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.	)	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.	)	WC Docket No. 08-185

TWELFTH CONSOLIDATED STATUS REPORT
OF INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Communications of Virginia Inc. ("Intrado Comm"), by its attorneys, respectfully submits this Twelfth Consolidated Status Report in response to the request from staff of the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("Commission" or "FCC"). This report provides information regarding the status of negotiations between Intrado Comm and Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq"), including the status of other state arbitration proceedings pending between Intrado Comm and Embarq. There have been no further regulatory developments regarding the Intrado Comm/Embarq arbitrations since the Eleventh Consolidated Status Report.

This report also provides information regarding the status of negotiations between Intrado Comm and Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon"), including the status of other state arbitration proceedings pending between Intrado Comm and Verizon. On May 8, 2009, the Massachusetts Department of Telecommunications and Cable ("DTC") issued a Final Arbitration Order granting Intrado §251(c) interconnection rights. A copy of the DTC's decision is set forth in **Attachment 1**.

Respectfully submitted,

INTRADO COMMUNICATIONS OF VIRGINIA INC.

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CERTIFICATE OF SERVICE

I, Susan C. Goldhar, certify that on this 21st day of May 2009, I served a copy of the foregoing Consolidated Status Report on the following via the method indicated:

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ATTACHMENT 1

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 08-9 May 08, 2009

Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts

ARBITRATION ORDER

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TABLE OF CONTENTS

I. INTRODUCTION…….....Page 1

II. BACKGROUND – *911/E-911 Network Architecture*……..Page 3

III. PROCEDURAL HISTORY…….Page 8

IV. SUPPLEMENTAL AUTHORITY AND RESOLUTION OF PENDING MOTIONS…….Page 10

V. STANDARD OF REVIEW……..Page 15

VI. "THRESHOLD" ISSUE……...Page 16

VII. UNRESOLVED ISSUES…….Page 20

A. Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic? Arbitration Issue 1 - Point of Interconnection and Interconnection of Verizon's Network to Intrado's Network (*911 Attachment* §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1)[1]

What terms and conditions should govern how the Parties will initiate interconnection?
Arbitration Issue 4 - Initiating Interconnection (*911 Attachment* § 1.5)

How should the Parties route 911/E-911 calls to each other?
Arbitration Issue 5 - 911/E-911 Call Routing (*911 Attachment* §§ 1.3, 1.4, 1.7.3)…….Page 21

1. Introduction……..Page 21

2. Point(s) of Interconnection ……..Page 22

a. Intrado……..Page 22

b. Verizon…….Page 26

c. Analysis and Findings……..Page 29

[1] The interconnection agreement "ICA" sections referenced are taken from the Parties' Second Stipulation – Joint Issues Matrix. These ICA sections are not intended to be exhaustive and an issue may apply to ICA sections other than those that are listed.

3. Applicability of LATA Language ……...Page 37

a. Intrado……...Page 37

b. Verizon……..Page 38

c. Analysis and Findings……...Page 39

4. Reciprocity……..……...Page 42

a. Intrado……...Page 42

b. Verizon……..Page 42

c. Analysis and Findings……...Page 42

B. 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?
Arbitration Issue 2 - Inter-Selective Router Trunking (*911 Attachment* § 1.4)……Page 43

1. Introduction……..Page 43

2. Positions of the Parties……..Page 43

a. Intrado……...Page 43

b. Verizon……..Page 44

3. Analysis and Findings……...Page 45

C. Whether the forecasting provisions should be reciprocal?
Arbitration Issue 3 - Joint Forecasting (*911 Attachment* § 1.6.2) ……....Page 47

1. Introduction…….. Page 47

2. Positions of the Parties……..Page 47

a. Intrado……...Page 47

b. Verizon……..Page 48

3. Analysis and Findings……...Page 49

D. Whether *911 Attachment* § 1.1.1 should include reciprocal language describing both Parties' 911/E-911 facilities?
Arbitration Issue 6 - Components of 911/E-911 System (*911 Attachment* § 1.1.1)

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?
Arbitration Issue 16 - Use of Term "a caller" (*911 Attachment* § 1.1.1)…..Page 50

1. Introduction……..Page 50

2. Network Components Descriptive Language ……..Page 50

a. Intrado……...Page 50

b. Verizon……..Page 51

c. Analysis and Findings……...Page 51

3. The Term "a caller.....……...Page 53

a. Intrado……...Page 53

b. Verizon……..Page 53

c. Analysis and Findings……...Page 54

E. Whether the agreement should contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what those provisions should be?
Arbitration Issue 7 - 911 Databases (*911 Attachment* § 1.2)……Page 55

1. Introduction……..Page 55

2. Positions of the Parties……..Page 56

a. Intrado……...Page 56

b. Verizon……..Page 58

3. Analysis and Findings……...Page 58

F. 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?
Arbitration Issue 8 - 911 and E-911 Related Definitions (*Glossary* §§ 2.6, 2.63, 2.64, 2.67, 2.94, 2.95)….……..Page 60

1. Introduction……..Page 60

2. Positions of the Parties……..Page 60

a. Intrado……...Page 60

b. Verizon……..Page 61

3. Analysis and Findings……...Page 63

a. *"POI" and "911/E-911 Service Provider" Definitions*……Page 63

b. *"ANI" Definition*……...Page 64

c. *"911 Tandem/Selective Router" Definition*……..Page 66

d. *"Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center Definitions*……Page 67

G. Should *911 Attachment* § 2.5 be reciprocal and qualified as proposed by Intrado?
Arbitration Issue 9 - Verizon's Ability to Bypass Intrado and Directly Send 911/E-911 Calls to Intrado's PSAP Customer (*911 Attachment* § 2.5, [proposed] § 2.6)

Should the reservation of rights to bill charges to 911 Controlling Authorities and PSAPs be qualified as proposed by Intrado by "To the extent permitted under the Parties' Tariffs and Applicable Law?"
Arbitration Issue 14 - Reservation of Rights to Bill Charges (*911 Attachment* §§ 2.3, 2.4)……Page 68

1. Introduction……...Page 68

2. Positions of the Parties……..Page 68

a. Intrado……...Page 68

b. Verizon……..Page 69

3. Analysis and Findings……...Page 70

H. What should Verizon charge Intrado for 911/E-911 related services and what should Intrado charge Verizon for 911/E-911 related services?
Arbitration Issue 10 - Rates to be Charged for 911/E-911 Services (*911 Attachment* §§ 1.3, 1.4, 1.7; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)

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 the Pricing *Attachment*, Appendix A, without a reference to the specific tariff; and whether the Verizon proposed language in the *Pricing Attachment* § 1.5 with regard to "TBD" rates should be included in the agreement?
Arbitration Issue 11 - Tariff References and Development of New Rates (*General Terms and Conditions* § 1.1; *911 Attachment* §§ 1.3, 1.4.2, 1.7.3; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)……..Page 71

1. Introduction……...Page 71

2. Positions of the Parties……..Page 71

a. Intrado……...Page 71

b. Verizon……..Page 73

3. Analysis and Findings……...Page 75

I. Whether Verizon may require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements?
Arbitration Issue 12 - Restrictions on Intrado Rates (*Pricing Attachment* § 2)……Page 79

1. Introduction……..Page 79

2. Positions of the Parties……..Page 79

a. Intrado……...Page 79

b. Verizon……..Page 80

3. Analysis and Findings……...Page 80

J. Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI Database, and MSAG be qualified as proposed by Intrado by other provisions of the Agreement?
Arbitration Issue 13 - Waiver of 911 Related Charges (*911 Attachment* §§ 1.7.2, 1.7.3)…….Page 81

1. Introduction……..Page 81

2. Positions of the Parties……..Page 81

a. Intrado……...Page 81

b. Verizon……..Page 82

3. Analysis and Findings……...Page 82

K. Should Intrado have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E-911 calls?
Arbitration Issue 15 - Intrado's Right to Amend the Interconnection Agreement (*General Terms and Conditions* § 1.5)…….Page 83

1. Introduction……...Page 83

2. Positions of the Parties……..Page 83

a. Intrado……...Page 83

b. Verizon……..Page 84

3. Analysis and Findings……...Page 85

VIII. ORDER…….Page 87

I. INTRODUCTION

This arbitration proceeding between Intrado Communications Inc. ("Intrado") and Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon") (collectively "Parties") is held pursuant to the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 252. Pursuant to § 252(b) of the Act, a carrier is permitted to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. *See* 47 U.S.C. § 252(b)(1). Intrado seeks interconnection with Verizon under § 251(c) of the Act in order to provide competitive 911/E-911 services to Public Safety Answering Points and other public safety agencies in Massachusetts. Intrado and Verizon have been involved in similar interconnection arbitrations in seven other states[2] and at the Federal Communications Commission's ("FCC") Wireline Competition Bureau (arbitrating a Virginia agreement), and the Parties recently completed an interconnection arbitration in West Virginia.[3] *See* IR Resp. D.T.C.-INT. 1-3. In addition to its arbitrations with Verizon, Intrado is also involved in various stages of interconnection arbitrations with AT&T, Embarq, and Cincinnati Bell Telephone ("CBT").[4]

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[2] The Parties are currently involved in arbitrations in Delaware, Florida, Illinois, Maryland, North Carolina, Ohio and Texas.

[3] The issues presented in the other jurisdictions parallel those currently in dispute in the instant proceeding.

[4] The Department is aware of Intrado/AT&T arbitrations in Florida, Illinois, North Carolina and Texas; an Intrado/CBT arbitration in Ohio; and Intrado/Embarq arbitrations in Florida, Ohio, and at the FCC's Wireline Competition Bureau. The FCC's Wireline Competition Bureau consolidated the Intrado/Embarq arbitration with the Intrado/Verizon arbitration. *See* VZ Abey. Mot. at 1; IR Resp. D.T.C.-INT. 1-3. *See generally, In re Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to §252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Del. LLC*, Del. Pub. Serv. Comm'n, Docket No. 08-61 (filed Mar. 5, 2008) ("*INT/VZ Del. Arb.*"); *Petition by Intrado Commc'ns, Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Fla. LLC, Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, and § 364.162, F.S.*, Fla. Pub. Serv. Comm'n, Docket No. 080134-TP (filed Mar. 5, 2008) ("*INT/VZ Fl. Arb.*"); *Petition by Intrado Commc'ns, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomms., Inc. d/b/a AT&T Fla, Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, and §§ 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.*, Fla. Pub. Serv. Comm'n, Docket No. 070736-TP (filed Dec. 21, 2007) ("*INT/AT&T Fl. Arb.*"); *Petition by Intrado Commc'ns, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Fla., Inc., Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, and § 364.162, F.S.*, Fla. Pub. Serv. Comm'n, Docket No. 070699-TP (filed Nov. 27, 2007) ("*INT/EMB Fl. Arb.*"); *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts ("Massachusetts"). *See generally*, VZ Init. Br. and VZ Rep. Br. Intrado is a common carrier authorized to provide competitive local exchange telecommunications services throughout Massachusetts. *See* INT. Pet. at 5.

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and Verizon South Inc., Ill. Commerce Comm'n, Docket No. 08-0550 (filed Sept. 24, 2008) ("*INT/VZ Ill. Arb.*"); *Petition of Intrado Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Ill. Bell Tel. Co. d/b/a AT&T Ill.*, Ill. Commerce Comm'n, Docket No. 08-0545 (filed Sept. 22, 2008) ("*INT/AT&T Ill. Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Md. Inc.*, Md. Pub. Serv. Comm'n, Case No. 9138 (filed Mar. 5, 2008) ("*INT/VZ Md. Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. d/b/a Verizon N.C.*, N.C. Utils. Comm'n, Docket No. P-1187 Sub 3 (filed Mar. 5, 2008) ("*INT/VZ NC Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, with BellSouth Telecomms., Inc. d/b/a AT&T N.C.*, N.C. Utils. Comm'n, Docket No. P-1187 Sub 2 (filed Dec. 21, 2007) ("*INT/AT&T NC Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*, Ohio Pub. Utils. Comm'n, Case No. 08-0198-TP-ARB (filed Mar. 5, 2008) ("*INT/VZ Oh. Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Ohio Pub. Utils. Comm'n, Case No. 08-537-TP-ARB (filed Apr. 21, 2008) ("*INT/CBT Oh. Arb.*"); *Petition of Intrado Commc'ns Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Tel. Co. of Ohio d/b/a Embarq and United Tel. Co. of Ind. d/b/a Embarq, Pursuant to § 252(b) of the Telecomms. Act of 1996*, Ohio Pub. Utils. Comm'n, Case No. 07-1216-TP-ARB (filed Nov. 28, 2007) ("*INT/EMB Oh. Arb.*"); *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Inc. d/b/a Verizon Southwest*, Tex. Pub. Util. Comm'n, Control No. 36185 (filed Sept. 24, 2008) ("*INT/VZ Tx. Arb.*"); *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, to Establish an Interconnection Agreement with Southwestern Bell Tel. Co. d/b/a AT&T Tex.*, Tex. Pub. Util. Comm'n, Control No. 36176 (filed Sept. 22, 2008) ("*INT/AT&T Tx. Arb.*"); *Intrado Commc'ns, Inc., and Verizon W. Va. Inc. Petition for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with Verizon W. Va. Pursuant to § 252(b) of the Commc'ns Act of 1934, as amended, and Commission Rule 150-6-15*, W. Va. Pub. Serv. Comm'n, Docket No. 08-0298-T-PC (filed Mar. 5, 2008) ("*INT/VZ WV Arb.*"); *Petition of Intrado Commc'ns of Va. Inc. Pursuant to § 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Va. Inc. (collectively, Verizon)*, FCC Wireline Competition Bureau, WC Docket No. 08-185 (filed July 18, 2008) ("*INT/VZ FCC Arb.*"); *Petition of Intrado Commc'ns of Va. Inc. Pursuant to § 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Tel. Co. of Va. and United Tel. – Southeast, Inc. (collectively, Embarq)*, FCC Wireline Competition Bureau, WC Docket No. 08-33 (filed Mar. 6, 2008) ("*INT/EMB FCC Arb.*").

II. BACKGROUND - *911/E-911 Network Architecture*

Emergency telephone service ("911") and enhanced emergency telephone service ("E-911") allow a caller to reach emergency services quickly during emergencies like fires, accidents, floods, etc. The caller dials the three-digit emergency number of 9-1-1 to reach the assigned public safety answering point ("PSAP"), which is also referred to as a 911 center or emergency services center. *See* VZ Panel Pref. Test. at 15. The E-911 service provides more functionality than basic 911 service by providing the PSAP with the caller's telephone number (automatic number identification or "ANI") and actual location of the caller (automatic location identification or "ALI"), even if the caller cannot communicate or the call is disconnected for some reason. *Id.*

A statewide E-911 plan is required by G. L. c. 6A, § 18D(c), and Verizon currently provides statewide E-911 services to the State 911 Department pursuant to a contract with the state. *Id.*; Tr. at 74. The State 911 Department (formerly the Statewide Emergency Telecommunications Board) is the agency responsible for coordinating, administering and promulgating standards for the implementation of E-911 services. *See* G. L. c. 6A, § 18B(d); VZ Panel Pref. Test. at 17. The E-911 system in Massachusetts is funded by a surcharge on all wireline phones and wireless subscribers in the state. *See* G. L. c. 6A, § 18H; VZ Panel Pref. Test. at 17.

Verizon currently provides 911/E-911 service to each of the 273 PSAPs in Massachusetts. *See* VZ Init. Br. at 4. All 911 calls made by Verizon end users are identified as such by the Verizon end office serving them and are then routed to the selective routers of the 911/E-911 network. *See* VZ Panel Pref. Test. at 15; IR Resp. D.T.C.-VZ 1-3. In Massachusetts, Verizon operates two pairs of selective routers. *See* VZ Panel Pref. Test. at 15; Tr. at 74. A selective router is essentially a tandem switch with the added features that allow it to transmit 911 calls to the

correct PSAP. *See* IR Resp. D.T.C.-VZ 1-3. When a 911 call reaches the selective router, the selective router's database identifies the customer's telephone number and associates that number with the emergency services number of the PSAP serving that customer. *Id.*; VZ Panel Pref. Test. at 15. These numbers indicate which trunk route the call needs to take to get to the proper PSAP. *See* IR Resp. D.T.C.-VZ 1-3; VZ Panel Pref. Test. at 15. The selective routers are paired (or "mated"), so if the circuits from one selective router to a PSAP are busy, that selective router will automatically transfer the call to the other (mated) selective router that has direct circuits to the PSAP. *See* VZ Panel Pref. Test. at 16; IR Resp. D.T.C.-VZ 1-3; Tr. 116-118. One pair of selective routers is located in Wakefield and Medfield, and the other pair is located in Westborough and Northampton. *See* VZ Hearing Exh. 3; Tr. at 118. These selective routers aggregate 911 calls from the end offices and send them over dedicated circuits to the appropriate PSAPs. *See* VZ Init. Br. at 36, 37; VZ Rep. Br. at 17.

More specifically, when a Verizon end user dials 911, the 911 call travels from the Verizon end office serving the end user through dedicated and redundant trunks to one of the two pairs of selective routers operated by Verizon in Massachusetts. *See* VZ Panel Pref. Test. at 15; IR Resp. D.T.C.-VZ 1-3. In addition, all other carriers located in Massachusetts, including competitive local exchange carriers ("CLECs") and wireless carriers, generally have service areas that overlap Verizon's and typically directly trunk their customers' 911 calls to Verizon's selective routers using similar dedicated circuits. *See* VZ Panel Pref. Test. at 16-17. Diagram No. 1 shows the typical interconnection arrangements between these carriers and Verizon on Verizon's 911/E-911 network. *See* RR Resp.-2 D.T.C.-VZ.

When a 911 call from a CLEC end user reaches a Verizon selective router, the same process occurs as it does for a call from Verizon's own end users. *See* VZ Panel Pref. Test. at 16-

17. The selective router looks up the caller's number and emergency service number and routes the call to the correct PSAP. *Id*. In the case of wireless calls, however, the database search is not performed on the caller's actual telephone number, but on a pseudo-ANI ("pANI") assigned by the carrier or its contracted third-party database provider in order to route the call to the appropriate PSAP. *Id*. This is because "[w]ireless call routing is typically accomplished based on the cell tower and sector detecting the greatest signal strength from the wireless caller's device [and] [w]ireless service boundaries do not perfectly align with the jurisdictional boundary of the PSAP receiving the initial 911 call." INT. Hicks Pref. Test. at 52-53

When a PSAP receives a call, the receiving system automatically sends a request to one of Verizon's two redundant ALI databases via dedicated, diverse digital circuits. *Id*. at 16. The address or location information of the caller is returned to the PSAP, which sends the appropriate public safety personnel in response to the emergency call. *Id*.

Current Verizon (VZ) Landline and Wireless E-911 Network

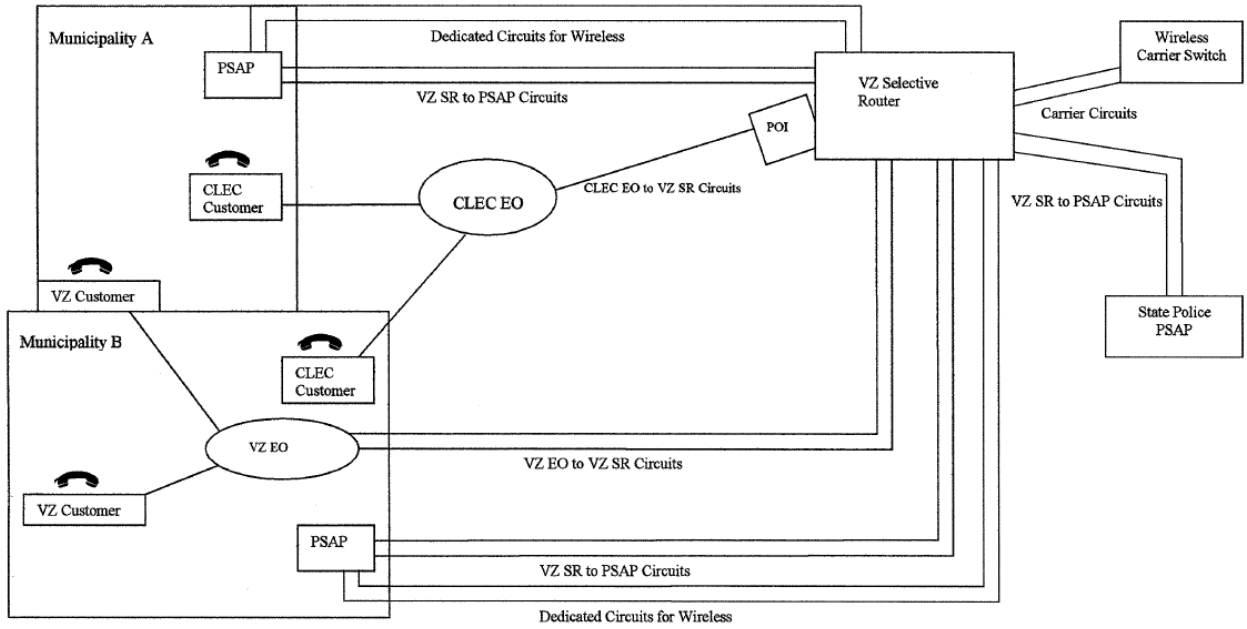

Diagram No. 1

In Massachusetts, Intrado plans to provide an alternative to Verizon's 911/E-911 service by offering competitive 911/E-911 services directly to PSAPs and other public safety agencies. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2. Intrado proposes to provide its 911 service through its Intelligent Emergency Network® ("IEN"), as shown in Diagram No. 2 below. *See* INT. Currier Pref. Test. at 4; INT. Hicks Pref. Test. at 6. Intrado's customers will be PSAPs and related public agencies, not the individual end users that initiate 911 calls. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5. The physical components of Intrado's 911/E-911 service will not handle 911 call until it has been relayed to Intrado. *See* INT. Hicks Pref. Test. at 6. Intrado asserts that it needs to enter into a mutually beneficial interconnection agreement with Verizon to

obtain access to the public switched telephone network ("PSTN") before it can offer its competitive 911/E-911 service to Massachusetts PSAPs. *Id*. at 8; INT. Init. Br. at 2.

