

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Intrado)
Communications, Inc. to Provide Competitive) Case No. 07-1199-TP-ACE
Local Exchange Services in the State of Ohio.)

FINDING AND ORDER

The Commission finds:

- (1) On November 19, 2007, as amended on December 7, 2007, and January 28, 2008, Intrado Communications, Inc. (Intrado) filed an application seeking certification in the state of Ohio as a competitive local exchange carrier (CLEC) for the purpose of provisioning telecommunications services that facilitate, enhance, and advance the provision of emergency services for end users of wireline and wireless carriers and voice over Internet protocol (VoIP) providers. Intrado submits that it will offer its telecommunications services throughout the state of Ohio to a federal, state, or municipal or other local government unit legally authorized to subscribe to the service and which has public safety responsibility by law to respond to telephone calls from the public for emergency services, including police and fire. The applicant avers that its offerings in Ohio will provide public safety answering points (PSAPs) with competitive alternative options to their current 9-1-1 incumbent-based legacy systems that do not exist today. In particular, Intrado states that its next-generation solution will provide PSAPs with the capabilities to process, route, and deliver wireline, wireless, and VoIP calls allowing for more relevant information to be sent to first responders.

Intrado explains that its services permit calls originated by personal communications devices that dial 9-1-1 or another emergency number to be received by a PSAP. The company describes how its services support interconnection to other telecommunications service providers for the purpose of receiving emergency calls originated in their networks. Specifically, these services include 9-1-1 call routing services which use a call management system to perform the selective routing of an emergency call to the appropriate PSAP or to hand the call off to a different 9-1-1 service provider for call completion to the appropriate PSAP. Inasmuch as its services allow for access and usage of 9-1-1

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services through the transporting of 9-1-1 and emergency call traffic to its subscribers, Intrado opines that it is engaged in the provision of Tier 1 noncore service.

As part of its service provisioning, Intrado describes that it requires the use of numbering resources in the state of Ohio. In particular, these numbering resources pertain to the use of pseudo automatic number identification (pANI) resources for the purpose of instructing switches where to route wireless and VoIP 9-1-1 calls. Intrado avers that prior to seeking such numbering resources it should be certified as a CLEC for the purpose of providing Tier 1 noncore services.

- (2) Pursuant to the attorney examiner's Entry of December 18, 2007, AT&T Ohio, Cincinnati Bell Telephone Company, LLC (Cincinnati Bell),¹ and the Ohio Telecom Association (OTA) were granted intervention in this proceeding.
- (3) AT&T Ohio questions why Intrado should be allowed to provide a limited service absent the broader obligations of other telecommunications carriers in the state of Ohio. Specifically, AT&T Ohio avers that Intrado is seeking a CLEC certificate for the purpose of interconnection while not intending to offer basic local exchange service as required by the Commission's rules. AT&T Ohio submits that, pursuant to Section 4905.041, Revised Code, Intrado's application for certification should be denied in light of the fact that the company does not qualify as a local exchange carrier consistent with federal law (AT&T Ohio Motion for Intervention at 3).

Further, AT&T Ohio asserts that Intrado's application is contrary to the Commission's long-standing policy requiring that 9-1-1 services be priced "at cost." Specifically, AT&T Ohio highlights the fact that Intrado's tariff provides for a "return" on certain charges (AT&T Ohio Reply Memorandum, December 18, 2007, at 2, referencing Intrado's proposed Tariff No. 1, Section 6, Original Pages 1 and 2).

- (4) Cincinnati Bell objects to Intrado seeking certification as a CLEC despite the fact that it will not be offering dial tone or any other aspect of local exchange service other than 9-1-1 services to

¹ On December 4, 2007, Cincinnati Bell also filed objections in opposition to Intrado's application and a request for a suspension.

PSAPs. Cincinnati Bell opines that Intrado is seeking certification as a CLEC so that it can avail itself of interconnection and access to unbundled network elements (UNEs), despite the fact that it has no plans to actually operate as a CLEC. Cincinnati Bell also believes that Intrado is seeking to change the routing of certain 9-1-1 traffic and the relationship between Cincinnati Bell and other carriers and PSAPs in Cincinnati Bell's service area (Cincinnati Bell Motion for Intervention at 3).

