

Attachment 1

**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)	Docket No. 08-0545
Establish an Interconnection Agreement with)	
Illinois Bell Telephone Company d/b/a)	
AT&T Illinois)	

Intrado Inc. Reply Brief on Exceptions

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Its Attorneys

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Intrado Inc. Reply Brief on Exceptions

Intrado Inc. (“Intrado”), by its attorneys, hereby submits its Reply 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 two exceptions set forth in Intrado’s Brief on Exceptions² and find that Intrado offers telephone exchange service and is therefore entitled to interconnection under Section 251(c) of the Act as recommended by Commission Staff in this proceeding. The Commission should reject the finding in the Proposed Arbitration Decision (“PAD”)³ that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and should direct the Administrative Law Judges

¹ 47 U.S.C. § 252(b).

² Intrado recognizes that Rule 761.430 requires “a suggested replacement statement or finding” to be included in exceptions. Given that Intrado takes exception to the majority of the statements and findings in the Proposed Arbitration Decision, it would be impractical for Intrado to include specific suggested replacement statements or findings in its exceptions other than the inclusion of the suggested replacement finding that Intrado offers telephone exchange service and is entitled to Section 251(c) interconnection.

³ 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”).

(“ALJs”) to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, pursuant to Section 251(a) of the Act.

ARGUMENT

I. INTRADO PROVIDES TELEPHONE EXCHANGE SERVICE AND IS ENTITLED TO SECTION 251(C) RIGHTS AS STAFF HAS RECOGNIZED

As set forth in Intrado’s Briefs and Intrado’s Brief on Exceptions, Intrado’s 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission (“FCC”) (Intrado Exception No. I).⁴ The PAD correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.⁵ Intrado’s service also allows Intrado’s public safety answering point (“PSAP”)⁶ customers to receive 911 calls and intercommunicate with all 911 callers programmed to reach the particular PSAP. Intrado’s service therefore satisfies the “intercommunication” requirement of the telephone exchange service definition.⁷ This is consistent with Commission Staff’s conclusions throughout this proceeding that Intrado offers telephone exchange service and is therefore entitled to interconnection pursuant to Section 251(c).⁸

Intrado also agrees with Staff’s finding that the Commission should take an expansive view of the types of entities entitled to interconnection pursuant to Section 251(c).⁹ The PAD itself acknowledges that the Commission is “receptive to statutory interpretation that advances

⁴ Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

⁵ PAD at 15-16, 16-17.

⁶ 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.

⁷ Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

⁸ Staff Initial Brief at 9-10; Staff BOE at 2.

⁹ Staff BOE at 2.

the law’s intentions and enhances public safety;”¹⁰ but the PAD’s conclusions ignore this important public interest objective. The approach advocated by Staff in its Brief on Exceptions is consistent with the Commission’s prior findings in Sprint’s arbitration proceeding with various rural carriers.¹¹ In that case, the Commission determined that supporting Sprint’s entry into the market was “significant” because it represented “one of the first, if not the first,” competitive alternatives in the geographic areas Sprint sought to serve.¹² The same is true here. The Illinois public safety agencies Intrado seeks to serve are a class of customers with no competitive choice of service provider today.¹³ Thus, a finding that Intrado is entitled to interconnect with AT&T, pursuant to Section 251(c), Section 251(a) or both, would “greatly serve[] the public interest” and would allow the Illinois public safety market “to benefit from the competitive telecommunications market”¹⁴ as Congress, the Illinois legislature, and this Commission envisioned.¹⁵

¹⁰ PAD at 18.

¹¹ Staff BOE at 2 (citing 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) (“*Sprint-Rural Order*”); *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)).

¹² *Sprint-Rural Order* at 11.

¹³ Direct Testimony of Carey F. Spence-Lenss on behalf of Intrado Inc. at 24, lines 4-6 (Intrado Hearing Exhibit 4).

¹⁴ *Sprint-Rural Order* at 18.

¹⁵ 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. Illinois law also supports a competitive telecommunications market. *See, e.g.*, 220 ICLS 5/13-103 (directing the Commission to ensure the “development of and prudent investment in advanced telecommunications services and networks that foster economic development of the State

The Commission's conclusions in the Sprint proceedings are also consistent with its previous findings in the *SCC Order* that the "public interest is protected when [911/E911] services are regulated."¹⁶ As Staff notes, the PAD does not adequately address "how the facts obtained in the instant matter differ from those in" the *SCC* proceeding.¹⁷ Indeed, Staff correctly recognizes that Intrado's current 911/E911 product will offer significantly more than SCC's service offering.¹⁸ Unlike SCC, Intrado will not merely be a middleman, but will provide a complete, integrated service to its Illinois public safety customers. Moreover, Intrado will provide services to telematics providers (such as OnStar) and private branch exchange ("PBX") owners who have subscribers that originate 911 calls.¹⁹ Thus, there is no justification for reversing the Commission's prior findings in the *SCC Order* or for the Commission to accept the edits proposed by Staff to the PAD with respect to the *SCC Order* under Staff Exception No. 2.²⁰

Finally, Intrado disagrees with Staff that the classification of AT&T's 911 service to Illinois public safety agencies has no bearing on this proceeding (Staff Exception No. 3).²¹ As evidenced by the Emergency Telephone Service Act and the Commission's Part 725 rules, it has already been determined that 911/E911 services should be subject to a significant level of

[is] encouraged through the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets") (emphasis added).

