the amount of intermediate switching required for any given split wire center. Unless either party now proposes a demonstrably superior and immediately feasible alternative, I recommend that the Commission require implementation of the so-called "primary/secondary" methodology. Calls originating in split wire centers would be routed first to the "primary" 911 system provider (i.e. the provider with the highest line count for that wire center). All else equal, this approach would minimize the amount of intermediate switching required in split wire centers.

[2] I am not aware that Intrado discusses or proposes any potential exception to its direct trunking proposal in the case of split wire centers.

ISSUE 2(d): SHOULD VERIZON BE REQUIRED TO IMPLEMENT "LINE ATTRIBUTE ROUTING" OR ANOTHER NEW MECHANISM TO SORT CALLS TO THE APPROPRIATE PSAP?

Q. Please provide your recommendation concerning this issue.

A. I believe it is neither required nor would it be appropriate under applicable rules and regulations governing this arbitration for the Commission to adopt or accept any proposals regarding line attribute routing. I am aware of no reason to support, in the context of this Section 252 arbitration, requiring that Verizon carry traffic on its own side of each POI in a specific manner desired by Intrado. The Commission has long held that interconnected carriers are responsible for carrying traffic on their own side of the POI, and carriers generally may elect to do so in the manner they choose. Moreover, it appears that the primary/secondary routing methodology in split wire centers is the best currently available option from 911 network efficiency and reliability perspectives. Accordingly, I recommend that the Commission decline to adopt or accept any new call sorting mechanism in this arbitration proceeding.

ISSUE 3: FOR 911 CALLS TRANSFERRED BETWEEN PSAPS USING INTER SELECTIVE ROUTER TRUNKING, SHOULD THE INTERCONNECTION AGREEMENT:
(A) REQUIRE VERIZON TO ESTABLISH A POI(S) ON INTRADO'S NETWORK FOR 911 CALLS BEING TRANSFERRED FROM PSAPS FOR WHICH VERIZON IS THE 911/E-911 SERVICE PROVIDER TO PSAPS FOR WHICH INTRADO IS THE 911/E-911 SERVICE PROVIDER?
(B) INCLUDE INTRADO'S PROPOSED INTERCONNECTION,

TRUNKING AND ROUTING ARRANGEMENTS IF VERIZON IS REQUIRED TO ESTABLISH A POI(S) ON INTRADO'S NETWORK?

Q. Please provide your recommendation concerning these issues.

A. I believe Issues 3(a) and 3(b) concern only the placement of such POIs. It appears the two parties agree on the desirability of inter-selective router trunking, but disagree on the appropriate location of POIs for traffic exchange. If the Commission determines such POIs should be within Verizon's network (as I believe it should), then Verizon's proposed language regarding Issues 3(a) and 3(b) is acceptable, and Intrado's proposed language should be rejected.

Q. Does this conclude your testimony?

A. Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below, by electronic service, this 13th day of February, 2009.

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Attachment 7

Before the
STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

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 Verizon Maryland Inc.	)	Case No. 9138

INITIAL BRIEF OF INTRADO COMMUNICATIONS INC.

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CERTIFICATE OF SERVICE

ATTACHMENT 1 - INTRADO COMM FCC REPLY

Before the
STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

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 Verizon Maryland Inc.	)	Case No. 9138

INITIAL BRIEF OF INTRADO COMMUNICATIONS INC.

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, hereby submits its Initial Brief in connection with Intrado Comm's Petition for Arbitration ("Petition") to Establish an Interconnection Agreement with Verizon Maryland Inc. ("Verizon") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").[1] The Public Service Commission of Maryland ("Commission") should adopt Intrado Comm's positions and proposed interconnection-agreement language as set forth herein and the Joint Issues Matrix for the unresolved issues between the Parties.

INTRODUCTION AND SUMMARY

911/E-911 services save lives and property by helping emergency services personnel respond more quickly and efficiently.[2] Intrado Inc. has been providing 911 database management services to incumbent local exchange carriers ("ILECs") since 1979.[3] Since its formation in 1999, Intrado Comm has built on its parent's emergency service expertise to

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[1] 47 U.S.C. § 252(b).

[2] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, ¶ 5 (1996).

[3] Intrado Comm Hearing Exhibit 1, Direct Testimony of Carey F. Spence-Lenss on behalf of Intrado Communications Inc. at 4, lines 19-20 (hereinafter, "Spence-Lenss").

become an integral part of the public safety industry.[4] Intrado Comm is poised to offer Maryland counties, public safety agencies, and Public Safety Answering Points ("PSAPs") a competitive alternative for their 911/E911 services, which have traditionally been provided by ILECs like Verizon.[5] But Intrado Comm can only deliver this alternative if it has equal access to all end users—PSAPs and 911 callers.[6]

Intrado Comm's competitive 911/E-911 service offering directly responds to the goals of Congress and the Federal Communications Commission ("FCC") by providing "meaningful automatic location identification information that permits first responders to render aid, regardless of the technology or platform employed" by the caller.[7] As the FCC has determined, it is imperative that public safety officials receive "accurate and timely information concerning the current location of an individual who places an emergency call, notwithstanding the platform or technology used by the provider or the means by which the individual places the call."[8] In order to offer its innovative 911/E-911 service offering to Maryland counties and PSAPs, Intrado Comm must first establish mutually beneficial interconnection and interoperability arrangements with the ILECs who control access to the public switched telephone network ("PSTN").[9] The interconnection Intrado Comm seeks with Verizon will allow Verizon's end users to reach Intrado Comm's primary end users (*i.e.*, Maryland PSAPs) and vice versa.[10] Interconnection

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[4] Spence-Lenss at 4-5; Spence-Lenss at 7, lines 1-19.

[5] Spence-Lenss at 5-7.

[6] Spence-Lenss at 9-10.

[7] *Wireless E-911 Location Accuracy Requirements*, 22 FCC Rcd 10609, ¶ 6 (2007).

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) ("*TRS 911 Order*").

[9] Spence-Lenss at 9-10.

[10] Spence-Lenss at 10, lines 1-5. Intrado Comm will also provide services to enterprise customers that offer emergency connection assistance services (such as OnStar) through programmed cars or private branch exchange owners.

with Verizon is essential to permit Intrado Comm to meet the primary 911/E-911 service needs of its Maryland PSAP customers, *i.e.*, to ensure the PSAP customer receives 911 calls from all users of wireline, wireless, voice over Internet Protocol ("VoIP"), and other future types of services destined for the Intrado Comm PSAP customer.[11] This interconnection arrangement also will meet the goal of ensuring that "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service."[12]

Verizon claims that this is simply another arbitration proceeding between an ILEC and a competitive local exchange carrier ("CLEC") and that the type of competitive service to be offered—911 service to PSAPs—is irrelevant to evaluating interconnection arrangements.[13] Verizon is wrong. This proceeding is about interconnection arrangements to be established between Intrado Comm and Verizon that will permit Intrado Comm to provide competitive 911 services to PSAPs.[14] As Section 251(c) recognizes, the interconnection arrangements established between the Parties as a result of this arbitration proceeding will directly affect the quality of service provided to Maryland public safety agencies and, consequently, to Maryland consumers. If Intrado Comm is denied access to physical interconnection arrangements that are at least equal

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[11] Intrado Comm Hearing Exhibit 2, Direct Testimony of Thomas W. Hicks on behalf of Intrado Communications Inc. at 8-9 (hereinafter, "Hicks").

[12] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*").

[13] Verizon Hearing Exhibit 1, Direct Testimony on behalf of Verizon Maryland Inc. at 8-9, 10, lines 8-17 (hereinafter, "Verizon Panel Testimony").

[14] The issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter that has been presented to the Commission for arbitration in this proceeding. This is based on the agreement reached between Intrado Comm and Verizon that Intrado Comm's entitlement to Section 251(c) interconnection would not be an issue for arbitration between the Parties. *See* Intrado Comm Hearing Exhibit 3, Reply Testimony on behalf of Intrado Communications Inc. at 4-5 (hereinafter "Intrado Comm Panel Reply Testimony"). The Commission's jurisdiction to arbitrate is specifically limited to the issues raised by the petitioner (*i.e.*, Intrado Comm) and any additional issues identified by the respondent (*i.e.*, Verizon). *See* 47 U.S.C. § 252(b)(4)(A).

in quality to what Verizon has established for its own 911 service to PSAPs today, PSAPs will not realize the benefits of competition intended by the Act.[15]

Section 251(c) Supports Adoption of Intrado Comm's Proposals. Section 251(c) contemplates and supports the adoption of Intrado Comm's interconnection proposals for the competitive provision of 911 service to PSAPs. Existing 251(c) requirements have focused on interconnection for plain old telephone service ("POTS") traffic. While those rules and regulations are important, they do not foreclose a review of the statute, rules, and policies from the perspective of the best interconnection arrangements for the competitive provision of 911/E-911 services to PSAPs, which is at issue here. Verizon itself has decided that network interconnection arrangements for the provision of 911 services to PSAPs should be different from those used for POTS traffic. Interconnection arrangements and the rules designed for the competitive provision of POTS should not alter or prevent the application of the statutory requirement that competitors are entitled to interconnection that is equal in quality to what the ILEC provides to itself.[16]

The critical question is: how does Verizon provide 911/E-911 services to PSAPs today? The only provider of 911/E-911 services to PSAPs in the Verizon service territory is Verizon. Thus, Verizon's own practices (as well as those of the ILECs operating in other geographic areas) have established the standard for service to PSAPs and defined the appropriate network arrangements to be used for the exchange of 911/E-911 traffic in a competitive market. As discussed below, this ILEC-developed network interconnection standard for 911 service has also

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[15] The use of dedicated direct trunks to the appropriate selective router has been the arrangement used for 911 services since their inception. *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (discussing the routing of emergency telephone calls "over dedicated telephone lines").

[16] 47 U.S.C. § 251(c)(2)(C).

been embraced by the FCC and other state commissions.[17] Verizon itself has decided that 911 interconnection arrangements should be different from those used for POTS traffic, and Verizon is required to give Intrado Comm the same arrangements it provides to ***itself*** when Verizon is serving the PSAP.[18] To find otherwise would undermine the entire foundation of Section 251(c)—to ensure that competitors receive interconnection that "is at least indistinguishable from that which the incumbent provides itself."[19] It would be dangerous to ignore the existing arrangements used for the provision of 911/E-911 service to PSAPs today. The history of the implementation of 911 service demonstrates that the current physical interconnection architecture was established to ensure public safety.[20]

Interconnection for 911 Traffic Occurs at the Selective Router Serving the PSAP. Verizon requires all CLECs and wireless carriers to interconnect at the appropriate selective router, *i.e.*, the Verizon selective router serving the Verizon PSAP customer to which the 911 call is destined.[21] This is consistent with the FCC's mandates that the selective router should be the "cost allocation" point for the exchange of 911/E-911 traffic.[22] Although that finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it

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[17] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*") (finding the selective router is the "cost allocation" point); ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring all carriers to use dedicated direct trunking "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); TEXAS P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[18] Intrado Comm Panel Reply Testimony at 9, lines 13-18; 47 U.S.C. § 251(c)(2)(C).

[19] *Local Competition Order* ¶ 224.

[20] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (noting the establishment of 911 network arrangements to ensure that emergency calls "are recognized and answered as emergency calls by professionals trained to assist callers in need of emergency assistance"); *see also id.* ¶ 1 ("we intend to ensure that the effective operation of 911 services is not compromised by new developments in telecommunications").

[21] Hicks at Exhibit No. 4, 911 Attachment § 3.2.

[22] *King County Order* ¶ 1.

was appropriate and consistent with industry practice.[23] This arrangement is also consistent with the 911 interconnection arrangements used by Embarq and AT&T,[24] as well as the requirements mandated by several states.[25] Indeed, it is for these reasons that the Public Utilities Commission of Ohio determined that the point of interconnection ("POI") when Intrado Comm is serving the PSAP should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[26]

Dedicated Direct Trunking Is the Standard for Routing 911/E-911 Calls. Verizon's template interconnection agreement mandates the use of dedicated direct trunks for the transmission of 911 calls to the selective router serving the PSAP to which the 911 call is directed.[27] This requirement is consistent with the 911 network interconnection arrangements used by other ILECs,[28] as well as those mandated by other state commissions.[29] Illinois Staff

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[23] *King County Order* ¶ 11.

[24] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 ("Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[25] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(x) (requiring all telecommunications carriers to adopt practices and procedures "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[26] Ohio 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 33 (Sept. 24, 2008) ("*Embarq Arbitration Award*"); *see also* Ohio Case No. 08-537-TP-ARB, *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*, Arbitration Award at 8-9 (Oct. 8, 2008) ("*CBT Arbitration Award*").

[27] Hicks at Exhibit No. 4, 911 Attachment § 3.2.

[28] *See, e.g.*, AT&T 22-State Template Interconnection Agreement, §§ 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE

recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider, because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[30]

Intrado Comm Is Entitled to Interconnection Arrangements that Are Equal in Quality. No law supports the use of different POI or interconnection arrangements when Intrado Comm is the 911/E-911 service provider for the PSAP. Verizon cannot use Section 251(c)(2)(B) as applied to POTS traffic to undermine its equal-in-quality obligations under 251(c)(2)(C). Verizon itself has ignored 251(c)(2)(B)'s requirements, which permit CLECs to establish a single POI on Verizon's network and avoid physical or financial obligations beyond the POI.[31] Verizon has adopted interconnection agreement arrangements for CLECs that support a different network architecture for 911 calls to promote public safety.[32] The Verizon 911 interconnection arrangements require the CLEC to establish multiple POIs in addition to the POI for POTS and

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E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[29] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring the use of dedicated direct trunking to the selective router serving the PSAP); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[30] Illinois Docket No. 08-0550, Direct Testimony of Jeffrey H. Hoagg on behalf of Staff of the Illinois Commerce Commission at 10, lines 221-23 (filed Dec. 19, 2008) ("Illinois Hoagg Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117; Illinois Docket No. 08-0550, Direct Testimony of Kathy Stewart on behalf of Staff of the Illinois Commerce Commission at 4, lines 98-100 (filed Dec. 19, 2008) ("Illinois Stewart Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

[31] Intrado Comm Panel Reply Testimony at 9, lines 13-18.

[32] Intrado Comm Panel Reply Testimony at 9, lines 13-18.

dictate the trunking arrangements to be used on the CLEC's side of those POIs for 911 (two dedicated direct one-way trunks to each 911 POI) if they want their 911 calls to be completed to Verizon served PSAP customers.[33] Everything that Verizon complains about with respect to Intrado Comm's proposed contract language was designed by Verizon and is embodied in Verizon's own template agreements for CLECs to ensure that Verizon receives 911 calls destined for its PSAP customers in a specific way.[34] The interconnection arrangements sought by Intrado Comm here are the same that Verizon and other ILECs have established for themselves to serve their PSAP customers and are the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs.

In sum, Intrado Comm's proposals reflect industry practices established by ILECs like Verizon, are consistent with Section 251(c), are consistent with 911 policy, and should be adopted. It would be a complete reversal of sound engineering, physical architecture decision making, and regulatory policies deemed to serve the public interest to deny a competitor providing 911/E-911 services to PSAPs any interconnection arrangement other than that which mirrors the arrangements established between Verizon and competitive carriers needing access to Verizon served PSAPs. This is consistent with principles of statutory construction and the Act's purpose. The Act is dynamic so it can be flexibly applied to adapt to the ever-changing

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[33] It is important to note that Verizon requires the CLEC to route all 911 calls to the "designated" selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers also. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that. *See* Transcript at 161-162.

[34] Intrado Comm agrees with regulators and the ILECs that the best POI for 911 service to PSAPs is at the selective router of the carrier providing the service to the PSAP. When Intrado Comm has customers who call 911 and Verizon is the 911 service provider for the PSAP, Intrado Comm will have a POI at Verizon's selective router for the delivery of the 911 call to the appropriate PSAP. *See* Blackline ICA, 911 Attachment § 1.3.1.

communications industry.[35] Accordingly, Intrado Comm's proposed language should be adopted for inclusion in the Parties' interconnection agreement so that Maryland public safety agencies and Maryland citizens dialing 911 receive the most reliable, redundant, and diverse 911 network possible.

COMMISSION AUTHORITY

The Commission's oversight is critical to the provision of 911 services. Sections 251(e) and 706 of the Act give the Commission the authority to oversee the deployment of 911 services.[36] The FCC has recognized that the "uniform availability of E911 services may spur consumer demand" for broadband services, which accomplishes the goals of the Act.[37] The FCC has emphasized that 911/E-911 services also play a "critical role" in achieving the Act's goal of promoting safety of life and property and that "promoting an effective nationwide 911/E911 emergency access system has become a primary public safety responsibility under the Act."[38] The state's role in overseeing 911 services and promoting public safety is without question. "In the 911 Act, Congress made a number of findings regarding wireline and wireless 911 services, including that 'improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce,' and that 'emerging technologies can be a critical component of the end-to-end communications

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35 *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 21 (1999) ("*Advanced Services Order*") (recognizing "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act").

36 *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 31, 33 (2005) ("*VoIP E911 Order*").

37 *VoIP E911 Order* ¶ 31.

38 *VoIP E911 Order* ¶ 29 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 7 (1994)).

infrastructure connecting the public with emergency [services].'"[39] These Congressional mandates support and necessitate the adoption of Intrado Comm's proposals in their entirety.

Section 253(b) of the Act also gives the Commission authority to adopt "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."[40] This statutory provision "set[s] aside a large regulatory territory for State authority" and gives the Commission ample support for adoption of Intrado Comm's proposals, which serve to protect the public safety and welfare and the rights of consumers.[41] In further support of this state authority, the FCC has reminded carriers that Sections 251 and 252 of the Act create a partnership between the FCC and state commissions in defining the precise parameters of those sections' requirements[42] and that the Act makes clear that states play a role in the development of competitive telecommunications markets.[43]

Section 253(b) gives the Commission "broad regulatory authority to achieve [its] public interest objectives,"[44] and Intrado Comm's proposed physical architecture arrangements meet the objectives set forth in the Act. In an arbitration proceeding between AT&T and a predecessor of Intrado Comm, the Illinois Commerce Commission determined that 911 calls are a matter of the

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39 *VoIP E911 Order* ¶ 32 (citing 911 Act § 3(a)).

40 47 U.S.C. § 253(b).

41 *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999).

42 *American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended,* 14 FCC Rcd 21579**,** ¶ 35 (1999).

43 *The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995,* 13 FCC Rcd 3460, ¶ 52 (1997).

44 *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916, ¶ 29 (2002).

utmost public interest; it therefore concluded that it had authority under Section 253(b) to make decisions in the arbitration proceeding to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[45] The same holds true here.

There is no merit to the claim that the Commission cannot analyze Intrado Comm's request under any provision other than Section 251(c) of the Act.[46] The Commission has authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c).[47] Moreover, while Intrado Comm is entitled to interconnection under 251(c), arbitration is permitted for provisions outside of 251(b) and 251(c) in certain circumstances.[48]

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[45] Illinois Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (I.C.C. Mar. 21, 2001). The Public Utilities Commission of Ohio has ruled similarly. *See* Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) ("*Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Certification Rehearing Order*").

[46] Verizon Panel Rebuttal Testimony at 9, line 172.

[47] *Embarq Arbitration Award* at 15; Ohio Case No. 08-537-TP-ARB, *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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*CBT Rehearing Award*") ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. . . . the Commission has the authority and the requirement to consider Section 251(a) where it is applicable").

[48] *See, e.g.*, *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) ("where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that <u>*any issue*</u> left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original); *CBT Rehearing Award* at 11-12 ("The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements."); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and*

ARGUMENT

The framework for local competition established in 1996 supports the arrangements requested by Intrado Comm. 911/E-911 services are unique.[49] The physical architecture arrangements Intrado Comm seeks in this proceeding are critical to issues of reliability, redundancy, and minimizing points of failure for 911/E-911 services.[50] These are the key considerations when establishing interconnection arrangements for public safety providers.[51] These considerations are reflected in the interconnection and routing arrangements ILECs have established for themselves and the arrangements ILECs impose on CLECs today for access to these ILEC provided services.

I. ISSUE 3: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC?

Intrado Comm's proposed physical architecture arrangement benefits public safety. Interconnection on Intrado Comm's network is appropriate when Intrado Comm is the designated 911/E-911 service provider and is consistent with the purpose of Section 251(c), the

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CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

[49] *See, e.g.*, *TRS 911 Order* ¶ 29 (recognizing "the importance of emergency call handling for all Americans"); *VoIP E911 Order* ¶ 6 ("the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services").

[50] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954, ¶ 2 (1999) (adopting rules to "improve 911 reliability, [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (expressing intent of statute to establish a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Katrina Order* ¶ 96 (recognizing goal to ensure "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service"); New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (recognizing importance of reliable 911 systems).

[51] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) (recognizing the goal to have the most efficient and most reliable 911/E911 network possible regardless of the platform or technology used by end user's service provider or the means by which the individual places the call).

way in which ILECs compel CLECs to interconnect on their networks, and industry recommendations and guidelines.

A. Interconnection on the ILEC Network Was Required for the Benefit of Competitors like Intrado Comm, Not Incumbents like Verizon

In enacting and implementing the Act, the goal of both Congress and the FCC was to ensure that new entrants could effectively compete with the entrenched incumbent provider. Section 251(c)(2) has four components to ensure effective interconnection arrangements between ILECs and competitors are achieved: interconnection is to be for the transmission and routing of telephone exchange service and exchange access;[52] at any technically feasible point within the carrier's network;[53] 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;[54] and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with Section 252 of the Act.[55] The FCC, in its rules to implement the Act, gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC.[56] The FCC found that Section 251(c)(2) gave competitors "the right" to interconnect on the ILEC's network rather than obligating competitors to transport traffic to less convenient or efficient points.[57] Giving competitors this "right" was intended to lower barriers to entry.[58] Thus, Section 251(c)(2)(B)'s requirement that the POI be on the ILEC's network was established for the benefit of the competitor, not the ILEC.

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52 47 U.S.C. § 251(c)(2)(A).

53 47 U.S.C. § 251(c)(2)(B).

54 47 U.S.C. § 251(c)(2)(C).

55 47 U.S.C. § 251(c)(2)(D).

56 *Local Competition Order* ¶ 172.

57 *Local Competition Order* ¶ 209.

58 *Local Competition Order* ¶ 209.

To provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, a decision that protected competitors from ILEC demands to interconnect at multiple points on the ILEC network.[59] The FCC found that the single-point-of-interconnection rule benefits the *competitor* by permitting it to interconnect for delivery of its traffic at a single point on the ILEC's network.[60] While this rule was available to competitors, the FCC expressly recognized that competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor.[61] Indeed, the FCC recognized that although the Act *permits* a competitor to choose where it will deliver its traffic, "carriers do not always deliver originating traffic and receive terminating traffic at the same place."[62]

The FCC further concluded that these were intended to be minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection to offset the imbalance in bargaining power.[63] The FCC clarified that the term "nondiscriminatory" in the 1996 Act was not synonymous with "unjust and unreasonable discrimination" used in the 1934 Act; it is a more stringent standard.[64] The FCC determined that for Section 251 purposes, if an ILEC provides interconnection to a competitor in a manner that is less efficient than the ILEC provides itself, the ILEC violates the duty to be "just" and "reasonable" under Section

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59 *Intercarrier Compensation NPRM* ¶ 112 ("[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.").

60 *Virginia Arbitration Order* ¶ 71.

61 *Virginia Arbitration Order* ¶ 71.

62 *Virginia Arbitration Order* ¶ 71.

63 *Local Competition Order* ¶ 216.

64 *Local Competition Order* ¶ 217.

251(c)(2)(D). The FCC also added that ILECs may not discriminate against parties based upon the identity of the carrier.[65]

B. ILECs Have Historically Required Competitors to Bring 911/E911 Traffic to the ILEC or Delivered 911/E911 Traffic to the Network of the Entity Serving the PSAP

Interconnection that is at least equal in type, quality, and price to the interconnection arrangements the ILEC provides to itself and others was required of ILECs to ensure that effective local competition emerged.[66] The FCC determined that 251(c)(2)(C) interconnection that is *at least* equal in quality to that enjoyed by the ILEC itself was the minimum requirement.[67] Intrado Comm's proposal is consistent with the arrangements Verizon uses within its own network for the delivery of its end users' 911 calls to Verizon served PSAPs and those arrangements Verizon requires of competitors seeking to terminate their end users' 911 calls to Verizon served PSAPs. For example, Verizon's template interconnection agreement requires CLECs:

- to establish interconnection at a point on Verizon's network for the transmission and routing of POTS traffic[68] with each party being responsible for the transport facilities on its side of that POI[69] ***and***
- to interconnect with each Verizon 911/E-911 selective router that serves the exchange areas in which the CLEC offers service[70] ***and***
- to provide a minimum of two one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 calls from the CLEC's switch to each designated Verizon 911/E-911 selective router[71] ***and***

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65 *Local Competition Order* ¶ 218.

66 S. Rep. No. 104-23, at 20 (1995).

67 *Local Competition Order* ¶ 225.

68 Hicks at Attachment 4, 911 Attachment § 1.

69 Hicks at Attachment 4, 911 Attachment § 2.1.

70 Hicks at Attachment 4, 911 Attachment § 3.2.1.

71 Hicks at Attachment 4, 911 Attachment § 3.2.2.

- to compensate Verizon for the provision of 911/E-911 services pursuant to the rates set forth in the pricing attachment to the agreement.[72]

This network architecture arrangement was developed by Verizon based on Verizon's determination that this interconnection arrangement provides the most reliable and efficient 911 network.[73] Intrado Comm seeks nothing different when it is the designated 911/E-911 service provider.

In fact, Verizon has admitted that the POI for connecting to the 911/E911 network is at the selective router.[74] This is consistent with the FCC's finding that the "cost-allocation point" for the exchange of 911/E-911 traffic should be at the selective router.[75] This decision was based on "the nature and configuration of the existing network components used to provide wireline E911 service"[76] and input from PSAPs that asserted that the selective router was the appropriate demarcation point for allocating responsibility and associated costs between carriers.[77] Although the finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.[78] Thus, the FCC determined that, when a 911 call is made, the carrier must bring the 911 call, as well as the information about the caller (*i.e.*, the caller's phone number and location), to the 911/E-911 network for processing

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72 Hicks at Attachment 4, 911 Attachment § 4.2.

73 Transcript at 161-65.

74 Transcript at 163-64.

75 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*").

76 *King County Order* ¶ 4.

77 *King County Order* at n.4.

78 *King County Order* ¶ 11.

and, specifically, to the equipment that analyzes and distributes the call—the 911 selective router serving the PSAP.[79]

Based on this precedent, the Public Utilities Commission of Ohio also has confirmed that the point of interconnection should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[80] Verizon's characterization of the Ohio decision is misplaced and inaccurate.[81] Specifically, the Ohio commission determined

> the point of interconnection to the wireline E9-1-1 network is at the selective router of the E9-1-1 network provider and consistent with the FCC's findings [in the *King County Order*], each party bears the cost of getting to the point of interconnection.[82]

The Ohio commission further determined that, in order to maintain this form of interconnection in a competitive market for 911 services to PSAPs, Section 251(a) along with its broad authority over 911 service supported the adoption of Intrado Comm's proposed interconnection arrangements.[83]

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[79] 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, WT Docket No. 94-102 (rel. May 7, 2001).

[80] *Embarq Arbitration Award* at 33.

[81] Rebuttal Testimony on behalf of Verizon Maryland Inc. at 8, line 163 to 9, line 176 (hereinafter, "Verizon Panel Rebuttal Testimony").

[82] *Ohio Embarq Arbitration Award* at 33.

[83] *Ohio Embarq Arbitration Award* at 15. The Ohio commission correctly found that it had authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c). *See id.*; *see also Ohio CBT Rehearing Award* at 11-12 ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements. . . . [T]he Commission has the authority and the requirement to consider Section 251(a) where it is applicable").

This Commission has addressed a similar issue concerning the points of interconnection at which two carriers would exchange traffic.[84] In Order No. 79250, Verizon (the carrier with which AT&T requested interconnection) appealed the Commission's earlier order, which required Verizon to drop off its traffic to an AT&T switch.[85] In Verizon's view, "Verizon [should have been able to] exchange traffic with AT&T at the *same* point of interconnection (i.e., a point on Verizon's network) chosen by AT&T to drop off its traffic."[86] The Commission rejected Verizon's position, emphasizing that principles of fairness took center stage when resolving the parties' dispute:

> This dispute concerns AT&T's and Verizon's respective obligations to deliver their originating traffic to one another. The issue concerns each party's respective responsibility for the cost of transporting traffic from its switch to the other company's switch. The FCC's rules make each party responsible for delivering its traffic to the other party. Therefore Verizon is financially responsible for transporting its traffic to AT&T's switch location and AT&T is financially responsible for transporting its traffic to Verizon's switch location. Two points of interconnection are appropriate. Each party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection facility itself is shared consistent with the rules set forth by the FCC in ¶ 1062 of the 1996 First Report and Order. In sum, those rules require that the carriers share the cost of the interconnection facility based upon each carrier's percentage of the traffic passing over the facility.
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> The interconnection architecture described above is *fair to both carriers*.[87]

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[84] Case No. 8882, *Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection, Rates, Terms and Conditions*, Order No. 79250 (July 7, 2004) ("*Maryland AT&T Order*").

[85] *Maryland AT&T Order* at 7-8.

[86] *Maryland AT&T Order* at 8 (emphasis in original).

[87] *Maryland AT&T Order* at 9-10 (emphasis added); *see also* Case No. 8922, *Arbitration of US LEC of Maryland vs. Verizon Maryland Inc. Pursuant to 47 U.S.C. § 252(b)*, Order No. 79813 at 7-9 (March 10, 2005) (stating that although the point of interconnection must be on Verizon's network in that particular matter, Verizon's financial responsibility to transport traffic to the network of the carrier requesting interconnection did not end at the point of interconnection) (*citing Maryland AT&T Order* at 9-10).

Consistent with these principles, Verizon routinely requires all competitive carriers serving end users in the Verizon geographic service area to bring their end users' 911 calls to the "designated" Verizon selective router serving the PSAP to which the 911 call is destined,[88] even though those carriers have established a POI at a different location for all other POTS traffic. Thus, while Section 251(c)(2)(B) and the FCC's rules entitle competitors to designate a single POI on the ILEC network, the Verizon template interconnection agreement compels CLECs to interconnect at every Verizon selective router to deliver 911 calls to Verizon's PSAP customers if they want their customers' 911 calls to be completed to Verizon served PSAPs.[89] For Intrado Comm's provision of 911/E-911 services to Maryland PSAPs, Intrado Comm seeks interconnection arrangements with Verizon that are at parity with what Verizon provides itself and others when Verizon is the designated 911/E-911 service provider.[90] Verizon has not demonstrated why the interconnection arrangements it imposes on CLECs and uses within its own network when Verizon is the designated 911/E-911 service provider are not equally applicable to Verizon when Intrado Comm is the designated 911/E-911 service provider.

Further, Verizon does not require other 911/E911 service providers to interconnect with Verizon at Verizon's selective router when Verizon's end user customers make 911 calls to the PSAP customers of another 911/E911 service provider. Rather, Verizon takes its originating end users' 911 calls destined for another 911/E911 service provider's network to a meet point established with the adjacent carrier or all the way to the adjacent carrier's selective router.[91] Verizon does not require adjacent, non-competing ILECs to establish a POI on Verizon's

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88 Hicks at Attachment 4, 911 Attachment § 3.2.

89 Hicks at Attachment 4, 911 Attachment § 3.2.

90 Hicks at 12, lines 14-23.

91 Transcript at 144, lines 3-8.

selective router or otherwise pick-up 911 calls at Verizon's selective router as Verizon would impose on Intrado Comm here.[92]

The Act entitles Intrado Comm to interconnection "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."[93] 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.[94] Interconnection to the PSTN "is an essential component of [the] end-to-end" 911/E911 service Intrado Comm intends to provide in Maryland.[95] The FCC has recognized the importance of ensuring that competitors receive interconnection for 911/E911 services in the same manner that incumbents provide such service to themselves (*i.e.*, parity).[96] Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs like Verizon to provide competitors like Intrado Comm interconnection that is at least equal in quality to the interconnection Verizon provides itself for routing 911 and E-911 calls to PSAPs.[97]

Verizon's 911 POI arrangements for itself, including those arrangements established in a competitive market to receive 911 calls from CLEC customers destined for Verizon served PSAPs, demonstrate that establishing the POI for the exchange of 911 traffic at the selective router serving the appropriate PSAP is the *preferred* method of interconnection for completing

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92 Transcript at 144, lines 3-8.

93 47 U.S.C. § 251(c)(2)(C).

94 47 C.F.R. § 51.305(a)(3); *Local Competition Order* ¶ 224.

95 *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282, ¶ 25 (2002) ("*City of Richardson Order*").

96 *Local Competition Order* ¶ 16.

97 *Virginia Arbitration Order* ¶ 652.

calls to the appropriate 911/E911 service provider and is technically feasible. Verizon is required under 251(c)(2)(C) to make the same arrangement available to Intrado Comm.[98] Verizon cannot use 251(c)(2)(B) to undermine its obligations under 251(c)(2)(C).[99] Simply because the interconnection arrangement Verizon has chosen for itself does not fall neatly within Section 251(c)(2)(B) does not mean that Verizon is able to forego its obligations under 251(c)(2)(C). On the contrary, since 1996 Verizon has ignored the benefit extended to CLECs under Section 251(c)(2)(B) entitling CLECs to a single POI when the traffic at issue is 911 calls. Appropriately, the ILECs and regulators have adopted requirements that support a different network architecture for 911 calls to promote public safety.[100] The CLECs have accepted the network interconnection arrangements demanded beyond the single POI for 911 traffic.[101] This is the interconnection arrangement Verizon and other ILECs have established for themselves to serve their PSAP customers and it is the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs, such as Intrado Comm's request.

The FCC has determined that, if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar

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98 *Local Competition Order* ¶ 225.

99 *See, e.g.*, *Montgomery County* v. *Lindsay*, 50 Md.App. 675, 678 (Md. Ct. Spec. App. 1982) ("[T]he court should consider the object or purpose to be obtained by the statutes in question, and the courts should construe the law so as to carry out, effectuate, or aid in its general purposes and policies."); *Comptroller of the Treasury* v. *American Cyanamid Co.*, 240 Md. 491, 511 (Md. Ct. App. 1965) ("[It is a] well established maxim for the construction of statutes . . . that the statute should be construed to give effect, if possible, to every word in it, so that no part of the statute will be superfluous or inoperative.");

100 Transcript at 27-34.

101 Transcript at 161-62.

network architectures.[102] Further, successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point ***or at substantially similar points in networks employing substantially similar facilities***.[103] In comparing networks, the FCC determined that the substantial similarity of network facilities may be evidenced by their adherence to the same interface or protocol standards.[104] Verizon bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point.[105] Verizon has not made such a showing.

C. Intrado Comm's Proposal for Two Geographically Diverse POIs Is Consistent with Industry Recommendations and Guidelines

Intrado Comm has requested that Verizon establish interconnection to a minimum of two geographically diverse POIs on Intrado Comm's network for reliability and redundancy purposes, which will benefit public safety.[106] Verizon is wrong when it claims that Intrado Comm's language would allow Intrado Comm to choose as many POIs as it wishes.[107] Intrado Comm has informed Verizon, and it is a matter of record evidence in numerous states, that Intrado Comm intends to place a minimum of two selective routers in each state in which it offers 911/E-911 service.[108] The agreed-upon provisions of the Parties' interconnection agreement also make clear that the agreement applies to the State of Maryland, not other

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102 *Local Competition Order* ¶ 554.

103 *Local Competition Order* ¶ 204.

104 *Local Competition Order* ¶ 204.

105 *Local Competition Order* ¶ 554.

106 Blackline ICA, 911 Attachment § 1.3.2; *see also generally Katrina Order*.

107 Verizon Panel Testimony at 7-8, 18, lines 1-3.

108 Transcript at 73, lines 10-12; *id.* at 83, line 23.

states.[109] Thus, there is no merit to Verizon's claim that the POIs will be outside of Maryland.[110] While additional POIs will be available to Verizon outside of Maryland as explained below, there will be at least two available at the locations specified in Maryland.[111]

Implementing Intrado Comm's proposal would ensure that 911 calls are diversely routed, which is consistent with the FCC's recommendations.[112] In addition, the FCC is currently reviewing whether it should require the deployment of redundant trunks to each selective router or require that multiple selective routers be able to route calls to each PSAP.[113] Intrado Comm has designed its network to do both.

Intrado Comm's proposal is also consistent with industry recommendations. The public benefit of the type of diversity and redundancy requested by Intrado Comm has been supported by the FCC's Network Reliability and Interoperability Council ("NRIC"), which found "[w]hen all 9-1-1 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure (e.g., cable cut). The ECOMM Team recommends diversification of 9-1-1 circuits over multiple, diverse interoffice facilities."[114] Likewise, a National Emergency Number Association ("NENA") 911 Tutorial states:

> 9-1-1 systems are expected to function without interruption. However, expecting every network and PSAP component to work perfectly forever is unrealistic. Stuff happens – things break.

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109 Blackline ICA § 43.1.

110 Verizon Panel Testimony at 18, lines 7-12.

111 Intrado Comm Panel Reply Testimony at 8, lines 12-13.

112 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 3, n.6 (1994) ("the American public depends on 911 services in its emergencies" and that reliability in the 911 network results from the deployment of diverse routing of interoffice facilities, multiple 911 tandem switch architectures, and diverse links for ALI database access).

113 *VoIP E911 Order* ¶ 59.

114 Hicks at Attachment 1, Network Reliability Council Focus Group IV, Essential Communications During Emergencies Team Report (Jan. 12, 1996), *available at* http://www.nric.org/pubs/nric2/fg4/nrcfinal.pdf.

> Reliability, then, is achieved through diversity and redundancy. One method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to its 9-1-1 tandem. Each trunk group should be large enough to carry the entire traffic load for that end office.[115]

Thus, Intrado Comm's proposed language implements industry best practices for diversity and redundancy.

Verizon has established diversity and redundancy within its own 911/E911 network.[116] In other states, Verizon uses "mated" or "paired" selective routers to ensure 911 call completion is unimpeded and a PSAP is not isolated from the 911/E911 network should a facility path failure or selective router switch failure occur. Verizon has established dedicated trunks from each of its end offices to each selective router,[117] and Verizon requires competitors to interconnect at each selective router, plus at an additional POI for the exchange of POTS traffic.[118]

D. LATA Boundaries Do Not Apply to 911/E911 Service Traffic

LATA boundaries are inapplicable to 911/E-911 services. The FCC and the federal district court overseeing the Modified Final Judgment recognized that many 911/E911 "transmissions cross LATA boundaries."[119] That district court specifically waived the LATA restrictions to ensure that the Bell Operating Companies ("BOCs") could "provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose

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115 Hicks at Attachment 2, NENA 9-1-1 Tutorial at 13 (Jan. 19, 2000), *available at* http://www.nena.org/florida/Directory/911Tutorial %20Study%20Guide.pdf.

116 Intrado Comm Panel Reply Testimony at 12, lines 19-20.

117 Intrado Comm Panel Reply Testimony at 12-13.

118 Hicks at Attachment 4, 911 Attachment § 3.2.

119 *Bell Operating Companies; Petitions for Forbearance form the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 20 (1998).

jurisdiction crosses a LATA boundary,"[120] thus allowing "the BOCs to provide multiLATA 911 services, including E911 services."[121] Moreover, Verizon has been freed from interLATA restrictions for several years by virtue of its Section 271 authority in every state in which it offers local exchange service, including Maryland.[122] Therefore, Verizon is not restricted from carrying any traffic, let alone 911/E-911 service traffic destined for Intrado Comm's network, outside of a LATA.

E. Other Maryland Carriers Will Not Be Disadvantaged by Intrado Comm's POI Proposal

As Intrado Comm's witness explained, CLECs and other carriers in Maryland will have numerous options for reaching Intrado Comm's PSAP customers in Maryland.[123] Many voice service providers have regional or nationwide footprints. Intrado Comm plans to deploy at least two, and possibly more, selective routers in every state in which Intrado Comm plans to offer service, including Maryland.[124] By connecting to any Intrado Comm selective router, a carrier can reach any PSAP connected to Intrado Comm's network. As an example, interconnecting to Intrado Comm's selective routers in Florida will still permit 911 call delivery to one of Intrado Comm's PSAP customers in Maryland. This means that Verizon, a CLEC, or any other carrier could connect to any two Intrado Comm Intelligent Emergency Network® access ports anywhere

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[120] *United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984).

[121] Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991).

[122] *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Enterprise Solutions),Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 (2003).

[123] Hicks at 18-19; Intrado Comm Panel Reply Testimony at 8, lines 12-13.

[124] Hicks at 18-19.

in Intrado Comm's nationwide network if it chooses to do so to reach a Maryland PSAP.[125] Given that Verizon, its affiliates, and many other carriers provide services throughout the nation, interconnecting outside of Maryland may be more efficient for many providers. In either case, however, there will be at least two geographically diverse Intrado Comm selective routers located in Maryland at which Verizon, CLECs, and other carriers can interconnect with Intrado Comm to deliver 911/E-911 calls destined for Intrado Comm's Maryland PSAP customers. Any concern about the effect of Intrado Comm's POI proposal on other carriers is therefore misplaced and not relevant to Verizon's interconnection arrangement with Intrado Comm.

Further, Verizon's so-called concerns do not justify Verizon's planned use of transit arrangements to send 911/E-911 service traffic to Intrado Comm from other third party carriers interconnected with Verizon.[126] Transit traffic is traffic that originates with one carrier, transits Verizon's network, and terminates with another carrier.[127] In that situation, neither the calling party nor the called party is Verizon's end user customer, and the carriers exchanging the call are both connected to Verizon, but not each other.[128] Transit arrangements are not used for 911/E-911 service traffic today.[129] In today's environment, competitive carriers must deploy dedicated trunks to the Verizon selective routers to reach the appropriate PSAP. There is a good reason for using such an arrangement (reliability as Verizon's witness confirmed)[130] and it makes no sense to alter this sensible network arrangement designed by Verizon presumably to increase the odds

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125 Hicks at 18, lines 18-20.

126 Verizon Panel Testimony at 34, lines 5-13.

127 Intrado Comm Panel Reply Testimony at 21, lines 6-8.

128 Transcript at 181, lines 5-9 ("Transit being defined as from one CLEC that connects to a Verizon tandem, through that Verizon tandem to another CLEC that is also connected to that Verizon tandem. Yes, that's what we call transit.").

129 Intrado Comm Panel Reply Testimony at 21, lines 9-12.

130 Transcript at 156-58.

of saving lives. Verizon's proposal is inconsistent with its own treatment of 911/E-911 service calls and should be rejected.

Indeed, Verizon's template interconnection agreement encourages competitors to enter into direct interconnection relationships with those carriers with which they are exchanging traffic.[131] Further, Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement.[132] As Verizon's filings state, "nothing in the Act requires Verizon to accept any CLEC traffic that is destined for another carrier (such as another CLEC or a non-Verizon ILEC)" and thus Verizon only "voluntarily provides these services."[133] A service as important as 911 should not be relegated to "voluntary" transit service arrangements that, in Verizon's view, it is under no obligation to provide.[134]

Allowing 911/E-911 service traffic to be exchanged via a transit service arrangement also affects quality of service, network reliability, and network efficiency. As explained by Intrado Comm's witness, it is common for different call types (*e.g.*, wireless) to be routed over different PSAP trunks to ensure the incident-driven nature of wireless does not saturate all PSAP call takers.[135] Indeed, a news report regarding a Verizon 911 outage in Michigan confirmed the benefits of separate 911 trunks for different types of services.[136] During the outage of Verizon's wireline 911 service, wireless 911 service remained available because those calls were on a

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131 Verizon Template Interconnection Agreement, Interconnection Attachment § 12 (Attachment 5 to Intrado Comm Petition for Arbitration).

132 Intrado Comm Panel Reply Testimony at 22, lines 3-4.

133 *See, e.g.*, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, Reply Comments of Verizon at 25, 26-27 (Nov. 5, 2001), *available at* http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512773351.

134 Intrado Comm Panel Reply Testimony at 22, lines 7-9.

135 Intrado Comm Panel Reply Testimony at 20-21.

136 "State Telecom Activities," COMMUNICATIONS DAILY (Sept. 23, 2008).

separate trunk group.[137] Under the transit arrangement proposed by Verizon, Verizon would put every call originating on its network (or delivered to it by another carrier) onto a common trunk group for delivery to Intrado Comm.[138] This would not provide Maryland PSAPs with the ability to discern 911/E-911 calls by type and would remove or severely limit their call management control options for determining the location of the caller, which is critical to saving lives.[139] Transit service arrangements are simply inapplicable to 911/E-911 service traffic. As discussed above and in more detail below, Verizon utilizes dedicated trunking within its own network for 911/E-911 service traffic and requires competitors seeking to terminate 911 calls to Verizon's PSAP customers to also use dedicated trunking to deliver 911 calls to Verizon's selective routers. Imposing a different type of interconnection arrangement on Intrado Comm is discriminatory and violates Intrado Comm's right to interconnection arrangements that are equal in quality to those Verizon provides itself or any other carrier.[140]

II. ISSUE 4: 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?[141]

Inter-selective router trunking allows emergency calls to be transferred between selective routers (and the PSAPs connected to those selective routers) while retaining the critical access to the caller's number and location information associated with the emergency call.[142] This type of interoperability between 911/E-911 networks allows 911/E-911 calls to be transferred among

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137 *Id.* (noting that during the outage, wireless E-911 worked because it is "carried on a different cable").

138 Intrado Comm Panel Reply Testimony at 20-21.

139 Intrado Comm Panel Reply Testimony at 20-21.

140 47 U.S.C. § 251(c)(2)(C).

141 The Commission's decision with respect to Issue 3 will determine the appropriate resolution of Issue 4 only to the extent the Parties' disputed language refers to the location of the POIs. The Commission's resolution of Issue 3 does not affect the Parties' dispute concerning the exchange of dial plan information.

142 Hicks at 19-20.

carriers to ensure misdirected emergency calls are transferred to the appropriate PSAP while still retaining access to the critical caller location information associated with the call.[143] If the call is required to be transferred over the PSTN (rather than via the 911 network), the caller's automatic number information ("ANI") and automatic location information ("ALI") is lost. Establishing inter-selective router trunking ensures that PSAPs are able to communicate with each other and, more important, that misdirected calls can be quickly and efficiently routed to the appropriate PSAP.

Section 251(c)(5) of the Act requires ILECs like Verizon to provide public notice of changes in their network "that would affect the interoperability of those facilities and networks."[144] The importance of interoperability between competing networks is highlighted by the FCC's rules that ILECs must provide public notice of any changes that "[w]ill affect the [I]LEC's interoperability with other service providers."[145] For the purposes of Section 251(c)(5) and its implementing rules, the FCC defined "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[146] The FCC determined "that the concepts of seamlessness and transparency are already adequately incorporated into" its adopted definition and thus a specific reference to these concepts in the definition is not necessary.[147]

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143 Hicks at 20.

144 47 U.S.C. § 251(c)(5).

145 47 C.F.R. § 51.325(a)(2).

146 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("*FCC Interoperability Order*").

147 *FCC Interoperability Order* ¶ 178.

A. Intrado Comm's Inter-Selective Routing Language Should Be Adopted

Verizon's claim that the interconnection agreement should not contain the specifics regarding the Parties' inter-selective router arrangements should be rejected.[148] The FCC has recognized that 911/E-911 services are important to overall public safety, and thus has found that more detailed interconnection language is better suited for 911/E-911 interconnection arrangements.[149] Indeed, the FCC determined that "the need for greater detail" in relation to 911/E-911 services overrides Verizon's goal of "more uniform agreements."[150]

Verizon is also wrong when it claims that Intrado Comm is trying to "impose upon PSAPs specific interoperability provisions without their consent . . . ."[151] Intrado Comm strongly supports the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back up routing, default routing, night transfer routing, call transfer routes, etc., with its designated 911/E-911 service provider. Further, some PSAPs may not desire to provide input into the trunking to be established, and thus there should be no requirement that the interconnection agreement contain specific language regarding the need for a separate agreement with a PSAP prior to implementing inter-selective routing capabilities.[152]

Nonetheless, the Parties have agreed to language indicating that inter-selective router trunking arrangements would be established between the Parties when each Party's customer ***agrees*** that 911 calls should be transferred between PSAPs served by each Party:

> Where the Controlling 911 Authority for a PSAP for which Verizon is the 911/E-911 Service Provider and the Controlling 911 Authority for a PSAP for which Intrado Comm is the 911/E-911

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148 Verizon Panel Testimony at 25-26.

149 *Virginia Arbitration Order* ¶ 660.

150 *Virginia Arbitration Order* ¶ 660.

151 Verizon Panel Testimony at 25-26.

152 *Embarq Arbitration Award* at 36.

> Service Provider agree to transfer 911/E-911 Calls from one PSAP to the other PSAP and each Controlling 911 Authority requests its 911/E-911 Service Provider to establish arrangements for such 911/E-911 Call transfers, each Party shall . . . .[153]

Verizon's argument is contrary to the language of the interconnection agreement, and its claim that Intrado Comm is trying to "control the conduct of third parties" is simply not true.[154]

Verizon also wrongly assumes that it would have to pay for any inter-selective router capabilities requested by the Parties' PSAP or government municipality customers.[155] Today, a government municipality or PSAP requesting call transfer capabilities is responsible for paying for that service just like any other service the customer requests.[156] Intrado Comm expects that same practice to continue under the Parties' interconnection agreement. How such costs will be recovered from the PSAPs should be determined by each Party's contract with its PSAP customer rather than language in the interconnection agreement between Intrado Comm and Verizon. There is no factual or legal support for Verizon's contention that Intrado Comm's proposed language would require Verizon to pay for the implementation of inter-selective router capabilities.

Like other 911/E-911 service traffic to be exchanged by the Parties, inter-selective router calls should be exchanged by the Parties at the POI established by each Party for the exchange of 911/E-911 calls and should be spelled out in the interconnection agreement. Thus, for transfers of 911/E-911 calls destined for an Intrado Comm PSAP customer, the Parties would exchange that call at the POI(s) established by Verizon on the Intrado Comm network.[157] For transfers of 911/E-911 calls destined for a Verizon PSAP customer, the Parties would exchange that call at

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153 Blackline ICA, 911 Attachment § 1.4.1.

154 *Cf.* Verizon Panel Testimony at 26, lines 4-6.

155 *See* Verizon Panel Testimony at 25, lines 3-7.

156 Intrado Comm Panel Reply Testimony at 14, lines 4-5.

157 Hicks at 22, lines 9-11.

the POI(s) established by Intrado Comm on the Verizon network.[158] This is how Verizon transfers such calls to other PSAPs served by non-competing, adjacent 911/E-911 service providers today,[159] and there is no reason Intrado Comm should be subject to a different type of interconnection arrangement than Verizon provides to others to ensure 911 calls reach the appropriate PSAP.[160]

B. Intrado Comm's Dial-Plan Language Should Be Adopted

Moreover, the Parties should be required to notify each other of changes in dial plans that support inter-selective router trunking, and such language should be included in the interconnection agreement.[161] Dial plans are used to determine the PSAP to which emergency calls should be routed based on the route number passed during the call transfer.[162] Intrado Comm has proposed language that would require the Parties to notify each other of any changes, additions, or modifications to 911-related call transfer dial plans that could affect inter-selective router arrangements. Use of dial plans ensures interoperability between the Parties' networks.

Verizon has provided no support for its argument that Intrado Comm seeks an "excessive level" of dial plan information in the interconnection agreement.[163] Intrado Comm's proposed language could not be more straightforward:

> The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions, or deletions to their inter-PSAP transfer dial plans.[164]

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158 Hicks at 22, lines 11-13.

159 Hicks at 21-22.

160 47 U.S.C. § 251(c)(2)(C).

161 Hicks at 22.

162 Hicks at 22, lines 19-22.

163 Verizon Panel Testimony at 26, lines 14-17.

164 Blackline ICA, 911 Attachment § 1.4.4.

Verizon admits that it provides dial plan information to other 911/E-911 service providers,[165] and Intrado Comm should be treated no differently.[166] It is for this reason that the West Virginia commission adopted Intrado Comm's position[167] and the Staff of the Illinois commission has recommended adoption of Intrado Comm's language based on its finding that Intrado Comm's language "seems reasonable and not 'excessive.'"[168] Intrado Comm's proposed language ensures the interoperability needed between the Parties networks and should be adopted.

III. ISSUE 6: WHETHER THE FORECASTING PROVISIONS SHOULD BE RECIPROCAL?[169]

Intrado Comm has modified Verizon's proposed language to make the forecasting provisions related to ongoing trunk forecasts applicable to both Parties rather than solely an obligation imposed on Intrado Comm. Intrado Comm must have some indication from Verizon as to how many 911/E-911 trunks will be required to support calls between the Parties' networks to adequately groom its network.[170] It is very important to size trunk groups properly—the reason Intrado Comm seeks reciprocal forecasting from Verizon. Forecasts are integral to ensuring that the Parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delays.[171]

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165 Verizon Panel Testimony at 26, lines 11-14.

166 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51.305(a)(3).

167 Intrado Comm Panel Reply Testimony at Attachment 12, Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award, at 16-17 (Nov. 14, 2008) ("*West Virginia ALJ Award*"), *approved by* Commission Order (Dec. 16, 2008).

168 Illinois Stewart Staff Testimony at 8, lines 179-80, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

169 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 6.

170 Hicks at 23, lines 14-16.

171 Hicks at 23, lines 16-19.

The primary purpose of trunk forecasts, especially in the 911 context, is to alert interconnecting parties of anticipated growth plans so that the interconnecting party may engineer, furnish, and install the equipment necessary to accommodate such growth.[172] Only 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.[173] Verizon will therefore be in the best position to determine the trunking needs between the Parties' networks.

Other provisions of the interconnection agreement will not provide Intrado Comm with the trunk forecasting information it needs. The agreed-upon language in Section 1.5.5 of the 911 Attachment requires the Parties to meet to discuss the establishment of new trunk groups, augmentation of existing trunk groups, or the disconnection of existing trunk groups.[174] By contrast, the forecasting language at issue in Section 1.6.2 of the 911 Attachment is specific to the 911/E-911 trunking to be deployed between the Parties' networks to support their exchange of 911/E-911 service traffic. The discussions required by Section 1.5.5 will not provide Intrado Comm with the same type of information a trunk forecast would provide. Indeed, the fact that Verizon's template interconnection agreement includes each provision is evidence that Verizon believes the contract provisions serve different purposes.

Verizon incorrectly assumes that the forecasting language is not necessary because there will be no 911 calls flowing from Intrado Comm to Verizon.[175] In fact, there are likely to be numerous 911 calls flowing between the Parties' networks. The huge popularity of mobile

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172 Hicks at 23, lines 14-20.

173 Intrado Comm Panel Reply Testimony at 16, lines 11-13.

174 Blackline ICA, 911 Attachment § 1.5.5.

175 Verizon Panel Testimony at 27-28.

technologies, and future services such as 911 text messaging, will make it even more critical to ensure that 911 calls reach the appropriate PSAP. Thus, it is likely that the number of calls transferred from Intrado Comm to Verizon will be significantly more than the occasional call Verizon predicts. Indeed, news articles support this position: "Cell phone 911 calls often get routed to the wrong 911 centers because of the location of cell phone towers. This leads to delays in sending help because operators have to figure out where a caller is and which police or fire department should respond, and then transfer the call to that jurisdiction."[176] Intrado Comm has a legitimate need for Verizon's trunk forecasts, a fact the Staff of the Illinois commission recognized when it recommended adoption of Intrado Comm's language because ***both Parties*** have "valuable information regarding trunking levels."[177]

Furthermore, only Verizon can determine whether calls are being blocked ***within its network***, which is a key component to determining whether trunk groups are adequately sized to handle the 911 calls made from an originating office.[178] Intrado Comm would only be able to make such determinations if its PSAP customers received complaints from callers who were unable to complete their 911 call attempt, which many 911 callers fail to report. Accordingly, Intrado Comm's proposed language should be adopted.

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[176] Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008.

[177] Illinois Stewart Staff Testimony at 9, lines 215-16, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

[178] Intrado Comm Panel Reply Testimony at 16, lines 8-11.

IV. ISSUE 9: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION?[179]

Verizon's proposed language requires Intrado Comm to provide certain notices and other information to Verizon when Intrado Comm seeks to establish interconnection arrangements with Verizon.[180] This information includes the location of the POIs, the activation date, and an initial forecast. Intrado Comm has revised this language to make it reciprocal.[181] In areas in which Intrado Comm is the 911/E-911 service provider, Intrado Comm will require the same type of information from Verizon to effectuate the Parties' interconnection arrangement. As interconnected co-carriers, the Parties will need to exchange information about their networks to ensure the network implemented is reliable, redundant, and diverse. Intrado Comm's proposed language should be adopted.

V. ISSUE 12: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH OTHER?[182]

The optimal way for a carrier to route 911/E-911 traffic to the appropriate 911/E-911 service provider should be based on the interconnection arrangements designed by Verizon for completion of its customers' 911 calls and CLEC customers' 911 calls made to Verizon's PSAP customers.[183] This interconnection arrangement is dedicated direct one-way trunks from the end office of the 911 caller to the appropriate selective router.[184] The use of dedicated direct

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179 The Commission's decision with respect to Issue 3 will determine the appropriate resolution of Issue 9 only to the extent the Parties' proposed language in the disputed Blackline ICA sections identifies the locations of the POIs.

180 Blackline ICA, 911 Attachment § 1.5.

181 Blackline ICA, 911 Attachment § 1.5.

182 The Commission's decision with respect to Issue 3 will determine the appropriate resolution of Issue 12 only to the extent the Parties' disputed language refers to the location of the POIs. Regardless of the Commission's resolution of Issue 3, however, Verizon should still be required to send all 911/E-911 calls to Intrado Comm over dedicated direct trunks.

183 *See, e.g.*, Hicks at Attachment 4, 911 Attachment § 3.2.

184 Hicks at Attachment 4, 911 Attachment § 3.2

trunking promotes competition by putting all 911/E-911 service providers on equal footing. Establishing dedicated direct trunking from Verizon's end offices to Intrado Comm's selective router is consistent with established industry practice, is technically feasible, and provides the most reliable 911 network. Intrado Comm's language should therefore be adopted.