- (5) Similar to AT&T Ohio and Cincinnati Bell, OTA believes that Intrado is seeking to obtain the rights and privileges of interconnection, access to UNEs, and collocation, despite the fact that the applicant is not entitled to them pursuant to Ohio law inasmuch as Intrado does not provide all of the elements of basic local exchange service (OTA Motion to Intervene at 4). OTA opines that if Intrado is successful in gaining CLEC certification, OTA's members will be adversely affected and unlawfully burdened by other similarly situated providers (*Id.* at 2).
- (6) Intrado considers the motions of AT&T Ohio, Cincinnati Bell, and OTA to be an attempt to create a barrier to entry for itself and other competitive 9-1-1 service providers to compete in Ohio for the purpose of serving the needs of the public safety community (Intrado Memorandum Contra at 1).

Specifically, Intrado dismisses the objections raised in response to its certification application inasmuch as it considers the identified issues and concerns to be either without merit or irrelevant to the issue of Intrado's fiscal, technical, or managerial qualifications as they relate to certification (*Id.* at). Intrado considers the stated objections to be nothing more than an attempt by the ILECs to protect their own turf from the services that Intrado believes are supported by the public safety community (*Id.* at 3). Additionally, Intrado believes that such services are supported by Section 253 of the Telecommunications Act of 1996 (1996 Act).

To the extent that there are technical issues relative to the offering of its advanced 9-1-1 services, Intrado believes that these issues are more appropriate in the context of interconnection negotiations, and should not be addressed in this certification proceeding. Intrado asserts that its services constitute telephone exchange service as defined in the 1996 Act inasmuch as it provides the routing, transmission, and transport of traditional

and nontraditional emergency call traffic to the appropriate PSAP. Therefore, Intrado avers that it is a telephone company subject to the Commission's jurisdiction in accordance with Section 4905.03(A)(2), Revised Code. As a result of its service offerings, Intrado asserts that it provides significant value to the public safety community, as well as residents of the state.

- (7) Upon a review of Intrado's application for certification, the Commission determines that, although Intrado is seeking to be designated as a CLEC, based on the company's described services it is more appropriate to establish a new designation known as a "competitive emergency services telecommunications carrier" and to designate the applicant as such, rather than as a CLEC.

The Commission determines that competitive emergency services telecommunications carriers are telecommunications carriers pursuant to 47 U.S.C. 153. In reaching this determination, the Commission notes that, pursuant to Section 153(44) of the 1996 Act, a telecommunications carrier is:

[A]ny provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in telecommunications services . . .

Section 153(51) of the 1996 Act defines telecommunications service as:

[T]he offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 153(48) defines telecommunications as:

[T]he transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Applying these definitions to Intrado's proposed service offering, it is clear that Intrado is engaged in the provisioning of tele-

communications due to its transmission of 9-1-1 end user information from the end user's location to the PSAP. This offering is a telecommunications service in light of the fact that it will be contracted for by one or more Ohio counties for a fee, the effect of which is the availability of enhanced 9-1-1 service directly to the public.

Additionally, the Commission determines that emergency service telecommunications carriers are telephone companies pursuant to Section 4905.03, Revised Code and Rule 4901:1-7-01(S), O.A.C., and public utilities pursuant to Section 4905.02(B), Revised Code, inasmuch as they are engaged in the transmission of a telephonic message in their capacity of maintaining the selective router and directing 9-1-1 traffic to the appropriate PSAP. Accordingly, competitive emergency services telecommunications carriers are entitled to all rights and obligations of a telecommunications carrier pursuant to Sections 251 and 252 of the 1996 Act.