According to Intrado, its Internet Protocol ("IP") based network is designed to "interoperate" with existing legacy PSAP equipment and incumbent networks, as well as the capability to use and receive calls from newer technologies. *See* INT. Hicks Pref. Test. at 6. Consequently, Intrado asserts that this will permit it to provide "meaningful [ALI] information that permits first responders to render aid, regardless of the technology or platform employed" by the caller. *See* INT. Init. Br. at 2.

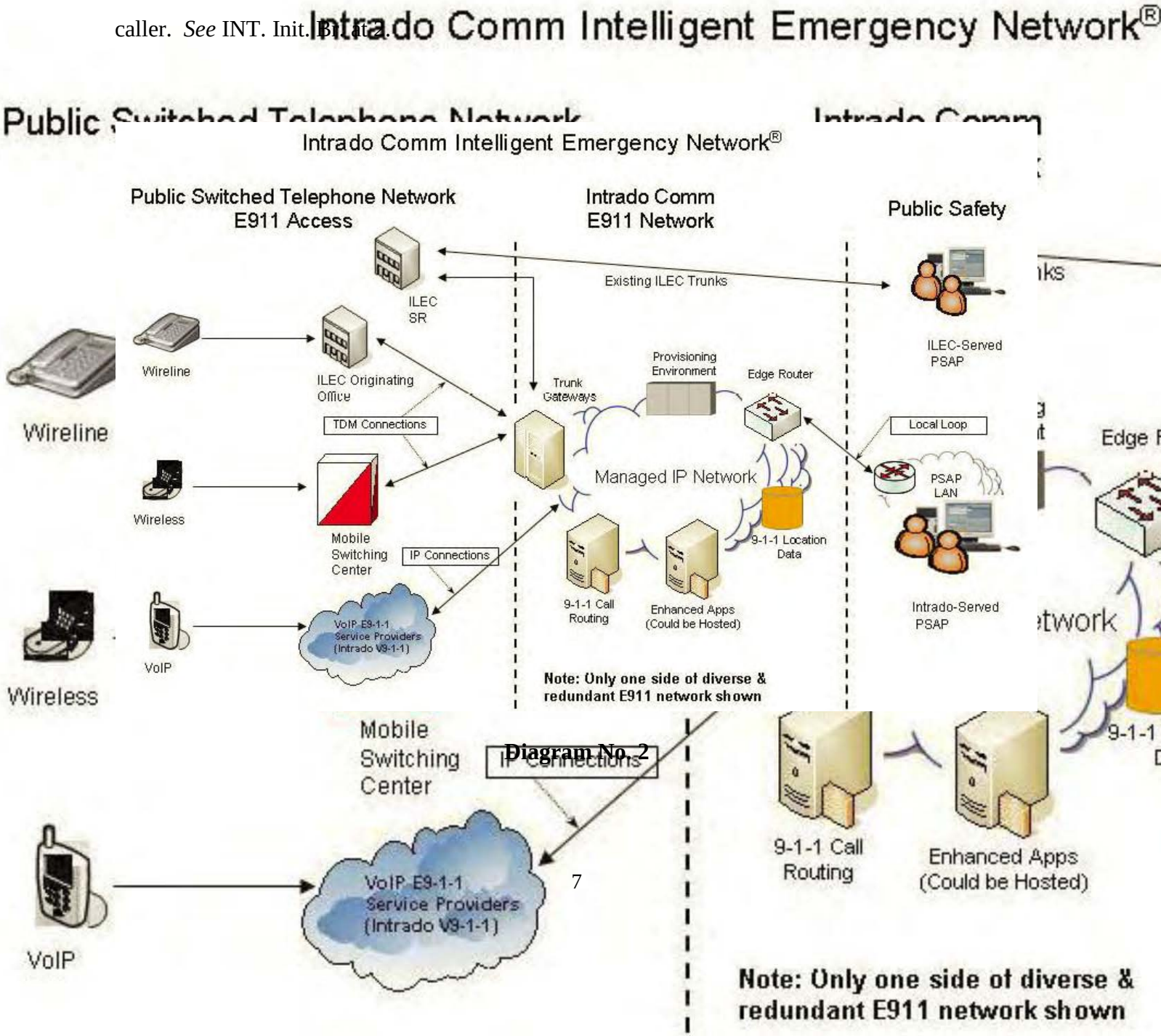

Diagram No. 2

III. PROCEDURAL HISTORY

On November 4, 2008, Intrado filed a Petition for Arbitration of an interconnection agreement ("ICA") with Verizon. *See* INT. Pet. Verizon responded to Intrado's Petition on December 1, 2008. *See* VZ Resp. On December 5, 2008, the Department of Telecommunications and Cable ("Department") issued the arbitration ground rules and an initial procedural schedule. *See* Dec. 5 Memorandum.

Pursuant to the Parties' proposed changes to the procedural schedule and an agreement reached during a December 12, 2008, conference call, the Department stayed the initial procedural schedule pending a Joint Motion. *See* D.T.C. Docket 08-9. On December 18, 2008, the Parties filed a Joint Motion Concerning Deadline for Arbitration Decision in which Verizon stipulated that it received Intrado's request for negotiation on July 10, 2008, and both Parties requested that the Department acknowledge the final decision date in this proceeding to be April 10, 2009.[5] *See* December 18 Jt. Mot. On December 23, 2008, the Department acknowledged the statutory deadline for Department action and issued a revised arbitration schedule. *See* D.T.C. Docket 08-9.

On December 29, 2008, the Parties submitted prefiled testimony.[6] *See* VZ Panel Pref. Test.; INT. Hicks Pref. Test.; INT. Currier Pref. Test. The Department held an informal technical session on January 9, 2009. *See* D.T.C. Docket 08-9. The Parties filed a First and Second Stipulation of Issues – Joint Issues Matrix on December 29, 2008, and January 23, 2009,

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[5] The Act requires that state commissions "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request[.]" 47 U.S.C. § 252(b)(4)(C).

[6] Verizon submitted prefiled panel testimony by Peter J. D'Amico, Maureen Napolitano, and John Conroy. *See* VZ Panel Pref. Test. Peter J. D'Amico is a Product Manager in the Switched Access and Interconnection Product Management Group for Verizon Services Corporation; Maureen Napolitano is the National Director for E-911 Customer Service for Verizon Business; and John Conroy is Regulatory Vice President for Verizon Massachusetts. *See* VZ Panel Pref. Test. at 1-4. Intrado submitted separate prefiled testimony by Robert C. Currier and Thomas W. Hicks. *See* INT. Hicks Pref. Test.; INT. Currier Pref. Test. Thomas W. Hicks is Director, Carrier Relations, for Intrado and its affiliate, Intrado Inc. *See* INT. Hicks Pref. Test. at 2. Robert C. Currier is Manager, Regulatory and Government Affairs, for Intrado and its affiliate, Intrado Inc. *See* INT. Currier Pref. Test. at 2.

respectively.[7] *See* First Jt. Iss. Mat.; Second Jt. Iss. Mat. On January 26, 2009, the Parties filed responses to the Department's information requests.[8] *See* IR Resp. D.T.C.-VZ; IR Resp. D.T.C.-INT. The Department held the arbitration hearing on January 28, 2009, during which both Parties presented their witnesses and testimony for questioning.[9] *See* Tr. On February 6, 2009, Verizon filed record request responses. *See* RR Resp. D.T.C.-VZ.[10] On February 26 and March 12, 2009, the Parties filed their initial and reply briefs, respectively. *See* VZ Init. and Rep. Brs.; INT. Init. and Rep. Brs.

On April 6, 2009, the Parties filed a second Joint Motion Concerning Deadline for Arbitration Decision in which Verizon stipulated that it received Intrado's request for negotiation on August 8, 2008, and both Parties requested that the Department acknowledge the final decision date in this proceeding to be May 8, 2009. *See* April 6 Jt. Mot. On April 13, 2009, the Department acknowledged the statutory deadline for Department action to be no later than May 8, 2009. *See* D.T.C. 08-9.

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[7] The Parties did not reach any additional agreements in the Second Stipulation of Issues since the filing of the First Stipulation of Issues.

[8] The Parties waived discovery between themselves.

[9] At the hearing, Kathleen Cerrati appeared as a replacement witness for Maureen Napolitano on Verizon's witness panel. *See* Tr. at 51-52.

[10] Neither the Department nor Verizon made record requests to Intrado.

IV. SUPPLEMENTAL FILINGS AND RESOLUTION OF PENDING MOTIONS

On March 10, 2009, Verizon filed a Motion for Abeyance of the current proceeding. *See* VZ. Abey. Mot. Intrado filed its opposition to Verizon's motion on March 18, 2009. *See* INT. Abey. Opp. On March 20, 2009, Verizon filed a Notice of Recent Decisions ("VZ March 20 Not."), to which Intrado filed a response on March 23, 2009 ("INT. March 23 Resp."). On April 14, 2009, Verizon filed a Notice of Recent Decision specifically as support for its Motion for Abeyance. *See* VZ April 14 Not. Intrado responded on April 15, 2009, with a Motion to Strike Verizon's April 14 Notice. *See* INT. Mot. to Str. On April 29, 2009, Intrado submitted a letter with supplemental authority for the record. *See* INT. April 29 Letter. For the reasons outlined below, the Department denies Verizon's Motion for Abeyance and grants Intrado's Motion to Strike Verizon's April 14 Notice. Furthermore, the Department strikes Verizon's March 20 Notice.

Verizon requests abeyance pending a ruling from the FCC's Wireline Competition Bureau expected to be issued in early May, involving the same issues disputed by the Parties here with an additional "threshold" issue involving the applicability of § 251(c) of the Act (discussed more fully below). *See* VZ Abey. Mot. at 1. Verizon asserts that the FCC Wireline Competition Bureau's ruling will "provide useful guidance on the same issues now before the Department" and will allow the Department a more efficient use of resources. *Id*. at 1-2.

Although the Parties have jointly agreed to abeyance in the arbitration proceedings before commissions in North Carolina and Delaware, Intrado opposes an abeyance in the instant proceeding. *See* INT. Abey. Opp. at 1. Intrado distinguishes this proceeding from those in North Carolina and Delaware and specifies that those proceedings are not as far along as the current arbitration. *Id*. at 3. Specifically, Intrado emphasizes that neither of those commissions have yet

conducted a hearing or established a Final Order date, and the Parties have not yet filed legal briefs in either proceeding. *Id*. Intrado also points out that the FCC Wireline Competition Bureau will be resolving a "threshold" issue not currently before the Department – whether or not Intrado is entitled to § 251(c) interconnection – and that the Bureau will be deciding *only* this issue in early May. *Id*. at 2. Intrado asserts that, therefore, there will be no guidance for the Department on the remaining issues. *Id*. at 2-3. Finally, Intrado contends that abeyance would only be appropriate if it "would be an 'inefficient use of the Department's and [P]arties' resources' to move forward with the proceeding." *Id*. According to Intrado, no such inefficiency is presented here, because a decision on the "threshold" issue from the Bureau would not change the Department's evaluation of the current issues before it. INT. Abey. Opp. at 3.[11]

In support of its abeyance motion, Verizon offers an exhibit included with its April 14 Notice. *See* VZ April 14 Not. The April 14 Notice includes a copy of an April 8, 2009, scheduling notice issued by the Hearing Examiner for the Intrado/Verizon arbitration at the Maryland Public Service Commission. *Id*., Exh. 1. In the notice, the Hearing Examiner ruled that the Maryland arbitration proceeding should be held in abeyance pending the anticipated May ruling by the FCC's Wireline Competition Bureau, based on the determination that "eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case." *Id*., Exh. 1 at 1. Verizon contends that the Maryland Hearing Examiner's decision is relevant to Verizon's Motion for Abeyance, since the Maryland arbitration involves the same list of issues as the instant

[11] In support of its position, Intrado relies on *Proceeding by the Dep't of Telecomms. & Energy on Its Own Motion to Implement the Requirements of the Fed. Commc'ns Comm'n's Triennial Review Order Regarding Switching for Mass Market Customers*, D.T.E. Docket 03-60 Track A and Track B, *Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Mass.*, at 17 (Apr. 2, 2004) ("*2004 Interlocutory Order*"). In the *2004 Interlocutory Order*, the Department granted Verizon's motion to stay the proceeding because it would otherwise be an inefficient use of the Department's and parties' resources. *See 2004 Interlocutory Order* at 16-17("[T]he D.C. Circuit Court's action [in its *USTA II* decision] and the present uncertainty of the FCC's response makes [the Department] reluctant to proceed with evidentiary hearings and to evaluate parties' legal arguments until we are certain what rules apply. To act otherwise would be an inefficient use of the Department's and parties' resources.").

proceeding, noting that, in Maryland, neither of the Parties presented for dispute the "threshold" issue of § 251(c)'s applicability. *See* VZ April 14 Not. at 1-2.

Similarly, Verizon filed its March 20 Notice to inform the Department of recent state commission determinations that Intrado is not entitled to § 251(c) interconnection. *See* VZ March 20 Not. and Exhs. The Florida Public Service Commission and the Illinois Commerce Commission issued their non-Verizon arbitration decisions on March 16 and 17, 2009, respectively, just days after the Parties in the instant proceeding filed their Reply Briefs. *See* VZ March 20 Not. at 1-2. Verizon specifies that the Florida and Illinois commission decisions are "relevant to the threshold jurisdictional question of Intrado's right to request arbitration…." *Id*. at 2.

Intrado requests that the Department reject Verizon's March 20 Notice, arguing that its entitlement to § 251(c) interconnection was never raised as an issue for dispute by the Parties. *See* INT. March 23 Resp. at 1-2. Furthermore, Intrado requests that the Department strike Verizon's April 14 Notice from the record because it is a "poorly disguised, improperly filed, [and] untimely supplement" to Verizon's Motion for Abeyance. INT. Mot. to Str. at 1. Intrado does not dispute the Department's authority to take administrative notice of rulings from other jurisdictions and does not object to the Department "taking administrative notice of the [Maryland Hearing Examiner's] Scheduling Notice to which Verizon refers." INT. Mot. to Str. at 2.[12] Instead, Intrado disputes Verizon's explanation for its March 20 Notice and argues that it is an untimely

[12] In support of its position, Intrado relies on *New England Tel. & Tel. Co.*, D.T.E. 99-105 at 2 (2000) ("The Hearing Officer also took administrative notice of an Order Granting in Part and Denying in Part Petition for Reconsideration of the State of New York Public Service Commission dated December 23, 1998."); *Complaint of WorldCom Techs., Inc. (successor-in-interest to MFS Intelenet Serv. of Mass., Inc.) against New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass. for Alleged Breach of Interconnection Terms Entered Into Under §§ 251 and 252 of the Telecomms. Act of 1996*, D.T.E. 97-116, at 2 n.8 (1998), *opinion vacated on denial of reconsideration, MCI WorldCom, Inc. v. New England Tel. & Tel. Co.*, D.T.E. 97-116-C (1999) ("the Department is obligated to take administrative notice of relevant legal precedent from other jurisdictions"). *See* INT. Mot. to Str. at 1 n.1.

supplemental brief filed by Verizon. *Id.*; INT. March 23 Resp. at 1 (opposing the "supplemental authority" provided by Verizon with its March 20 Notice). Intrado, however, filed its own supplemental authority on April 29, 2009. *See* INT. April 29 Letter. The supplemental authority is a Recommended Arbitration Order issued by the North Carolina Utilities Commission on April 24, 2009, regarding the Intrado/AT&T arbitration in that state, whereby the commission rules, in part, that Intrado is entitled to § 251(c) interconnection with AT&T. *See* INT. April 29 Letter Exh. 1 at 14; *INT/AT&T NC Arb*.

Because the Parties have not mutually agreed to extend past May 8, 2009, the deadline for the Department's decision, then the Department is barred by 47 U.S.C. § 252(b)(4)(C) from granting Verizon's Motion for Abeyance. Pursuant to § 252(b)(4)(C) of the Act, the Department is required to "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier [Verizon] received the request…." Although the Parties previously agreed to extend the requisite nine month period by stipulating to a new start date for negotiations (*see* December 18 and April 6 Jt. Mots.) and have agreed to request abeyance in other state arbitration proceedings (*see* VZ. Abey. Mot. at 2), Intrado opposes Verizon's Motion for Abeyance in the instant proceeding. Without mutual assent by the Parties, the Department will not contravene the federally-mandated statutory requirement, which requires the Department to issue an Order no later than May 8, 2009. *See* 47 U.S.C. § 252(b)(4)(C).

Furthermore, as discussed more fully below, the "threshold" issue has not been presented to the Department for arbitration, and, although the FCC Wireline Competition Bureau's anticipated May ruling will decide only this "threshold" issue (*see* VZ Abey. Mot. at 1; INT. Abey. Opp. at 1), Bureau arbitration decisions are only persuasive authority and not binding on the Department. *See* Section VII.A.2.c below. In addition, the Bureau has not met its anticipated decision date as of the

date of this Order, and there is no guarantee as to when the Bureau will issue a final decision on this issue. *See INT/EMB FCC Arb.*; *INT/VZ FCC Arb.* For these reasons, the Department denies Verizon's Motion for Abeyance.

For similar reasons, the Department rejects Verizon's March 20 Notice and approves Intrado's Motion to Strike Verizon's April 14 Notice. In these Notices, Verizon argues that the submitted exhibits are relevant to the "threshold" issue of § 251(c). Since, as more fully discussed below in Section VI, the § 251(c) "threshold" issue was not presented to the Department as a disputed issue for resolution, the Department finds that Verizon's March 20 and April 14 Notices are improperly filed pleadings, and agrees with Intrado that these Notices are irrelevant to the issues to be decided by the Department. Therefore, these Notices shall be stricken from the record.

The Department, however, may take official notice "of such matters as might be judicially noticed by the courts of the United States or of the Commonwealth[.]" 220 C.M.R. § 1.10. Intrado does not object to the Department taking administrative notice of the Maryland Arbitrator's Scheduling Notice, which was submitted with Verizon's April 14 Notice. Intrado also does not ask the Department to strike from the record or reject the Illinois Commerce Commission Arbitration Decision or the Florida Public Service Commission Orders filed with Verizon's March 20 Notice. In addition, Verizon did not respond or object to Intrado's April 29 Letter with the attached North Carolina Utilities Commission Recommended Arbitration Decision. For these reasons, and pursuant to 220 C.M.R. § 1.10, the Department takes official notice of the aforementioned Maryland, Illinois, Florida, and North Carolina decisions.

V. STANDARD OF REVIEW

The procedures for negotiation, arbitration, and approval of agreements are set forth in § 252 of the Act. The general procedural guidelines for agreements arrived at through compulsory arbitration are specifically set forth in § 252(b), and state commission actions are guided by § 252(b)(4), which states in relevant part:

> (A) [t]he State commission shall limit its consideration of any [arbitration] petition…(and any response thereto) to the issues set forth in the petition and in the response, if any, filed [within 25 days after the State commission receives the petition.]