A. Dedicated Direct Trunking of 911/E-911 Calls to the Selective Router Serving the PSAP Is a Standard Industry Practice

Dedicated direct trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E-911 network, as evidenced by Verizon's use of direct trunking arrangements within its own network when it is the 911/E-911 service provider.[185] Service quality and industry standards call for the use of dedicated connections.[186] It is for this reason that Verizon does not unnecessarily switch its customers' 911/E-911 calls before delivering those calls to Verizon's PSAP customers.[187] Inserting another stage of switching in the call processing path—such as Verizon proposes here—increases the possibility of additional points of failure,[188] thereby undermining the reliability provided by direct dedicated trunking. In reviewing this issue, Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider, because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[189]

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185 Hicks at Attachment 4, 911 Attachment § 4.

186 Hicks at 36-37.

187 Hicks at 28-29.

188 Hicks at 35, lines 11-14.

189 Illinois Hoagg Staff Testimony at 10, lines 221-23; Illinois Stewart Staff Testimony at 4, lines 98-100.

While Verizon claims that Intrado Comm's proposal would dictate how Verizon engineers its network,[190] Verizon imposes similar requirements on competitors when it is the designated 911/E-911 service provider. These Verizon requirements imposed on competitors include providing the requisite number of diversely routed 911/E-911 trunks, engineering the 911/E-911 trunks pursuant to industry recommended grades of service, monitoring 911/E-911 trunk volumes, and coordinating testing and maintenance activities for 911/E-911 trunks between the Parties' networks.[191] For example, Verizon's template interconnection agreement states:

> In order to interconnect with Verizon for the transmission and routing of 911/E-911 Calls, CLEC shall:
>
> interconnect with each Verizon 911/E-911 Tandem Offices(s)/Selective Router(s) . . .;
>
> provide a minimum of two (2) one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 Calls from the CLEC switch to each designated Verizon 911/E-911 Tandem Office(s)/Selective Router(s) or Verizon interface point(s), using SS7 signaling where available, as necessary.[192]

Thus, despite the single-point-of-interconnection rule, Verizon's interconnection language only offers competitors the option to connect to its network to establish POI(s) for exchanging POTS traffic and separate ***additional*** points of interconnection and dedicated direct trunking on Verizon's side of the network for the sole purpose of delivering 911 calls to the "designated" Verizon selective router serving the Verizon PSAP customer. Intrado Comm's proposed language seeks the same interconnection arrangement for delivery of 911 calls to Intrado Comm when it is the 911/E-911 service provider and should be adopted.[193]

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190 Verizon Panel Testimony at 32, lines 18-22.

191 Blackline ICA, 911 Attachment § 1.3.

192 Hicks at Attachment 4, 911 Attachment §§ 3.2, 3.2.1, 3.2.3.

193 Hicks at 28-30.

Verizon's arguments that Intrado Comm's dedicated trunking proposal would require Verizon to haul 911 calls for free to Intrado-served PSAPs should also be rejected.[194] Intrado Comm's language contains no requirement for Verizon to transport its 911 calls to Intrado Comm's PSAP customers. Further, Verizon claims that it should be compensated for delivering 911 calls to the appropriate selective router, but admits that CLECs and wireless carriers are not compensated when Verizon requires those carriers to transport their end users' 911 calls to the appropriate Verizon selective router.[195] Verizon's argument ignores the arrangements it imposes on competitive carriers today as well as its role when it is no longer the designated 911/E-911 service provider. Once a public safety agency designates a competitive carrier like Intrado Comm as its 911/E-911 service provider, the ILEC is put in the position of any other carrier with obligations to deliver its end users' 911 traffic over dedicated direct trunks to the appropriate selective router.[196]

Moreover, Verizon's proposal to use a common trunk group for all 911/E911 service traffic destined for Intrado Comm's network, rather than dedicated connections, is inconsistent with NENA recommendations and industry practice.[197] The use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado Comm to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities. Industry recommendations, therefore, call for identifiable end office trunk groups for default routing.[198] This configuration readily assists both the 911 network

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194 Verizon Panel Testimony at 33-34.

195 Transcript at 173-74.

196 *Embarq Arbitration Award* at 8.

197 Hicks at 41, lines 7-9.

198 *See, e.g.*, Hicks at Attachment 5, NENA Technical Information Document on Network Quality Assurance, NENA TID 03-501, Issue 2 at 11-12 (revised Oct. 3, 2005) ("Serving End Office to E9-1-1 Control Office Switched Message Trunks must be route diverse. There should be at least two trunks from each central office to the E9-1-1

service provider and the PSAP in quickly troubleshooting 911 service problems or redirecting 911 traffic from an end office on demand.[199] This arrangement can be accomplished by Verizon aggregating (but not switching) 911 traffic destined for Intrado Comm at Verizon's selective router and handing off that traffic to Intrado Comm over segregated trunks that identify the end office from which those calls originated.[200]

B. Intrado Comm's Language Does Not Require Verizon to Implement Line Attribute Routing

Verizon's testimony wrongly focuses on the concept of "line attribute routing." At no place in Intrado Comm's proposed contract language does Intrado Comm seek to require Verizon to use line attribute routing.[201] Rather, Intrado Comm seeks the use of dedicated direct trunking from Verizon's end offices to Intrado Comm's selective router, just as Verizon requires competitive carriers to implement today and just as Verizon configures its own network for service to its own PSAP customers. When a competitive carrier's customers receive emergency services from PSAPs that are served by the ILEC 911/E911 network, it is necessary for the competitive carrier's switch to be configured to select the appropriate direct and redundant trunk group to the 911 selective router connected to the PSAP that is designated to respond to the 911 caller, as determined by the location of the caller.[202]

Control Office. A pair of diverse circuits may be assigned on a fiber ring system or a fiber system with diversely routed protection."), *available at* http://www.nena.org/media/File/03-501_20051003.pdf; NENA Standard for Enhanced 9-1-1 (E9-1-1) Default Routing Assignments and Functions, NENA 03-008 at 9 (Jan. 19, 2008) ("It must be recognized that 'default call routing' by definition may result in having some emergency calls reach a PSAP not directly responsible for the subscriber's location. Local authorities, E9-1-1 System Service Providers and carriers should ensure that default call routing impacts are minimized through the appropriate association of trunk groups with defined geographic areas."), *available at* http://www.nena.org/media/File/03-008_20080119.pdf.

199 Hicks at 36-37.

200 Hicks at 39, lines 9-13.

201 Hicks at 32, lines 2-7.

202 Hicks at 29, lines 15-19.

Intrado Comm's language is similar to Verizon's template language. Verizon does not require CLECs to use a certain method to determine to which selective router a 911 call should be delivered. Rather, Verizon's interconnection agreement merely states that the CLEC is required to deliver its end users' 911 calls to the "designated" selective router.[203] Verizon does not need to focus on how the CLEC achieves this because, under the contract, the CLEC must route its 911 traffic over dedicated trunks to the "designated" selective router serving the PSAP. Verizon has ensured through its interconnection agreement template that it is not Verizon's problem how the CLEC sorts its 911 calls to reach the "designated" Verizon selective router and Verizon PSAP customer.[204] Once a competitor accepts this interconnection agreement language, which many have,[205] a failure to comply will render the CLEC in breach of the agreement.

Like Verizon's template interconnection agreement language, Intrado Comm's proposed interconnection agreement language does not dictate how Verizon will sort its end users' 911 calls for delivery to Intrado Comm.[206] Rather, Intrado Comm's proposed language indicates that Verizon will interconnect with Intrado Comm to deliver its 911 calls to Intrado Comm over dedicated trunks from Verizon's end offices. No contract language requires Verizon to use line attribute routing. Intrado Comm has simply suggested line attribute routing as a possible method for Verizon to use to determine which dedicated trunk to route its 911 calls over to reach the appropriate Intrado Com PSAP customer.[207]

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203 Hicks at Attachment 4, 911 Attachment § 3.

204 Transcript at 158-59.

205 Transcript at 162, lines 8-10.

206 Hicks at 32, lines 4-7.

207 Hicks at 32, lines 4-7.

C. The Equal in Quality and Non-Discrimination Requirements of the Act Mandate the Use of Dedicated Direct Trunking

Maryland public safety entities must have assurances that 911/E-911 service traffic destined for first responders will be treated equally in a competitive environment. As Congress and the FCC recognized, competitors face numerous operational barriers, which require that all aspects of local services be available to all competitors on an equal basis.[208] They further determined that equal access was absolutely necessary for competition in the local market to succeed.[209] The routing technique proposed by Intrado Comm—dedicated direct routing of 911/E-911 calls to the selective router serving the PSAP—is based on this equal access concept and the essential need for smart network design that ensures reliability and resiliency for these unique public safety services.

The equal in quality requirements of Section 251(c)(2) also support Intrado Comm's proposed language. The FCC has determined that "Verizon must provide [Intrado Comm] interconnection with [a 911-related switch] 'at least equal in quality' to the interconnection Verizon provides itself for routing 911 and E911 calls."[210] Verizon's attempt to impose different interconnection arrangements for Intrado Comm's PSAP customers than Verizon uses within its own network to serve its PSAP customers violates the equal in quality requirements of the Act.[211]

Likewise, the 911 calls of all Maryland citizens should be routed using the most reliable process available—dedicated direct trunking to the selective router serving the PSAP.[212] When

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208 *Local Competition Order* ¶ 16.

209 *Local Competition Order* ¶ 17.

210 *Virginia Arbitration Order* ¶ 652.

211 Hicks at 14, lines 12-21.

212 Hicks at 16-17.

Verizon is the designated 911/E-911 service provider, its customers' 911 calls are directly trunked to the selective router serving the relevant Verizon PSAP customer. Verizon's refusal to use dedicated trunking when Intrado Comm is the designated 911/E-911 service provider means that some Verizon Maryland 911 callers (*i.e.*, those calling a PSAP served by Intrado Comm) will be treated differently than other Verizon Maryland 911 callers (*i.e.*, those calling a PSAP served by Verizon). All Maryland Verizon 911 callers should be treated in the same manner—directly trunked from the Verizon 911 caller's end office to the selective router serving the appropriate PSAP—regardless of who is the service provider for the PSAP.

If Verizon is permitted to relegate Intrado Comm to a different and lesser form of interconnection than what Verizon provides to itself, Verizon will be discriminating among its own Maryland customers who dial 911. Verizon customers trying to reach a PSAP served by Intrado Comm will be treated differently than Verizon customers trying to reach a PSAP served by Verizon—a violation of the non-discrimination requirements found in Section 202 of the Act.[213] Intrado Comm's proposed interconnection method, by contrast, is consistent with the method Verizon uses for itself, that ILECs have developed for themselves, and that ILECs require CLECs to use to reach ILEC-served PSAPs in a competitive market.

D. Dedicated Direct Trunking from the End Office to the Selective Router Serving the PSAP is Technically Feasible

Intrado Comm's witness demonstrated that use of dedicated direct trunking is technically feasible.[214] Despite Verizon's attempt to shift the burden to Intrado Comm, the threshold issue is whether Intrado Comm's interconnection proposal is technically feasible. Under the FCC's rules, interconnection and access requests shall be deemed technically feasible absent technical

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[213] 47 U.S.C. § 202.

[214] Hicks at 37-38.

or operational concerns that prevent fulfillment of the requests, and the determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns.[215] *Once Intrado Comm has demonstrated that its proposal is technically feasible, the burden shifts to Verizon to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that "specific and significant adverse impacts" would result from Intrado Comm's requested interconnection arrangement*.[216] The FCC has determined that the ILEC, not the competitor, has the burden to prove technical infeasibility to the relevant state commission.[217]

Verizon's unsupported and unsubstantiated claims regarding the potential cost to implement Intrado Comm's interconnection proposals should also be rejected.[218] While Verizon claims that Intrado Comm should be responsible for any "expensive" form of interconnection it requests,[219] Verizon has provided no evidence supporting its allegation that implementing Intrado Comm's proposals would impose cost on Verizon. The sole consideration is whether Intrado Comm's interconnection proposals are technically feasible. The need for Verizon to modify its network to accommodate dedicated trunking, if any exists, does not affect the analysis of technical feasibility. Under the FCC's requirements, Verizon is obligated to make the requisite changes in its network and operational practices that will accommodate the interconnection of competing local exchange networks and the mutual exchange of traffic between those networks.[220] The FCC has stated that incumbent carriers like Verizon are required

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215 47 C.F.R. § 51.5 (defining technical feasibility).

216 *Local Competition Order* ¶¶ 198, 203.

217 *Local Competition Order* ¶ 198; 47 C.F.R. § 51.5.

218 Verizon Panel Testimony at 33, lines 17-21.

219 Verizon Panel Testimony at 33-34.

220 *Local Competition Order* ¶ 202.

to adapt their facilities to interconnection or use by other carriers, and an ILEC must accept the novel use of, and modification to, its network facilities to accommodate the interconnector.[221] The FCC recognized that ILEC networks were not designed to accommodate third party interconnection and that the purposes of the Act would be frustrated if ILECs were not required, at least to some extent, to adapt their facilities.[222]

If Verizon is unable to use dedicated direct trunking for technical reasons, Intrado Comm proposes the following language to address those situations:

> Split Wire Center Call Delivery Exception – Where it is technically infeasible for Verizon to segregate Verizon End Users' 911/E-911 Calls associated with an End Office Wire Center and where an End Office Wire Center serves Verizon End Users both within and outside of the Intrado Comm's 911/E-911 network serving area, Verizon shall work cooperatively with Intrado Comm and the affected Controlling 911 Authority(ies) to establish call routing and/or call handoff between the Parties.[223]

Intrado Comm's proposed language should be adopted because it takes into consideration how the affected public safety agency would like 911 calls to be handled.

VI. ISSUE 13: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE THE INTRADO COMM PROPOSED SENTENCE DESCRIBING VERIZON'S 911 FACILITIES?[224]

Verizon's proposed language in Section 1.1.1 of the 911 Attachment contains a sentence that describes the service, equipment, and software that Intrado Comm will provide and maintain when Intrado Comm is the 911/E-911 service provider.[225] There is no dispute with respect to that sentence. Intrado Comm, however, has proposed an identical sentence to govern instances in which Verizon is the 911/E-911 service provider. A reciprocal sentence is appropriate

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221 *Local Competition Order* ¶ 202.

222 *Local Competition Order* ¶ 202.

223 Blackline ICA, 911 Attachment § 1.3.2.3.

224 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 13.

225 Blackline ICA, 911 Attachment § 1.1.1.

because the interconnection agreement addresses both Intrado Comm's obligations, rights, and responsibilities when Verizon is the 911/E-911 service provider ***and*** Verizon's obligations, rights, and responsibilities when Intrado Comm is the 911/E-911 service provider.[226] Thus, if the interconnection agreement lists what components comprise Intrado Comm's 911/E-911 service offering and network, the interconnection should contain a reciprocal listing of what components comprise Verizon's 911/E-911 service offering and network.

Verizon's proposed language identifying the components of its network is unacceptable because it erroneously describes the access from Verizon end users as part of the Verizon network.[227] It is inappropriate to include this type of language in a generic description of 911/E-911 arrangements. This is consistent with the *West Virginia ALJ Award*'s determination that Intrado Comm's proposed language should be adopted.[228]

VII. ISSUE 14: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE.[229]

Intrado Comm has proposed language to ensure that the Parties can maintain interoperability between their databases when exchanging 911 traffic or transferring 911 calls between each Party's selective router. For this reason, Intrado Comm requests that the Parties adopt arrangements to maintain ALI steering tables, which will enable access to ALI when performing 911 call transfers via inter-selective router trunking. The transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak. Language regarding exchange

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226 Hicks at 42, lines 1-4.

227 Intrado Comm Panel Reply Testimony at 27, lines 13-16.

228 *West Virginia ALJ Award* at 21.

229 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 14.

of ALI information is also necessary to ensure interoperability between the Parties' networks as contemplated by Section 251(c).[230]

Verizon's claims that ALI steering falls outside the scope of Section 251 should be rejected.[231] As Intrado Comm's witness explained, there are three integrated components that are necessary to provide 911/E-911 service—the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP.[232] When the ALI database function is provided as a stand-alone service, it is viewed as an information service.[233] The comprehensive 911/E-911 service offering to be provided by Intrado Comm in Maryland, however, combines the three integrated components that are necessary to provide 911/E-911 service into one integrated product.[234] The switching and transmission components would be useless without the ALI database functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records.[235] The FCC also recognizes that all of the various components come together to form an all-inclusive service offering known as the "wireline E-911 network."[236] Further, the FCC has found ALI provisioning so essential to the 911 call process that it has imposed outage reporting requirements on ALI service providers

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230 47 U.S.C. § 251(c)(5).

231 Verizon Panel Testimony at 47, lines 1-6.

232 Hicks at 8-9.

233 *Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 17 (1998). But in a carrier-to-carrier relationship pursuant to Section 251, ALI databases are considered to be telecommunications services that ILECs are required to offer on an unbundled basis. *See* 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 557 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted).

234 Hicks at 8-9.

235 Hicks at 9, lines 9-11; Hicks at 43, lines 8-19.

236 *VoIP E911 Order* ¶ 15 (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

when ALI services are disrupted for specified periods.[237] Segmenting the physical switching and routing of 911 calls from the database that provides the routing information for such calls, as Verizon appears to suggest, would significantly diminish the viability and reliability of 911 services.[238] The bottom line is that the three integrated components are so intertwined that "one would be useless without the other."[239]

Failure to include Intrado Comm's proposed language in the interconnection agreement will have a significant effect on Maryland PSAPs. As many as 30-40 percent of wireless 911 calls **routinely** require transfer to another PSAP, regardless of the 911/E-911 service provider involved.[240] Without the language requested by Intrado Comm, Maryland PSAPs opting for a competitive 911 provider will lose the ability to receive a call transfer with ALI from a Verizon served PSAP, and Verizon served PSAPs will also be unable to receive a call transfer with ALI from a PSAP served by a competitive provider. Accordingly, Intrado Comm's proposed language should be adopted.

VIII. ISSUE 15: 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.[241]

Six definitions are at issue between the Parties: the definitions of (1) "Automatic Number Information" or "ANI"; (2) "911/E-911 Service Provider"; (3) "911 Tandem/Selective Router"; (4) "Point of Interconnection" or "POI"; (5) "Verizon 911 Tandem/Selective Router"; and (6) "Verizon 911 Tandem/Selective Router Interconnection Wire Center." The issues between the

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237 47 C.F.R. § 4.5(e)(4).

238 Hicks at 9, lines 10-11.

239 Hicks at 9, lines 9-10.

240 Transcript at 38-39.

241 The Commission's decision with respect to Issue 3 will determine the appropriate definitions of "Point of Interconnection" and "911/E-911 Service Provider."

Parties concerning the definition of "911/E-911 Service Provider" and the definition of "POI" deal with the location of the POI and are addressed under Issue 3.

Intrado Comm's proposed definition of "ANI" should be adopted.[242] The definition proposed by Intrado Comm is set forth in the NENA Master Glossary.[243] Intrado Comm proposed that this term and definition be included in the interconnection agreement because the term is used in Intrado Comm's proposed language in other sections of the interconnection agreement.[244] It does not appear that Verizon has an issue with the substance of the definition. Rather, Verizon does not agree with the reference to ANI in other sections of the interconnection agreement definition. ANI is a key component of 911 service, Intrado Comm's proposed definition is an industry-accepted definition, the term is used in the interconnection agreement, and thus Intrado Comm's proposed definition should be included in the interconnection agreement.

Intrado Comm's proposed language with respect to the definition of "911 Tandem/Selective Router" accurately reflects the functions that will be performed by a 911 Tandem/Selective Router.[245] In discussing the functions of the wireline 911 network, the FCC has stated that a selective router receives 911/E-911 calls and forwards those calls to the PSAP that has been designated to serve the caller's area.[246] The FCC thus recognizes that a selective router terminates 911/E-911 calls to a PSAP—a fact that Intrado Comm's proposed language reflects. In addition, it is well-established that selective routers are used to transfer 911/E-911 calls between PSAPs. Intrado Comm's language should be adopted.

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242 Blackline ICA, Glossary § 2.6.

243 *NENA Master Glossary of 9-1-1 Terminology, NENA-00-001, Version 11,* at 17 (May 16, 2008).

244 Hicks at 45, lines 10-13.

245 Hicks at 46, lines 4-10.

246 *VoIP E911 Order* ¶ 15.

By contrast, Verizon's proposed language for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" should be rejected. These two Verizon-proposed definitions are unnecessary and repetitive of the general definitions for these terms. The terms "911 Tandem/Selective Router" and "Interconnection Wire Center" are already defined in the interconnection agreement.[247] There is no reason for separate, Verizon-specific definitions for these terms. To the extent the language of the interconnection agreement needs to state that the 911 Tandem/Selective Router belongs to Verizon, it should be sufficient to say "a Verizon 911 Tandem/Selective Router" without developing a separate definition for that term. If Verizon's proposed language is included in the interconnection agreement, Intrado Comm-specific definitions for these terms should also be included. There is no reason to include Verizon-specific terms and definitions without including reciprocal terminology for Intrado Comm.[248] This is consistent with the *West Virginia ALJ Award*'s determination that Verizon's proposed definitions were "superfluous since there is already a definition of 911 tandem/selective router" in the interconnection agreement.[249]

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[247] Hicks at 46-47.

[248] Hicks at 47, line 2.

[249] *West Virginia ALJ Award* at 17-18.

IX. ISSUE 34: WHAT VERIZON WILL CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT INTRADO COMM WILL CHARGE VERIZON FOR 911/E-911 RELATED SERVICES.

ISSUE 54: SHOULD INTRADO COMM'S PROPOSED INTERCONNECTION RATES BE ADOPTED?[250]

A. The Rates to Be Charged By Verizon Must Conform With Section 252 Pricing Standards Subject To Limited Exceptions

Verizon should not be permitted to impose unspecified tariff rates on Intrado Comm for interconnection-related services. In some instances, Verizon's proposed language would allow Verizon to impose charges on Intrado Comm for 911 interconnection services based on "applicable" tariffs.[251] As a competitor, Intrado Comm is entitled to interconnection facilities and unbundled network elements ("UNEs") at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act.[252] Section 252(d) sets forth the pricing standards for three categories of charges: (1) interconnection and network element charges; (2) transport and termination charges; and (3) wholesale telecommunications services charges.[253] Tariffs are not the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection arrangements concerning any of these categories.[254] Rather, an ILEC's rates for interconnection and unbundled network elements must meet the standards set forth in Section 252(d)(1) of the Act.

Verizon cannot use tariffs to circumvent the requirements of 251/252.[255] While Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from

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250 The Commission's decision with respect to Issue 3 will determine the appropriate resolution of Issues 34 and 54 only to the extent the Parties' disputed language refers to charges based on the location of the POIs.

251 Spence-Lenss at 22, lines 13-14.

252 47 U.S.C. §§ 251(c)(2)(4); 252(d)(1).

253 47 U.S.C. § 252(d).

254 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

255 *Virginia Arbitration Order* ¶ 602.

Verizon (*i.e.*, non-TELRIC services), interconnection arrangements for the competitive provision of 911 services do not fall within that framework. If there are non-252(d)(1) services that Intrado Comm would purchase from Verizon, those services and the pricing for those services must be identified in the interconnection agreement. If the relevant pricing for non-252(d)(1) services is set forth in a tariff, the interconnection agreement should contain a specific reference to the tariff for that service rather than a generic reference to "applicable" tariffed rates as Verizon's proposed language would allow.[256] Intrado Comm's proposed language should therefore be adopted.[257]

B. Intrado Comm's Rates Are Reasonable and Should Be Included in the Interconnection Agreement

Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic should be included in the interconnection agreement. Intrado Comm has proposed rates for access or "interconnection" ports on its network that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP.[258] Intrado Comm is not preventing Verizon from using its own facilities or the facilities of a third party to reach Intrado Comm's network. But even if Verizon uses its own facilities, Verizon will be required to pay Intrado Comm for the physical connection to Intrado Comm's switch (*i.e.*, the selective router port).

Intrado Comm is under no obligation to make any demonstration regarding its rates in a Section 252 proceeding. The FCC has stated that Section 252 authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable, but provides no authority for a state commission to adjudicate a competitor's rates during a Section 252

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256 Spence-Lenss at 22-23.

257 Blackline ICA, 911 Attachment §§ 1.3, 1.4, 1.7, Pricing Attachment §§ 1.3, 1.5, Appendix A.

258 Spence-Lenss at 24, lines 10-14.

proceeding.[259] If Verizon seeks to challenge the "reasonableness" of Intrado Comm's rates, it should do that in a separate proceeding before this Commission.[260] There is no requirement for the Commission to make such a determination here.

Nonetheless, Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic are reasonable and appropriate, and Verizon has not demonstrated otherwise. Indeed, the Public Utilities Commission of Ohio determined that Intrado Comm's proposed port or connection charges are "reasonable" and "are not beyond the range of other companies."[261]

Verizon imposes similar charges on competitors seeking interconnection to Verizon's network.[262] The Parties' interconnection agreement specifically states that Intrado Comm will be responsible for any charges related to "interconnection of Intrado Comm's network with Verizon's network at the POI(s)."[263] In general, such "interconnection" can be accomplished in one of two ways—use of entrance facilities or via a collocation arrangement. Under the Parties' Pricing Schedule, Verizon will charge Intrado Comm a "facility termination" charge per DS0, DS1, or DS3 in connection with any collocation arrangement established by Intrado Comm for "interconnection" (in addition to the general fees for establishing the collocation arrangement).[264]

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259 *Virginia Arbitration Order* ¶ 588.

260 *Virginia Arbitration Order* ¶ 589.

261 Case No. 08-537-TP-ARB, *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*, Arbitration Award at 21 (Oct. 8, 2008) ("*CBT Arbitration Award*").

262 Spence-Lenss at 24, lines 15-18.

263 Blackline ICA, 911 Attachment § 1.7.3; *see also* Joint Issues Matrix at 25 (noting Verizon's position that "Intrado Comm must pay Verizon for interconnection at the POI").

264 Verizon MD Tariff PSC No. 218, Section 2, 1st Revised Page 58. Per the Pricing Schedule, collocation charges are pursuant to Verizon's Maryland collocation tariff.

Verizon also imposes "termination" fees in connection with its entrance facility charges.[265] Intrado Comm is entitled to impose the same types of charges for interconnection on its network. Accordingly, Intrado Comm's proposed charges should be adopted for inclusion in the interconnection agreement as well as Intrado Comm's proposed language referencing those charges.

X. ISSUE 35: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT.[266]

There are three main disputes under this issue. *First*, Intrado Comm objects to Verizon's proposed language that would incorporate all "applicable" tariff provisions into the interconnection agreement.[267] *Second*, tariff charges should not be permitted to trump those interconnection-related charges contained in the Pricing Appendix without a specific reference in the Pricing Appendix. Any charges to be imposed by either Party should be specifically set forth in the Pricing Appendix to the interconnection agreement. *Third*, Verizon should not be permitted to automatically supersede any rates marked as "TBD" in the Pricing Attachment with tariff charges, which may or may not be developed pursuant to the requirements of Sections 251 and 252 of the Act.[268]

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265 *See generally* Verizon MD Tariff PSC No. 217. Per the Pricing Schedule, entrance facility charges are pursuant to Verizon Maryland's tariff for Feature Group D service.

266 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 35.

267 *See* Blackline ICA, General Terms and Conditions §§ 1.1, 911 Attachment § 1.3, 1.4.2, 1.7.3, Pricing Attachment §§ 1.3, 1.5; Appendix A.

268 Spence-Lenss at 27, lines 8-14.

Intrado Comm seeks certainty in the Parties' interconnection relationship and cannot agree to unspecified terms and conditions that Verizon may later determine are "applicable" to the services being offered in the interconnection agreement. Tariffs may not always be the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection-related services.[269] Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon for which a tariff is the appropriate pricing mechanism. If Verizon seeks to have a tariff apply to the interconnection agreement for a non-252(d)(1) service, it should identify that tariff in the agreement rather than a generic reference to "applicable" tariffed rates as Verizon proposes. Intrado Comm could accept a reference to relevant, applicable tariffs for interconnection-related services, but Verizon has not identified such tariffs.[270]

The *West Virginia ALJ Award* agreed with Intrado Comm and found that

> If Verizon intends to charge Intrado for a particular service, it ought to be able to figure out what tariff contains that charge or service. All tariffs which might generate charges to Intrado must be specifically listed in the Agreement or the Pricing Attachment.[271]

The West Virginia ALJ also determined that references to tariffs in phrases such as "notwithstanding any other provision of this Agreement **<u>or tariff</u>**" or "as set out in **<u>Verizon's applicable tariffs</u>**" must be eliminated from the interconnection agreement.[272] Further, the West Virginia ALJ ruled that charges stated in the interconnection agreement cannot be automatically superseded by subsequent tariff changes as would be permitted by Verizon's proposed language,

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269 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008).

270 Spence-Lenss at 22-23.

271 *West Virginia ALJ Award* at 24.

272 *West Virginia ALJ Award* at 24.

because doing so would be inconsistent with FCC mandates.[273] The Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempt to impose similar language, finding that rates contained in a pricing schedule to an interconnection agreement cannot be secondary to rates contained in a filed tariff.[274] Indeed, the Bureau determined that, unless the parties otherwise agree, it would be inappropriate for "a tariff to supersede an interconnection agreement."[275] Tariffs that are "approved or allowed to go into effect" should not supersede rates approved in an arbitrated interconnection agreement.[276] Adopting Verizon's language would "thwart [Intrado Comm]'s statutory right to ensure that the new rates comply with the requirements of sections 251 and 252," because the tariffed rates "would not be the subject of a determination under section 252."[277] Intrado Comm's proposed language should therefore be adopted.

XI. ISSUE 36: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS.[278]

Intrado Comm objects to Verizon's attempt to dictate what the rates and charges will be for the Parties' same services, facilities, and arrangements. Verizon's proposed language is one-sided and could force Intrado Comm to lower its rates without competitive justification.[279] Neither federal nor state law requires Intrado Comm's rates or the rates of other competitors to be capped at the rate that Verizon and other incumbents charge (with the exception of intercarrier

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273 *West Virginia ALJ Award* at 24.

274 *Virginia Arbitration Order* ¶ 608.

275 *Virginia Arbitration Order* ¶ 608.

276 *Virginia Arbitration Order* ¶ 600.

277 *Virginia Arbitration Order* ¶ 601.

278 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 36.

279 Spence-Lenss at 28, lines 1-5.

compensation charges, which are inapplicable here).[280] In fact, the Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempts to cap competitors' rates at the prevailing ILEC rate for facilities and services other than intercarrier compensation.[281] Likewise, the New York, New Jersey, and Connecticut commissions have rejected Verizon's attempt to cap the rates of competitors through such language in other interconnection agreements.[282] Indeed, the *West Virginia ALJ Award* also rejected Verizon's proposed language based on the prior FCC precedent.[283]

Intrado Comm, like other competitive providers in Maryland, is entitled to operate independently of Verizon. No competitive provider of telecommunications services can conduct business where its business model is determined by the price setting whims of its competitor, particularly the incumbent. If Verizon seeks to challenge Intrado Comm's rates, it should do that in a separate proceeding before this Commission, because Section 252—the standard governing this proceeding—does not apply to Intrado Comm's rates.[284] Accordingly, Verizon's proposed language should be deleted.

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280 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

281 *Virginia Arbitration Order* ¶¶ 581-89.

282 *See, e.g.*, NY Case 99-C-1389, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell-Atlantic New York Inc.*, Order Resolving Arbitration Issues, at 10 (Jan. 28, 2000); CT Docket No. 00-10-22, *Petition of Cablevision Lightpath-CT, Inc. for Arbitration*, Decision, at 4 (CT DPUC Apr. 11, 2001); NJ Docket No. TO01080498, *Petition of Cablevision Lightpath-NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Order Approving Interconnection Agreement (NJ BPU Mar. 1, 2002).

283 *West Virginia ALJ Award* at 25.

284 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

XII. ISSUE 46: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS?[285]

Recognizing that it might offer additional telephone exchange services in Maryland, Intrado Comm has proposed language that would allow Intrado Comm to seek to amend the interconnection agreement to include any additional arrangements that would be necessary to facilitate Intrado Comm's provision of other telephone exchange services.[286] If Intrado Comm decides to offer additional telephone exchange services, the Parties should build on their existing agreement and incorporate any additional provisions necessary to support the provision of the additional services Intrado Comm decides to offer.[287] The negotiation and arbitration of interconnection agreements involves a significant amount of time and resources. There is no reason for the Parties to re-start the process, which will likely lead them back to arbitration before this Commission. Intrado Comm's proposed language ensures that Intrado Comm is not forced to re-negotiate, re-litigate, or re-arbitrate provisions that have already been resolved by the Parties or by the Commission. This is consistent with the FCC's finding that "any carrier attempting to arbitrate issues that have previously been resolved in an arbitration solely to increase another party's costs would be in violation of the duty to negotiate in good faith and could be subject to enforcement."[288]

Verizon offers no support for its unreasonable position, other than it seeks to prevent Intrado Comm from being able to "pick-and-choose" favorable contract provisions.[289] But Verizon's argument fails to acknowledge that any amendment to be made to the interconnection

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285 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 46.

286 Blackline ICA, General Terms and Conditions § 1.5.

287 Spence-Lenss at 30, lines 3-10.

288 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 13494, ¶ 28 (2004).

289 Joint Issues Matrix at 28-29 (noting Verizon's position).

agreement will be subject to negotiations between the Parties, dispute resolution before the Commission, and possibly arbitration before the Commission pursuant to the agreement already reached by the Parties:

> If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party ***may pursue any remedies*** available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.[290]

To the extent Verizon seeks to change certain contract language based on Intrado Comm's provision of additional services, Verizon can do it at that time. This approach would save the Parties and the Commission the time and energy of renegotiating and re-litigating provisions that have already been resolved by the Parties.

XIII. ISSUE 47: 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 COMM?[291]

Section 1.1.1 of the 911 Attachment contains general statements about 911/E-911 arrangements. Verizon's proposed language states that 911/E-911 arrangements provide ***a caller*** access to the appropriate PSAP. Intrado Comm views inclusion of the phrase "a caller" as unnecessary and has requested that the language be deleted.[292]

Indeed, Verizon's inclusion of the term appears to be an attempt to inappropriately limit the definition of 911/E-911 arrangements. The Verizon-proposed inclusion of "a caller" is too restrictive. In another arbitration proceeding involving Verizon and Intrado Comm, Verizon's

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290 Blackline ICA, General Terms and Conditions § 4.6 (emphasis added).

291 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 47.

292 Hicks at 47, lines 20-23.

witness admitted that its proposed term is intended to limit 911 arrangements to "fixed line subscriber dial tone."[293] Under this interpretation of "a caller," not even 911 calls from wireless devices or interconnected VoIP services would be able to be completed to Intrado Comm PSAP customers.[294] This so-called "clarification"[295] is inconsistent with the types of 911/E-911 calls that PSAP customers expect to be able to receive from their 911 service provider. The inclusion of "a caller" is unnecessary, serves only to restrict Intrado Comm's ability to provide service to PSAPs, and should therefore be rejected.

XIV. ISSUE 49: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT?[296]

Intrado Comm has proposed language to ensure that each Party is able to bill the other Party for services or items set forth in the interconnection agreement at the rates contained in the Pricing Attachment to the agreement.[297] Intrado Comm's proposed language does not address intercarrier compensation[298] or create a "loophole" to allow Intrado Comm to impose intercarrier compensation charges on Verizon.[299] Nor is it Intrado Comm's "objective" to bill Verizon charges in connection with the ALI database or the Master Street Address Guide ("MSAG")[300] unless the interconnection agreement specifically permits such charges. In fact, a review of the

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293 Ohio Case No. 08-198-TP-ARB, *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 Verizon North, Inc.*, Transcript at 169-70 (Jan. 13, 2009), *available at* http://dis.puc.state.oh.us/TiffToPDf/A1001001A09A27B54955D46020.pdf (hereinafter, "Intrado Comm-Verizon Ohio Transcript").

294 Intrado Comm-Verizon Ohio Transcript at 169-70.

295 Verizon Panel Testimony at 67, line 12.

296 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 49.

297 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

298 Intrado Comm Panel Reply Testimony at 35, lines 1-6.

299 *Cf.* Verizon Panel Testimony at 67, lines 23-26.

300 *Cf.* Verizon Panel Testimony at 68, lines 8-11.

agreed-upon language demonstrates that charges for reciprocal compensation, intercarrier compensation, exchange access service, ALI database, and MSAG have been specifically excluded from the types of charges the Parties are permitted to impose on each other.[301]

Verizon's proposed language would eliminate Intrado Comm's ability to impose "any" charges "in connection with 911/E-911 Calls" on Verizon even if those charges were set forth in the interconnection agreement.[302] By contrast, Intrado Comm's proposed language ensures that each Party may bill the other Party appropriate interconnection-related charges for their exchange of 911/E-911 calls to the extent such charges are permitted by or set forth in the interconnection agreement. Examples of such charges may include the access or "interconnection" port charges that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP. Intrado Comm's proposed language should be adopted.

XV. ISSUE 52: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPs BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"?[303]

Intrado Comm has proposed language to ensure that neither Party may operate outside Commission-approved rates or Commission regulation for their retail services to PSAPs.[304] Without Intrado Comm's suggested qualification, either Party could have the ability to bill Maryland public safety agencies for a range of services even if the Party no longer provided those services. Indeed, it is important to note that Intrado Comm's proposed language applies equally to ***both Parties*** and is not intended to restrict the potential relationship and charges

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301 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

302 Blackline ICA, 911 Attachment § 1.7.2.

303 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 52

304 Blackline ICA, 911 Attachment §§ 2.3, 2.4

between Verizon and the PSAP.[305] The reference to "tariffs" in Intrado Comm's proposed language means both Parties' tariffs.

Nor is Intrado Comm attempting to restrict Verizon's ability to charge PSAPs to which ***Verizon will continue to provide services***.[306] Intrado Comm's proposed language would not prevent Verizon from imposing lawful charges on Maryland counties or PSAPs as authorized by state or federal law, Commission-approved tariffs, or Commission rules and regulations.[307] The key is whether Verizon will actually be providing such services to PSAPs when Intrado Comm is the designated 911/E-911 service provider. Verizon has not explained what services it would provide to a PSAP once Intrado Comm is the designated 911/E-911 provider. Switching via Verizon's selective router is no longer necessary when Intrado Comm is the designated provider.[308] Selective routing involves termination of a call to a PSAP, and when Intrado Comm is the designated provider, Verizon will no longer be terminating calls to the PSAP.[309] Thus, Verizon will no longer provide selective routing services, ALI database services, or database management services to a PSAP when Intrado Comm is the designated 911/E-911 service provider.

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305 Intrado Comm Panel Reply Testimony at 35.

306 Spence-Lenss at 32, lines 7-8; Intrado Comm Panel Reply Testimony at 35, lines 15-22; *see also, e.g.*, *Embarq Arbitration Award* at 42 ("the Commission agrees with Intrado that Embarq should have no right to charge Ohio counties for services the company no longer provides"); Florida Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (Fla. P.S.C. June 4, 2008) ("The law is clear that telecommunications companies may not charge for services they do not provide. Section 364.604(2) provides that '[a] customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.'").

307 Spence-Lenss at 32, lines 1-8; Intrado Comm Panel Reply Testimony at 35, lines 18-22.

308 Hicks at 6, lines 5-14; Hicks at 11-12.

309 Hicks at 6, lines 5-14.

Moreover, any notion that Intrado Comm could control the actions of Verizon via Intrado Comm's tariff is simply nonsensical.[310] Intrado Comm cannot control the pricing actions of Verizon, just as Verizon should not be permitted to control the pricing actions of Intrado Comm (as discussed further above). The only entity that may control the Parties' pricing actions is the Commission, as reflected in Intrado Comm's proposed language indicating that applicable law, tariffs, and Commission rules are the determining factor for the Parties' ability to charge for certain services. Intrado Comm's proposed language ensures that both Parties operate within Commission-sanctioned parameters, and should therefore be adopted.

XVI. ISSUE 53: SHOULD 911 ATTACHMENT SECTION 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?[311]

Verizon has proposed language that would allow Verizon to directly deliver 911/E-911 calls to one of Intrado Comm's PSAP customers.[312] Intrado Comm has proposed deleting this language. Originally, Intrado Comm had proposed that the language *be reciprocal* and be qualified so that either Party would only be permitted to directly deliver 911/E-911 calls to the other Party's PSAP customer if the PSAP customer specifically authorized the requesting Party to do so.[313] Intrado Comm understands there may be instances where a PSAP may select more than one 911/E-911 service provider. For example, a PSAP could choose to have both Verizon and Intrado Comm provide 911/E-911 services. The language should therefore reflect that such arrangements are driven by the PSAP (who is the customer of record), not Verizon's unilateral

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310 Verizon Panel Reply Testimony at 67, lines 1531-32.

311 The Commission's decision with respect to Issue 3 does not affect its resolution of Issue 53.

312 Blackline ICA, 911 Attachment § 2.5.

313 Hicks at 48-49; Intrado Comm Panel Reply Testimony at 36, lines 6-10.

mandates. The PSAP must make an affirmative decision to subscribe to additional 911/E-911 services before such services are provided by either Party.[314]

Verizon rejected this proposal, and instead proposed language for Section 2.6 of the 911 Attachment purporting to address Intrado Comm's concerns for reciprocity.[315] Verizon's language, however, does not address Intrado Comm's concerns. Verizon's language would still allow it to bypass the Intrado Comm selective router and deliver 911/E-911 calls directly from its end offices to a PSAP served by Intrado Comm. Neither Party should be permitted to route 911/E-911 service traffic in this manner without express permission from the PSAP. In addition, the Verizon-proposed provision is not exactly reciprocal and contains additional limitations, such as whose facilities are to be used to deliver the 911/E-911 call.

Therefore, the language in Sections 2.5 and 2.6 should be stricken or, at a minimum, be exactly reciprocal and qualified to reflect that such arrangements are driven by the PSAP, the customer of record. Verizon is correct that whether a party has a right to deliver calls to a PSAP is a matter outside of the Section 251(c) interconnection agreement.[316] That is precisely why Intrado Comm has proposed deleting Verizon's language from the Parties' interconnection agreement.[317] This is consistent with the *West Virginia ALJ Award*'s determination that Verizon's proposed language should be rejected, and if there is a legitimate reason for either Verizon or Intrado Comm to directly route 911 calls to PSAPs served by the other, those reasons

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[314] *Cf.* 47 C.F.R. § 64.1100, *et seq.*; *United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*, 8 FCC Rcd 5563, ¶ 5 (1993) (finding that only customers that order service are responsible for the charges associated with that service); *Atlantic Telco, Inc. and Tel. & Tel. Payphones, Inc.*, Order, 8 FCC Rcd 8119, ¶ 6 (1993) (same).

[315] Blackline ICA, 911 Attachment § 2.6.

[316] Verizon Panel Testimony at 72, lines 16-18.

[317] Blackline ICA, 911 Attachment §§ 2.5, 2.6.

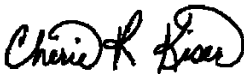
and conditions must be clearly spelled out in the interconnection agreement.[318] Accordingly, Intrado Comm's proposal to delete Verizon's proposed language for Sections 2.5 and 2.6 should be adopted.

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission adopt Intrado Comm's positions and proposed contract language as set forth herein and the Joint Issues Matrix.

Respectfully submitted,

INTRADO COMMUNICATIONS INC.



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Dated: February 20, 2009

Its Attorneys

[318] *West Virginia ALJ Award* at 28.

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of INTRADO COMMUNICATIONS INC.'S INITIAL BRIEF was filed electronically and via Federal Express with the Maryland Public Service Commission and was served electronically and via US Mail, postage prepaid, on this 20th day of February 2009 upon the following:

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Attachment 1
to Intrado Comm Initial Brief

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

In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")	)	WC Docket No. 08-33
In the Matter of the Petition of Intrado Communications 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. (collectively, "Verizon")	)	WC Docket No. 08-185

REPLY OF INTRADO COMMUNICATIONS OF VIRGINIA INC.

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ATTACHMENT 1 - PORTIONS OF OHIO HEARING TRANSCRIPT

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")	)	WC Docket No. 08-33
In the Matter of the Petition of Intrado Communications 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. (collectively, "Verizon")	)	WC Docket No. 08-185

REPLY OF INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Communications of Virginia Inc. ("Intrado Comm"), through its attorneys, respectfully submits its Reply to the Response filed by Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon") with respect to Intrado Comm's Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Verizon pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").[1] The Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("Commission") should adopt Intrado Comm's positions and proposed interconnection agreement language as set forth herein and in Intrado Comm's Petition for Arbitration for the unresolved issues between the Parties.

[1] 47 U.S.C. § 252(b).

INTRODUCTION AND SUMMARY

Verizon's Response demonstrates that Verizon seeks to continue to use its monopoly position as a dominant provider of 911/E-911 services to Virginia public safety agencies and public service answering points ("PSAPs")[2] to impede Intrado Comm's entry into the market. Verizon's apparent objective is to prevent competition in contravention of the goals of the Act. Despite Verizon's attempt to shield its monopoly from competition, Virginia public safety agencies are legally entitled to choose a competitive provider such as Intrado Comm. The opening of the local exchange market to competition via Section 251(c) was "intended to pave the way for enhanced competition in ***all*** telecommunications markets, by allowing ***all*** providers to enter ***all*** markets."[3] This includes the provision of 911/E-911 services to PSAPs.

Since its inception in 1968, 911 service has been treated as telephone exchange service by incumbent local exchange carriers ("ILECs") like Verizon and has been regulated as telephone exchange service by the states.[4] Only now when Verizon is faced with the prospect of competition in one of its last monopoly markets does it claim that competitive 911/E-911 service to PSAPs is not a telephone exchange service and is thus not entitled to 251(c) interconnection. Verizon presents this ridiculous position because it realizes that Intrado Comm cannot offer its competitive 911/E-911 product to Virginia public safety agencies without establishing the

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[2] For ease of reference, Intrado Comm uses the term "PSAP" to refer to any Virginia public safety agency or governmental authority that may be responsible for purchasing 911/E-911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

[3] *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, ¶ 4 (1996) ("*Local Competition Order*") (emphasis added) (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd*., 525 U.S. 366 (1999).

[4] For example, 911/E-911 services to PSAPs are located in the ILECs local exchange service tariffs, and have been classified as "business exchange service" or "telephone exchange network service." *See, e.g.*, Verizon Virginia Inc. Miscellaneous Service Arrangements Tariff, 14A. Emergency 911 Services, Original Page 10 (effective July 1, 2005); United Telephone Southeast LLC, Tariff SCC No. 1, General Subscriber Services Tariff, Section U21.1, Original Page 1 (effective May 20, 2008).

necessary interconnection and interoperability arrangements with the public switched telephone network ("PSTN") to which all 911 callers and PSAPs are connected.[5] As demonstrated below, Intrado Comm's planned 911/E-911 service to PSAPs meets the definition of "telephone exchange service" thereby entitling Intrado Comm to Section 251(c) interconnection with Verizon. Verizon's arguments to the contrary are legally and factually incorrect and should be rejected.

Further, Verizon's claim that this is simply another arbitration proceeding between an ILEC and a competitive local exchange carrier ("CLEC") and the type of competitive service to be offered - 911 service to PSAPs - is irrelevant to evaluating interconnection arrangements, should also be rejected.[6] There is not a single CLEC that is interconnected with Verizon for the purpose of ***competing with Verizon*** to provide 911/E-911 services to PSAPs. The CLECs interconnected with Verizon today provide competitive residential and business services. This proceeding, however, is about interconnection arrangements to be established between Intrado Comm and Verizon that will permit Intrado Comm to provide competitive 911 services to PSAPs. As Section 251(c) recognizes, the interconnection arrangements established between the Parties as a result of this arbitration proceeding will have a direct effect on the quality of service provided to Virginia public safety agencies, and consequently, to Virginia consumers. If Intrado Comm is denied access to physical interconnection arrangements that are at least equal in quality

[5] As explained below, the issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter for arbitration that has been presented to the Commission for resolution in either Intrado Comm's Petition for Arbitration or Verizon's Response.

[6] Verizon Response at 4.

to what Verizon has established for its own 911 service to PSAPs today, PSAPs will not realize the benefits of competition intended by the Act.[7]

Section 251(c) contemplates and allows for Intrado Comm's interconnection proposals for the competitive provision of 911 service to PSAPs despite Verizon's arguments to the contrary.[8] Existing 251(c) requirements and Commission precedent have focused on interconnection for plain old telephone service ("POTS") traffic. While those rules and regulations are important, they do not foreclose a review of the statute, rules, and policies from the perspective of the best interconnection arrangements for the competitive provision of 911/E-911 services to PSAPs, which is at issue here. Verizon itself has decided that network interconnection arrangements for the provision of 911 services to PSAPs should be different from those used for POTS traffic. Interconnection arrangements and the rules designed for the competitive provision of POTS should not alter or prevent the application of the statutory requirement that competitors are entitled to interconnection that is equal in quality to what the ILEC provides to itself.[9]

The critical question is: how does Verizon provide 911/E-911 services to PSAPs today? The only provider of 911/E-911 services to PSAPs in the Verizon service territory is Verizon. Thus, Verizon's own practices (as well as those of the ILECs operating in other geographic areas) have established the standard for service to PSAPs and defined the appropriate network arrangements to be used for the exchange of 911/E-911 traffic in a competitive market. As

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[7] The use of dedicated direct trunks to the appropriate selective router has been the arrangement used for 911 services since their inception. *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (discussing the routing of emergency telephone calls "over dedicated telephone lines").

[8] Verizon Response at 4.

[9] 47 U.S.C. § 251(c)(2)(C).

discussed below, this ILEC-developed network interconnection standard for 911 service has also been embraced by the Commission and state commissions.[10] Verizon itself has decided that 911 interconnection arrangements should be different from those used for POTS traffic, and Verizon is required to give Intrado Comm the same arrangements it provides to ***itself*** when Verizon is serving the PSAP.[11] To find otherwise would undermine the entire foundation of Section 251(c) - to ensure competitors receive interconnection that "is at least indistinguishable from that which the incumbent provides itself."[12] It would be foolish for this proceeding to ignore the existing arrangements used for the provision of 911/E-911 service to PSAPs today. The history of the implementation of 911 service demonstrates that the current physical interconnection architecture was established to ensure public safety.[13]

Specifically, Verizon requires all CLECs and wireless carriers to interconnect at the appropriate selective router, *i.e.*, the selective router serving the PSAP to which the 911 call is destined.[14] This is consistent with the Commission's mandates that the selective router should be the "cost allocation" point for the exchange of 911/E-911 traffic.[15] Although that finding

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[10] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*") (finding the selective router is the "cost allocation" point); ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring all carriers to use dedicated direct trunking "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); TEXAS P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[11] 47 U.S.C. § 251(c)(2)(C).

[12] *Local Competition Order* ¶ 224.

[13] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (noting the establishment of 911 network arrangements to ensure that emergency calls "are recognized and answered as emergency calls by professionals trained to assist callers in need of emergency assistance"); *see also id.* ¶ 1 ("we intend to ensure that the effective operation of 911 services is not compromised by new developments in telecommunications").

[14] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

[15] *King County Order* ¶ 1.

resulted in "a cost allocation point beyond" the carrier's switch, the Commission nevertheless found it was appropriate and consistent with industry practice.[16] This arrangement is also consistent with the 911 interconnection arrangements used by Embarq and AT&T,[17] as well as the requirements mandated by several states.[18] It is for these reasons that the Public Utilities Commission of Ohio determined that that the point of interconnection ("POI") when Intrado Comm is serving the PSAP should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[19]

Further, Verizon's template interconnection agreement mandates the use of dedicated direct trunks for the transmission of 911 calls to the selective router serving the PSAP to which the 911 call is directed.[20] This requirement is consistent with the 911 network interconnection

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[16] *King County Order* ¶ 11.

[17] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 (Attachment 1 to Intrado Comm Embarq VSCC Petition for Arbitration) (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[18] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(x) (requiring all telecommunications carriers to adopt practices and procedures "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area"); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[19] Ohio 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 33 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*"); *see also* Ohio Case No. 08-537-TP-ARB, *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*, Arbitration Award at 8-9 (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*").

[20] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

arrangements used by other ILECs,[21] as well as other state commission requirements.[22] Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[23]

There is no support in the law for the use of different POI or trunking arrangements when Intrado Comm is 911/E-911 service provider serving the PSAP. Verizon cannot use Section 251(c)(2)(B) as applied to POTS traffic to undermine its equal in quality obligations under 251(c)(2)(C). Verizon itself has ignored 251(c)(2)(B)'s requirements, which permit CLECs to establish a single POI on Verizon's network and avoid physical or financial obligations beyond the POI. Verizon has adopted interconnection agreement arrangements for CLECs that support a different network architecture for 911 calls to promote public safety.[24] The Verizon 911

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[21] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State; Embarq Template Interconnection Agreement at Section 55.1.3 (Attachment 1 to Intrado Comm Embarq VSCC Petition for Arbitration) (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.").

[22] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring the use of dedicated direct trunking to the selective router serving the PSAP); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router).

[23] Illinois Docket No. 08-0550, Direct Testimony of Jeffrey H. Hoagg on behalf of Staff of the Illinois Commerce Commission at 10, lines 221-23 (filed Dec. 19, 2008) ("Illinois Hoagg Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117; Illinois Docket No. 08-0550, Direct Testimony of Kathy Stewart on behalf of Staff of the Illinois Commerce Commission at 4, lines 98-100 (filed Dec. 19, 2008) ("Illinois Stewart Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

[24] *See, e.g.*, West Virginia Case 08-0298-T-PC, Hearing Transcript at 208, lines 17-25 (Oct. 2, 2008), *available at* http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=250537&NotType='WebDocket'; Ohio Case 08-198-TP-ARB, Hearing Transcript at 102, lines 15-23 (Jan. 13, 2009) (set forth in Attachment 1).

interconnection arrangements require the CLEC to establish multiple POIs in addition to the POI for POTS and dictate the trunking arrangements to be used on the CLEC's side of those POIs for 911 (two dedicated direct one-way trunks to each 911 POI).[25] Everything that Verizon complains about with respect to Intrado Comm's proposed contract language was designed by Verizon and is embodied in Verizon's own template agreements for CLECs to ensure Verizon receives 911 calls destined for its PSAP customers in a specific way.[26] The interconnection arrangements sought by Intrado Comm here are the same that Verizon and other ILECs have established for themselves to serve their PSAP customers and are the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs.

The Commission therefore has the authority to adopt the physical architecture arrangements Intrado Comm seeks, which reflect industry practices established by ILECs like Verizon and are consistent with Section 251(c) and the Commission's rules for the provision of 911/E-911 services. It would be a complete reversal of sound engineering, physical architecture decision making, and regulatory policies deemed to serve the public interest to deny a competitor providing 911/E-911 services to PSAPs any interconnection arrangement other than that which mirrors the arrangements established between Verizon and other competitive carriers needing access to Verizon served PSAPs. This is consistent with the laws of statutory construction and

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[25] It is important to note that Verizon requires the CLEC to route all 911 calls to the "designated" selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers also. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that.

[26] Intrado Comm agrees with regulators and the ILECs that the best POI for 911 service to PSAPs is at the selective router of the carrier providing the service to the PSAP. When Intrado Comm has customers who call 911 and Verizon is the 911 service provider for the PSAP, Intrado Comm will have a POI at Verizon's selective router for the delivery of the 911 call to the appropriate PSAP. *See* Intrado Comm Petition at Attachment 3, 911 Attachment § 1.3.1.

the intent of the Act. The Act is dynamic so that it can be flexibly applied to adapt to the ever-changing communications industry.[27] Accordingly, Intrado Comm's proposed language should be adopted for inclusion in the Parties' interconnection agreement so that Virginia public safety agencies and Virginia citizens dialing 911 receive the most reliable, redundant, and diverse 911 network possible.

ARGUMENT[28]

I. THRESHOLD ISSUE: INTRADO COMM WILL OFFER TELEPHONE EXCHANGE SERVICE AND IS ENTITLED TO SECTION 251(C) INTERCONNECTION

As explained in Intrado Comm's Petition, the issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter that has been presented to the Commission for arbitration in this proceeding.[29] Nor has this issue been raised by either Party in any of the pending arbitration proceedings between Intrado Comm and Verizon.[30] This is based on the agreement reached between Intrado Comm and Verizon that Intrado Comm's entitlement to Section 251(c) would not be an issue for arbitration between the Parties. Indeed, when given the opportunity in this proceeding to designate "additional" issues for arbitration, Verizon

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[27] *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 21 (1999) ("*Advanced Services Order*") (recognizing "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act"); *see also* Intrado Comm Statement of Unresolved Issues at 2-3 (discussing the Commission's broad authority to regulate 911/E-911 services).

[28] For Issues 4, 6, 8, 10, 11, 12, 13, 14, and 15, Verizon's Response provides no additional authority or support for its proposed language. As Intrado Comm explained in its Petition for Arbitration, Intrado Comm's proposed language for each of these issues is reasonable and consistent with law or established industry practices. Verizon has provided no legal support otherwise. Accordingly, Intrado Comm's proposed language for these issues should be adopted.

[29] Intrado Comm Petition at 16.

[30] *See, e.g.*, *See, e.g.*, Verizon Direct Testimony in West Virginia Case No. 08-0298-T-PC at lines 172-74 (filed Sept. 9, 2008), *available at* http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=248548&NotType='WebDocket ("Verizon has agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC"). Similar statements are repeated in testimony filed by Verizon in other states. In Texas, the Arbitrators raised the issue on their own motion; Verizon did not affirmatively raise the issue.

specifically stated that there were none.[31] The Commission's jurisdiction to arbitrate is specifically limited to the issues raised by the petitioner (*i.e.*, Intrado Comm) and any additional issues identified by the respondent (*i.e.*, Verizon).[32]

Verizon is wrong that Intrado Comm's right to Section 251(c) "is necessarily an issue" in this proceeding because Intrado Comm's preemption request was based on that issue.[33] Intrado Comm's preemption request was filed ***before*** the Parties reached agreement that the 251(c) issue would not be presented for arbitration. Moreover, Intrado Comm never requested that the Commission "apply a similar determination" to that in the Embarq proceeding with respect to this issue as Verizon claims.[34] Intrado Comm's request for "similar" treatment was a request for Intrado Comm's ***preemption*** request in the Verizon proceeding to be treated similarly to Intrado

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[31] Verizon Response at 7.