In establishing the competitive emergency services telecommunications carrier designation, the Commission distinguishes between a CLEC that is engaged in the business of provisioning basic local exchange service to end user subscribers who have either affirmatively selected the carrier or have other alternative providers available, and a company such as Intrado, which intends to serve the needs of the public safety community as a "competitive 9-1-1 service provider" (Intrado Memorandum Contra, December 11, 2007, at 1), but with whom the end user has no relationship. In support of this distinction, the Commission notes that Intrado's services involve the routing, transmission, and transport of traditional and nontraditional emergency call traffic to the appropriate PSAP or to allow for the handoff to a different 9-1-1 service provider, such as an ILEC, for call completion to the appropriate PSAP (Application, Ex. 3). Therefore, while Intrado is a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the 1996 Act, its telephone exchange activities are restricted in scope and, thus, do not extend to the level of a CLEC.

The Commission notes that as a telecommunications carrier, the applicant has requested interconnection with the following Ohio ILECs pursuant to Section 251 of the 1996 Act: AT&T Ohio,

CenturyTel of Ohio, Cincinnati Bell Telephone Company, United Telephone Company of Ohio dba Embarq, Verizon North, and Windstream (Application, Ex. 19). Therefore, ILECs are obligated to negotiate with Intrado in good faith specific to the terms of interconnection. Additionally, pursuant to its designation as an emergency services telecommunications carrier, Intrado is entitled to access of pANI resources. Intrado shall obtain and utilize such pANI resources in an efficient manner consistent with the FCC's number optimization rules in 47 C.F.R. §52. The Commission directs Intrado to make available to the Commission's staff, upon request, information concerning Intrado's application for and/or utilization of pANI resources.

The Commission highlights the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provisioning of 9-1-1 service. As discussed in Intrado's application, its next-generation technology will provide PSAPs with the enhanced capability to process, route, and deliver wireline, wireless, and VoIP calls, enabling more relevant information to be sent to emergency personnel (Application, Ex. 5, at 3). By certifying competitive emergency services telecommunications carriers, the Commission recognizes that it is providing PSAPs with competitive alternatives (e.g., Intrado) to the ILEC's traditional processing of 9-1-1 traffic. PSAPs will now have the opportunity to contract with entities that provide the most advanced 9-1-1 service available. This competitive environment will encourage the further development of 9-1-1 technology.

- (8) In reaching the determination that Intrado should be certified as a competitive emergency services telecommunications carrier, the Commission has engaged in a comprehensive analysis of the company's compliance of the requirements of Rule 4901:1-6-10, O.A.C., including a demonstration of its technical, financial, and managerial capabilities.

A review of the record reflects that Intrado is certified to provide telecommunications services in more than 35 states (Application, Ex. 3, at 3). The company represents that along with its affiliate Intrado Inc., it owns and operates the largest 9-1-1 network in the world and that Intrado Inc. has operated 9-1-1 databases on behalf of three of the major ILECs for a number of years, and a

nationwide near real-time messaging network in support of wireless E9-1-1 for over 49 wireless carriers (*Id.*). Intrado describes its support for the industry's migration to Next Generation 9-1-1 services as evidenced by its active support and alignment with the United States Department of Transportation's Next Generation 9-1-1 Initiative (*Id.*, Ex. 5, at 3). According to the company, its expertise and commitment to E9-1-1 network security is reflected by its active participation in the Network Reliability and Interoperability Council (*Id.*, Ex. 3, at 3). In fact, Intrado submits that it is a secured and private IP-managed network. Intrado's systems that are accessible through the Internet, including the subscriber record management data exchange portal, database management interface tool, and metrics tool, are protected by a secure access process that requires authentication through a unique user name, unique user password, and a code randomly generated at time of access via a secure ID token. Further, firewalls and network infrastructure are always configured with network intrusion detection in place to warn dedicated network security personnel of abnormal traffic patterns as well as providing the needed forensics to follow up on any attempted attack. The record also demonstrates that Intrado's officers and directors have vast technical experience in the 9-1-1 industry (*Id.*, Ex. 3). Additionally, the financial information submitted for Intrado's parent corporation reflects that Intrado has sufficient funding sources from its ultimate parent corporation to support its operations in the state of Ohio (*Id.*, Ex. 10).