The standards for arbitrations by state commissions are set forth in 47 U.S.C. § 252(c), which states that a state commission shall:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d)]; and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Furthermore, § 252(e)(3) provides that "subject to section 253 … nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements." Finally, § 253(b) specifies that "[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis … 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."

VI. <u>"THRESHOLD" ISSUE</u>

During the pendency of the instant proceeding, Verizon has discussed, but never raised for dispute, a "threshold" issue that has been asserted against Intrado in non-Verizon arbitrations, that is, whether Intrado is even entitled to interconnection under § 251(c) of the Act. *See* VZ Resp. Exhs. 1 and 3-5; VZ Panel Pref. Test. Exh. 4; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.* According to Verizon, it "has never conceded that Intrado is entitled to section 251(c) interconnection" (VZ Init. Br. at 1) and that "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." *Id*. at 1 n.3. Verizon asserts that this presents a threshold jurisdictional question. *Id*. at 4. In support of its position, Verizon relies on arbitration decisions issued from other state commissions regarding Intrado's eligibility for § 251(c) interconnection. *Id*. at 1-4; VZ Rep. Br. at 1-3. In response, Intrado states that "Verizon's attempt to challenge Intrado['s] right to a Section 251(c) interconnection agreement should be rejected" in large part because Verizon never raised the issue for dispute in its response to Intrado's petition, and § 252(b)(4)(A) of the Act is clear that "the State commission shall limit its consideration of any petition…to the issues set forth in the petition and in the response, if any[.]" INT. Rep. Br. at 5.

The premise behind the "threshold" issue is that a requesting carrier seeks interconnection with an ILEC under § 251(c) in order to provide "telephone exchange service" or "exchange access." 47 U.S.C. § 251(c)(2)(A); 47 C.F.R. § 51.305(a)(1). Unlike Verizon in the instant proceeding, AT&T, Embarq, and CBT each disputed Intrado's entitlement to § 251(c) interconnection in their arbitrations. *See* VZ Resp. Exhs. 1 and 3-5; VZ Pref. Test. Exh. 4; VZ Init.

Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.*

In their proceedings, AT&T, Embarq, and CBT each argued, with varying results, that Intrado's proposed 911/E-911 service did not meet the definition of a "telephone exchange service" or "exchange access" and, therefore, was not entitled to § 251(c) interconnection. *See* VZ Resp. Exhs. 1 and 3-5; VZ Pref. Test. Exh. 4; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.*; *INT/AT&T NC Arb.*; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.*; *INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb*. The Florida and Illinois commissions ruled in their respective non-Verizon arbitrations that, based on Intrado's proposed services, it is not entitled to § 251(c) interconnection and dismissed the remaining issues presented for arbitration. *See* VZ Panel Pref. Test. Exhs. 1 and 2; VZ Init. Br. Exh. 3; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/AT&T Ill. Arb.* In contrast, the Ohio Public Utilities Commission ruled in its non-Verizon arbitrations that Intrado is entitled to § 251(c) interconnection. *See* INT. Currier Pref. Test. Exh. 6; INT. Rep. Br. Exh. 3; VZ Resp. Exhs. 4 and 5; *INT/CBT Oh. Arb.*; *INT/EMB Oh. Arb.* Similarly, the North Carolina Arbitrator determined that Intrado is entitled to § 251(c) interconnection with AT&T. *See INT/AT&T NC Arb.* The Texas Public Utility Commission and the FCC's Wireline Competition Bureau have not yet ruled on this issue in these non-Verizon arbitrations.[13] *See INT/AT&T Tx. Arb.*; *INT/EMB FCC Arb.*

In contrast to the AT&T, Embarq, and CBT arbitration proceedings, the "threshold" issue was not a disputed issue in any of its arbitration proceedings with Intrado. *See INT/VZ Del. Arb.*; *INT/VZ Fl. Arb.*; *INT/VZ Ill. Arb.*; *INT/VZ Md. Arb.*; *INT/VZ NC Arb.*; *INT/VZ Oh. Arb.*; *INT/VZ Tx. Arb.*; *INT/VZ WV Arb.*; *INT/VZ FCC Arb.* Subsequent to the Florida and Illinois decisions

[13] Both Intrado and Verizon indicate that the FCC Wireline Competition Bureau's target date for a decision was May 2, 2009. *See* INT. Abey. Mot. Opp. at 1 n.1; VZ Init. Br. at 3.

relating to the non-Verizon arbitrations, Verizon has requested that the Florida and Illinois grant it similar relief.[14] *See* VZ Init. Br. at 1-2; VZ Rep. Br. at 2; *INT/VZ Fl. Arb.*; *INT/AT&T Fl. Arb.*; *INT/EMB Fl. Arb.*; *INT/VZ Ill. Arb.*; *INT/AT&T Ill. Arb.* Finally, as Embarq has raised this issue in the Virginia arbitration, and the FCC's Wireline Competition Bureau consolidated the Intrado/Embarq and Intrado/Verizon arbitrations, the Bureau will decide the issue for those arbitrations. *See* INT. Abey. Mot. Opp. at 2; *INT/VZ FCC Arb.*; *INT/EMB FCC Arb.*

Arbitration proceedings between Intrado and Verizon in other states offer no useful guidance because of their differing treatments of the "threshold" issue.[15] For instance, although indicating that there may have been a jurisdictional question, the West Virginia Arbitrator addressed only the disputed issues between the Parties and not Intrado's right to request interconnection or arbitration solely for its proposed 911/E911 service to PSAPs since:

> the issue is pending before the FCC; because Verizon did essentially waive that issue by entering into interconnection agreement negotiations with Intrado; and because the issue was not squarely presented to the parties in a fashion that would have allowed Intrado to recognize that it needed to file responsive testimony and briefing on the issue for the undersigned.

VZ Resp. Exh. 7, *WV Arb. Award*, at 11. In contrast, the Texas commission took a different approach and requested that Intrado and Verizon file initial and reply briefs on the "threshold issue." *See* VZ Resp. Exhs. 6 and 8. The briefs in the Texas proceeding were filed on October 31 and November 7, 2008, respectively, but, to date, the Texas Public Utility Commission has not yet

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[14] In addition, both Parties filed a joint motion for abeyance pending resolution of the Florida Public Service Commission's decision in the Intrado/AT&T and Intrado/Embarq arbitrations, which the commission granted. *See INT/VZ Fl. Arb*.

[15] The Department does not generally find other state commission decisions to be dispositive on its arbitration proceedings. *See Petition of Global NAPs, Inc., Pursuant to § 252(b) of the Telecomms. Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Mass. f/k/a New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass.*, D.T.E. 02-45, *Order*, at 12 (Dec. 12, 2002) ("*GNAPs Arb. Order*"). Indeed, the Department "ordinarily place[s] little weight on the decisions reached in other states, since we rely for our decisions on the record presented here." *Id*. (citing *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 4), *Order*, at 23 (December 4, 1996) ("*Phase 4 Order*")).

issued a decision. *See* VZ Resp. Exh. 6 at 1; *INT/VZ Tx. Arb*. The Hearing Examiner in the Maryland arbitration recently issued a notice specifying that "eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case, and I will therefore refrain from issuing any Proposed Order in this matter until the relevant FCC order is issued and [sic] case be reviewed." *See INT/VZ Md. Arb.*, *Hearing Officer Scheduling Notice* (issued Apr. 8, 2009). Finally, the Delaware and North Carolina commissions have thus far been silent on this issue. *See INT/VZ Del. Arb.*; *INT/VZ NC Arb.*

The Department is bound by the express terms of the statute, which requires that a state commission "limit its consideration of any petition … to the issues set forth in the petition and in the response[.]" 47 U.S.C. § 252(b)(4)(A). Because the Parties did not present the "threshold" issue as a disputed issue to the Department, pursuant to § 252(b)(4)(A) of the Act, the Department is therefore precluded from addressing Intrado's entitlement to § 251(c) interconnection in the instant proceeding. Accordingly, the Department does not make any determinations as to whether Intrado's proposed 911/E-911 service is a telephone exchange or exchange access service, nor does the Department make any determinations as to whether the "threshold" issue is, according to Verizon, jurisdictional in nature. *See* VZ Init. Br. at 4.

VII. UNRESOLVED ISSUES

The Parties presented sixteen issues to be resolved by the Department. Resolution of these issues will determine the final language to be incorporated in the Parties' interconnection agreement. The sixteen issues presented to the Department involve: (1) the location of Point(s) of Interconnection ("POIs") on each Parties' 911/E-911 network; (2) inter-selective router trunking; (3) trunk forecasting requirements; (4) how the Parties will initiate interconnection; (5) how the Parties route 911/E-911 calls to each other; (6) description of both Parties' 911/E-911 facilities; (7) ALI databases and steering tables; (8) incorporation into the agreement of certain definitions; (9) direct interconnection to PSAPs served by the other Party; (10) rates to be charged for 911/E-911 services; (11) incorporation and application of tariff rates; (12) capping Intrado rates at Verizon rates; (13) express language regarding the waiver of charges; (14) charges billed to a Controlling 911 Authority or PSAP; (15) the right to amend the Agreement to permit the exchange of traffic other than 911/E-911 traffic; and (16) the use of the term "a caller."

According to Intrado, these sixteen issues generally fall into one of four broad categories: (1) general physical architecture issues (Arbitration Issues 1 through 4); (2) specific 911/E-911 services issues (Arbitration Issues 5 through 9); (3) pricing issues and related language (Arbitration Issues 10 through 14); and (4) miscellaneous issues (Arbitration Issues 15 and 16). *See* INT. Pet. at 10-11. Arbitration Issue 1 is a central issue to this proceeding. Both Parties acknowledge that the resolution of this issue will be dispositive in whole or in part to several of the other outstanding issues in this proceeding. Specifically, resolution of Arbitration Issue 1 regarding POIs will be dispositive to resolution of disputed language in Arbitration Issues 2, 4, 5, 8, and 10. Thus, we turn first to Arbitration Issues 1, 4 and 5.

A. Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?
Arbitration Issue 1 - Point of Interconnection and Interconnection of Verizon's Network to Intrado's Network (*911 Attachment* §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1)[16]

What terms and conditions should govern how the Parties will initiate interconnection?
Arbitration Issue 4 - Initiating Interconnection (*911 Attachment* § 1.5)

How should the Parties route 911/E-911 calls to each other?
Arbitration Issue 5 - 911/E-911 Call Routing (*911 Attachment* §§ 1.3, 1.4, 1.7.3)

1. Introduction

The crux of the Parties' interconnection dispute involves Arbitration Issue 1 and the appropriate placement of the POI(s). Resolution of Arbitration Issue 1 determines the resolution of Arbitration Issues 4 and 5 since the disputed language of Arbitration Issues 4 and 5 are fully incorporated into the disputed language of Arbitration Issue 1. The placement of the POI(s) is tied to how the Parties interconnect and how the Parties will transport and route 911/E-911 traffic. The Parties do not dispute the POI(s) on Verizon's network when Verizon serves a PSAP or is the 911/E-911 service provider. The dispute stems from whether or not the POI(s) should be on Intrado's network when Intrado serves a PSAP or is the 911/E-911 service provider. In addition, the Parties dispute whether Local Access and Transport Area ("LATA") language is appropriate. Finally, although Arbitration Issues 1 and 5 incorporate disputed Glossary language, the Department will address the Glossary language in its Arbitration Issue 8 analysis.

As explained more fully below, the Department finds that (1) any POIs established under this agreement shall be on Verizon's network; (2) certain LATA language is unnecessary and shall

[16] The ICA sections referenced are taken from the Parties' Second Stipulation – Joint Issues Matrix. These ICA sections are not intended to be exhaustive and an issue may apply to ICA sections other than those that are listed.

be deleted from the agreement; and (3) the disputed reciprocal language in *911 Attachment* § 1.5 is unnecessary and shall, therefore, be deleted from the agreement.

2. Point(s) of Interconnection

a. Intrado

When Intrado serves a PSAP, Intrado seeks an interconnection arrangement with Verizon that it asserts is essentially the same as that which currently exists between Verizon and other carriers for the transport and delivery of 911/E-911 traffic within Massachusetts when Verizon serves a PSAP. *See* INT. Pet. at 16; INT. Init. Br. at 19. When Intrado serves a PSAP, Intrado seeks to have Verizon build out dedicated trunk lines from each Verizon end office located within an Intrado-served PSAP's territory to a minimum of two "geographically diverse" POIs on Intrado's network. INT. Init. Br. at 23. This will permit 911/E-911 calls from Verizon end users to be directly routed from Verizon end offices to Intrado's selective routers, bypassing Verizon's own selective routers. *See* Intrado-proposed language ICA *911 Attachment* §§ 1.3.4(i) and (ii). Intrado indicates that it will have at least two selective routers located in Massachusetts, although its proposed language would also permit Verizon (or any other carrier) to interconnect with Intrado's network at selective routers located outside of Massachusetts. *See* INT. Init. Br. at 23. Intrado would require certain technical and delivery requirements on Verizon's side of the POI(s). *See* Intrado-proposed language ICA *911 Attachment* §§ 1.3.4(i)-(viii). Intrado asserts that its 911/E-911 interconnection network architecture proposal "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" for 911/E-911 traffic. INT. Init. Br. at 14.

Intrado's primary POI arguments stem from its analyses regarding the applicability of 47 U.S.C. §§ 251(c)(2)(B) and (C), and its contention that § 251(c), when viewed in relation with

Verizon's own 911/E-911 network architecture, permits Intrado's interconnection proposals when it is the 911/E-911 service provider. *Id*. at 8-9, 14-23. It is under § 251(c) that Intrado seeks interconnection with Verizon. *Id*. at 3-5; Tr. at 18. Intrado asserts that its interconnection proposals for when it is the 911/E-911 service provider are consistent with the purpose of § 251(c), which is "to ensure that new entrants could effectively compete" with the ILEC. INT. Init. Br. at 14. Of the four obligations required of ILECs under § 251(c), Intrado contends that § 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" (*id*. at 15) and that § 251(c)(2)(C)'s "equal in quality" requirement, when coupled with Verizon's 911/E-911 interconnection arrangements with other carriers when Verizon is the 911/E-911 service provider, requires that the POI(s) be on Intrado's network when Intrado is the 911/E-911 service provider. *Id*. at 8-9, 20-21. According to Intrado, POIs for 911/E-911 traffic are separate and distinct from POIs established for Plain Old Telephone Service ("POTS") traffic, as evidenced by Verizon's interconnection arrangements with other carriers for 911/E-911 traffic. *Id*. at 16-17, 19-20.

Intrado relies on FCC determinations in the *King County Order*[17] and *Local Competition Order*[18] and the Ohio Public Utilities Commission's decisions in the Intrado/Embarq and Intrado/CBT arbitrations[19] to support its position. Intrado states that the FCC established selective routers to be the appropriate "cost-allocation point[s]" when carriers exchange 911/E-911 traffic, even if those points are beyond the carrier's switch. *Id*. at 17-18 (citing *King County)*. Pointing to

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[17] *Revision of the Comm'n's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys. – Request of King County*, 17 FCC Rcd 14789, CC Docket No. 94-102, FCC 02-146 (rel. July 24, 2002) ("*King County Order*").

[18] *Implementation of the Local Competition Provisions in the Telecomms. Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (rel. Aug. 8, 1996) ("*Local Competition Order*").

[19] *See generally, INT/EMB Oh. Arb.*; *INT/CBT Oh. Arb*.

Verizon's interconnection arrangements when Verizon is the 911/E-911 service provider, Intrado also asserts that under the FCC's *Local Competition Order*, "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." INT. Init. Br. at 22-23 (emphasis omitted). Relying on the *Local Competition Order*, Intrado states that parties may agree to have the ILEC deliver its traffic to a different point(s) than the point(s) used by the interconnecting carrier, since "carriers do not always deliver originating traffic and receive terminating traffic at the same place." *Id*. at 15.

According to Intrado, the Ohio Public Utilities Commission determined that when Intrado serves a PSAP, then Embarq and CBT are each responsible for establishing POIs at Intrado's selective routers based on the *King County* precedent. *Id*. at 18-19. Furthermore, in addition to applying § 251(c), Intrado contends that the Ohio Public Utilities Commission found additional support for Intrado's POI proposal under § 251(a) of the Act and the Commission's "broad authority over 911 service." *Id*. at 18-19. Intrado argues that if the Department does not uphold its interconnection proposals under § 251(c), the Department may also approve its proposals pursuant to § 251(a) of the Act. *See* INT. Rep. Br. at 3-4. Intrado also asserts that the Department has the additional authority to adopt its interconnection proposals based on authority granted to state commissions pursuant to §§ 253(b), 251(e) and 706 of the Act. *See* INT. Init. Br. at 10-11.

Intrado also states that a minimum of two geographically diverse POIs on its network provides reliability and redundancy, benefitting public safety, and is consistent with industry recommendations and guidelines. *Id*. at 23. Intrado cites to an FCC recommendation in a Notice of Proposed Rulemaking ("NPRM") that 911 calls be "diversely routed" and a later NPRM where

the FCC inquired "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." *Id*. at 24. Intrado next states that its proposed language "implements best practices for diversity and redundancy," citing both the FCC's Network Reliability and Interoperability Council ("NRIC") recommendation that 911 circuits be established over "multiple, diverse interoffice facilities" rather than "over a common interoffice facility route" and the National Emergency Number Association ("NENA") 911 recommendation that "[r]eliability…is achieved through diversity and redundancy [and] [o]ne method of achieving reliability is to build redundant, diversely routed trunk groups from each end office to [sic] its 9-1-1 tandem." *Id*. (citations omitted). Intrado also refers to Verizon's own use of diversity and redundancy within its 911/E-911 network through Verizon's establishment of "dedicated trunks from each of its end offices to each selective router" and competitors' interconnection to Verizon's selective routers. *Id*. at 25.

Finally, Intrado argues that its POI proposal will not disadvantage other Massachusetts carriers and does not justify Verizon's planned use of transit arrangements to send third-party carrier 911/E-911 traffic from its selective routers over a common trunk group to Intrado. INT. Init. Br. at 27, 29. Intrado states that other Massachusetts carriers will be able to connect at any Intrado selective router in order to connect to Intrado's Massachusetts PSAP customers. *Id*. at 27. Intrado voices concern over Verizon's planned use of transit service arrangements for third-party carrier 911/E-911 traffic, claiming that "Verizon has eschewed any obligation to provide transit services under a Section 251(c) interconnection agreement…and… Verizon only 'voluntarily provides these services.'" *Id*. at 28.[20] In addition, according to Intrado, a transit service

[20] Citing Verizon Reply Comments, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 25, 26-27 (Nov. 5, 2001).

arrangement for 911/E-911 traffic would affect "quality of service, network reliability, and network efficiency." *Id*. at 29.

b. Verizon

Verizon does not dispute the general interconnection arrangement between Intrado and Verizon when Verizon is the 911/E-911 service provider. *See* VZ Pet. at 7. In fact, the Parties agree that the POIs will be on Verizon's network when Verizon is the 911/E-911 service provider. *Id*. Verizon's dispute is with Intrado's proposal that Verizon connect at (and build out to) POIs on Intrado's network when Intrado is the 911/E-911 service provider and asserts that it has no obligation under § 251(c) of the Act to establish POIs on Intrado's network. *See* VZ Init. Br. at 9-12; VZ Rep. Br. at 7-11.

Verizon responds that the POI issue "'is quite simple to decide,'" because "'[t]he law is clear and unequivocal.'" VZ Init. Br. at 10 (citing *WV Arb. Award* at 12-13). Verizon points out that Intrado seeks interconnection only under § 251(c) of the Act, and that Intrado's POI proposal would directly violate that statutory provision and the corresponding FCC rule, 47 C.F.R. § 51.305, which implements that provision, stating that POIs must be "at any technically feasible point" on the incumbent's network. VZ Init. Br. at 10-12. According to Verizon, "[t]o accept Intrado's position, the Department will have to find that there are different requirements for Section 251(c) interconnection for 911[/E-911] traffic than there are for all other traffic," since neither § 251(c) nor the FCC's implementing rules for that portion of the statute distinguish between different types of traffic. *Id*. Verizon further asserts that the FCC rule that defines "interconnection," 47 C.F.R. § 51.5, requires that carriers must exchange their traffic at the same POI. *Id*. at 12.