[32] 47 U.S.C. § 252(b)(4)(A). There is no merit to Verizon's argument that Intrado Comm is not entitled to arbitration outside of Section 251(c). *See* Verizon Response at 4. While Intrado Comm is entitled to interconnection under 251(c), arbitration is permitted for provisions outside of 251(b) and 251(c) in certain circumstances. *See, e.g., Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) ("where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original); Ohio Case No. 08-537-TP-ARB, *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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*Ohio CBT Rehearing Award*") ("The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements."); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc*., Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

[33] Verizon Statement of Relevant Authority at 4.

[34] Verizon Statement of Relevant Authority at 4.

Comm's preemption request in the Embarq proceeding. The "virtually identical issues" identified by the Bureau between the two proceedings was the Virginia commission's failure to act, not whether Intrado Comm is entitled to Section 251(c).[35]

Thus, there is no basis for inclusion of this issue in Intrado Comm's arbitration proceeding with Verizon. Nonetheless, Intrado Comm is entitled to interconnect with Verizon pursuant to Section 251(c) for Intrado Comm's provision of competitive 911/E-911 services to Virginia PSAPs because competitive 911/E-911 services to PSAPs are "telephone exchange services" for purposes of Section 251(c)(2)(A) of the Act.[36]

Congress defined "telephone exchange service" in two ways, and a service may satisfy either part of the definition to be considered a telephone exchange service. A telephone exchange service under Part (A) of the definition must:

(1) furnish subscribers intercommunicating service;

(2) be within a telephone exchange or within a connected system of telephone exchanges within the same exchange area; and

(3) be covered by an exchange service charge.[37]

A telephone exchange service under Part (B) of the definition must:

(1) be a comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof);

(2) originate and terminate a telecommunications service; and

(3) provide subscribers the ability to intercommunicate.[38]

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[35] *Cf.* Verizon Statement of Relevant Authority at 4-5.

[36] Intrado Comm acknowledges that its competitive 911/E-911 service offering is not an "exchange access" service as defined in the Act.

[37] 47 U.S.C. § 153(47)(A).

The purpose for including the "telephone exchange service" limitation in 251(c) should not be forgotten or overlooked. It does not exist to require an analysis of each local service offered by a carrier, but rather was included to ensure long distance carriers did not attempt to avail themselves of 251(c) interconnection in an effort to circumvent access charges.[39] Congress balanced the stick of 251(c) – additional obligations necessary to ensure equal bargaining power for the opening of local markets – with the carrot of the right of ILECs to provide long distance service under Section 271.[40] Now that Verizon has the rights of 271, it seeks to further limit its obligations under 251(c) to promote competition for a local service where no competition exists today.

As explained below, Intrado Comm's competitive 911/E-911 service to PSAPs meets the standards of both parts of the federal definition. 911/E-911 service to PSAPs is a telephone exchange service when Verizon provides it to its PSAP customers[41] and it is a telephone exchange service when Intrado Comm provides it. The Commission has stated that a service is a telephone exchange service if it:

- "provides customers with the capability of intercommunicating with other subscribers;"[42]
- "permits a community of interconnected customers to make calls to one another;"[43]
- allows for "'intercommunication' among subscribers within a local exchange area;"[44]

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[38] 47 U.S.C. § 153(47)(B); *see also Advanced Services Order* ¶ 30 (finding "intercommunication" is required under Part (B) even though the language of the Act does not state it).

[39] *Local Competition Order* ¶ 188.

[40] *Local Competition Order* ¶ 55.

[41] Verizon's 911/E-911 service to PSAPs is located in its general exchange tariff and is classified as a "business exchange service" in the tariff. *See* Verizon Virginia Inc. Miscellaneous Service Arrangements Tariff, 14A. Emergency 911 Services, Original Page 10 (effective July 1, 2005).

[42] *Advanced Services Order* ¶ 23.

[43] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended,* 16 FCC Rcd 2736, ¶ 17 (2001) ("*DA Call Completion Order*).

- includes any "means of communicating information within a local area;"[45]
- "permit[s] communications among subscribers within an exchange or within a connected system of exchanges;"[46]
- "'allows a local caller at his or her request to connect to another local telephone subscriber;'"[47] and
- permits "the provision of individual two-way voice communication by means of a central switching complex to interconnect all subscribers within a geographic area."[48]

Intrado Comm's service meets the requirements found in each of these Commission pronouncements, and Verizon's arguments to the contrary should be rejected.

Intercommunication/Originate and Terminate. The Commission has stated "a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area."[49] A service satisfies the "intercommunication" requirement "as long as it provides customers with the capability of intercommunicating with other subscribers."[50] Intrado Comm's competitive 911/E-911 service allows its PSAP customers to communicate with Intrado Comm's other PSAP customers and Verizon's customers. It allows Virginia consumers to make calls to PSAPs and communicate with local emergency personnel. Thus, Intrado Comm's service "permits a community of interconnected customers to make calls to one another."[51] This

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[44] *Advanced Services Order* ¶ 30.

[45] *Advanced Services Order* ¶ 17.

[46] *Advanced Services Order* ¶ 20.

[47] *DA Call Completion Order* ¶ 21.

[48] *Advanced Services Order* ¶ 20.

[49] *Advanced Services Order* ¶ 30.

[50] *Advanced Services Order* ¶ 23.

[51] *DA Call Completion Order* ¶ 17.

interconnected community consists of 911 callers, PSAPs, and first responders located in the relevant geographic area.[52]

For example, a PSAP may receive a 911 call and then "hookflash" to obtain a dial tone and originate a bridged call to a third-party and then connect the originating 911 caller to the third party. In that case, the PSAP can pick up the phone, obtain a dial tone, and originate a call to a third-party. Despite Verizon's arguments to the contrary,[53] the concept of "hookflash" in the 911 environment to initiate a call is no different than what occurs on a daily basis in a typical office environment when calls are transferred (the person transferring the call obtains dial tone to transfer the call to someone else) or when conferencing capabilities are used (the person seeking to initiate a conference obtains dial tone and dials the third-party number). It is not the 911 caller originating the call, it is the PSAP.[54]

Intrado Comm's service is not "one-way."[55] Intrado Comm's network provides for the capability of two-way communications between 911 callers and emergency responders, and allows Intrado Comm's public safety agency customers to originate and terminate communications. The key consideration, however, is whether there is two-way communications, not two-way traffic.[56] Intrado Comm's 911 service nonetheless satisfies both. It is also very important to note that 911 trunks are generally required under state law to be deployed as one-

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[52] *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, n.32 (2005) ("*VoIP E911 Order*") ("unlike normal phone calls, 911 calls are routed based on the calling number (which is linked to a particular geographic area and political jurisdiction), not the called number").

[53] Verizon Statement of Relevant Authority at 11-12.

[54] *Cf.* Verizon Statement of Relevant Authority at 12.

[55] *Cf.* Verizon Statement of Relevant Authority at 5.

[56] *Advanced Services Order* ¶ 20 (the FCC "has long interpreted the traditional telephone exchange definition to refer to 'the provision of individual two-way voice communication by means of a central switching complex to interconnect all subscribers within a geographic area'").

way trunks.[57] Indeed, the ILECs have engineered their 911 services to PSAPs using one-way trunks for what are obvious public safety reasons. While those trunks can support two-way communications and are capable of being used for two-way traffic purposes, they are generally legally required to be engineered as one-way for a very good reason - they are 911 trunks.

The ability of Intrado Comm's 911 service to permit two-way communication between a PSAP and a 911 caller or between a PSAP and another PSAP as described above[58] is also similar to directory assistance ("DA") call completion services, which have been determined to be telephone exchange service.[59] The Commission reasoned that DA call completion service allows a "local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call."[60] Thus, while the call completion service offered by the directory assistance provider "may not take the form of an ordinary telephone call (*i.e.*, one initiated by LEC provision of dial tone), [it] nonetheless 'allows a local caller at his or her request to connect to another local telephone subscriber.'"[61] The same analogy applies for 911/E-911 services.

Within a Telephone Exchange or Exchange Area. Intrado Comm's service is not required to operate within ILEC exchange boundaries to qualify as telephone exchange service.[62] The concept of an exchange "is based on geography and regulation" not exchange boundaries.[63] In fact, the Commission has found that the telephone exchange service definition "does not

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[57] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(d).

[58] *Advanced Services Order* ¶ 20; *DA Call Completion Order* ¶ 20.

[59] *DA Call Completion Order* ¶ 16 (finding DA call completion services met both prongs of the "telephone exchange service" definition).

[60] *DA Call Completion Order* ¶ 20.

[61] *DA Call Completion Order* ¶ 21.

[62] Verizon Statement of Relevant Authority at 10.

[63] *Advanced Services Order* ¶ 22.

require a specific geographic boundary."[64] For that reason, the Commission determined that wireless providers' geographic service areas, which are different from typical wireline exchange area boundaries, were considered to be "within a telephone exchange" or "a connected system of telephone exchanges within the same exchange area" for purposes of the Act's definition of "telephone exchange service."[65]

Telephone exchange service includes any "means of communicating information within a local area"[66] and involves "a central switching complex which interconnects all subscribers within a geographic area."[67] Intrado Comm's 911/E-911 service uses selective routers (*i.e.*, switches) to interconnect PSAPs and 911 callers located in the same geographic area. Geographic or "local areas" are not necessarily based on ILEC exchange boundaries. It is for this reason that expanded area service ("EAS") and expanded local calling service ("ELCS") have developed to ensure all members of a "community of interest" can reach other subscribers without incurring a toll charge.[68] 911 service works in the same way – 911 callers and PSAPs in a community of interest can reach each other regardless of the existing designated ILEC exchange areas.

Moreover, ILEC exchange boundaries are inapplicable to 911/E-911 services. The Commission and the federal district court overseeing the Modified Final Judgment recognized

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[64] *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 30 (1998) ("*BellSouth Louisiana II Order*").

[65] *BellSouth Louisiana II Order* ¶ 30.

[66] *Advanced Services Order* ¶ 17.

[67] *BellSouth Louisiana II Order* ¶ 28.

[68] *See generally Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, 12 FCC Rcd 10646 (1997).

that many 911/E-911 "transmissions cross LATA boundaries."[69] The district court specifically waived the LATA restrictions to ensure the Bell Operating Companies ("BOCs") could "provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary,"[70] thus allowing "the BOCs to provide multiLATA 911 services, including E911 services."[71] The Commission also recognized that selective routers often serve 911 callers and PSAPs in more than one LATA.[72] Thus, there is no requirement that Intrado Comm's service offering be based on Verizon's exchange boundaries to qualify as a telephone exchange service under the Act.

Exchange Service Charge. Whether an "exchange service charge" is imposed on end users dialing 911 has no bearing on Intrado Comm's competitive 911/E-911 service to be provided to Virginia public safety agencies.[73] Intrado's customer – the Virginia public safety agency – will be subject to an "exchange service charge" for its receipt of a telephone exchange service from Intrado Comm. With respect to the services at issue in the *Advanced Services Order*, the Commission determined "that any charges" assessed for the service would be considered the "exchange service charge."[74] Intrado Comm's service meets this element of the definition because Intrado Comm's PSAP customers will obtain "the ability to communicate

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[69] *Bell Operating Companies; Petitions for Forbearance form the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 20 (1998) ("*Forbearance Order*").

[70] *United States v. Western Elec. Co*., Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984).

[71] Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991).

[72] *Forbearance Order* ¶ 9.

[73] *Cf.* Verizon Statement of Relevant Authority at 13.

[74] *Advanced Services Order* ¶ 27.

within the equivalent of an exchange area as a result of entering into a service and payment agreement with" Intrado Comm.[75]

Further, the Commission has stated that the "exchange service charge" portion of the definition "comes into play only for the purposes of distinguishing whether or not a service is local."[76] The jurisdictional nature of 911/E-911 service is not at issue here. 911/E-911 services to PSAPs are routinely included in intrastate tariffs and the Parties have agreed that no form of intercarrier compensation applies to their exchange of 911/E-911 calls. Accordingly, Intrado Comm's competitive 911/E-911 service satisfies the exchange service charge prong of the definition.

Other State Commission Determinations. Intrado Comm's competitive 911/E-911 service has the same qualities as other services deemed to be telephone exchange services by other state commissions. In 2000, Intrado Comm's predecessor (SCC Communications) sought to interconnect with AT&T in Texas, Illinois, and California. In response to AT&T's motions to dismiss in all three states, in which AT&T argued that Intrado Comm was not entitled to 251(c) interconnection because it did not offer telephone exchange service, the Illinois commission[77] as well as arbitrators in Texas[78] and the California Public Utilities Commission[79] found that SCC did offer telephone exchange service and therefore was entitled to interconnection under 251(c).

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[75] *Advanced Services Order* ¶ 27.

[76] *Advanced Services Order* ¶ 27.

[77] Illinois Docket No. 00-0769, P*etition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision (Mar. 21, 2001) ("*Illinois SCC Order*").

[78] Texas Docket No. 23378, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with SBC Communications*, Order No. 8 Denying Motion to Dismiss (Jan. 4, 2002) ("*Texas SCC Order*").

[79] California Decision No. 01-09-048, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc*., Opinion Affirming Final Arbitrator's Report and Approving Interconnection Agreement (C.P.U.C. Sept. 20, 2001) ("*California SCC Order*").

While SCC offered a different type of service than Intrado Comm now plans to offer, many of those earlier findings are relevant to Intrado Comm's planned competitive 911/E-911 service offering to PSAPs in Virginia.

Specifically, the Illinois commission determined that the SCC service at issue in 2000 was a telephone exchange service for the purpose of 251(c) because: (1) a telephone exchange service includes non-traditional means of communication; (2) a service that transports and enhances a 911 call is a service that transmits between or among points specified by the user within the meaning of "telecommunications" under the Act; and (3) a service that transports a portion of an emergency or 911 call falls within the definition of telephone exchange service.[80] These qualities similarly apply to Intrado Comm's planned competitive 911/E-911 service to Virginia public safety agencies. Indeed, Staff of the Illinois commission recently found in Intrado Comm's pending arbitration proceeding with AT&T that the previous findings of the Illinois commission with respect to SCC apply to Intrado Comm's planned service offering and AT&T has not "provided persuasive arguments to cause the [Illinois] Commission to depart form[sic] or alter its previous decision on this matter."[81]

Further, the Texas arbitrators found that SCC's service would "both transmit and route 9-1-1 calls, which calls are telephone exchange service and/or exchange access" for which the ILEC was under an obligation to provide interconnection.[82] Likewise, the California commission determined that SCC's service was a telephone exchange service for the purpose of Section 251(c) because the service: (1) enables subscribers to "intercommunicate" within a

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[80] *Illinois SCC Order* at 5-6.

[81] Illinois Docket No. 08-0545, Initial Brief of the Staff of the Illinois Commerce Commission at 10 (filed Jan. 5, 2009), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0545&docId=132320.

[82] *Texas SCC Order* at 11-12.

telephone exchange; (2) allows citizens dialing 911 to conduct a two-way voice communication with a person at the PSAP; (3) fulfills the requirement to allow origination and termination of calls as set forth in the definition of telephone exchange service; and (4) allows intercommunication even though SCC is not the dial tone provider.[83] Again, each of these findings equally applies to Intrado Comm's planned service in Virginia.

In addition, the Ohio commission specifically determined that Intrado Comm's competitive 911/E-911 service to PSAPs is a telephone exchange service. The Ohio commission found that "Intrado is a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of 1996 Act" when Intrado Comm offers its competitive 911/E-911 service offering to PSAPs.[84] This is consistent with the recommendation by the Public Staff of the North Carolina Utilities Commission ("Public Staff") in Intrado Comm's pending arbitration proceeding with AT&T that the full North Carolina commission find Intrado Comm's competitive 911/E-911 service to PSAPs constitutes telephone exchange service pursuant to Section 251 of the Act because such a finding is supported by the Commission's *Advanced Services Order* and the fact that "AT&T itself has treated 911/E911 service or other service with similar characteristics as telephone exchange services."[85] The Public Staff further recommended that AT&T be required to offer interconnection to Intrado

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[83] *California SCC Order* at 9.

[84] Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) ("Order on Rehearing (Apr. 2, 2008) ("*Ohio Certification Rehearing Order*").

[85] NCUC Docket No. P-1187, Sub 2, *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 BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Proposed Recommended Arbitration Order of the Public Staff at 9 (filed Oct. 10, 2008) ("NCUC Public Staff Proposed Order"), *available at* http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=2AAAAA78280B&parm3=000127996.

under Section 251(c) of the Act.[86] The Commission should make the same findings here.

Commercial Agreements Undermine the Commission's Jurisdiction. Competitors are entitled to interconnect with ILECs pursuant to 251(c).[87] Intrado Comm is a competitor and Verizon is an ILEC, yet Verizon claims Intrado Comm is the one competitor that should be denied its 251(c) rights.[88] The "commercial agreement" proposed by Verizon[89] will not provide Intrado Comm with the interconnection necessary for Intrado to "compete directly with the [ILEC] for its customers and its control of the local market."[90] Nor would a commercial agreement provide the Commission with the necessary oversight of 911 arrangements. There is no requirement that commercial, non-251 agreements be filed with state commissions, be subject to state commission review or oversight, or be publicly available for other carriers to review. Adoption of Verizon's position would therefore eliminate the Commission's ability to oversee the competitive deployment of and provision of 911 services to Virginia public safety agencies.

Verizon's position is also contrary to other state commission findings that the public interest requires competitive 911/E-911 system providers like Intrado Comm to be subject to common carrier regulation because "of the utmost importance that the continuance and quality of a 9-1-1 call be preserved and enhanced."[91] As "a matter of public safety," the Illinois commission determined that competitive 911/E-911 services should be regulated because the

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[86] NCUC Public Staff Proposed Order at 10-11.

[87] *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*") (stating that ILECs are required by Section 251(c)(2) to allow competitors to interconnect while interconnection arrangements between "non-incumbent carriers" are governed by Section 251(a)).

[88] Verizon Statement of Relevant Authority at 13.

[89] Verizon Statement of Relevant Authority at 1.

[90] *Local Competition Order* ¶ 55.

[91] *Illinois SCC Order* at 8.

"public interest is protected when [Intrado Comm's] services are regulated."[92] The Illinois commission's previous findings are on par with those of the Public Utilities Commission of Ohio, which noted "the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provision of 9-1-1 service."[93] Adoption of Verizon's position would violate the Ohio commission's determination that state commission "oversight and resolution of disputes raised in [an arbitration] proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service."[94]

In a similar situation, the Indiana Regulatory Utility Commission recently determined that a private, commercial agreement between various Verizon entities and INdigital Telecom is an interconnection agreement subject to the requirements of Section 252 of the Act.[95] INdigital sought interconnection with Verizon to provide competitive 911/E-911 services to Indiana public safety agencies. After an interconnection dispute, INdigital and Verizon entered into a private, commercial agreement that was not filed with the Indiana commission or subject to review by other competitors. Intrado Comm challenged the private nature of the agreement, and the Indiana commission agreed that the agreement should be filed with the commission and subject to public review. Specifically, the Indiana commission found that the agreement between Verizon and INdigital "contains precisely the types of information typically contained in 47

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[92] *Illinois SCC Order* at 8.

[93] *Ohio Certification Order* at Finding 7.

[94] *Ohio Embarq Arbitration Award* at 15.

[95] Indiana Cause No. 43277, *Complaint of Communications Venture Corporation d/b/a INdigital Telecom ("INdigital") against Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively "Verizon") Concerning the Refusal of Verizon to Allow Connection of INdigital's Wireless Enhanced 911 Telephone System Serving Public Safety Answering Points, and INdigital's Request for the Indiana Utility Regulatory Commission to Order the Connection under Reasonable Terms, Conditions, and Compensation*, Final Order (Nov. 20, 2008) ("*Indiana INdigital Order*").

U.S.C. 252 agreements: selective routing of traffic, purchase of trunks, port charges and terms of compensation, among others."[96]

Finally, the use of a commercial arrangement between Verizon and Intrado Comm would also hinder other competitors' ability to compete with Verizon in the provision of 911/E-911 services to PSAPs.[97] As the Indiana commission found, the lack of public filing would "thwart the public availability requirements for such agreements contained in federal law."[98] Public availability of agreements between ILECs like Verizon and competitors like Intrado Comm serves the underlying purposes of Sections 251/252 to guard against discrimination and ensure Intrado Comm (and all other competitors) receives interconnection from Verizon that is "equal in quality" to the interconnection Verizon provides to itself and other carriers. Having the opportunity to review agreements gives a state commission and potential competitors "a starting point for determining what is 'technically feasible' for interconnection," such as the types of standards and operational procedures in place between carriers."[99] Accordingly, Verizon's proposed use of a "commercial" agreement should be rejected.

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96 *Indiana INdigital Order* at 9.

97 *Cf. Local Competition Order* ¶ 168.

98 *Indiana INdigital Order* at 9.

99 *Local Competition Order* ¶ 167.

II. 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

ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH OTHER

Verizon's attempt to offhandedly dismiss the POI and dedicated trunking arrangements it has established within its own network for 911/E-911 traffic should be rejected. Intrado Comm is not seeking terms or conditions that "violate" established law or existing industry practices.[100] Intrado Comm's POI and direct trunking proposal reflects the requirements of the law; the way in which Verizon compels CLECs to interconnect with Verizon's network to reach Verizon's PSAP customers; the manner in which Verizon provides 911/E-911 services today between its own 911 calling customers and PSAP customers; and industry-accepted practices. All of these sources support the establishment of the POI for the exchange of 911/E-911 calls at the selective router of the carrier serving the PSAP and delivering 911/E-911 calls over dedicated direct trunks to the selective router serving the PSAP. For example:

- Intrado Comm seeks to have Verizon establish two (2) POIs on Intrado Comm's network when Intrado Comm is the designated 911/E-911 service provider for the termination of 911/E-911 calls destined for Intrado Comm's PSAP customers.[101] The Commission's rules recognize that the selective router is the "cost allocation" point for the exchange of 911/E-911 traffic.[102] Verizon also recognizes that the ILEC-established industry practice is that the POI for connecting to the 911/E-911 network is at the selective router,[103] and Verizon requires the same arrangement when it is the designated 911/E-911 service provider.[104]

- Intrado Comm proposes the use of dedicated trunking from Verizon's end offices to Intrado Comm's selective router to carry 911/E-911 calls destined for Intrado Comm's

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[100] Verizon Statement of Relevant Authority at 3.

[101] Intrado Comm Statement of Unresolved Issues at 6.

[102] *King County Order* ¶ 1.

[103] Intrado Comm Statement of Unresolved Issues at 7.

[104] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

PSAP customers.[105] Verizon recognizes that dedicated trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E-911 network,[106] and Verizon implements the same arrangements when it is the designated 911/E-911 service provider.[107]

- Intrado Comm proposes the establishment of two geographically diverse POIs to ensure redundancy in the 911/E-911 network.[108] Verizon similarly uses "mated" or "paired" selective routers in its network to establish diversity and redundancy within its own 911/E-911 network, and has established dedicated trunks to each selective router. Verizon also requires competitors to interconnect at ***both*** selective routers to terminate 911/E-911 traffic to Verizon's PSAP customers.[109]

- Intrado Comm proposes the use of diversely routed trunks between the switch originating the 911 call (*i.e.*, Verizon's end office) and the selective router serving the PSAP (*i.e.*, Intrado Comm's selective router).[110] Verizon requires CLECs to provide a minimum of two dedicated trunks to each Verizon selective router to send their end users' 911 calls to Verizon's PSAP customers.[111]

- Intrado Comm's language does not dictate a specific method for Verizon to use to route its end users' 911 calls to the appropriate Intrado Comm selective router, only that Verizon use dedicated trunks to do so. Verizon likewise does not require CLECs to use a specific method to determine to which selective router a 911 call should be delivered. Rather, the interconnection agreement merely states that the CLEC is required to deliver its end users' 911 calls to the "designated" selective router.[112]

Intrado Comm's network architecture proposal is not "novel" as Verizon claims.[113] Nor are Intrado Comm's proposed interconnection arrangements different from those Verizon and other

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[105] Intrado Comm Statement of Unresolved Issues at 20.

[106] Intrado Comm Statement of Unresolved Issues at nn.62, 63.

[107] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

[108] Intrado Comm Statement of Unresolved Issues at 11.

[109] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

[110] Intrado Comm Statement of Unresolved Issues at 11.

[111] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

[112] Verizon Template Interconnection Agreement at 911 Attachment § 3.2 (Attachment 5 to Intrado Comm VSCC Petition for Arbitration).

[113] Verizon Statement of Unresolved Issues at 15.

911/E-911 service providers use today.[114] It is just the opposite. Intrado Comm's proposal is entirely consistent with industry network interconnection arrangements as implemented by Verizon within its own network for service to its own customers and those interconnection arrangements established by Verizon for other carriers seeking to terminate 911/E-911 calls to Verizon's PSAP customers.

Verizon's reliance on Intrado Comm's arbitration decision with Embarq from the Ohio commission is also misplaced and inaccurate.[115] Importantly, the Ohio commission adopted Intrado Comm's POI proposal finding that the POI should be located at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm is responsible for delivering its 911/E-911 calls to an Intrado Comm selective router location.[116] Specifically, the Ohio commission determined

> the point of interconnection to the wireline E9-1-1 network is at the selective router of the E9-1-1 network provider and consistent with the FCC's findings [in the *King County Order*], each party bears the cost of getting to the point of interconnection.[117]

The Ohio commission further determined that, in order to maintain this form of interconnection in a competitive market for 911 services to PSAPs, Section 251(a) along with its broad authority over 911 service supported the adoption of Intrado Comm's proposed interconnection arrangements.[118]

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[114] Verizon Statement of Unresolved Issues at 14.

[115] Verizon Statement of Relevant Authority at 20.

[116] *Ohio Embarq Arbitration Award* at 33.

[117] *Ohio Embarq Arbitration Award* at 33.

[118] *Ohio Embarq Arbitration Award* at 15. The Ohio commission correctly found that it had authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c). *See id.*; *see also Ohio CBT Rehearing Award* at 11-12 ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251

Further, the dedicated trunking issue before the Ohio commission was framed differently than the issue presented to this Commission for arbitration. Embarq had agreed during the parties' negotiations to deploy dedicated trunking from its end offices to Intrado Comm's selective router in situations in which the entire end office is served by the same PSAP.[119] AT&T also has agreed in its interconnection negotiations with Intrado Comm to the same arrangement.[120] In fact, out of the major ILECs from which Intrado Comm is seeking interconnection throughout the United States, Verizon is the only one to refuse to implement dedicated trunking with Intrado Comm for end offices served by a single PSAP. In addition, under Intrado Comm's proposed language in this proceeding, to the extent Verizon cannot determine on which dedicated trunk to place its end users' 911/E-911 calls, the Parties would work with the affected PSAPs to determine the best arrangement in the case of a split rate center.[121] Thus, Verizon's description of the Ohio commission's arbitration decision regarding Intrado Comm and Embarq is inaccurate and should be given no weight.

Verizon is also wrong that other carriers in Virginia will be disadvantaged by Intrado Comm's interconnection architecture proposal.[122] CLECs and other carriers in Virginia will have numerous options for reaching Intrado Comm's PSAP customers in Virginia. Many voice service providers have regional or nationwide footprints. Intrado Comm plans to deploy at least

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agreements. . . . the Commission has the authority and the requirement to consider Section 251(a) where it is applicable").

[119] *Ohio Embarq Arbitration Award* at 30. The issue in dispute between Intrado Comm and Embarq was whether dedicated trunking from Embarq's end offices was required to be used in a split rate center situation, *i.e.*, when an end office is served by more than one PSAP.

[120] *See, e.g.*, Ohio Case No. 07-1280-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with the Ohio Bell Telephone Company d/b/a AT&T Ohio*, AT&T Ohio's Initial Post-Hearing Brief at 21 (filed Oct. 30, 2008). Intrado Comm and AT&T, however, continue to dispute whether AT&T is required to deploy dedicated trunking from its end offices when an end office is served by more than one PSAP.

[121] Intrado Comm Petition at Attachment 3, 911 Attachment § 1.3.2.3.

[122] Verizon Statement of Unresolved Issues at 5-6.

two, and possibly more, selective routers in every state in which Intrado Comm offers service, including Virginia.[123] By connecting to any Intrado Comm selective router, a carrier can reach any PSAP connected to Intrado Comm's network. As an example, interconnecting to Intrado Comm's selective routers in Florida will still permit 911 call delivery to one of Intrado Comm's PSAP customers in Virginia. This means that Verizon, a CLEC, or any other carrier could choose to connect to any two Intrado Comm Intelligent Emergency Network® access ports anywhere in Intrado Comm's nationwide network to reach a Virginia PSAP and all other PSAPs served by Intrado Comm throughout the country. Given that Verizon, its affiliates, and many other carriers provide services throughout the nation, interconnecting outside of Virginia may be more efficient for many providers. In either case, however, there will be at least two geographically diverse Intrado Comm selective routers located in Virginia at which Verizon, CLECs, and other carriers can interconnect with Intrado Comm to deliver 911/E-911 calls destined for Intrado Comm's Virginia PSAP customers. Verizon's concerns about the impact of Intrado Comm's proposals on other carriers are misplaced and not relevant to its interconnection arrangement with Intrado Comm.[124]

Further, Verizon's so-called concerns are not justification for Verizon's planned use of tandem transit arrangements to send 911/E-911 service traffic to Intrado Comm.[125] Transit

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[123] Verizon is wrong when it claims that Intrado Comm's language would allow Intrado to choose as many POIs as it wishes. *See* Verizon Statement of Unresolved Issues at 4. Intrado Comm has informed Verizon and put on the record in numerous states that it intends to place a minimum of two selective routers in each state in which it offers 911/E-911 service. This includes Virginia. The Parties' interconnection agreement also makes clear that the agreement applies to the Commonwealth of Virginia, not other states. *See* Intrado Comm Petition at Attachment 3, General Terms and Conditions § 43.1. Thus, there is no merit to Verizon's claim that the POIs will be outside of Virginia. While there will be additional POIs available to Verizon outside of Virginia, there will be at least two available in Virginia.

[124] *Cf.* Verizon Statement of Relevant Authority at 24 (arguing that a Section 251(c) agreement is limited to matters between Intrado Comm and Verizon and does not bind third parties).

[125] Verizon Statement of Unresolved Issues at 6.

arrangements are not used for 911/E-911 service traffic. In today's environment, competitive carriers must deploy dedicated trunks to all of Verizon's selective routers and route their 911 calls to the appropriate Verizon served PSAP. There is a good reason for using such an arrangement and it makes no sense to alter this sensible network arrangement designed by Verizon presumably to increase the odds of saving lives. Verizon's proposal is inconsistent with its own treatment of 911/E-911 service calls and should be rejected.[126]

Further, in its public filings to the Commission, Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement. As Verizon's filings state, "nothing in the Act requires Verizon to accept any CLEC traffic that is destined for another carrier (such as another CLEC or a non-Verizon ILEC)" and thus Verizon only "voluntarily provides these services."[127] A service as important as 911 should not be relegated to "voluntary" transit service arrangements that, in Verizon's view, it is under no obligation to provide.

Transit service arrangements are simply inapplicable to 911/E-911 service traffic. Verizon utilizes dedicated trunking within its own network for 911/E-911 service traffic and requires competitors seeking to terminate 911 calls to Verizon's PSAP customers to also use dedicated trunking to deliver 911 calls to Verizon's selective routers. Imposing a different type of interconnection arrangement on Intrado Comm is discriminatory and violates Intrado Comm's right to interconnection arrangements that are equal in quality to those Verizon provides itself or any other carrier.[128]

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[126] *See, e.g.*, Ohio Case 08-198-TP-ARB, Hearing Transcript at 106-13 (Jan. 13, 2009) (set forth in Attachment 1).

[127] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of Verizon at 25, 26-27 (Nov. 5, 2001).

[128] 47 U.S.C. § 251(c)(2)(C).

Verizon's unsupported and unsubstantiated claims regarding the potential cost to implement Intrado Comm's interconnection proposals should also be rejected.[129] While Verizon claims Intrado Comm should be responsible for any "expensive" form of interconnection it requests,[130] Verizon has provided no evidence supporting its allegation that implementation of Intrado Comm's proposals would impose cost on Verizon. The sole consideration is whether Intrado Comm's interconnection proposals are technically feasible. Under the Commission's rules, the determination of technical feasibility does not include consideration of economic concerns.[131] Once Intrado Comm has demonstrated that its proposal is technically feasible, the burden shifts to Verizon to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that "specific and significant adverse impacts" would result from Intrado Comm's requested interconnection arrangement.[132] Verizon has not met that burden here and thus its unproven claims should be rejected.[133]

III. ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911 CALLS BETWEEN THE PARTIES

Verizon's objections to Intrado Comm's proposed inter-selective router language make no sense. *First*, for all of the reasons discussed above, the POI should be located on Intrado Comm's network when Intrado Comm is the designated 911/E-911 service provider.[134] When a 911/E-911 call needs to be sent to Intrado Comm's PSAP customer, Verizon should be required

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[129] Verizon Statement of Relevant Authority at 21.

[130] Verizon Statement of Relevant Authority at 25.

[131] 47 C.F.R. § 51.5 (defining technical feasibility).

[132] *Local Competition Order* ¶¶ 198, 203.

[133] For similar reasons as those set forth in this Section, Intrado Comm's proposed language for Issue 4 should also be adopted.

[134] Verizon Statement of Unresolved Issues at 8.

to transport that call to Intrado Comm's network consistent with industry practice and the 911 interconnection arrangements Verizon has implemented within its own network. Similarly, when a 911/E-911 call needs to be sent to Verizon's PSAP customer, Intrado Comm will transport that call to Verizon's network.

Second, Verizon claims that Intrado Comm is trying to force Verizon to implement inter-selective router capabilities regardless of whether any PSAP requested it.[135] Verizon's argument is contrary to the language of the interconnection agreement. The Parties have agreed to language indicating that inter-selective router trunking arrangements would be established between the Parties when each Party's customer ***agrees*** that 911 calls should be transferred between PSAPs served by each Party:

> Where the Controlling 911 Authority for a PSAP for which Verizon is the 911/E-911 Service Provider and the Controlling 911 Authority for a PSAP for which Intrado Comm is the 911/E-911 Service Provider agree to transfer 911/E-911 Calls from one PSAP to the other PSAP and each Controlling 911 Authority requests its 911/E-911 Service Provider to establish arrangements for such 911/E-911 Call transfers, each Party shall. . . .[136]

Verizon's claim that Intrado Comm can "force" Verizon to implement inter-selective router trunking without PSAP input is simply not true.[137]

Third, Verizon is wrong when it says call transfer capability does not "involve interconnection with the public switched telephone network."[138] The 911 network is interconnected to the PSTN as recognized by the Commission,[139] and a wireless or wireline 911 call originates on the PSTN. Moreover, origination on the PSTN is not the determination of

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[135] Verizon Statement of Unresolved Issues at 9.

[136] Intrado Comm Petition at Attachment 3, 911 Attachment § 1.4.1.

[137] Verizon Statement of Relevant Authority at 17.

[138] Verizon Statement of Relevant Authority at 17.

[139] 47 C.F.R. § 9.3 (defining wireline E-911 network); *see also VoIP E911 Order* ¶ 15.

whether a service is a telephone exchange service for the purposes of Section 251(c)(2). The Commission has explicitly stated that it "has never suggested that the telephone exchange service definition is limited to voice communications provided over the public circuit-switched network."[140] Rather, the Commission found that telephone exchange service includes "the provision of alternative local loops for telecommunications services, *separate from the public switched telephone network*, in a manner 'comparable' to the provision of local loops by a traditional local telephone exchange carrier."[141]

Fourth, Verizon has provided no support for its argument that Intrado Comm seeks an "excessive level" of dial plan information in the interconnection agreement.[142] Intrado Comm's proposed language could not be more straightforward:

> The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions, or deletions to their inter-PSAP transfer dial plans.[143]

Verizon admits that it provides dial plan information to other 911/E-911 service providers,[144] and Intrado Comm should be treated no differently.[145] It is for this reason that the West Virginia commission adopted Intrado Comm's position[146] and the Staff of the Illinois commission has recommended adoption of Intrado Comm's language based on their finding that Intrado Comm's

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140 *Advanced Services Order* ¶ 20.

141 *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 54 (1998) (emphasis added).

142 Verizon Statement of Unresolved Issues at 9.

143 Intrado Comm Petition at Attachment 3, 911 Attachment § 1.4.4.

144 Verizon Statement of Unresolved Issues at 9.

145 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51.305(a)(3).

146 Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award, at 16-17 (Nov. 14, 2008) ("*West Virginia ALJ Award*"), *approved by* Commission Order (Dec. 16, 2008).

language "seems reasonable and not 'excessive.'"[147] Accordingly, Intrado Comm's proposed language should be adopted.

IV. ISSUE 3: WHETHER THE FORECASTING PROVISIONS SHOULD BE RECIPROCAL

Verizon incorrectly assumes that the forecasting language is not necessary because there will be no 911 calls flowing from Intrado Comm to Verizon.[148] In fact, there are likely to be numerous 911 calls flowing between the Parties' networks. The huge popularity of mobile technologies, and future services such as 911 text messaging, will make it even more critical to ensure 911 calls reach the appropriate PSAP. Thus, it is likely that the number of calls transferred from Intrado Comm to Verizon will be significantly more than the occasional call Verizon predicts. Indeed, news articles support this position: "Cell phone 911 calls often get routed to the wrong 911 centers because of the location of cell phone towers. This leads to delays in sending help because operators have to figure out where a caller is and which police or fire department should respond, and then transfer the call to that jurisdiction."[149] Intrado Comm has a legitimate need for Verizon's trunk forecasts, which Staff of the Illinois commission agreed with when they recommended adoption of Intrado Comm's language because ***both Parties*** have "valuable information regarding trunking levels."[150] Accordingly, Intrado Comm's proposed language should be adopted.

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[147] Illinois Stewart Staff Testimony at 8, lines 179-80, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

[148] Verizon Statement of Unresolved Issues at 10.

[149] Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008.

[150] Illinois Stewart Staff Testimony at 9, lines 215-16, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

V. 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

Intrado Comm has not acknowledged that automatic location information ("ALI") is an information service when provided in conjunction with a complete 911/E-911 service as Verizon claims.[151] There are three integrated components that are necessary to provide 911/E-911 service – the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP. Under Commission precedent, *stand-alone* ALI may be viewed as an information service.[152] But Intrado Comm's request for ALI steering capabilities has nothing to do with stand-alone ALI functions. ALI steering is needed to ensure interoperability between the Parties' 911 networks as contemplated by Section 251(c).[153] The switching and transmission components would be useless without the ALI functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records. The Commission also has recognized that all of the various components come together to form an all-inclusive service offering known as the "wireline E-911 network."[154] The transfer of ALI information between the Parties is an integral component of the 911/E-911 service each Party provides to its PSAP customers and is therefore appropriate to include in the Parties' interconnection agreement.

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[151] Verizon Statement of Unresolved Issues at 18.

[152] *Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 17 (1998) ("*Forbearance Order*"). However, in a carrier-to-carrier relationship pursuant to Section 251, ALI databases are considered to be telecommunications services that ILECs are required to offer on an unbundled basis. *See* 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 557 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted).

[153] 47 U.S.C. § 251(c)(5).

[154] *VoIP E911 Order* ¶ 15 (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

Further, the existing commercial agreement between Intrado Comm's affiliate and Verizon does not address the arrangements Intrado Comm seeks here.[155] As an initial matter, Intrado Comm is not a party to that agreement and cannot avail itself of the provisions of that agreement. More importantly, that commercial agreement does not govern the exchange of 911/E-911 service traffic pursuant to Section 251(c) like the instant interconnection agreement under review by the Commission. Interoperability between the Parties' networks, including the exchange of ALI, is a key component of ensuring Virginia PSAPs have adequate call transfer capabilities and that Virginia consumers' 911 calls reach the appropriate PSAP. Accordingly, Intrado Comm's proposed language should be adopted.

VI. ISSUE 9: SHOULD SECTION 2.5 OF THE 911 ATTACHMENT BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO

Verizon is correct that whether a party has a right to deliver calls to a PSAP is a matter outside of the Section 251(c) interconnection agreement.[156] That is precisely why Intrado Comm has proposed deleting Verizon's language from the Parties' interconnection agreement.[157] Intrado Comm's position is consistent with the West Virginia commission's determination that Verizon's proposed language should be rejected, and if there is a legitimate reason for either Verizon or Intrado Comm to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the interconnection agreement.[158] Accordingly, Verizon's proposed language should be deleted.

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[155] Verizon Statement of Unresolved Issues at 18.

[156] Verizon Statement of Unresolved Issues at 21.

[157] Intrado Comm Petition at Attachment 3, 911 Attachment §§ 2.5, 2.6.

[158] *West Virginia ALJ Award* at 28.

VII. 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

The Verizon-proposed term "a caller" is too restrictive. Verizon recently admitted in Ohio that its proposed term is intended to limit 911 arrangements to "fixed line subscriber dial tone."[159] This limitation does not account for users of wireless services or interconnected Voice over Internet Protocol ("VoIP") services that may be dialing 911 to contact one of the Parties' PSAP customers. This so called "clarification"[160] is inconsistent with the types of 911/E-911 calls that will be exchanged between the Parties and should therefore be rejected.

[159] Ohio Case 08-198-TP-ARB, Hearing Transcript at 169-70 (Jan. 13, 2009) (set forth in Attachment 1).

[160] Verizon Statement of Relevant Authority at 28.

CONCLUSION

For the foregoing reasons and those set forth in Intrado Comm's Petition for Arbitration, Intrado Comm respectfully requests that the Commission arbitrate the outstanding issues identified herein and adopt Intrado Comm's position and proposed contract language.

Respectfully submitted,

INTRADO COMMUNICATIONS OF VIRGINIA INC.

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Dated: January 26, 2009

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 26th day of January 2009, I served a copy of the foregoing Reply on the following via the method indicated:

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Attachment 1

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 Verizon North, Inc.	Case No. 08-198-TP-ARB

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ARBITRATION PROCEEDINGS

before Mr. Jay Agranoff, Hearing Examiner, Mr. Mick Twiss, Mr. Chris Kotting, and Ms. Lori Sternisha, Staff Members, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, on Tuesday, January 13, 2009, at 10:00 a.m.

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- - -

dedicated. In other words, the trunk itself is going to the Verizon's selective router and it's only used for 9-1-1 traffic, but those facilities could be used for other trunks as well.

Q. Thank you. And I think that -- or would you agree that in most instances CLECs establish a point of interconnection for POTS traffic and multiple interconnection points specifically to reach Verizon's selective router and Verizon's PSAP customers?

A. I'm not sure of the specifics in Ohio but that is their option, to have multiple points of interconnection on Verizon's network.

Q. Would you agree that Verizon has designed its interconnection facilities to establish and maintain a certain technical and service quality level to ensure the most efficient, effective, and reliable 9-1-1 service for its PSAP customers and 9-1-1 callers?

A. I think that's the goal of everyone is to have service quality for 9-1-1. It's a very important issue.

Q. And at page 14 where you're

describing the interconnection arrangements of CLECs, these interconnection trunks that the CLECs are also part of your template language I guess, the dedicated circuits, those are either provided by the CLEC directly or they can purchase them from Verizon or they can purchase them from a third party, correct?

A. Correct. They could physically collocate in the Verizon wire center, they could use their own facilities, or purchase a third party's facilities.

Q. And at page 23, the interconnection arrangements Verizon has with ILECs, lines 497 to 500 just so you know where I'm at, for receiving 9-1-1 calls destined for Verizon PSAP customers, those interconnection arrangements are via meet point which is different than going all the way to the selective router that the CLEC has with Verizon; is that correct?

A. Yes. Verizon establishes, typically establishes meet-point arrangements with ILECs. Those arrangements, agreements predate the act. Normally they're not filed with the state commission and they're not exclusively used just

A. I could speculate on that, but I really wouldn't want to provide a legal analysis, if you will. So I don't know.

Q. And at page 39 of your testimony, starting at around line 881, Verizon appears to suggest that because all the carriers are already connected to Verizon, Verizon should continue to send all 9-1-1 calls from those carriers to Intrado Comm if it serves PSAPs; is that correct?

A. That would be an option. I think the point that I was trying to make here is that under Intrado's proposal, there is no option. Everyone must do direct trunking; and to the extent that a CLEC or wireless carrier who already has an existing arrangement or connections to a Verizon selective router, based on Intrado's proposal they would not have an option of routing that to Intrado through Verizon.

Q. Does Verizon transit 9-1-1 calls from CLECs to third-party carriers today?

A. I don't believe so but the word transit, I think we need to define the actual

call flow to make sure that I accurately answer the question.

Q. Okay. Verizon has a local tandem and we'll say cablevision is -- I don't know what the local cable company is here -- is collocated at the local tandem and Intrado is providing services to PSAPs in competition with Verizon and it is interconnected with Verizon, but cablevision and Intrado are not interconnected. Can cablevision send its 9-1-1 call to Verizon and have Verizon send the 9-1-1 call on to Intrado?

A. Is it -- I'm confused on Intrado's role. Are they a 9-1-1 service provider?

Q. Let's not talk about 9-1-1. Maybe it will be easier for you. It's the same scenario in either way. What you have are two carriers who are interconnected with Verizon but those two carriers have no existing relationship but they both have a relationship with Verizon. Verizon is the middleman. Carrier one sends a call to Verizon and says please send this call on to carrier third party that I don't have a relationship with.

A. Okay. That is what I would call a traditional transit arrangement for the exchange of local exchange traffic and, yes, that happens quite frequently.

Q. And how does that differ from what you have described on page 39?

A. Well, I think the difference is, first of all, on page 39 we're talking about 9-1-1 traffic as opposed to local exchange traffic, and secondly, Intrado, under their proposal, wants direct trunking or insists on direct trunking which would eliminate Verizon as being a middle tandem, if you will. And so the difference to me is with transit there's a relationship between Verizon and CLEC A and Verizon and CLEC B, and the two can pass traffic through Verizon tandem. I'm not sure that under Intrado's proposal for 9-1-1 arrangements that that would be able to occur.

Q. I understand what Intrado's proposal is but I want to talk about your proposal which appears to be set forth on line 883. It says "Verizon would no longer be able to transport 9-1-1 traffic from other carriers to

Intrado-served PSAPs, so those carriers would have no choice but to lease or build their own facilities." When you say Verizon would no longer be able to transport 9-1-1 traffic from other carriers to Intrado, I read that -- maybe I'm misreading it, that's why I'm asking you the question; that Verizon is sitting in the middle between other carriers and Intrado and you say Verizon would no longer be able to transport 9-1-1 traffic from other carriers to Intrado.

A. Yes.

Q. You would be the middleman?

A. Well, what I'm saying is that because Intrado requires direct trunking from Verizon end offices, CLECs and wireless carriers would not be able to route their traffic to Intrado over those dedicated trunk groups from Verizon end offices to Intrado.

Q. How about this, that the Ohio Public Utilities Commission declares that Intrado Communications needs to interconnect on Verizon network.

A. Okay. That would be a good decision.

Q. And I think that would be a bad decision, of course, but under that hypothetical.

A. Okay.

Q. Is it Verizon's intention then that it will then be the middleman between all of the carriers in the market that it has interconnection agreements with today because it is the only provider of service to public safety answering points and Intrado, and it will have those carriers or offer to those carriers the ability to direct all of their 9-1-1 calls to Verizon for transiting to Intrado who is interconnected with Verizon?

A. There's two separate issues. The POI on Verizon's network would just define where the POI is; but there's the other issue that Intrado is insisting on direct trunking from Verizon end offices. So I believe that even though the POI on Verizon's network is a very important issue, likewise, the issue that I think impacts this so-called transiting arrangement, or is associated with that, would be the direct trunking issue.

Q. Okay. Let's say Verizon gets everything that it wants.

A. Okay.

Q. When Verizon says -- and I understand this to be a complaint by Verizon in your testimony. You're telling the Commission Verizon will no longer be able to transport 9-1-1 traffic from other carriers to Intrado-served PSAPs. Of course, the scenario does not exist today, but if you got exactly what you wanted, am I reading this correctly that it's your intention, Verizon's intention that it needs to be able and should be able to transit 9-1-1 calls from all the carriers that are interconnected with it to the competitive PSAP-provider Intrado?

A. Verizon would have that ability and option to do that and offer that option to the CLECs and the wireless carriers, yes.

Q. And you charge for transit services today, don't you?

A. For local exchange traffic through Verizon tandem to another CLECs there are compensation arrangements for transit traffic,

yes.

Q. Okay, thank you. On page 33 to the top of page 34 beginning at lines 761, Verizon indicates "as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 9-1-1 selective routers are located." So it's Verizon's position that it gets to designate where the points of interconnection shall be, and those points of interconnection shall be at all five selective routers, correct?

A. I think it's Verizon's position here that the POI for 9-1-1 traffic has to be on Verizon's network, and it is up to the carrier to determine that POI on Verizon's network at any technically feasible location.

Q. A couple follow-up questions on the transit issue. Is there anything in the act that requires Verizon to accept CLEC traffic that's destined for another carrier?

A. I believe that would be, again, kind of a legal type of an analysis, but Verizon does offer transit services to CLECs and wireless carriers in its interconnection agreements.

Q. And Verizon supports the provision of transit services by incumbent local exchange carriers to CLECs; is that correct?

A. Again, we voluntarily offer it, but we also have the caveat, if you will, that to the extent that Verizon has tandem exhaust issues, that we should also have the ability to manage and care for our tandems and our network exhaust issues as well as the pricing associated with transit rates.

Q. Thank you. Page 39 -- oh, wait. We can skip that.

MS. KISER: I have no further questions for this witness.

HEARING EXAMINER AGRANOFF: Anything else on redirect?

MR. TOWNSLEY: Yes, just a question or two, Your Honor.

- - -

REDIRECT EXAMINATION

By Mr. Townsley;

Q. Mr. D'Amico, Ms. Kiser asked you some questions about transiting. Do you recall those questions?

A. I'm sorry. Where exactly is that?

Q. It's line 2039.

A. 2039?

Q. Yeah. Page 85.

A. We believe "a caller" just adds more clarity as an exchange and, again, this is within the scope of an exchange, a local exchange subscriber which we serve as a local exchange carrier, that "a caller" adds further clarity to it. I think in Mr. Hicks' discussions this morning he talked about the defibrillators calling 9-1-1. We don't see that in terms of providing local exchange networks. You know, we're talking a fixed line subscriber dial tone. We think the term "a caller" just adds greater clarity to the description.

Q. But to the extent that a device was making the call, you don't believe that that would fit under the definition?

A. I think that when we look towards next generation 9-1-1, there will be a lot of device-device calling. I think that that all needs to be sorted out by the public safety agencies, whether they want a device to contact

a 9-1-1 agent, whether they want that to go to another location other than a PSAP location or a 9-1-1 call taker. I think that it is a futuristic application that the public safety agencies will need to give the 9-1-1 service providers direction in how they want to operate in that area. So, yes, it's a realistic futuristic application. There are many of them that's being discussed in the industry, but we don't think in terms of the context of this interconnection agreement, that application such as that is applicable.

HEARING EXAMINER AGRANOFF: Thank you. Anything further on redirect based on questions that the Panel asked?

MR. TOWNSLEY: No, nothing further.

HEARING EXAMINER AGRANOFF: From Intrado?

MS. KISER: I have nothing further. Thank you.

HEARING EXAMINER AGRANOFF: Thank you, sir.

THE WITNESS: Thank you.

HEARING EXAMINER AGRANOFF: Back to

Attachment 8

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE PETITION OF	**)**	
INTRADO COMMUNICATIONS INC. FOR	**)**	
ARBITRATION TO ESTABLISH AN	**)**	**Case No. 9138**
INTERCONNECTION AGREEMENT WITH	**)**	
VERIZON MARYLAND INC. PURSUANT TO	**)**	
THE FEDERAL TELECOMMUNICATIONS ACT	**)**	

INITIAL BRIEF OF

VERIZON MARYLAND INC.

February 20, 2009

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I. INTRODUCTION AND BACKGROUND

In this arbitration, Intrado seeks interconnection with Verizon, under section 251(c) of the Communications Act of 1934 ("Act"), as amended, to provide 911/E911 services to Public Safety Answering Points ("PSAPs"). Intrado will not provide local exchange service to its PSAP customers, and it will not serve any end users of its own who place 911 (or any other) calls over Intrado facilities. It will instead interconnect with Verizon to receive Verizon's end users' 911 calls and deliver those calls to its PSAP customers.[1]

Although Intrado approached Verizon to negotiate an interconnection agreement as a certified competitive local exchange carrier ("CLEC") in Maryland, and Verizon offered Intrado the same interconnection arrangements it offers to carriers providing actual local exchange service, Verizon has never conceded that Intrado is entitled to section 251(c) interconnection for its 911 services. (*See* VZ Ex. 1 at 8-9; Intrado Petition for Arbitration ("Petition") at 18, 22.) Indeed, the Florida Public Service Commission dismissed Intrado's arbitrations with Embarq and AT&T because Intrado's 911 services are not "telephone exchange service" or "exchange access" that would entitle it to section 251(c) interconnection. The Commission advised Intrado that it could provide its

[1] *See, e.g.*, Hearing Transcript ("Tr.") at 13-14, 27; Intrado Ex. 2 at 6, 11; Verizon ("VZ") Ex. 1 at 7, 15-16; VZ Ex. 2 at 4, 10-11.

services through the use of commercial agreements.[2] Verizon Florida expects the same result in its pending arbitration with Intrado.[3]

Just last week, the Administrative Law Judges ("ALJs") in Intrado's arbitration with AT&T in Illinois issued a Proposed Arbitration Decision concluding, as Florida did, that Intrado's 911 services do not entitle it to section 251(c) interconnection:

> [T]he Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that any market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.[4]

There was, therefore, no need for the ALJs to reach the parties' disputes about proposed interconnection agreement terms, because those disputes were "rendered moot and superfluous" by the conclusion that Intrado is not entitled to section 251(c) interconnection. (*Ill. Proposed Order* at 21.) Verizon will ask for the same ruling in its arbitration with Intrado in Illinois.

In Intrado's arbitrations with AT&T and Cincinnati Bell Telephone Company ("CBT") in Ohio, the Ohio Public Utilities Commission, likewise, ruled that Intrado was not entitled to section 251(c) interconnection for its 911 services, but must instead obtain

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[2] *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with AT&T Florida*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*Fla. AT&T/Intrado Order*") (attached as Ex. 1), at 7; *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Fla. Embarq/Intrado Order*") (attached as Ex. 2), at 8. Verizon filed these Orders in this docket on December 10, 2008, but they are attached here again for convenience.

[3] On December 16, 2008, Verizon filed a Motion for Summary Final Order asking the Florida Commission to dismiss Intrado's arbitration with Verizon, as the Commission had dismissed Intrado's arbitrations with Embarq and AT&T, because Intrado is not entitled to section 251(c) interconnection for its 911 services.

[4] *Petition for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Illinois Bell Tel. Co.*, Proposed Arb. Decision, Docket No. 08-0545 (Feb. 13, 2009) ("*Ill. Proposed Order*") (attached as Ex. 3), at 18.

commercial terms for such interconnection under section 251(a) of the Act.[5] And the Arbitrators in Intrado's arbitrations with AT&T and Verizon in Texas have also raised doubts about whether ILECs can be forced to arbitrate interconnection agreements with Intrado for the 911 services it plans to provide.[6] At the Arbitrators' request, Verizon and AT&T submitted briefs in those arbitrations, explaining that Intrado is not, in fact, entitled to section 251(c) arbitration because it is not providing any telephone exchange or exchange access services as defined by the Act. (VZ Ex. 2 at 10.)

The same threshold issue of Intrado's entitlement to section 251(c) interconnection is now before the FCC's Wireline Competition Bureau in Intrado's consolidated Virginia arbitration with Embarq and Verizon. Contrary to the suggestion of Intrado's counsel at the hearing (Tr. 189, 193), the issue of Intrado's entitlement to section 251(c) interconnection is not limited to just Embarq and Intrado in the FCC arbitration. In a status conference held with the FCC Staff and the parties after the hearing in this case, the Staff made clear that it would decide the threshold issue first, and that Verizon would be included in that determination (Verizon briefed the threshold issue in its response to Intrado's arbitration petition at the FCC). The FCC Staff also stated that its target date for deciding the Verizon/Embarq/Intrado arbitration is May 2 of this year, two weeks after the currently scheduled April 17 decision date in this arbitration.

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[5] *See* VZ Ex. 2 at 8-9, *citing Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Embarq*, Arb. Award, Case No. 07-1216-TP-ARB, ("*Ohio Embarq/Intrado Order*"), at 33 (Sept. 24, 2008) (attached to VZ Ex. 2 as Ex. 7); *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*., Arb. Award, Case No. 08-537-TP-ARB, ("*Ohio CBT/Intrado Order*"), at 15 (Oct. 8, 2008) (attached to VZ Ex. 2 as Ex. 8). The Ohio Commission arbitrated commercial, section 251(a) agreement terms in Intrado's arbitrations with AT&T and CBT, but neither Verizon nor Intrado has asked it to arbitrate section 251(a) terms in their ongoing arbitration.

[6] VZ Ex. 2 at 10, *citing Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Order No. 2, Requesting Briefs on Threshold Legal Issues (Oct. 17, 2008) (attached to VZ Ex. 2 as Ex. 6).

Therefore, it may be best to agree to extend the decision date in this case slightly, in order to receive the FCC Bureau's guidance before issuing a ruling in this case.

Verizon offers its positions on the substantive issues here in the event that the Hearing Examiner wishes to move forward with deliberations on those issues at this point, despite the pendency of the threshold jurisdictional issue of Intrado's entitlement to section 251(c) interconnection at the FCC.

If this case proceeds, it is essential to keep in mind that it is an arbitration under section 251(c) of the Act. The Commission's task is, therefore, to determine the scope of Verizon's interconnection obligations under section 251(c) and the FCC's rules implementing that section. Although Verizon and Intrado vigorously disagree about the nature and scope of Verizon's obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado's arbitration petition here and the issues it raises. (*See*, *e.g.*, Tr. 52; Intrado Ex. 1 at 8-9 & Ex. 2 at 8; Tr. 40-41.)