¹⁶ 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*"); see also Intrado BOE at 9-10 (discussing the Commission's previous public interest findings).

¹⁷ Staff BOE at 3.

¹⁸ Staff BOE at 3-4.

¹⁹ 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 Communications Inc. Verified Petition for Arbitration at 6, n.10 (filed Sept. 22, 2008).

²⁰ Staff BOE at 5.

²¹ Staff BOE at 7.

regulation.²² The Commission has routinely regulated the 911/E911 services provided by AT&T and other incumbents,²³ has approved of the inclusion of such services in the incumbents' regulated local exchange tariffs,²⁴ and has rejected attempts by other unqualified 911/E911 service providers to enter the market.²⁵ The statements contained in AT&T's tariff regarding its 911/E911 service and the Commission's past treatment of that and other 911/E911 services therefore have a direct bearing on the Commission's conclusions in this proceeding. If AT&T's 911/E911 service is treated as a local exchange service, there is no justification for treating Intrado's service any differently.

II. THIS ARBITRATION PROCEEDING HAS NO EFFECT ON THIRD PARTIES OR STAFF'S REQUEST FOR A GENERIC PROCEEDING

The only matter at issue in this proceeding is Intrado's right to interconnect and the interconnection arrangements that must be established between Intrado and AT&T to support Intrado's provision of 911/E911 services to Illinois PSAPs and public safety agencies consistent with Illinois and federal law. There are no third party rights at issue in this arbitration²⁶ and there is no need for the Commission to conduct a generic proceeding prior to resolving the interconnection arrangements at issue here.²⁷

The legal framework necessary to grant Intrado's interconnection request is already in place. Interconnection is available to Intrado under Section 251(c) or Section 251(a) (or both) of

²² Emergency Telephone System Act, 50 ICLS 75010, 750.11; 83 ILL. ADM. CODE PART 725.

²³ See, e.g., Docket No. 93-0037, *Revision of 83 Ill. Adm. Code 725*, Order (Sept. 13, 1995).

²⁴ AT&T's 911/E911 service to PSAPs is located in its general exchange tariff and is classified as a "telephone exchange communications service" in the tariff. See *Illinois Bell Telephone Company Ill. C.C. No. 20*, Part 8, Section 3.

²⁵ 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 (May 17, 2005), *aff'd Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

²⁶ Cf. Staff BOE at 8.

²⁷ Cf. Staff BOE at 10.

the Act as explained in Intrado’s Brief on Exceptions (Intrado Exception No. II).²⁸ At a minimum, Intrado is a telecommunications carrier²⁹ and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer “telephone exchange service” as the PAD acknowledges.³⁰ Indeed, the Commission has previously found that Section 251(a) “contains no restrictions on who may interconnect with whom.”³¹ The issue of 251(a) interconnection is properly before the Commission as a result of the positions taken by AT&T in this proceeding that Intrado is only entitled to a 251(a) or commercial agreement for interconnection.³²

Further, Illinois law recognizes the possibility of a competitive provider of 911/E911 services to Illinois public safety agencies.³³ As long as Intrado’s service complies with the Commission’s rules for 911 system providers, Intrado should not be denied the right to provide this intrastate service.³⁴ Intrado’s service offering will be detailed in its tariff, which can be

²⁸ Intrado BOE at 6-10.

²⁹ 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).

³⁰ 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”).

³¹ *Sprint-Rural Order* at 13.

³² Intrado BOE at 6-7; *see also* Transcript at 132, lines 7-11 (Pellerin) (“Q: The [Florida] 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.”); 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.”).

³³ 83 ILL. ADMIN CODE TIT. § 725.500(c)(2); *see also* Direct Testimony of Marci Schroll on behalf of the Staff of the Illinois Commerce Commission at 5, lines 103-08 (Staff Hearing Exhibit 3).

³⁴ Intrado agrees with Staff that it is not necessary to classify 911/E911 service under Illinois law. *See* Staff BOE at 9. The Commission has already determined that 911/E911 services should be regulated in adopting the Part

examined by the Commission pursuant to the same process applied to all other carriers.³⁵ To treat Intrado any differently would amount to a barrier to entry under Section 253 of the federal Act³⁶ and would be inconsistent with the Commission’s prior conclusion that promoting competition in previously non-competitive markets “greatly serve[s] the public interest.”³⁷ Thus, the proposed revisions suggested by Staff under Exceptions No. 4 and 5 are unnecessary and should be rejected.

725 rules. *See* 83 ILL. ADMIN CODE TIT. Part 725. Moreover, the PAD makes clear that 911/E911 service is a local service. *See* PAD at 15.

³⁵ 220 ILCS 5/13-505 (stating that a competitor like Intrado is only required to demonstrate that its proposed rates are reasonable); *see also* Transcript at 148, lines 13-20 (Pellerin) (AT&T’s witness acknowledging that “just and reasonable rates” is the standard in Illinois).

³⁶ 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).

³⁷ *Sprint-Rural Order* at 13; *see also* Intrado BOE at n.6 (discussing the goals of Sections 251 and 253 to promote competition).

CONCLUSION

For the foregoing reasons and those set forth in Intrado's Brief on Exceptions, 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 pursuant to Section 251(c), Section 251(a), or both.

Respectfully submitted,

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Dated: March 2, 2009

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CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 2nd day of March 2009, I electronically filed a copy of the foregoing Reply 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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