Verizon also contends that the four ILEC obligations established under § 251(c) each addresses "a different aspect of the interconnection relationship," and one obligation cannot cancel out the express terms of another. *Id*. at 13-15. Contrary to Intrado's assertions, Verizon contends that § 251(c)(2)(C)'s requirement does not apply to POI placement. *Id*. at 13. Specifically, Verizon asserts that § 251(c)(2)(B) addresses POI placement whereas § 251(c)(2)(C) addresses "equal in quality" requirements for technical criteria and service standards. *Id*. at 13-14. Verizon states that the language of the FCC's rules which implement §§ 251(c)(2)(B) and (C), 47 C.F.R. §§ 51.305(a)(2), (3), the FCC's determinations in the *Local Competition Order*, and the West Virginia Arbitrator's determinations further bolsters its position. *Id*. at 14-16.[21]

Furthermore, Verizon asserts that the FCC has never ruled on POIs for 911/E-911 traffic. *Id*. at 21. Responding to Intrado's use of the FCC's *King County Order*, Verizon argues that the *King County Order* cost allocation point determinations were unrelated to interconnection rights and agreements or POIs, and, in fact, the *King County Order* settled "a dispute between wireless carriers and PSAPs with respect to the allocation of costs between them" and did not address ILEC relationships with interconnecting carriers. VZ Rep. Br. at 14.

Verizon contends that there are no alternative statutory or other sources that would permit the Department to approve Intrado's POI proposals. *See* VZ Init. Br. at 21. According to Verizon, neither the general reservation of rights nor the authorized ability to "protect the public safety and

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[21] According to the West Virginia Arbitrator,

> Intrado argues that Verizon cannot use one 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…The subsection on which Intrado has hung so much of its argument [Section 251(c)(2)(C)] doesn't even apply to the location of the point of interconnection…[In addition,] Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection.

WV Arb. Award at 13.

welfare" granted to state commissions under § 253(b) of the Act can override the express provisions of § 251(c) which require the POI to be on the ILEC's network. *Id*. at 18-19. In addition, Verizon states the additional statutory authorities cited by Intrado, §§ 251(e) and 706 of the Act, are inapplicable to the placement of POIs, since "Section 251(e) addresses FCC authority over numbering administration; [and] section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability." *Id*. at 21.

Verizon asserts that Intrado's contention that the Department may use § 251(a) of the Act as authority to adopt Intrado's interconnection proposals is wrong. *See* VZ Rep. Br. at 3. Verizon argues that the Parties did not negotiate any terms under § 251(a) nor did the Parties brief their arguments regarding the applicability of § 251(a). *Id*. at 4. According to Verizon, the Department may only arbitrate issues "outside of the ILEC's obligations under [S]ections 251(b) and (c) only if the [P]arties agreed to include those issues in their negotiations"[22] and, since "Intrado did not seek negotiation of any [S]ection 251(a) terms in negotiations, so Verizon certainly could not have agreed to arbitrate any such terms." *Id*. (emphasis omitted). In other words, whether Intrado is entitled to its interconnection proposals under § 251(a) was not negotiated by the Parties and is not a disputed issue presented to the Department for arbitration.

Verizon argues that the POI issue is a legal issue and not a policy issue, that federal law requires that the POI(s) must be on Verizon's network, and that an interconnection arbitration is not the proper forum to alter the underlying 911/E-911 network infrastructure in Massachusetts. *See* VZ Init. Br. at 21-24; VZ Rep. Br. at 5. More specifically, Verizon states that the State 911

[22] Referring to the Fifth Circuit decision referenced by Intrado in its Initial Brief at 13 n.51. *CoServ Ltd. Liab. Corp. v. Southwestern Bell Tel. Co., P.U.C. of Tex.*, 350 F.2d 482, 487 (5th Cir. 2003)("[A state commission at arbitrator] is limited by the actions of the parties in conducting voluntary negotiations. It may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations.").

Department is "the agency responsible for coordinating and administering the implementation of E911 services and promulgating and verifying compliance with standards to ensure a consistent statewide approach for E911" within Massachusetts. VZ Rep. Br. at 5.

Finally, Verizon states that, contrary to Intrado's assertions, it does not plan to use "transit arrangements" to transport third-party carrier 911/E-911 traffic to Intrado, since "transit arrangements" are not used to transport third-party carrier 911/E-911 traffic. *Id*. at 19-20. According to Verizon:

> Transit service is a specifically defined offering in Verizon's interconnection agreements, under which Verizon agrees to allow an originating carrier to send traffic through Verizon's tandems for delivery to a third party carrier with which the originating carrier has no direct connection. The transit provisions for local exchange traffic are completely separate from the 911 call delivery provisions in Verizon's interconnection agreements. In fact, the transit service provisions were removed from the Intrado/Verizon draft agreement under arbitration, because the [P]arties agreed they were not relevant to Verizon's and Intrado's interconnection for 911[/E-911] service.

Id. at 19. Verizon states that, unlike "transit arrangements," it is obligated to provide "nondiscriminatory access to 911[/E-911] services," and "delivery of other carriers' 911[/E-911] traffic is…not voluntary" pursuant to § 271(c)(2)(B)(vii)(1) of the Act. *Id*. at 19-20. Furthermore, according to Verizon, the requirement to provide nondiscriminatory access to 911/E-911 services "is provided today in most cases through Verizon's selective routers … [and] 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 [this] access to 911 services." *Id*. at 20.

c. Analysis and Findings

Pursuant to § 251(a) of the Act, all telecommunications carriers have the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications

carriers." 47 U.S.C. 251(a)(1). The Act imparts four additional obligations on incumbent carriers specifically and requires incumbents to provide for interconnection with the requesting carrier's network:

> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) 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; and
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

47 U.S.C. §§ 251(c)(2)(A)-(D). Furthermore, the FCC rules implementing § 251(c)(2) state that:

> An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:
>
> (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
> (2) At any technically feasible point within the incumbent LEC's network including, at a minimum: (i) The line-side of a local switch; (ii) The trunk-side of a local switch; (iii) The trunk interconnection points for a tandem switch; (iv) Central office cross-connect points; (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and (vi) The points of access to unbundled network elements as described in § 51.319;
> (3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this 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. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and
> (4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself.

47 C.F.R. § 51.305(a)(1)-(4). Regarding technical feasibility, the FCC rule states that:

> (c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.
> (d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.
> (e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

47 C.F.R. §§ 51.305(c)-(e).

The FCC also has rules concerning where a carrier must deliver traffic originating on its network to the terminating carrier. *See GNAPS Arb. Order* at 11. These rules, which were adopted in earlier FCC orders and discussed by the FCC's Wireline Competition Bureau in its *Virginia Arbitration Order*,[23] state that:

> (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network;
> (2) competitive LECs may, at their option, interconnect with the incumbent's network at only one place in a LATA;
> (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and
> (4) competitive LECs may refuse to permit other ILECs to collocate at their facilities.

Virginia Arbitration Order at ¶ 67 (footnotes omitted). *See GNAPs Arb. Order* at 11-12.

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[23] *In re Petition of WorldCom, Inc. Pursuant to § 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Interconnection Disputes with Verizon Va. Inc., and for Expedited Arbitration, Petition of Cox Va. Telecom, Inc. Pursuant to Section 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Interconnection Disputes with Verizon-Va., Inc. and for Arbitration, and Petition of AT&T Commc'ns of Va., Inc., Pursuant to Section 252(e)(5) of the Commc'ns Act for Preemption of the Jurisdiction of the Va. Corp. Comm'n Regarding Interconnection Disputes with Verizon Va. Inc., Memorandum Opinion & Order*, CC Docket Nos. 00-218, 00-249 and 00-251, 17 FCC Rcd 27039 (rel. July 17, 2002) ("*Virginia Arbitration Order*").

The application of §§ 251(c)(2)(B) and (C) of the Act are at the crux of the Parties' POIs dispute for Arbitration Issues 1, 4 and 5. Although the FCC has not addressed interconnection of competing 911/E-911 providers, the express language of the statute, the FCC's *Local Competition Order* and corresponding rules, and the Wireline Competition Bureau's *Virginia Arbitration Order*[24] provide clear guidance.

Intrado seeks interconnection with Verizon under § 251(c) of the Act. *See* Tr. at 18; INT. Init. Br. at 3-5. Pursuant to 47 U.S.C. § 251(c)(2)(B) and 47 C.F.R. § 51.305(a), a requesting carrier seeking interconnection is entitled to interconnect directly at any technically feasible point *on the incumbent's network*. *See* 47 U.S.C. § 251(c)(2)(B) (requiring ILECs to interconnect with requesting carriers "at any technically feasible point within the carrier's network") and 47 C.F.R. § 51.305(a) (stating "[a]n incumbent LEC shall provide, for the facilities and equipment of any

[24] Given that the *Virginia Arbitration Order* was an FCC Bureau decision rather than a Commission decision, it is necessary for the Department to comment on the weight that it is given in this case. The FCC's Wireline Competition Bureau preempted the jurisdiction of the Virginia Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WorldCom, Inc. ("WorldCom"), Cox Virginia Telecom, Inc. ("Cox"), and AT&T Communications of Virginia, Inc., and issued its *Virginia Arbitration Order* standing in place of the Virginia Corporation Commission. Thus, the *Virginia Arbitration Order* is more analogous to a state commission decision than an order issued by the FCC. *See GNAPs Arb. Order* at 12. As indicated in Section VI, the Department generally does not find other state commission decisions to be dispositive to arbitration proceedings conducted in Massachusetts. *Id.* Although the Wireline Competition Bureau explicitly stated that it was acting in place of the Virginia Corporation Commission, the Department nonetheless finds it reasonable to place greater weight on the Bureau's interpretation of the intent and application of FCC rules than it would for another state commission's interpretation of the same FCC rules because the FCC Bureau's staff have access to institutional knowledge of the development of the rules, which is invaluable in interpreting them. *Id.* at 13. The FCC's Wireline Competition Bureau also did not consider Virginia law when it rendered its decision. *Id.* Thus, potential conflicts between another state's law and Massachusetts law are absent. *Id.* Accordingly, the Department finds the *Virginia Arbitration Order* to be persuasive authority. *Id. See Investigation by the Dep't of Telecomms. & Energy on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass.*, D.T.E. 06-61, *Order*, at 20 n.13 (rel. Jan. 30, 2007) ("The *Virginia Arbitration Order* was issued by the Wireline Competition Bureau of the FCC acting in place of the Virginia State Corporation Commission and, therefore, does not have the same precedential effect as an FCC commission-level Order."). It is not, however, binding on the Department because it is not an FCC mandate. *GNAPs Arb. Order* at 12. In contrast, in D.P.U./D.T.E. 97-88/97-18-A [Phase II] (Aug. 8, 2001) ("*Payphone Reconsideration Order*"), the Department found that the FCC Common Carrier Bureau's decision in *In re Wisconsin Pub. Serv. Comm'n Order Directing Filings*, 14 FCC Rcd. 9978 (Com. Car. Bur. 2000) ("*Wisconsin Order*") was binding on state regulators, unless stayed or reversed. Unlike the *Wisconsin Order*, the *Virginia Arbitration Order* is an arbitration decision issued by the Wireline Competition Bureau acting on behalf of the Virginia Corporation Commission. Thus, it is appropriate to consider the *Virginia Arbitration Order* persuasive, but not binding, authority.

requesting telecommunications carrier, interconnection with the incumbent LEC's network … [a]t any technically feasible point *within the incumbent LEC's network*[.]")(emphasis added). Neither the statute nor the FCC's implementing rules differentiate between different types of traffic, including 911/E-911 traffic.[25] Contrary to Intrado's assertions, there is no ambiguity within this statutory provision and implementing rules, which require that the POI must be within the incumbent's network, unless the parties agree otherwise.[26]

In addition, we find that the "equal in quality" requirement imposed upon an incumbent under § 251(c)(2)(C) of the Act, which Intrado cites as support for its POI proposal, does not override the § 251(c)(2)(B) POI obligation, which requires that interconnection be on the incumbent's network. *See* 47 U.S.C. § 251(c)(2)(C) (stating that the ILEC must provide 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 C.F.R. § 51.305(a) ("An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network … [t]hat is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this 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. This obligation is not limited to a

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[25] Verizon is correct that the *King County Order* is inapplicable to the current arbitration. *See* VZ Rep. Br. at 14. The situations are not analogous. *King County* resolved a dispute between wireless carriers and PSAPs with respect to the allocation of 911/E-911 traffic costs between them and is, contrary to Intrado's assertions, unrelated to interconnection obligations between carriers. *See King County Order* at ¶ 1.

[26] Competitive carriers also can request to establish meet-point arrangements for interconnection, whereby some build-out by the ILEC may be required. *See Local Competition Order* at ¶ 553 ("[A]lthough the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3)."). However, Intrado did not agree to this type of interconnection. *See* INT. Hicks Pref. Test. at 17; Tr. at 44-50.

consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier.”).

As noted above, § 251(c) of the Act imposes four obligations on incumbent carriers. Contrary to Intrado’s claims, those obligations are not interchangeable. The Department agrees with Verizon that those obligations each address “a different aspect of the interconnection relationship” between ILECs and requesting carriers. VZ Init. Br. at 13. The Department further agrees with Verizon that 47 U.S.C. § 251(c)(2)(B) and 47 C.F.R. § 51.305(a)(2) address the placement of POIs, whereas 47 U.S.C. § 251(c)(2)(C) and 47 C.F.R. § 51.305(a)(3) address *technical criteria* and *service standards* (i.e., service quality). *Id*. at 13-18 (emphasis added). This is further bolstered by the fact that the FCC addresses these two statutory provisions separately in its *Local Competition Order*. *See Local Competition Order* at ¶¶ 181-225. As Verizon points out,

> 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 [and the] equal-in-quality requirement is discussed later, in the “Interconnection that is Equal in Quality” portion of the Order.

VZ Init. Br. at 14. The “equal in quality” obligations require that the incumbent maintain the same quality of service at the POI(s) as the incumbent maintains for itself and others. Thus, the Department finds that Intrado’s position that the “equal in quality” statutory requirement imposed by 47 U.S.C. § 251(c)(2)(C) overrides the statutory POI requirement imposed by 47 U.S.C. § 251(c)(2)(B) is an unreasonable interpretation.

The Department is not persuaded by Intrado that the authority granted to the Department pursuant to 47 U.S.C. §§ 251(3), 706 and 253(b) supports Intrado’s interconnection proposals. *See* INT. Init. Br. at 10-11. The Department agrees with Verizon that we are bound by the express

provisions concerning interconnection set forth elsewhere in the Act (i.e., § 251(c)(2)(B)). *See* VZ Init. Br. at 19. In addition, the Department agrees with Verizon that §§ 251(e) and 706 of the Act are inapplicable to the placement of POIs and interconnection obligations under § 251(c), since "Section 251(e) addresses FCC authority over numbering administration; [and] section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability." VZ Init. Br. at 21. Moreover, regarding § 253(b) of the Act, this Section grants to states the authority to adopt "requirements necessary to…protect the public safety and welfare." 47 U.S.C. § 253(b). According to Intrado, "911/E-911 services are unique" and the interconnection arrangements that it seeks "are critical to issues of reliability, redundancy, and minimizing points of failure for 911/E-911 services." INT. Init. Br. at 13. Specifically, Intrado states that a minimum of two geographically diverse POIs on its network provides reliability and redundancy, benefits public safety, and is consistent with industry recommendations and guidelines. *Id.* at 23-25. The Department agrees that reliability and redundancy for 911/E911 traffic may be critical for public safety and that interconnection arrangements should not be inconsistent with industry standards, but the Department is bound by the express provisions concerning interconnection set forth elsewhere in the Act (i.e., § 251(c)(2)(B)). Even if the Department was not bound by the express provisions of the Act, the Department agrees with Verizon that the record does not establish that requiring the POI(s) on Verizon's network harms public safety or is inconsistent with industry standards.

As Verizon points out, issues of public safety in the design of the 911/E911 network in Massachusetts are the responsibility of the State 911 Department. *See* VZ Init. Br. at 4; G. L. c. 6A, § 18B-I. The State 911 Department is responsible for the overseeing the design, construction, and maintenance of the 911/E911 network, as well as for promulgating and administering

standards for the provision of 911/E-911 services. *See* VZ Panel Pref. Test. at 17; G. L. c. 6A §§ 18B(d) and 18D(c); 560 CMR App. A "Standards for Enhanced 911." In contrast, the Department's role is to oversee the funding of 911/E-911 services to ensure that the surcharge on wireline and wireless carriers is reasonable and balances the interests of telephone customers and the State 911 Department. *See* G. L. chs. 6A, 159 and 166.

The Department is also not persuaded by Intrado's arguments that the Department can alternatively rely on § 251(a) of the Act to support Intrado's interconnection proposals. *See* INT Init. Br. at 18-19; INT Rep. Br. at 3-4. Intrado specifically seeks § 251(c) interconnection, not interconnection under § 251(a). *See* Tr. at 18; INT Init. Br. at 3-5. Therefore, as it will not address Verizon's "threshold" issue since it was not raised as a disputed issue, neither will the Department address the applicability of § 251(a) for the same reasons. The Department does not dispute that it has the "authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c)" (INT. Rep. Br., at 7), but it notes that the West Virginia Arbitrator is correct that "[a] request for arbitration of a Section 251(c) interconnection request must be arbitrated *in toto* as a Section 251(c) arbitration request." *WV Arb. Award* at 15.

Finally, the Department finds Intrado's "transit arrangement" concerns to be without merit since Verizon is required to transport 911/E-911 traffic from third-party carriers to the Parties' POI(s). As Verizon concedes, "transit arrangements" are not used to transport third-party carrier 911/E-911 traffic, and it is required to provide "nondiscriminatory access to 911[/E-911] services," and "delivery of other carriers' 911[/E-911] traffic is…not voluntary" pursuant to 47 U.S.C. § 271(c)(2)(B)(vii)(1). VZ Rep. Br. at 19, 20. The Department notes that pursuant to § 251(a) of the Act, all telecommunications carriers have "the duty … to interconnect *directly or indirectly* with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(emphasis

added). The FCC has found that "indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an [ILEC's] network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)." *Local Competition Order* at ¶ 997. Thus, unless and until Intrado establishes direct interconnection with third-party carriers that currently send 911/E-911 traffic through Verizon's network, then those carriers are permitted to continue to indirectly interconnect with Intrado through Verizon's selective routers, pursuant to 47 U.S.C. § 251(a) and the FCC's *Local Competition Order*.

For all of the reasons discussed above, the Department rejects Intrado's network architecture proposals and adopts Verizon's proposals for Arbitration Issues 1, 4 and 5, unless otherwise indicated below. Specifically, the Department adopts Verizon's proposed POI language in *911 Attachment* §§ 1.3.1, 1.4.1, 1.4.2, 1.5.2, and 1.7.3. In addition, the Department rejects Intrado's proposed *911 Attachment* §§ 1.3.2, 1.3.2.1-1.3.2.3, 1.3.4(i)-(viii), 1.3.5, 1.3.6, 1.4.2.1, and 1.4.2.2, and adopts Verizon's proposed §§ 1.3.2, 1.3.3.[27] Finally, because the Parties indicate that there may be instances where misrouted 911/E-911 calls may need to be transferred between the Parties' networks, the Department adopts Intrado's proposed heading for *911 Attachment* § 1.3, which states "Interconnection for Exchange of 911/E-911 Calls between the Parties."

3. Applicability of LATA Language

a. Intrado

Intrado asserts that "LATA boundaries are inapplicable" to 911/E-911 services and traffic. INT. Init. Br. at 25. Intrado points to an FCC and federal district court decision subsequent to the Modification of Final Judgment ("MFJ") (where the Bell Operating Companies ("BOCs") were

[27] This determination does not apply to incorporation of Intrado's proposed "ANI" language within the agreement, which is discussed under Arbitration Issue 8.

divested from AT&T) permitting the BOCs to provide "'using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary.'" *Id.*[28] In addition, Intrado points to the fact that Verizon is not restricted from carrying *any* traffic, and currently carries 911/E-911 traffic, across LATA boundaries. *Id.* at 26.[29]

b. Verizon

For Verizon, the LATA language in the agreement is inherently linked to the POIs issue. *See* Tr. at 122-123. It is Verizon's assertion that, since a § 251(c) interconnection agreement requires that POIs be on the incumbent's network and not on a competitor's network, language specifying the Parties' obligations for establishment of POIs in different LATAs is necessary. *See* VZ Rep. Br. at 16-17. Verizon's witness D'Amico stated that Verizon's network architecture is LATA-based, and when CLECs seek interconnection for their local exchange traffic on Verizon's network, then CLECs interconnect in each LATA. *See* Tr. at 122-123. Consistent with this position, Verizon's template interconnection agreement requires a CLEC "to interconnect with Verizon at a technically feasible point of interconnection on Verizon's network in each LATA or at a fiber meet point in each LATA." RR Resp.-3 D.T.C.-VZ.