- (9) Intrado acknowledges and agrees to abide by the requirements set forth in Rule 4901:1-5-13, O.A.C., which pertain to the emergency and outage operations impacting 9-1-1 service. Consistent with the intent of this rule, the Commission is particularly concerned that 9-1-1 service not be interrupted due to a business determination on behalf of the applicant or a county that Intrado no longer serve in the capacity of an competitive emergency services telecommunications carrier. Therefore, Intrado must obtain Commission approval pursuant to an order prior to discontinuing or disconnecting service in a specific county or throughout the entire state of Ohio. In other words, all such requests should be filed as nonautomatic approval abandonment cases. Additionally, the Commission directs that Intrado and the ILEC providing wireline emergency 9-1-1 service shall

operate in a cooperative manner to ensure that emergency 9-1-1 calls continue unimpeded between end users and PSAPs.

- (10) The Commission recognizes that, pursuant to Rule 4901:1-6-01(B)(3), O.A.C., *basic local exchange service includes access to and usage of 9-1-1 services, where such services are available.* Due to the fact that the provision of emergency services is a component of basic local service, it shall be considered as a Tier 1 core service consistent with Rule 4901:1-6-04, O.A.C. Therefore, with the exception of those case types specifically addressed in Findings (11) and (16), all applications related to the provision of emergency services shall be filed and processed in accordance with the automatic approval time frames provided for in the Commission's rules applicable to the competitive provider provision of Tier 1 core services.

Certification of competitive emergency services telecommunications carriers should occur on a countywide basis in order to ensure that all PSAPs in a given county are served by the same competitive emergency services telecommunications carrier for the purpose of provisioning seamless 9-1-1 service. In addition, the 9-1-1 systems in Ohio are planned, structured, and established on a countywide-basis. Therefore, competitive emergency services telecommunications carriers should not serve individual PSAPs but, instead, the entire countywide 9-1-1 system.

- (11) Pursuant to its application, Intrado is certified, at this time, as a competitive emergency services telecommunications carrier in all 88 counties in the state of Ohio. The company's tariff should be routinely updated to reflect the counties in which it is actually provisioning service.

Intrado, or any other competitive emergency services telecommunications carrier, may not operate as 9-1-1 system service provider in a countywide system until such time as the county has amended its 9-1-1 plan to identify that carrier as the 9-1-1 carrier of choice for the designated telecommunications (e.g., wireline, wireless, VoIP etc.). The ILEC shall continue to act as the 9-1-1 system service provider for those types of telecommunication services not designated to the competitive emergency services telecommunications carrier by the county. Any competitive emergency services telecommunications carrier

authorized to act as a countywide system service provider must carry all calls throughout the county for such types of telecommunications services designated by the county. In addition to the ILEC, there may be no more than one competitive emergency services telecommunications carrier designated by the county per countywide 9-1-1 system.

Once the countywide 9-1-1 plan has been amended and the competitive emergency services telecommunications carrier is designated to operate within the specified countys, the competitive emergency services telecommunications carrier shall file both the amended plan and an amended tariff listing both the county which has chosen it to provide 9-1-1 service and the telecommunication services designated by the county to be carried by the competitive emergency services telecommunications carrier.

- (12) In order to promote the notion of seamless 9-1-1 service, each designated competitive emergency services telecommunications carrier shall interconnect with each adjacent countywide 9-1-1 system to ensure transferability across county lines. In addition, each competitive emergency services telecommunications carrier is required to ensure call/data transferability between Internet protocol (IP) enabled PSAPs and non-IP PSAPs within the countywide 9-1-1 systems it serves, and to other adjacent countywide 9-1-1 systems, including those utilizing non-IP networks which are served by another 9-1-1 system service providers.
- (13) Intrado also seeks to establish rules, and regulations governing its competitive emergency services telecommunications carrier offerings. After inspecting the applicant's proposed tariff, as amended on December 7, 2007, and January 28, 2008, the Commission finds the tariff to be in compliance with the Commission's rules and orders relevant to the service offerings proposed by the applicant. Accordingly, the Commission concludes that the tariff should be approved. While approving *Intrado's tariff*, the Commission notes that the tariff reflects that the services will be offered on an individual contract basis. The tariff itself is limited standard language regarding the rules and regulations pertaining to the service offering.