This arbitration is **not** a proceeding about whether to authorize competition for 911 services in Maryland or to decide what the best 911 arrangements and practices are for Maryland. Those broad policy questions are not before the Commission and they could not, in any event, be resolved in this bilateral arbitration. (VZ Ex. 2 at 5.) As Intrado witness Spence-Lenss stated at the hearing, government entities subscribe to 911 services and "government is responsible for the implementation of 911 and then purchasing the appropriate services that government chooses for its 911." (Tr. 27.) In Maryland, the Emergency Number Systems Board ("Board") "coordinate[s] the implementation, enhancement, maintenance, and operation of county or multicounty 9-1-1 systems." (COMAR § 12.11.03.01.) The decision in this arbitration cannot affect any

company's obligation to comply with its 911 tariffs and the detailed statutes and rules governing the administration, implementation, and funding of 911 systems in Maryland. (*See* Md. Code §§ 1-306 – 1-312; COMAR title 12, Subtitle 11, Ch. 03.) As Ms. Spence-Lenss acknowledged, the Board and the individual governmental entities determine what 911 arrangements and practices will be for Maryland, with any contracts for competitive 911 services likely awarded through a bidding process that could include Intrado, Verizon, and perhaps others. (Tr. 57-58.) In other words, to the extent competitive 911 provision is authorized under Maryland law, the marketplace will determine the merits of Intrado's and Verizon's respective 911 products—provided the Commission does not confer upon Intrado the artificial competitive advantages it seeks in this arbitration (VZ Ex. 1 at 10).

Assuming the arbitration goes forward and the Hearing Examiner completes the review Intrado has requested—that is, evaluation of Intrado's proposals under section 251(c)—they must be rejected as unlawful and anticompetitive. Intrado's proposals are directly contrary to federal law, they have not been implemented anywhere (Tr. 18)—and in fact, as discussed below, they have been rejected in the arbitrations that have gone forward instead of being dismissed outright. (VZ Ex. 2 at 6-7.)

Under its extreme proposal, Intrado would force Verizon to interconnect with Intrado *on Intrado's network*, at unspecified locations--at as many points of interconnection ("POIs") as Intrado wishes and as far from Verizon facilities as Intrado wishes. (VZ Ex. 1 at 7-8 & Ex. 2 at 13; 911 Att., Intrado's proposed § 1.3.1.) Intrado would require Verizon to incur the cost of at least two direct trunks from each affected Verizon end office to those POIs on Intrado's network. (VZ Ex. 1 at 31; Intrado Ex. 2 at

33-34; 911 Att., Intrado's proposed § 1.3.4(ii).) In addition, Intrado would require Verizon to deploy an unknown, new kind of call-sorting technology in place of Verizon's selective routers used today to sort calls to the appropriate PSAP. (VZ Ex. 1 at 31-32.) Under Intrado's plan, Verizon and its customers would have to bear the entire cost of Intrado's proposed new 911 network. Intrado has never denied this fact, and in fact openly recommends for the retail customers of Verizon and other carriers to pay for Intrado's network. (VZ Ex. 2 at 34, 43, *citing* Intrado Ex. 1 at 17, 19-20.)

Intrado's business plan is, therefore, to force Verizon to provide facilities and services that Intrado will market to PSAPs, but that Verizon would actually provide and pay for. Under Intrado's plan, Verizon would still carry its end users' 911 calls (to Intrado's network, instead of directly to the PSAPs), but instead of being paid to do so by the PSAPs, as Verizon is today, Verizon would have to haul those calls ***for free*** and then, on top of that, ***pay*** Intrado for interconnecting on Intrado's network. This unprecedented plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can. (VZ Ex. 1 at 8.) When Verizon serves a PSAP, it must charge its tariffed rates for services and facilities provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still provide them--thus allowing Intrado to price its overall service more attractively and providing it an unfair competitive advantage.

Verizon is not trying to maintain a "monopoly" over service to PSAPs, as Intrado charges (Intrado Ex 1 at 3), and Verizon has not refused to interconnect with Intrado. Verizon remains willing to offer Intrado interconnection arrangements that are comparable to the arrangements Verizon has in place today with CLECs that provide

local exchange service, and it stands ready to negotiate a commercial agreement that may better suit Intrado's plans than the section 251(c) interconnection it seeks. But Intrado has no right to the particular interconnection arrangements it proposes in this arbitration.

Intrado can provide its services using any kind of network it wishes (as long as it is consistent with Maryland's 911 statutes and regulations), but Intrado cannot force Verizon to pay for that network. This point bears repeating: ***Intrado will be able to provide its 911 services under either Verizon's proposed interconnection arrangements or Intrado's***. (VZ Ex. 1 at 10-11.) Indeed, Intrado admitted that if the Commission rules against Intrado on the fundamental POI placement issue, it would not be a "deal breaker" for Intrado's planned 911 services in Maryland. (Tr. 51-52.) Leaving aside the technical and reliability concerns with Intrado's proposals (discussed below), the chief difference between Intrado's and Verizon's respective interconnection proposals is who bears the cost of Intrado's proposed network configuration—Intrado or Verizon. The answer—under both governing federal law and sound policy—must be that Intrado pays for the network it seeks to establish.

Indeed, even while dismissing Intrado's arbitration petitions for legal reasons, the Florida Commission raised the same concerns about Intrado's self-evident cost-shifting proposals that Verizon has here. It observed that the type of interconnection arrangements Intrado is requesting "could present a serious disadvantage to [the ILEC], who would pay for Intrado Comm establishing its 911/E911 service. We are concerned that the costs for interconnection would be borne by [the ILEC]." (*Fla. AT&T/Intrado Order* at 7; *Fla. Embarq/Intrado Order* at 6.)

This concern is well justified. If the Commission proceeds to consider Intrado's proposals under section 251(c) without waiting for the FCC Bureau's decision as to whether Intrado is entitled to section 251(c) interconnection at all, it must reject Intrado's position that section 251(c) grants 911 providers like Intrado special, more favorable interconnection rights over interconnecting CLECs that provide 911 service to their end users as part of actual local exchange service.

The fundamental problem with Intrado's case is that the law under which it chose to petition for interconnection does not fit interconnection for Intrado's 911 services. But, as the Illinois ALJs concluded, having chosen to seek section 251(c) interconnection, Intrado cannot bend that law to suit its business plan: "The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily." (*Ill. Proposed Order* at 18.) Indeed, Intrado's resources would be better directed to obtaining reasonable commercial interconnection arrangements than pursuing unreasonable interconnection arrangements to which it has no right under section 251(c).

II. DISPUTED ISSUES

ISSUE 3: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC? (911 Att., §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1; Glossary §§ 2.63, 2.67.)

A. Issues 3 and 12 Are Driving this Arbitration

As the Hearing Examiner observed, Issue 3, with respect to POI placement, is the "foundation" of this arbitration (Tr. 51), and Issue 3 can be linked in some respects to

Issue 12, which is the parties' dispute about routing of 911 traffic. (Tr. 100-102.)[7] As noted, Intrado's proposed contract language would allow Intrado to designate POIs on its own network--at least two, but as many as it wishes, anywhere on its network that it wishes, within or outside Maryland.[8] Intrado's proposed language does not specify where the POIs will be, and neither did the Intrado witnesses. (VZ Ex. 1 at 18 & Ex. 2 at 13; Intrado Ex. 2 at 17.) They testified that Intrado intended to place at least two POIs somewhere in Maryland, but also admitted that Intrado's proposed contract language does not require the POIs to be in Maryland and confirmed that Intrado plans to place POIs outside of Maryland. (Intrado Ex. 2 at 18; Tr. 69, 76, 91.) Although Mr. Hicks suggested that points outside of Maryland would be for the convenience of Verizon and other carriers (Intrado Ex. 2 at 18-19), that is not what Intrado's language says. That language would give Intrado, not Verizon, the discretion to decide where on Intrado's network the POIs would be--and this issue must, of course, be decided on the basis of the disputed contract language, rather than Intrado's claimed intentions.

Forcing Verizon to interconnect on Intrado's network is the foundation of Intrado's cost-shifting scheme. As Verizon explains below, the POI is the physical and financial demarcation of the parties' respective networks, and Intrado has recognized that each party bears the cost of delivering its originating traffic to the POI. (Petition at 25; Intrado Ex. 2 at 41.) Therefore, to the extent Intrado can compel Verizon to interconnect

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[7] Issue 3 is also linked to several other issues, as noted in Verizon's discussions of those particular issues.

[8] Intrado Ex. 2 at 16; Intrado's proposed § 1.3.2 of the 911 Attachment states:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm shall provide to Verizon, in accordance with this Agreement, interconnection at a minimum of two (2) geographically diverse technically feasible Point(s) of Interconnection on Intrado Comm's network for the transmission and routing of 911/E-911 Calls to PSAPs for which Intrado Comm is the 911/E-911 Service Provider.

on Intrado's network, Intrado would force Verizon to incur the cost of transporting its end users' 911 traffic to those POIs, no matter how far from Verizon's network they are. This transport responsibility will be entirely one-sided, because calls will not originate from Intrado's network. As noted, Intrado's only customers will be PSAPs, and they will not place calls to Verizon's customers or anyone else.

Together, Issues 3 and 12 define the network architecture that Intrado would impose upon Verizon. Intrado's proposal for Issue 3 would require Verizon to interconnect at POIs Intrado places on its network; Intrado's proposal for Issue 12 would dictate how Verizon sorts those calls and transports them to the POIs on Intrado's network. In other words, Intrado would not only choose the location of the POIs on its own network, but would also dictate *how Verizon engineers its own network* on Verizon's own side of those POIs.

As Verizon discusses further under Issue 12, Intrado's proposal would require Verizon to build or lease a minimum of two new direct trunks from each of Verizon's affected end offices to each of the POIs on Intrado's network. And because Verizon's end offices cannot sort calls, Intrado would require Verizon to deploy some kind of new call-sorting mechanism as an alternative to its selective routers that sort Verizon's and other carriers' calls to the right PSAP. Under Intrado's proposal, Verizon would have to pay for Intrado's entire 911 network--interconnection at Intrado's POIs, all the transport to those POIs, and the new call-sorting mechanism.

With respect to the relationship between Issues 3 and 12, if Issue 3 is resolved by rejecting Intrado's proposal for Verizon to interconnect with Intrado on Intrado's network, then Issue 12 should become moot. Given the parties' understanding that each

carrier is responsible for the facilities on its side of the POI (Petition at 25), there would be no reason to consider the issue of how Verizon might transport traffic to POIs on Intrado's network if the Commission determines (as it should) that Intrado has no right to designate POIs on its own network.

If the Commission decides, contrary to law, that Verizon must interconnect with Intrado on Intrado's network, that does not, however, mean it must approve Intrado's specific interconnection proposal for Issue 3--which, as explained, would require Verizon to take 911 traffic to multiple, as-yet-undesignated, POIs on Intrado's network. Even if the Commission requires interconnection on Intrado's network, it can and should limit Verizon's transport and interconnection costs by restricting Intrado to a single POI per LATA (unless the parties agree to additional POIs). Indeed, even in Ohio, where Embarq *agreed* to take its traffic to Intrado as a commercial term under section 251(a) of the Act (which Verizon has not agreed to do here or elsewhere), the Commission nevertheless rejected, as unsupported by any law, Intrado's proposals to place multiple POIs on its own network, and instead required interconnection to occur within the ILEC's service territory. (*Ohio Embarq/Intrado Order*, at 29; *see also Ohio CBT/Intrado Order*, at 9.)

Finally, even if the Commission imposes (contrary to law) some form of obligation for Verizon to interconnect on Intrado's network in resolving Issue 3, that does not mean it must or should accept Intrado's direct trunking/end-office call-sorting proposal for Issue 12. Indeed, the Commission should not approve Intrado's Issue 12 proposal under any circumstances. If the Commission requires Verizon to take 911 traffic to Intrado's network, Verizon is entitled to decide how to get it there and how to engineer its own network on its own side of the POI. There is no support for requiring

Verizon to establish new direct trunks from its end offices to Intrado's POI(s) or to abandon use of its selective routers (which would be on Verizon's side of the POI whether the POI is on Verizon's network or Intrado's) in favor of some unknown new call-sorting mechanism.

As explained in more detail under Issue 12, even if there were any legal support for Intrado's Issue 12 proposal, it would have to be rejected because of its serious public safety risks. ***Neither Intrado nor anyone else has identified any existing method that could be used to route calls to PSAPs as an alternative to the industry-standard selective routing that Intrado would stop Verizon and other carriers from using under Intrado's Issue 12 proposal.***

B. The POI for Mutual Exchange of Traffic Must Be on Verizon's Network

As the Arbitrator observed in resolving the POI placement dispute in Intrado's arbitration with Verizon West Virginia, "this issue is quite simple to decide," because "[t]he law is clear and unequivocal."[9] Section 251(c) and the FCC's regulation implementing section 251(c) unambiguously provide that the point(s) of interconnection must be within the ILEC's network. Intrado seeks interconnection with Verizon under section 251(c) (and only section 251(c)) of the Act, so the Commission must resolve Issue 3 in accordance with section 251(c) (if it proceeds with the arbitration at all) and reject Intrado's proposal to designate POIs on its own network.

Under FCC Rules, "interconnection" is "the linking of two networks for the mutual exchange of traffic." 47 C.F.R. § 51.5. A POI is a point where that linking of

[9] *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 ("*W.V. Arb. Award*") (attached VZ Ex. 2 as Ex. 1)., at 12-13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*") (attached here as Ex. 4.)

networks occurs. The location of the POI is a significant issue in part because the parties have recognized that the POI is the demarcation of financial responsibility; each carrier is financially responsible for the facilities to deliver its traffic to the POI. (VZ Ex. 1 at 17; Petition at 24-25; Intrado Ex. 2 at 41.)

Intrado proposes different POI arrangements depending on whether Verizon or Intrado serves the PSAP in a particular geographic area. Where Verizon is the designated 911 service provider for a PSAP, Intrado agrees to deliver its 911 calls to Verizon at a point on Verizon's network at Verizon's selective router. (Intrado Ex. 2 at 19.) This proposal correctly reflects the legal requirement for Intrado to establish a POI on Verizon's network. However, it will have virtually no practical effect because Intrado's only customers will be PSAPs, and they will not make any calls to Verizon's end users. The parties' dispute with respect to Issue 3 is, rather, about where the POI will be when Intrado is the designated 911 provider--that is, when Verizon's end users make emergency calls to PSAPs served by Intrado. In that case, Intrado's proposed language would require Verizon to build or lease transport facilities to, and interconnect within, Intrado's network at multiple points. (Verizon Ex. 1 at 17-18; 911 Att., Intrado's proposed § 1.3.2.)

Intrado's proposal is directly contrary to federal law. Section 251(c) 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). And this Commission has determined that "Verizon is correct in its assertion that the point of interconnection must be on its network."[10] This rule applies to all traffic exchanged between an ILEC and an interconnecting carrier. Section 251(c) prescribes no different rules for 911 calls than it does for all other calls. As noted, Intrado requests this interconnection pursuant to section 251(c) of the Act. (Tr. 15; Intrado Ex. 1 at 9, 22 & Ex. 2 at 8.)

Indeed, Intrado openly recognizes that the Act requires the POI to be within the ILEC's network. Intrado's Petition for Arbitration (at 24-25) states: "Under the law, Intrado Comm has the right to choose the location of the point of interconnection *on the incumbent's network*, including the right to establish a single POI." (Emphasis added.) Mr. Hicks, likewise, answers "yes" to the question: "Does the Act require the POI to be on the ILEC's network?" (Intrado Ex. 2 at 17.) Nevertheless, both Mr. Hicks and Ms. Spence-Lenss urge the Commission to deviate from this "traditional" POI arrangement required by law. (Intrado Ex. 2 at 12 & Ex. 1 at 12-13.)

The Commission must reject Intrado's position. There is no way the explicit federal requirement for the POI to be "within the incumbent LEC's network" can also mean "outside the incumbent LEC's network." In addition, Intrado cannot require Verizon to hand off traffic at a POI at a different location than Intrado hands off its traffic to Verizon. FCC rules provide that POIs are for "the linking of two networks for the *mutual exchange of traffic*." 47 C.F.R. § 51.5 (emphasis added). Thus, Verizon must be permitted to hand off its traffic to Intrado at the same POI location on Verizon's network.

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[10] *Arbitration of US LEC of Maryland Inc. vs. Verizon Maryland Inc. Pursuant to 47 U.S.C. § 252(b)*, Order No. 79813, Case No. 8922 (March 10, 2005) ("*US LEC Order*"), at 8. Verizon discusses this Order further under Issue 12.

At the hearing, Intrado witness Spence-Lenss seemed to indicate that, in Texas, Verizon had agreed to a POI on another carrier's network for exchange of 911 traffic and/or that some Texas unidentified rule "allows the government agencies to determine the POI." (Tr. 63-66.). These surprising allegations were not made in any of Intrado's prefiled testimony or other filings, so Verizon did not have a meaningful opportunity to rebut them. They are, in any event, wrong, and by the end of the hearing, Ms. Spence-Lenss' had retreated from these confusing claims. She admitted that there was no interconnection agreement in Texas requiring the POI to be outside the ILEC's network for 911 services. (Tr. 103-04.) And there are no rules in Texas that purport to override section 251(c) and the FCC's rules unambiguously requiring the POI to be within the ILEC's network.

C. The "Equal-in-Quality" Requirement Does Not Cancel Out the Requirement for the POI to Be on the ILEC's Network

Even though Intrado recognizes that the Act requires the POI to be on the ILEC's network, Mr. Hicks suggests that section 251(c)(2)(C)'s "equal-in-quality" requirement trumps the POI placement directive in section 251(c)(2)(B). (Intrado Ex. 2 at 17.) Intrado contends that, regardless of the requirement for the POI to be within the ILEC's network, section 251(c)(2)(C) requires Verizon to build out to and interconnect with POIs on Intrado's network. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even through section 251(c)(2)(B) explicitly addresses POI placement.

Intrado's convoluted arguments are, as the West Virginia Arbitrator concluded, "ludicrous on their face." (*W.V. Award* at 13.)

Section 251(c)(2)(C) 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).

Section 251(c)(2)(C), by its plain terms, relates to the *way* in which Verizon interconnects with CLECs, not *where* the interconnection occurs.

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. These criteria include that interconnection must be provided by the ILEC: (A) for transmission and routing of telephone exchange services and exchange access; (B) at any technically feasible point within the ILEC's network; (C) at least equal in quality to that provided by the ILEC to itself or others; and (D) on just, reasonable and nondiscriminatory rates, terms and conditions. Where a requesting carrier seeks interconnection of its facilities with the ILEC's network, the ILEC must comply with *each* subsection of section 251(c)(2).

The "equal-in-quality" subsection (C) appears right after the subsection requiring interconnection within the ILEC's network (B). 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), right after section 51.305(a)(2), which requires 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."[11] 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 criterion in section 251(c)(2)(C) of the Act and FCC rule 51.305(a)(3) addresses 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). This fact was readily apparent to the West Virginia Arbitrator: "The subsection on which Intrado has hung so much of its argument

[11] *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).

doesn't even apply to the location of the point of interconnection." *W.V. Arb. Award* at 13.

Because they address distinct subjects, it would be impossible for Verizon to rely on section 251(c)(2)(B) to "obliterate" its obligations under 251(c)(2)(C), as Intrado accuses Verizon of doing. (Intrado Ex. 2 at 17.) This is why Intrado's arguments are "ludicrous on their face." As the West Virginia Arbitrator stated: "On the one hand, Intrado argues that Verizon cannot use on obligation under Section 251(c) to 'obliterate' another obligation under Section 251(c). That is certainly true enough. However, Intrado's own argument would require exactly that outcome." *W.V. Award* at 13.

Indeed, subsections (B) and (C) appear one after another in the ***very same statute***-meaning that Congress *has already decided* that there is no conflict between requiring interconnection on the ILEC's network and the equal-in-quality requirement; both requirements must be applied. 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 within the ILEC's network. Intrado's advancement of this bizarre statutory construction shows its desperation to come up with some kind of legal argument, no matter how frivolous, to support its extreme network architecture proposals.

Even if there were any merit to Intrado's legal argument that the "equal-in-quality" requirement cancels the POI location requirement (and there is not), that argument would still fail because it is based on Intrado's incorrect factual premise that Verizon is denying Intrado interconnection arrangements Verizon provides to other CLECs, other ILECs, or itself. As Verizon's witnesses testified, the section 251(c)

"interconnection" arrangements Intrado seeks--POIs on its own network, direct trunking from the ILEC's end offices, and a new form of call routing from end offices--have never been implemented anywhere by anyone in any interconnection agreement. (Verizon Ex. 1 at 18-19.)

Intrado's argument that it is only asking to "mirror" the same kind of arrangements Verizon uses with CLECs (Intrado Petition at 26-27) seems to be that since CLECs bring their traffic to Verizon, it is only fair for Verizon to take its traffic to Intrado. But this *policy* argument rests on Intrado's incorrect *legal* position that it is entitled to establish POIs on its own network. CLECs bring their traffic to Verizon's network because the Act and the FCC's rules require it, and the Commission cannot create a different rule just for Intrado based on its misguided policy arguments. (Verizon Ex. 1 at 21 & Ex. 2 at 22.) As the West Virginia Arbitrator correctly observed: "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." *W.V. Award* at 13.

In any event, Verizon's "template 251(c) interconnection agreement" does not (and, as a template, cannot) "mandate" that CLECs interconnect at Verizon's selective routers, as Mr. Hicks contends (Intrado Ex. 2 at 28, 40-41); in negotiations over that template agreement, CLECs nevertheless typically opt for this arrangement, because it is efficient for them to have Verizon route their 911 calls. (Tr. at 41, 46, 156, 159-60.) Indeed, as Mr. D'Amico pointed out, CLECs may choose to interconnect at Verizon's selective router because "they may already be there for other purposes" (aside from interconnecting for 911 traffic) (Tr. 164).

Nor do Verizon's arrangements for exchanging 911 traffic with adjacent ILECs support Intrado's extreme network architecture proposals, as Intrado also contends. In its ILEC-to-ILEC arrangements, Verizon typically provides facilities to a meet point at its service area boundary and the other ILEC provides the facilities in its service territory. These meet-point interconnection arrangements do not involve Verizon building facilities and transporting traffic to points on another carrier's network or outside Verizon's service area, as Intrado's proposal would. (VZ Ex. 1 at 19-20 & Ex. 2 at 21-22.) Moreover, because the meet-point facilities Verizon constructs carry all sorts of traffic (not just 911 calls) between Verizon and the adjacent ILEC, the cost and administrative burdens associated with the facilities are not restricted to 911 calls but are spread over the many different types of traffic Verizon exchanges with the adjacent ILEC. And ILEC-to-ILEC arrangements provide switched and special access revenues that help to cover the costs of those arrangements. Under Intrado's proposal, though, Verizon would be required to establish facilities over potentially very long distances and that would be dedicated only to 911 calls for which Verizon collects no revenue. (VZ Ex. 1 at 19-20.)

In addition, the arrangements Verizon has with adjacent ILECs for the exchange of 911 traffic generally pre-date the Act and are not section 251 interconnection agreements, which is what Intrado seeks here. Therefore, such arrangements could not guide the Commission's resolution of the parties' disputes about their rights and obligations under section 251(c). (VZ Ex. 1 at 20.) Having chosen to seek interconnection through section 251(c), Intrado cannot claim entitlement to arrangements Verizon is not required to offer under section 251(c).

In any event, Verizon did offer Intrado meet-point interconnection arrangements, as it does to CLECs, on terms and conditions consistent with the FCC's requirements for section 251(c) agreements. But Intrado expressed no interest in this interconnection method, so the meet-point language was removed from the draft agreement. (VZ Ex. 1 at 20.) Verizon, however, remains willing to provide meet-point interconnection arrangements to Intrado on the same terms it provides such arrangements to CLECs.

Intrado's claim that it is seeking interconnection like Verizon has with other carriers is wrong as a matter of fact--and Verizon cannot, in any event, be forced to interconnect on Intrado's network as a matter of law.

D. Section 253(b) of the Act Does Not Authorize the Commission to Adopt Intrado's Extreme Interconnection Arrangements

Aside from Intrado's erroneous section 251(c)(2)(C) argument, Ms. Spence-Lenss claims that Section 253(b) of the Act "necessitates the adoption of Intrado Comm's proposed physical interconnection arrangements in their entirety." (Intrado Ex. 1 at 14.) This argument is no more credible than Intrado's recommendation to read section 251(c)(2)(B) out of the Act. Section 253, entitled "Removal of Barriers to Entry," is completely separate from the interconnection requirements in section 251 and the interconnection agreement negotiation and arbitration procedures in section 252. 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 provision supports, let alone "necessitates" the adoption of Intrado's proposal. Intrado is, once again, engaging in its own, peculiar brand of statutory interpretation.

First, 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 252arbitration. 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.[12] Nothing in section 253(b)'s general reservation of rights speaks to, let alone overrides, the specific interconnection requirements in section 251(c)(2), including the requirement for the POI to be within the ILEC's network. Section 253(b)'s general reference to protection of the public safety and welfare certainly does not authorize state commissions to ignore unambiguous directives in the Act and the FCC rules, as Intrado urges.

Second, even if section 253 were relevant to resolving the parties' rights and duties under section 251(c) (and it is not), the Commission could not assume that Intrado's proposals will protect the public safety and welfare and the rights of consumers, as Intrado's legal argument necessarily presumes. As detailed in response to Issue 12, Intrado's proposals are more likely to undermine than promote public safety. Among

[12] See, e.g., *BellSouth Telecomms., Inc. v Town of Palm Beach*, 252 F.3d 1169, 1188 (11 Cir. 2001).

other things, Intrado cannot assure the Commission that CLECs' and wireless carriers' calls will get to Intrado-served PSAPs or that anyone can develop a reliable call routing alternative to the selective routing used today.

Intrado's allegations that its POI-on-its-own-network proposal is "consistent with industry recommendations" relating to network reliability (Intrado Ex. 3 at 23) are unfounded. Despite Intrado's speculation, it cannot prove that its not-yet-built network will be any more reliable than Verizon's network, which indisputably complies with industry standards, and which, even Intrado acknowledges, is diverse and redundant. (Intrado Ex. 2 at 15-16.) Most importantly, though, nothing in any 911 industry guidelines addresses *section 251(c) interconnection requirements*, which are the only requirements to be implemented in this section 252 arbitration. Intrado's speculation about the merits of its planned services and network are not relevant to determining Verizon's section 251(c) interconnection obligations.

As for Intrado's claimed objective of safeguarding the rights of consumers, Intrado doesn't say what consumers or what rights its proposal is supposed to protect. Certainly, it is not in the interest of Verizon's or other carriers' customers who would be forced to pay for Intrado's new network (on top of any 911 fees they already pay) if the Commission adopts Intrado's network architecture proposals.

E. There Are No "Other Sources" Authorizing the Commission to Ignore the Requirement for the POI to Be on Verizon's Network

Intrado asserts that Sections 251(e) and 706 of the Act authorize the Commission to adopt Intrado's network architecture proposal (Intrado Ex. 3 at 12) and claims additional support for that proposal in an alleged FCC determination "that the cost-allocation point for the exchange of 911/E-911 traffic should be at the selective router"

(Intrado Ex. 1 at 13). None of these "sources" has anything to do with placement of the POI, let alone provides any authority for the Commission to adopt Intrado's proposal to place POIs on its own network. Section 251(e) addresses FCC authority over numbering administration; section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability; and the FCC never made any generic determination about the POI for 911 traffic, as Intrado implies. With respect to this latter claim, Intrado provided no citation in its prefiled testimony, but at the hearing, Ms. Spence-Lenss referenced the FCC's *King County* docket (Tr. 43-44). [13]

To the extent Intrado claims that the *King County* case supports its proposal to place POIs on its own network in a section 251(c) interconnection agreement, Intrado has blatantly misrepresented that case, as the Commission can see for itself. *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 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 (emphasis added.)

[13] *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, Order on Recon., 17 FCC Rcd 14789 (2002) ("*King County*") (attached as Ex. 5); Letter from T. J. Sugrue, Chief, Wireless Telecomm. Bureau, FCC, to M. R. Davis, E911 Program Manager, Dep't of Information and Admin. Services, King County, Washington, WT Docket No. 94-102 (dated May 7, 2001) ("King County Letter") (attached as Ex. 6).

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. There is no FCC precedent authorizing this Commission to ignore the Act and the FCC's rule for the POI to be within the ILEC's network.

F. Even if Intrado's Proposal Were Lawful, It Would Be Bad Policy

Although Intrado petitioned for interconnection under section 251(c)—which obviously requires the application of section 251(c) requirements—Intrado's witnesses suggest that "public interest considerations" should dictate the resolution of Issue 3. (Verizon Ex. 2, RT at 14, *citing* Intrado Ex. 1 at 14 & Intrado Ex. 2 at 11-12). The Commission cannot ignore governing federal law (and the Commission's regulations reflecting that law) and instead decide the issue with respect to POI placement on policy grounds. That law, as explained above, provides that the POI(s) must be on Verizon's network, not Intrado's. (VZ Ex. 1 at 5 & Ex. 2 at 14.)

Intrado's position is that shifting its costs to other carriers and their customers is desirable policy because Intrado, at least in Intrado's view, will provide superior emergency services. As Verizon has pointed out, it is not the Commission's job to evaluate the relative merits of Verizon's 911 services and Intrado's 911 services, so all of Intrado's testimony in this regard is irrelevant to any issue in this arbitration, which must be resolved in accordance with federal law. The Commission cannot modify the law based on a determination that Intrado will provide better 911 service than Verizon or other potential providers.

Nor could the Commission make any such determination, because Intrado's 911 services are purely speculative at this point. There is no assurance that Intrado will

actually provide *any* 911 services, let alone implement the capabilities it says it will. Intrado is not providing 911 services in Maryland and the network it seeks to establish in this case has not been established anywhere. To the extent Intrado claims it has been in the 911 business for years, it is important to understand that that business has been limited to ALI database services and routing—not the infrastructure to handle other carriers' end users' 911 calls, as it seeks to establish here. (*See* Tr. 32.)

Although a comparison of Intrado's planned 911 services and Verizon's 911 services is not relevant to determining Verizon's interconnection obligations to Intrado, Verizon emphasizes that nothing in the record suggests any problem with Verizon's 911 services, and there is nothing to indicate that public safety needs won't be met unless Intrado enters the market. (VZ Ex. 1 at 9.) At one point in the hearing, Intrado witness Spence-Lenss appeared to testify that there were problems with Verizon's existing 911 system that prevented callers from connecting to a 911 operator, allegedly because calls could not be transferred across LATAs. (Tr. 38-39.) As Verizon's witnesses testified later, Intrado's testimony was incorrect—a Verizon-served PSAP "can definitely" transfer a misdirected 911 call to another Verizon-served PSAP in a different LATA (Tr. 128, 132), although the need for such transfers is "extremely rare" (Tr. 133.) There is no evidence of any problems with dropped calls or anything else.

It is abundantly clear, however, that Intrado's vaguely defined network architecture does raise serious security and reliability concerns. Among the "public interest considerations" the Florida Commission cited when it dismissed Intrado's arbitration petitions was that "carriers could potentially be transporting 911/E911 emergency calls up and down the state over great distances, perhaps even out of state."

(*Fla. AT&T/Intrado Order*, at 8; *Fla. Embarq/Intrado Order*, at 7.) And Intrado's proposal presents an obvious danger of dropped 911 calls. As detailed below in conjunction with Issue 12, Intrado's proposal would prohibit Verizon from using its selective routers to sort other carriers' calls to PSAPs. Those carriers would have to build their own direct trunks to Intrado and implement their own call sorting capability, just as Intrado seeks to compel Verizon to do. But Intrado cannot answer the question of how it plans to force other carriers to do so. In the absence of such direct trunking agreements with those other carriers, it appears that these carriers' calls would not reach Intrado-served PSAPs.

Contrary to Intrado's testimony at the hearing, these other carriers could not count on saving any money under Intrado's planned new network architecture, either. Intrado tried to argue that carriers would have to interconnect at fewer points with Intrado than they do with Verizon today at Verizon's selective routers. (Tr. 79.) But, once again, no one knows how many POIs Intrado would designate for interconnection with all other carriers, and no one knows how distant they may be from those carriers' networks—so the costs of Intrado's vague network architecture proposal to either Verizon or other carriers are unknown. (Tr. 82-83.) Moreover, Intrado's cost-savings hypothesis presumes that Intrado will sign up all 24 PSAPs in the state (VZ Ex. 1 at 12), so that other carriers would be sending traffic to just Intrado. (Tr. 95-96.) If, as is more likely in a competitive 911 environment, Verizon serves some PSAPs and Intrado serves others, the carriers that send traffic today to Verizon's selective routers for sorting to Verizon-served PSAPs will still do so **and** they will have to establish at least two new direct trunks from their end offices (and call sorting capability in those end offices) in areas served by Intrado—a

much less efficient and much more costly proposition than continuing to send their traffic through Verizon's selective routers, as they would still be able to do under Verizon's interconnection proposal.

Even if the Commission could ignore the governing law and the security and reliability risks Intrado's proposal presents, it could not find that it would not be in the public interest to force Verizon and other carriers to bear the costs of implementing Intrado's business plan, as that plan is designed to do. It is indisputable that fair and efficient competition cannot develop if carriers are forced to bear their competitors' costs. (VZ Ex. 2 at 34), and this Commission has never articulated any such anticompetitive, anti-consumer policy. Intrado's proposal may be the most "efficient" and "cost-effective" for Intrado (Petition at 24), but it is grossly inefficient and expensive for Verizon and other carriers. (VZ Ex. 1 at 21-22.)

It is also at odds with Verizon's 911 tariff. When Verizon serves a PSAP, it must charge its tariffed rates for elements provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still perform them—thus allowing Intrado to price its service more attractively and gain an unfair competitive advantage. (VZ Ex. 1 at 7-8.)

Even if Intrado's proposal to force Verizon and all other carriers into a new network architecture were supported by any law (and it is not), it would have to be rejected on policy grounds. Verizon's interconnection proposal will permit Intrado to provide all of its planned services to PSAPs that want to take them, but without any of the harmful policy consequences of Intrado's proposal.

<u>ISSUE 4</u>: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES? (911 Att. § 1.4; Glossary §§ 2.6, 2.63, 2.64, 2.67, 2.94, and 2.95.)

Sometimes, a 911/E-911 Call may be directed to the wrong PSAP. This may occur, for example, in the case of a wireless call because of a lack of identification of the caller's exact location. In the case of a misdirected 911 call, the PSAP that received the call may wish to transfer the call to the correct PSAP. Verizon does not disagree with Intrado that inter-selective router trunking permits PSAPs to communicate with each other to allow misdirected calls to be efficiently routed to the appropriate PSAP. (VZ Ex. 1 at 24; Intrado Ex. 2 at 20.) (In fact, it is Verizon's position that the interconnection between Verizon and Intrado for *all* 911 calls should be by means of trunking between selective routers. (VZ Ex. 2 at 25).) However, Intrado's specific inter-selective routing proposal is unacceptable for a number of reasons.

First, call transfer routing capability between PSAPs doesn't even involve interconnection with the public switched telephone network, so inter-selective routing terms are not subject to section 251(c) of the Act, as the Ohio Commission found. *Ohio Intrado/Embarq Order* at 8.

Second, Intrado's inter-selective-router trunking proposal assumes that Intrado may force Verizon to deliver 911 calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP *at a POI on Intrado's network*. As Verizon under Issue 3, Verizon cannot lawfully be forced to interconnect within Intrado's network, so the Commission must reject Intrado's proposal for Issue 4, just as it did for Issue 3. (VZ Ex. 1 at 24 & Ex. 2 at 26.)

Third, because Intrado proposes to designate POIs on its own network when it serves a PSAP in a particular area, and to require Verizon to deliver to these POIs calls being transferred from Verizon-served PSAPs to this Intrado-served PSAP, it follows that all of the inter-selective router trunking between Verizon's selective routers and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs would be on Verizon's side of the POI in this scenario. Therefore, under Intrado's proposal, Verizon would have to pay for the trunking between Verizon's and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs, as well as any other activities necessary to implement Intrado's particular method for selective router-to-selective router transfers. (These obligations would be in addition to Intrado's proposal for Issue 12 to make Verizon pay for direct trunks from Verizon's end offices to Intrado.) Intrado's proposal is, therefore, inequitable and anticompetitive (as well as unlawful). Intrado is once again seeking to make Verizon pay to implement new capabilities that Intrado can then market to PSAPs. (VZ Ex. 1 at 24-25 & Ex. 2 at 25-26.)

Fourth, the PSAPs served by Verizon and Intrado must *agree* to transfer misdirected 911 calls between them before such transfers can occur. Intrado argues that "[t]he interoperability currently available on a limited basic to ILECs providing 911/E911 services must be made available to Intrado Comm when it offers a competing 911/E911 service product." (Intrado Ex. 2 at 21.) It is not clear what Intrado means, but to the extent it is saying that PSAPs should have the same arrangements that they do today to transfer calls between one ILEC-served PSAP and another, that is not a matter for Verizon's and Intrado's interconnection agreement. The agreement between Verizon and Intrado cannot impose upon PSAPs specific interoperability provisions without their

consent, as Intrado seeks to do. Verizon does not seek to dictate to PSAPs call transfer arrangements, but rather, where PSAPs have agreed to transfer calls between themselves, Verizon will work with Intrado to establish arrangements for these transfers. But the interconnection agreement cannot purport to control third parties' conduct or the services that can be sold to them. (VZ Ex. 1 at 25-26.)

Fifth, Intrado's proposed language specifying particular activities to be undertaken by the parties to support Intrado's proposed call transfer methodology would require the parties to maintain inter-911-selective router dial plans. (911 Att., Intrado's proposed § 1.4.4.) Verizon agrees that current dial plans are necessary to ensure proper transfers of calls between companies' selective routers, and Verizon is willing to provide this information to Intrado just as it does to other providers. But there is no need for a provision expressly imposing a requirement that the parties maintain inter-911-selective router dial plans. Establishing these dial plans should be left, like many other network arrangements the parties will need to establish to connect their networks, to industry practice and the implementation efforts ordinarily undertaken by interconnecting carriers. (VZ Ex. 1 at 26.)

ISSUE 6: WHETHER FORECASTING REQUIREMENTS PROVISIONS SHOULD BE RECIPROCAL. (911 Att. § 1.6.)

The disputed language for this issue addresses forecasting of trunks for traffic exchanged between the parties' networks. Verizon's language 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. Intrado proposes to make this language reciprocal, so that Verizon would need to provide forecasts of the number of trunks Intrado would need to provide for the exchange of

traffic with Verizon. Intrado's revision serves no useful purpose and would impose an unnecessary burden on Verizon. (VZ Ex. 1 at 27 & Ex. 2 at 27-29.)

Intrado suggests that there will be a "mutual exchange of traffic" between Intrado and Verizon, so trunk forecasting requirements should apply equally to both parties. This argument is misleading, because Intrado does not plan to provide service to any end users that would make emergency (or other) calls; there will be no calls originating from Intrado's PSAP customers to Verizon. And Intrado, not Verizon, will be in the best position to forecast the number of trunks necessary for traffic from Verizon to Intrado. These trunking needs will depend on Intrado's success in the market, which Verizon cannot predict, and Intrado will be able to track the volume of traffic passing through its network to the PSAP. In addition, Intrado's PSAP customers will have the best knowledge of call volumes from Verizon's serving area to the PSAPs. (VZ Ex. 1 at 27-28 & Ex.2 at 28-29.) As the West Virginia Commission concluded in rejecting Intrado's reciprocal forecasting proposal, Intrado-served PSAPs, which have a business relationship with Intrado, will be better positioned than Verizon to assess call volumes to them (*W.V. Arb. Order*, at 3-4), so there is no reason to place this burden on Verizon.

In any event, 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. (VZ Ex. 1 at 28.) The Commission should thus reject Intrado's proposed forecasting language in section 1.6 of the 911 Attachment.

<u>ISSUE 9</u>: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION? (911 Att. § 1.5)

This issue is related to Issue 3, whether Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon's proposed section 1.5 of the 911 Attachment correctly recognizes that interconnection will occur on Verizon's network, and that certain steps need to be taken to initiate service at the POI(s) on Verizon's network. Intrado's competing language, however, assumes that Intrado may require as many POIs on 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 a POI on Intrado's network (*see* Issue 12 below). Because Intrado's language for section 1.5 reflects the erroneous notion that Verizon must interconnect with Intrado on Intrado's network, it must be rejected. (VZ Ex. 1 at 29-30 & Ex. 2 at 29-30.)

When Intrado interconnects with Verizon on Verizon's network (as it must) and Verizon routes its end users' 911 calls to Intrado through Verizon's 911 selective routers (*see* Issue 12 below), then, while Intrado will have the right to interconnect at as many technically feasible points on Verizon's network as Intrado wishes (either when interconnection is initially established in a LATA or at a later time), as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 911 selective routers are. These interconnections would probably be

established by Intrado when it initially interconnects with Verizon. Thereafter, changes to these interconnection arrangements would be managed under 911 Attachment section 1.5.5. If Intrado for some reason needs additional interconnection arrangements in a LATA, it can order them from Verizon pursuant to Verizon's generally established business practices for CLEC interconnection. Therefore, Intrado's language on this point is unnecessary. (VZ Ex. 1 at 20 & Ex. 2 at 30.)

The Commission should adopt Verizon's proposed language in §§ 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment, which correctly describes how Intrado can initiate interconnection at technically feasible POIs on Verizon's network.

ISSUE 12: HOW WILL THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER? (911 Att., §§ 1.3, 1.4, 1.7.3.)

Intrado has not only proposed for Verizon to take its end users' 911 traffic to multiple, distant POIs on Intrado's network (see Issue 3), but would also dictate how Verizon sorts it and gets it to those POIs. As Mr. Hicks testified, there are "two main components to Intrado Comm's language" for Issue 12—trunking arrangements and call routing arrangements. (Intrado Ex. 2 at 28.) Specifically, Intrado would (1) require Verizon to establish, at Verizon's expense, at least two[14] direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and (2) force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Verizon Ex. 1 at 31-32 & Ex. 2 at 31-32; Intrado Ex. 2 at 28-29.) Intrado has not supported and cannot support this unlawful and anticompetitive proposal. Even if the Commission, contrary to law, forces Verizon to

[14] Many end offices would require more trunks, as the required P.01 grade of service will be harder to achieve under Intrado's direct trunking proposal than under the existing approach of aggregating all end-user traffic on a single trunk group. (VZ Ex. 2 at 19-20.)

interconnect at a POI on Intrado's network, Intrado has no right to dictate how Verizon gets its 911 traffic to that point.

A. Intrado Has No Right to Dictate How Verizon Engineers Its Own Network

Intrado's proposal would require Verizon to buy or build a minimum of two additional direct trunks from affected Verizon end offices (Verizon has 235 end offices, Tr. 130) where Intrado is designated as the 911/E911 service provider for an area containing Verizon end users to an unspecified number of POIs on Intrado's network. (VZ Ex. 1 at 35; Intrado Ex. 2 at 27.) As discussed under Issue 3, Intrado's proposed contract language places no constraints on the number of POIs it may designate on its network or their distance from Verizon's network. Intrado's ill-defined proposal, therefore, gives it complete discretion to impose unlimited and unknowable transport costs upon Verizon. (VZ Ex., 2 at 33.)

If, contrary to law, the Commission directs Verizon to place a POI (or POIs) on Intrado's network, then the transport facilities needed to get 911 calls to that POI will be on Verizon's side of the POI. As a result, Intrado's proposal for Verizon to establish direct trunks to those POIs on Intrado's network and to implement call-sorting capability in its end offices seek to dictate how Verizon engineers its own network on its own side of the POI. There is no basis in law, policy, or equity to support the notion that Intrado may tell Verizon how to configure Verizon's own network and that Verizon must bear the costs of whatever configuration eventually Intrado decides upon.

The only two Commissions that have ruled on Intrado's direct trunking proposal—Ohio and West Virginia--have rejected it. The West Virginia Arbitrator ruled that "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." *W.V. Award*, at 20; *W.V. Order*, at 3 ("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.").

In Intrado's arbitrations with Embarq and Cincinnati Bell, the Ohio Commission found that Intrado's direct trunking proposal was not required under section 251(c) of the Act. *Ohio Embarq/Intrado Order* at 33; *Ohio CBT/Intrado Order* at 14-15. It confirmed that nothing would justify one carrier dictating to another how it transports traffic *within its own network.* (*See, e.g.*, *CBT/Intrado Order*, at 14 (a carrier is "entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection"); *Embarq/Intrado Order*, at 33 ("Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI").) Verizon, not Intrado, has the right to decide how to configure its own network, so the Commission must reject Intrado's direct trunking/call sorting proposal, which would transfer that right to Intrado.

In addition, as the FCC has repeatedly stated, the requesting carrier is responsible for the costs of interconnection and must pay the ILEC for any expensive form of interconnection it requests.[15] So even if section 251(c) did require Verizon to implement Intrado's network architecture proposal (and it does not), Intrado would have to pay the substantial costs that Verizon would incur to implement these proposals. If Intrado wants

[15] *Local Competition Order*, *supra*, at ¶¶ 199, 200, 209, 225, 552.

redundant direct trunks from Verizon's end offices to POIs on Intrado's network, then Intrado must pay for them.

B. Intrado Cannot Force Its Network Architecture Proposal on Other Carriers

As explained, most CLECs and wireless carriers today opt to connect through Verizon's selective routers to route their calls to the appropriate PSAP. Under Intrado's proposal, Verizon could not send any traffic—its own or other carriers'—through selective routers to PSAPs served by Intrado. Only Verizon's calls would flow over the direct trunks from Verizon's end offices to Intrado's POIs under Intrado's plan. So other carriers would have to implement the same direct trunking/end-office call-sorting arrangements Intrado demands of Verizon here. (VZ Ex. 1 at 33, 45.)

Therefore, Intrado's proposal would not only dictate how Verizon engineers its own network, but how other carriers engineer their networks.. (VZ Ex. 1 at 34-35 & Ex. 2 at 20.) Intrado can cite no law that entitles it to force these carriers to lease or build their own facilities to directly connect on Intrado's network.

As of June 30, 2007, CLECs served 526,796 lines and wireless carriers served 4,818, 275 subscribers in Maryland. (VZ Ex. 1 at 35.) So a substantial number of non-Verizon customers would potentially be affected by Intrado's proposal, because it risks leaving them without access to E911 service. (*Id.*; VZ Ex. 2 at 20.)

Intrado's proposal would, moreover, compromise Verizon's obligation, under section 271(c)(2)(B)(vii)(I) of the Act, to provide other carriers nondiscriminatory access to 911 services. This access is provided today in most cases through Verizon's selective routers. Intrado's proposal would remove this option for these carriers, disrupt Verizon's

agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. (VZ Ex. 1 at 35.)

C. Intrado's Proposal Is Vague, Risky, and Unworkable

As Verizon has explained, its end offices cannot sort 911 calls. Call-sorting capability resides instead in Verizon's selective routers. As a result, for Intrado's direct end-office trunking proposal to work, some kind of new call-sorting method would have to be deployed in those end offices in order for calls to be sorted to the right PSAP. Intrado recognizes this fact, and at the beginning of this case, it asked the Commission to require Verizon to deploy what Intrado calls "line attribute routing" to get calls to Intrado-served PSAPs. (VZ Ex. 1 at 31, *quoting* Joint Issues Matrix, Intrado Position on Issue 12 (Sept. 12, 2008); Intrado Ex. 2 at 28-29.)

Intrado's line attribute routing proposal is substantially the same as an obsolete process known in the industry as "class marking." Class marking is a manual process in which each end user's telephone number is programmed into the serving end office switch to correspond to a specific 911 trunk group when the end user dials 911. When a single switch supplies dial tone to a large area served by multiple PSAPs, class marking requires separate 911 trunks for each PSAP. (VZ Ex. 1 at 38-39.)

Line attribute routing is not an industry standard, has never been used anywhere and is, in fact, just a concept dreamed up by Intrado to try to convince public utilities commissions that Intrado's direct trunking approach will work. (VZ Ex. 1 at 38-41 & Ex. 2 at 22-23.) As 911 entities and commissions have become aware of Intrado's line attribute concept, it has generated serious concerns. (VZ Ex. 2 at 37-40.) When the Ohio Commission rejected Intrado's direct trunking/line attribute routing proposal, it cited (in addition to the lack of any law to support it), the "conflicting evidence

concerning the reliability and expense of implementing such an arrangement." *Ohio Embarq/Intrado Award*, at 33; *Ohio CBT/Intrado Award*, at 15.

In Texas, a coalition of state and local 911 agencies and associations was given special permission to file position statements in Intrado's arbitrations with Verizon and AT&T, in order to help "ensure that public safety interests are not compromised via either a negotiated or arbitrated interconnection agreement between the Parties." The Texas 911 coalition was particularly concerned about Intrado's line attribute routing proposal, explaining that adopting it "would be contrary to law, the public interest, public safety, and be null and void as a matter of law" in Texas.[16]

The West Virginia Enhanced 9-1-1 Council, in a letter to the Commission in Verizon's arbitration with Intrado, also expressed concern about Intrado's line attribute routing proposal: "The 9-1-1 Council is concerned about the reliability and effectiveness of this method of emergency call delivery."[17]

In the wake of these criticisms, Intrado adopted more of a soft-sell approach to line attribute routing, in an effort to try to salvage its direct trunking proposal. Instead of asking commissions, including this one, to require Verizon to implement line attribute routing, Intrado started to "offer" it "as a possible method for Verizon to use to route its 911 calls to Intrado Comm." (Intrado Ex. 2 at 32; VZ Ex. 2 at 37-38.) By the time Intrado submitted its Rebuttal Testimony here, Intrado stopped defending line attribute routing; that testimony did not even mention it—but neither did it offer any other call

[16] VZ Ex. 2 at 38-39, *citing Petition of Intrado, Inc. for Arb. Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Verizon Southwest*, Unopposed Joint Motion of the Tex. Comm'n on State Emergency Comm., the Texas 9-1-1 Alliance, and the Municipal Emergency Comm. Districts Ass'n for Leave to File a Statement of Position, at 1-2 (Oct. 17, 2008).

[17] VZ Ex. 2 at 38-39, *citing* Letter from R. Hoge, Sec'y, W.V. Enhanced 9-1-1 Council, to S. Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (Nov. 7, 2008) (attached as Ex. 12 to VZ Ex. 1).

routing alternative.

Whether Intrado proposes line attribute routing or nothing at all for call routing along with its direct trunking proposal, there is no existing call-sorting alternative to selective routing. Line attribute routing, the only routing concept discussed on this record, certainly cannot provide any assurance that Intrado's end office direct trunking proposal will work. (VZ Ex. 2 at 40.) Intrado agrees that class marking is an inferior form of routing that could result in 911 calls being misrouted to the wrong PSAP (Intrado Ex. 2 at 33), but the only difference between class marking and line attribute routing is that Intrado proposes to require Verizon to validate the address information of its end users against the master street address guide ("MSAG"). (VZ Ex. 1 at 38-39; Intrado Ex. 2 at 34-35.) Intrado's claim that MSAG validation would make line attribute routing more reliable than class marking is unpersuasive. There is no automated process to do such validation, and adding another manual step to the line attribute routing proposal just increases the opportunity for error. (VZ Ex. 1 at 40-41 & Ex. 2 at 42.)

Although Intrado's line attribute routing proposal has never been implemented anywhere, it is nevertheless clear that its implementation would be extremely difficult, require a lengthy period to deploy, and cost up to several million dollars. (VZ Ex. 1 at 38.) At a minimum, Verizon would have to establish line attribute tables for Verizon central offices where Intrado Comm is designated as the 911 provider for an area containing Verizon end users; engineer and install separate trunk groups for each PSAP; manually reprogram each of its access lines served in the affected central offices; and modify its ordering and provisioning systems—causing Verizon to have duplicate ordering and provisioning processes. (VZ Ex. 1 at 37-38.) Intrado offers no opinion as to how long it might take to implement line attribute routing (or any other calling sorting

concept) or how much it would cost. Intrado simply proposes to leave it up to Verizon to devise, deploy, and pay for the new call-sorting capability.

Intrado's line attribute routing proposal (or, more generally, precluding use of Verizon's selective routers) is not necessary for any legitimate reason, including reliability of the 911 network. To the extent Mr. Hicks suggests that selective routing is not, in fact, the industry standard for call sorting (Intrado Ex. 2 at 24), he is plainly wrong. Indeed, no Intrado witness could name another method of call sorting in use or even in development. As Verizon has testified, using selective routers is efficient because it allows a company to aggregate and route calls to multiple PSAPs through a single switch. Conversely, it is not efficient for call carriers to build multiple trunks from multiple end offices to multiple selective routers, as Intrado proposes. (VZ Ex. 1 at 39.) As Verizon witnesses testified, the industry standard, reflected in National Emergency Number Association publications, is to concentrate trunks from end offices at a 911 tandem or selective router from which a single trunk group serves the PSAP. This most-efficient configuration is used throughout the country and has proven to be extraordinarily reliable. (VZ Ex. 1 at 39-40 & Ex. 2 at 34-37.) Given the critical need to assure reliable 911 communications, the Commission cannot accept Intrado's speculation that line attribute routing—or some unidentified call-sorting alternative--will be more reliable than Verizon's selective routing, when such alternative has not even been developed, let alone ever used.

Intrado's untested proposals will undermine, not enhance, network reliability, because of, as discussed, the manual processing required for line attribute routing and the need for all carriers to buy into Intrado's network configuration plan for it to offer any level of reliability. Unless carriers that interconnect with Verizon today establish direct

connections to Intrado's network, they will need to continue to route their calls to Intrado-served PSAPs through a Verizon selective router. It would only be potentially unnecessary for a particular Verizon end office if all of the PSAPs serving that end office were served by Intrado ***and all other carriers established direct trunks to route emergency calls to Intrado.*** (VZ Ex. 2 at 46.) As noted, if Intrado fails to secure direct trunking agreements from these carriers, their end users' emergency calls will not be transmitted to Intrado-served PSAPs. This critical gap in Intrado's plan alone justifies its rejection.

Intrado's only response to this serious public safety issue is that those carriers have an obligation to interconnect with Intrado under section 251(a) of the Act, and that it is not Verizon's job to police Intrado's relationships with other carriers. (Intrado Ex. 1 at 19-20.) But while section 251(a) requires all carriers to interconnect with each other, it does not require any particular method of interconnection, let alone the direct trunking approach Intrado is trying to force on the industry. And Verizon is not trying to police Intrado's relationships with other carriers; it is, instead, informing the Commission about the effect of Intrado's proposal on Verizon's own relationship with other carriers (which, under Intrado's proposal, would have to stop sending traffic through Verizon's selective routers) and rebutting Intrado's ill-founded claims that its direct trunking/mystery call sorting approach will enhance public safety.

If Intrado wishes to shift the industry to its direct trunking/new call routing approach, that issue needs to be worked out by the industry, with participation of all affected agencies and carriers. It is too critical to be left for an ILEC to figure out by itself as the result of a bilateral arbitration decision. (VZ Ex. 2 at 41.) As the Florida

Commission observed, "any discussion regarding the provisioning of competitive 911/E911 service…requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters." (*Fla. Embarq/Intrado Order* at 8; *Fla. AT&T/Intrado Order* at 9.)

Intrado's suggestion that its direct trunking proposal will somehow benefit Verizon is also unfounded. (VZ Ex. 2 at 48-49.) Intrado implies its direct trunking/line attribute routing proposal will allow Verizon to more quickly isolate trouble, such as Automatic Number Identification ("ANI") failure conditions, to a particular end office. It also argues that direct end office trunking to Intrado's routers would alleviate potential problems with "saturation" of trunks that might occur over the combined trunk groups and may reduce address validation errors. (VZ Ex. 1 at 36-37.) Intrado witness Hicks concludes that "any investment required to implement line attribute routing may be offset by the savings Verizon realizes from reduced switch maintenance and repair costs and from not having to correct downstream service address errors detected by Intrado Comm's ALI database management process." (Intrado Ex. 2 at 37.)

Intrado is wrong on all counts. First, Verizon, not Intrado, has the right to decide how best to configure its own network, and it is certainly *not* the approach Intrado is proposing. Second, direct end office trunking to Intrado's selective routers would exacerbate, not alleviate, potential problems with "saturation" of trunks. A fundamental traffic capacity principle is that there is greater traffic capacity and less chance of blockage when traffic is aggregated to one group of facilities (Verizon's approach) and a greater chance of 911 call blockage if Verizon is forced to separate its end user traffic to multiple trunk groups (as Intrado proposes). Third, aside from the fact that the potential

benefits Intrado raises are purely speculative, they are unnecessary solutions to non-existent problems. There are no problems that need addressing today in Verizon's 911 network in terms of ALI failures, lengthy repair times, or address validation errors—nothing that would justify the major network reconfiguration that Intrado would require. There is absolutely no way any minimal benefits to be gained from Intrado's proposal, even if there were any, could outweigh the million or more dollars Verizon would have to spend to establish and maintain the direct trunking/new call routing system Intrado proposes. (VZ Ex. 2 at 49.)

Moreover, call routing has nothing to do with interconnection under § 251(c)(2) of the Act, so Verizon has no obligation to provide it, let alone provide and pay for it. Line attribute routing (or other routing) would be a process affecting switch translations and line coding and routing, which occur on the ILEC's side of the POI. The ILEC alone is responsible for what happens on its side of the POI, just as the CLEC is responsible for what happens on its side of the POI. Intrado has no right to dictate what Verizon does on its side of the POI. (VZ Ex. 1 at 41-42.)

Even if there were any law to support Intrado's direct trunking/mystery call routing proposal, the Commission cannot responsibly adopt Intrado's cavalier stance toward critical 911 call routing issues; it should reject Intrado's direct trunking proposal.

D. Intrado's Proposal Is Not The Same as Verizon's Interconnection Arrangements With Other Carriers

Intrado claims that it is simply seeking the same types of arrangements Verizon has with other carriers when Verizon serves the PSAP. (Intrado Ex. 2 at 29.) It argues that its proposal for Verizon to direct trunk its end users' 911 traffic from Verizon's end offices to Intrado's selective routers is consistent with Verizon's use of dedicated trunks

to route its own end users' call to its PSAP customers, and the way in which Verizon requires competitors to deliver their end users' 911 calls to Verizon's selective routers. (Intrado Ex. 2 at 17.) As explained above, this is not true. None of the Verizon companies' interconnection agreements anywhere include anything like Intrado's direct trunking/new call routing proposal. Indeed, no other carrier has even asked for such arrangements. (VZ Ex. 1 at 42.) Again, when Verizon exchanges traffic through section 251(c) interconnection agreements--like the one Intrado is seeking here--CLECs bring their traffic to Verizon's network because *federal law requires them to.* And, again, Verizon does not "require" all CLECs to bring their 911 traffic to Verizon's selective routers, but most do so because it is the most efficient solution for them to have Verizon sort their calls to the right PSAPs.