With regard to Verizon's proposed ICA provisions, POI(s) are established:

> on Verizon's network in each LATA in which Verizon End Users originate 911/E-911 Calls bound to a PSAP for which Intrado Comm is the 911/E-911 Service Provider, so that Verizon may deliver such Verizon End User 911/E-911 Calls to

[28] Intrado incorrectly cites to a district court's 1984 decision for this quote. *See* INT. Init. Br. at 25 n.122. According to the FCC decision cited by Intrado in its Initial Brief at 25 n.121, this statement actually comes from the district court's 1989 decision. *Bell Operating Cos.; Petitions for Forbearance from the Application of § 272 of the Commc'ns Act of 1934, as amended, to Certain Activities*, Memorandum Opinion & Order, 13 FCC Rcd 2627, CC Docket No. 96-149, DA 98-220, ¶ 25 (rel. February 6, 1998)("*FCC 1998 BOC Order*"), citing *U.S. v. Western Elec. Co.*, Civil Action No. 82-0192, slip op. at 1 (D.D.C. Feb. 2, 1989).

[29] Citing *Application of Verizon New England Inc., Bell Atlantic Commc'ns, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Co. (d/b/a Verizon Enter. Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Mass.*, Memorandum Opinion & Order, 16 FCC Rcd 8988, CC Docket No. 01-9, FCC 01-130 (rel. Apr. 16, 2001).

> Intrado Comm in the LATA in which the 911/E-911 Calls originate. Verizon shall have no obligation, and may decline: (a) to transport 911/E-911 Calls from one LATA to another LATA; and, (b) to provide interLATA facilities or services to transport 911/E-911 Calls.[30]

Verizon's witness Conroy testified that this language is included only in relation to where Intrado will place its POI(s). Tr. at 126-127. In addition, Verizon's attorney specified that:

> because Intrado would be interconnecting on Verizon's network, at the moment that the call reaches Intrado's network it would be by definition impossible for [Verizon] to be crossing a LATA. To the extent that a LATA needs to be crossed, it would be Intrado that would be doing the crossing … [b]ecause now it's on Intrado's network.

Id. at 128-129. In its Record Request responses to the Department, however, Verizon indicates that it operates:

> what are in practice two separate 911[/E-911] network[s]…The Verizon 911[/E-911] network in eastern and central MA serves primarily LATA 128. The Verizon 911[/E-911] network in western MA serves primarily LATA 126…there is some limited cross LATA coverage by each network, each network is largely coextensive with the LATA it serves and Intrado will need to interconnect with Verizon in each LATA.

RR Resp.-3 D.T.C.-VZ.

c. Analysis and Findings

The Department disagrees with Intrado that "LATA boundaries are inapplicable" to 911/E-911 services and traffic, in that LATAs are the established demarcation points for interconnection on carrier networks. Verizon is correct that while 911/E-911 calls and services "may cross LATA boundaries," this has "nothing to do with placement of POIs in a section 251(c) interconnection agreement." VZ Rep. Br. at 16-17. The FCC has determined that competitive carriers intending to provide service must interconnect with the incumbent's network at a single point *in each LATA*. *See Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking,*

[30] This language is found in the *911 Attachment* §§ 1.3.3 and 1.4.1. Any analysis referencing this particular language applies equally to these sections as well as to any other sections in which this language may be located.

Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650, CC Docket No. 01-92, FCC 01-32, ¶¶ 72, 112 (rel. Apr. 27, 2001)("*Intercarrier Compensation NPRM*")*;* *Virginia Arbitration Order* at ¶¶ 52, 67. Since the Department has already determined that Intrado is required to establish its POI(s) on Verizon's network, then Intrado will be required to interconnect to Verizon's network at POI(s) in one or both Massachusetts LATAs.

Verizon indicates that some cross-LATA coverage of certain 911/E-911 calls exists. *See* RR Resp.-3 D.T.C.-VZ. In Massachusetts, for instance, some Verizon end users are located in a LATA different from that of the PSAP(s) that serve them. *See* Tr. at 125-129. Furthermore, one mated pair of Verizon's selective routers is located in two different LATAs. *See* Tr. at 146. For this pair of selective routers, Verizon's negotiated routing plan with the State 911 Department indicates that if calls are blocked to the "primary" selective router in one LATA, then those calls will be routed to the "secondary" selective router in the other LATA.[31] *See* Tr. at 117. In addition, wireless calls are more likely than wireline calls to be misrouted to the incorrect PSAP, therefore needing to be rerouted. *See* VZ Panel Pref. Test. at 33; INT. Hicks Pref. Test. at 52-53; Tr. at 125-133.[32] If this occurs near a LATA boundary, then, these wireless calls are likely to be routed between different LATAs. *See* INT. Hicks Pref. Test. at 52-53.

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[31] Verizon's Northampton selective router is "mated" with Verizon's Westboro selective router as a mated pair, and the Wakefield and Medfield selective routers are the other mated pair within Massachusetts. Tr. at 82 and 146-147. The Northampton selective router is located in LATA 126, whereas the Westboro selective router is located in LATA 128. Tr. at 146. If, for instance, a Verizon end user in Chester dialed "911," then the Northampton selective router would be the "primary" selective router to the end office connected to that end user, and the Westboro selective router would be the "secondary" selective router to that end office. That is, if all of the trunks connecting the end office to the "primary" selective router in LATA 126 were busy when trying to route the 911 call, then the system would next try to route the Chester call to the "secondary" selective router in LATA 128. *Id*. at 117. Therefore, the 911/E-911 call would be transported to a LATA different from that which the 911/E-911 call originated, and Verizon would have transported the call from one LATA (LATA 126) to another LATA (LATA 128).

[32] For instance, Intrado's witness Hicks specifies that:

> Wireless call routing is typically accomplished based on the cell tower and sector detecting the greatest signal strength from the wireless caller's device. Wireless service boundaries do not perfectly align with the jurisdictional boundary of the PSAP receiving the initial 911 call. The caller

As indicated above, Verizon has proposed language whereby POI(s) are established:

> on Verizon's network in each LATA in which Verizon End Users originate 911/E-911 Calls bound to a PSAP for which Intrado Comm is the 911/E-911 Service Provider, so that Verizon may deliver such Verizon End User 911/E-911 Calls to Intrado Comm in the LATA in which the 911/E-911 Calls originate. Verizon shall have no obligation, and may decline: (a) to transport 911/E-911 Calls from one LATA to another LATA; and, (b) to provide interLATA facilities or services to transport 911/E-911 Calls.

911 Attachment § 1.3.3; *911 Attachment* § 1.4.1.[33] Verizon's witness D'Amico indicated that this language was a response to Intrado's POI proposals,[34] and Verizon's attorney stated that "at the moment that the call reaches Intrado's network it would be by definition impossible for [V]erizon to be crossing a LATA." Tr. at 126-129. If, as Verizon's witness and attorney state, this language is unnecessary in the event the Department adopts Verizon's POI(s) language, which the Department has done, then this language need not be incorporated into the agreement. As such, the Department finds that the Parties shall delete these provisions from *911 Attachment* §§ 1.3.3 and 1.4.1 and any other corresponding language that mirrors them.

Accordingly, the Department rejects Intrado's LATA proposals and adopts Verizon's proposed LATA position and adopts Verizon's proposed LATA language for Arbitration Issues 1, 4 and 5, except as otherwise specified. Specifically, the Parties shall incorporate Verizon's proposed LATA language in *911 Attachment* §§ 1.3.2, 1.3.3 (first paragraph), 1.4.1 (first paragraph), 1.4.2, 1.5, 1.6.2, 1.7.3, and 2.3.1.

> may be mobile and may move into another PSAP's serving area during the duration of the call. It is not uncommon for the PSAP receiving this transient type of call to transfer the caller to the PSAP that would be responsible for delivering emergency assistance to the caller's final location.

INT. Hicks Pref. Test. at 52-53.

[33] Although the Department indicates that this language is found in the *911 Attachment* §§ 1.3.3 and 1.4.1, any analysis referencing this particular language applies equally to these sections as well as to any other sections in which this language may be located.

[34] The particular provision that Verizon's witness D'Amico addressed was *911 Attachment* § 1.3.3. However, since this language is almost identical to one paragraph in § 1.4.1, then this analysis is equally applicable to both.

4. Reciprocity

a. Intrado

Intrado indicates that resolution of the POI(s) issue in Arbitration Issue 1 will determine the appropriate POI(s) language in Arbitration Issue 4. *See* INT. Init. Br. at 37 n.181. If the Department permits POI(s) to be on Intrado's network, then Intrado seeks reciprocity for the type of notices and information required by Verizon for when Intrado interconnects on Verizon's network. *Id*. at 37. The LATA language would still be in dispute. *Id*. at 26, 37 n.181.

b. Verizon

Verizon's Arbitration Issue 4 arguments correspond to Intrado's recognition that resolution of the POI(s) issue in Arbitration Issue 1 determines the resolution of the reciprocity issue of Arbitration Issue 4. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25. Verizon contends that Intrado's proposed language is based on the premise that the Department will permit POI(s) to be established on Intrado's network under the agreement. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25. According to Verizon, if the Department approves Verizon's proposed POI(s) language under Arbitration Issue 1, then it must also approve Verizon's POI(s) language in Arbitration Issue 4. *See* VZ Init. Br. at 28-29; VZ Rep. Br. at 25.

c. Analysis and Findings

Intrado seeks reciprocity of language to the extent that its interconnection proposals are adopted. *See* INT. Init. Br. at 37. Because the Department adopts Verizon's proposed POI(s) and LATA language, the inclusion of reciprocal language in *911 Attachment* § 1.5 is unnecessary. Accordingly, the Department rejects Intrado's proposed language and the Parties shall adopt Verizon's language for this section.

B. 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?
Arbitration Issue 2 - Inter-Selective Router Trunking (*911 Attachment* § 1.4)

1. Introduction

Arbitration Issue 2 is essentially resolved by the Department's determinations for Arbitration Issue 1. However, the issue involving dial plan language under Intrado's proposed *911 Attachment* § 1.4.4 still requires resolution. Accordingly, several of the Parties' inter-selective routing arguments need not be addressed, and the Department's analysis of Arbitration Issue 2 will focus on the disputed dial plan language. For the reasons set forth below, the Parties shall incorporate modified dial plan language into their ICA.

2. Positions of the Parties

a. Intrado

Intrado recognizes that resolution of Arbitration Issue 1 essentially determines the resolution of Arbitration Issue 4 to the extent that the Parties' language "refers to the location of the POI[s]." INT. Init. Br. at 30 n.144. Intrado notes, however, that the Department's resolution of Arbitration Issue 1 does not affect the Parties' dispute in regards to the exchange of dial plan information. *Id*.

According to Intrado, inter-selective router trunking allows 911/E-911 calls to be transferred between PSAPs through selective routers. *Id*. at 30. In addition, Intrado asserts that inter-selective router trunking permits the identifying ANI and ALI information of a 911/E-911 call to be transferred between PSAPs. *Id*.; Second Jt. Iss. Mat. at 12. Intrado states that both Parties "should be required to maintain appropriate updates and routing translations for 911/E-911 services and call transfers." Second Jt. Iss. Mat. at 13.

Through its proposed *911 Attachment* § 1.4.4, Intrado seeks to have both Parties "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." Intrado asserts that these dial plans are used to determine which PSAP the 911/E-911 calls are to be routed to based upon the route number sent with the transferred call. *See* INT. Init. Br. at 33. According to Intrado, notification by each Party of dial plan changes "ensures interoperability between the Parties' networks." *Id*. at 34. Intrado states that, contrary to Verizon's assertions, its proposed dial plan language is not excessive and points out that the West Virginia Arbitrator's decision and the Illinois Commerce Commission's staff recommendations support Intrado's position on this particular issue. *Id*.; *WV Arb. Award* at 16-17 (finding "[g]iven that both parties agreed that dial plans are needed, it appears that some language modification is all that is necessary to render [that section] of the *911 Attachment* acceptable."); Illinois Stewart Staff Test., *INT/VZ Ill. Arb.*, at 8 (filed Dec. 19, 2008) (determining that Intrado's proposed language "seems reasonable and not 'excessive'").

b. Verizon

Verizon contends that Intrado's proposed language assumes that POIs will be established on Intrado's network. *See* VZ Init. Br. at 25. Like Intrado, Verizon agrees that resolution of Arbitration Issue 1 will determine the resolution of Arbitration Issue 2, to the extent that the language involves POI placement. *Id*.; Second Jt. Iss. Mat. at 13.

Verizon supports inter-selective router trunking between the Parties' networks, as long as the POIs are on Verizon's network, and agrees 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 Init. Br. at 24. In fact, Verizon states that, "[t]he parties do not disagree

about the merits of selective router trunking … interconnection between Verizon and Intrado for ***all*** 911[/E-911] calls can and should be accomplished by means of trunking between selective routers." VZ Rep. Br. at 20. Verizon agrees that there is a need for both Parties "to maintain a comprehensive dialing plan to enable the transfer of 911[/E-911] calls among PSAPs." IR Resp. D.T.C. – VZ 1-5(a).

Verizon's main contention is that Intrado seeks an "excessive level" of dial plan detail. VZ Rep. Br. at 21, 22, 23; Second Jt. Iss. Mat. at 14. According to Verizon, Intrado's proposed language is "excessive," since "establishment and maintenance of an inter-Selective Router dialing plan is complex and will require collaboration between the State 911 Department, PSAPs, Verizon and Intrado." IR Resp. D.T.C. – VZ 1-5(a). Verizon states, however, that it "does not object to participating in this collaborative effort; maintaining documented dialing plans; sharing such documentation with Intrado or notifying Intrado if a Verizon served PSAP initiates changes." *Id.* Verizon also indicates that it is willing to provide the same type of dial plan information that it currently shares with other providers that do not have express interconnection agreement provisions. *See* VZ Init. Br. at 26; VZ Rep. Br. at 21. Finally, Verizon states that it "understood Intrado's proposal to require Verizon to incorporate into the Interconnection Agreement the specific details of very customized and ever-changing dialing plans specific to end users" and that "if Intrado's proposed language is solely its proposed *911 Attachment* [S]ection 1.4.4, and if Intrado does not interpret that language to require actual dial plan details in the contract, it may be acceptable to Verizon." IR Resp. D.T.C. – VZ 1-5(b).

3. <u>Analysis and Findings</u>

Here, the issue is not whether the Parties should share dial plan information. Rather, the issue is the specific dial plan language that Intrado has proposed. *See* INT Init. Br. at 30; VZ Rep.

Br. at 21, 22, 23; Second Jt. Iss. Mat. at 14; IR Resp. D.T.C. – VZ 1-5(b). Both Parties support inter-selective routing between their networks in order to facilitate inter-PSAP call transfers (*See* INT Init. Br. at 30; VZ Init. Br. at 24); and both Parties specify that maintenance of dial plans is necessary in order to enable inter-PSAP 911/E-911 call transfers. *See* INT Init. Br. at 33-34; IR Resp. D.T.C. – VZ 1-5(a). In addition, the Parties have agreed to language to work together to transfer 911/E-911 calls between PSAPs where PSAPs have agreed to transfer 911/E-911 calls between themselves. *See 911 Attachment* § 1.4.1. Furthermore, Verizon already shares dial plan information with other carriers.[35] *See* VZ Init. Br. at 26; VZ Rep. Br. at 21.

For these reasons, and since Verizon indicates that it is not opposed to incorporation of dial plan language within the contract, the Department determines that inclusion of certain dial plan language within the interconnection agreement is appropriate. The West Virginia Arbitrator required that the Parties incorporate modified dial plan language into their West Virginia interconnection agreement, and that modified language was not deemed by Verizon to be "excessive" in either the instant proceeding or in the West Virginia arbitration. *See WV Arb. Award* at 16-17; *INT/VZ WV Arb.* In addition, Intrado relies on the West Virginia Arbitrator's decision as support for its dial plan language position. *See* INT. Init. Br. at 34. As a result, the Department finds that the language approved by the West Virginia Arbitrator is reasonable. Therefore, the Parties shall incorporate the following language as § 1.4.4 in the *911 Attachment* of their interconnection Agreement:

> The Parties will maintain appropriate dial plans to support inter-PSAP call transfer and shall notify each other of changes, additions or deletions to those dial plans.

[35] The Department does note a key difference between Verizon's typical § 251(c) arrangements in Massachusetts and the arrangement that will exist with Intrado. Unlike Verizon's typical carrier arrangements where carriers transport all of their end users' 911/E-911 calls to Verizon, Verizon will likely be transferring, at a minimum, misdirected 911/E-911 calls to Intrado's network, and vice versa.

C. Whether the forecasting provisions should be reciprocal?
Arbitration Issue 3 - Joint Forecasting (*911 Attachment* § 1.6.2)

1. Introduction

The Parties' proposed interconnection agreement includes a section entitled "Trunk Forecasting Requirements." *911 Attachment* § 1.6. The Parties do not dispute the language in *911 Attachment* § 1.6.1 entitled "Initial Trunk Forecasting Requirements," whereby Intrado is required to provide to Verizon a two-year traffic forecast before initiating interconnection with Verizon in a LATA. The dispute arises from Verizon's proposed language in *911 Attachment* § 1.6.2 entitled "Ongoing Trunk Forecast Requirements," whereby Intrado modified the language in order to make reciprocal Verizon's semi-annual trunk forecast requirements. For the reasons set forth below, the Department finds that the Parties shall incorporate Verizon's proposed language for *911 Attachment* § 1.6.2.

2. Positions of the Parties

a. Intrado

Intrado states that resolution of this issue is unrelated to the Department's resolution of Arbitration Issue 1. *See* INT. Init. Br. at 34 n.171. Intrado asserts that it has a "legitimate need" for Verizon trunk forecasts since it is important for Intrado to be able to "size trunk groups properly." *Id*. at 35-36. According to Intrado, Verizon's trunk forecasts would alert Intrado to any Verizon switch consolidation plans and anticipated line growth expectations, which "can significantly affect 911[/E-911] trunk quantity needs," in order to enable Intrado to "engineer, furnish, and install the equipment necessary to accommodate such growth." *Id*. at 35. Intrado also asserts that such forecasting is necessary because 911/E-911 calls will flow between the Parties' networks due, in large part, to misrouted wireless calls, and because it would account for possible

call blockages to Intrado's network from Verizon's network. *Id*. at 36-37. Intrado contends that this latter information (call blockages) is especially necessary for appropriately sizing trunk groups since, otherwise, many 911/E-911 callers fail to report any uncompleted calls. *Id*.; INT. Rep. Br. at 15. Intrado relies on Illinois staff recommendations, which supported Intrado's proposed language. *See* INT. Init. Br. at 36; *INT/VZ Ill. Arb.*

Intrado also argues that other interconnection agreement provisions, namely *911 Attachment* § 1.5.5, are not sufficient to cover the information that Intrado would otherwise be able to garner through reciprocal forecasting under *911 Attachment* § 1.6.2. *See* INT. Init. Br. at 35-36.

b. Verizon

Verizon argues that reciprocal language would serve "no useful purpose and would impose an unnecessary burden on Verizon." VZ Init. Br. at 27. Verizon asserts that Intrado is better positioned to determine the number and size of trunk groups that it will require on Verizon's network because Verizon is unable to predict what Intrado's market success will be and, furthermore, Intrado's PSAP customers will best know the call volumes based on historical data when Verizon served the PSAPs. *Id*.; VZ Rep. Br. at 24. Verizon relies on the West Virginia Arbitrator's determination in support of its position. *See* VZ Init. Br. at 27; VZ Rep. Br. at 24; *WV Arb. Award* at 19 (finding Verizon's arguments "reasonable" and that PSAPs "are in the best position to assess the number of misdirected calls which they receive" and, further, "if there is every a point when Intrado believes that it is not receiving adequate traffic and usage data on trunk groups, it can avail itself of the opportunity provided by Section 1.5.5"). Finally, Verizon points out that it submits monthly and quarterly service reports, including network performance reports, to the State 911 Department pursuant to its 911/E-911 contract with the state, and that these reports

are available to the public at the discretion of the State 911 Department. *See* RR Resp.-4 D.T.C.-VZ.

Verizon also argues that Intrado's needs will be fully met through the Parties' agreed upon language in § 1.5.5 of the *911 Attachment*. *See* VZ Init. Br. at 28.

3. Analysis and Findings

The Parties have agreed upon language in *911 Attachment* § 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.

In addition, the record indicates that Verizon submits monthly and quarterly service reports, including network performance reports, to the State 911 Department pursuant to its 911/E-911 contract with the state, and that these reports are available to the public at the discretion of the State 911 Department. *See* RR Response-4 D.T.C.-Verizon. Intrado may obtain this data from the State 911 Department as necessary.