While AT&T Ohio is correct in its contention that the Commission previously expressed the intent that the price of 9-1-1 and related services shall be limited to the additional cost to provide the service, this limitation was in reference to the offering of traditional 9-1-1 services offered by the ILEC. Enhanced 9-1-1 services, such as those proposed by Intrado, were not contemplated at the time of the Commission's prior 9-1-1 pricing decision. See, *In the Matter of the Adoption of Guidelines Governing the Disclosure or Use of the Emergency 9-1-1 Database in Accordance with House Bill No. 244*, Case No. 94-1965-TP-ORD, Finding and Order, June 6, 1996, at 13.

- (14) All contracts between Intrado and individual Ohio counties for the provision of enhanced emergency services should, within 30-days of their execution, be submitted to the 9-1-1 Coordinator for the state of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.
- (15) To the extent that Intrado ultimately seeks to engage in the provision of additional services that results in the company acting as a CLEC, the applicant should file for approval to amend its certificate to provide such services. Upon the filing of the application, the Commission will assess the company's designated status.
- (16) Finally, the Commission has previously determined that the provisioning of outbound emergency notification messaging is not competitive due to the fact that the 9-1-1 database is compiled and held in "public trust and not able to be released to any outside third party. As a result, all tariffs filed by Intrado for the provisioning of outbound emergency notification messaging should be held at cost and will be considered on a nonautomatic basis. See Case No. 06-915-TP-ORD, *In the Matter of the Implementation of Rules Concerning Wireless Enhanced 9-1-1 Pursuant to H.B. 361*, Entry on Rehearing, January 17, 2007, at 8. Intrado is directed to amend its tariff to include outbound emergency notification messaging once the service is requested from any county it serves.

It is, therefore,

ORDERED, That Intrado is granted certification as an competitive emergency services telecommunications carrier in accordance with the above findings and shall be issued Certificate No. 90-8000. It is, further,

ORDERED, That Intrado's tariff filed on November 19, 2007, as amended on December 7, 2007, and January 28, 2008, is hereby approved. The earliest effective date of the approved tariff shall be the date upon which Intrado has filed with the Commission three copies of the approved tariff in the TRF docket No. 90-8000-TP-TRF. The tariff shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That Intrado must update its tariff to reflect its counties of operation consistent with Finding (11). It is, further,

ORDERED, That Intrado amend its tariff to incorporate outbound emergency notification messaging consistent with Finding (16). It is, further,

ORDERED, That all contracts between Intrado and an Ohio county should be informally submitted to the Commission staff in accordance with Finding (14). It is, further,

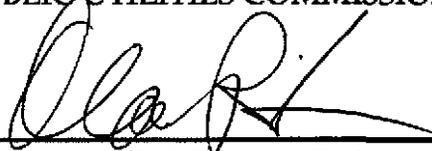
ORDERED, That Intrado must obtain Commission approval pursuant to an Order prior to *discontinuing or disconnecting service*. It is, further,

ORDERED, That Intrado cannot commence operations in a particular county until such time that it has filed the applicable countywide 9-1-1 plan adopting Intrado as its 9-1-1 system service provider, filed its amended tariff updating the counties it is serving, and submitted the applicable contract to the Commission staff. Additionally, Intrado must have approved interconnection agreement(s) for the counties it seeks to serve. It is, further,

ORDERED, That the ILEC shall continue to act as the 9-1-1 system service provider for those types of telecommunications services not designated to Intrado by the county. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

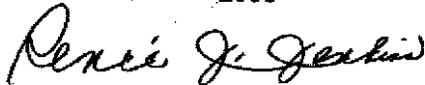


Donald L. Mason

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Renee J. Jenkins
Secretary