In any event, the definitive response to Intrado argument that it will be at a competitive disadvantage without direct trunking to Intrado's selective routers (Tr. 51) is that Intrado can have all the direct trunking it wants, *provided Intrado pays for it*. Verizon's proposal allows Intrado to determine how best to get Intrado's traffic from Verizon's selective routers on Verizon's network to Intrado's network. But Verizon has no obligation to pay for the direct trunks Intrado wants or to deploy a new call-sorting method to replace selective routing.

* * *

For all of the foregoing reasons, the Commission should reject Intrado's network architecture proposals, which have no basis in law or sound policy. Specifically, the Commission should find that Verizon is not required to: (1) interconnect at a POI (or POIs) on Intrado's network; (2) install direct trunking from its end offices to POIs on Intrado's network; (3) forego use of its selective routers and implement a new call routing

methodology; or (4) send all 911 calls from split wire centers to Intrado, even where 911 calls are destined for Verizon-served PSAPs. The Commission should instead adopt Verizon's language for sections 1.3, 1.4, and 1.7.3 of the 911 Attachment, and sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95 of the Glossary.

E. Intrado's Proposal Is Inconsistent with Past Commission Decisions

At the hearing, Commission Staff asked Verizon witness D'Amico to compare Intrado's proposal here with the situation in a 2004 arbitration between AT&T and Verizon (Tr. 181-85).[18] As an initial matter (and in response to Staff's question at the hearing), the *AT&T Order* was not the latest decision (Tr. 181) by the Commission on points of interconnection. The 2005 *US LEC Order* Verizon mentioned earlier in Issue 3 was issued after the *AT&T Order*. Verizon also points out that the *AT&T Order* and the *US LEC Order* were never implemented, because neither order led to a conforming interconnection agreement. After its arbitration with AT&T, Verizon and AT&T negotiated an amendment to their existing contract that resolved the parties' network architecture/intercarrier compensation disputes in a different way than the Commission had. Verizon and US LEC did not negotiate a conforming interconnection agreement (US LEC was acquired by PaeTec after the arbitration ruling). Therefore, the Commission never issued any orders approving agreements implementing its rulings and which would have triggered the appeal process.

In the AT&T arbitration, the Commission interpreted FCC rulings to permit it to fashion a resolution that it deemed equitable under the circumstances. The Commission recognized that POI(s) were for mutual exchange of traffic (*AT&T Order* at 7), but

[18] Verizon assumes Staff was referring to *Petition of AT&T Comm. of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms and Conditions*, Order No. 79250, Case No. 8882 (July 7, 2004) ("*AT&T Order*").

permitted two POIs for such mutual traffic exchange—one at Verizon's switch and one at "the AT&T switch location to which Verizon has built out its network facilities." *Id.* at 8. The Commission described this solution as "fair to both carriers" because each would "equitably share the cost of the interconnection facility" based on its share of originating traffic passing over that facility. *Id.* at 10. Under the regime adopted by the Commission, "'[t]he originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls,'" making it "'possible for one company's customers to call any other customer even if that customer is served by another telephone company.'"[19]

In the subsequent *US LEC Order*, the Commission departed from the two-POI approach in the *AT&T Order*, finding Verizon correct that "the point of interconnection must be on its network." *US LEC Order* at 8. However, the Commission relied on the same fairness rationale it had in the *AT&T Order* to direct the parties to bear the cost of transporting their respective originating traffic—that is, it would be equitable to do so because each carrier could recover the transport costs from its own end users, as part of a system in which any carrier's customer could call any other carrier's customer. *US LEC Order* at 8-9.

Verizon disagrees with the Commission's previous reading of the FCC's rules to the extent it would permit a dual-POI arrangement and/or would require sharing of transport costs beyond a POI on the ILEC's network. But, as noted, these issues were never fully litigated because they were not implemented in any interconnection agreements.

[19] *AT&T Order* at 9 n. 9, *quoting TSR Wireless v. U.S. West*, FCC 00-194, ¶ 34 (June 21, 2000).

In any event, the *AT&T* and *US LEC Orders* provide no support for Intrado's proposal to designate unlimited POIs on its network and to force Verizon to bear all the costs of taking 911 traffic to those POIs, because the facts here are completely different than they were in the AT&T and US LEC arbitrations. Indeed, at the hearing, Staff asked Verizon how the situation in the AT&T case was "different from what Intrado is asking" here. (Tr. 182.) There are numerous such differences.

First, there will be no mutual exchange of traffic between Verizon and Intrado. The only traffic under the agreement will be 911 traffic, and that traffic will flow only one way—from Verizon to Intrado—to enable Intrado to serve PSAPs that take its service. Intrado's only customers will be PSAPs and they will not call Verizon's customers. So the fundamental assumption underlying the decisions in the AT&T and US LEC cases—that the interconnecting carriers' customers would make telephone calls to one another—does not apply in this case. (Tr. 182-83.)

Second, there are no facilities in place between Verizon and Intrado, unlike the situation described in the *AT&T Order*, where the Commission's ruling considered that Verizon had existing facilities to AT&T's switch.

Third, Intrado has no facilities, either, as AT&T and US LEC already did, so there are no physical constraints on Intrado's ability to arrange its network in the most cost-efficient way for Intrado, within the requirements of the law. (Tr. 184-85.)

Fourth, Verizon cannot recover from its originating end users the costs of transporting their traffic to Intrado, because that traffic will be 911 calls for which Verizon cannot charge its end users.

Fifth, the *Local Competition Order* reference the Commission relied upon, in part, for its conclusion that the originating carrier should pay to transport its traffic to the other party's switch in the AT&T and US LEC cases was part of the FCC's discussion of

reciprocal compensation obligations for traffic subject to section 251(b)(5) of the Act.[20] No reciprocal compensation will apply to the 911 traffic at issue in this case.

Sixth, neither AT&T nor US LEC asked the Commission to allow them to designate as many POIs as they wanted to, anywhere on their networks, as Intrado seeks to do here. So the Commission did not have to consider, as it does here, that the transport costs Intrado seeks to impose upon Verizon are completely unknown and potentially unlimited. (Tr. 184-85.)

Seventh, as noted, Intrado has acknowledged that each carrier is responsible for the cost of delivering its traffic to the POI (Petition at 25) (although, of course, they disagree as to where the POI(s) must be).

There is, in short, no identity of facts between Intrado's proposal in this case and the situations in the AT&T and US LEC cases. Because the facts are completely different, the equity rationale that led the Commission relied to impose some transport costs upon the originating carrier in the AT&T and US LEC cases does not apply here. Here, Intrado seeks to impose upon Verizon *all* the costs of the parties' interconnection without the opportunity to recover those costs that the Commission identified in the US LEC and AT&T cases. Intrado's proposal is, therefore, directly opposed to the fairness objective the Commission was trying to achieve in the AT&T and US LEC cases. The only equitable solution here is for Intrado to pay the costs of transporting the 911 traffic to Intrado's PSAP customers, from which Intrado can recover its costs. Intrado should bear these transport costs whether the Commission decides the POI(s) must be on Verizon's network (as it should) or whether it permits Intrado to designate POIs on its own network.

[20] *AT&T Order* at 10 and *US LEC Order* at 9, both citing *Local Competition Order*, ¶ 1062.

<u>ISSUE 13</u>: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE THE INTRADO COMM PROPOSED SENTENCE DESCRIBING VERIZON'S 911/E-911 FACILITIES. (911 ATT., § 1.1.1.)

Verizon does not oppose listing its 911 network components in the interconnection agreement and proposed compromise language in its testimony that accurately describes Verizon's 911 facilities and that should have resolved Intrado's asserted concerns. (VZ Ex. 1 at 45) But a dispute appears to remains because Intrado's language continues to describe Verizon's network components inaccurately.

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 from Verizon end offices to PSAPs--in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement another routing method. 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. (VZ Ex. 1 at 45.)

Only Verizon's proposed language accurately describes Verizon's network arrangements and capabilities. (VZ Ex. 2 at 49-50.) Verizon's language is also consistent with its definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.64 and properly reflects that Verizon manages the ALI database where Verizon has been selected by the Controlling Authority to do so. (VZ Ex. 1 at 45.)

<u>ISSUE 14</u>: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE. (911 Att., § 1.2.1.)

Verizon does not disagree that the parties should cooperate to ensure that misdirected 911 calls are directed to the right PSAP, and it has 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 (automatic location identification) database. (911 Att., § 1.2.) But Intrado's specific language with regard to ALI steering tables does not belong in an interconnection agreement. (VZ Ex. 1 at 46.)

The ALI function is an information service. (VZ Ex. 1 at 46-47.) Because the FCC has determined that the provision of caller location information to a PSAP is an information service,[21] not a telecommunications service, such services fall outside the scope of interconnection agreements. (VZ Ex. 1 at 46-47.) 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, as Intrado unreasonably proposes here. To Verizon's knowledge, its 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 in negotiations outside the context of a section 251/252 interconnection agreement. (VZ Ex. 1 at 47-48 & Ex. 2 at 50-51.) The Commission should thus reject Intrado's proposed language in section 1.2.1 of the 911 Attachment related to ALI databases.

<u>ISSUE 15</u>: WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES' PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED? (Glossary §§ 2.6 ("ANI"), 2.63 ("911/E-911 Service Provider"), 2.64 ("911 Tandem/Selective Router"), 2.67 ("POI"), 2.94 ("Verizon 911

[21] *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 (1998), at ¶ 17.

Tandem/Selective Router"), and 2.95 ("Verizon 911 Tandem/Selective Router Interconnection Wire Center").)

Each of the glossary definitions for Issue 15 is referenced in one or more of the draft interconnection agreement sections in Issues 3, 4 and 12. The source of the parties' dispute about the definitions under Issue 15, like many others in this arbitration, is Intrado's unlawful network architecture proposal. In this regard, Intrado's definitions in sections 2.63 ("911/E-911 Service Provider") and 2.67 ("POI") incorrectly assume that Intrado is entitled to select POIs on its own network. (VZ Ex 1 at 49.)

Intrado's proposed definition of "ANI" in Glossary § 2.6 is related to its proposed language in the 911 Attachment that includes an express requirement that Verizon deliver 911 calls to Intrado with ANI. Since the Commission should reject Intrado's proposed language for the 911 Attachment for the reasons set out under Issue 3, there will be no need for a definition of ANI. Moreover, there is no need the 911 Attachment to address delivery of 911 calls to Intrado with ANI, because technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice.

In addition, Intrado's language does not accurately reflect the structure of Verizon's network and the location and operation of 911 Tandem/Selective Routers in Verizon's network. Intrado's single generic definition of "911 Tandem/Selective Router" does not fully reflect the location and operation of this facility in Verizon's existing retail network. Intrado proposes the following definition of "911 Tandem/Selective Router:"

> Switching or routing equipment that is used for routing and terminating originating end user 911/E-911 Calls to a PSAP and/or transfer of 911/E911 Calls between PSAPs.

Verizon agrees that a 911 Tandem/Selective Router is switching or routing equipment that is used for routing end user 911 calls to a PSAP. Verizon also agrees that in some instances such equipment may be used to transfer 911calls between PSAPs. However, a 911 Tandem/Selective Router is not always used for this call transfer purpose—whether or not it will be is determined by the PSAPs. Intrado's joinder of the two possible uses of 911 Tandem/Selective Router (that is, routing end user calls and transferring calls between PSAPs) into a single sentence with the conjunction "and" inaccurately suggests that a 911 Tandem/Selective Router *always* performs the call transfer function. By using "and/or," Intrado's language could be interpreted to mean that equipment could be deemed to be a 911 Tandem/Selective Router even if it performed only the PSAP-to-PSAP call transfer function. In Verizon's network, a 911 Tandem/Selective Router would not perform only this function. It either performs only the first function (routing end user calls to PSAPs), or both the first and second functions, but not just the second alone. Therefore, Intrado's language is inaccurate. (VZ Ex. 2 at 52-53.)

Intrado's definition of "911 Tandem/Selective Router" (Glossary § 2.6.4) is also inappropriate because it fails to properly describe the location of a 911 Tandem/Selective Router in Verizon's network, which is at a point between Verizon end offices and the PSAPs. In addition, Intrado's language incorrectly suggests that a Verizon end office switch is a 911 Tandem/Selective Router, when Verizon's end offices cannot perform selective routing functions. (VZ Ex. 2 at 53.)

Verizon defines "911 Tandem/Selective Router" in a way that is appropriate for this equipment in either Party's network as follows: "Switching or routing equipment that

is used for routing 911/E-911 Calls." This definition is broad enough to cover both 911 calls routing to a PSAP and 911 call transfer between PSAPs.

Verizon defines "Verizon 911 Tandem/Selective Router Interconnection Wire Center" in Glossary § 2.95 as: "A building or portion thereof which serves as the premises for a Verizon 911 Tandem/Selective Router." (Verizon Ex. 2, RT at 53-54.)

Finally, including Verizon's proposed definition of "Verizon 911 Tandem/Selective Router Interconnection Wire Center" is appropriate because one of the POIs on Verizon's network is specifically stated in the 911 Attachment to be a "Verizon 911 Tandem/Selective Router Interconnection Wire Center.

The Commission should adopt Verizon's proposed definitions because they accurately reflect the structure of Verizon's network and will therefore reduce the likelihood of future disputes between the Parties because of Intrado's vague and overly broad definitions.

ISSUE 34: WHAT VERIZON WILL CHARGE INTRADO COMM FOR 911/E911 RELATED SERVICES AND WHAT INTRADO COMM WILL CHARGE VERIZON FOR 911/E-911 RELATED SERVICES. (911 Att. §§ 1.3, 1.4 and 1.7; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

ISSUE 54: SHOULD INTRADO COMM'S PROPOSED INTERCONNECTION RATES BE ADOPTED? (911 Att. Intrado Comm proposed §§ 1.3.7 and 1.7.3; Pricing Att. Intrado Comm proposed Appendix A, Intrado rates.)

Intrado does not dispute Verizon's proposed rates in Appendix A to the Pricing Attachment. (VZ Ex. 2 at 55.) Appendix A lists the Commission-sanctioned rates for elements that CLECs may take from Verizon, including unbundled network elements, and appropriate references to Verizon's tariff rates for such services as entrance facilities and transport for interconnection, and exchange access services. (VZ Ex. 1 at 54-55.) Verizon's proposed 911 Attachment and the Pricing Attachment would apply applicable

tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. In other words, tariffed rates would apply to tariffed services. (VZ Ex. 2 at 55.) Intrado objects to these tariff references.

There appear to be two reasons. First, Ms. Spence-Lenss states: "Pricing for interconnection and network elements is to be developed pursuant to the pricing standards contained in Section 252(d) of the Act"--that is, the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology. (Intrado Ex. 1 at 22.) Intrado appears to be suggesting that everything it may possibly order from Verizon must be priced at TELRIC simply because Intrado is what it calls a "co-carrier" interconnecting with Verizon. (Intrado Ex. 1 at 22.) That is a plainly erroneous notion. Intrado is entitled to TELRIC pricing only for the elements the FCC has identified for such pricing, and these elements, as well as appropriate references to Verizon's tariff rates, are already included in Appendix A to the Pricing Attachment. Intrado cannot circumvent Verizon's tariffs and obtain better pricing than any other carrier can for the same service simply by claiming that Intrado needs it for interconnection. (VZ Ex. 2 at 56.)

Intrado also argues that without pricing for every element that Intrado may someday take from Verizon, "Intrado Comm cannot effectively compete with Verizon because it will not know its operating costs." (Intrado Ex. 1 at 23.) Intrado claims that it needs greater "certainty" (*Id*. at 26), imagining a scenario in which Verizon knows Intrado is planning to enter a particular geographic area and Verizon suddenly changes its tariffed pricing and contends that such "volatile pricing" would make Intrado's chance of succeeding in the market "tenuous at best." *Id*. at 23.

This argument is unconvincing. Verizon's generic tariff references are a standard part of Verizon's Commission-approved interconnection agreements. (Verizon Ex. 2 at 57.) Verizon's proven, workable approach has not had any of the nefarious effects Intrado conjures. Contrary to Intrado's arguments, Verizon cannot immediately change its tariffed prices on a whim. Tariffs for the wholesale services that Intrado is likely to purchase, such as entrance facilities and transport from Verizon's access tariffs and collocation from Verizon's collocation tariff, remain subject to Commission review and approval. (Verizon Ex. 2 at 57.)

Verizon cannot predict which of Verizon's many tariffed services, if any, Intrado might take in the future and Intrado probably cannot, either. It would be unreasonable, infeasible, and unnecessary to expect the interconnection agreement to list all of its tariffed rates for all of its services. Verizon's tariff references make clear that Intrado may purchase tariffed services and that it will receive the same, nondiscriminatory rates offered to all CLECs. (VZ Ex. 2 at 57-58.)

Verizon's proposed provisions with regard to "TBD" (to be determined) rates in section 1.5 of the Pricing Attachment are appropriate because they provide for TBD rates to be replaced by applicable tariff rates (when such rates come into effect), or by rates required, approved or allowed to go into effect by the Commission or the FCC. (VZ Ex. 1 at 59-60.)

Unlike Verizon's charges listed in Pricing Attachment A, Intrado's proposed rates are in dispute. This issue is, again, related to Intrado's Issue 3 proposal to designate POIs on its own network and its Issue 12 proposal for Verizon to pay for trunks to transport

911 traffic to those POIs. (VZ Ex. 2 at 68-69.) Verizon opposes any charges that assume the implementation of Intrado's interconnection proposal.

Intrado's entire pricing proposal (at App. A, Pricing Att.) is as follows:

A. INTERCONNECTION

Service or Element Description:	**Recurring Charges:**	**Non-Recurring Charge:**
Per DS1	**$ 127.00**	**$ 250.00**
Per DS0	**$ 40.00**	**$250.00**

It is impossible to tell from this chart what Intrado's proposed charges are for. Intrado's proposed language does not specify what services "per DS1" or "per DS0" it proposes to charge for, or what facility arrangements it might have in mind. (VZ Ex. 2 at 69.) In her direct testimony, Ms. Spence-Lenss suggests that Intrado's proposed charges would be for "port terminations" to interconnect at Intrado's POIs on its network (Intrado Ex. 1 at 24), but that is not clear from the contract language it asks the Commission to adopt. (VZ Ex. 2 at 69.)

Intrado contends that port termination charges are fair because Verizon imposes trunk port termination charges on carriers terminating traffic on its 911 network. (*Id.*) Intrado's argument has no merit. First, it incorrectly assumes that Intrado may designate POIs on its network. Since Intrado must interconnect with Verizon on Verizon's network, Intrado has no right to charge Verizon for interconnection and transport facilities to carry 911 calls to Intrado's network, so port, termination, or other such fees are inappropriate. (VZ Ex. 1 at 58.) As the West Virginia Arbitrator determined, "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award*, at 24.) With respect to pricing provisions in general, the Arbitrator found:

> The 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network. (*W.V. Award*, at 15.)

This Commission should make the same finding.

In addition, it is not clear just what Verizon rates Intrado is comparing Intrado's rates to or, as noted above, what facility arrangement Intrado's rates represent--so it is impossible to draw any comparison between Verizon's and Intrado's proposed rates. (VZ Ex. 1 at 61-62 & Ex. 2 at 70.) Finally, Intrado has offered no cost or other justification for the rate levels it proposes for the unspecified "interconnection" services in Appendix A. Even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), the Commission would have to reject those rates for lack of any support. (VZ Ex. 1 at 59 & Ex. 2 at 70.)

For all of these reasons, the Commission should approve Verizon's proposed references to "applicable" tariff provisions and "TBD" rates. Because Verizon cannot be required to interconnect on Intrado's network, the Commission should reject Intrado's charges for interconnecting facilities to POIs on Intrado's network. Moreover, the Commission should reject Intrado's proposed rates, because Intrado has not shown that they are reasonable.

<u>ISSUE 35</u>: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT.

(GT&C § 1.1; 911 Att. § 1.3 (Verizon § 1.3.3, Intrado § 1.3.6), 1.4.2, 1.7.3; Pricing Att. §§ 1.3, 1.5 and Appendix A)

The dispute here is essentially the same as that in Issue 34, with respect to Verizon's use of tariff references in the Agreement. Verizon proposes language referring to "applicable tariff provisions" at various places in the draft agreement, including, but not limited to, in General Terms and Conditions §1.1, the Collocation Attachment, the 911 Attachment and the Pricing Attachment. As noted under Issue 34, Verizon also proposes language in Pricing Attachment section 1.5 that states that "TBD" rates will be replaced with applicable tariff rates, when they become effective, or rates required, approved or allowed to go into effect by the Commission or the FCC. (VZ Ex. 1 at 59-60.)

Intrado objects to these general references to applicable tariff provisions, as well as to Verizon's standard Pricing Attachment provision stating that the rates for a party's services will be the rates set out in the party's applicable tariff and that, in the absence of an applicable tariff rate, the rates in Appendix A of the Pricing Attachment. Intrado also suggests that all prices under the Agreement should be developed in accordance with the "Section 251/252 process" (Joint Issues Matrix, Intrado Position on Issue 35 (Dec. 12, 2008)), which Verizon understands to mean TELRIC pricing.

Verizon's position here is the same as it was on the dispute about tariff references in Issue 34. Applying tariff rates for the services Verizon provides Intrado is appropriate because these rates are subject to Commission review in accordance with applicable legal standards. Using tariff rates helps ensure that Intrado receives the same, nondiscriminatory prices that others do (and that Intrado does not receive more favorable rates). Intrado's proposal to limit the tariffs that apply to those that are specifically cited

in the Agreement or in Appendix A of the Pricing Attachment is infeasible because neither Verizon nor Intrado can identify the tariffs, tariff rates and sections that might apply to services that Intrado might take in the future. As explained under Issue 34, Intrado is also incorrect that it is entitled to TELRIC pricing for anything Verizon provides to Intrado. The Commission should, therefore, adopt Verizon's proposed references to "applicable tariffs." (VZ Ex. 1 at 60-51 & Ex. 2 at 55-56.)

<u>ISSUE 36</u>: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS. (Pricing Att. § 2.)

The rates of Verizon, as an ILEC, have historically been subject to thorough Commission scrutiny and therefore are subject to a presumption of reasonableness. If Intrado wants to charge Verizon higher rates for comparable services, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. (VZ Ex. 1 at 62.)Intrado complains that Verizon's proposal is "one-sided" and that it "may have the effect of forcing Intrado to lower its rates without competitive justification." (Intrado Ex. 1 at 28.) This claim that Verizon's proposal is one-sided makes no sense; Verizon is not aware of any requirement anywhere for an ILEC to benchmark to CLEC rates. (VZ Ex. 2 at 61.) On the other hand, benchmarking CLEC rates to ILEC rates is a standard part of Verizon's interconnection agreements and is commonly used by regulators to prevent CLEC pricing abuses in a number of contexts without the disastrous consequences Ms. Spence-Lenss predicts. (VZ Ex 2 at 59-60.) For instance, as she mentions in passing, CLECs must charge symmetrical reciprocal compensation rates with the ILEC, unless a CLEC can justify higher rates based on its costs. (Intrado Ex. 1 at 28.) In addition, the FCC requires benchmarking of CLEC interstate access rates to competing ILEC rates and

over a dozen states, including Maryland, have implemented similar requirements. (VZ Ex. 1 at 62-63 & Ex. 2 at 59, *citing* COMAR 20.45.09.03(b).)The Commission should adopt Verizon's language for § 2 of the Pricing Attachment, which would allow Intrado to charge rates above those Verizon charges for comparable services only if Intrado demonstrates that its costs exceed Verizon's charges for the service.

<u>ISSUE 46</u>: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS? (GT&C § 1.5.)

In the event that Intrado seeks to provide services other than 911/E911 services while the interconnection agreement is effective, Intrado wants the right to request and obtain an amendment covering those other services. (VZ Ex. 1 at 64, *citing* Intrado proposed § 1.5, General Terms and Conditions.)) Intrado's proposed language states:

> Notwithstanding the foregoing, the Parties agree that: (a) Intrado Comm may seek to offer telecommunications and local exchange services other than 911/E-911 Calls in the future; and (b) upon Intrado Comm's request, the Parties will amend this Agreement as necessary to provide for the interconnection of the Parties' networks pursuant to 47 U.S.C. § 251(c)(2) for the exchange of traffic other than 911/E-911 Calls.

This language would provide Intrado the unilateral right to an amendment, outside of the contract's change of law provisions. The change of law provision in § 4.6, unlike Intrado's proposed language, specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate. Intrado's language is inappropriate, because the parties agreed to negotiate and arbitrate an agreement based largely on the fact that Intrado is seeking to provide only 911-related services to PSAPs. This interconnection agreement approach is unique; the give-and-take in negotiations and the parties' compromises assumed a much narrower scope of services and operation than the usual agreement, under which the CLEC, unlike Intrado, will provide basic local

exchange services to end users. Absent a change in law affecting provisions of the agreement which would allow a Party to request an amendment to the agreement (*see* § 4.6, General Terms and Conditions), Intrado should not have a unilateral right to seek an amendment to the agreement. (VZ Ex. 1 at 65-66 & Ex. 2 at 62.) It is not appropriate to allow Intrado to retain the benefit of any provisions already obtained through negotiation or arbitration and then seek the benefit of additional provisions associated with exchange of traffic other than 911/E-911 calls.

If Intrado wishes to greatly expand the scope of the agreement, it should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in a fair and balanced trade-off of one provision against another. The Commission should find, as the West Virginia Commission did, that Intrado's proposal for section 1.5 of the General Terms and Conditions is contrary to the Act's requirement to make available to requesting carriers entire agreements, not pieces of agreements. (VZ Ex. 2 at 63, citing *W.V. Award*, at 26.)

ISSUE 47: 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 COMM? (911 Att. § 1.1.1)

Verizon proposes including the term "a caller" in section 1.1.1 of the 911 Attachment to make clear what entity is dialing 911. Intrado contends that there is no reason for the description of "911/E-911 Arrangements" to include what entity is dialing 911.

Section 1.1.1 describes how 911/E-911 arrangements provide access to the appropriate PSAP by dialing "911." Verizon simply proposes to include "a caller" between the words "provide" and "access" so that the sentence reads: "911/E-911 arrangements provide a caller access to the appropriate PSAP by dialing a 3-digit

universal telephone number, '911.'" Verizon's language accurately describes the function of 911/E911 arrangements and provides additional clarity. (VZ Ex. 1 at 66-67.)

Intrado is seeking interconnection with Verizon so that Verizon customers calling 911 can reach PSAPs served by Intrado. No other "entities" would call 911. Verizon's customers acquire access to the appropriate PSAP by dialing "911." In other words, for Verizon's end user customers to summon emergency services, they must place a call to 911-that is, be "a caller." Inclusion of the phrase "a caller" in § 1.1.1 of the 911 Attachment accurately describes the access that 911/E911 arrangements provide to a caller, and there is no legitimate reason for Intrado to object to this simple clarification (*Id.*; VZ Ex. 2 at 62-63), as the West Virginia Commission concluded. (*W.V. Award*, at 26.)

<u>ISSUE 49</u>: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT? (911 Att., §§ 1.7.2, 1.7.3.)

The parties have agreed not to charge each other intercarrier compensation for 911/E911 calls. In §§ 1.7.2 and 1.7.3, however, Intrado has proposed language that would create a loophole that might permit such charges. Specifically, Intrado proposes to add the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment" to the agreed-upon language in § 1.7.2. The Commission should reject this unnecessary qualification, which has no legitimate basis. Aside from undercutting the parties' agreement not to bill for transport of 911/E-911 calls, Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network, which, as discussed in Issue 3, incorrectly assumes that Intrado may designate POIs on Intrado's network. Moreover, if Intrado's objective is to allow it to bill charges in connection with the ALI

database or the MSAG, Intrado should recover these costs from the applicable government agency as part of the 911 services Intrado provides for the PSAP. (VZ Ex. 1 at 67-68 & Ex. 2 at 64-65.)

The Commission should also reject Intrado's proposed language in § 1.7.3 that would require Verizon to pay Intrado to interconnect at POIs on Intrado's network. That language is inappropriate for the reasons discussed in Issue 3. (VZ Ex. 1 at 68.)

ISSUE 52: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"? (911 Att., §§ 2.3, 2.4.)

The agreed-upon language for sections 2.3 and 2.4 of the 911 Attachment specifies that nothing in the Agreement shall prevent Verizon or Intrado from billing PSAPs for specified services, facilities and arrangements. Intrado seeks to qualify this language with the phrase "[t]o the extent permitted under the Parties' Tariffs and Applicable Law." According to Intrado, this clause is necessary to prevent Verizon from having free rein to bill Maryland PSAPs for services that Verizon no longer provides to them. (Intrado Ex. 1 at 32.) Intrado is wrong. Its proposed language is nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for services that it will continue to provide even when Intrado provides 911 services to that same PSAP. (VZ Ex. 1 at 70 & Ex. 2 at 66.) Intrado attempted to impose a similar restriction by filing a petition with the Florida Public Service Commission seeking a declaratory statement that ILECs may not charge PSAPs or Intrado for any tariffed services once a PSAP chooses Intrado as a 911 network services provider. The Florida Commission denied Intrado's petition, finding that Intrado failed to consider that ILECs may have to continue to provide certain services to Intrado or the PSAP in order for Intrado's primary

E911 service to function properly, and for which the ILECs are entitled to compensation.[22] 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. 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--not for an interconnection agreement between Verizon and Intrado. The Commission should reject Intrado's attempt to intrude upon Verizon's relationships with third parties. (VZ Ex. 1 at 68-69 & Ex. 2 at 66.)

The foundation of Intrado's positions in this arbitration is that other carriers and their end users who call 911 should bear the cost of Intrado's proposed 911 system. By qualifying the statement of Verizon's right to charge for specified services provided to PSAPs with a reference to Intrado's own tariffs, Intrado will have the opportunity to--and no doubt, will try to insert language in its tariff reflecting its view that Verizon cannot charge PSAPs anything when Intrado is serving the PSAP. (VZ Ex. 1 at 70 & Ex. 2 at 67.)

The Commission should reject Intrado's attempt to prohibit Verizon from charging for services it will continue to provide to PSAPs even when those PSAPs are

[22] VZ Ex. 1 at 70-71, *citing Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications*, Docket No. 080089-TP, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

also served by Intrado, just as the Florida and West Virginia Commissions did. (*W.V. Award*, at 28.)

<u>ISSUE 53</u>: SHOULD 911 ATT. § 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM? (911 Att. § 2.5.)

As part of the 911 Attachment for the agreement, Verizon proposes the following reciprocal sections for the 911 Attachment:

> 2.5 Nothing in this Agreement shall be deemed to prevent Verizon from delivering, by means of facilities provided by a person other than Intrado Comm, 911/E-911 Calls directly to a PSAP for which Intrado Comm is the 911/E-911 Service Provider.
>
> 2.6 Nothing in this Agreement shall be deemed to prevent Intrado Comm from delivering, by means of facilities provided by a person other than Verizon, 911/E-911 Calls directly to a PSAP for which Verizon is the 911/E-911 Service Provider.

These sections are a reservation of rights that assure that nothing in the agreement shall be deemed to prevent a party from using its own facilities, or those of a third-party carrier, to deliver 911 calls directly to a PSAP served by the other party. This language will help assure that if a PSAP wishes to obtain services from both parties, nothing in the parties' agreement will prevent it from doing so.

Originally, Verizon had proposed only Section 2.5 and Intrado had responded by proposing to make this section reciprocal and to qualify it by limiting the reservation of rights to situations where the PSAP had agreed to the direct interconnection. Verizon added Section 2.6 to address Intrado's reciprocity concerns, but did not agree to Intrado's proposed qualification. Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP, and Intrado's qualification would have intruded upon Verizon's rights with respect to third parties. Because Verizon did not agree to Intrado's proposed qualification, Intrado now proposes to exclude both sections from the

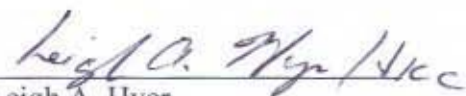
agreement, changing the issue as framed.

Verizon's compromise language should be adopted because it will assure that the agreement does not interfere with a PSAP's ability to use multiple service providers if it wishes to do so. Intrado's deletion appears to be intended to either allow Intrado to obtain an exclusive service arrangement with a PSAP or to advance Intrado's inappropriate attempt to prohibit Verizon from charging for services it will continue to provide to PSAPs when those PSAPs are also served by Intrado. As Verizon explained in Issue 52 (and the Florida Commission has confirmed), it is incorrect to assume that Verizon will not provide any services to a PSAP in this situation. Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and, given Intrado's contrary view that Verizon will have no right to charge an Intrado-served PSAP anything, Verizon's language is necessary to prevent disputes later.

III. CONCLUSION

For all of the reasons in Verizon's testimony and this brief, Verizon asks the Commission to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2009, a copy of Verizon Maryland Inc.'s Initial Brief in Case No, 9138, was served on the Public Service Commission of Maryland via e-file and by hand and on all parties on the service list via US mail.

Dawn K. Cooper

Attachment 9

Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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 Verizon New England Inc. d/b/a/ Verizon Massachusetts	)	D.T.C. 08-9

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Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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 Verizon New England Inc. d/b/a/ Verizon Massachusetts	)	D.T.C. 08-9

INITIAL BRIEF OF INTRADO COMMUNICATIONS INC.

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, hereby submits its Initial Brief in connection with Intrado Comm's Petition for Arbitration ("Petition") to Establish an Interconnection Agreement with Verizon Massachusetts ("Verizon") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act").[1] The Massachusetts Department of Telecommunications and Cable ("Department") should adopt Intrado Comm's positions and proposed interconnection agreement language as set forth herein and in the Joint Issues Matrix for the unresolved issues between the Parties.

INTRODUCTION AND SUMMARY

911/E-911 services save lives and property by helping emergency services personnel respond more quickly and efficiently.[2] Intrado Inc. has been providing 911 database management services to incumbent local exchange carriers ("ILECs") since 1979.[3] Since its formation in 1999, Intrado Comm has built on its parent's emergency service expertise to

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[1] 47 U.S.C. § 252(b).

[2] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, ¶ 5 (1996) (Attachment 12).

[3] Intrado Comm Hearing Exhibit 2, Direct Testimony of Robert C. Currier, ENP on behalf of Intrado Communications Inc. at 4, lines 17-18 (filed Dec. 29, 2008) ("Currier").

become an integral part of the public safety industry.[4] Intrado Comm is poised to offer Massachusetts counties, public safety agencies, and public safety answering points ("PSAPs") a competitive alternative for their 911/E-911 services, which have traditionally been provided by ILECs like Verizon.[5] But Intrado Comm can deliver this alternative only if it has equal access to all end users—PSAPs and 911 callers.[6]

Intrado Comm's competitive 911/E-911 service offering directly responds to the goals of Congress and the Federal Communications Commission ("FCC") by providing "meaningful automatic location identification information that permits first responders to render aid, regardless of the technology or platform employed" by the caller.[7] As the FCC has determined, it is imperative that public safety officials receive "accurate and timely information concerning the current location of an individual who places an emergency call, notwithstanding the platform or technology used by the provider or the means by which the individual places the call."[8] In order to offer its innovative 911/E-911 service offering to Massachusetts counties and PSAPs, Intrado Comm must first establish mutually beneficial interconnection and interoperability arrangements with the ILECs who control access to the public switched telephone network ("PSTN").[9] The interconnection Intrado Comm seeks with Verizon will allow Verizon's end users to reach Intrado Comm's primary end users (*i.e.*, Massachusetts PSAPs) and vice versa.[10]

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4 Currier at 4-5, 6-7.

5 Currier at 7, lines 14-21.

6 Currier at 8, lines 15-19.

7 *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 10609, ¶ 6 (2007) (Attachment 31).

8 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) ("*TRS 911 Order*") (Attachment 32).

9 Intrado Comm Hearing Exhibit 1, Direct Testimony of Thomas W. Hicks on behalf of Intrado Communications Inc. at 8, lines 8-10 (filed Dec. 29, 2008) ("Hicks").

10 Currier at 8, lines 17-19. Intrado Comm will also provide services to enterprise customers that offer emergency connection assistance services (such as OnStar) through programmed cars or private branch exchange owners.

Interconnection with Verizon is essential to permit Intrado Comm to meet the primary 911/E-911 service needs of its Massachusetts PSAP customers, *i.e.*, to ensure the PSAP customer receives 911 calls from all users of wireline, wireless, voice over Internet Protocol ("VoIP"), and other future types of services destined for the Intrado Comm PSAP customer.[11] This interconnection arrangement also will meet the goal of ensuring that "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service."[12]

Verizon claims that this is simply another arbitration proceeding between an ILEC and a competitive local exchange carrier ("CLEC") and that the type of competitive service to be offered—911 service to PSAPs—is irrelevant to evaluating interconnection arrangements.[13] Verizon is wrong. This proceeding is about interconnection arrangements to be established between Intrado Comm and Verizon that will permit Intrado Comm to provide competitive 911 services to PSAPs.[14] As Section 251(c) recognizes, the interconnection arrangements established between the Parties as a result of this arbitration proceeding will directly affect the quality of service provided to Massachusetts public safety agencies and, consequently, to Massachusetts consumers. If Intrado Comm is denied access to physical interconnection arrangements that are

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[11] Currier at 8-9; Hicks at 7-9.

[12] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*") (Attachment 30).

[13] Verizon Hearing Exhibit 1, Direct Testimony on behalf of Verizon Massachusetts at 10, lines 11-20 (filed Dec. 29, 2008). ("Verizon Panel Testimony").

[14] The issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter that has been presented to the Commission for arbitration in this proceeding. This is based on the agreement reached between Intrado Comm and Verizon that Intrado Comm's entitlement to Section 251(c) interconnection would not be an issue for arbitration between the Parties. *See* Currier at 9, lines 12-17; Transcript at 64-66. The Commission's jurisdiction to arbitrate is specifically limited to the issues raised by the petitioner (*i.e.*, Intrado Comm) and any additional issues identified by the respondent (*i.e.*, Verizon). *See* 47 U.S.C. § 252(b)(4)(A).

at least equal in quality to what Verizon has established for its own 911 service to PSAPs today, PSAPs will not realize the benefits of competition intended by the Act.[15]

Section 251(c) Supports Adoption of Intrado Comm's Proposals. Section 251(c) contemplates and supports the adoption of Intrado Comm's interconnection proposals for the competitive provision of 911 service to PSAPs. Existing 251(c) requirements have focused on interconnection for plain old telephone service ("POTS") traffic. While those rules and regulations are important, they do not foreclose a review of the statute, rules, and policies from the perspective of the best interconnection arrangements for the competitive provision of 911/E-911 services to PSAPs, which is at issue here. Verizon itself has decided that network interconnection arrangements for the provision of 911 services to PSAPs should be different from those used for POTS traffic. Interconnection arrangements and the rules designed for the competitive provision of POTS should not alter or prevent the application of the statutory requirement that competitors are entitled to interconnection that is equal in quality to what the ILEC provides to itself.[16]

The critical question is: how does Verizon provide 911/E-911 services to PSAPs today? The only provider of 911/E-911 services to PSAPs in the Verizon service territory is Verizon. Thus, Verizon's own practices (as well as those of the ILECs operating in other geographic areas) have established the standard for service to PSAPs and defined the appropriate network arrangements to be used for the exchange of 911/E-911 traffic in a competitive market. As discussed below, this ILEC-developed network interconnection standard for 911 service has also

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[15] The use of dedicated direct trunks to the appropriate selective router has been the arrangement used for 911 services since their inception. *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (discussing the routing of emergency telephone calls "over dedicated telephone lines") (Attachment 10).

[16] 47 U.S.C. § 251(c)(2)(C).

been embraced by this Department,[17] the FCC[18] and other state commissions.[19] Verizon itself has decided that 911 interconnection arrangements should be different from those used for POTS traffic, and Verizon is required to give Intrado Comm the same arrangements it provides to ***itself*** when Verizon is serving the PSAP.[20] To find otherwise would undermine the entire foundation of Section 251(c)—to ensure that competitors receive interconnection that "is at least indistinguishable from that which the incumbent provides itself."[21] The history of the implementation of 911 service demonstrates that the current physical interconnection architecture was established to ensure public safety.[22] It would be dangerous to ignore the existing arrangements used for the provision of 911/E-911 service to PSAPs today.

Interconnection for 911 Traffic Occurs at the Selective Router Serving the PSAP. Verizon requires all CLECs and wireless carriers to interconnect at the appropriate selective router, *i.e.*, the Verizon selective router serving the Verizon PSAP customer to which the 911

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[17] *See, e.g.*, Department Hearing Exhibit 1, Statewide Emergency Telecommunications Board, Standards for Enhanced 9-1-1, 560 CMR 2.00, Appendix A (2002) ("Massachusetts 911 Standards").

[18] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789, ¶ 1 (2002) ("*King County Order*") (finding the selective router is the "cost allocation" point) (Attachment 24).

[19] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring all carriers to use dedicated direct trunking "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area") (Attachment 47); TEXAS P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router) (Attachment 48).

[20] Transcript at 99-102 (D'Amico); 47 U.S.C. § 251(c)(2)(C).

[21] *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, ¶ 224 (1996) ("*Local Competition Order*") (intervening history omitted) (Attachment 11), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (Attachment 2).

[22] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 9 FCC Rcd 6170, ¶ 4 (1994) (noting the establishment of 911 network arrangements to ensure that emergency calls "are recognized and answered as emergency calls by professionals trained to assist callers in need of emergency assistance") (Attachment 10); *see also id.* ¶ 1 ("we intend to ensure that the effective operation of 911 services is not compromised by new developments in telecommunications") (Attachment 1).

call is destined.[23] This is consistent with the FCC's mandates that the selective router should be the "cost allocation" point for the exchange of 911/E-911 traffic.[24] Although that finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.[25] This arrangement is also consistent with the 911 interconnection arrangements used by Embarq and AT&T,[26] as well as the requirements mandated by several states.[27] Indeed, it is for these reasons that the Public Utilities Commission of Ohio determined that the point of interconnection ("POI") when Intrado Comm is serving the PSAP should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[28]

Dedicated Direct Trunking Is the Standard for Routing 911/E-911 Calls. Verizon's template interconnection agreement mandates the use of dedicated direct trunks for the

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[23] Hicks at Attachment 5, 911 Attachment § 3.2.

[24] *King County Order* ¶ 1 (Attachment 24).

[25] *King County Order* ¶ 11 (Attachment 24).

[26] *See, e.g.*, AT&T 22-State Template Interconnection Agreement at Attachment 5 Sections 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State (Attachment 49); Embarq Template Interconnection Agreement at Section 55.1.3 ("Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.") (Attachment 50).

[27] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(x) (requiring all telecommunications carriers to adopt practices and procedures "to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area") (Attachment 47); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router) (Attachment 48).

[28] Currier at Attachment 6, Ohio 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 33 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*"); *see also* Currier at Attachment 11, Ohio Case No. 08-537-TP-ARB, *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*, Arbitration Award at 8-9 (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*").

transmission of 911 calls to the selective router serving the PSAP to which the 911 call is directed.[29] This requirement is consistent with the 911 network interconnection arrangements used by other ILECs,[30] as well as those mandated by other state commissions.[31] Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider, because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[32]

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[29] Hicks at Attachment 5, 911 Attachment § 3.2.

[30] *See, e.g.*, AT&T 22-State Template Interconnection Agreement, §§ 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"), *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State (Attachment 49); Embarq Template Interconnection Agreement at Section 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.") (Attachment 50).

[31] *See, e.g.*, ILL. ADMIN CODE TIT. 83, § 725.500(c), (x) (requiring the use of dedicated direct trunking to the selective router serving the PSAP) (Attachment 47); Texas P.U.C. SUBST. R. 26.435 (stating that carriers are "responsible for providing such dedicated trunks from the [carrier] switching office or point of presence to the 9-1-1 selective router" and requiring carriers to deploy a minimum of two dedicated trunks to each selective router) (Attachment 48).

[32] Illinois Docket No. 08-0550, Direct Testimony of Jeffrey H. Hoagg on behalf of Staff of the Illinois Commerce Commission at 10, lines 221-23 (filed Dec. 19, 2008) ("Illinois Hoagg Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117 (Attachment 41); Illinois Docket No. 08-0550, Direct Testimony of Kathy Stewart on behalf of Staff of the Illinois Commerce Commission at 4, lines 98-100 (filed Dec. 19, 2008) ("Illinois Stewart Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117 (Attachment 42). Illinois Staff made the same recommendation in Intrado Comm's arbitration proceeding with AT&T, but the Illinois Administrative Law Judges' ("ALJs'") proposed arbitration decision did not reach this issue based on a finding by the ALJs that Intrado Comm does not offer telephone exchange service and is therefore not entitled to interconnection under Section 251(c). This decision is not yet final and Intrado Comm has filed exceptions to the decision (Attachment 46). Reply exceptions are due March 2, 2009. These exceptions are also consistent with Intrado Comm's most recent filing to the FCC in the Intrado Comm/Verizon Virginia arbitration proceeding (Attachment 33); *see also* Intrado Comm Hearing Exhibit 4, Florida Docket 070699, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with Embarq Florida Inc.* Intrado Communications Inc. Motion for Reconsideration (filed December 18, 2008); Intrado Comm Hearing Exhibit 5, Florida Docket 070736, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 356.16, and 364.162, F.S., and Rule 28-106.201, F.A.C. to Establish an*

Intrado Comm Is Entitled to Interconnection Arrangements that Are Equal in Quality.

No law supports the use of different POI or interconnection arrangements when Intrado Comm is the 911/E-911 service provider for the PSAP. Verizon cannot use Section 251(c)(2)(B) as applied to POTS traffic to undermine its equal-in-quality obligations under 251(c)(2)(C). Verizon itself has ignored 251(c)(2)(B)'s requirements, which permit CLECs to establish a single POI on Verizon's network and avoid physical or financial obligations beyond the POI.[33] Verizon has adopted interconnection agreement arrangements for CLECs that support a different network architecture for 911 calls to promote public safety.[34] The Verizon 911 interconnection arrangements require the CLEC to establish multiple POIs in addition to the POI for POTS and dictate the trunking arrangements to be used on the CLEC's side of those POIs for 911 (two dedicated direct one-way trunks to each 911 POI) if the CLEC wants its 911 calls to be completed to Verizon served PSAP customers.[35] Everything that Verizon complains about with respect to Intrado Comm's proposed contract language was designed by Verizon and is embodied in Verizon's own template agreements for CLECs to ensure that Verizon receives 911 calls destined for its PSAP customers in a specific way.[36] The interconnection arrangements sought by Intrado Comm here are the same that Verizon and other ILECs have established for

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Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Intrado Communications Inc. Motion for Reconsideration (filed Dec. 18, 2008).

[33] Transcript at 99-102 (D'Amico).

[34] *Id.*

[35] It is important to note that Verizon requires the CLEC to route all 911 calls to the "designated" selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon also requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that. *See* Transcript at 78-80.

[36] Intrado Comm agrees with regulators and the ILECs that the best POI for 911 service to PSAPs is at the selective router of the carrier providing the service to the PSAP. When Intrado Comm has customers who call 911 and Verizon is the 911 service provider for the PSAP, Intrado Comm will have a POI at Verizon's selective router for the delivery of the 911 call to the appropriate PSAP. *See* Blackline ICA, 911 Attachment § 1.3.1.

themselves to serve their PSAP customers and are the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs.

In sum, Intrado Comm's proposals reflect industry practices established by ILECs like Verizon, are consistent with Section 251(c), are consistent with 911 policy, and should be adopted. It would be a complete reversal of sound engineering, physical architecture decision making, and regulatory policies deemed to serve the public interest to deny a competitor providing 911/E-911 services to PSAPs any interconnection arrangement other than that which mirrors the arrangements Verizon has established for itself to serve its PSAP customers, which is reflected in the arrangements between Verizon and competitive carriers needing access to Verizon served PSAPs. This is consistent with principles of statutory construction and the Act's purpose.[37] The Act is dynamic so it can be flexibly applied to adapt to the ever-changing communications industry.[38] Accordingly, Intrado Comm's proposed language should be adopted for inclusion in the Parties' interconnection agreement so that Massachusetts public safety agencies and Massachusetts citizens dialing 911 receive the most reliable, redundant, and diverse 911 network possible.

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[37] *Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems*, 11 FCC Rcd 18223, ¶ 13 (1996) ("The starting point for our analysis is the statute. Where Congress 'has directly spoken to the precise question at issue . . . that is the end of the matter,' and the Commission must give effect to Congress' expressed intent. If, however, the statute is silent or ambiguous with respect to a specific issue, the Commission's interpretation will be upheld so long as it is a 'permissible' construction of the statute.") (citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)) (Attachment 14).

[38] *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 21 (1999) ("*Advanced Services Order*") (recognizing "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act") (Attachment 17).

DEPARTMENT AUTHORITY

The Department's oversight is critical to the provision of 911 services. Sections 251(e) and 706 of the Act give the Department the authority to oversee the deployment of 911 services.[39] The FCC has recognized that the "uniform availability of E-911 services may spur consumer demand" for broadband services, which accomplishes the goals of the Act.[40] The FCC has emphasized that 911/E-911 services also play a "critical role" in achieving the Act's goal of promoting safety of life and property and that "promoting an effective nationwide 911/E-911 emergency access system has become a primary public safety responsibility under the Act."[41] The state's role in overseeing 911 services and promoting public safety is without question. "In the 911 Act, Congress made a number of findings regarding wireline and wireless 911 services, including that 'improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce,' and that 'emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency [services].'"[42] These Congressional mandates support and necessitate the adoption of Intrado Comm's proposals in their entirety.

Section 253(b) of the Act also gives the Department authority to adopt "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."[43] This statutory provision "set[s] aside a large regulatory territory for State authority" and gives

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[39] Hicks at Attachment 9, *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 31, 33 (2005) ("*VoIP E911 Order*").

[40] *VoIP E911 Order* ¶ 31 (Hicks at Attachment 9).

[41] *VoIP E911 Order* ¶ 29 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 7 (1994)) (Hicks at Attachment 9).

[42] *VoIP E911 Order* ¶ 32 (citing 911 Act § 3(a)) (Hicks at Attachment 9).

[43] 47 U.S.C. § 253(b).

the Department ample support for adoption of Intrado Comm's proposals, which serve to protect the public safety and welfare and the rights of consumers.[44] In further support of this state authority, the FCC has reminded carriers that Sections 251 and 252 of the Act create a partnership between the FCC and state commissions in defining the precise parameters of those sections' requirements[45] and that the Act makes clear that states play a role in the development of competitive telecommunications markets.[46]

Section 253(b) gives the Department "broad regulatory authority to achieve [its] public interest objectives,"[47] and Intrado Comm's proposed physical architecture arrangements meet the objectives set forth in the Act. In an arbitration proceeding between AT&T and a predecessor of Intrado Comm, the Illinois Commerce Commission determined that 911 calls are a matter of the utmost public interest; it therefore concluded that it had authority under Section 253(b) to make decisions in the arbitration proceeding to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[48] The same holds true here.

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[44] *City of Abilene, Texas v. FCC*, 164 F.3d 49, 53 (D.C. Cir. 1999) (Attachment 3).

[45] *American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, 14 FCC Rcd 21579, ¶ 35 (1999) (Attachment 18).

[46] *The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, ¶ 52 (1997) (Attachment 15).

[47] *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916, ¶ 29 (2002) (Attachment 26).

[48] Currier at Attachment 7, Illinois Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (I.C.C. Mar. 21, 2001). The Public Utilities Commission of Ohio has ruled similarly. *See* Currier at Attachments 2 and 3, Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) ("*Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Certification Rehearing Order*").

There is no merit to the claim that the Department cannot analyze Intrado Comm's request under any provision other than Section 251(c) of the Act.[49] The Department has authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c).[50] While Intrado Comm is entitled to interconnection and arbitration

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[49] Verizon Panel Testimony at 9-10.

[50] *Ohio Embarq Arbitration Award* at 15; Ohio Case No. 08-537-TP-ARB, *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*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*Ohio CBT Rehearing Award*") ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements. . . . [T]he Commission has the authority and the requirement to consider Section 251(a) where it is applicable") (Attachment 43); California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated.") (Attachment 39); Illinois Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005) (Attachment 37); *aff'd Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007) (Attachment 6); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc*., Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding) (Attachment 40); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements) (Attachment 38); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005) (Attachment 36), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006) (Attachment 5); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)) (Attachment 35); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).") (Attachment 34).

under 251(c) and 251(a), arbitration of issues outside of 251(b) and 251(c) is appropriate where the Parties have included those issues in the 251 agreement.[51]

ARGUMENT

The framework for local competition established in 1996 supports the arrangements requested by Intrado Comm. 911/E-911 services are unique.[52] The physical architecture arrangements Intrado Comm seeks in this proceeding are critical to issues of reliability, redundancy, and minimizing points of failure for 911/E-911 services.[53] These are the key considerations when establishing interconnection arrangements for public safety providers.[54] These considerations are reflected in the interconnection and routing arrangements ILECs have established for themselves and the arrangements ILECs impose on CLECs today for access to these ILEC provided services.

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[51] *See, e.g.*, *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) ("where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original) (Attachment 4).

[52] *See, e.g.*, *TRS 911 Order* ¶ 29 (recognizing "the importance of emergency call handling for all Americans"); *VoIP E911 Order* ¶ 6 ("the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services").

[53] *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954, ¶ 2 (1999) (adopting rules to "improve 911 reliability, [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies") (Attachment 19); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (expressing intent of statute to establish a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Katrina Order* ¶ 96 (recognizing goal to ensure "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service"); New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (recognizing importance of reliable 911 systems).

[54] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23 (2008) (recognizing the goal to have the most efficient and most reliable 911/E911 network possible regardless of the platform or technology used by end user's service provider or the means by which the individual places the call) (Attachment 32).

I. 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?

Intrado Comm's proposed physical architecture arrangement benefits public safety, which Massachusetts has identified as "a criterion of utmost importance."[55] Interconnection on Intrado Comm's network is appropriate when Intrado Comm is the designated 911/E-911 service provider and is consistent with the purpose of Section 251(c), the way in which ILECs compel CLECs to interconnect on their networks, and industry recommendations and guidelines.

A. Interconnection on the ILEC Network Was Required for the Benefit of Competitors like Intrado Comm, Not Incumbents like Verizon

In enacting and implementing the Act, the goal of both Congress and the FCC was to ensure that new entrants could effectively compete with the entrenched incumbent provider. Section 251(c)(2) has four components to ensure effective interconnection arrangements between ILECs and competitors are achieved: interconnection is to be for the transmission and routing of telephone exchange service and exchange access;[56] at any technically feasible point within the carrier's network;[57] 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;[58] and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with Section 252 of the Act.[59] The FCC, in its rules to implement the Act, gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC.[60] The FCC found that Section 251(c)(2) gave competitors "the right" to interconnect on the ILEC's

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55 Massachusetts 911 Standards at 1(a).

56 47 U.S.C. § 251(c)(2)(A).

57 47 U.S.C. § 251(c)(2)(B).

58 47 U.S.C. § 251(c)(2)(C).

59 47 U.S.C. § 251(c)(2)(D).

60 *Local Competition Order* ¶ 172.

network rather than obligating competitors to transport traffic to less convenient or efficient points.[61] Giving competitors this "right" was intended to lower barriers to entry.[62] Thus, Section 251(c)(2)(B)'s requirement that the POI be on the ILEC's network was established for the benefit of the competitor, not the ILEC.

To provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, a decision that protected competitors from ILEC demands to interconnect at multiple points on the ILEC network.[63] The FCC found that the single-point-of-interconnection rule benefits the *competitor* by permitting it to interconnect for delivery of its traffic at a single point on the ILEC's network.[64] While this rule was available to competitors, the FCC expressly recognized that competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor.[65] Indeed, the FCC recognized that although the Act *permits* a competitor to choose where it will deliver its traffic, "carriers do not always deliver originating traffic and receive terminating traffic at the same place."[66]

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61 *Local Competition Order* ¶ 209.

62 *Local Competition Order* ¶ 209.

63 *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, ¶ 112 (2001) ("*Intercarrier Compensation NPRM*") ("[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.") (Attachment 21).

64 *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, ¶ 71 (2002) ("*Virginia Arbitration Order*") (Attachment 27).

65 *Virginia Arbitration Order* ¶ 71.

66 *Virginia Arbitration Order* ¶ 71.

The FCC further concluded that these were intended to be minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection to offset the imbalance in bargaining power.[67] The FCC clarified that the term "nondiscriminatory" in the 1996 Act was not synonymous with "unjust and unreasonable discrimination" used in the 1934 Act; it is a more stringent standard.[68] The FCC determined that for Section 251 purposes, if an ILEC provides interconnection to a competitor in a manner that is less efficient than the ILEC provides itself, the ILEC violates the duty to be "just" and "reasonable" under Section 251(c)(2)(D). The FCC also added that ILECs may not discriminate against parties based upon the identity of the carrier.[69]

B. ILECs Have Historically Required Competitors to Bring 911/E911 Traffic to the ILEC or Delivered 911/E911 Traffic to the Network of the Entity Serving the PSAP

Interconnection that is at least equal in type, quality, and price to the interconnection arrangements the ILEC provides to itself and others was required of ILECs to ensure that effective local competition emerged.[70] The FCC determined that 251(c)(2)(C) interconnection that is *at least* equal in quality to that enjoyed by the ILEC itself was the minimum requirement.[71] Intrado Comm's proposal is consistent with the arrangements Verizon uses within its own network for the delivery of its end users' 911 calls to Verizon PSAP customers and those same arrangements Verizon requires of competitors seeking to terminate their end users' 911 calls to Verizon PSAP customers. For example, Verizon's template interconnection agreement requires CLECs:

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67 *Local Competition Order* ¶ 216.

68 *Local Competition Order* ¶ 217.

69 *Local Competition Order* ¶ 218.

70 S. Rep. No. 104-23, at 20 (1995) (Attachment 52).

71 *Local Competition Order* ¶ 225.

- to establish interconnection at a point on Verizon's network for the transmission and routing of POTS traffic[72] with each party being responsible for the transport facilities on its side of that POI[73] ***and***
- to interconnect with each Verizon 911/E-911 selective router that serves the exchange areas in which the CLEC offers service[74] ***and***
- to provide a minimum of two one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 calls from the CLEC's switch to each designated Verizon 911/E-911 selective router[75] ***and***
- to compensate Verizon for the provision of 911/E-911 services pursuant to the rates set forth in the pricing attachment to the agreement.[76]

This network architecture arrangement was developed by Verizon based on Verizon's determination that this interconnection arrangement provides the most reliable and efficient 911 network.[77] Intrado Comm seeks nothing different when it is the designated 911/E-911 service provider for PSAPs.