The Department agrees with Verizon that PSAPs (or the State 911 Department) will be able to provide Intrado with misdirected call information. *See* VZ Init. Br. at 27; VZ Rep. Br. at 24. To the extent that Intrado will need certain other traffic and usage data, the Department finds that Intrado's need is sufficiently met through the agreed-upon language of *911 Attachment* § 1.5.5 and information that it may obtain from the State 911 Department. Therefore, the Department finds that Verizon's proposed language in *911 Attachment* § 1.6.2 is reasonable, and the Parties shall adopt it in the interconnection agreement.

D. Whether *911 Attachment* § 1.1.1 should include reciprocal language describing both Parties' 911/E-911 facilities?
Arbitration Issue 6 - Components of 911/E-911 System (*911 Attachment* § 1.1.1)

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?
Arbitration Issue 16 - Use of Term "a caller" (*911 Attachment* § 1.1.1)

1. Introduction

Arbitration Issues 6 and 16, although unrelated, involve disputed language located in different portions of the same paragraph (*911 Attachment* § 1.1.1). Arbitration Issue 6 involves a description of components of each Party's 911/E-911 network. The Parties do not dispute the description of Intrado's network components. The dispute involves the description of components of Verizon's 911/E-911 network. Arbitration Issue 16 involves whether or not *911 Attachment* § 1.1.1 should incorporate the term "a caller." For the reasons set forth below, the Parties shall incorporate Intrado's proposed network components descriptive language and delete the term "a caller" from *911 Attachment* § 1.1.1.

2. Network Components Descriptive Language

a. Intrado

Intrado does not dispute Verizon's proposed language that describes components of Intrado's 911/E-911 network. *See* INT. Init. Br. at 47. Intrado disputes Verizon's description of components of its own 911/E-911 network architecture and contends that Verizon's description "erroneously describes the access from Verizon end users as part of the Verizon network." *Id*. In addition, Intrado argues that since there is a sentence "that describes the service, equipment, and software that Intrado … will provide and maintain when [it] is the 911/E-911 service provider," then Verizon's descriptive language of its own network elements should be reciprocal and identical. *Id*.; Second Jt. Iss. Mat. at 21. Intrado relies on the West Virginia Arbitrator's

determination in support of its position. *See* INT. Init. Br.at 47; *WV Arb. Award* at 20-21 (finding that Intrado's proposed sentence "is benign and there is no reason for it not to be included").

b. Verizon

Verizon does not oppose inclusion of language which it views as "accurately" describing components of its 911/E-911 network. INT. Init. Br. at 42; Second Jt. Iss. Mat. at 21. However, Verizon opposes Intrado's language, arguing that it is "vague as to the function" of Verizon's selective routers and asserts that this vagueness is "in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement another routing method." VZ Init. Br. at 42. Verizon contends that its proposed language "accurately describes the key function" performed by its selective routers which is "routing calls from the Verizon end offices … to PSAPs." *Id*.

c. Analysis and Findings

The undisputed portion of the Arbitration Issue 6 language in *911 Attachment* § 1.1.1 provides a general description of Intrado's proposed 911/E-911 service offering and network and states:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm provides and maintains such equipment and software at the Intrado Comm 911 Tandem/Selective Router(s) and, if Intrado Comm manages the ALI Database, the ALI Database, as is necessary for 911/E-911 Calls.

This language was proposed by Verizon. *See* INT Init. Br. at 47. Intrado seeks only the same general language to describe Verizon's 911/E-911 service offering and network. *Id*.; Second Jt. Iss. Mat. at 21. If the Department adopted Intrado's proposed language, it would read:

> For areas where Verizon is the 911/E-911 Service Provider, <u>Verizon provides and maintains such equipment and software at the 911 Tandem/Selective Router(s) or selective router(s) and</u>, if Verizon manages the ALI Database, the ALI Database, as is necessary for 911/E-911 Calls.

(emphasis added). While Verizon does not oppose the incorporation of a description, Verizon is opposed to a similar general description of its own 911/E-911 network architecture and seeks to incorporate a more specific description of the "key function" of its selective routers. VZ Init. Br. at 42. Verizon proposes language in *911 Attachment* § 1.1.1 that states:

> For areas where Verizon is the 911/E-911 Service Provider, Verizon provides and maintains (a) Verizon 911 Tandem/Selective Router(s) <u>for routing 911/E-911 Calls from Verizon End Offices to PSAP(s)</u> and (b), if Verizon manages the ALI Database, the ALI Database.

(emphasis added). The primary difference in the language between the two proposed versions are the underlined portions.

It is unclear to the Department why Verizon would agree to language -- language that it proposed -- for describing Intrado's network architecture, but opposes substantially similar language to describe its network architecture on the grounds that it is "vague" in how it describes Verizon's 911/E-911 selective routers. VZ Init. Br. at 42. Since the Department already determined above that federal law permits Intrado to interconnect at any technically feasible point in each LATA to Verizon's network, and since Verizon's own proposed language throughout this agreement repeatedly indicates that the Parties POI(s) can be "at technically feasible [POI(s)] on Verizon's network in a LATA,"[36] incorporation of Verizon's proposed language does not appear to serve any useful purpose to the remainder of *911 Attachment* § 1.1 or to the interconnection agreement as a whole. In addition, if Intrado decided to establish one of its POIs at a technically feasible point *other than* at one of Verizon's selective routers (e.g., at a Verizon end office), then Verizon's description of a function of its selective routers would not necessarily be accurate.

[36] For instance, refer to Verizon's proposed language in *911 Attachment* §§ 1.3.1-1.3.3, 1.4.1, 1.4.2, 1.5.2-1.5.4. 1.7.3, and 2.3.1, and *Glossary* §§ 2.63 and 2.67.

Therefore, the Department finds that the Parties shall incorporate Intrado's proposed language for this issue into *911 Attachment* § 1.1.1.

3. The Term "a caller"

a. Intrado

Intrado contends that the use of the term "a caller" in *911 Attachment* § 1.1.1 as the entity dialing 911 is unnecessary and argues that its inclusion may be used by Verizon to restrict the services that Intrado intends to provide to PSAPs. *See* INT. Init. Br. at 65-66; Tr. at 35, 38. Intrado points to a Verizon witness's testimony in Ohio that the term is intended to mean "fixed line subscriber dial tone." INT. Init. Br. at 65. Intrado argues that, under this definition, calls from wireless devices or interconnected VoIP services may not be completed by Verizon to Intrado-served PSAPs. *Id*. Intrado's witness Hicks testified that the term is restrictive to the extent that it implies that only a person will ever dial 911 and could restrict Intrado's ability to connect current and future "automated capabilities," such as calls from a defibrillator or automatic calling from an automobile, to the appropriate PSAP. Tr. at 35-36, 38.

b. Verizon

Verizon contends that the use of the phrase "a caller" is nothing more than "simple clarification" which "accurately describes the function of 911/E-911 arrangements" when 911 is dialed. VZ Init. Br. at 58; VZ Rep. Br. at 44. In addition, Verizon argues that Intrado seeks interconnection with Verizon in order to allow Verizon end users to be able to reach Intrado-served PSAPs, so "[n]o other 'entities' would call 911." VZ Init. Br. at 58; VZ Rep. Br. at 44. In order to place a 911 call, Verizon states that "a caller" dials 911. *Id*. Verizon relies on the West Virginia Arbitrator's adoption of Verizon's proposed language in support of inclusion of this term. *See* VZ

Init. Br. at 58; VZ Rep. Br. at 44; *WV Arb. Award* at 26 (finding that Verizon's proposed language "is accurate [and] there is no legitimate reason to eliminate the phrase").

c. Analysis and Findings

If the Department adopts Verizon's proposed language, then the first sentence of *911 Attachment* § 1.1.1 would read: "911/E-911 arrangements provide ***a caller*** access to the appropriate PSAP by dialing a 3-digit universal telephone number, '911.'" (emphasis added). The inclusion of "a caller" in the sentence would be grammatically correct and offer some clarification, which is essentially the argument that Verizon makes – "by dialing" 911, a Verizon customer is provided access to the appropriate PSAP. VZ Init. Br. at 58; VZ Rep. Br. at 44. "A caller" identifies the customer dialing 911. Verizon, however, offers this term only as "simple clarification" and does not indicate that this phrase is necessary. VZ Init. Br. at 58; VZ Rep. Br. at 44. In contrast, Intrado is concerned that use of the term "a caller" could restrict its provisioning of 911/E-911 services. *See* INT Init. Br. at 65-66; Tr. at 35-36, 38.

The Department was not provided with information sufficient for it to make a determination as to whether Intrado's concerns are well-founded. This issue, however, is one of grammar, because Verizon offers this term only as a "simple clarification" and presents no substantive or legal arguments for its inclusion. VZ Init. Br. at 58; VZ Rep. Br. at 44. Although the inclusion of the term "a caller" is grammatically correct, the Department agrees with Intrado that its inclusion is unnecessary in order for the reader to understand the sentence's meaning. *See* INT Init. Br. at 65-66; Tr. at 35-36, 38. Whether or not the term "a caller" is used, it is undisputed that 911/E-911 arrangements *do* provide access to PSAPs when 911 is dialed. Therefore, because Verizon offers this term only as "simply clarification" (VZ Init. Br. at 58; VZ Rep. Br. at 44) and presents no substantive or legal arguments for its inclusion, and Intrado presents a possible future

complication if the term is used (INT. Init. Br. at 65-66; Tr. at 35-36, 38), the Department directs the Parties to delete the phrase "a caller" from *911 Attachment* § 1.1.1.

E. Whether the agreement should contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what those provisions should be? Arbitration Issue 7 - 911 Databases (*911 Attachment* § 1.2)

1. Introduction

Intrado's proposed *911 Attachment* § 1.2.1 states that "[t]he Parties shall work cooperatively to maintain the necessary ALI steering tables to support display of ALI between the Parties' respective PSAP Customers upon transfer of 911/E-911 Call." In Arbitration Issue 7, the Parties dispute whether this ALI steering table provision needs to be included in the interconnection agreement.

ALI steering tables are a function of the ALI system and provide caller ALI information for wireless, IP-enabled, and VOIP 911/E-911 calls. *See* INT. Hicks Pref. Test. at 52. According to Intrado's witness Hicks:

> Wireless and IP-enabled service providers provide 911 calling capabilities to their end users through the use of [pseudo] ANI numbers employed for use in determining which PSAP the 911 call is to be terminated to, as well as for the retrieval of the ALI associated with the caller. When a PSAP receives the pANI number over the PSAP trunks from the selective router, it queries the ALI system using the pANI number. The ALI system provider pre-provisions its ALI steering tables with the pANI numbers common to its serving area, and upon receiving a query from the PSAP, accesses those tables to identify the Mobile Positioning Center ("MPC") or VoIP Positioning Center ("VPC") where it must retrieve the "dynamic" ALI of the wireless or IP-connected caller. The "dynamic" ALI contains the caller's telephone number, address and other supplementary information necessary for emergency response.

Id.

Verizon is currently the sole ALI service provider in Massachusetts. *See* VZ Panel Pref. Test. at 15; Tr. at 74. The information contained in Verizon's ALI database includes both

Verizon's end user data and third-party provider records, and "with Verizon being the sole provider, those third parties or the carriers themselves … load their pANI numbers, their ranges, as shell records to the ILEC, and then the ILEC has to build those tables. Of course, that [is] a function [the ILECs] have to do or they [are] not going to get Phase 1/Phase 2 data." Tr. at 24.

For the reasons set forth below, the Parties shall incorporate Verizon's language for *911 Attachment* § 1.2 and shall delete Intrado's proposed § 1.2.1.

2. Positions of the Parties

a. Intrado

Intrado argues that its proposed language will permit interoperability between the Parties' networks, which is "contemplated" under § 251(c)(5) of the Act. *See* INT. Init. Br. at 48; INT. Rep. Br. at 16. According to Intrado, interoperability will permit the inter-selective router transfer of 911/E-911 calls, with identifying ALI information, dialed from wireless and IP-enabled technologies. *See* INT. Init. Br. at 48. This interoperability will occur through synchronization of the Parties' steering tables (of the shell records or pANI numbers). *See* Tr. at 21. Intrado's witness Hicks testified that it is not feasible for Intrado to populate its own ALI steering tables from scratch and explains that, while it would be possible for Intrado to go out and get the necessary data:

> [Y]ou're talking about having to deal and work with 20, maybe 15, 20 different companies…instead of cooperatively working between two companies…Further, it doesn't assure that both of us are getting the same data. A carrier that provides data to Intrado may have forgotten what they've provided to Verizon.

Id. at 28. Mr. Hicks pointed to a similar arrangement that Verizon already has with AT&T in California but conceded that the state of California's 911 program office "demanded that the companies work together to make that happen." *Id*. at 21-23. Mr. Hicks specified, however, that

Verizon has indicated that it is "willing to cooperate and to the synchronization of the ALI steering where it's appropriate and where it's applicable. [The] issue is … [that] they don't believe it's 251(c)." *Id*. at 25.

Intrado offers FCC determinations in support of its position. Intrado states that, although the FCC has determined the ALI database function to be an information service when provided as a stand-alone service,[37] ALI "is not an information service when provided in conjunction with a complete 911/E-911 service." INT. Rep. Br. at 15. In addition, Intrado states that the FCC "recognizes that…various components [the Selective Router, the trunk line(s) between the Selective Router and the PSAP, the ALI database, the [Selective Router Database], the trunk line(s) between the ALI database and the PSAP, and the MSAG] come together to form an all-inclusive service offering known as the 'wireline E-911 network.'"[38] INT. Init. Br. at 48-49; INT. Rep. Br. at 15-16. According to Intrado, the ALI database function is one of "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[/E-911] call to the PSAP," which are "so intertwined that one would be useless without the other." INT. Init. Br. at 48-49 (quotations omitted); INT. Rep. Br. at 15-16.

Finally, Intrado asserts that if the Department does not approve Intrado's proposed language, then "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 vice versa. INT. Init. Br. at 49-50. In addition, Intrado states that a current commercial agreement mentioned by Verizon, which

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[37] Citing *FCC 1998 BOC Order* at ¶ 17 (rel. Feb. 6, 1998).

[38] Citing *In re IP-Enabled Servs. and E911Requirements for IP-Enabled Serv. Providers, First Report & Order & Notice of Proposed Rulemaking*, WC Docket Nos. 04-36 and 05-196, FCC 05-116, 20 FCC Rcd 10245,at ¶ 15 (rel. June 3, 2005).

exists between Verizon and an Intrado affiliate, would be inapplicable to Intrado. *See* INT. Rep. Br. at 16; Tr. at 26-27.

b. Verizon

Verizon indicates that it will cooperate with Intrado with regard to ALI steering. *See* VZ Rep. Br. at 43. However, Verizon disagrees that an ALI steering provision belongs in an § 251(c) interconnection agreement, since, according to FCC determinations, it is an information service which falls "outside the scope of interconnection agreements." *Id*. at 34; VZ Init. Br. at 43. Verizon notes that according to the FCC: "[b]ecause BOCs' E911 services offer the capability for storing and retrieving information, they are information services, except to the extent they are used for the management, control, or operation of telecommunications systems or the management of telecommunications services." VZ Rep. Br. at 35, citing *FCC 1998 BOC Order* at ¶ 17. According to Verizon, the ALI database does not qualify as a telecommunications service under this description, since it is a "storage and retrieval system." VZ Rep. Br. at 35.

Verizon also contends that the commercial agreements it already has with Intrado would provide Intrado with anything it needs to conduct its business regarding its ALI database requirements and, if not, then Intrado can negotiate to modify those agreements. *See* VZ Init. Br. at 43-44.

3. Analysis and Findings

The Department recognizes that the ALI database is a critical component of a 911/E-911 system. For the reasons set forth below, however, the Department finds inclusion of Intrado's language to be unnecessary and finds Intrado's arguments that it can compel Verizon to provide the data to be unpersuasive. First, Verizon indicates that it will cooperate with Intrado with regard to ALI steering despite its opposition to Intrado's proposed language. *See* VZ Rep. Br. at 43.

Second, pursuant to *911 Attachment* § 1.2, Verizon specifically agrees "to establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database." Third, Intrado cannot compel Verizon to perform functions that would be Intrado's obligation when Intrado manages an ALI database, and despite Intrado's feasibility argument to the contrary, Intrado is capable of obtaining third-party provider data on its own accord. *See* Tr. at 28. Whether Intrado works solely with Verizon to obtain the data or with the multiple carriers is unimportant because there is no guarantee that the third-party data given to Intrado is accurate either way. The third-party data in Verizon's possession is only as accurate as what it receives from those third-parties. Furthermore, it is assumed that third-party carriers would want to ensure that their customers' calls are routed to the appropriate PSAP and, therefore, would provide Intrado with any necessary information. Fourth, it is within the discretion of the State 911 Department to ensure that the Parties transfer all applicable 911/E-911 data to the appropriate PSAP. *See* G. L. c. 6A, § 18B(d); VZ Panel Pref. Test. at 17. In fact, the State 911 Department has already established certain technical requirements within the 911/E-911 network. *See* 560 C.M.R. 2.00, Appendix A. For all of these reasons, the Department hereby rejects Intrado's proposed language and directs the Parties to adopt Verizon's *911 Attachment* § 1.2 language.[39]

[39] Because there is a sufficient basis for rejecting Intrado's proposed language, the Department need not address the Parties' information service argument.

F. 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?
Arbitration Issue 8 - 911 and E-911 Related Definitions (*Glossary* §§ 2.6, 2.63, 2.64, 2.67, 2.94, 2.95)

1. Introduction

The Parties dispute six definitions under Arbitration Issue 8: (1) "ANI" (*Glossary* § 2.6); (2) "911/E-911 Service Provider" (*Glossary* § 2.63); (3) "911 Tandem/Selective Router" (*Glossary* § 2.64); (4) "POI" (*Glossary* § 2.67); (5) "Verizon 911 Tandem/Selective Router" (*Glossary* § 2.94); and (6) "Verizon 911 Tandem/Selective Router Interconnection Wire Center" (*Glossary* § 2.95). For the reasons set forth below, the Parties shall incorporate into their interconnection agreement the definitions indicated for "POI," "ANI," "911/E-911 Service Provider," and "911 Tandem/Selective Router," and the Parties shall delete the definitions for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center."

2. Positions of the Parties

a. Intrado

Intrado specifies that the Department's resolution of Arbitration Issue 1 will determine the appropriate definitions to be applied to "POI" and "911/E-911 Service Provider." *See* INT. Init. Br. at 50 n.241.

Intrado proposes an "ANI" definition that comes directly from NENA's *Master Glossary of 9-1-1 Terminology*. *Id*. at 50. Intrado contends that Verizon has no issue with the substance of this definition and only disputes its inclusion in the *Glossary* to the extent that "Verizon disputes the reference to ANI in other sections of the interconnection agreement." *Id*. Intrado states that "ANI is a key component of 911 service" and that inclusion of ANI language within both the *Glossary*

and elsewhere within the interconnection agreement is unrelated to the Department's determinations for POIs in Arbitration Issue 1. *Id*.

Intrado asserts that its proposed "911 Tandem/Selective Router" definition accurately reflects the functions to be performed by those routers, which includes not only routing 911/E-911 calls, but also terminating and transferring those calls to the appropriate PSAPs. *Id*. at 51.

Finally, Intrado argues that Verizon's proposed definitions for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" are "unnecessary and repetitive of the general definitions for these terms" and, therefore, should be rejected. *Id*. at 51. Intrado indicates that there is "no reason for separate, Verizon-specific definitions for these terms" and contends that if the Department approves these definitions, then Intrado-specific definitions for these terms should also be included. *Id*. Intrado relies on the West Virginia Arbitrator's determinations in support of its arguments against Verizon-specific definitions. *Id*. at 51-52; *WV Arb. Award* at 17-18 (Verizon's proposed definitions were "superfluous since there is already a definition of 911 tandem/selective router" in the ICA).

b. Verizon

Verizon agrees that the Department's resolution of Arbitration Issue 1 will determine the appropriate definitions to be applied to "POI" and "911/E-911 Service Provider." *See* VZ Init. Br. at 44.

Contrary to Intrado, however, Verizon specifies that resolution of Arbitration Issue 1 will determine whether or not an "ANI" definition should be included in the interconnection agreement. *Id*. at 44-45. Verizon argues that it is unnecessary to have language in the *911 Attachment* that requires Verizon to deliver 911/E-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." *Id*. at 45.

Verizon agrees with Intrado that a "911 Tandem/Selective Router" is used to route 911/E-911 calls to appropriate PSAPs. *Id*. However, Verizon argues that Intrado's proposed definition implies that those routers *always* perform the call transfer function, which is not the case. *Id*. Verizon is silent as to why it disputes Intrado's "terminating" language for this definition. In addition, Verizon's proposed "911 Tandem/Selective Router" definition includes a sentence describing "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." *Id*. at 46. Verizon argues that this additional description is necessary because it would otherwise incorrectly suggest "that a Verizon end office switch is a 911 Tandem/Selective Router, when Verizon's end offices cannot perform selective routing functions." *Id*.

Similar to its proposed sentence describing its network in the "911 Tandem/Selective Router" definition, Verizon also proposes a specific definition of "Verizon 911 Tandem/Selective Router" and argues that this definition "accurately describes the function of this equipment in Verizon's network." *Id*. Furthermore, Verizon states that a definition for a "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" such a wire center. *Id*. at 47.

Finally, Verizon argues that its proposed definitions should be adopted by the Department because they add detail to the parties "obligations, rights and responsibilities" under the agreement and will help to "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." VZ Rep. Br. at 36.

3. Analysis and Findings

a. *"POI" and "911/E-911 Service Provider" Definitions*

The Department agrees with both Parties that resolution of Arbitration Issue 1 resolves the disputes with regard to the Parties' proposed "POI" and "911/E-911 Service Provider" definitions. *See* INT. Init. Br. at 50 n.241; VZ Rep. Br. at 59. For that reason, the Parties shall adopt Verizon's proposed language for the "POI" definition.

With regard to the POI language in the "911/E-911 Service Provider" definition, neither Party's language shall be adopted. The Department determines that this language appears only to be a response to Intrado's interconnection proposals and, therefore, is unnecessary. The applicable portion of the "911/E-911 Service Provider" definition states:

> …For the purposes of this Agreement only, as between Intrado Comm and Verizon:
>
> (a) Intrado Comm shall be deemed to be the 911/E-911 Service Provider for an area and the PSAP(s) serving that area, if Intrado Comm has been selected by the Controlling 911 Authority for that area to provide 911/E-911 network Telecommunications Services for that area and the PSAP(s) serving that area and to directly interconnect with the PSAP(s) and provide transmission and routing of 911/E-911 Calls from a Verizon*'s* End User *network (i.e., from the technically feasible [POI(s)] on Verizon's network in a LATA where Intrado Comm interconnects with Verizon)* to the PSAP(s); and
>
> (b) Verizon shall be deemed to be the 911/E-911 Service Provider for an area and the PSAP(s) serving that area, if Verizon has been selected by the Controlling 911 Authority for that area to provide 911/E-911 network Telecommunications Services for that area and the PSAP(s) serving that area and to directly interconnect with the PSAP(s) and provide transmission and routing of 911/E-911 Calls from Verizon's network to the PSAP(s).

Glossary § 2.63. The italicized and underlined language is the disputed language. *See* Sec. Jt. Iss. Mat. at 22. Verizon's proposed language is italicized and Intrado's proposed language is underlined. *Id.* The proposed descriptions for *Glossary* §§ 2.63(a) and (b) are essentially identical *but for* the

disputed language added to *Glossary* § 2.63(a). Therefore, because the Parties' disputed language is unnecessary, the Parties shall instead mirror the undisputed language of the last sentence of *Glossary* § 2.63(b). Accordingly, the last sentence for the "911/E-911 Service Provider" in *Glossary* § 2.63(a) shall read:

> … and provide transmission and routing of 911/E-911 Calls from Verizon's network to the PSAP(s).

b. *"ANI" Definition*

The Department agrees with Intrado that the resolution of Arbitration Issue 1 only determines the appropriate definitions of "POI" and "911/E-911 Service Provider" and is unrelated to the use and incorporation of "ANI" within the agreement. *See* INT. Init. Br. at 50 n.241. In addition, the Department concluded above that its determinations with regard to Arbitration Issue 1 did not address the use of "ANI" language and would, instead, be addressed under Arbitration Issue 8. Furthermore, the Department notes that the Parties only discuss incorporation of "ANI" language (both in the *Glossary* and elsewhere in the agreement) specifically under Arbitration Issue 8. For these reasons, the Department addresses all disputed "ANI" language, including the definition of "ANI," below.

Based on the Department's above determinations in Arbitration Issue 1, *911 Attachment* § 1.3.2 currently reads:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Verizon shall provide for transmission and routing of 911/E-911 Calls ***with ANI*** from Verizon End Users destined for Intrado Comm's PSAP Customers to the POI(s) established by the Parties at technically feasible Point(s) of Interconnection on Verizon's network in a LATA….

(emphasis added). In addition, Intrado's proposed "ANI" definition defines "ANI" as the "[t]elephone number associated with the access line from which a call originates." *Glossary* § 2.6.

It is clear that the correct routing of a 911/E-911 call requires, at a minimum, use of ANI data. *See* INT. Init. Br. at 50; VZ Panel Pref. Test. at 15. Thus, ANI is an important component of 911/E-911 service. The record indicates that this data is available beginning at Verizon's end offices through SS7 signaling that "contains the dialed digits (911 and the calling party number)," which are sent from the end offices over 911/E-911 dedicated trunks to the designated selective routers where the SRDB utilizes the information in order to match the digits to the appropriate PSAP. IR Resp. D.T.C.-VZ 1-3. In addition, the State 911 Department's regulations require carriers to "provide data links to allow for the transfer of ANI and ALI data from the primary PSAP to secondary and limited secondary PSAPs." *E-911 Technical Standards*, "9-1-1 System Design - Technical Standards" at § 2(e).

Verizon's sole argument against incorporating Intrado's "ANI" language in the *911 Attachment* or requiring Verizon to deliver 911/E-911 calls to Intrado with "ANI" is that "technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice." VZ Init. Br. at 45. Verizon offers no substantive or legal arguments against "ANI" use and, moreover, only disputes the use of an "ANI" definition if the Department rejects Intrado's "ANI" language in the *911 Attachment*. Therefore, if the Department adopts Intrado's general ANI language, then the Department may adopt Intrado's "ANI" definition without opposition from Verizon.

As the Department found earlier, "applicable law" permits Intrado to connect at any technically feasible point on Verizon's network. 47 U.S.C. §§ 251(c)(2)(B); 47 C.F.R. §

51.305(a)(2). In addition, the Department finds that ANI data is necessary to route 911/E-911 calls to the appropriate destination. Intrado requires ANI data in order to route 911/E-911 calls from any technically feasible point on Verizon's network to the appropriate destination point.

For these reasons, the Parties shall incorporate Intrado's "ANI" language in *911 Attachment* § 1.3.2 and shall incorporate Intrado's "ANI" definition in the *Glossary*.

c. *"911 Tandem/Selective Router" Definition*

The Department finds that neither Parties' proposed language is appropriate for the "911 Tandem/Selective Router" definition. For example, if Intrado locates its POI on a Verizon 911 selective router, then Intrado's proposed definition is incorrect because that selective router will not be terminating the end user call to an Intrado-served PSAP. Instead, that call will be first directed through an Intrado selective router. In addition, Intrado's proposed definition will also be incorrect because, as Verizon correctly points out, a selective router may not always be used to transfer 911/E-911 calls between PSAPs. *See* VZ Init. Br. at 45. On the other hand, Verizon's description of the function of a Verizon selective router in its proposed definition would be inaccurate if Intrado established a POI at a Verizon end office in order to directly trunk Verizon end user traffic to Intrado's selective router.

The Department also is not persuaded by Verizon's concerns of a perceived suggestion "that a Verizon end office switch is a 911 Tandem/Selective Router." First, the *Glossary* includes separate and distinct definitions for "End Office" (§ 2.33) versus "Tandem" (§ 2.81), and the current definition at dispute relates to a 911 *tandem*, not a 911 *end office*. Second, the adopted "POI" definition (and elsewhere in the agreement) distinguishes between a Verizon Tandem Interconnection Wire Center, a Verizon End Office Interconnection Wire Center, and a Verizon

911 Tandem Selective Router.[40] Accordingly, the Parties shall incorporate the following "911 Tandem/Selective Router" definition into *Glossary* § 2.64:

> Switching or routing equipment that is used for routing 911/E-911 Calls to a PSAP and may be used to transfer 911/E-911 Calls between PSAPs.

d. *"Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" Definitions*

Intrado argues that Verizon's proposed definitions for "Verizon 911 Tandem/Selective Router" and "Verizon 911 Tandem/Selective Router Interconnection Wire Center" are "unnecessary and repetitive of the general definitions for these terms" and, therefore, should be rejected. INT. Init. Br. at 51. The Department agrees. Incorporation of either of these definitions is redundant relative to other definitions already incorporated in the *Glossary*.[41] Furthermore, Verizon's proposed definition of its own selective routers would be inaccurate if Intrado established a POI at one of Verizon's end offices.[42] Therefore, *Glossary* §§ 2.94 and 2.95 shall be deleted from the final interconnection agreement.

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[40] For example, refer to the undisputed language in *911 Attachment* § 1.3.1: "By way of example … a technically feasible Point of Interconnection on Verizon's network in a LATA would include an applicable Verizon Tandem Interconnection Wire Center, Verizon End Office Interconnection Wire Center, or Verizon 911 Tandem/Selective Router Interconnection Wire Center[.]"

[41] For example, *Glossary* § 2.47 defines "Interconnection Wire Center" as "[a] building or portion thereof which serves as the premises for one or more End Offices, Tandems, *911 Tandem/Selective Routers*, and related facilities." (emphasis added). In addition, *Glossary* § 2.64 defines "911 Tandem/Selective Router."

[42] Verizon's proposed "Verizon 911 Tandem/Selective Router" definitions specifies that "[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."

G. Should *911 Attachment* § 2.5 be reciprocal and qualified as proposed by Intrado?
Arbitration Issue 9 - Verizon's Ability to Bypass Intrado and Directly Send 911/E-911 Calls to Intrado's PSAP Customer (*911 Attachment* § 2.5, § 2.6)

Should the reservation of rights to bill charges to 911 Controlling Authorities and PSAPs be qualified as proposed by Intrado "To the extent permitted under the Parties' Tariffs and Applicable Law"?
Arbitration Issue 14 - Reservation of Rights to Bill Charges (*911 Attachment* §§ 2.3, 2.4)

1. Introduction

Although not presented as such by the Parties, Arbitration Issues 9 and 14 are related because both Issues involve language regarding third-party entities. Arbitration Issue 9 involves language on whether and how calls may be directly routed to a PSAP served by the other Party, and Arbitration Issue 14 involves language regarding charges the Parties may impose on a Controlling 911 Authority or PSAP. For the reasons set forth below, the Department rejects incorporation of Verizon's proposed *911 Attachment* §§ 2.5 and 2.6 and approves Verizon's proposed language in *911 Attachment* §§ 2.3 and 2.4.

2. Positions of the Parties

a. Intrado

Regarding Arbitration Issue 9, Intrado argues that the *911 Attachment* §§ 2.5 and 2.6 direct routing language should be "exactly reciprocal and qualified to reflect that such arrangements are driven by the PSAP" or should be deleted entirely. INT. Init. Br. at 52, 53. Intrado relies on the West Virginia Arbitrator's rejection of Verizon's proposed language in support of its position. *Id.* at 53; *WV Arb. Award* at 28 ("[W]hether a party has a right to deliver calls directly to a PSAP served by the other party is directly relevant to the issues in this arbitration[.] If there is a legitimate reason for either Verizon or Intrado to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the Interconnection

Agreement."). Intrado, however, agrees with Verizon to the extent that whether a party has a right to deliver calls to a PSAP served by the other Party is a matter outside of a § 251(c) interconnection agreement. *See* INT. Init. Br. at 53.

With regard to the language proposed by Intrado in *911 Attachment* §§ 2.3 and 2.4 for Arbitration Issue 14, Intrado contends that it wants to ensure that the Parties will only impose lawful charges on Massachusetts counties or PSAPs "as authorized by state or federal law, Department-approved tariffs, or Department rules and regulations." *Id*. at 62.

b. Verizon

With respect to Arbitration Issue 9, Verizon states that it proposed *911 Attachment* § 2.5 in order to provide that "nothing in the agreement will limit Verizon's ability to deliver calls directly to a PSAP served by Intrado." VZ Init. Br. at 47. Verizon asserts that it responded to Intrado's reciprocity concerns through its proposed *911 Attachment* § 2.6 and disagrees that either § 2.5 or § 2.6 should incorporate language requiring express permission from the applicable PSAPs. *Id*. Verizon contends that whether or not a party has a right to deliver a call to a PSAP is outside the scope of the agreement. *Id*.; VZ Rep. Br. at 36.

Verizon states that *911 Attachment* §§ 2.3 and 2.4, regarding Arbitration Issue 14, are nothing more than reservations of rights between the Parties. *See* VZ Init. Br. at 55. Verizon asserts that Intrado's proposed language is inappropriate, contending that charges to PSAPs or other third parties are between those third parties and Verizon and are not a matter for an interconnection agreement between Verizon and Intrado. *Id*. Verizon relies on determinations made by the West Virginia Arbitrator and the Florida Public Service Commission in support of its position. *Id*. at 56; VZ Rep. Br. at 42-43; *WV Arb. Award* at 28 ("It is inappropriate to attempt to assert or negotiate in this proceeding the rights of entities not parties to the Agreement. If

applicable law or Commission-approved tariffs authorize a party to impose charges on PSAPs or 911 controlling authorities, that need not be stated in this [ICA], which is, after all, only between Verizon and Intrado."); *Petition for Declaratory Statement Regarding Local Exchange Telecomm. Network Emergency 911 Service, by Intrado Comm. Inc.*, Fla. Pub. Serv. Comm'n Order No. PSC-08-0374-DS-TP, Docket No. 080089-TP, *Order Denying Amended Petition for Declaratory Statement*, at 14 (rel. June 4, 2008) ("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 911 services to Intrado or to the PSAP … for which the ILECs are entitled to compensation pursuant to their tariffs[.]").

3. Analysis and Findings

The Department agrees with the Parties that the rights and obligations of third parties are not a matter for an interconnection agreement. *See* INT. Init. Br. at 52, 53; VZ Init. Br. at 55. This agreement is between Intrado and Verizon, and is not between Intrado, Verizon, and the state's controlling 911 authorities. Any charges to be assessed on, or any connections to be made to, those authorities are properly left to negotiations between those authorities and the contracting parties (i.e., Verizon and Intrado). *See, e.g.*, G. L. c. 6A, § 18B(k) ("The [State 911] [D]epartment may enter into contracts and agreements with … any individual, foundation, corporation, association or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work[.]"); IR Resp. D.T.C.-VZ 1-4 Attachment (a copy of the public version of Verizon's current contract with the State 911 Department). They should not be addressed in this interconnection agreement. Accordingly, the Department rejects incorporation of *911 Attachment* §§ 2.5 and 2.6 and approves Verizon's language in §§ 2.3 and 2.4.

H. What should Verizon charge Intrado for 911/E-911 related services and what should Intrado charge Verizon for 911/E-911 related services?
Arbitration Issue 10 - Rates to be Charged for 911/E-911 Services (*911 Attachment* §§ 1.3, 1.4, 1.7; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)

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 the Pricing *Attachment*, Appendix A, without a reference to the specific tariff; and whether the Verizon proposed language in the *Pricing Attachment* § 1.5 with regard to "TBD" rates should be included in the agreement?
Arbitration Issue 11 - Tariff References and Development of New Rates (*General Terms and Conditions* § 1.1; *911 Attachment* §§ 1.3, 1.4.2, 1.7.3; *Pricing Attachment* §§ 1.3, 1.5 and Appendix A)

1. Introduction

Arbitration Issues 10 and 11 address variations of disputed pricing language and involve the issue of whether general "applicable" tariff references should be permitted. For the reasons set forth below, the Department approves incorporation of Verizon's proposed *General Terms and Conditions* § 1.1, but rejects any disputed "applicable" tariff(s) language and other disputed pricing language in *911 Attachment* §§ 1.3, 1.4 and 1.7. In addition, the Parties shall delete Intrado's proposed last sentence of *911 Attachment* § 1.7.3 as well as Intrado's proposed interconnection charges in Appendix A of the *Pricing Attachment*. Finally, the Department approves for incorporation Intrado's proposed language for *Pricing Attachment* §§ 1.3 and 1.5, as well as the first sentences for *911 Attachment* §§ 1.7.2 and 1.7.3.

2. Positions of the Parties

a. Intrado

Intrado asserts that state retail tariffs governing 911/E911 services are not appropriate for Verizon's provision of service to Intrado under the interconnection agreement and that any charges to be assessed to Intrado should be developed pursuant to the §§ 251/252 process under the Act

and set forth in the interconnection agreement. *See* Second Jt. Iss. Mat. at 24. Intrado states that tariff charges should not be permitted to trump the charges contained in the Pricing Appendix, especially those rates marked at "TBD," unless those tariffs are specifically referenced in the Pricing Appendix. *See* INT. Init. Br. at 57. In addition, asserts Intrado, if there are non-§ 252(d)(1) services that Intrado would purchase from Verizon, then those services and the pricing for those services must be identified in the interconnection agreement. *Id*. at 54.

Furthermore, Intrado argues that any new rates to be developed by Verizon for services under the interconnection agreement should be developed as part of the §§ 251/252 process with Department approval. *Id*. at 57. According to Intrado, unspecified tariff terms and conditions deemed by Verizon to be "applicable" should not be incorporated into the interconnection agreement. *Id*. Instead, if tariffed rates are to apply, argues Intrado, then Verizon must specifically list or identify the tariff. *Id*. at 58; INT. Rep. Br. at 19-20. Intrado maintains that it 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. *See* INT. Init. Br. at 57; INT. Rep. Br. at 20. Intrado relies on the determinations made by the West Virginia Arbitrator supporting Intrado's proposed language and determinations made by the FCC's Wireline Competition Bureau in the *Virginia Arbitration Order* in support of its position. *See* INT. Init. Br. at 58-59; *WV Arb. Award* at 24; *Virginia Arbitration Order* at ¶¶ 600, 601, and 608 (finding that it would be inappropriate for "a tariff to supersede an [ICA]" and tariffs "approved or allowed to go into effect" should not supersede rates approved in an arbitrated ICA).

Intrado also argues that if Verizon is to interconnect on Intrado's network, then Intrado is entitled to impose on Verizon the same types of charges for interconnection that Verizon imposes

on Intrado. *Id*. at 56. With respect to its proposed rates, Intrado argues that the rates are reasonable and should be included in the interconnection agreement. *Id*. In support of its position, Intrado notes that, in the *Ohio Arbitration Award*, whereby the ILEC is required to interconnect at POIs on Intrado's network when Intrado is the 911/E-911 service provider, the Ohio Public Utilities Commission determined that Intrado's proposed port and termination rates were reasonable and not beyond the range of other companies. *Id*.

b. Verizon

Verizon maintains that the proposed attachments to the agreement set out the charges that Verizon will bill Intrado for services that Verizon provides under the agreement. *See* Second Jt. Iss. Mat. at 24. According to Verizon, Intrado must pay to Verizon charges for interconnection at the POI(s) on Verizon's network and must pay Verizon for any facilities and services provided by Verizon to carry 911/E911 calls between the POI on Verizon's network and Intrado's network. *Id*. Both Parties have agreed that transport and termination of 911/E911 calls will be handled on a non-charged basis. *Id*. at 25. Verizon states that the *Pricing Attachment* provides for the rates for Verizon's services to be as set out in its tariffs and, in the absence of a tariff rate, as set out in Appendix A to the *Pricing Attachment*. *Id*. at 24-25. Verizon also states that the rates set out in Appendix A are its standard rates for the services listed in that Appendix that are offered to other competitive carriers. *Id*. at 25.

Verizon contends that its generic tariff references are a standard part of its Department-approved interconnection agreements with competitive carriers. *See* VZ Init. Br. at 49; VZ Rep. Br. at 39. Verizon maintains that its proposed *911 Attachment* and *Pricing Attachment* would apply applicable tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. *See* VZ Init. Br. at 48. In addition, Verizon states that it cannot unilaterally

change its tariffed rates and applying those tariff rates to the services which Verizon will provide to Intrado is appropriate because those rates are subject to Department review and approval. *Id*. at 49. Further, Verizon contends that Intrado's proposal to limit the tariffs and apply to the services under the agreement only those tariffs that are specifically cited either in the agreement or in Appendix A of the *Pricing Attachment* is unreasonable because it simply is not feasible to identify in advance each of the tariffs, tariff rates and sections that might apply to services offered under the Agreement. *Id*. at 50. Finally, Verizon argues that its "TBD" rates proposed in Appendix A are appropriate because they provide for "TBD" rates to be replaced by applicable tariff rates, and since Verizon cannot specify rates that do not yet exist. *Id*.