In fact, Verizon has admitted that the POI for connecting to the 911/E-911 network is at the selective router.[78] This is consistent with the FCC's finding that the "cost-allocation point" for the exchange of 911/E-911 traffic should be at the selective router.[79] This decision was based on "the nature and configuration of the existing network components used to provide wireline E-911 service"[80] and input from PSAPs that asserted that the selective router was the appropriate demarcation point for allocating responsibility and associated costs between carriers.[81] Although

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72 Hicks at Attachment 5, 911 Attachment § 1.

73 Hicks at Attachment 5, 911 Attachment § 2.1.

74 Hicks at Attachment 5, 911 Attachment § 3.2.1.

75 Hicks at Attachment 5, 911 Attachment § 3.2.2.

76 Hicks at Attachment 5, 911 Attachment § 4.2.

77 Transcript at 110-11.

78 Transcript at 101, lines 11-20.

79 *King County Order* ¶ 1.

80 *King County Order* ¶ 4.

81 *King County Order* at n.4.

the finding resulted in "a cost allocation point beyond" the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice.[82] Thus, the FCC determined that, when a 911 call is made, the carrier must bring the 911 call, as well as the information about the caller (*i.e.*, the caller's phone number and location), to the 911/E-911 network for processing and, specifically, to the equipment that analyzes and distributes the call—the 911 selective router serving the PSAP.[83]

Based on this precedent, the Public Utilities Commission of Ohio also has confirmed that the point of interconnection should be at the selective router of the 911/E-911 network provider and that an ILEC sending 911/E-911 calls to Intrado Comm PSAP customers is responsible for delivering those 911/E-911 calls to an Intrado Comm selective router location.[84] Verizon's characterization of the Ohio decision is misplaced and inaccurate.[85] Specifically, the Ohio commission determined,

> the point of interconnection to the wireline E9-1-1 network is at the selective router of the E9-1-1 network provider and consistent with the FCC's findings [in the *King County Order*], each party bears the cost of getting to the point of interconnection.[86]

The Ohio commission further determined that, in order to maintain this form of interconnection in a competitive market for 911 services to PSAPs, Section 251(a) along with its broad authority

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82 *King County Order* ¶ 11.

83 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, WT Docket No. 94-102 (rel. May 7, 2001) (Attachment 20).

84 *Ohio Embarq Arbitration Award* at 33.

85 Verizon Panel Testimony at 47, lines 5-10, and 63-64.

86 *Ohio Embarq Arbitration Award* at 33.

over 911 service supported the adoption of Intrado Comm's proposed interconnection arrangements.[87]

Consistent with these principles, Verizon routinely requires all competitive carriers serving end users in the Verizon geographic service area to bring their end users' 911 calls to the "designated" Verizon selective router serving the PSAP to which the 911 call is destined,[88] even though those carriers have established a POI at a different location for all other POTS traffic. Thus, while Section 251(c)(2)(B) and the FCC's rules entitle competitors to designate a single POI on the ILEC network, the Verizon template interconnection agreement compels CLECs to interconnect at every Verizon selective router to deliver 911 calls to Verizon's PSAP customers if they want their customers' 911 calls to be completed to Verizon served PSAPs.[89] For Intrado Comm's provision of 911/E-911 services to Massachusetts PSAPs, Intrado Comm seeks interconnection arrangements with Verizon that are at parity with what Verizon provides itself and requires of others when Verizon is the designated 911/E-911 service provider.[90] Verizon has not demonstrated why the interconnection arrangements it has established for CLECs and uses within its own network when Verizon is the designated 911/E-911 service provider are not equally applicable to Verizon when Intrado Comm is the designated 911/E-911 service provider.

Further, Verizon does not require other 911/E-911 service providers to interconnect with Verizon at Verizon's selective router when Verizon customers make 911 calls to the PSAP

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87 *Ohio Embarq Arbitration Award* at 15. The Ohio commission correctly found that it had authority to arbitrate and oversee ***all*** Section 251 interconnection agreements, not just those pertaining to Section 251(c). *See id.*; *see also Ohio CBT Rehearing Award* at 11-12 ("Even though neither party raised the application of Section 251(a) as an issue, the Commission is not barred by mere omission from applying applicable law. The Commission agrees with Intrado that a state commission can use its Section 252 arbitration and enforcement authority over all Section 251 agreements. . . . [T]he Commission has the authority and the requirement to consider Section 251(a) where it is applicable").

88 Hicks at Attachment 5, 911 Attachment § 3.2.

89 Hicks at Attachment 5, 911 Attachment § 3.2.

90 Hicks at 16, lines 14-18, and 19, lines 21-27.

customers of another 911/E-911 service provider. Rather, Verizon takes its originating end users' 911 calls destined for another 911/E-911 service provider's network to a meet point established with the adjacent carrier or all the way to the adjacent carrier's selective router.[91] Verizon does not require adjacent, non-competing ILECs to establish a POI at Verizon's selective router or otherwise pick-up 911 calls at Verizon's selective router, as Verizon seeks to impose on Intrado Comm here.[92]

The Act entitles Intrado Comm to interconnection "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."[93] 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.[94] Interconnection to the PSTN "is an essential component of [the] end-to-end" 911/E-911 service Intrado Comm intends to provide in Massachusetts.[95] The FCC has recognized the importance of ensuring that competitors receive interconnection for 911/E-911 services in the same manner that incumbents provide such service to themselves (*i.e.*, parity).[96] Moreover, the FCC specifically determined that Section 251(c)(2) requires ILECs like Verizon to provide

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[91] Transcript at 49-50; Hicks at 14, lines 20-22; *see also* Maryland Case 9138, *Petition of Intrado Communications Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Maryland Inc. pursuant to the Federal Telecommunications Act*, Hearing Transcript at 151, line 10 to 153, line 15 (Jan. 7, 2009) ("Maryland Transcript") (Verizon's witness D'Amico indicating that a 911 call destined for an adjacent, non-competing provider "goes through the meet point") (Attachment 44).

[92] Hicks at 14, lines 17-22.

[93] 47 U.S.C. § 251(c)(2)(C).

[94] 47 C.F.R. § 51.305(a)(3); *Local Competition Order* ¶ 224.

[95] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282, ¶ 25 (2002) ("*City of Richardson Order*") (Attachment 25).

[96] *Local Competition Order* ¶ 16.

competitors like Intrado Comm interconnection that is at least equal in quality to the interconnection Verizon provides itself for routing 911 and E-911 calls to PSAPs.[97]

Verizon's 911 POI arrangements for itself, including those arrangements established in a competitive market to receive 911 calls from CLEC customers destined for Verizon served PSAPs, demonstrate that establishing the POI for the exchange of 911 traffic at the selective router of the carrier serving the appropriate PSAP is the *preferred* method of interconnection for completing calls to the appropriate 911/E-911 service provider and is technically feasible.[98] Verizon is required under 251(c)(2)(C) to make the same arrangement available to Intrado Comm.[99] Verizon cannot use 251(c)(2)(B) to undermine its obligations under 251(c)(2)(C).[100] Simply because the interconnection arrangement Verizon has chosen for itself does not fall neatly within Section 251(c)(2)(B) does not mean that Verizon is able to forego its obligations under 251(c)(2)(C). Indeed, grafting such a wooden interpretation upon Section 251(c)(2)(B) would flout the obvious intent behind these statutory provisions—creating an equal playing field in an industry that has long been dominated by incumbents like Verizon. And as the Supreme Judicial Court of Massachusetts has explained,

> [w]e construe a statute in accord with the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose

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97 *Virginia Arbitration Order* ¶ 652.

98 Maryland Transcript at 158, lines 9-19 (Verizon witness: "Q: And part of the agreement between Verizon and the wireless carriers and the competitive carriers in using those direct dedicated connections to each of Verizon's selected routers is that the wireless carrier and the CLECs need to get their 911 call to the appropriate PSAP, correct? A: That's correct. A: When you say need to get them to the appropriate PSAP, they need to get the calls to Verizon's 911 tandems. Q: Selective routers. A: Selective routers. Q: The appropriate selective router? A: You wouldn't want it delivered to the wrong router. A: I would guess, yes.").

99 *Local Competition Order* ¶ 225.

100 *See, e.g.*, *Commonwealth* v. *Disler*, 451 Mass. 216, 227 (Mass. 2008) ("We decline to adopt an interpretation that ignores words and phrases of the statute. '[E]very word in a statute should be given meaning,' and no word is considered superfluous.") (citation omitted).

> of its framers may be effectuated. When a literal reading of a statute would be inconsistent with legislative intent, we look beyond the words of the statute. The object of all statutory construction is to ascertain the true intent of the Legislature from the words used. If a liberal, even if not literally exact, interpretation of certain words is necessary to accomplish the purpose indicated by the words as a whole, such interpretation is to be adopted rather than one which will defeat that purpose.[101]

Since 1996 Verizon has ignored the benefit extended to CLECs under Section 251(c)(2)(B) entitling CLECs to a single POI when the traffic at issue is 911 calls. Appropriately, the ILECs and regulators have adopted requirements that support a different network architecture for 911 calls to promote public safety.[102] The CLECs have accepted the network interconnection arrangements demanded beyond the single POI for 911 traffic.[103] This is the interconnection arrangement Verizon and other ILECs have established for themselves to serve their PSAP customers and it is the standard of interconnection to be applied pursuant to Section 251(c)(2)(C) under a request for interconnection to provide competitive 911 services to PSAPs, such as Intrado Comm's request.

The FCC has determined that, if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures.[104] Further, successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point ***or at substantially similar points in networks employing***

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101 *Champigny* v. *Commonwealth*, 422 Mass. 249, 251 (Mass. 1996) (citations and quotation marks omitted).

102 Transcript at 100-101.

103 Transcript at 99-102.

104 *Local Competition Order* ¶ 554.

substantially similar facilities.[105] In comparing networks, the FCC determined that the substantial similarity of network facilities may be evidenced by their adherence to the same interface or protocol standards.[106] Verizon bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point.[107] Verizon has not made such a showing.

C. Intrado Comm's Proposal for Two Geographically Diverse POIs Is Consistent with Industry Recommendations and Guidelines

Intrado Comm has requested that Verizon establish interconnection to a minimum of two geographically diverse POIs on Intrado Comm's network for reliability and redundancy purposes, which will benefit public safety.[108] Verizon is wrong when it claims that Intrado Comm's language would allow Intrado Comm to choose as many POIs as it wishes.[109] Intrado Comm has informed Verizon, and it is a matter of record evidence in numerous states, that Intrado Comm intends to place a minimum of two selective routers in each state in which it offers 911/E-911 service.[110] The agreed-upon provisions of the Parties' interconnection agreement also make clear that the agreement applies to the State of Massachusetts, not other states.[111] Thus, Verizon's claim that the POIs will be outside of Massachusetts is meritless.[112] While additional POIs will be available to Verizon outside of Massachusetts, as explained below, there will be at least two available at the locations specified in Massachusetts.[113]

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105 *Local Competition Order* ¶ 204.

106 *Local Competition Order* ¶ 204.

107 *Local Competition Order* ¶ 554.

108 Blackline ICA, 911 Attachment § 1.3.2; *see also generally Katrina Order*.

109 Verizon Panel Testimony at 13, lines 4-9.

110 Hicks at 20, lines 16-21.

111 Blackline ICA § 43.1.

112 Verizon Panel Testimony at 24, lines 20-22.

113 Hicks at 20-21.

Implementing Intrado Comm's proposal would ensure that 911 calls are diversely routed, which is consistent with the FCC's recommendations.[114] In addition, the FCC is currently reviewing whether it should require the deployment of redundant trunks to each selective router or require that multiple selective routers be able to route calls to each PSAP.[115] Intrado Comm has designed its network to do both.

Intrado Comm's proposal is also consistent with industry recommendations. The public benefit of the type of diversity and redundancy requested by Intrado Comm has been supported by the FCC's Network Reliability and Interoperability Council ("NRIC"), which found "[w]hen all 9-1-1 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure (e.g., cable cut). The ECOMM Team recommends diversification of 9-1-1 circuits over multiple, diverse interoffice facilities."[116] Likewise, a National Emergency Number Association ("NENA") 911 Tutorial states:

> 9-1-1 systems are expected to function without interruption. However, expecting every network and PSAP component to work perfectly forever is unrealistic. Stuff happens – things break. Reliability, then, is achieved through diversity and redundancy. One method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to its 9-1-1 tandem. Each trunk group should be large enough to carry the entire traffic load for that end office.[117]

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114 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170, ¶ 3, n.6 (1994) ("the American public depends on 911 services in its emergencies" and that reliability in the 911 network results from the deployment of diverse routing of interoffice facilities, multiple 911 tandem switch architectures, and diverse links for ALI database access) (Attachment 10).

115 *VoIP E911 Order* ¶ 59.

116 Hicks at Attachment 1, Network Reliability Council Focus Group IV, Essential Communications During Emergencies Team Report (Jan. 12, 1996), *available at* http://www.nric.org/pubs/nric2/fg4/nrcfinal.pdf.

117 Hicks at Attachment 2, NENA 9-1-1 Tutorial at 13 (Jan. 19, 2000), *available at* http://www.nena.org/florida/Directory/911Tutorial %20Study%20Guide.pdf.

Thus, Intrado Comm's proposed language implements industry best practices for diversity and redundancy.

Verizon has established diversity and redundancy within its own 911/E-911 network.[118] In other states, Verizon uses "mated" or "paired" selective routers to ensure 911 call completion is unimpeded and a PSAP is not isolated from the 911/E-911 network should a facility path failure or selective router switch failure occur. Verizon has established dedicated trunks from each of its end offices to each selective router,[119] and Verizon requires competitors to interconnect at each selective router, plus at an additional POI for the exchange of POTS traffic.[120]

D. LATA Boundaries Do Not Apply to 911/E911 Service Traffic

LATA boundaries are inapplicable to 911/E-911 services. The FCC and the federal district court overseeing the Modified Final Judgment recognized that many 911/E-911 "transmissions cross LATA boundaries."[121] That district court specifically waived the LATA restrictions to ensure that the Bell Operating Companies ("BOCs") could "provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary,"[122] thus allowing "the BOCs to provide multiLATA 911 services, including E-911 services."[123]

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118 Hicks at 18, lines 11-18.

119 Hicks at 18, lines 12-15.

120 Hicks at Attachment 5, 911 Attachment § 3.2.

121 *Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 20 (1998) (Attachment 16).

122 *United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984) (Attachment 1).

123 Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991).

Moreover, Verizon has been freed from interLATA restrictions for several years by virtue of its Section 271 authority in every state in which it offers local exchange service, including Massachusetts.[124] Therefore, Verizon is not restricted from carrying any traffic, let alone 911/E-911 service traffic destined for Intrado Comm's network, outside of a LATA. In fact, Verizon's witness admitted that Verizon provides 911/E-911 service across LATA boundaries in Massachusetts.[125]

The Department has also correctly identified an additional problem with Verizon's proposed language for Section 1.3.3 relating to interLATA call transfers:

> [Verizon is refusing to transfer E911/911 calls between LATAs, and yet when a call is misdirected] I could see interLATA would happen no matter where the point of interconnection was on Verizon's network or Intrado's network. There is going to be - if there's a misdirected call, which the parties stipulate does occur, then there is a likelihood that there is going to be an interLATA need to transport the call, no matter where that point of interconnection is.[126]

Not only did Verizon fail to address the Department's well-founded concern, but Verizon also admitted that the Parties' dispute over Section 1.3.3 would remain regardless of the Department's decision with respect to the location of the POIs.[127]

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[124] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprises Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts,* 16 FCC Rcd 8988 (2001) (Attachment 22).

[125] Transcript at 147, lines 8-16 ("Q: So an end user's call that went to Northampton but should have gone to Westborough would still be completed for that end user; correct? A: Yes. Q: Thereby crossing from LATA 126 to 128. A: Right . . . ."); *see also* Intrado Comm Hearing Cross Exhibit 6 (detailed map identifying LATAs in Massachusetts).

[126] Transcript at 129, lines 10-19 (DeYoung).

[127] Transcript at 130, lines 9-15 (Conroy).

E. Other Massachusetts Carriers Will Not Be Disadvantaged by Intrado Comm's POI Proposal

As Intrado Comm's witness explained, CLECs and other carriers in Massachusetts will have several options for reaching Intrado Comm's PSAP customers in Massachusetts.[128] Many voice service providers have regional or nationwide footprints. Intrado Comm plans to deploy at least two, and possibly more, selective routers in every state in which Intrado Comm plans to offer service, including Massachusetts.[129] By connecting to any Intrado Comm selective router, a carrier can reach any PSAP connected to Intrado Comm's network. As an example, interconnecting to Intrado Comm's selective routers in Florida will still permit 911 call delivery to one of Intrado Comm's PSAP customers in Massachusetts. This means that Verizon, a CLEC, or any other carrier could connect to any two Intrado Comm Intelligent Emergency Network® access ports anywhere in Intrado Comm's nationwide network if it chooses to do so to reach a Massachusetts PSAP.[130] Given that Verizon, its affiliates, and many other carriers provide services throughout the nation, interconnecting outside of Massachusetts may be more efficient for many providers. In either case, however, there will be at least two geographically diverse Intrado Comm selective routers located in Massachusetts at which Verizon, CLECs, and other carriers can interconnect with Intrado Comm to deliver 911/E-911 calls destined for Intrado Comm's Massachusetts PSAP customers. Any concern about the effect of Intrado Comm's POI proposal on other carriers is therefore misplaced and not relevant to Verizon's interconnection arrangement with Intrado Comm.

Further, Verizon's so-called concerns do not justify Verizon's planned use of transit arrangements to send 911/E-911 service traffic to Intrado Comm from other third party carriers

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128 Hicks at 20-21.

129 Hicks at 21, lines 1-3.

130 Hicks at 21, lines 6-8.

interconnected with Verizon. Transit traffic is traffic that originates with one carrier, transits Verizon's network, and terminates with another carrier.[131] In that situation, neither the calling party nor the called party is Verizon's end user customer, and the carriers exchanging the call are both connected to Verizon, but not each other.[132] Transit arrangements are not used for 911/E-911 service traffic today.[133] In today's environment, competitive carriers must deploy dedicated trunks to the Verizon selective routers to reach the appropriate PSAP. There is a good reason for using such an arrangement (reliability) and it makes no sense to alter this sensible network arrangement designed by Verizon presumably to increase the odds of saving lives. Verizon's proposal is inconsistent with its own treatment of 911/E-911 service calls and should be rejected.

Indeed, Verizon's template interconnection agreement encourages competitors to enter into direct interconnection relationships with those carriers with which they are exchanging traffic.[134] Further, Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement.[135] As Verizon's filings state, "nothing in the Act requires Verizon to accept any CLEC traffic that is destined for another carrier (such as another CLEC or a non-Verizon ILEC)" and thus Verizon only "voluntarily provides these services."[136]

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131 Hicks at 47, lines 19-20.

132 Hicks at 47, lines 20-21; Transcript at 105, lines 1- 7 (D'Amico) ("If the call flow that you're describing is one CLEC sends a call through Verizon's tandem that another CLEC is connected to and Verizon transits that call to the other CLEC, yes, we have those arrangements. We typically call those transit, transiting, or transit traffic arrangements.").

133 Hicks at 47, lines 22-23.

134 Verizon Template Interconnection Agreement, Interconnection Attachment § 12 ("Verizon Tandem Transit Language") (Attachment 51).

135 Hicks at 48, lines 16-17.

136 *See, e.g.*, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, Reply Comments of Verizon at 25, 26-27 (Nov. 5, 2001), *available at* http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512773351 (Attachment 23).

A service as important as 911 should not be relegated to voluntary transit service arrangements that, in Verizon's view, it is under no obligation to provide.[137]

Allowing 911/E-911 service traffic to be exchanged via a transit service arrangement also affects quality of service, network reliability, and network efficiency. As explained by Intrado Comm's witness, it is common for different call types (*e.g.*, wireless) to be routed over different PSAP trunks to ensure the incident-driven nature of wireless does not saturate all PSAP call takers.[138] Indeed, a news report regarding a Verizon 911 outage in Michigan confirmed the benefits of separate 911 trunks for different types of services.[139] During the outage of Verizon's wireline 911 service, wireless 911 service remained available because those calls were on a separate trunk group.[140] Under the transit arrangement proposed by Verizon, Verizon would put every call originating on its network (or delivered to it by another carrier) onto a common trunk group for delivery to Intrado Comm.[141] This would not provide Massachusetts PSAPs with the ability to discern 911/E-911 calls by type and would remove or severely limit their call management control options for determining the location of the caller, which is critical to saving lives.[142] Transit service arrangements are simply inapplicable to 911/E-911 service traffic. As discussed above and in more detail below, Verizon uses dedicated trunking within its own network for 911/E-911 service traffic and also requires competitors seeking to terminate 911 calls to Verizon's PSAP customers to use dedicated trunking to deliver 911 calls to Verizon's selective routers. Imposing a different type of interconnection arrangement on Intrado Comm is

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137 Hicks at 48, lines 20-22.

138 Hicks at 47, lines 10-13.

139 "State Telecom Activities," COMMUNICATIONS DAILY (Sept. 23, 2008) (Attachment 54).

140 *Id.* (noting that during the outage, wireless E-911 worked because it is "carried on a different cable").

141 Hicks at 47, lines 13-14.

142 Hicks at 47, lines 13-17.

discriminatory and violates Intrado Comm's right to interconnection arrangements that are equal in quality to those Verizon provides itself or any other carrier.[143]

II. 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?[144]

Inter-selective router trunking allows emergency calls to be transferred between selective routers (and the PSAPs connected to those selective routers) while retaining the critical access to the caller's number and location information associated with the emergency call.[145] This type of interoperability between 911/E-911 networks allows 911/E-911 calls to be transferred among carriers to ensure misdirected emergency calls are transferred to the appropriate PSAP while still retaining access to the critical caller location information associated with the call.[146] If the call is required to be transferred over the PSTN (rather than via the 911 network), the caller's automatic number information ("ANI") and automatic location information ("ALI") is lost. Establishing inter-selective router trunking ensures that PSAPs are able to communicate with each other and, more important, that misdirected calls can be quickly and efficiently routed to the appropriate PSAP.

Section 251(c)(5) of the Act requires ILECs like Verizon to provide public notice of changes in their network "that would affect the interoperability of those facilities and networks."[147] The importance of interoperability between competing networks is highlighted by the FCC's rules that ILECs must provide public notice of any changes that "[w]ill affect the

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143 47 U.S.C. § 251(c)(2)(C).

144 The Commission's decision with respect to Issue 1 will determine the appropriate resolution of Issue 2 only to the extent the Parties' disputed language refers to the location of the POIs. The Commission's resolution of Issue 1 does not affect the Parties' dispute concerning the exchange of dial plan information.

145 Hicks at 22-23.

146 Hicks at 23, lines 5-9.

147 47 U.S.C. § 251(c)(5).

[I]LEC's interoperability with other service providers."[148] For the purposes of Section 251(c)(5) and its implementing rules, the FCC defined "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[149] The FCC determined "that the concepts of seamlessness and transparency are already adequately incorporated into" its adopted definition and thus a specific reference to these concepts in the definition is unnecessary.[150]

A. Intrado Comm's Inter-Selective Routing Language Should Be Adopted

Verizon's claim that the interconnection agreement should not contain the specifics regarding the Parties' inter-selective router arrangements should be rejected.[151] The FCC has recognized that 911/E-911 services are important to overall public safety, and thus has found that more detailed interconnection language is better suited for 911/E-911 interconnection arrangements.[152] Indeed, the FCC determined that "the need for greater detail" in relation to 911/E-911 services overrides Verizon's goal of "more uniform agreements."[153]

Verizon is also wrong when it claims that Intrado Comm is trying to "impose upon PSAPs specific interoperability provisions without their consent . . . ."[154] Intrado Comm strongly supports the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back up routing, default routing, night transfer routing, and call transfer routes, with its designated 911/E-911 service provider. Further, some PSAPs may not desire to

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148 47 C.F.R. § 51.325(a)(2).

149 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("*FCC Interoperability Order*") (Attachment 13).

150 *FCC Interoperability Order* ¶ 178.

151 Verizon Panel Testimony at 34-35.

152 *Virginia Arbitration Order* ¶ 660.

153 *Id.*

154 Verizon Panel Testimony at 34, lines 22-23.

provide input into the trunking to be established, and thus there should be no requirement that the interconnection agreement contain specific language regarding the need for a separate agreement with a PSAP prior to implementing inter-selective routing capabilities.[155]

Nonetheless, the Parties have agreed to language indicating that inter-selective router trunking arrangements would be established between the Parties when each Party's customer ***agrees*** that 911 calls should be transferred between PSAPs served by each Party:

> Where the Controlling 911 Authority for a PSAP for which Verizon is the 911/E-911 Service Provider and the Controlling 911 Authority for a PSAP for which Intrado Comm is the 911/E-911 Service Provider agree to transfer 911/E-911 Calls from one PSAP to the other PSAP and each Controlling 911 Authority requests its 911/E-911 Service Provider to establish arrangements for such 911/E-911 Call transfers, each Party shall . . . .[156]

Verizon's argument is contrary to the language of the interconnection agreement, and its claim that Intrado Comm is trying to "control the conduct of third parties" is false.[157]

Verizon also wrongly assumes that it would have to pay for any inter-selective router capabilities requested by the Parties' PSAP or government municipality customers.[158] Today, a government municipality or PSAP requesting call transfer capabilities is responsible for paying for that service just like any other service the customer requests.[159] Intrado Comm expects that same practice to continue under the Parties' interconnection agreement. How such costs will be recovered from the PSAPs should be determined by each Party's contract with its PSAP customer rather than language in the interconnection agreement between Intrado Comm and Verizon. There is no factual or legal support for Verizon's contention that Intrado Comm's

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155 *Ohio Embarq Arbitration Award* at 36.

156 Blackline ICA, 911 Attachment § 1.4.1.

157 *Cf.* Verizon Panel Testimony at 34, line 4.

158 *See* Verizon Panel Testimony at 33-34.

159 Hicks at 25, lines 15-16.

proposed language would require Verizon to pay for the implementation of inter-selective router capabilities.

Like other 911/E-911 service traffic to be exchanged by the Parties, inter-selective router calls should be exchanged by the Parties at the POI established by each Party for the exchange of 911/E-911 calls and should be spelled out in the interconnection agreement. Thus, for transfers of 911/E-911 calls destined for an Intrado Comm PSAP customer, the Parties would exchange that call at the POI(s) established by Verizon on the Intrado Comm network.[160] For transfers of 911/E-911 calls destined for a Verizon PSAP customer, the Parties would exchange that call at the POI(s) established by Intrado Comm on the Verizon network.[161] This is how Verizon transfers such calls to other PSAPs served by non-competing, adjacent 911/E-911 service providers today, and there is no reason Intrado Comm should be subject to a different type of interconnection arrangement than Verizon provides to others to ensure 911 calls reach the appropriate PSAP.[162]

B. Intrado Comm's Dial-Plan Language Should Be Adopted

Moreover, the Parties should be required to notify each other of changes in dial plans that support inter-selective router trunking, and such language should be included in the interconnection agreement.[163] Dial plans are used to determine the PSAP to which emergency calls should be routed based on the route number passed during the call transfer.[164] Intrado Comm has proposed language that would require the Parties to notify each other of any changes,

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160 Hicks at 24, lines 21-23.

161 Hicks at 24-25.

162 47 U.S.C. § 251(c)(2)(C).

163 Hicks at 26-27.

164 Hicks at 26, lines 15-16.

additions, or modifications to 911-related call transfer dial plans that could affect inter-selective router arrangements. Use of dial plans ensures interoperability between the Parties' networks.

Verizon has provided no support for its argument that Intrado Comm seeks an "excessive level" of dial plan information in the interconnection agreement.[165] Intrado Comm's proposed language could not be more straightforward:

> The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions, or deletions to their inter-PSAP transfer dial plans.[166]

Verizon admits that it provides dial plan information to other 911/E-911 service providers.[167] Intrado Comm should be treated no differently.[168] It is for this reason that the West Virginia commission adopted Intrado Comm's position.[169] The Staff of the Illinois commission also recommended adoption of Intrado Comm's language because Intrado Comm's language "seems reasonable and not 'excessive.'"[170] Intrado Comm's proposed language ensures the interoperability needed between the Parties networks and should be adopted.

III. ISSUE 3: WHETHER THE FORECASTING PROVISIONS SHOULD BE RECIPROCAL?[171]

Intrado Comm has modified Verizon's proposed language to make the forecasting provisions related to ongoing trunk forecasts applicable to both Parties rather than solely an

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165 Verizon Panel Testimony at 35, lines 14.

166 Blackline ICA, 911 Attachment § 1.4.4.

167 Verizon Panel Testimony at 35, lines 12-13.

168 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51.305(a)(3).

169 Hicks at Attachments 3 and 4, West Virginia Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award, at 16-17 (Nov. 14, 2008) ("*West Virginia ALJ Award*"), *approved by* Commission Order (Dec. 16, 2008).

170 Illinois Stewart Staff Testimony at 8, lines 179-80, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

171 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 3.

obligation imposed on Intrado Comm. Intrado Comm cannot adequately groom its network without some indication from Verizon as to how many 911/E-911 trunks will be required to support calls between the Parties' networks.[172] It is very important to size trunk groups properly—the reason Intrado Comm seeks reciprocal forecasting from Verizon. Forecasts are integral to ensuring that the Parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delays.[173]

The primary purpose of trunk forecasts, especially in the 911 context, is to alert interconnecting parties of anticipated growth plans so that the interconnecting party may engineer, furnish, and install the equipment necessary to accommodate such growth.[174] Only 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.[175] Verizon will therefore be in the best position to determine the trunking needs between the Parties' networks.

Other provisions of the interconnection agreement will not provide Intrado Comm with the trunk forecasting information it needs. The agreed-upon language in Section 1.5.5 of the 911 Attachment requires the Parties to meet to discuss the establishment of new trunk groups, augmentation of existing trunk groups, or the disconnection of existing trunk groups.[176] By contrast, the forecasting language at issue in Section 1.6.2 of the 911 Attachment is specific to the 911/E-911 trunking to be deployed between the Parties' networks to support their exchange

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172 Hicks at 27-28.

173 Hicks at 28, lines 1-4.

174 *Id.*

175 Hicks at 29, lines 10-12.

176 Blackline ICA, 911 Attachment § 1.5.5.

of 911/E-911 service traffic. The discussions required by Section 1.5.5 will not provide Intrado Comm with the same type of information a trunk forecast would provide. Indeed, the fact that Verizon's template interconnection agreement includes each provision is evidence that Verizon believes the contract provisions serve different purposes.

Verizon incorrectly assumes that the forecasting language is unnecessary because no 911 calls will flow from Intrado Comm to Verizon.[177] In fact, numerous 911 calls will likely flow between the Parties' networks. The huge popularity of mobile technologies, and future services such as 911 text messaging, will make it even more critical to ensure that 911 calls reach the appropriate PSAP. Thus, it is likely that the number of calls transferred from Intrado Comm to Verizon will be significantly more than the occasional call Verizon predicts. Indeed, news articles support this position: "Cell phone 911 calls often get routed to the wrong 911 centers because of the location of cell phone towers. This leads to delays in sending help because operators have to figure out where a caller is and which police or fire department should respond, and then transfer the call to that jurisdiction."[178] Intrado Comm has a legitimate need for Verizon's trunk forecasts, a fact the Staff of the Illinois commission recognized when it recommended adoption of Intrado Comm's language because ***both Parties*** have "valuable information regarding trunking levels."[179]

Furthermore, only Verizon can determine whether calls are being blocked ***within its network***, which is a key component to determining whether trunk groups are adequately sized to

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[177] Verizon Panel Testimony at 36-37.

[178] Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008 (Attachment 53).

[179] Illinois Stewart Staff Testimony at 9, lines 215-16, *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117.

handle the 911 calls made from an originating office.[180] Intrado Comm would be able to make such determinations only if its PSAP customers received complaints from callers who were unable to complete their 911 call attempt, which many 911 callers fail to report. Accordingly, Intrado Comm's proposed language should be adopted.

IV. ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION?[181]

Verizon's proposed language requires Intrado Comm to provide certain notices and other information to Verizon when Intrado Comm seeks to establish interconnection arrangements with Verizon.[182] This information includes the location of the POIs, the activation date, and an initial forecast. Intrado Comm has revised this language to make it reciprocal.[183] In areas in which Intrado Comm is the 911/E-911 service provider, Intrado Comm will require the same type of information from Verizon to effectuate the Parties' interconnection arrangement. As interconnected co-carriers, the Parties will need to exchange information about their networks to ensure the network implemented is reliable, redundant, and diverse. Intrado Comm's proposed language should be adopted.

V. ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E-911 CALLS TO EACH OTHER?[184]

The optimal way for a carrier to route 911/E-911 traffic to the appropriate 911/E-911 service provider should be based on the interconnection arrangements designed by Verizon for

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180 Hicks at 29, lines 7-10.

181 The Commission's decision with respect to Issue 1 will determine the appropriate resolution of Issue 4 only to the extent the Parties' proposed language in the disputed Blackline ICA sections identifies the locations of the POIs.

182 Blackline ICA, 911 Attachment § 1.5.

183 Blackline ICA, 911 Attachment § 1.5.

184 The Commission's decision with respect to Issue 1 will determine the appropriate resolution of Issue 5 only to the extent the Parties' disputed language refers to the location of the POIs. Regardless of the Commission's resolution of Issue 1, however, Verizon should still be required to send all 911/E-911 calls to Intrado Comm over dedicated direct trunks.

completion of its customers' 911 calls and CLEC customers' 911 calls made to Verizon's PSAP customers.[185] This interconnection arrangement is dedicated direct one-way trunks from the end office of the 911 caller to the appropriate selective router.[186] The use of dedicated direct trunking promotes competition by putting all 911/E-911 service providers on equal footing. Establishing dedicated direct trunking from Verizon's end offices to Intrado Comm's selective router is consistent with established industry practice and the Massachusetts E-911 standards, is technically feasible, and provides the most reliable 911 network.[187] Intrado Comm's language should therefore be adopted.

A. Dedicated Direct Trunking of 911/E-911 Calls to the Selective Router Serving the PSAP Is a Standard Industry Practice

Dedicated direct trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E-911 network, as evidenced by Verizon's use of direct trunking arrangements within its own network when it is the 911/E-911 service provider.[188] Service quality and industry standards call for the use of dedicated connections.[189] It is for this reason that Verizon does not unnecessarily switch its customers' 911/E-911 calls before delivering those calls to Verizon's PSAP customers.[190] Inserting another stage of switching in the call processing

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185 *See, e.g.*, Hicks at Attachment 5, 911 Attachment § 3.2.

186 Hicks at Attachment 5, 911 Attachment § 3.2

187 *See, e.g.*, Massachusetts 911 Standards at 2(b) ("There shall be a minimum of two dedicated incoming 9-1-1 trunks at each PSAP and a minimum of two dedicated trunks from each telephone company or Alternative Local Exchange Carrier (ALEC) central office to any tandem."); *id.* at 2(e) ("The transfer of 9-1-1 calls from a primary PSAP to any secondary PSAP or ringing PSAP shall be accomplished through a dedicated/switched network."); *id.* at 4(c) ("All wireless carriers in the state shall provide a minimum of two dedicated trunks from each of their switching offices (if in-state) or Point of Presence (if the switch is located out of state) to the 9-1-1 tandems.").

188 Hicks at Attachment 5, 911 Attachment § 4.

189 Hicks at 40-41, 44-45.

190 Hicks at 34-35.

path - such as Verizon proposes here - increases the possibility of additional points of failure,[191] thereby undermining the reliability provided by direct dedicated trunking. In reviewing this issue, Illinois Staff recently recommended that Verizon be required to directly trunk 911 traffic from its end offices to the point of interconnection when Intrado Comm is the designated 911/E-911 service provider, because "[i]ntermediate switching [of 911/E-911 calls] at Verizon's selective router would perform no useful network function, and would contribute nothing to 911 system reliability or efficacy" and thus "there is no need for Verizon to route the 911 calls through its selective router."[192]

While Verizon claims that Intrado Comm's proposal would dictate how Verizon engineers its network,[193] Verizon imposes similar requirements on competitors when it is the designated 911/E-911 service provider. These Verizon requirements imposed on competitors include providing the requisite number of diversely routed 911/E-911 trunks, engineering the 911/E-911 trunks pursuant to industry recommended grades of service, monitoring 911/E-911 trunk volumes, and coordinating testing and maintenance activities for 911/E-911 trunks between the Parties' networks.[194] For example, Verizon's template interconnection agreement states:

> In order to interconnect with Verizon for the transmission and routing of 911/E-911 Calls, CLEC shall:
>
> interconnect with each Verizon 911/E-911 Tandem Offices(s)/Selective Router(s) . . .;
>
> provide a minimum of two (2) one-way outgoing 911/E-911 trunks over diversely routed facilities that are dedicated for originating 911/E-911 Calls from the CLEC switch to each designated Verizon 911/E-911 Tandem Office(s)/Selective Router(s) or Verizon

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191 Hicks at 40, lines 4-7; *see also* Maryland Transcript at 155, lines 5-6 (Verizon witness: "because you don't want to switch something twice if you don't have to").

192 Illinois Hoagg Staff Testimony at 10, lines 221-23; Illinois Stewart Staff Testimony at 4, lines 98-100.

193 Verizon Panel Testimony at 42, lines 7-11.

194 Blackline ICA, 911 Attachment § 1.3.

> interface point(s), using SS7 signaling where available, as necessary.[195]

Thus, despite the single-point-of-interconnection rule, Verizon's interconnection language only offers competitors the option to connect to its network to establish POI(s) for exchanging POTS traffic and separate ***additional*** points of interconnection and dedicated direct trunking on Verizon's side of the network for the sole purpose of delivering 911 calls to the "designated" Verizon selective router serving the Verizon PSAP customer. Intrado Comm's proposed language seeks the same interconnection arrangement for delivery of 911 calls to Intrado Comm when it is the 911/E-911 service provider and should be adopted.[196]

Verizon's arguments that Intrado Comm's dedicated trunking proposal would require Verizon to haul 911 calls for free to Intrado-served PSAPs should also be rejected.[197] Intrado Comm's language contains no requirement for Verizon to transport its 911 calls to Intrado Comm's PSAP customers. Verizon need only deliver 911 calls to Intrado Comm's selective router. Further, Verizon claims that it should be compensated for delivering 911 calls to the appropriate selective router, but admits that CLECs and wireless carriers are not compensated when Verizon requires those carriers to transport their end users' 911 calls to the appropriate Verizon selective router.[198] Verizon's argument ignores the arrangements it imposes on competitive carriers today as well as its role when it is no longer the designated 911/E-911 service provider. Once a public safety agency designates a competitive carrier like Intrado Comm as its 911/E-911 service provider, the ILEC is put in the position of any other carrier with

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195 Hicks at Attachment 5, 911 Attachment §§ 3.2, 3.2.1, 3.2.3.

196 Hicks at 36, lines 13-22.

197 Verizon Panel Testimony at 13, lines 18-22.

198 Transcript at 90, lines 1-15.

obligations to deliver its end users' 911 traffic over dedicated direct trunks to the appropriate selective router.[199]

Moreover, Verizon's proposal to use a common trunk group for all 911/E-911 service traffic destined for Intrado Comm's network, rather than dedicated connections, is inconsistent with NENA recommendations and industry practice.[200] The use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado Comm to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities. Industry recommendations, therefore, call for identifiable end office trunk groups for default routing.[201] This configuration readily assists both the 911 network service provider and the PSAP in quickly troubleshooting 911 service problems or redirecting 911 traffic from an end office on demand.[202] This arrangement can be accomplished by Verizon aggregating (but not switching) 911 traffic destined for Intrado Comm at Verizon's selective router and handing off that traffic to Intrado Comm over segregated trunks that identify the end office from which those calls originated.[203]

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199 *Ohio Embarq Arbitration Award* at 8.

200 Hicks at 44-45.

201 *See, e.g.*, Hicks at Attachment 7, NENA Technical Information Document on Network Quality Assurance, NENA TID 03-501, Issue 2 at 11-12 (revised Oct. 3, 2005) ("Serving End Office to E9-1-1 Control Office Switched Message Trunks must be route diverse. There should be at least two trunks from each central office to the E9-1-1 Control Office. A pair of diverse circuits may be assigned on a fiber ring system or a fiber system with diversely routed protection."), *available at* http://www.nena.org/media/File/03-501_20051003.pdf; NENA Standard for Enhanced 9-1-1 (E9-1-1) Default Routing Assignments and Functions, NENA 03-008 at 9 (Jan. 19, 2008) ("It must be recognized that 'default call routing' by definition may result in having some emergency calls reach a PSAP not directly responsible for the subscriber's location. Local authorities, E9-1-1 System Service Providers and carriers should ensure that default call routing impacts are minimized through the appropriate association of trunk groups with defined geographic areas."), *available at* http://www.nena.org/media/File/03-008_20080119.pdf.

202 Hicks at 40-41.

203 Hicks at 43, lines 16-20.

B. Intrado Comm's Language Does Not Require Verizon to Implement Line Attribute Routing

Verizon's testimony wrongly focuses on the concept of "line attribute routing." At no place in Intrado Comm's proposed contract language does Intrado Comm seek to require Verizon to use line attribute routing. Intrado Comm does expect the use of dedicated direct trunking from Verizon's end offices to Intrado Comm's selective router, just as Verizon expects competitive carriers to implement today and just as Verizon configures its own network for service to its own PSAP customers. When a competitive carrier's customers receive emergency services from PSAPs that are served by the ILEC 911/E-911 network, it is necessary for the competitive carrier's switch to be configured to select the appropriate direct and redundant trunk group to the 911 selective router connected to the PSAP that is designated to respond to the 911 caller, as determined by the location of the caller.[204]

Intrado Comm's language is similar to Verizon's template language. Verizon does not require CLECs to use a certain method to determine to which selective router a 911 call should be delivered. Rather, Verizon's interconnection agreement merely states that the CLEC is required to deliver its end users' 911 calls to the "designated" selective router.[205] Verizon does not need to focus on how the CLEC achieves this because, under the contract, the CLEC must route its 911 traffic over dedicated trunks to the "designated" selective router serving the PSAP. Verizon has ensured through its interconnection agreement template that it is not Verizon's problem how the CLEC sorts its 911 calls to reach the "designated" Verizon selective router and

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[204] Hicks at 42, lines 14-18.

[205] Hicks at Attachment 5, 911 Attachment § 3.

Verizon PSAP customer.[206] Once a competitor accepts this interconnection agreement language, a failure to comply will render the CLEC in breach of the agreement.

Like Verizon's template interconnection agreement language, Intrado Comm's proposed interconnection agreement language does not dictate how Verizon will sort its end users' 911 calls for delivery to Intrado Comm.[207] Intrado Comm's proposed language indicates that Verizon will interconnect with Intrado Comm to deliver its 911 calls to Intrado Comm over dedicated trunks from Verizon's end offices. No contract language requires Verizon to use line attribute routing.

C. The Equal in Quality and Non-Discrimination Requirements of the Act Mandate the Use of Dedicated Direct Trunking

Massachusetts public safety entities must have assurances that 911/E-911 service traffic destined for first responders will be treated equally in a competitive environment. As Congress and the FCC recognized, competitors face numerous operational barriers, which require that all aspects of local services be available to all competitors on an equal basis.[208] They further determined that equal access was absolutely necessary for competition in the local market to succeed.[209] The routing technique proposed by Intrado Comm—dedicated direct routing of 911/E-911 calls to the selective router serving the PSAP—is based on this equal access concept and the essential need for smart network design that ensures reliability and resiliency for these unique public safety services.

The equal in quality requirements of Section 251(c)(2) also support Intrado Comm's proposed language. The FCC has determined that "Verizon must provide [Intrado Comm]

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206 Transcript at 90-91.

207 Hicks at 39, lines 11-14.

208 *Local Competition Order* ¶ 16.

209 *Local Competition Order* ¶ 17.

interconnection with [a 911-related switch] 'at least equal in quality' to the interconnection Verizon provides itself for routing 911 and E-911 calls."[210] Verizon's attempt to impose different interconnection arrangements for Intrado Comm's PSAP customers than Verizon uses within its own network to serve its PSAP customers violates the equal in quality requirements of the Act.[211]

Likewise, the 911 calls of all Massachusetts citizens should be routed using the most reliable process available—dedicated direct trunking to the selective router serving the PSAP.[212] When Verizon is the designated 911/E-911 service provider, its customers' 911 calls are directly trunked to the selective router serving the relevant Verizon PSAP customer. Verizon's refusal to use dedicated trunking when Intrado Comm is the designated 911/E-911 service provider means that some Verizon Massachusetts 911 callers (*i.e.*, those calling a PSAP served by Intrado Comm) will be treated differently than other Verizon Massachusetts 911 callers (*i.e.*, those calling a PSAP served by Verizon). All Massachusetts Verizon 911 callers should be treated in the same manner—directly trunked from the Verizon 911 caller's end office to the selective router serving the appropriate PSAP—regardless of who is the service provider for the PSAP.

If Verizon is permitted to relegate Intrado Comm to a different and lesser form of interconnection than what Verizon provides to itself, Verizon will be discriminating among its own Massachusetts customers who dial 911. Verizon customers trying to reach a PSAP served by Intrado Comm will be treated differently than Verizon customers trying to reach a PSAP served by Verizon—a violation of the non-discrimination requirements found in Section 202 of

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210 *Virginia Arbitration Order* ¶ 652.

211 Hicks at 15-16, 16, lines 12-18, 16-17.

212 Hicks at 34-35.

the Act.[213] Intrado Comm's proposed interconnection method, by contrast, is consistent with the method Verizon uses for itself, that ILECs have developed for themselves, and that ILECs require CLECs to use to reach ILEC-served PSAPs in a competitive market.

D. Dedicated Direct Trunking from the End Office to the Selective Router Serving the PSAP is Technically Feasible

Intrado Comm's witness demonstrated that use of dedicated direct trunking is technically feasible.[214] Despite Verizon's attempt to shift the burden to Intrado Comm, the threshold issue is whether Intrado Comm's interconnection proposal is technically feasible. Under the FCC's rules, interconnection and access requests shall be deemed technically feasible absent technical or operational concerns that prevent fulfillment of the requests, and the determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns.[215] *Once Intrado Comm has demonstrated that its proposal is technically feasible, the burden shifts to Verizon to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that "specific and significant adverse impacts" would result from Intrado Comm's requested interconnection arrangement*.[216] The FCC has determined that the ILEC, not the competitor, has the burden to prove technical infeasibility to the relevant state commission.[217]

Verizon's unsupported and unsubstantiated claims regarding the potential cost to implement Intrado Comm's interconnection proposals should also be rejected.[218] While Verizon claims that Intrado Comm should be responsible for any "expensive" form of interconnection it

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213 47 U.S.C. § 202.

214 Hicks at 42, lines 13-23.

215 47 C.F.R. § 51.5 (defining technical feasibility).

216 *Local Competition Order* ¶¶ 198, 203.

217 *Local Competition Order* ¶ 198; 47 C.F.R. § 51.5.

218 Verizon Panel Testimony at 43, lines 12-21.

requests,[219] Verizon has provided no evidence supporting its allegation that implementing Intrado Comm's proposals would impose costs on Verizon. The sole consideration is whether Intrado Comm's interconnection proposals are technically feasible. The need for Verizon to modify its network to accommodate dedicated trunking, if any exists, does not affect the analysis of technical feasibility. Under the FCC's requirements, Verizon is obligated to make the requisite changes in its network and operational practices that will accommodate the interconnection of competing local exchange networks and the mutual exchange of traffic between those networks.[220] The FCC has stated that incumbent carriers like Verizon are required to adapt their facilities to interconnection or use by other carriers, and an ILEC must accept the novel use of, and modification to, its network facilities to accommodate the interconnector.[221] The FCC recognized that ILEC networks were not designed to accommodate third party interconnection and that the purposes of the Act would be frustrated if ILECs were not required, at least to some extent, to adapt their facilities.[222]

If Verizon is unable to use dedicated direct trunking for technical reasons, Intrado Comm proposes the following language to address those situations:

> Split Wire Center Call Delivery Exception – Where it is technically infeasible for Verizon to segregate Verizon End Users' 911/E-911 Calls associated with an End Office Wire Center and where an End Office Wire Center serves Verizon End Users both within and outside of the Intrado Comm's 911/E-911 network serving area, Verizon shall work cooperatively with Intrado Comm and the affected Controlling 911 Authority(ies) to establish call routing and/or call handoff between the Parties.[223]

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219 Verizon Panel Testimony at 43, lines 18-21.

220 *Local Competition Order* ¶ 202.

221 *Local Competition Order* ¶ 202.

222 *Local Competition Order* ¶ 202.

223 Blackline ICA, 911 Attachment § 1.3.2.3.

Intrado Comm's proposed language should be adopted because it takes into consideration how the affected public safety agency would like 911 calls to be handled.

VI. ISSUE 6: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES?[224]

Verizon's proposed language in Section 1.1.1 of the 911 Attachment contains a sentence that describes the service, equipment, and software that Intrado Comm will provide and maintain when Intrado Comm is the 911/E-911 service provider.[225] There is no dispute with respect to that sentence. Intrado Comm, however, has proposed an identical sentence to govern instances in which Verizon is the 911/E-911 service provider. A reciprocal sentence is appropriate because the interconnection agreement addresses both Intrado Comm's obligations, rights, and responsibilities when Verizon is the 911/E-911 service provider ***and*** Verizon's obligations, rights, and responsibilities when Intrado Comm is the 911/E-911 service provider.[226] Thus, if the interconnection agreement lists what components comprise Intrado Comm's 911/E-911 service offering and network, the interconnection should contain a reciprocal listing of what components comprise Verizon's 911/E-911 service offering and network.

Verizon's proposed language identifying the components of its network is unacceptable because it erroneously describes the access from Verizon end users as part of the Verizon network.[227] It is inappropriate to include this type of language in a generic description of 911/E-911 arrangements. This is consistent with the *West Virginia ALJ Award*'s determination that Intrado Comm's proposed language should be adopted.[228]

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224 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 6.

225 Blackline ICA, 911 Attachment § 1.1.1.

226 Hicks at 50-51.

227 Hicks at 51, lines 10-12.

228 *West Virginia ALJ Award* at 21.

VII. 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.[229]

Intrado Comm has proposed language to ensure that the Parties can maintain interoperability between their databases when exchanging 911 traffic or transferring 911 calls between each Party's selective router. For this reason, Intrado Comm requests that the Parties adopt arrangements to maintain ALI steering tables, which will enable access to ALI when performing 911 call transfers via inter-selective router trunking. The transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak. Language regarding exchange of ALI information is also necessary to ensure interoperability between the Parties' networks as contemplated by Section 251(c).[230]

Verizon's claims that ALI steering falls outside the scope of Section 251 should be rejected.[231] As Intrado Comm's witness explained, there are three integrated components that are necessary to provide 911/E-911 service—the selective router, the database system that retains the ALI, and the transport of the 911 call to the PSAP.[232] When the ALI database function is provided as a stand-alone service, it is viewed as an information service.[233] The comprehensive 911/E-911 service offering to be provided by Intrado Comm in Massachusetts, however,

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229 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 7.

230 47 U.S.C. § 251(c)(5).

231 Verizon Panel Testimony at 67, lines 7-11.

232 Hicks at 8-9.

233 *Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 17 (1998) (Attachment 16). But in a carrier-to-carrier relationship pursuant to Section 251, ALI databases are considered to be telecommunications services that ILECs are required to offer on an unbundled basis. *See* 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 557 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted) (Attachment 28).

combines the three integrated components that are necessary to provide 911/E-911 service into one integrated product.[234] The switching and transmission components would be useless without the ALI database functions, and 911 call routing to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records.[235] The FCC also recognizes that all of the various components come together to form an all-inclusive service offering known as the "wireline E-911 network."[236] Further, the FCC has found ALI provisioning so essential to the 911 call process that it has imposed outage reporting requirements on ALI service providers when ALI services are disrupted for specified periods.[237] Segmenting the physical switching and routing of 911 calls from the database that provides the routing information for such calls, as Verizon appears to suggest, would significantly diminish the viability and reliability of 911 services.[238] The bottom line is that the three integrated components are so intertwined that "one would be useless without the other."[239]

Failure to include Intrado Comm's proposed language in the interconnection agreement will have a significant effect on Massachusetts PSAPs. As many as 30-40 percent of wireless 911 calls ***routinely*** require transfer to another PSAP, regardless of the 911/E-911 service provider involved.[240] Without the language requested by Intrado Comm, Massachusetts PSAPs opting for a competitive 911 provider will lose the ability to receive a call transfer with ALI from a Verizon served PSAP, and Verizon served PSAPs will also be unable to receive a call transfer

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234 Hicks at 8-9.

235 Hicks at 9, lines 9-12; Currier at 26, lines 7-11.

236 *VoIP E911 Order* ¶ 15 (finding the Wireline 911 Network consists of the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the SRDB, the trunk line(s) between the ALI database and the PSAP, and the MSAG).

237 47 C.F.R. § 4.5(e)(4).

238 Hicks at 9, lines 10-12.

239 Hicks at 9, lines 9-10.

240 Hicks at 54, lines 12-13.

with ALI from a PSAP served by a competitive provider. Accordingly, Intrado Comm's proposed language should be adopted.

VIII. 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.[241]

Six definitions are at issue between the Parties: the definitions of (1) "Automatic Number Information" or "ANI"; (2) "911/E-911 Service Provider"; (3) "911 Tandem/Selective Router"; (4) "Point of Interconnection" or "POI"; (5) "Verizon 911 Tandem/Selective Router"; and (6) "Verizon 911 Tandem/Selective Router Interconnection Wire Center." The issues between the Parties concerning the definition of "911/E-911 Service Provider" and the definition of "POI" deal with the location of the POI and are addressed under Issue 1.

Intrado Comm's proposed definition of "ANI" should be adopted.[242] The definition proposed by Intrado Comm is set forth in the NENA Master Glossary.[243] Intrado Comm proposed that this term and definition be included in the interconnection agreement because the term is used in Intrado Comm's proposed language in other sections of the interconnection agreement.[244] It does not appear that Verizon has an issue with the substance of the definition. Verizon disputes the reference to ANI in other sections of the interconnection agreement definition. ANI is a key component of 911 service. Intrado Comm's proposed definition is an industry-accepted definition, the term is used in the interconnection agreement, and thus Intrado Comm's proposed definition should be included in the interconnection agreement.

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[241] The Commission's decision with respect to Issue 1 will determine the appropriate definitions of "Point of Interconnection" and "911/E-911 Service Provider."

[242] Blackline ICA, Glossary § 2.6.

[243] Hicks at Attachment 8, *NENA Master Glossary of 9-1-1 Terminology, NENA-00-001, Version 11,* at 17 (May 16, 2008).

[244] Hicks at 55, lines 11-14.

Intrado Comm's proposed language with respect to the definition of "911 Tandem/Selective Router" accurately reflects the functions that will be performed by a 911 Tandem/Selective Router.[245] In discussing the functions of the wireline 911 network, the FCC has stated that a selective router receives 911/E-911 calls and forwards those calls to the PSAP that has been designated to serve the caller's area.[246] The FCC thus recognizes that a selective router terminates 911/E-911 calls to a PSAP - a fact that Intrado Comm's proposed language reflects. In addition, it is well established that selective routers are used to transfer 911/E-911 calls between PSAPs. Intrado Comm's language should be adopted.

By contrast, Verizon's proposed language for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" should be rejected. These two Verizon-proposed definitions are unnecessary and repetitive of the general definitions for these terms. The terms "911 Tandem/Selective Router" and "Interconnection Wire Center" are already defined in the interconnection agreement.[247] There is no reason for separate, Verizon-specific definitions for these terms. To the extent the language of the interconnection agreement must state that the 911 Tandem/Selective Router belongs to Verizon, it should be sufficient to say "a Verizon 911 Tandem/Selective Router" without developing a separate definition for that term. If Verizon's proposed language is included in the interconnection agreement, Intrado Comm-specific definitions for these terms should also be included. There is no reason to include Verizon-specific terms and definitions without including reciprocal terminology for Intrado Comm.[248] This is consistent with the *West Virginia ALJ Award*'s

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245 Hicks at 56, lines 12-18.

246 *VoIP E911 Order* ¶ 15.

247 Hicks at 57, lines 10-11.

248 Hicks at 57-58.

determination that Verizon's proposed definitions were "superfluous since there is already a definition of 911 tandem/selective router" in the interconnection agreement.[249]

IX. ISSUE 9: SHOULD 911 ATTACHMENT SECTION 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?[250]

Verizon has proposed language that would allow Verizon to directly deliver 911/E-911 calls to one of Intrado Comm's PSAP customers.[251] Intrado Comm has proposed deleting this language. Originally, Intrado Comm had proposed that the language be *reciprocal* and qualified so that either Party would be permitted to directly deliver 911/E-911 calls to the other Party's PSAP customer only if the PSAP customer specifically authorized the requesting Party to do so.[252] Intrado Comm understands there may be instances where a PSAP may select more than one 911/E-911 service provider. For example, a PSAP could choose to have both Verizon and Intrado Comm provide 911/E-911 services. The language should therefore reflect that such arrangements are driven by the PSAP (who is the customer of record), not Verizon's unilateral mandates. The PSAP must make an affirmative decision to subscribe to additional 911/E-911 services before such services are provided by either Party.[253]

Verizon rejected this proposal, and instead proposed language for Section 2.6 of the 911 Attachment purporting to address Intrado Comm's concerns for reciprocity.[254] Verizon's language, however, does not address Intrado Comm's concerns. Verizon's language would still

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249 *West Virginia ALJ Award* at 17-18.

250 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 9.

251 Blackline ICA, 911 Attachment § 2.5.

252 Hicks at 58, lines 18-22.

253 *Cf.* 47 C.F.R. § 64.1100, *et seq.*; *United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*, 8 FCC Rcd 5563, ¶ 5 (1993) (finding that only customers that order service are responsible for the charges associated with that service) (Attachment 8); *Atlantic Telco, Inc. and Tel. & Tel. Payphones, Inc.*, Order, 8 FCC Rcd 8119, ¶ 6 (1993) (same) (Attachment 9).

254 Blackline ICA, 911 Attachment § 2.6.

allow it to bypass the Intrado Comm selective router and deliver 911/E-911 calls directly from its end offices to a PSAP served by Intrado Comm. Neither Party should be permitted to route 911/E-911 service traffic in this manner without express permission from the PSAP. In addition, the Verizon-proposed provision is not exactly reciprocal and contains additional limitations, such as whose facilities are to be used to deliver the 911/E-911 call.

Therefore, the language in Sections 2.5 and 2.6 should be stricken or, at a minimum, be exactly reciprocal and qualified to reflect that such arrangements are driven by the PSAP. Verizon is correct that whether a party has a right to deliver calls to a PSAP is a matter outside of the Section 251(c) interconnection agreement.[255] That is precisely why Intrado Comm has proposed deleting Verizon's language from the Parties' interconnection agreement.[256] This is consistent with the *West Virginia ALJ Award*'s determination that Verizon's proposed language should be rejected, and if there is a legitimate reason for either Verizon or Intrado Comm to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the interconnection agreement.[257] Accordingly, Intrado Comm's proposal to delete Verizon's proposed language for Sections 2.5 and 2.6 should be adopted.

X. ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?[258]

A. The Rates to Be Charged By Verizon Must Conform With Section 252 Pricing Standards Subject To Limited Exceptions

Verizon should not be permitted to impose unspecified tariff rates on Intrado Comm for interconnection-related services. In some instances, Verizon's proposed language would allow

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255 Verizon Panel Testimony at 75, lines 15-17.

256 Blackline ICA, 911 Attachment §§ 2.5, 2.6.

257 *West Virginia ALJ Award* at 28.

258 The Commission's decision with respect to Issue 1 will determine the appropriate resolution of Issue 10 only to the extent the Parties' disputed language refers to charges based on the location of the POIs.

Verizon to impose charges on Intrado Comm for 911 interconnection services based on "applicable" tariffs.[259] As a competitor, Intrado Comm is entitled to interconnection facilities and unbundled network elements ("UNEs") at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act.[260] Section 252(d) sets forth the pricing standards for three categories of charges: (1) interconnection and network element charges; (2) transport and termination charges; and (3) wholesale telecommunications services charges.[261] Tariffs are not the appropriate mechanism for determining what Verizon may charge Intrado Comm under the Parties' interconnection agreement for interconnection arrangements concerning any of these categories.[262] Rather, an ILEC's rates for interconnection and unbundled network elements must meet the standards set forth in Section 252(d)(1) of the Act.

Verizon cannot use tariffs to circumvent the requirements of 251/252.[263] While Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon (*i.e.*, non-TELRIC services), interconnection arrangements for the competitive provision of 911 services do not fall within that framework. If there are non-252(d)(1) services that Intrado Comm would purchase from Verizon, those services and the pricing for those services must be identified in the interconnection agreement. If the relevant pricing for non-252(d)(1) services is set forth in a tariff, the interconnection agreement should contain a specific reference to the tariff for that service rather than a generic reference to "applicable" tariffed rates, as

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259 Currier at 27, lines 9-10.

260 47 U.S.C. §§ 251(c)(2)(4); 252(d)(1).

261 47 U.S.C. § 252(d).

262 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008) (Attachment 7).

263 *Virginia Arbitration Order* ¶ 602.

Verizon's proposed language would allow.[264] Intrado Comm's proposed language should therefore be adopted.[265]

B. Intrado Comm's Rates Are Reasonable and Should Be Included in the Interconnection Agreement

Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic should be included in the interconnection agreement. Intrado Comm has proposed rates for access or "interconnection" ports on its network that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP.[266] Intrado Comm is not preventing Verizon from using its own facilities or the facilities of a third party to reach Intrado Comm's network. But even if Verizon uses its own facilities, Verizon will be required to pay Intrado Comm for the physical connection to Intrado Comm's switch (*i.e.*, the selective router port).

Intrado Comm is under no obligation to make any demonstration regarding its rates in a Section 252 proceeding. The FCC has stated that Section 252 authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable, but provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding.[267] If Verizon seeks to challenge the "reasonableness" of Intrado Comm's rates, it should do that in a separate proceeding before this Department.[268] There is no requirement for the Department to make such a determination here.

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264 Currier at 28, lines 3-6.

265 Blackline ICA, 911 Attachment §§ 1.3, 1.4, 1.7, Pricing Attachment §§ 1.3, 1.5, Appendix A.

266 Currier at 30, lines 1-5; *see also* Currier at Attachment 10 (providing Intrado Comm's proposed rates).

267 *Virginia Arbitration Order* ¶ 588.

268 *Virginia Arbitration Order* ¶ 589.

Nonetheless, Intrado Comm's proposed interconnection rates for services Intrado Comm will provide to Verizon for the exchange of 911/E-911 traffic are reasonable and appropriate, and Verizon has not demonstrated otherwise.[269] Indeed, the Public Utilities Commission of Ohio determined that Intrado Comm's proposed port or connection charges are "reasonable" and "are not beyond the range of other companies."[270]

Verizon imposes similar charges on competitors seeking interconnection to Verizon's network.[271] The Parties' interconnection agreement specifically states that Intrado Comm will be responsible for any charges related to "interconnection of Intrado Comm's network with Verizon's network at the POI(s)."[272] In general, such "interconnection" can be accomplished in one of two ways—use of entrance facilities or via a collocation arrangement. Under the Parties' Pricing Schedule, Verizon will charge Intrado Comm a "facility termination" charge per DS0, DS1, or DS3 in connection with any collocation arrangement established by Intrado Comm for "interconnection" (in addition to the general fees for establishing the collocation arrangement).[273] Verizon also imposes "termination" fees in connection with its entrance facility charges.[274] Intrado Comm is entitled to impose the same types of charges for interconnection on its network. Accordingly, Intrado Comm's proposed charges should be adopted for inclusion in the

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[269] DTE 00-54-A, *Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration of an Interconnection Agreement between Sprint and Verizon New England, Inc. d/b/a Verizon-Massachusetts*, Order on Sprint's Motion for Reconsideration, Motion to Admit Late-Filed Exhibit, Motion for Official Notice (May 3, 2001) ("Sprint is likewise required to charge reasonable rates for interconnection. . . . The requirement that interconnection rates be reasonable is applicable to all local exchange carriers in Massachusetts.").

[270] *Ohio CBT Arbitration Award* at 21.

[271] Currier at 30, lines 14-16.

[272] Blackline ICA, 911 Attachment § 1.7.3; *see also* Joint Issues Matrix at 25 (noting Verizon's position that "Intrado Comm must pay Verizon for interconnection at the POI").

[273] Verizon Massachusetts Tariff DTE MA No. 17. Per the Pricing Schedule, collocation charges are pursuant to Verizon's Massachusetts collocation tariff.

[274] *See generally* Verizon Massachusetts Tariff DTE MA No. 15. Per the Pricing Schedule, entrance facility charges are pursuant to Verizon's Massachusetts tariff for Feature Group D service.

interconnection agreement as well as Intrado Comm's proposed language referencing those charges.

XI. ISSUE 11: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT.[275]

There are three main disputes under this issue. *First*, Intrado Comm objects to Verizon's proposed language that would incorporate all "applicable" tariff provisions into the interconnection agreement.[276] *Second*, tariff charges should not be permitted to trump those interconnection-related charges contained in the Pricing Appendix without a specific reference in the Pricing Appendix. Any charges to be imposed by either Party should be specifically set forth in the Pricing Appendix to the interconnection agreement. *Third*, Verizon should not be permitted to automatically supersede any rates marked as "TBD" in the Pricing Attachment with tariff charges, which may or may not be developed pursuant to the requirements of Sections 251 and 252 of the Act.[277]

Intrado Comm seeks certainty in the Parties' interconnection relationship and cannot agree to unspecified terms and conditions that Verizon may later determine are "applicable" to the services being offered in the interconnection agreement. Tariffs may not always be the appropriate mechanism for determining what Verizon may charge Intrado Comm under the

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275 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 11.

276 *See* Blackline ICA, General Terms and Conditions §§ 1.1, 911 Attachment § 1.3, 1.4.2, 1.7.3, Pricing Attachment §§ 1.3, 1.5; Appendix A.

277 Currier at 33-34.

Parties' interconnection agreement for interconnection-related services.[278] Intrado Comm recognizes there may be non-252(d)(1) services that Intrado Comm will purchase from Verizon for which a tariff is the appropriate pricing mechanism. If Verizon seeks to have a tariff apply to the interconnection agreement for a non-252(d)(1) service, it should identify that tariff in the agreement rather than a generic reference to "applicable" tariffed rates, as Verizon proposes. Intrado Comm could accept a reference to relevant, applicable tariffs for interconnection-related services, but Verizon has not identified such tariffs.[279]

The *West Virginia ALJ Award* agreed with Intrado Comm and found that,

> [i]f Verizon intends to charge Intrado for a particular service, it ought to be able to figure out what tariff contains that charge or service. All tariffs which might generate charges to Intrado must be specifically listed in the Agreement or the Pricing Attachment.[280]

The West Virginia ALJ also determined that references to tariffs in phrases such as "notwithstanding any other provision of this Agreement **<u>or tariff</u>**" or "as set out in **<u>Verizon's applicable tariffs</u>**" must be eliminated from the interconnection agreement.[281] Further, the West Virginia ALJ ruled that charges stated in the interconnection agreement cannot be automatically superseded by subsequent tariff changes, as would be permitted by Verizon's proposed language, because doing so would be inconsistent with FCC mandates.[282] The Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempt to impose similar language, finding that rates contained in a pricing schedule to an interconnection agreement cannot be

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278 *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008) (Attachment 7).

279 Currier at 32-33.

280 *West Virginia ALJ Award* at 24.

281 *West Virginia ALJ Award* at 24.

282 *West Virginia ALJ Award* at 24.

secondary to rates contained in a filed tariff.[283] Indeed, the Bureau determined that, unless the parties otherwise agree, it would be inappropriate for "a tariff to supersede an interconnection agreement."[284] Tariffs that are "approved or allowed to go into effect" should not supersede rates approved in an arbitrated interconnection agreement.[285] Adopting Verizon's language would "thwart [Intrado Comm]'s statutory right to ensure that the new rates comply with the requirements of sections 251 and 252," because the tariffed rates "would not be the subject of a determination under section 252."[286] Intrado Comm's proposed language should therefore be adopted.

XII. ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS.[287]

Intrado Comm objects to Verizon's attempt to dictate what the rates and charges will be for the Parties' same services, facilities, and arrangements. Verizon's proposed language is one-sided and could force Intrado Comm to lower its rates without competitive justification.[288] Neither federal nor state law requires Intrado Comm's rates or the rates of other competitors to be capped at the rate that Verizon and other incumbents charge (with the exception of intercarrier compensation charges, which are inapplicable here).[289] In fact, the Wireline Competition Bureau of the FCC has specifically rejected Verizon's attempts to cap competitors' rates at the prevailing

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283 *Virginia Arbitration Order* ¶ 608.

284 *Virginia Arbitration Order* ¶ 608.

285 *Virginia Arbitration Order* ¶ 600.

286 *Virginia Arbitration Order* ¶ 601.

287 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 12.

288 Currier at 34, lines 24-25.

289 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

ILEC rate for facilities and services other than intercarrier compensation.[290] Likewise, the New York, New Jersey, and Connecticut commissions have rejected Verizon's attempt to cap the rates of competitors through such language in other interconnection agreements.[291] Indeed, the *West Virginia ALJ Award* also rejected Verizon's proposed language based on the prior FCC precedent.[292]

Intrado Comm, like other competitive providers in Massachusetts, is entitled to operate independently of Verizon. No competitive provider of telecommunications services can conduct business where its business model is determined by the price setting whims of its competitor, particularly the incumbent. If Verizon seeks to challenge Intrado Comm's rates, it should do that in a separate proceeding before this Department, because Section 252—the standard governing this proceeding—does not apply to Intrado Comm's rates.[293] Accordingly, Verizon's proposed language should be deleted.

XIII. 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 COMM BY OTHER PROVISIONS OF THE AGREEMENT?[294]

Intrado Comm has proposed language to ensure that each Party is able to bill the other Party for services or items set forth in the interconnection agreement at the rates contained in the

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290 *Virginia Arbitration Order* ¶¶ 581-89.

291 *See, e.g.*, New York Case 99-C-1389, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell-Atlantic New York Inc.*, Order Resolving Arbitration Issues, at 10 (Jan. 28, 2000); Connecticut Docket No. 00-10-22, *Petition of Cablevision Lightpath-CT, Inc. for Arbitration*, Decision, at 4 (CT DPUC Apr. 11, 2001); New Jersey Docket No. TO01080498, *Petition of Cablevision Lightpath-NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Order Approving Interconnection Agreement (NJ BPU Mar. 1, 2002).

292 *West Virginia ALJ Award* at 25.

293 *Virginia Arbitration Order* ¶ 588 (the state commission "is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners") (emphasis in original).

294 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 13.

Pricing Attachment to the agreement.[295] Intrado Comm's proposed language does not address intercarrier compensation[296] or create a "loophole" to allow Intrado Comm to impose intercarrier compensation charges on Verizon.[297] Nor is it Intrado Comm's "objective" to bill Verizon charges in connection with the ALI database or the Master Street Address Guide ("MSAG")[298] unless the interconnection agreement specifically permits such charges. In fact, a review of the agreed-upon language demonstrates that charges for reciprocal compensation, intercarrier compensation, exchange access service, ALI database, and MSAG have been specifically excluded from the types of charges the Parties are permitted to impose on each other.[299]

Verizon's proposed language would eliminate Intrado Comm's ability to impose "any" charges "in connection with 911/E-911 Calls" on Verizon even if those charges were set forth in the interconnection agreement.[300] By contrast, Intrado Comm's proposed language ensures that each Party may bill the other Party appropriate interconnection-related charges for their exchange of 911/E-911 calls to the extent such charges are permitted by or set forth in the interconnection agreement. Examples of such charges may include the access or "interconnection" port charges that would be applied when Verizon interconnects with Intrado Comm's network to deliver 911 calls destined for an Intrado Comm served PSAP. Intrado Comm's proposed language should be adopted.

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295 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

296 Currier at 35, lines 13-16.

297 *Cf.* Verizon Panel Testimony at 89, lines 13-15.

298 *Cf.* Verizon Panel Testimony at 89-90.

299 Blackline ICA, 911 Attachment §§ 1.7.2, 1.7.3.

300 Blackline ICA, 911 Attachment § 1.7.2.

XIV. ISSUE 14: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPs BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"?[301]

Intrado Comm has proposed language to ensure that neither Party may operate outside Department-approved rates or Department regulation for their retail services to PSAPs.[302] Without Intrado Comm's suggested qualification, either Party could have the ability to bill Massachusetts public safety agencies for a range of services even if the Party no longer provided those services. Indeed, it is important to note that Intrado Comm's proposed language applies equally to ***both Parties*** and is not intended to restrict the potential relationship and charges between Verizon and the PSAP.[303] The reference to "tariffs" in Intrado Comm's proposed language means both Parties' tariffs.

Nor is Intrado Comm attempting to restrict Verizon's ability to charge PSAPs to which ***Verizon will continue to provide services***.[304] Intrado Comm's proposed language would not prevent Verizon from imposing lawful charges on Massachusetts counties or PSAPs as authorized by state or federal law, Department-approved tariffs, or Department rules and regulations.[305] The key is whether Verizon will actually be providing such services to PSAPs when Intrado Comm is the designated 911/E-911 service provider. Verizon has not explained what services it would provide to a PSAP once Intrado Comm is the designated 911/E-911

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301 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 14.

302 Blackline ICA, 911 Attachment §§ 2.3, 2.4.

303 Currier at 36-37.

304 Currier at 37, lines 6-12; *see also, e.g.*, *Ohio Embarq Arbitration Award* at 42 ("the Commission agrees with Intrado that Embarq should have no right to charge Ohio counties for services the company no longer provides"); Currier at Attachment 4, Florida Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (Fla. P.S.C. June 4, 2008) ("The law is clear that telecommunications companies may not charge for services they do not provide. Section 364.604(2) provides that '[a] customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.'").

305 Currier at 37, lines 6-12.

provider. Switching via Verizon's selective router is no longer necessary when Intrado Comm is the designated provider.[306] Selective routing involves termination of a call to a PSAP, and when Intrado Comm is the designated provider, Verizon will no longer be terminating calls to the PSAP.[307] Thus, Verizon will no longer provide selective routing services, ALI database services, or database management services to a PSAP when Intrado Comm is the designated 911/E-911 service provider.

Moreover, any notion that Intrado Comm could control the actions of Verizon via Intrado Comm's tariff is simply nonsensical.[308] Intrado Comm cannot control the pricing actions of Verizon, just as Verizon should not be permitted to control the pricing actions of Intrado Comm (as discussed further above). The only entity that may control the Parties' pricing actions is the Department, as reflected in Intrado Comm's proposed language indicating that applicable law, tariffs, and Department rules are the determining factor for the Parties' ability to charge for certain services. Intrado Comm's proposed language ensures that both Parties operate within Department-sanctioned parameters and should therefore be adopted.

XV. ISSUE 15: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS?[309]

Recognizing that it might offer additional telephone exchange services in Massachusetts, Intrado Comm has proposed language that would allow Intrado Comm to seek to amend the interconnection agreement to include any additional arrangements that would be necessary to facilitate Intrado Comm's provision of other telephone exchange services.[310] If Intrado Comm

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306 Hicks at 40, lines 4-6.

307 Currier at 13, lines 12-21, 24, lines 4-7.

308 Verizon Panel Testimony at 92, lines 13-17.

309 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 15.

310 Blackline ICA, General Terms and Conditions § 1.5.

decides to offer additional telephone exchange services, the Parties should build on their existing agreement and incorporate any additional provisions necessary to support the provision of the additional services Intrado Comm decides to offer.[311] The negotiation and arbitration of interconnection agreements involves a significant amount of time and resources. There is no reason for the Parties to re-start the process, which will likely lead them back to arbitration before this Department. Intrado Comm's proposed language ensures that Intrado Comm is not forced to re-negotiate, re-litigate, or re-arbitrate provisions that have already been resolved by the Parties or by the Department. This is consistent with the FCC's finding that "any carrier attempting to arbitrate issues that have previously been resolved in an arbitration solely to increase another party's costs would be in violation of the duty to negotiate in good faith and could be subject to enforcement."[312]

Verizon offers no support for its unreasonable position, other than it seeks to prevent Intrado Comm from being able to "pick-and-choose" favorable contract provisions.[313] But Verizon's argument fails to acknowledge that any amendment to be made to the interconnection agreement will be subject to negotiations between the Parties, dispute resolution before the Department, and possibly arbitration before the Department pursuant to the agreement already reached by the Parties:

> If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party ***may pursue any remedies*** available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction,

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311 Currier at 38, lines 17-20.

312 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 13494, ¶ 28 (2004) (Attachment 29).

313 Joint Issues Matrix at 31 (noting Verizon's position).

> without first pursuing dispute resolution in accordance with Section 14 of this Agreement.[314]

To the extent Verizon seeks to change certain contract language based on Intrado Comm's provision of additional services, Verizon can do it at that time. This approach would save the Parties and the Department the time and energy of renegotiating and re-litigating provisions that have already been resolved by the Parties.

XVI. 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 COMM?[315]

Section 1.1.1 of the 911 Attachment contains general statements about 911/E-911 arrangements. Verizon's proposed language states that 911/E-911 arrangements provide ***a caller*** access to the appropriate PSAP. Intrado Comm views inclusion of the phrase "a caller" as unnecessary and has requested that the language be deleted.[316]

Indeed, Verizon's inclusion of the term appears to be an attempt to inappropriately limit the definition of 911/E-911 arrangements. The Verizon-proposed inclusion of "a caller" is too restrictive. In another arbitration proceeding involving Verizon and Intrado Comm, Verizon's witness admitted that its proposed term is intended to limit 911 arrangements to "fixed line subscriber dial tone."[317] Under this interpretation of "a caller," not even 911 calls from wireless devices or interconnected VoIP services would be able to be completed to Intrado Comm PSAP customers.[318] This so-called "simple clarification"[319] is inconsistent with the types of 911/E-911

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314 Blackline ICA, General Terms and Conditions § 4.6 (emphasis added); *see also* Currier at 38-39.

315 The Commission's decision with respect to Issue 1 does not affect its resolution of Issue 16.

316 Hicks at 60, lines 15-18.

317 Ohio Case No. 08-198-TP-ARB, *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 Verizon North, Inc.*, Hearing Transcript at 169-70 (Jan. 13, 2009), *available at* http://dis.puc.state.oh.us/TiffToPDf/A1001001A09A27B54955D46020.pdf ("Ohio Transcript") (Attachment 45).

318 Ohio Transcript at 169-70.

319 Verizon Panel Testimony at 98, line 11.

calls that PSAP customers expect to be able to receive from their 911 service provider. The inclusion of "a caller" is unnecessary, serves only to restrict Intrado Comm's ability to provide service to PSAPs, and should therefore be rejected.

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Department adopt Intrado Comm's positions and proposed contract language as set forth herein and in the Joint Issues Matrix.

Respectfully submitted,

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Dated: February 26, 2009

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of INTRADO COMMUNICATIONS INC.'S INITIAL BRIEF was filed with the Secretary of the Massachusetts Department of Cable and Telecommunications via electronic filing and Federal Express, and a copy was served on the following via electronic mail and U.S. mail, postage prepaid on this 26th day of February, 2009:

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LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
Federal Court Decisions	
1	*United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. (D.D.C. Feb. 6, 1984)
2	*AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)
3	*City of Abilene, Texas v. FCC*, 164 F.3d 49 (D.C. Cir. 1999)
4	*Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003)
5	*Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006)
6	*Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007)
7	*Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676 (8th Cir. 2008)
Federal Communications Commission Decisions and Filings	
8	*United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*, 8 FCC Rcd 5563 (1993)
9	*Atlantic Telco, Inc. and Tel. & Tel. Payphones, Inc.*, Order, 8 FCC Rcd 8119 (1993)
10	*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 9 FCC Rcd 6170 (1994)
11	*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 (1996) ("*Local Competition Order*") - ***Selected Sections Only***
12	*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676 (1996)
13	*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392 (1996) ("*FCC Interoperability Order*")
14	*Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems*, 11 FCC Rcd 18223 (1996) (citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)) - ***Selected Sections Only***

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
15	*The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460 (1997)
16	*Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627 (1998)
17	*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) ("*Advanced Services Order*")
18	*American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, 14 FCC Rcd 21579 (1999)
19	*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954 (1999)
20	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, WT Docket No. 94-102 (rel. May 7, 2001)
21	*Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation NPRM*")
22	*Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprises Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001)
23	CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, Reply Comments of Verizon (Nov. 5, 2001), *available at* http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512773351
24	*Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, 17 FCC Rcd 14789 (2002) ("*King County Order*")
25	*Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition of City of Richardson, Texas*, 17 FCC Rcd 24282 (2002) ("*City of Richardson Order*")
26	*Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916 (2002)

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
27	*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 (2002) ("*Virginia Arbitration Order*")
28	*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *aff'd in part, remanded in part, vacated in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 587 (D.C. Cir. 2004) (subsequent history omitted) - ***Selected Sections Only***
29	*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 13494 (2004)
Hicks Attachment 9	*Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245 (2005) ("*VoIP E911 Order*")
30	*Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541 (2007) ("*Katrina Order*")
31	*Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 10609 (2007)
32	*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255 (2008) ("*TRS 911 Order*")
33	WC Docket Nos. 08-33, 08-185, Intrado Communications Inc. Reply to Verizon Response (filed Jan. 26, 2008)
Other State Commission Decisions and Filings	
Attached to December 18 correspondence	New York Case 99-C-1389, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell-Atlantic New York Inc.*, Order Resolving Arbitration Issues (Jan. 28, 2000)
Attached to December 18 correspondence	Connecticut Docket No. 00-10-22, *Petition of Cablevision Lightpath-CT, Inc. for Arbitration*, Decision (CT DPUC Apr. 11, 2001)
Attached to December 18 correspondence	New Jersey Docket No. TO01080498, *Petition of Cablevision Lightpath-NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Order Approving Interconnection Agreement (NJ BPU Mar. 1, 2002)
Currier Attachment 7	Illinois Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision (I.C.C. Mar. 21, 2001) ("*Illinois SCC Decision*")

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
34	Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003)
35	North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003)
36	New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005), Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006)
37	Illinois Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order (July 13, 2005); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff'd Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007)
38	Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006)
39	California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006)
40	Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (I.U.R.C. Sept. 6, 2006)
Currier Attachments 2 and 3	Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order (Feb. 5, 2008) ("*Ohio Certification Order*"), Order on Rehearing (Apr. 2, 2008) ("*Ohio Certification Rehearing Order*")
Currier Attachment 4	Florida Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (Fla. P.S.C. June 4, 2008)

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
Currier Attachment 6	Ohio 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 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*")
Currier Attachment 11	Ohio Case No. 08-537-TP-ARB, *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*, Arbitration Award (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*")
Hicks Attachments 3 and 4	West Virginia Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award, at 16-17 (Nov. 14, 2008) ("*West Virginia ALJ Award*"), *approved by* Commission Order (Dec. 16, 2008)
Intrado Comm Hearing Exhibit 4	Florida Docket 070699, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with Embarq Florida Inc.* Intrado Communications Inc. Motion for Reconsideration (filed December 18, 2008)
Intrado Comm Hearing Exhibit 5	Florida Docket 070736, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 356.16, and 364.162, F.S., and Rule 28-106.201, F.A.C. to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Intrado Communications Inc. Motion for Reconsideration (filed Dec. 18, 2008)
41	Illinois Docket No. 08-0550, Direct Testimony of Jeffrey H. Hoagg on behalf of Staff of the Illinois Commerce Commission (filed Dec. 19, 2008) ("Illinois Hoagg Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117
42	Illinois Docket No. 08-0550, Direct Testimony of Kathy Stewart on behalf of Staff of the Illinois Commerce Commission (filed Dec. 19, 2008) ("Illinois Stewart Staff Testimony"), *available at* http://www.icc.illinois.gov/docket/files.aspx?no=08-0550&docId=132117
43	Ohio Case No. 08-537-TP-ARB, *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*, Entry on Rehearing (Jan. 14, 2009) ("*Ohio CBT Rehearing Award*")
44	Maryland Case 9138, *Petition of Intrado Communications Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Maryland Inc. pursuant to the Federal Telecommunications Act*, Hearing Transcript (Jan. 7, 2009) - ***Selected Sections Only***

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
45	Ohio Case No. 08-198-TP-ARB, *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 Verizon North, Inc.*, Hearing Transcript at 169-70 (Jan. 13, 2009), *available at* http://dis.puc.state.oh.us/TiffToPDf/A1001001A09A27B54955D46020.pdf - ***Selected Sections Only***
46	Illinois Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Intrado Inc. Brief on Exceptions (filed Feb. 23, 2009)
Other State Commission Rules and Regulations	
47	ILL. ADMIN CODE TIT. 83, § 725.500
48	TEXAS P.U.C. SUBST. R. 26.435
Miscellaneous	
49	AT&T 22-State Template Interconnection Agreement at Attachment 5, *available at* https://clec.att.com/clec/shell.cfm?section=115#Multi-State
50	Embarq Template Interconnection Agreement at Section 55.1.3
Hicks Attachment 5	Verizon Template Interconnection Agreement, 911 Attachment
51	Verizon Template Interconnection Agreement, Tandem Transit Section
Not Available	Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporcero, Pacific Telesis Group, I (Mar. 27, 1991)
52	S. Rep. No. 104-23 (1995)
Hicks Attachment 1	Network Reliability Council Focus Group IV, Essential Communications During Emergencies Team Report (Jan. 12, 1996), *available at* http://www.nric.org/pubs/nric2/fg4/nrcfinal.pdf
Hicks Attachment 2	NENA 9-1-1 Tutorial at 13 (Jan. 19, 2000), *available at* http://www.nena.org/florida/Directory/911Tutorial %20Study%20Guide.pdf.
Hicks Attachment 7	NENA Technical Information Document on Network Quality Assurance, NENA TID 03-501, Issue 2 (revised Oct. 3, 2005), *available at* http://www.nena.org/media/File/03-501_20051003.pdf
Hicks Attachment 7	NENA Standard for Enhanced 9-1-1 (E9-1-1) Default Routing Assignments and Functions, NENA 03-008 (Jan. 19, 2008), *available at* http://www.nena.org/media/File/03-008_20080119.pdf

LIST OF ATTACHMENTS AND CITED DOCUMENTS

Attachment Number	Description
Hicks Attachment 8	*NENA Master Glossary of 9-1-1 Terminology, NENA-00-001, Version 11*, at 17 (May 16, 2008)
53	Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008
54	"State Telecom Activities," COMMUNICATIONS DAILY (Sept. 23, 2008)

Attachment 10

BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

In the Matter of the Petition of Intrado	**)**	
Communications Inc. for Arbitration	**)**	
Pursuant to Section 252(b) of the	**)**	**DTC 08-9**
Communications Act of 1934, as Amended	**)**	
To Establish an Interconnection	**)**	
Agreement with Verizon New England	**)**	
Inc. d/b/a Verizon Massachusetts.	**)**	

INITIAL BRIEF OF

VERIZON MASSACHUSETTS

February 26, 2009

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I. INTRODUCTION AND BACKGROUND

In this arbitration, Intrado seeks interconnection with Verizon, under section 251(c) of the Communications Act of 1934 ("Act"), as amended, to provide 911/E911 services to Public Safety Answering Points ("PSAPs").[1] Intrado will not provide local exchange service to its PSAP customers, and it will not serve any end users of its own who place 911 (or any other) calls over Intrado facilities. It will instead interconnect with Verizon to receive Verizon's end users' 911 calls and deliver those calls to Intrado's PSAP customers.[2]

Although Intrado approached Verizon to negotiate an interconnection agreement as a certified competitive local exchange carrier ("CLEC") in Massachusetts, and Verizon offered Intrado the same interconnection arrangements it offers to carriers providing actual local exchange service, Verizon has never conceded that Intrado is entitled to section 251(c) interconnection for its 911 services.[3] Indeed, the Florida Public Service Commission dismissed Intrado's arbitrations with Embarq and AT&T because Intrado's 911 services are not "telephone exchange service" or "exchange access" that would entitle it to section 251(c) interconnection. The Commission advised Intrado that it could provide its services through the use of commercial agreements.[4] Verizon Florida expects the same result in its pending arbitration with Intrado.[5]

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[1] *See* Intrado Ex. 1 (Hicks Testimony) at 8; Intrado Ex. 2 (Currier Testimony) at 8-9; Hearing Tr. ("Tr.") at 18.

[2] *See, e.g.*, Intrado Petition for Arbitration ("Petition") at 3; Intrado Ex. 2 at 5; Verizon ("VZ") Ex. 1 at 6-7, 12-13.

[3] *See, e.g.*, Tr. 71-73; VZ Ex. 1 at 7-9. Mr. Currier states that Intrado's entitlement to section 251(c) interconnection is not an issue in this proceeding, because it did not appear in the issues matrix. (Intrado Ex. 2 at 9.) But the Department may determine that it lacks the authority to address Intrado's section 251(c) interconnection request, , regardless of whether it was presented as a specific issue by the parties.

[4] *See* VZ Ex. 1 at 8, *citing Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with AT&T Florida*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*Fla. AT&T/Intrado Order*") (attached as Ex. 1 to VZ Ex. 1), at 7; *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Fla. Embarq/Intrado Order*") (attached as Ex. 2 to VZ Ex. 1), at 8.

[5] On December 16, 2008, Verizon filed a Motion for Summary Final Order asking the Florida Commission to dismiss Intrado's arbitration with Verizon, as the Commission had dismissed Intrado's arbitrations with Embarq

Just last week, the Administrative Law Judges ("ALJs") in Intrado's arbitration with AT&T in Illinois issued a Proposed Arbitration Decision concluding, as the Florida Commission did, that Intrado's 911 services do not entitle it to section 251(c) interconnection:

> [T]he Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that any market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.[6]

There was, therefore, no need for the ALJs to reach the parties' disputes about proposed interconnection agreement terms, because those disputes were "rendered moot and superfluous" by the conclusion that Intrado is not entitled to section 251(c) interconnection. (*Ill. Proposed Order* at 21.) The procedural schedule in Verizon's arbitration with Intrado in Illinois has been suspended pending Commission action on the ALJs' proposed order in the AT&T/Intrado arbitration.

In Intrado's arbitrations with AT&T and Cincinnati Bell Telephone Company in Ohio, the Ohio Public Utilities Commission, likewise, ruled that Intrado was not entitled to section 251(c) interconnection for its 911 services, but must instead obtain commercial terms for such interconnection under section 251(a) of the Act.[7] And the Arbitrators in Intrado's arbitrations

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and AT&T, because Intrado is not entitled to section 251(c) interconnection for its 911 services. Verizon's Motion was held in abeyance pending the Commission's ruling on Intrado's Motions for Reconsideration of the Commission's Orders dismissing Intrado's arbitrations with AT&T and Embarq. At the hearing, Intrado submitted those Motions as Intrado Exhibits 4 and 5. (Tr. 65.) The Florida Staff has, since the hearing here, recommended denial of Intrado's Motions for Reconsideration (*see* attached Exs. 1 and 2); the Commission will rule on the Petitions on March 3, 2009.

[6] *Petition for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Illinois Bell Tel. Co.*, Proposed Arb. Decision, Docket No. 08-0545 (Feb. 13, 2009) ("*Ill. Proposed Order*") (attached as Ex. 3), at 18.

[7] *See* VZ Ex. 1 at 9, *citing Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Embarq*, Arb. Award, Case No. 07-1216-TP-ARB, ("*Ohio Embarq/Intrado Order*"), at 33 (Sept. 24, 2008) (attached to VZ Ex. 1 as Ex. 4) and Entry on Rehearing (Dec. 10, 2008) (attached to VZ Ex. 1 as Ex. 5); *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.*, Arb. Award, Case No. 08-537-TP-ARB, ("*Ohio CBT/Intrado Order*"), at 15 (Oct. 8, 2008) (attached to VZ Ex. 1 as Ex.

with AT&T and Verizon in Texas have also raised doubts about whether ILECs can be forced to arbitrate interconnection agreements with Intrado for the 911 services it plans to provide.[8] At the Arbitrators' request, Verizon and AT&T submitted briefs explaining that Intrado is not, in fact, entitled to compel section 252 arbitration of an interconnection agreement because it is not providing any telephone exchange or exchange access services as defined by the Act. (VZ Ex. 1 at 9.)

The same threshold issue of Intrado's entitlement to section 251(c) interconnection is now before the FCC's Wireline Competition Bureau in Intrado's consolidated Virginia arbitration with Embarq and Verizon.[9] In a status conference held with the FCC Staff on January 30, 2009, the Staff made clear that it would decide the threshold issue first for both Embarq and Verizon, both of which have argued that Intrado is not entitled to section 251(c) interconnection. The FCC Staff also stated that its target date for deciding the Verizon/Embarq/Intrado arbitration is May 2 of this year, two weeks after the currently scheduled April 17 decision date in this arbitration. Therefore, it may be best to extend the decision date in this case slightly, in order to receive the FCC Bureau's guidance before issuing a ruling in this case. Indeed, Verizon and Intrado have already agreed to hold their Delaware and

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6). The Ohio Commission arbitrated commercial, section 251(a) agreement terms in Intrado's arbitrations with AT&T and CBT, but neither Verizon nor Intrado asked it to arbitrate section 251(a) terms in their ongoing arbitration.

[8] VZ Ex. 1 9, *citing Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Order No. 2, Requesting Briefs on Threshold Legal Issues (Oct. 17, 2008) (attached as Ex. 3 to VZ Ex. 1).

[9] *See* VZ Ex. 1 at 7-8, *citing 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 Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33; *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 (consolidated by Order released Dec. 9, 2008, FCC No. DA 08-2682).

North Carolina arbitrations in abeyance pending the Bureau's decision.

Verizon offers its positions on the substantive issues here in the event that the Department wishes to move forward with deliberations on those issues at this point, despite the pendency of the threshold jurisdictional issue of Intrado's entitlement to section 251(c) interconnection at the FCC.

If this case proceeds, it is essential to keep in mind that it is an arbitration under section 251(c) of the Act. The Department's sole task is, therefore, to determine the scope of Verizon's interconnection obligations under section 251(c) and the FCC's rules implementing that section. Although Verizon and Intrado vigorously disagree about the nature and scope of Verizon's obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado's arbitration petition here and the issues it raises. (*See, e.g.*, Tr. 18; VZ Ex. 1 at 6.)

This arbitration is ***not*** a proceeding about whether to authorize competition for 911 services in Massachusetts or to decide what the best 911 arrangements and practices are for Massachusetts. (Tr. 109.) Those broad policy questions are not before the Department and they could not, in any event, be resolved in this bilateral arbitration. (VZ Ex. 2 at 5.) Massachusetts has a statewide E911 system, under which Verizon currently provides E911 service to 273 PSAPs. The State 911 Department (formerly the Statewide Emergency Telecommunications Board) is, by statute, the agency responsible for coordinating and administering the implementation of E911 services and promulgating standards to ensure a consistent statewide approach for E911. The 911 Department is the entity that would make decisions about E911 policies, practices and providers in Massachusetts. (*See* M.G.L. ch. 6A, § 18B-I; 560 CMR, "Statewide Emergency Telecomms. Board.") The decision in this arbitration cannot affect any company's obligation to comply with its 911 tariffs and the detailed statutes and rules governing

the administration, implementation, and funding of 911 systems in Massachusetts. To the extent competitive 911 provision is authorized under Massachusetts law, the marketplace will determine the merits of Intrado's and Verizon's respective 911 products—provided the Department does not confer upon Intrado the artificial competitive advantages it seeks in this arbitration (VZ Ex. 1 at 17-18,).

Assuming the arbitration goes forward and the Department completes the review Intrado has requested—that is, evaluation of Intrado's proposals under section 251(c)—they must be rejected as unlawful and anticompetitive. Intrado's proposals are directly contrary to federal law and are not like any section 251(c) interconnection arrangements with any carrier anywhere. In fact, Intrado admits that its proposed interconnection arrangements "absolutely" differ from "typical CLEC interconnection." (Intrado Ex. 2 at 13.)

Under its extreme proposal, Intrado would force Verizon to interconnect with Intrado *on Intrado's network*, at unspecified locations--at as many points of interconnection ("POIs") as Intrado wishes and as far from Verizon facilities as Intrado wishes. (VZ Ex. 1 at 13, 24; 911 Att., Intrado's proposed § 1.3.1.) Intrado would require Verizon to incur the cost of at least two direct trunks from each affected Verizon end office to those POIs on Intrado's network. (VZ Ex. 1 at 40-41; Intrado Ex. 2 at 33-34; 911 Att., Intrado's proposed § 1.3.4(ii).) In addition, Intrado would require Verizon to deploy an unknown, new kind of call-sorting technology in place of Verizon's selective routers used today to sort calls to the appropriate PSAP. (VZ Ex. 1 at 45-47.) Under Intrado's plan, Verizon would have to bear the cost of Intrado's proposed new 911 network. Intrado has never denied this fact, and in fact openly recommends that the retail customers of Verizon and other carriers bear the costs of Intrado's network. (VZ Ex. 1 at 56; Intrado Ex. 2 at 21, 24.)

Intrado's business plan is, therefore, to force Verizon to provide facilities and services that Intrado will market, but that Verizon would actually provide and pay for. Under Intrado's plan, Verizon would still carry its end users' 911 calls (to Intrado's network, instead of directly to the PSAPs), but instead of being paid to do so by the PSAPs, as Verizon is today, Verizon would have to haul those calls ***for free*** and then, on top of that, ***pay*** Intrado for interconnecting on Intrado's network. This unprecedented plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can. (VZ Ex. 1 at 13.) When Verizon serves a PSAP, it must charge its tariffed rates for services and facilities provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still provide them--thus allowing Intrado to price its overall service more attractively and providing it an unfair competitive advantage.

Contrary to Intrado's rhetoric, Verizon is *not* trying to maintain a "monopoly" over service to PSAPs in its territory (Intrado Ex 2 at 15), it has *not* tried to stop Intrado from "exercis[ing] the rights given to it by Congress" (Intrado Ex. 2 at 15), and it has *not* taken the position that Intrado has no right to seek to provide 911 services in Massachusetts (Tr. 62; VZ Ex. 1 at 20.) Indeed, Verizon remains willing to offer Intrado the same kind of interconnection arrangements it has in place today with CLECs that provide actual local exchange service. Verizon also stands ready to negotiate a commercial agreement that may better suit Intrado's plans than the section 251(c) interconnection it seeks. But Intrado has no right to the particular interconnection arrangements it proposes in this arbitration, which would be more favorable than the section 251(c) interconnection arrangements provided to any other interconnecting carrier. (VZ Ex. 1 at 10, 20.)

Intrado can provide its services using any kind of network it wishes (as long as it is consistent with Massachusetts's 911 statutes and regulations), but Intrado cannot force Verizon to pay for that network, as it seeks to do. This point bears repeating: ***Intrado will be able to provide its 911 services under either Verizon's proposed interconnection arrangements or Intrado's***. (Tr. 109.) Leaving aside the technical and reliability concerns with Intrado's proposals (discussed below), the chief difference between Intrado's and Verizon's respective interconnection proposals is who bears the cost of Intrado's proposed network configuration—Intrado or Verizon. The answer—under both governing federal law and sound policy—must be that Intrado pays for the network it seeks to establish.

Indeed, even while dismissing Intrado's arbitration petitions for legal reasons, the Florida Commission raised the same concerns about Intrado's self-evident cost-shifting proposals that Verizon has here. It observed that the type of interconnection arrangements Intrado is requesting "could present a serious disadvantage to [the ILEC], who would pay for Intrado Comm establishing its 911/E911 service. We are concerned that the costs for interconnection would be borne by [the ILEC]." (*Fla. AT&T/Intrado Order* at 7; *Fla. Embarq/Intrado Order* at 6.)

This concern is well justified. In fact, the costs of Intrado's proposals are sure to be enormous, not just for Verizon but for the entire industry. As explained in more detail under Issue 5, if the Department approves Intrado's network architecture proposal, it will change the existing 911 call delivery system in Massachusetts. CLECs and wireless carriers that today aggregate their traffic at Verizon's selective routers for transmission to the PSAPs would no longer be able to do so and would have to establish their own direct trunks to Intrado, just as Verizon would. Verizon has 270 end offices in Massachusetts, it serves 273 PSAPs, and CLECs and wireless carriers typically send their end users' emergency calls through Verizon's selective

routers for sorting to the appropriate PSAP. ***Given these facts, the magnitude and expense of the changes Intrado is proposing with its new network architecture would be staggering.*** (VZ Ex. 1 at 21.) As Verizon has pointed out, there is no reason to consider these drastic changes, because they are completely unnecessary to allow Intrado to compete for 911 services.

If the Department proceeds to consider Intrado's proposals under section 251(c) without waiting for the FCC Bureau's decision as to whether Intrado is entitled to section 251(c) interconnection at all, it must reject Intrado's position that section 251(c) grants 911 providers like Intrado special, more favorable interconnection rights over interconnecting CLECs that provide 911 service to their end users as part of actual local exchange service.

The fundamental problem with Intrado's case is that the law under which it chose to petition for interconnection does not fit its business plan to provide 911 services. But, as the Illinois ALJs concluded, having chosen to seek section 251(c) interconnection, Intrado cannot bend that law to suit its business plan: "The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily." (*Ill. Proposed Order* at 18.) Indeed, Intrado's resources would be better directed to negotiating reasonable commercial interconnection arrangements than pursuing arbitration of unreasonable interconnection terms to which it has no right under section 251(c).

II. UNRESOLVED ISSUES

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? (911 Att., §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1; Glossary §§ 2.63, 2.67, 2.94, 2.95.)

As noted, Intrado's proposed contract language would allow Intrado to designate POIs on its own network at its selective routers--at least two, but as many as it wishes, anywhere on its network that it wishes, within or outside Massachusetts.[10] Intrado's proposed language does not specify where the POIs will be, and neither did Intrado's witnesses. (Intrado Ex. 1 at 20; VZ Ex. 1 at 24.) They testified that Intrado intended to place at least two "and possibly more" selective routers somewhere in Massachusetts, but also admitted that Intrado's proposed contract language does not require the POIs to be in Massachusetts and confirmed that Intrado plans to place POIs outside of Massachusetts. (Intrado Ex. 1 at 20-21.) Although Mr. Hicks suggested that points outside of Massachusetts would be for the convenience of Verizon and other carriers (Intrado Ex. 1 at 20-21), that is not what Intrado's proposed language says. That language would give Intrado, not Verizon, the discretion to decide where on Intrado's network the POIs would be--and this issue must, of course, be decided on the basis of the disputed contract language, rather than Intrado's claimed intentions.

Forcing Verizon to interconnect on Intrado's network is the foundation of Intrado's cost-shifting scheme. The POI is the physical and financial demarcation of the parties' respective networks, and each party bears the cost of delivering its originating traffic to the POI. (Tr. 99;

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[10] Intrado's proposed § 1.3.2 of the 911 Attachment states:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm shall provide to Verizon, in accordance with this Agreement, interconnection at a minimum of two (2) geographically diverse technically feasible Point(s) of Interconnection on Intrado Comm's network for the transmission and routing of 911/E-911 Calls to PSAPs for which Intrado Comm is the 911/E-911 Service Provider.

VZ Ex. 1 at 22.) Therefore, to the extent Intrado can compel Verizon to interconnect on Intrado's network, Intrado would force Verizon to incur the cost of transporting its end users' 911 traffic to those POIs, no matter how far from Verizon's network they are. This transport responsibility will be entirely one-sided, because calls will not originate from Intrado's network. As noted, Intrado's only customers will be PSAPs, and they will not place calls to Verizon's customers or anyone else.

Although Intrado has petitioned for interconnection under section 251(c) of the Act, the interconnection arrangements it seeks for its 911 service are, as it admits, "absolutely" unlike the "typical" section 251(c) interconnection arrangements Verizon has with CLECs. (Intrado Ex. 2 at 13.) Intrado argues that because its 911 traffic is different from "plain old telephone service" traffic, 911 traffic warrants unique and different interconnection arrangements. (*See* Intrado Ex. 2 at 13, 17.) To accept Intrado's position, the Department will have to find that there are different requirements for section 251(c) interconnection for 911 traffic than there are for all other traffic. As explained below, there is no basis for such a conclusion. There are no special rules for interconnection of 911 traffic, and the Department cannot create any.

A. The POI for Mutual Exchange of Traffic Must Be on Verizon's Network

As the Arbitrator observed in resolving the POI placement dispute in Intrado's arbitration with Verizon West Virginia, "this issue is quite simple to decide," because "[t]he law is clear and unequivocal."[11] Section 251(c) and the FCC's regulation implementing section 251(c) unambiguously provide that the point(s) of interconnection must be within the ILEC's network.

[11] See VZ Ex. 1 at 11, citing *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 ("*W.V. Arb. Award*") (attached as Ex. 7)., at 12-13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*") (attached to VZ Ex. 1 as Ex. 8).

Intrado seeks interconnection with Verizon under section 251(c) (and only section 251(c)) of the Act (Intrado Ex. 1 at 8 & Ex. 2 at 8-9; Tr. 18), so the Department must resolve Issue 1 in accordance with section 251(c) (if it proceeds with the arbitration at all) and reject Intrado's proposal to designate POIs on its own network.

Under FCC Rules, "interconnection" is "the linking of two networks for the mutual exchange of traffic." 47 C.F.R. § 51.5. A POI is a point where that linking of networks occurs. The location of the POI is a significant issue in part because the POI is the demarcation of financial responsibility; each carrier is financially responsible for the facilities to deliver its traffic to the POI. (Tr. at 89; VZ Ex. 1 at 22.)

Intrado proposes different POI arrangements depending on whether Verizon or Intrado serves the PSAP in a particular geographic area. Where Verizon is the designated 911/E911 service provider for a PSAP, Intrado agrees to deliver its 911/E911 calls to Verizon at a point on Verizon's network at Verizon's selective router. (Petition at 15.) This proposal correctly reflects the legal requirement for Intrado to establish a POI on Verizon's network. However, it will have virtually no practical effect because Intrado's only customers will be PSAPs, and they will not make any calls to Verizon's end users. The parties' dispute with respect to Issue 1 is, rather, about where the POI will be when Intrado is the designated 911 provider--that is, when Verizon's end users make emergency calls to PSAPs served by Intrado. In that case, Intrado's proposed language would require Verizon to build or lease transport facilities to, and interconnect within, Intrado's network at multiple points. (Verizon Ex. 1 at 24; Petition at 16; 911 Att., Intrado's proposed § 1.3.2.)

Intrado's proposal is directly contrary to federal law. Section 251(c) 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). This rule applies to all traffic exchanged between an ILEC and an interconnecting carrier. Section 251(c), under which Intrado seeks interconnection, prescribes no different rules for 911/E911 calls than it does for all other calls.

Indeed, Intrado openly recognizes that the Act requires the POI to be within the incumbent LEC's network. Its Petition even quotes the FCC's Rule 51.305(a) requiring interconnection "within the incumbent LEC's network." (Petition at 15 n. 19.) Mr. Hicks, likewise, answered "yes" to the question in his pre-filed testimony: "Does the Act require the POI to be on the ILEC's network?" (Intrado Ex. 1 at 19.) At the hearing, he again recognized that "the Act required a CLEC to interconnect on Verizon's network." (Tr. at 20.) Nevertheless, both Mr. Hicks and Mr. Currier urge the Department to deviate from this "traditional" POI arrangement required by law. (Intrado Ex. 1 at 13 & Ex. 2 at 16.)

The Department must reject Intrado's position. There is no way the explicit federal requirement for the POI to be "within the incumbent LEC's network" can also mean "outside the incumbent LEC's network." Nor can Intrado require Verizon to hand off traffic at a POI at a different location than Intrado hands off its traffic to Verizon. FCC rules provide that POIs are for "the linking of two networks for the *mutual exchange of traffic*." 47 C.F.R. § 51.5 (emphasis added). Thus, Verizon must be permitted to hand off its traffic to Intrado at the same POI location on Verizon's network.

B. The "Equal-in-Quality" Requirement Does Not Cancel Out the Requirement for the POI to Be on the ILEC's Network

Intrado understands that it cannot win Issue 1 unless it has some legal basis for insisting on POIs on its own network. So even though Intrado recognizes that the Act requires the POI to be on the ILEC's network, Mr. Hicks suggests that section 251(c)(2)(C)'s "equal-in-quality" requirement trumps the POI placement directive in section 251(c)(2)(B). (Intrado Ex. 1 at 16, 19.) Intrado contends that, regardless of the requirement for the POI to be within the ILEC's network, section 251(c)(2)(C) requires Verizon to build out to and interconnect with POIs on Intrado's network. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even through section 251(c)(2)(B) explicitly addresses POI placement.

Intrado's convoluted arguments are, as the West Virginia Arbitrator concluded, "ludicrous on their face." (*W.V. Award* at 13.)

Section 251(c)(2)(C) 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).

Section 251(c)(2)(C), by its plain terms, relates to the *way* in which Verizon interconnects with CLECs, not *where* the interconnection occurs.

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. These criteria include that interconnection must be provided by the ILEC: (A) for transmission and routing of telephone exchange services and exchange access; (B) at any technically feasible point within the ILEC's network; (C) at least equal in

quality to that provided by the ILEC to itself or others; and (D) on just, reasonable and nondiscriminatory rates, terms and conditions. Where a requesting carrier seeks interconnection of its facilities with the ILEC's network, the ILEC must comply with *each* subsection of section 251(c)(2).

The "equal-in-quality" subsection (C) appears right after the subsection requiring interconnection within the ILEC's network (B). 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), right after section 51.305(a)(2), which requires 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."[12] 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

[12] *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 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 criterion in section 251(c)(2)(C) of the Act and FCC rule 51.305(a)(3) addresses 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). This fact was readily apparent to the West Virginia Arbitrator: "The subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection." *W.V. Arb. Award* at 13.

Because they address distinct subjects, it would be impossible for Verizon to rely on section 251(c)(2)(B) to "obliterate" its obligations under 251(c)(2)(C), as Mr. Hicks accuses Verizon of doing. (Intrado Ex. 1 at 19.) This is why Intrado's arguments are "ludicrous on their face." As the West Virginia Arbitrator stated: "On the one hand, Intrado argues that Verizon cannot use on obligation under Section 251(c) to 'obliterate' another obligation under Section 251(c). That is certainly true enough. However, Intrado's own argument would require exactly that outcome." *W.V. Award* at 13.

Indeed, subsections (B) and (C) appear one after another in the ***very same statute***-meaning that Congress *has already decided* that there is no conflict between requiring interconnection on the ILEC's network and the equal-in-quality requirement; both requirements must be applied. 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 within the ILEC's network. Intrado's advancement of this bizarre statutory construction

shows its desperation to come up with some kind of legal argument, no matter how frivolous, to support its extreme network architecture proposals.

Even if there were any merit to Intrado's legal argument that the "equal-in-quality" requirement cancels the POI location requirement (and there is not), that argument would still fail because it is based on Intrado's incorrect factual premise that Verizon is denying Intrado interconnection arrangements Verizon provides to other CLECs, other ILECs, or itself. As Verizon's witnesses testified, the section 251(c) "interconnection" arrangements Intrado seeks--POIs on its own network, direct trunking from the ILEC's end offices, and a new form of call routing from end offices--have never been implemented in any interconnection agreement. (Verizon Ex. 1 at 27.)

Intrado's argument that it is only asking for the same kind of arrangements Verizon uses with CLECs (Intrado Petition at 22; Intrado Ex. 1 at 13) seems to be that since CLECs bring their traffic to Verizon, it is only fair for Verizon to take its traffic to Intrado. But this *policy* argument rests on Intrado's incorrect *legal* position that it is entitled to establish POIs on its own network. CLECs bring their traffic to Verizon's network because the Act and the FCC's rules require it. The Act prescribes no different interconnection rules for 911 traffic than for other traffic and the Department cannot create any such different, more favorable rules based on Intrado's misguided policy arguments. (Verizon Ex. 1 at 29-30.) As the West Virginia Arbitrator correctly observed: "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." *W.V. Award* at 13.

In any event, Verizon's "template 251(c) interconnection agreement" does not (and, as a template, cannot) "require" or "mandate" that CLECs interconnect at Verizon's selective routers,

as Intrado repeatedly contends (Intrado Ex. 1 at 34-35; Tr. 40); in negotiations over that template agreement, CLECs nevertheless typically opt for this arrangement, because it is efficient for them to have Verizon route their 911 calls, and they may be interconnected at Verizon's selective routers for purposes in addition to interconnecting for 911 traffic. (*See* Tr. 42).

Nor do Verizon's arrangements for exchanging 911 traffic with adjacent ILECs support Intrado's extreme network architecture proposals, as Intrado also contends. In its ILEC-to-ILEC arrangements, Verizon typically provides facilities to a meet point at its service area boundary and the other ILEC provides the facilities in its service territory. These meet-point interconnection arrangements do not involve Verizon building facilities and transporting traffic to points on another carrier's network or outside Verizon's service area, as Intrado's proposal would. Moreover, because the facilities Verizon constructs carry all sorts of traffic (not just 911 calls) between Verizon and the adjacent ILEC, the costs and administrative burdens associated with the facilities are not restricted to 911 calls but are spread over the many different types of traffic Verizon exchanges with the adjacent ILEC. And ILEC-to-ILEC arrangements provide switched and special access revenues that help to cover the costs of those arrangements. Under Intrado's proposal, though, Verizon would be required to establish facilities over potentially very long distances and that would be dedicated only to 911 calls for which Verizon collects no revenue. (VZ Ex. 1 at 28-29.)

In addition, the arrangements Verizon has with adjacent ILECs for the exchange of 911 traffic are generally not section 251 interconnection agreements, which is what Intrado seeks here. Therefore, such arrangements could not guide the Department's resolution of the parties' disputes about their rights and obligations under section 251(c). (VZ Ex. 1 at 28.) Having

chosen to seek interconnection through section 251(c), Intrado cannot claim entitlement to arrangements Verizon is not required to offer under section 251(c).

In any event, Verizon offered Intrado meet-point interconnection arrangements, as it does to CLECs, on terms and conditions consistent with the FCC's requirements for section 251(c) agreements. But Intrado expressed no interest in this interconnection method, so the meet-point language was removed from the draft agreement. (VZ Ex. 1 at 29.) Verizon, however, remains willing to provide meet-point interconnection arrangements to Intrado on the same terms it provides such arrangements to CLECs.

For all these reasons, Intrado's claim that it is seeking interconnection like Verizon has with other carriers is wrong as a matter of fact--and Verizon cannot, in any event, be forced to interconnect on Intrado's network as a matter of law.

C. Section 253(b) of the Act Does Not Authorize the Department to Adopt Intrado's Extreme Interconnection Arrangements

Aside from Intrado's erroneous section 251(c)(2)(C) argument, Mr. Currier claims that Section 253(b) of the Act permits the Department to base its decision here on "public interest considerations." (Intrado Ex. 2 at 18.) This argument is no more credible than Intrado's recommendation to read section 251(c)(2)(B) out of the Act. Section 253, entitled "Removal of Barriers to Entry," is completely separate from the interconnection requirements in section 251 and the interconnection agreement negotiation and arbitration procedures in section 252. 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 provision supports, let alone necessitates the adoption of Intrado's proposal. Intrado is, once again, engaging in its own, peculiar brand of statutory interpretation.

First, 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.[13] Nothing in section 253(b)'s general reservation of rights speaks to, let alone overrides, the specific interconnection requirements in section 251(c)(2), including the requirement for the POI to be within the ILEC's network. Section 253(b)'s general reference to protection of the public safety and welfare certainly does not authorize state commissions to ignore unambiguous directives in the Act and the FCC rules, as Intrado urges.

Second, even if section 253 were relevant to resolving the parties' rights and duties under section 251(c) (and it is not), the Department could not assume that Intrado's proposals will protect the public safety and welfare and the rights of consumers, as Intrado's legal argument necessarily presumes. As detailed in response to Issue 5, Intrado's proposals are more likely to undermine than promote public safety. Among other things, Intrado cannot assure the

[13] *See, e.g.*, *BellSouth Telecomms., Inc. v Town of Palm Beach*, 252 F.3d 1169, 1188 (11 Cir. 2001).

Department that CLECs' and wireless carriers' calls will get to Intrado-served PSAPs or that anyone can develop a reliable call routing alternative to the selective routing used today.