Verizon claims that Intrado seeks to have all potential Verizon charges that may be assessed on Intrado to be subject to Total Element Long-Run Incremental Cost ("TELRIC") pricing. *See* VZ Init. Br. at 48-49; VZ Rep. Br. at 39. Verizon specifies that to the extent Intrado takes the position that any charges Verizon may assess on Intrado must be developed in accordance with § 252(d) of the Act, this position is incorrect because all charges are not subject to TELRIC pricing. *See* Second Jt. Iss. Mat. at 25; VZ Init. Br. at 48-49; VZ Rep. Br. at 39. According to Verizon, the FCC has determined what elements must be priced at TELRIC under § 252(d) and Verizon offers those elements at TELRIC, which is delineated in Appendix A of the *Pricing Attachment*. *See* VZ Rep. Br. at 39.

Finally, Verizon disputes the reasonableness of Intrado's interconnection charges and asserts that Intrado should not be billing Verizon any interconnection charges in connection with 911/E911 calls since Verizon should not be required to interconnect at POI(s) on Intrado's network. *See Id*. at 37-38; *VZ* Init. Br. at 50-51.

3. Analysis and Findings

The Department has addressed a similar issue in a previous arbitration. *See GNAPs Arb. Order* (Arbitration Issue 7: "Is it Appropriate to Incorporate by Reference Other Documents, Including Tariffs, into the Agreement Instead of Fully Setting out Those Provisions in the Agreement?"). As a matter of policy, the Department does not oppose the incorporation of documents, including tariffs, by sufficiently specific reference. *ATC Trunk Ports Order* at 22;[43] *GNAPs Arb. Order* at 50. In particular, the Department notes that cross-referencing Verizon tariffs for prices is reasonable. *See GNAPs Arb. Order* at 50. As Verizon notes, the tariff process is not unilateral. *See* VZ Init. Br. at 49; VZ Rep. Br. at 39. In fact, Intrado may always participate in the tariff process to protect its interests. For instance, Verizon is obligated to provide electronic notification of proposed tariff changes to all competitive carriers with whom it has resale and interconnection agreements. *Tariff No. 17 Order* at 22-23.[44] This notice is provided on or about the same day that the proposed tariff changes are filed with the Department. *Id*. As to the contention that tariff terms and conditions may supersede terms and conditions in the interconnection agreement, the Department previously determined that tariffs generally do not supersede negotiated or arbitrated terms. *Id.* at 19. Thus, the Department's *Tariff No. 17 Order* already provides the protection that Intrado seeks. The *Tariff No. 17 Order* is consistent with the FCC Wireline Competition Bureau's determinations in the *Virginia Arbitration Order*. *See*

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[43] *See Complaint of Choice One Comm'cs of Mass. Inc., Conversent Comm'cs of Mass., LLC, CTC Comm'cs Corp., and Lightship Telecom, LLC (collectively, "One Communications"), Concerning Alleged Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Mass. for Access Toll Connecting Trunk Ports and E911/911 Dedicated End Office Trunk Ports*, D.T.C. 08-3, Order (rel. Apr. 9, 2009) ("*ATC Trunk Ports Order*").

[44] *Investigation by the Dep't on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, Filed with the Dep't on Aug. 27, 1999, to Become Effective on Sept. 27, 1999, by New England Tel. &Tel. Co. d/b/a Bell Atlantic-Mass.*, D.T.E. 98-57, *Order* (Mar. 24, 2000) ("*Tariff No. 17 Order*"). Tariff No. 17 contains the Department-approved rates, terms and conditions that Verizon offers for interconnection and access to network elements.

Virginia Arbitration Order at ¶¶ 599-608 (finding that it would be inappropriate for "a tariff to supersede an [ICA]" and tariffs "approved or allowed to go into effect" should not supersede rates approved in an arbitrated ICA"). Therefore, with regard to the Verizon language in § 1.5 addressing the "TBD" terms referenced in Appendix A (Part XII pricing chart), the Parties shall incorporate this language into the agreement with the requirement that Verizon shall add language to specify which Verizon tariff(s) would apply. If Verizon cannot identify which tariff(s) would apply, then the Parties shall delete this language from the agreement entirely. Moreover, the Department finds Verizon's proposed *General Terms and Conditions* § 1.1 to be consistent with our policy, and approves this section accordingly.

On the other hand, the Department does not oppose Intrado's suggestion to incorporate specific provisions of tariffs, or other documents, into the interconnection agreement directly.[45] However, the Parties' failure to negotiate or identify specifically which tariff provisions they would agree to incorporate prevents the Department from properly evaluating this approach.

In the Department's *Tariff No. 17 Order*, the Department stated that the "Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC." *Tariff No. 17 Order* at 18. The Department therefore held that "[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering." *Id*. at 19. Additionally, "the terms and conditions of Tariff No. 17 represent a supplement to interconnection agreements from which

[45] Usually, rehearsal, in the body of a contract, of wording found in other, separate documents is unnecessary, because a contract "may incorporate other documents by reference and may indicate a method by which to determine the unstated terms that were actually agreed upon." *Corbin on Contracts*, § 95, n.12. The parties, however, are free to incorporate specific provisions if they so choose. *GNAPs Arb. Order* at 52 n.39.

carriers may choose to purchase services not addressed in their interconnection agreements." *Id*. at 21.

Consequently, the Department finds that incorporation of additional terms and conditions from tariffs, or other documents, by mere reference to the tariff or "applicable" tariff is inconsistent with the policy the Department set forth in the *Tariff No. 17 Order*, *GNAPs Arb. Order*, and *ATC Trunk Ports Order*, unless the Parties explicitly intend to incorporate each and every additional term by reference. *See Tariff No. 17 Order* at 19 (holding that "[t]ariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering"); *GNAPs Arb. Order* at 53; *ATC Trunk Ports Order* at 24 (holding that "the incorporation of additional terms and conditions from other documents by mere reference without sufficient specificity to the document or tariff and without reflecting an explicit intention by the parties to incorporate each and every additional term by reference is inconsistent with … Department policy"). By "additional," the Department means terms and conditions in the tariff, or other document, which are consistent with the terms and conditions in the interconnection agreement, and for which there may, or may not, be a corresponding provision contained in the interconnection agreement. *See GNAPs Arb. Order* at 54-55; *ATC Trunk Ports Order* at 27. Otherwise, according to the findings set forth in the *GNAPs Arb. Order*, permitting Verizon to impose all the terms and conditions from tariffs "incorporated by reference without the explicit assent of the [competitive carrier] would allow Verizon to achieve a level of conformity in its agreement with different [competitive carriers] that would be inconsistent with [the Department's], and the Act's, preference for contracts that reflect the individual business strategies and priorities of each [competitive carrier]." *GNAPs Arb. Order* at 54; *ATC Trunk Ports Order* at 27.

Accordingly, the Department rejects any disputed "applicable" tariff(s) language and other disputed pricing language in *911 Attachment* §§ 1.3, 1.4 and 1.7.[46] Moreover, the Department adopts Intrado's proposed language for *Pricing Attachment* §§ 1.3 and 1.5, as well as the first sentences in *911 Attachment* §§ 1.7.2 and 1.7.3. Furthermore, in accordance with the *GNAPs Arb. Order*, the Department concludes that if "the Parties explicitly agree that an applicable tariff, or document, controls the terms and conditions of an offering, the [final interconnection] agreement shall make clear that the Parties explicitly agree that all provisions in the tariff, or other document, which are not inconsistent with provisions in the interconnection agreement, or that are not addressed at all in the interconnection agreement, are also controlling."[47] *GNAPs Arb. Order* at 54. If there are services not listed in the agreement that Verizon will provide to Intrado under the agreement, then Verizon shall list those services in conjunction with the associated tariff(s).

Finally, because Verizon is not required to interconnect at POIs on Intrado's network, then Intrado's proposed interconnection charges in Appendix A are inapplicable as well as Intrado's proposed language for the last sentence of *911 Attachment* § 1.7.3.[48] The Department does not need to address the reasonableness of Intrado's proposed charges. Accordingly, the Parties shall

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[46] Verizon specifies that "Verizon's generic tariff references are a standard part of Verizon's Department-approved interconnection agreements with CLECs." VZ Init. Br. at 49. The Department notes, however, that most of these agreements have been negotiated and agreed upon by the parties (or their successors), although, as the Department's *ATC Trunk Ports Order* shows, disputes over this language have arisen since the time that the agreements were negotiated. With regard to arbitrated agreements, Verizon has not provided as evidence any arbitrated agreement or arbitration proceeding in which the Parties specifically disputed, and the Department approved, generic "applicable" tariff references.

[47] The Department notes that it does not directly address each and every provision in the interconnection agreement which contains a tariff reference; however, the Department expects that its findings above will allow the Parties to submit conforming contract language for all such provisions in the agreement.

[48] Intrado's proposed last sentence for *911 Attachment* § 1.7.3 states: "When Intrado Comm is the 911/E-911 Service Provider, Verizon shall pay to Intrado Comm the full Intrado Comm rates and charges (as set out in this Agreement) for interconnection at the POI(s) established by the Parties on Intrado Comm's network for any services, facilities and/or arrangement provided by Intrado Comm for such interconnection."

delete Intrado's proposed charges in Appendix A and the proposed last sentence of *911 Attachment* § 1.7.3 from the interconnection agreement.

I. Whether Verizon may require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements? Arbitration Issue 12 - Restrictions on Intrado Rates (*Pricing Attachment* § 2)

1. Introduction

Arbitration Issue 12 involves the of inclusion of Verizon's proposed *Pricing Attachment* § 2, which would require Intrado to charge Verizon the same or lower rates than Verizon for comparable services, facilities, and arrangements provided by Verizon to Intrado, unless Intrado provides a cost justification for its prices. As explained more fully below, the Department finds that *Pricing Attachment* § 2 is unnecessary and, accordingly, the Parties shall delete it from the interconnection agreement.

2. Positions of the Parties

a. Intrado

Intrado argues that Verizon's proposed language is one-sided and could force Intrado to lower its rates without competitive justification. *See* INT. Init. Br. at 59. Intrado states that neither federal nor state law requires competitor's rates to be capped at the applicable ILEC's rates for interconnection (with the exception of intercarrier compensation charges, which are inapplicable here). *Id.*; INT. Rep. Br. at 18-19. Intrado contends that if Verizon seeks to challenge Intrado's rates, it should do so in a separate proceeding because § 252 does not apply to Intrado's rates. *See* INT. Init. Br. at 60. Intrado relies on the determinations made by the West Virginia Arbitrator and the *Virginia Arbitration Order* in support of its position. *Id*. at 59-60; *WV Arb. Award* at 25 (rejecting Verizon's proposed language based on determinations in the *Virginia Arbitration Order*); *Virginia Arbitration Order* at ¶¶ 581-589 ("[§ 251(c)] applies exclusively to [ILECs].

Accordingly, the Bureau … is authorized by section 252 to determine just and reasonable rates to be charged by *Verizon*, not petitioners…. [T]he [FCC] has ruled that it would be inconsistent with the Act for a state commission to impose [§ 251 (c)] obligations on [CLECs][.]").

b. Verizon

Verizon responds that its rates have historically been subject to thorough scrutiny by the Department and are therefore subject to a presumption of reasonableness. *See* VZ Init. Br. at 52. Verizon maintains that if Intrado wants to charge Verizon higher rates for comparable services, then Intrado should be required to show, based on its costs, that its proposed rates are reasonable. *Id*. at 53; VZ Rep. Br. at 40. Finally, Verizon asserts that using ILEC rates as a benchmark for competitor's rates is a standard part of its interconnection agreements. *See* VZ Init. Br. at 53.

3. Analysis and Findings

Verizon's proposed *Pricing Attachment* § 2 specifies:

> Notwithstanding any other provision of this Agreement or a Tariff, or otherwise, the Charges that Intrado Comm bills Verizon for Intrado Comm's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that Intrado Comm's cost to provide such Intrado Comm's Services to Verizon exceeds the Charges for Verizon's comparable Services and Intrado Comm has demonstrated such cost to Verizon, or, at Verizon's request, to the Commission or the FCC.

The Department need not address the Parties' arguments, since resolution of Arbitration Issue 12 is directly related to the Department's resolution of Arbitration Issues 10 and 11. For example, the first sentence of proposed *Pricing Attachment* § 2 mirrors Verizon's proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3, which the Department rejected in favor of Intrado's proposed language for those sentences. In addition, in Arbitration Issue 10, the Parties, in part, disputed Intrado's proposed interconnection rates. The Department determined that Intrado's proposed interconnection rates should be deleted from the agreement

since Verizon would not be interconnecting on Intrado's network and the inclusion of those rates would be unnecessary. Likewise, inclusion of Verizon's proposed *Pricing Attachment* § 2 is unnecessary since there are no additional rates proposed by Intrado within the agreement. *See generally 911 Attachment* § 1.7.2. Therefore, since *Pricing Attachment* § 2 is unnecessary, the Parties shall delete it from the interconnection agreement.

J. Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI Database, and MSAG be qualified as proposed by Intrado by other provisions of the Agreement?
Arbitration Issue 13 - Waiver of 911 Related Charges (*911 Attachment* §§ 1.7.2, 1.7.3)

1. Introduction

This issue involves language already discussed and resolved by the Department under Arbitration Issues 10 and 11, but in order to avoid any possible confusion or ambiguity, the Department addresses the Parties' arguments for this particular issue as well.

2. Positions of the Parties

a. Intrado

Intrado maintains that it has proposed language to ensure that each Party may only bill to the other Party those services and items set forth in the interconnection agreement and the rates contained in the *Pricing Attachment* to the agreement. *See* INT. Init. Br. at 60-61; Second Jt. Iss. Mat. at 29. In response to Verizon's arguments, Intrado contends that its language does not address intercarrier compensation or create a "loophole" to assess those charges, as well as ALI database and MSAG charges, on Verizon, since undisputed language in the agreement specifies that reciprocal compensation, intercarrier compensation, exchange access service, ALI database, and MSAG are specifically excluded from the types of charges the Parties are permitted to impose on each other. *See* INT. Init. Br. at 61. Intrado also specifies that its language ensures that each

Party may bill the other Party appropriate interconnection-related charges for 911/E-911 calls to the extent such charges are permitted by or set forth in the interconnection agreement. *Id*.

b. Verizon

Verizon asserts that although the Parties have agreed to not charge each other intercarrier compensation for 911/E-911 calls, Intrado's proposed language in *911 Attachment* §§ 1.7.2 and 1.7.3, "[e]xcept as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment," would create a loophole that might permit such charges. VZ Init. Br. at 53. Verizon claims that 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 incorrectly assume that Intrado may designate POIs on Intrado's network. *Id*. at 54; VZ Rep. Br. at 41; Second Jt. Iss. Mat. at 29. Moreover, Verizon asserts that 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. *See* VZ Init. Br. at 54; Second Jt. Iss. Mat. at 29.

3. Analysis and Findings

The Department's determinations regarding POI placement, "applicable" tariffs language, Intrado's proposed rates, and, specifically, Arbitration Issues 10 and 11 address in whole the language to be adopted by the Parties in *911 Attachment* §§ 1.7.2 and 1.7.3. However, the Department notes that it finds Verizon's concerns to be unfounded and agrees with Intrado's position that its proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3, "[e]xcept as otherwise set forth in this Agreement[,]" does not change the Parties' express agreement that Intrado will not charge for the charges specified under § 1.7.2. It is quite clear to the Department that the certain charges listed under § 1.7.2 will *not* be assessed against Verizon *unless* "otherwise set forth in this Agreement," and Verizon has not presented to the Department

any evidence of, or pointed the Department to, specific other provisions in the agreement that would provide for these charges. Accordingly, the Department finds Intrado's proposed language to be reasonable and reaffirms its above determinations that the Parties shall incorporate Intrado's proposed language for the first sentences of *911 Attachment* §§ 1.7.2 and 1.7.3.

K. Should Intrado have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E-911 calls?
Arbitration Issue 15 - Intrado's Right to Amend the Interconnection Agreement (*General Terms and Conditions* § 1.5)

1. Introduction

The Parties dispute incorporation of Intrado's proposed language which would permit Intrado to seek amendment of the interconnection agreement for traffic other than 911/E-911 traffic. For the reasons set forth below, the Department agrees with Verizon, and the Parties shall delete Intrado's proposed langage in *General Terms and Conditions* § 1.5.

2. Positions of the Parties

a. Intrado

Intrado argues that it should have the right to amend the agreement to include services other than 911/E-911 services without having to re-negotiate, re-litigate, or re-arbitrate provisions already resolved by the Parties or by the Department. *See* INT. Init. Br. at 63, 64; Second Jt. Iss. Mat. at 30. As support for its position, Intrado asserts the FCC has determined that it is bad faith to require competitors to re-arbitrate issues and contract language that has already been arbitrated. *See* INT. Init. Br. at 64; Second Jt. Iss. Mat. at 30. In response to Verizon's argument that Intrado is seeking to be able to "pick-and-choose" favorable contract provisions, Intrado contends that Verizon fails to acknowledge that any amendment will first be subject to negotiations between the

Parties, dispute resolution before the Department, and possibly, under *General Terms and Conditions* § 4.6, arbitration before the Department. *See* INT. Init. Br. at 64-65.

b. Verizon

Verizon responds that Intrado is inappropriately seeking a unilateral right to amendment and counters that *General Terms and Conditions* § 4.6 is a change of law provision, which specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate *for a change of law*, as opposed to a general right to amendment. *See* VZ Init. Br. at 56-57. Furthermore, according to Verizon, Intrado seeks to be able to greatly expand the scope of the agreement by seeking to retain the benefit of any provisions it obtains through negotiation and arbitration associated with 911/E-911 calls and then add to them new provisions associated with services other than 911/E-911 services. *Id*. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. Verizon argues that this strategy would violate the FCC's "pick-and-choose" rules and also asserts that its negotiations were based upon a much narrower scope of services (*only* 911/E-911 traffic) and operation than the usual § 251(c) negotiated agreement. *See* VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 31. Verizon states that if Intrado wishes to expand the scope of the agreement, then it should negotiate a completely new agreement in which all of the provisions will be at issue. *See* VZ Init. Br. at 57; VZ Rep. Br. at 44. Verizon relies on the West Virginia Arbitrator's determinations in support of its position. *See* VZ Init. Br. at 57; VZ Rep. Br. at 44; *WV Arb. Award* at 26 ("The FCC's supporting rule for [47 U.S.C. § 252(i)], 47 C.F.R. § 51.809 provides, in part, that an ILEC shall make available to any requesting telecommunications carrier, <u>any agreement in its entirety</u>, to which the ILEC is a party … Verizon's position is well-taken and [its language] will be incorporated into the [ICA].").

3. Analysis and Findings

Pursuant to 47 U.S.C. § 252(i):

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Under the FCC's rule:

> An incumbent LEC shall make available…to any requesting telecommunications carrier any agreement *in its entirety* to which the incumbent LEC is a party that is approved by a state commission…upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

47 C.F.R. § 51.809(a) (emphasis added). In other words, under § 51.809(a), requesting carriers are not permitted to "pick-and-choose" favorable contract provisions between different existing agreements; instead, requesting carriers, if they so choose, may only adopt an existing agreement "in its entirety."

It is clear from the record that the Parties' negotiations, the Parties' arguments, and this arbitration concerned only interconnection related to the provision by Intrado's of 911/E-911 services to PSAPs. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2; VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. The only traffic involved is 911/E-911 traffic. *See* INT. Pet. at 5; INT. Currier Pref. Test. at 5; INT. Init. Br. at 2; VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 30-31. The Department finds that it would be unreasonable if Intrado were permitted to require Verizon, upon Intrado's request, to expand the scope of the agreement to non-911/E-911-related traffic and services in the future. As Verizon notes, this was not a typical broad § 251(c) negotiation/arbitration that most CLECs undertake with Verizon. *See*

VZ Init. Br. at 57; VZ Rep. Br. at 43; Second Jt. Iss. Mat. at 31. In addition, the Department agrees that permitting Intrado to amend the agreement in such a way in the future may conflict with the FCC's "pick-and-choose" rule. *See* 47 U.S.C. § 252(i); 47 C.F.R. § 51.809(a). Therefore, the Department rejects Intrado's proposed language for *General Terms and Conditions* § 1.5, and the Parties shall delete it from the interconnection agreement.

VIII. ORDER

After hearing and due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the Parties incorporate these determinations into a final agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to § 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

/s/ Carol E. Foltz
Carol E. Foltz
Interim Commissioner