Intrado's allegations that its POI-on-its-own-network proposal is "consistent with industry recommendations" relating to network reliability (Intrado Ex. 1 at 18-19) are unfounded. Intrado's claims about its planned network's reliability are necessarily speculative, because Intrado hasn't built that network anywhere. Indeed, Intrado's Mr. Hicks advised the Arbitrator to "keep in mind that we have not placed live traffic on our system as yet anyplace in the country." Intrado is, instead, in the equipment testing stage and is only "preparing to conduct" field trials. (Tr. at 11-12.) The degree of reliability of Intrado's services once its network is built will depend, in large part, on its network architecture, which is the principal issue to be resolved in this arbitration. As Verizon explains in more detail under Issue 5, the network architecture Intrado proposes--not just for Verizon, but for all carriers—is more likely to undermine than enhance reliability of 911 services.

Most importantly, though, nothing in any 911 industry guidelines addresses *section 251(c) interconnection requirements*, which are the only requirements to be implemented in this section 252 arbitration. Intrado's speculation about the merits of its planned services and network are not relevant to determining Verizon's section 251(c) interconnection obligations. (VZ Ex. 1 at 30.)

As for Intrado's claimed objective of safeguarding the rights of consumers, Intrado doesn't say what consumers or what rights its proposal is supposed to protect. Certainly, it is not in the interest of Verizon's or other carriers' customers who would be forced to pay for Intrado's new network (on top of any 911 surcharges they already pay, and that are turned over to the State 911 Department (Tr. 141)) if the Department adopts Intrado's network architecture proposals.

D. There Are No "Other Sources" Authorizing the Department to Ignore the Requirement for the POI to Be on Verizon's Network

Intrado asserts that Sections 251(e) and 706 of the Act authorize the Department to adopt Intrado's network architecture proposal (Intrado Ex. 2 at 18-19) and claims additional support for that proposal in an alleged FCC determination "that the cost-allocation point for the exchange of 911/E-911 traffic should be at the selective router" (Intrado Ex. 2 at 17). None of these "sources" has anything to do with placement of the POI, let alone provides any authority for the Department to adopt Intrado's proposal to place POIs on its own network. Section 251(e) addresses FCC authority over numbering administration; section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability; and the FCC never made any ruling about the POI for 911 traffic. With respect to this latter claim, Mr. Currier provided no citation to any FCC decision in his prefiled testimony, but promised additional discussion of the FCC's findings in Intrado's legal briefs. (Intrado Ex. 2 at 17.) Verizon looks forward to rebutting that discussion.

E. Issue 1 Is Not a Policy Issue

Although Intrado petitioned for interconnection under section 251(c)—which obviously requires the application of section 251(c) requirements—Intrado's witnesses suggest that "public interest considerations" should dictate the resolution of Issue 1. (*See, e.g.*, Intrado Ex. 2 at 17). The Department cannot ignore governing federal law and instead decide the issue with respect to POI placement on policy grounds. (VZ Ex. 1 at 10, 30.) That law, as explained above, provides that the POI(s) must be on Verizon's network, not Intrado's.

Intrado's position is that shifting its costs to other carriers and their customers is desirable policy because Intrado, at least in Intrado's view, will provide superior emergency services. As

Verizon has pointed out, it is not the Department's job to evaluate the relative merits of Verizon's 911 services and Intrado's 911 services, so all of Intrado's testimony in this regard is irrelevant to any issue in this arbitration, which must be resolved in accordance with federal law. (Tr. 130.) There is no sliding scale of ILEC interconnection obligations under section 251(c) depending on what services a requesting carrier claims it will provide, and the Department cannot modify the law based on a determination that Intrado will provide better 911 service than Verizon or other potential providers.

Nor could the Department make any such determination, because Intrado is not providing any 911 services at this point, here or anywhere else. There is no assurance that Intrado will actually provide *any* 911 services, let alone implement the capabilities it says it will.

Although a comparison of Intrado's planned 911 services and Verizon's 911 services is not relevant to determining Verizon's interconnection obligations to Intrado, Verizon emphasizes that nothing in the record suggests any problem with Verizon's 911 services, and there is nothing to indicate that public safety needs won't be met unless Intrado enters the market. (VZ Ex. 1 at 19.) On the contrary, as the State 911 Department has explained: "Our program is considered one of the best in the country because of its coordinated approach and the redundancy and diversity required of our service provider, Verizon New England. All dispatchers and call-takers that answer Enhanced 9-1-1 calls are required to be certified through the SETB's [Statewide Emergency Telecommunications Board's] training program."[14] The 911 Department has worked with Verizon and VoIP service providers serving Massachusetts to integrate new technologies into the E911 system, and VoIP providers must go through a testing process with the 911 Department to ensure the calls are delivered with complete and accurate information. (*Id.*) The

[14] VZ Ex. 1 at 19, *citing* http://www.mass.gov/?pageID=eopsagencylanding&L=3&L0=Home&L1=Public+Safety+Agencies&L2=State+911+Department&sid=Eeops

911 Department's observations are, therefore, at odds with Mr. Currier's speculation that existing 911 systems will "progressively decline in their ability to keep pace with" changes in technology and customer demand. (Intrado Ex. 2 at 11.) And despite his comments about the inability of existing 911 providers to meet evolving 911 needs, Mr. Currier at the same time recognizes that the existing 911 system is not, in fact, inadequate. (Intrado Ex. 2 at 12.)

It is clear, however, that Intrado's vaguely defined network architecture does raise serious concerns about the adequacy of its security and reliability. Among the "public interest considerations" the Florida Commission cited when it dismissed Intrado's arbitration petitions was that "carriers could potentially be transporting 911/E911 emergency calls up and down the state over great distances, perhaps even out of state." (*Fla. AT&T/Intrado Order*, at 8; *Fla. Embarq/Intrado Order*, at 7.) And Intrado's proposal presents an obvious danger of dropped 911 calls. As detailed in conjunction with Issue 5, Intrado's proposal would prohibit Verizon from using its selective routers to sort other carriers' calls to PSAPs. Those carriers would have to build their own direct trunks to Intrado and implement their own call sorting capability, just as Intrado seeks to compel Verizon to do. But Intrado cannot answer the question of how it plans to force other carriers to do so. In the absence of such direct trunking agreements with those other carriers, it appears that these carriers' calls would not reach Intrado-served PSAPs. (VZ Ex. 1 at 43, 52.)

Even if the Department could ignore the governing law and the security and reliability risks Intrado's proposal presents, it could not find that it would not be in the public interest to force Verizon and other carriers to bear the costs of implementing Intrado's business plan, as that plan is designed to do. It is indisputable that fair and efficient competition cannot develop if carriers are forced to bear their competitors' costs. (VZ Ex. 1 at 20, 57), and the Department has

never articulated any such anticompetitive, anti-consumer policy. Intrado's proposal may be the most "efficient and effective" for Intrado (Petition at 16; Intrado Ex. 1 at 13), but it is grossly inefficient and expensive for Verizon and other carriers. (VZ Ex. 1 at 30.)

It is also at odds with Verizon's 911 tariff. When Verizon serves a PSAP, it must charge its tariffed rates for elements provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still perform them—thus allowing Intrado to price its service more attractively and gain an unfair competitive advantage. (VZ Ex. 1 at 14.)

Even if Intrado's proposal to force Verizon and all other carriers into a new network architecture were supported by any law (and it is not), it would have to be rejected on policy grounds. Verizon's interconnection proposal will permit Intrado to provide all of its planned services to PSAPs that want to take them, but without any of the harmful policy consequences of Intrado's proposal.

<u>ISSUE 2</u>: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES? (911 Att. § 1.4; Glossary §§ 2.6, 2.63, 2.64, 2.67, 2.94, and 2.95.)

Sometimes, a 911/E-911 Call may be directed to the wrong PSAP. This may occur, for example, in the case of a wireless call because of a lack of identification of the caller's exact location. In the case of a misdirected 911 call, the PSAP that received the call may wish to transfer the call to the correct PSAP. Verizon does not disagree with Intrado that inter-selective router trunking permits PSAPs to communicate with each other to allow misdirected calls to be efficiently routed to the appropriate PSAP. (VZ Ex. 1 at 32; Intrado Ex. 1 at 23.) (In fact, it is Verizon's position that the interconnection between Verizon and Intrado for *all* 911 calls should

be by means of trunking between selective routers. (VZ Ex. 1 at 33.) However, Intrado's specific inter-selective routing proposal is unacceptable for a number of reasons.

First, call transfer routing capability between PSAPs doesn't even involve interconnection with the public switched telephone network, so inter-selective routing terms are not subject to section 251(c) of the Act, as the Ohio Commission found. *Ohio Intrado/Embarq Order* at 8.

Second, Intrado's inter-selective-router trunking proposal assumes that Intrado may force Verizon to deliver 911 calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP *at a POI on Intrado's network*. As Verizon explained under Issue 1, Verizon cannot lawfully be forced to interconnect within Intrado's network, so the Department must reject Intrado's proposal for Issue 2, just as it did for Issue 1. (VZ Ex. 1 at 33.)

Third, because Intrado proposes to designate POIs on its own network when it serves a PSAP in a particular area, and to require Verizon to deliver to these POIs calls being transferred from Verizon-served PSAPs to this Intrado-served PSAP, it follows that all of the inter-selective router trunking between Verizon's selective routers and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs would be on Verizon's side of the POI in this scenario. Therefore, under Intrado's proposal, Verizon would have to pay for the trunking between Verizon's and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs,, as well as any other activities necessary to implement Intrado's particular method for selective router-to-selective router transfers. (These obligations would be in addition to Intrado's proposal for Issue 5 to make Verizon pay for direct trunks from Verizon's end offices to Intrado.) Intrado's proposal is, therefore, inequitable and

anticompetitive (as well as unlawful). Intrado is once again seeking to make Verizon pay to implement new capabilities that Intrado can then market to PSAPs. (VZ Ex. 1 at 33-34.)

Fourth, the PSAPs served by Verizon and Intrado must *agree* to transfer misdirected 911 calls between them before such transfers can occur. Intrado argues that "[t]he interoperability currently available on a limited basic to ILECs providing 911/E911 services must be made available to Intrado Comm when it offers a competing 911/E911 service product." (Intrado Ex. 1 at 24.) It is not clear what Intrado means, but to the extent it is saying that PSAPs should have the same arrangements that they do today to transfer calls between one ILEC-served PSAP and another, that is not a matter for Verizon's and Intrado's interconnection agreement. The agreement between Verizon and Intrado cannot impose upon PSAPs specific interoperability provisions without their consent, as Intrado seeks to do. Verizon does not seek to dictate to PSAPs call transfer arrangements, but rather, where PSAPs have agreed to transfer calls between themselves, Verizon will work with Intrado to establish arrangements for these transfers. But the interconnection agreement cannot purport to control third parties' conduct or the services that can be sold to them. (VZ Ex. 1 at 35.)

Fifth, Intrado's proposed language specifying particular activities to be undertaken by the parties to support Intrado's proposed call transfer methodology would require the parties to maintain inter-911-selective router dial plans. (911 Att., Intrado's proposed § 1.4.4.) Verizon agrees that current dial plans are necessary to ensure proper transfers of calls between companies' selective routers, and Verizon is willing to provide this information to Intrado just as it does to other providers. But there is no need for an interconnection agreement provision expressly imposing a requirement that the parties maintain inter-911-selective router dial plans. Rather, establishing these dial plans can be left, like many other network arrangements the

parties will need to establish to connect their networks, to industry practice and the implementation efforts ordinarily undertaken by interconnecting carriers. (VZ Ex. 1 at 35.)

<u>ISSUE 3</u>: WHETHER FORECASTING PROVISIONS SHOULD BE RECIPROCAL. (911 Att. § 1.6.)

The disputed language for this issue addresses forecasting of trunks for traffic exchanged between the parties' networks. Verizon's language 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. Intrado proposes to make this language reciprocal, so that Verizon would need to provide forecasts of the number of trunks Intrado would need to provide for the exchange of traffic with Verizon. Intrado's revision serves no useful purpose and would impose an unnecessary burden on Verizon. (VZ Ex. 1 at 36-37.)

Intrado suggests that there will be a "mutual exchange of traffic" between Intrado and Verizon, so trunk forecasting requirements should apply equally to both parties. This argument is misleading, because Intrado does not plan to provide service to any end users that would make emergency (or other) calls; there will be no calls originating from Intrado's PSAP customers to Verizon. And Intrado, not Verizon, will be in the best position to forecast the number of trunks necessary for traffic from Verizon to Intrado. These trunking needs will depend on Intrado's success in the market, which Verizon cannot predict, and Intrado will be able to track the volume of traffic passing through its network to the PSAP. In addition, Intrado's PSAP customers will have the best knowledge of call volumes from Verizon's serving area to the PSAPs. (*Id*. at 37.) As the West Virginia Commission concluded in rejecting Intrado's reciprocal forecasting proposal, Intrado-served PSAPs, which have a business relationship with Intrado, will be better

positioned than Verizon to assess call volumes to them (*W.V. Arb. Order*, at 3-4), so there is no reason to place this burden on Verizon.

In any event, 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. (VZ Ex. 1 at 37.) Indeed, at the hearing, Mr. Hicks recognized that the meetings contemplated by the agreed-upon section 1.5.5 would allow the parties to share call blockage and other such information useful for determining trunking requirements. (Tr. 9.) The Department should thus reject Intrado's proposed, unnecessary forecasting language in section 1.6 of the 911 Attachment.

ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION? (911 Att. § 1.5)

This issue is related to Issue 1, whether Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon's proposed section 1.5 of the 911 Attachment correctly recognizes that interconnection will occur on Verizon's network, and that certain steps need to be taken to initiate service at the POI(s) on Verizon's network. Intrado's competing language, however, assumes that Intrado may require as many POIs on 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 a POI on Intrado's network

(*see* Issue 5 below). Because Intrado's language for section 1.5 reflects the erroneous notion that Verizon must interconnect with Intrado on Intrado's network, it must be rejected. (VZ Ex. 1 at 39.)

When Intrado interconnects with Verizon on Verizon's network (as it must) and Verizon routes its end users' 911 calls to Intrado through Verizon's 911 selective routers (*see* Issue 5 below), then, while Intrado will have the right to interconnect at as many technically feasible points on Verizon's network as Intrado wishes (either when interconnection is initially established in a LATA or at a later time), as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 911 selective routers are. These interconnections would probably be established by Intrado when it initially interconnects with Verizon. Thereafter, changes to these interconnection arrangements would be managed under 911 Attachment section 1.5.5. If Intrado for some reason needs additional interconnection arrangements in a LATA, it can order them from Verizon pursuant to Verizon's generally established business practices for CLEC interconnection. Therefore, Intrado's language on this point is unnecessary. (VZ Ex. 1 at 39.)

The Department should adopt Verizon's proposed language in §§ 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment, which correctly describes how Intrado can initiate interconnection at technically feasible POIs on Verizon's network.

<u>ISSUE 5:</u> HOW SHOULD THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER? (911 Att., §§ 1.3, 1.4, 1.7.3.)

Intrado has not only proposed for Verizon to take its end users' 911 traffic to multiple, distant POIs on Intrado's network (*see* Issue 1), but would also dictate how Verizon sorts it and gets it to those POIs. Specifically, Intrado would (1) require Verizon to establish, at Verizon's

expense, at least two new direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and (2) force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Verizon Ex. 1 at 40-41; 911 Attachment, Intrado's proposed § 1.34(ii).) Intrado has not supported and cannot support this unlawful and anticompetitive proposal. Even if the Department, contrary to law, forces Verizon to interconnect at a POI on Intrado's network, Intrado has no right to dictate how Verizon gets its 911 traffic to that point—let alone to make Verizon pay for Intrado's proposed configuration.

A. Intrado Has No Right to Dictate How Verizon Engineers Its Own Network

Intrado's proposal would require Verizon to buy or build a minimum of two additional direct trunks[15] from affected Verizon end offices (Verizon has 270 end offices, Tr. 41) where Intrado is designated as the 911/E911 service provider for an area containing Verizon end users to an unspecified number of POIs on Intrado's network. (VZ Ex. 1 at 40-41.) As discussed under Issue 1, Intrado's proposed contract language places no constraints on the number of POIs it may designate on its network or their distance from Verizon's network. Intrado's ill-defined proposal, therefore, gives it complete discretion to impose unlimited and unknowable transport costs upon Verizon. (VZ Ex. 1 at 43.)

If, contrary to law, the Department directs Verizon to place a POI (or POIs) on Intrado's network, then the transport facilities needed to get 911 calls to that POI will be on Verizon's side of the POI. It is, therefore, untrue that Intrado's proposal will not dictate how Verizon routes traffic on Verizon's side of the POI, as Mr. Hicks contends (Intrado Ex. 1 at 36)—just after his

[15] Mr. Hicks suggests that Verizon may be able to use its existing direct trunks from Verizon's end offices to Verizon's selective routers to satisfy Intrado's proposed direct trunking requirement (Intrado Ex. 1 at 43), but that statement would make sense only if Intrado's POIs were at Verizon's selective routers—which is Verizon's proposal, not Intrado's.

discussion of Intrado's language that would require Verizon to "implement certain minimum arrangements for routing 911/E-911 service traffic destined for Intrado Comm's PSAP customers," including "providing the requisite number of dedicated, diversely routed 911/E-911 trunks, engineering the 911/E-911 trunks pursuant to industry recommended grades of service, monitoring 911/E-911 trunk volumes, and coordinating testing and maintenance activities for 911/E-911 trunks between the Parties' networks." (Intrado Ex. 1 at 33.) These requirements obviously *would* dictate how Verizon engineers its own network on its own side of the POI. There is no basis in law, policy, or equity to support the notion that Intrado may tell Verizon how to configure Verizon's own network and that Verizon must bear the costs of whatever configuration eventually Intrado decides upon.

Indeed, Intrado openly admits that Verizon and other carriers would pay for implementation of Intrado's proposed new network architecture (Intrado Ex. 2 at 21)—although it doesn't recognize the magnitude of those costs or the fact that they would not just be "initial," but ongoing. Intrado contends that this cost-shifting is only fair, however, because incumbent wireless carriers have tariffs "that allow them to recover costs associated with their end users' access to 911/E-911 services," and Intrado lacks such tariffs. (Intrado Ex. 2 at 21.) In other words, Intrado doesn't provide any telephone service to end users, so Verizon should raise its end users' rates to subsidize Intrado's operations. This result would be patently anticompetitive and unfair to Verizon's customers, who should not be made to suffer because Intrado has chosen not to provide local dial-tone service to anyone. Intrado has its own tariff under which it will provide its 911 services to its own customers, the PSAPs. Intrado must look to those customers to cover the costs of providing services to them; if Intrado cannot operate without subsidization

by the customers of Verizon and other carries, then Intrado should not be in business. (VZ Ex. 1 at 56-58.)

The only two Commissions that have ruled on Intrado's direct trunking proposal—Ohio and West Virginia--have rejected it. The West Virginia Arbitrator ruled that "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." *W.V. Award*, at 20; *W.V. Order*, at 3 ("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.").

In Intrado's arbitrations with Embarq and Cincinnati Bell, the Ohio Commission found that there was no law to support Intrado's direct trunking proposal. *Ohio Embarq/Intrado Order* at 33; *Ohio CBT/Intrado Order* at 14-15. It confirmed that nothing would justify one carrier dictating to another how it transports traffic *within its own network.* (*See, e.g., Ohio CBT/Intrado Order*, at 14 (a carrier is "entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection"); *Ohio Embarq/Intrado Order*, at 33 ("Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI").) The Commission pointed to "conflicting evidence concerning the reliability and expense of implementing" Intrado's direct trunking proposal as additional reasons for rejecting it in both arbitrations. (*Ohio Embarq/Intrado Order*, at 33; *Ohio CBT/Intrado Order*, at 15.)

Verizon, not Intrado, has the right to decide how to configure its own network, so the Department must reject Intrado's direct trunking proposal, which would transfer that right to Intrado. In addition, as the FCC has repeatedly stated, the requesting carrier is responsible for the costs of interconnection and must pay the ILEC for any expensive form of interconnection it requests.[16] So even if section 251(c) did require Verizon to implement Intrado's network architecture proposal (and it does not), Intrado would have to pay the substantial costs that Verizon would incur to implement these proposals. If Intrado wants redundant direct trunks from Verizon's end offices to POIs on Intrado's network, then Intrado must pay for them.

B. Intrado Cannot Force Its Network Architecture Proposal on Other Carriers

Intrado's proposal would give it *carte blanche* to impose its network costs not only on Verizon, but on every carrier that sends 911 calls to Intrado-served PSAPs. (VZ Ex. 1 at 43.) Today, most CLECs and wireless carriers connect through Verizon's selective routers to route their calls to the appropriate PSAP. Under Intrado's proposal, Verizon could not send any traffic—its own or other carriers'—through its selective routers to PSAPs served by Intrado. Only Verizon's calls would flow over the direct trunks from Verizon's end offices to Intrado's POIs under Intrado's plan. So other carriers would have to implement the same direct trunking/end-office call-sorting arrangements Intrado demands of Verizon here. (VZ Ex. 1 at 44-45.) ***Intrado's direct trunking/end-office call-sorting plan will not work unless Intrado can force these new arrangements on all other carriers***.

Mr. Hicks denies that Intrado's direct trunking proposal will "impact other telecommunications carriers in Massachusetts," but in the next breath, he states that "Intrado

[16] *Local Competition Order*, *supra*, at ¶¶ 199, 200, 209, 225, 552.

Comm intends to enter into direct interconnection arrangements with all CLECs and wireless carriers needing to send 911 calls to Intrado Comm's PSAP customers" (Intrado Ex. 1 at 46). Obviously, requiring CLECs and wireless carriers to establish new direct trunks to any points on Intrado's network Intrado wishes and forbidding them to aggregate calls at Verizon's selective routers would affect those carriers. (VZ Ex. 1 at 44-45.) Intrado can cite no law that entitles it to force these carriers to lease or build their own facilities to directly connect on Intrado's network. Mr. Hicks dismisses this concern by speculating that Intrado's proposal is "expected to be received favorably" by other carriers. (Intrado Ex. 1 at 46.) On the contrary, it is much more likely that these other carriers would receive very *un*favorably Intrado's plan to increase their costs by forcing them to establish new direct trunks to POIs at Intrado's network, no matter how far away those POIs may be from an individual carrier's network. (VZ Ex. 1 at 44.)

Intrado's proposal would, moreover, interfere with other carriers' ability to utilize existing arrangements that Verizon provides to them under their interconnection agreements, and that Verizon is required to provide under section 271(c)(2)(B)(vii)(I) of the Act. That section requires Verizon to provide other carriers nondiscriminatory access to 911 services--which, as noted, is provided today in most cases through Verizon's selective routers. Intrado's proposal would remove this option for these carriers, disrupt Verizon's agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. (VZ Ex. 1 at 44-45.)

C. Intrado's Proposal Is Vague, Risky, and Unworkable

As Verizon has explained, its end offices cannot sort 911 calls. Call-sorting capability resides instead in Verizon's selective routers. As a result, for Intrado's direct end-office trunking proposal to work in an environment of competing 911 providers, some kind of new call-sorting method would have to be deployed in those end offices in order for calls to be sorted to the right

PSAP. (Verizon Ex. 1, at 31, 41-43.) Intrado recognizes this fact, and in other state arbitrations before this one, Intrado asked commissions to deploy what Intrado calls "line attribute routing" to get calls to Intrado-served PSAPs. (VZ Ex. 1 at 46.)

Intrado's line attribute routing proposal was substantially the same as an obsolete, manual process known in the industry as "class marking." (VZ Ex. 1 at 38-39.) Because line attribute routing was just a concept created by Intrado, rather than an actual call routing method in use anywhere, it raised serious concerns from 911 entities and commissions.[17]

In the wake of these criticisms, it appears that Intrado has stopped defending line attribute routing; its testimony did not even mention it—but neither did it offer any other call routing alternative. This tack only exacerbates the concerns raised about Intrado's call routing plans. Whether Intrado proposes line attribute routing or nothing at all for call routing along with its direct trunking proposal, there is no existing call-sorting alternative to selective routing--and without a call sorting method to implement its direct trunking arrangement, Intrado is making only half a call routing proposal. (VZ Ex. 1 at 47-48, 54) Intrado offers no opinion as to how long it might take to implement some alternative call sorting concept or how much it would cost. Intrado simply proposes to leave it up to Verizon to devise, deploy, and pay for this new mechanism. (Intrado Ex. 1 at 38-39.)

Contrary to Intrado's arguments (Intrado Ex. 2 at 39-41) Intrado's direct trunking/new call sorting—and in particular, its proposal to preclude use of Verizon's selective routers--is not

[17] *See* VZ Ex. 1 at 46-47, *citing Ohio Embarq/Intrado Award*, at 33; *Ohio CBT/Intrado Award*, at 15; *Petition of Intrado, Inc. for Arb. Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Verizon Southwest*, Unopposed Joint Motion of the Tex. Comm'n on State Emergency Comm., the Texas 9-1-1 Alliance, and the Municipal Emergency Comm. Districts Ass'n for Leave to File a Statement of Position, at 1-2 (Oct. 17, 2008) (attached as Ex. 9 to VZ Ex. 1); Letter from R. Hoge, Sec'y, W.V. Enhanced 9-1-1 Council, to S. Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (Nov. 7, 2008) (attached as Ex. 10 to VZ Ex. 1).

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necessary for any legitimate reason, including reliability of the 911 network or efficiency. As Verizon has testified, using selective routers is efficient because it allows a company to aggregate and route calls to multiple PSAPs through a single switch. Conversely, it is not efficient for call carriers to build multiple trunks from multiple end offices to multiple selective routers, as Intrado proposes. (VZ Ex. 1 at 50-51.) As Verizon witnesses testified, the industry standard, reflected in National Emergency Number Association publications, is to concentrate trunks from end offices at a 911 tandem or selective router from which a single trunk group serves the PSAP. This most-efficient configuration is used throughout the country and has proven to have extraordinary reliability. (VZ Ex. 1 at 50-51.) The Department can give no credence to Intrado's claim that continued use of Verizon's industry-standard selective routers will increase the risk of call failure (Intrado Ex. 1 at 40) compared to Intrado's direct trunk/unidentified call-sorting alternative, when such alternative has not even been identified by Intrado, let alone developed or ever used.

Intrado's untested proposals will undermine, not enhance, network reliability—not only because of the lack of any identified routing alternative to selective routing, but because all carriers whose customers call 911 would need to buy into Intrado's network configuration plan for it to offer any level of reliability. Unless carriers that interconnect with Verizon today establish direct connections to Intrado's network, they will need to continue to route their calls to Intrado-served PSAPs through a Verizon selective router. Intrado claims that Verizon's selective routing is unnecessary (Intrado Ex. 1 at 39), but it would only be potentially unnecessary for a particular Verizon end office if all of the PSAPs serving that end office were served by Intrado ***and all other carriers established direct trunks to route emergency calls to Intrado***. (VZ Ex. 1 at 60.) As noted, if Intrado fails to secure direct trunking agreements from these carriers, their

end users' emergency calls will not be transmitted to Intrado-served PSAPs.

Intrado's only response to this serious public safety issue is that "Intrado Comm intends to enter into direct interconnection arrangements with all CLECs and wireless carriers needing to send 911 calls to Intrado Comm's PSAP customers." (Intrado Ex. 1 at 46.) Although that may be Intrado's intention, Intrado has no authority to impose its proposed arrangements on any of those carriers.

Intrado's suggestion that direct trunking will somehow benefit Verizon is also unfounded. (Intrado Ex. 1 at 41-42.) Intrado implies its proposal will allow Verizon to more quickly isolate trouble, such as Automatic Number Identification ("ANI") failure conditions, to a particular end office. It also argues that direct end office trunking to Intrado's routers would alleviate potential problems with "saturation" of trunks that might occur over the combined trunk groups and may reduce address validation errors. Intrado witness Hicks concludes that "any investment required to deploy direct trunking may be offset by the savings Verizon realizes from reduced switch maintenance and repair costs and from not having to correct downstream service address errors detected by Intrado Comm's ALI database management process." (Intrado Ex. 1 at 41-42.)

Intrado is wrong on all counts. First, Verizon, not Intrado, has the right to decide how best to configure its own network, and it is certainly *not* the approach Intrado is proposing. Second, direct end office trunking to Intrado's selective routers would exacerbate, not alleviate, potential problems with saturation of trunks. A fundamental traffic capacity principle is that there is greater traffic capacity and less chance of blockage when traffic is aggregated to one group of facilities (Verizon's approach) and a greater chance of 911 call blockage if Verizon is forced to separate its end user traffic to multiple trunk groups (as Intrado proposes). Third, aside from the fact that the potential benefits Intrado raises are purely speculative, its proposal is an

unnecessary, expensive solution to non-existent problems. There are no problems that need addressing today in Verizon's 911 network in terms of ALI failures, lengthy repair times, or address validation errors—and certainly nothing that would justify the major network reconfiguration that Intrado would require. There is absolutely no way any minimal benefits to be gained from Intrado's proposal, even if there were any, could outweigh the enormous expense Verizon (and others) would have to incur to establish and maintain the direct trunking system Intrado proposes. (VZ Ex. 1 at 62-63.)

Moreover, call routing has nothing to do with interconnection under § 251(c)(2) of the Act, so Verizon has no obligation to provide it, let alone provide and pay for it. Like selective routing, any alternative to selective routing would be a process affecting switch translations and line coding and routing, which occur on the ILEC's side of the POI. The ILEC alone is responsible for what happens on its side of the POI, just as the CLEC is responsible for what happens on its side of the POI. Intrado has no right to dictate what Verizon does on its side of the POI. (VZ Ex. 1 at 52-53.)

Even if there were any law to support Intrado's direct trunking/mystery call routing proposal (and there is not), the Department cannot responsibly adopt Intrado's cavalier stance toward critical 911 call routing issues. If Intrado wishes to shift the industry to its direct trunking/new call routing approach, that issue should be worked out by the industry, with participation of all affected agencies and carriers. It is too critical to be left for an ILEC to figure out by itself as the result of a bilateral arbitration decision. (VZ Ex. 1 at 17-18, 55.) As the Florida Commission observed, "any discussion regarding the provisioning of competitive 911/E911 service…requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters." (*Fla. Embarq/Intrado Order* at 8; *Fla.*

AT&T/Intrado Order at 9.)

D. Intrado's Proposal Is Not The Same As Verizon's Interconnection Arrangements With Other Carriers

Intrado claims that it is simply seeking the same types of arrangements Verizon has with other carriers when Verizon serves the PSAP. (Intrado Ex. 1 at 40; Intrado Ex. 2 at 19-20.) It argues that its proposal for Verizon to direct trunk its end users' 911 traffic from Verizon's end offices to Intrado's selective routers is consistent with Verizon's use of dedicated trunks to route its own end users' call to its PSAP customers, and the way in which Verizon requires competitors to deliver their end users' 911 calls to Verizon's selective routers. *Id*. But, as explained above, CLECs bring their traffic, including their 911 traffic, to Verizon's network because *federal law requires them to interconnect on Verizon's network*. (VZ Ex. 1 at 53-54.) And, again, Verizon does not "require" all CLECs to bring their 911 traffic to Verizon's selective routers, but most do so because it is the most efficient solution for them. Also, as discussed under Issue 1, interconnection with Verizon's network by ILECs and CLECs is fundamentally different from Intrado's proposed method of "interconnection," which, unlike Verizon's other arrangements, involves no mutual traffic exchange and build-out to Intrado's 911 network and some new form of call routing.

In any event, the definitive response to Intrado argument that it will be at a competitive disadvantage without direct trunking to Intrado's selective routers (Tr. 51) is that Intrado can have all the direct trunking it wants, *provided Intrado pays for it*. Verizon's proposal allows Intrado to determine how best to get Intrado's traffic from Verizon's selective routers on Verizon's network to Intrado's network. But Verizon has no obligation to pay for the direct trunks Intrado wants or to deploy a new call-sorting method to replace selective routing.

E. The Relationship Between Issues 1 and 5

Together, Issues 1 and 5 define the network architecture that Intrado would impose upon Verizon. Intrado's proposal for Issue 1 would require Verizon to interconnect at POIs Intrado places on its network; Intrado's proposal for Issue 5 would dictate how Verizon sorts those calls and transports them to the POIs on Intrado's network. As explained in more detail under Issue 5, Intrado's proposal would not only allow it to choose the location of the POIs on its own network, but would also impermissibly dictate how Verizon engineers its own network on Verizon's own side of those POIs.

If Issue 1 is resolved (as it should be) by rejecting Intrado's proposal for Verizon to interconnect with Intrado on Intrado's network, then Issue 5 should become moot. There would be no reason to consider the issue of how Verizon might transport traffic to POIs on Intrado's network once the Department determines that Intrado has no right to designate POIs on its own network.

If the Department decides, contrary to law, that Verizon must interconnect with Intrado on Intrado's network, that does not, however, mean it must approve Intrado's specific proposal for Issue 1, which would require Verizon to take 911 traffic to multiple, as-yet-undesignated, POIs on Intrado's network. Even if the Department foists Intrado's network costs upon Verizon by requiring interconnection on Intrado's network, it can and should limit Verizon's transport and interconnection costs by restricting Intrado to a single POI per LATA (unless the parties agree to additional POIs). Indeed, even in Ohio, where Embarq *agreed* to take its traffic to Intrado as a commercial term under section 251(a) of the Act (which Verizon has not agreed to do here or elsewhere), the Commission nevertheless rejected, as unsupported by any law, Intrado's proposals to place multiple POIs on its own network, and required interconnection to

occur within the ILEC's service territory. (*Ohio Embarq/Intrado Order*, at 29; *see also Ohio CBT/Intrado Order*, at 9.)

Finally, even if the Department imposes (contrary to law) some form of obligation for Verizon to interconnect on Intrado's network in resolving Issue 1, that does not mean it must or should accept Intrado's direct trunking/end-office call-sorting proposal for Issue 5. Indeed, the Department should not approve Intrado's Issue 5 proposal under any circumstances. If the Department requires Verizon to take 911 traffic to Intrado's network, Verizon is entitled to decide how to get it there and how to engineer its own network on its own side of the POI. There is no support for requiring Verizon to establish new direct trunks from its end offices to Intrado's POI(s) or to abandon use of its selective routers (which would be on Verizon's side of the POI, whether the POI is on Verizon's network or Intrado's) in favor of some unknown new call-sorting mechanism. And neither Intrado nor anyone else has identified any existing method that could be used to route calls to PSAPs as an alternative to the industry-standard selective routing that Intrado urges the Department to abandon with its Issue 5 proposal.

* * *

For all of the foregoing reasons, the Department should reject Intrado's proposals, which have no basis in law or sound policy. Specifically, the Department should find that Verizon is not required to: (1) interconnect at a POI (or POIs) on Intrado's network; (2) install direct trunking from its end offices to POIs on Intrado's network; (3) forego use of its selective routers and implement a new call routing methodology; or (4) send all 911 calls from split wire centers to Intrado, even where 911 calls are destined for Verizon-served PSAPs. The Department should instead adopt Verizon's language for sections 1.3, 1.4, and 1.7.3 of the 911 Attachment, and sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95 of the Glossary.

<u>ISSUE 6</u>: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES. (911 Att., § 1.1.1.)

Verizon does not oppose listing its 911 network components in the interconnection agreement and proposed compromise language in its testimony that accurately describes Verizon's 911 facilities and that should have resolved Intrado's asserted concerns. (VZ Ex. 1 at 65.) But a dispute appears to remains because Intrado's language continues to describe Verizon's network components inaccurately.

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 from Verizon end offices to PSAPs--in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement another routing method. 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. (VZ Ex. 1 at 65.)

Only Verizon's proposed language accurately describes Verizon's network arrangements and capabilities. (*Id*. at 66.) Verizon's compromise language accurately describes the key function performed by Verizon's 911 tandem/selective routers in Verizon's network--that is, routing calls from the Verizon end offices from which 911 calls originate to PSAPs. Verizon's language is also consistent with its definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.64 and properly reflects that Verizon manages the ALI database where Verizon has been selected by the Controlling Authority to do so. (*Id.*)

<u>ISSUE 7</u>: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE. (911 Att., § 1.2.1.)

Verizon does not disagree that the parties should cooperate to ensure that misdirected 911 calls are directed to the right PSAP, and it has 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 (automatic location identification) database. (911 Att., § 1.2.) Indeed, at the hearing, Mr. Hicks recognized that there is no substantive issue here about Verizon cooperating with Intrado with respect to ALI steering, but rather with Intrado's insistence that Intrado's ALI steering provision belongs in a section 251(c) agreement:

> Verizon has pretty much given me indication that they're willing to cooperate and do the synchronization of the ALI steering where it's appropriate and where it's applicable. The issue is, again, they don't believe it's 251(c).

(Tr. 25, 29.)

Intrado's specific language with regard to ALI steering tables does not belong in an interconnection agreement. (VZ Ex. 1 at 66.) The ALI function is an information service. (VZ Ex. 1 at 67.) Because the FCC has determined that the provision of caller location information to a PSAP is an information service,[18] not a telecommunications service, such services fall outside the scope of interconnection agreements. (VZ Ex. 1 at 67.)

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, as Intrado

[18] *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 (1998), at ¶ 17.

unreasonably proposes here. To Verizon's knowledge, its 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 in negotiations outside the context of a section 251/252 interconnection agreement. (VZ Ex. 1 at 68.) The Department should thus reject Intrado's proposed language in section 1.2.1 of the 911 Attachment related to ALI databases.

<u>ISSUE 8</u>: WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES' PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED? (Glossary §§ 2.6 ("ANI"), 2.63 ("911/E-911 Service Provider"), 2.64 ("911 Tandem/Selective Router"), 2.67 ("POI"), 2.94 ("Verizon 911 Tandem/Selective Router"), and 2.95 ("Verizon 911 Tandem/Selective Router Interconnection Wire Center").)

Each of the glossary definitions for Issue 8 is referenced in one or more of the draft interconnection agreement sections in Issues 1, 2 and 5. The principal source of the parties' dispute about the definitions under Issue 8, like many others in this arbitration, is Intrado's unlawful network architecture proposal. In this regard, while the parties agree on most of the definition of "911/E-911 Service Provider" in section 2.63 of the Glossary, Intrado has refused to accept Verizon's language reflecting the legal requirement for POI(s) to be on Verizon's network. The parties have the same dispute with respect to the definition of POI in section 2.67 of the Glossary. There, too, Verizon's proposed definition of "POI (Point of Interconnection)" reflects the legal requirement for the POI to be within Verizon's network. Intrado has unreasonably refused to accept this language, because it maintains the erroneous position that it may designate POIs on its own network. (VZ Ex 1 at 69-70.)

Intrado's proposed definition of "ANI" in Glossary Section 2.6 is related to Intrado-

proposed language in the 911 Attachment that includes an express requirement that Verizon deliver 911 calls to Intrado with ANI. Since the Department should reject Intrado's proposed language for the 911 Attachment for the reasons set out under Issue 1, above, there will be no need for a definition of ANI. Moreover, there is no need to set out in the 911 Attachment language requiring Verizon to deliver 911 calls to Intrado with ANI, because technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice.

Intrado's single generic definition of "911 Tandem/Selective Router" in Glossary section 2.64 does not fully reflect the location and operation of this facility in Verizon's existing retail network. Intrado proposes the following definition of "911 Tandem/Selective Router:"

> Switching or routing equipment that is used for routing and terminating originating end user 911/E-911 Calls to a PSAP and/or transfer of 911/E911 Calls between PSAPs.

Verizon agrees that a 911 Tandem/Selective Router is switching or routing equipment that is used for routing end user 911/E-911 calls to a PSAP. Verizon also agrees that in some instances such equipment may be used to transfer 911/E-911calls between PSAPs. However, a 911 Tandem/Selective Router is not always used for this call transfer purpose—whether or not it will be is determined by the PSAPs. Intrado's joinder of the two possible uses of 911 Tandem/Selective Router (that is, routing end user calls and transferring calls between PSAPs) into a single sentence with the conjunction "and" inaccurately suggests that a 911 Tandem/Selective Router *always* performs the call transfer function. By using the word "or", in the term "and/or" Intrado's language could be interpreted to mean that equipment could be deemed to be a 911 Tandem/Selective Router even if it performed only the PSAP-to-PSAP call transfer function. In Verizon's network, a 911 Tandem/Selective Router would not perform only

this function. It either performs only the first function (routing end user calls to PSAPs), or both the first and second functions, but not just the second alone. Therefore, Intrado's language is inaccurate. (VZ Ex. 1 at 71-72.)

Intrado's definition of "911 Tandem/Selective Router" is also inappropriate because it fails to properly describe the location and function of a 911 Tandem/Selective Router in Verizon's network, which is at a point between Verizon end offices and the PSAPs and which is to route traffic from Verizon end offices to PSAPs. In addition, Intrado's language incorrectly suggests that a Verizon end office switch is a 911 Tandem/Selective Router, when Verizon's end offices cannot perform selective routing functions. (VZ Ex. 1 at 73.)

Verizon defines "911 Tandem/Selective Router" in a way that is appropriate for this equipment in either Party's network as follows: "Switching or routing equipment that is used for routing 911/E-911 Calls." This definition is broad enough to cover both 911 calls routing to a PSAP and 911 call transfer between PSAPs. Verizon's language also properly specifies the location (*i.e.*, between Verizon end offices and the PSAPs) and function (*i.e.*, to receive 911 calls from Verizon end offices and route them to PSAPs) of a "911 Tandem/Selective Router" in Verizon's network as follows: "In Verizon's network, a 911 Tandem/Selective Router receives 911/E-911 Calls from Verizon's End Offices and routes these 911/E-911 Calls to a PSAP."

Verizon's definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.94, likewise, accurately describes the function of this equipment in Verizon's network: "A 911 Tandem/Selective Router in Verizon's network which receives 911/E-911 Calls from Verizon End Offices and routes these 911/E-911 Calls to a PSAP."

Verizon defines "Verizon 911 Tandem/Selective Router Interconnection Wire Center" in Glossary § 2.95 as: "A building or portion thereof which serves as the premises for a Verizon

911 Tandem/Selective Router." (VZ Ex. 1 at 74.) Verizon's proposed definition of "Verizon 911 Tandem/Selective Router Interconnection Wire Center" is appropriate because one of the POIs on Verizon's network is specifically stated in the 911 Attachment to be a "Verizon 911 Tandem/Selective Router Interconnection Wire Center."

The Department should adopt Verizon's proposed definitions because they accurately reflect the structure of Verizon's network and will therefore reduce the likelihood of future disputes between the Parties because of Intrado's vague and overly broad definitions.

<u>ISSUE 9:</u> SHOULD 911 ATTACHMENT SECTION 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM? (911 Att. § 2.5.)

Verizon's proposed § 2.5 provides that nothing in the agreement will limit Verizon's ability to deliver calls directly to a PSAP served by Intrado. Intrado's primary proposal is to make this section reciprocal and to qualify it by limiting the reservation of rights to situations where the PSAP has agreed to the direct interconnection. (Intrado Ex. 1 at 58-59.) Verizon responded to Intrado's reciprocity concerns by offering a new section 2.6 as follows:

> 2.6 Nothing in this Agreement shall be deemed to prevent Intrado Comm from delivering, by means of facilities provided by a person other than Verizon, 911/E-911 Calls directly to a PSAP for which Verizon is the 911/E-911 Service Provider.

(*See* VZ Ex. 1 at 75.)

However, Verizon does not agree that sections 2.5 and 2.6 should be qualified by language that interconnection must be authorized by the PSAP, as Intrado proposes (so Intrado now proposes to omit section 2.5, as well as Verizon's proposed section 2.6, ,from the agreement altogether). Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside of the scope of the parties' agreement. Because Intrado's language

is an unwarranted intrusion upon Verizon's rights with respect to third parties, it should be rejected. (VZ Ex. 1 at 75.)

<u>ISSUE 10</u>: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES? (911 Att. §§ 1.3, 1.4 and 1.7; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

<u>ISSUE 11</u>: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT. (GT&C § 1.1; 911 Att. § 1.3 (Verizon § 1.3.3, Intrado § 1.3.6), 1.4.2, 1.7.3; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

Intrado does not dispute Verizon's proposed rates in Appendix A to the Pricing Attachment. Appendix A lists the Department-sanctioned rates for elements that CLECs may take from Verizon, including unbundled network elements, and appropriate references to Verizon's tariff rates for such services as entrance facilities and transport for interconnection, and exchange access services. (VZ Ex. 1 at 76-77.) Verizon's proposed 911 Attachment and the Pricing Attachment would apply applicable tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. In other words, tariffed rates would apply to tariffed services. Intrado objects to these tariff references. (*Id.*)

There appear to be two reasons. First, Mr. Currier states: "Pricing for interconnection and network elements is to be developed pursuant to the pricing standards contained in Section 252(d) of the Act"--that is, the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology. (Intrado Ex. 2 at 27.) Mr. Currier suggests that everything Intrado may possibly order from Verizon must be priced at TELRIC simply because Intrado is what it calls a "co-

carrier" interconnecting with Verizon. (Intrado Ex. 1 at 32; Intrado Ex. 2 at 27.) That is a plainly erroneous notion. Intrado is entitled to TELRIC pricing only for the elements the FCC has identified for such pricing, and these elements, as well as appropriate references to Verizon's tariff rates, are already included in Appendix A to the Pricing Attachment. Intrado cannot circumvent Verizon's tariffs and obtain better pricing than any other carrier can for the same service simply by claiming that Intrado needs it for interconnection.

Intrado also argues that without pricing for every element that Intrado may someday take from Verizon, "Intrado Comm cannot effectively compete with Verizon because it will not know its operating costs." (Intrado Ex. 2 at 28.) Intrado further claims that it needs greater "certainty" (*Id*. at 32), imagining a scenario in which Verizon knows Intrado is planning to enter a particular geographic area and Verizon suddenly changes its tariffed pricing and contends that such "volatile pricing" would make Intrado's chance of succeeding in the market "tenuous at best." (*Id*. at 28.)

This argument is unconvincing. Verizon's generic tariff references are a standard part of Verizon's Department-approved interconnection agreements with CLECs. (VZ Ex. 1 at 78.) Verizon's approach is proven and workable and has not had any of the nefarious effects Intrado conjures. Contrary to Intrado's arguments, Verizon cannot immediately change its tariffed prices on a whim. The rates for the wholesale services that Intrado is likely to purchase from Verizon, such as entrance facilities and transport from Verizon's access tariffs and collocation from Verizon's collocation tariff, remain subject to Department review and approval. And Mr. Hicks recognized that the Department would "mark certain that [tariffed rates] were reasonable and fair." (Tr. 35.)

Verizon offers a wide variety of tariffed services that Intrado might someday purchase. Verizon cannot predict which of these tariffed services, if any, Intrado might wish to take in the future and Intrado probably cannot, either. It would be unreasonable, infeasible, and unnecessary to expect the interconnection agreement to list all of its tariffed rates for all of its services. Verizon's tariff references make clear that Intrado may purchase tariffed services and that it will receive the same, nondiscriminatory rates offered to all CLECs. (VZ Ex. 1 at 79.)

Verizon's proposed provisions with regard to "TBD" (to be determined) rates in section 1.5 of the Pricing Attachment are appropriate because they provide for TBD rates to be replaced by applicable tariff rates (when such rates come into effect), or by rates required, approved or allowed to go into effect by the Department or the FCC. Intrado's criticism that TBD rates should be specifically identified in the Agreement (Tr. 32-35) makes no sense, because it is impossible to specify rates that do not yet exist—that's why they're designated as TBD in the first place.

Unlike Verizon's charges listed in Pricing Attachment A, Intrado's proposed rates *are* in dispute. (*Id*., at 79-80.) This issue is, again, related to Intrado's Issue 1 proposal to designate POIs on its own network, from which follows Intrado's Issue 5 proposal for Verizon to install and pay for trunks to transport 911 traffic to those POIs. Verizon opposes any charges that assume the implementation of Intrado's "interconnection" proposal.

The entirety of Intrado's pricing proposal is as follows:[19]

[19] Intrado's proposed Appendix A, Pricing Attachment.

A. INTERCONNECTION

Service or Element Description:	**Recurring Charges:**	**Non-Recurring Charge:**
Per DS1	**$ 127.00**	**$ 250.00**
Per DS0	**$ 40.00**	**$250.00**

On its face, it is impossible to tell what Intrado's proposed charges are for. Intrado's proposed language does not specify what services "per DS1" or "per DS0" it proposes to charge for, or what facility arrangements it might have in mind. In his direct testimony, Mr. Currier suggests that Intrado's proposed charges would be for "port terminations" to interconnect at Intrado's POIs on its network (Intrado Ex. 2 at 30), but that is not clear from the contract language it asks the Department to adopt.

Intrado contends that its port termination charges are fair because Verizon imposes trunk port termination charges on carriers terminating traffic on its 911 network. (*Id.*) Intrado's argument has no merit. First, it incorrectly assumes that Intrado may designate POIs on its network at which Verizon will interconnect. Since Intrado must interconnect with Verizon at a technically feasible point on Verizon's network, Intrado has no right to charge Verizon for interconnection and transport facilities to carry 911/E-911 calls to Intrado's network. Therefore, to the extent Intrado would impose port, termination, or other such fees, they are inappropriate. This issue should become moot once the Department determines, in the context of Issue 1, that Intrado cannot force Verizon to interconnect on Intrado's network. As the West Virginia Arbitrator determined, "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award*, at 24.) With respect to pricing provisions in general, the Arbitrator found:

> The 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of

> Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network. (*W.V. Award*, at 15.)

The Department should make the same finding.

Second, it is not clear just what Verizon rates Intrado is comparing Intrado's rates to or, as noted above, what facility arrangement Intrado's rates represent--so it is impossible to draw any comparison between Verizon's and Intrado's proposed rates.

Finally, Intrado has offered no cost or other justification for the rate levels it proposes for the unspecified "interconnection" services in Appendix A. Even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), the Department would have to reject those rates because Intrado has provided absolutely no support for them. (VZ Ex. 1 at 81-82.)

For all of these reasons, the Department should find that Verizon's proposed references to "applicable" tariff provisions and "TBD" rates are reasonable and should be adopted. The Department should find that because Verizon cannot be required to interconnect on Intrado's network (consistent with the resolution of Issue 1), there is no reason to include in the agreement any charges for interconnecting facilities to points on Intrado's network. The Department should further find that Intrado has not shown that its rates are fair and reasonable rates and that therefore they cannot be adopted.

<u>ISSUE 12</u>: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS. (Pricing Att. § 2.)

The rates of Verizon, as an ILEC, have historically been subject to thorough Department scrutiny and therefore are subject to a presumption of reasonableness. If Intrado wants to charge

Verizon higher rates for comparable services, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. (VZ Ex. 1 at 85.)Intrado complains that Verizon's proposal is "one-sided" and that it "may have the effect of forcing Intrado to lower its rates without competitive justification." (Intrado Ex. 2 at 34.) This claim that Verizon's proposal is one-sided makes no sense; Verizon is not aware of any requirement anywhere for an ILEC to benchmark to CLEC rates. (VZ Ex. 1 at 87.) On the other hand, benchmarking CLEC rates to ILEC rates is a standard part of Verizon's interconnection agreements and is commonly used by regulators to prevent CLEC pricing abuses in a number of contexts without the harmful consequences Intrado predicts. (VZ Ex 1 at 86-87.) For instance, as Mr. Currier mentions in passing, CLECs must charge symmetrical reciprocal compensation rates with the ILEC, unless a CLEC can justify higher rates based on its costs. (Intrado Ex. 1 at 35.) In addition, the FCC requires benchmarking of CLEC interstate access rates to competing ILEC rates and over a dozen states have implemented similar requirements. (VZ Ex. 1 at 85-86.)

The Department should adopt Verizon's language for § 2 of the Pricing Attachment, which would allow Intrado to charge rates above those Verizon charges for comparable services only if Intrado demonstrates that its costs exceed Verizon's charges for the service.

<u>ISSUE 13</u>: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT? (911 Att., §§ 1.7.2, 1.7.3.)

The parties have agreed not to charge each other intercarrier compensation for 911/E911 calls. In §§ 1.7.2 and 1.7.3, however, Intrado has proposed language that would create a loophole that might permit such charges. Specifically, Intrado proposes to add the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment" to the agreed-upon language in § 1.7.2. The Department should reject this unnecessary

qualification, which has no legitimate basis. Aside from undercutting the parties' agreement not to bill for transport of 911/E-911 calls, Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network, which, as discussed in Issue 1, incorrectly assumes that Intrado may designate POIs on Intrado's network. Moreover, if Intrado's objective is to allow it to bill charges in connection with the ALI database or the MSAG, Intrado should recover these costs from the applicable government agency as part of the 911 services Intrado provides for the PSAP. (VZ Ex. 1 at 89-90.)

Intrado also proposes language in § 1.7.3 that would require Verizon to pay Intrado to interconnect at POIs on Intrado's network. That is inappropriate for the reasons discussed in Issue 1. (VZ Ex. 1 at 90.)

For all of these reasons, the Department should reject Intrado's proposed language in dispute in 911 Attachment §§ 1.7.2 and 1.7.3.

<u>ISSUE 14</u>: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"? (911 Att., §§ 2.3, 2.4.)

The agreed-upon language for sections 2.3 and 2.4 of the 911 Attachment specifies that nothing in the Agreement shall prevent Verizon or Intrado from billing PSAPs for specified services, facilities and arrangements. Intrado seeks to qualify this language with the phrase "[t]o the extent permitted under the Parties' Tariffs and Applicable Law." According to Intrado, this clause is necessary to prevent Verizon from having free rein to bill Massachusetts PSAPs for services that Verizon no longer provides to them. (Intrado Ex. 2 at 36-37.)

Intrado is wrong. Its proposed language is nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for services that it will continue to provide even when

Intrado provides 911 services to that same PSAP. (VZ Ex. 1 at 91.) Intrado attempted to impose a similar restriction by filing a petition with the Florida Public Service Commission seeking a declaratory statement that ILECs may not charge PSAPs or Intrado for any tariffed services once a PSAP chooses Intrado as a 911 network services provider. The Florida Commission denied Intrado's petition, finding that Intrado failed to consider that ILECs may have to continue to provide certain services to Intrado or the PSAP in order for Intrado's primary E911 service to function properly, and for which the ILECs are entitled to compensation.[20]

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. 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--not for an interconnection agreement between Verizon and Intrado. The Department should reject Intrado's attempt to intrude upon Verizon's relationships with third parties. (VZ Ex. 1 at 92.)

The foundation of Intrado's positions in this arbitration is that other carriers and their end users who call 911 should bear the cost of Intrado's proposed 911 system. By qualifying the statement of Verizon's right to charge for specified services provided to PSAPs with a reference to Intrado's own tariffs, Intrado will have the opportunity to--and no doubt, will--insert language

[20] VZ Ex. 1 at 70-71, *citing Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications*, Docket No. 080089-TP, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

in its tariff reflecting its view that Verizon cannot charge PSAPs anything when Intrado is serving the PSAP. (*Id.*)

The Department should reject Intrado's attempt to prohibit Verizon from charging for services it will continue to provide to PSAPs even when those PSAPs are also served by Intrado, just as the Florida Commission did and just as the West Virginia Commission did. (*W.V. Award*, at 28.)

<u>ISSUE 15</u>: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS? (GT&C § 1.5)

In the event that Intrado seeks to provide services other than 911/E911 services while the interconnection agreement is effective, Intrado wants the right to request and obtain an amendment covering those other services. (VZ Ex. 1 at 94, *citing* Intrado proposed § 1.5, General Terms and Conditions.)) Intrado's proposed language states:

> Notwithstanding the foregoing, the Parties agree that: (a) Intrado Comm may seek to offer telecommunications and local exchange services other than 911/E-911 Calls in the future; and (b) upon Intrado Comm's request, the Parties will amend this Agreement as necessary to provide for the interconnection of the Parties' networks pursuant to 47 U.S.C. § 251(c)(2) for the exchange of traffic other than 911/E-911 Calls.

This language provides Intrado the unilateral right to an amendment, outside of the contract's change of law provisions, which would allow either Party to seek to amendment the agreement under appropriate circumstances. The change of law provision in § 4.6, unlike Intrado's proposed language above, specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate. Intrado's language is inappropriate, because the parties agreed to negotiate and arbitrate an agreement based largely on the fact that Intrado is seeking to provide only 911-related services to PSAPs. This

interconnection agreement approach is unique; the give-and-take in negotiations and the parties' compromises assumed a much narrower scope of services and operation than the usual agreement, under which the CLEC, unlike Intrado, will provide basic local exchange services to end users. Absent a change in law affecting provisions of the agreement which would allow a Party to request an amendment to the agreement (*see* § 4.6, General Terms and Conditions), Intrado should not have a unilateral right to seek an amendment to the agreement. (VZ Ex. 1 at 95.) It is not appropriate to allow Intrado to retain the benefit of any provisions already obtained through negotiation or arbitration and then seek the benefit of additional provisions associated with exchange of traffic other than 911/E-911 calls.

If Intrado wishes to greatly expand the scope of the agreement, it should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in a fair and balanced trade-off of one provision against another. The Department should find, as the West Virginia Commission did, that Intrado's proposal for section 1.5 of the General Terms and Conditions is contrary to the Act's requirement to make available to requesting carriers entire agreements, not pieces of agreements. (VZ Ex. 2 at 63, citing *W.V. Award*, at 26.)

<u>ISSUE 16</u>: 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 COMM? (911 Att. § 1.1.1)

Verizon proposes including the term "a caller" in section 1.1.1 of the 911 Attachment to make clear what entity is dialing 911. Intrado contends that there is no reason for the description of "911/E-911 Arrangements" to include what entity is dialing 911.

Section 1.1.1 describes how 911/E-911 arrangements provide access to the appropriate PSAP by dialing "911." Verizon simply proposes to include "a caller" between the words "provide" and "access" so that the sentence reads: "911/E-911 arrangements provide a caller

access to the appropriate PSAP by dialing a 3-digit universal telephone number, '911.'" Verizon's language accurately describes the function of 911/E911 arrangements and provides additional clarity. (VZ Ex. 1 at 96-97.)

Intrado is seeking interconnection with Verizon so that Verizon customers calling 911 can reach PSAPs served by Intrado. No other "entities" would call 911. Verizon's customers acquire access to the appropriate PSAP by dialing "911." In other words, for Verizon's end user customers to summon emergency services, they must place a call to 911-that is, be "a caller." Inclusion of the phrase "a caller" in § 1.1.1 of the 911 Attachment accurately describes the access that 911/E911 arrangements provide to a caller, and there is no legitimate reason for Intrado to object to this simple clarification. (*Id*. at 98.) The Department should, therefore, adopt Verizon's proposed language for section 1.1.1 of the 911 Attachment, as the West Virginia Commission did. (*W.V. Award*, at 26.)

III. CONCLUSION

For all of the reasons in Verizon's testimony and this brief, Verizon asks the Department to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully Submitted,

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